

# STATUTES OF NATAL

COMPILED AND EDITED BY

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ASSISTED AND REVISED ON BEHALF OF THE  
COLONIAL GOVERNMENT

BY

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BEING A

COMPILATION OF THE STATUTES OF THE COLONY OF  
NATAL FROM THE YEARS 1845 TO 1899, INCLUSIVE,  
WITH FOOT-NOTES, AND WITH APPENDIX  
CONTAINING THE ACTS OF 1900.

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*Pietermaritzburg :*

**P. DAVIS & SONS.**

1900.

TO  
J. F. HITCHINS, Esq., J.P.  
THIS WORK  
IS GRATEFULLY DEDICATED BY  
HIS SON

## PREFACE.

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On issuing the first Volume of this work from the Press, it would seem to be due from the Compiler to furnish his apology for introducing into legal circles a Compilation of Statutes so widely differing in principle of construction from those hitherto in use in the Colony.

The same opportunity is also gladly availed of to express the Author's thanks to those gentlemen who in various ways have helped and encouraged him during the long task.

The system of arrangement is adopted from "Chitty's Statutes," edited by Mr. J. M. Lely, Barrister-at-Law, and published by Messrs. Sweet and Maxwell, Ltd., and Stevens and Sons, Ltd., London. The idea of bringing out a Publication of Statutes arranged on this principle may be said to have arisen in the mind of the writer almost as soon as, fresh from the English Schools of Law, he came in contact with the only Book of Statutes hitherto used in the Colony—chronologically arranged and much out of date. This was in the year 1892.

The idea having once germinated, soon took root; but difficulties quickly sprang up to retard its growth.

One of the first legal gentlemen to whom the matter was mentioned was the late Mr. Escombe, Q.C., who entirely approved the idea and advised the writer to steadily persevere with the work, in the assurance that it would one day be brought to publication.

To the present Attorney-General, however, the thanks of the Author are chiefly due, and are here recorded, for the warm support which he gave to the undertaking at the outset and the practical steps which he took to help it forward.

At the suggestion of Mr. Bale, in 1895, a few pages of the title "WILLS" were set up in type and submitted to the Natal

Law Society with the object of getting their approbation and some assistance towards the cost of printing. The Law Society, whilst entirely approving the scheme, were not able to offer such pecuniary assistance as to warrant a heavy liability being incurred for printing, but their suggestion that Government should be approached was acted upon, and, in the light of the Society's sanction of the work, Government, at length, Mr. Bale being then Attorney-General, agreed to subscribe for a number of copies sufficient to enable arrangements to be made for bringing out the Book.

At this stage it became necessary to obtain the assistance of a second person; for in a work of this character and magnitude it is essential to accuracy that there should be the most careful revision by another eye than that of the Author. Considerable time was lost before a gentleman could be found competent and willing to assume this task, as no attempt was made to conceal the fact that it would involve assiduous labour, extending over many months, with much responsibility attaching. With full knowledge therefore of the demands that would be made upon him, Mr. Sweeney undertook the Revision upon behalf of Government, and at this stage it is probably not too much to say that unwearied care and attention in his department of the work have prevented all but the most trifling errors from creeping in.

But, happily, Mr. Sweeney did not content himself with mere revision. He has from the first taken the keenest interest in the whole matter. Many decisions were added by him as the subjects came under his eye, many Cross References inserted, and many suggestions given with respect to the classification of the Laws; all of which have added considerably to the utility of the Book.

For an explanation of the method of the work, little need be said. The Statutes are classified under titles referring to their subject matter, and these are arranged alphabetically with numerous Cross References. A few titles, such as "CRIMINAL LAW" and "PARLIAMENT," are sub-divided, but otherwise the Statutes run chronologically under each title. In some instances a guide to the more particular topic of an enactment is given by a sub-division of the headline, e.g., "DURBAN CORPORATION—TRAMWAYS."

Where a section has been wholly repealed, it is omitted, and a reference merely given to the repealing Law or Act; but where the repeal is only partial, the section is left intact and the repealed

words, if any, are indicated. In no other case is the Statute mutilated or interfered with. This is emphasised because the Book has frequently been referred to as a "Digest."

Each title is paged separately, a plan that has many advantages for a compiler, and some, it is believed, for the reader; in any event, it will be found to have no disadvantage as against the consecutive paging. For this idea, and for much kind encouragement, the Compiler is indebted to Mr. J. M. Lely, the Editor of "Chitty's Statutes." An acknowledgment is also here due to the Publishers of that Work, through whose kind courtesy extracts have been made from the footnotes of "Chitty" in instances where the Imperial and Colonial Statutes have been found to be similar in substance. With reference to these extracts, great care has been taken, whilst not omitting anything that might be useful to the practitioner, to avoid, on the other hand, misleading him by mis-applying English decisions to Colonial enactments. Where there is a doubt as to the applicability of a case, the citation is merely given, leaving the reader to judge whether or not it is in point, or in any way available in argument.

The first Volume contains a Chronological Table of all the Statutes of the Colony, including those that are repealed or have become obsolete, and showing what Statutes were in force at the end of February, 1900, with references to the titles to which they have been assigned. The third Volume will contain a complete General Index, in the compilation of which Mr. Sweeney is collaborating.

In conclusion, the Author, whilst not looking for high praise on the results of his labours, trusts that, at the least, "Statutes of Natal" may be found to be an improvement upon its predecessors, and that it may prove valuable not only as a stepping stone to a more perfect work in the future, but also to the Parliamentary draughtsman in his work of framing Consolidating Acts.

R. L. H.

Durban, March, 1900.

# CHRONOLOGICAL INDEX

*Of all the Ordinances, Laws, and Acts of the Colony of Natal from the year 1845, including those that have become obsolete or been repealed (but not including Acts of Supply), showing what Statutes are now in force and the Titles to which they have been assigned in the Alphabetical List (A).*

No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Ord. No. 12, 1845	"ROMAN-DUTCH LAW."	
" 14, 1845	District Court ... ..	Repealed by Law 10, 1857.
" 17, 1845	Jurors ... ..	Repealed by Ord. 6, 1852.
" 18, 1845	"CRIMINAL LAW."	
" 19, 1845	Evidence ... ..	Repealed by Law 17, 1859.
" 2, 1846	"REGISTRATION (DEEDS)."	
" 3, 1846	Transfer Dues ... ..	Repealed by Law 5, 1860.
" 4, 1846	"MINORS."	
" 5, 1846	"POLICE."	
" 6, 1846	"JUSTICES OF THE PEACE."	
" 14, 1846	Evidence ... ..	Repealed by Law 17, 1859.
" 16, 1846	Magistrates ... ..	Repealed by Law 22, 1889.
" 17, 1846	"MARRIAGE."	
" 18, 1846	Auction Sales ... ..	Repealed by Law 32, 1874.
" 21, 1846	"PLEADING, PRACTICE, &c."	
" 22, 1846	"CRIMINAL LAW."	
" 23, 1846	Retail Shops ... ..	Superseded.
" 24, 1846	Insolvency ... ..	Repealed by Law 47, 1887.
" 25, 1846	Payment of Witnesses ... ..	Repealed by Law 33, 1865.
" 26, 1846	Newspapers, &c. ... ..	Repealed by Law 9, 1858.
" 32, 1846	Rules of Court ... ..	Repealed by Act 39, 1896.
" 33, 1846	"REGISTRATION (DEEDS)."	
" 2, 1847	Deserters ... ..	Repealed by Law 12, 1867.
" 5, 1847	Municipal Boards ... ..	Repealed by Ord. 1, 1854.
" 6, 1847	Firearms ... ..	Repealed by Law 3, 1857.
" 7, 1847	Pounds ... ..	Repealed by Ord. 1, 1850.
" 8, 1847	"MARKETS."	
" 9, 1847	Intoxicating Liquors ... ..	Repealed by Act 38, 1896.
" 10, 1847	Licenses ... ..	Repealed by Ord. 3, 1850.
" 11, 1847	"COURTS (SUPREME)."	
" 12, 1847	Post Office ... ..	Repealed by Ord. 4, 1851.
" 1, 1848	Fees of Court ... ..	Superseded by Law 10, 1857.
" 2, 1848	Intoxicating Liquors ... ..	Virtually repealed by Ord. 3, 1853.

(A) This Index is, in part, founded on Broome's Chronological Index of Ordinances and Laws of Natal, 1845 to 1889, inclusive, which is believed to be correct so far as it goes. The Compiler acknowledges, with thanks, the assistance afforded by having the earlier Index to refer to.

No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Ord. No. 3, 1848	Gunpowder ... ..	Repealed by Law 3, 1857.
„ 4, 1848	Trade Beyond Boundaries ... ..	Repealed by Law 5, 1858.
„ 1, 1849	Ejectment ... ..	Repealed by Law 22, 1889.
„ 2, 1849	Provisional Titles ... ..	Disallowed. See Proc. 14 Jan., 1851.
„ 3, 1849	Native Law ... ..	Repealed by Law 26, 1875.
„ 4, 1849	Trust Company ... ..	Wound up.
„ 5, 1849	“IMMIGRATION (EUROPEAN).”	
„ 6, 1849	Aliens ... ..	Repealed by Ord. 3, 1851.
„ 1, 1850	Pounds ... ..	Repealed by Law 25, 1874.
„ 2, 1850	“MASTER AND SERVANT.”	
„ 3, 1850	Revenue ... ..	Obsolete. See Act 43, 1898.
„ 5, 1850	District Court ... ..	Virtually repealed by Law 10, 1857.
„ 6, 1850	Deeds Registry ... ..	Virtually repealed by Law 16, 1875.
„ 1, 1851	Harbours ... ..	Repealed by Law 29, 1880.
„ 2, 1851	“IMMIGRATION (EUROPEAN).”	
„ 3, 1851	Aliens ... ..	Repealed by Law 1, 1860.
„ 4, 1851	Postage ... ..	Repealed by Law 11, 1867.
„ 5, 1851	Gunpowder, &c. ... ..	Expired.
„ 2, 1852	Auction Duty ... ..	Repealed by Law 32, 1874.
„ 3, 1852	Clerks of the Peace ... ..	Repealed by Act 11, 1895.
„ 4, 1852	“COUNTIES (DIVISION OF).”	
„ 5, 1852	Arrest of Debtors ... ..	Repealed by Law 22, 1889.
„ 6, 1852	Juries ... ..	Repealed by Law 10, 1871.
„ 7, 1852	Juries ... ..	Repealed by Law 10, 1871.
„ 8, 1852	Resident Magistrate, Durban ... ..	Repealed by Law 22, 1889.
„ 9, 1852	Juries ... ..	Repealed by Law 10, 1871.
„ 11, 1852	“WEIGHTS AND MEASURES.”	
„ 12, 1852	Assistant Magistrates ... ..	Repealed by Law 22, 1889.
„ 13, 1852	“MASTER AND SERVANT.”	
„ 2, 1853	Sugar Company ... ..	Repealed by Ord. 7, 1854.
„ 3, 1853	Licenses and Stamps ... ..	Repealed by Act 38, 1896.
„ 4, 1853	“CROWN LANDS.”	
„ 6, 1853	Pietermaritzburg Corporation ... ..	Superseded by Ord. 1, 1854.
„ 1, 1854	Municipal Corporations ... ..	Repealed by Law 21, 1861.
„ 2, 1854	“STATUTES.”	
„ 3, 1854	Local Councils ... ..	Repealed by Law 2, 1857.
„ 4, 1854	Quarantine ... ..	Repealed by Law 3, 1858.
„ 5, 1854	Bank of Natal ... ..	Superseded by Law 21, June, 1859.
„ 6, 1854	Diseased Cattle ... ..	Repealed by Law 9, 1871.
„ 7, 1854	Sugar Company ... ..	Had effect.
„ 8, 1854	Volunteers ... ..	Repealed by Ord. 11, 1855.
„ 1, 1855	Cattle Stealing ... ..	Repealed by Law 4, 1868.
„ 2, 1855	“NATIVES.”	
„ 3, 1855	Harbour ... ..	Repealed by Law 9, 1861.
„ 4, 1855	“NATIVES.”	
„ 5, 1855	“CRIMINAL LAW.”	
„ 6, 1855	Customs ... ..	Repealed by Act 13, 1899.
„ 7, 1855	Customs ... ..	Repealed by Law 19, 1859.
„ 8, 1855	Excise ... ..	Repealed by Law 31, 1865.
„ 11, 1855	Volunteers ... ..	Repealed by Law 15, 1872.
„ 1, 1856	“COMMUNITY OF GOODS” and “WILLS.”	
„ 2, 1856	“Education” ... ..	Repealed by Act 5, 1894.
„ 3, 1856	Coolies ... ..	Repealed by Law 2, 1870.

No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Ord. No. 4, 1856	Intoxicating Liquors ... ..	Repealed by Law 18, 1863.
„ 5, 1856	“ALIENS.”	
„ 6, 1856	“ALIENS.”	
„ 7, 1856	Umpanda's Country ... ..	Obsolete.
„ 8, 1856	District Court ... ..	Virtually repealed by Law 10, 1857.
„ 9, 1856	Medical Practitioners ... ..	Repealed by Law 37, 1887.
„ 10, 1856	Municipal Corporations ... ..	Repealed by Law 21, 1861.
„ 11, 1856	“DUTCH REFORMED CHURCH.”	
„ 14, 1856	Copyright ... ..	Repealed by Act 9, 1896.
„ 15, 1856	Natal Bank ... ..	Disallowed. See Proc. 10 Aug., 1857.
„ 16, 1856	Victoria Local Council ... ..	Obsolete.
„ 18, 1856	“CRIMINAL LAW.”	
Law No. 1, 1857	“PARLIAMENT.”	
„ 2, 1857	Repealing Ord. 3, 1854 ... ..	Had effect.
„ 3, 1857	Gunpowder ... ..	Repealed by Law 22, 1861.
„ 4, 1857	Contracts of Service ... ..	Disallowed. See Proc. 11 Jan., 1858.
„ 6, 1857	Native Hut Tax ... ..	Repealed by Law 13, 1875.
„ 8, 1857	Tax on Unoccupied Lands ... ..	Disallowed. See Proc. 15 Feb., 1858.
„ 9, 1857	Firearms ... ..	Repealed by Law 11, 1862.
„ 10, 1857	Supreme Court ... ..	Repealed by Act 39, 1896.
„ 3, 1858	“PUBLIC HEALTH.”	
„ 4, 1858	Quit Rents ... ..	Repealed by Law 17, 1865.
„ 5, 1858	Repealing Ord. 4, 1848 ... ..	Had effect.
„ 6, 1858	“INTEREST.”	
„ 7, 1858	“ALIENS.”	
„ 9, 1858	“NEWSPAPERS.”	
„ 10, 1858	Parliament ... ..	Repealed by Law 7, 1860.
„ 11, 1858	Firearms ... ..	Virtually repealed by Law 11, 1862.
„ 12, 1858	“BUILDING SOCIETIES.”	
„ 5, 1859	“ARMS, AMMUNITION, &c.”	<i>Repealed by Act 1, 1906.</i>
„ 6, 1859	Branch Courts ... ..	Repealed by Law 22, 1889.
„ 7, 1859	Quit Rents ... ..	Repealed by Law 17, 1865.
„ 8, 1859	Firearms ... ..	Repealed by Law 11, 1862.
„ 9, 1859	“EVIDENCE AND WITNESSES.”	
„ 10, 1859	“PUBLIC HEALTH.”	
„ 11, 1859	Supreme Court ... ..	Repealed by Act 39, 1896.
„ 12, 1859	Postage ... ..	Repealed by Law 10, 1862.
„ 13, 1859	“IMMIGRATION (SPECIAL).”	
„ 14, 1859	Coolies ... ..	Repealed by Law 2, 1870.
„ 15, 1859	Indian Immigrants ... ..	Repealed by Law 2, 1870.
„ 16, 1859	“REGISTRATION (DEEDS).”	
„ 17, 1859	“EVIDENCE AND WITNESSES.”	
„ 19, 1859	Customs ... ..	Repealed by Law 13, 1863.
Law, 21 June, 1859	Natal Bank ... ..	Repealed by Law 9, 1874.
Law, 21 June, 1859	Natal Railway Company ... ..	Inoperative. See Law 18, 1876.
Law No. 1, 1860	Aliens ... ..	Repealed by Law 8, 1874.
„ 5, 1860	“REGISTRATION (DEEDS).”	
„ 6, 1860	Oaths ... ..	Repealed by Law 13, 1862.
„ 7, 1860	Parliament ... ..	Repealed by Law 17, 1869.
„ 8, 1860	Harbour Works Loan ... ..	Repaid.
Law, 31 July, 1860	Natal Railway Company ... ..	Inoperative. See Law 18, 1876.
Law No. 8, 1861	Quit Rents ... ..	Repealed by Law 19, 1863.



No. or Date of Statute.		Title, or if Repealed, Subject Matter.	Repealing Statute.
Law	No. 9, 1861	Repealing Ord. 3, 1855 ... ..	Had effect.
"	" 10, 1861	Declarations for Oaths ... ..	Repealed by Law 13, 1862.
"	" 11, 1861	Customs ... ..	Repealed by Law 13, 1863.
"	" 12, 1861	Master and Servant ... ..	Disallowed. See Proc. 27 Feb., 1862.
"	" 13, 1861	Intoxicating Liquors ... ..	Repealed by Act 38, 1896.
"	" 14, 1861	" "PRESCRIPTION."	
"	" 15, 1861	Mounted Police ... ..	Repealed by Law 4, 1874.
"	" 16, 1861	" "CRIMINAL LAW."	
"	" 17, 1861	" "QUIT RENTS."	
"	" 18, 1861	" "PIETERMARITZBURG COLLEGIATE INSTITUTION."	<i>Repealed by Act 21/1902</i>
"	" 19, 1861	" "DURBAN COLLEGIATE INSTITUTION."	<i>Repealed by Act 21/1903</i>
"	" 20, 1861	Xanthium Spinosum ... ..	Repealed by Law 38, 1874.
"	" 21, 1861	Municipal Corporations ... ..	Repealed by Law 21, 1862.
"	" 22, 1861	Gunpowder ... ..	Repealed by Law 12, 1862.
"	" 8, 1862	Arms and Ammunition ... ..	Repealed by Law 3, 1888.
"	" 9, 1862	Shipwrecks ... ..	Repealed by Law 24, 1875.
"	" 10, 1862	Postage ... ..	Repealed by Law 11, 1867.
"	" 11, 1862	" "ARMS, AMMUNITION, &c."	<i>Repealed by Act 1/1906</i>
"	" 12, 1862	" "ARMS, AMMUNITION, &c."	<i>Repealed by Act 4, 1906</i>
"	" 13, 1862	" "OATHS."	
"	" 14, 1862	Gaols ... ..	Repealed by Law 39, 1887.
"	" 15, 1862	" "HOLIDAYS (PUBLIC)."	
"	" 16, 1862	" "ARMS, AMMUNITION, &c."	
"	" 17, 1862	Apprehension of Offenders ... ..	Disallowed. See Proc. Oct. 11, 1863.
"	" 18, 1862	" "MASTER AND SERVANT."	
"	" 19, 1862	" "RIFLE ASSOCIATIONS."	
"	" 20, 1862	" "FRIENDLY SOCIETIES."	
"	" 21, 1862	Municipal Corporations ... ..	Repealed by Law 19, 1872.
"	" 22, 1862	Municipal Corporations ... ..	Repealed by Law 19, 1872.
Law,	28 Mar. 1862	" "NATAL LAND AND COLONIZATION COMPANY."	
Law,	13 Aug. 1862	Natal Bank ... ..	Repealed by Law 9, 1874.
Law,	13 Aug. 1862	Commercial and Agricultural Bank ... ..	Wound up.
Law	No. 1, 1863	A Public Holiday ... ..	Had effect.
"	" 8, 1863	Post Office ... ..	Superseded.
"	" 9, 1863	Post Office ... ..	Repealed by Law 11, 1867.
"	" 10, 1863	Leases ... ..	Repealed by Law 19, 1884.
"	" 11, 1863	" "TELEGRAPH."	<i>Repealed by Act 16/1901</i>
"	" 12, 1863	" "ARMS, AMMUNITION, &c."	<i>Repealed by Act 1/1906</i>
"	" 13, 1863	Customs ... ..	Repealed by Law 1, 1867.
"	" 14, 1863	Gunpowder ... ..	Expired.
"	" 16, 1863	Judges' Salaries ... ..	Repealed by Law 11, 1876.
"	" 17, 1863	Public Wharves ... ..	Repealed by Law 29, 1880.
"	" 18, 1863	Intoxicating Liquors ... ..	Repealed by Law 22, 1878.
"	" 19, 1863	Quit Rents ... ..	Repealed by Law 16, 1876.
"	" 20, 1863	Coolies ... ..	Repealed by Law 2, 1870.
"	" 21, 1863	" "QUIT RENTS."	
"	" 22, 1863	" "COMMUNITY OF GOODS."	
"	" 23, 1863	Intoxicating Liquors ... ..	Repealed by Act 38, 1896.
"	" 26, 1863	Burgher Law ... ..	Repealed by Law 19, 1865.
"	" 27, 1863	Insolvency ... ..	Repealed by Law 47, 1887.
"	" 28, 1863	" "PIETERMARITZBURG CORPORATION."	
Law,	27 July, 1863	" "DURBAN CORPORATION."	
Law,	30 July, 1863	" "DURBAN CORPORATION."	
Law,	3 Aug. 1863	Natal Railway Company... ..	Superseded.

No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Law No. 1, 1864	Official Salaries ... ..	Superseded.
" 3, 1864	Supreme Court ... ..	Repealed by Act 39, 1896.
" 4, 1864	Supreme Court ... ..	Repealed by Act 39, 1896.
" 5, 1864	" MUNICIPAL CORPORATIONS."	
" 6, 1864	" TELEGRAPH."	<i>Repealed by Act-16/101.</i>
" 7, 1864	Leases ... ..	Repealed by Law 19, 1884.
" 8, 1864	Glanders ... ..	Repealed by Law 14, 1887.
" 9, 1864	Fraudulent Marks ... ..	Repealed by Law 22, 1888, and 11, 1889.
" 10, 1864	" COMPANIES (JOINT STOCK)."	
" 11, 1864	Native Law ... ..	Repealed by Law 28, 1866.
" 12, 1864	Wills (Natives) ... ..	Repealed by Act 7, 1895.
" 14, 1864	" CRIMINAL LAW."	
" 15, 1864	Loan ... ..	Repaid.
" 16, 1864	Loans ... ..	Repealed by Law 14, 1871.
" 17, 1864	Assignment of Coolies ... ..	Repealed by Law 2, 1870.
" 18, 1864	Coolies ... ..	Repealed by Law 2, 1870.
" 21, 1864	Tax ... ..	Repealed by Laws 5, 1872 and 6, 1874.
" 22, 1864	Guaranteed Interest ... ..	Repealed by Laws 5, 1872 and 6, 1874.
Law, 16 Sep. 1864	Colonial Bank ... ..	Wound up.
Law, 16 Sep. 1864	Natal Bank ... ..	Repealed by Law 9, 1874.
Law, 16 Sep. 1864	Cotton Company ... ..	Wound up.
Law, 16 Sep. 1864	" DURBAN CORPORATION."	
Law, 16 Sep. 1864	" DURBAN CORPORATION."	
Law, 26 Sep. 1864	Durban Loan ... ..	Repealed by Law 24 Aug., 1865.
Law, 26 Sep. 1864	" PIETERMARITZBURG CORPORATION."	
Law, 26 Sep. 1864	Natal Coal Company ... ..	Repealed by Laws 5, 1872 and 6, 1874.
Law, 26 Sep. 1864	Natal Railway, &c., Companies... ..	} Repealed by Laws 5, 1872 and 6, 1874.
Law, 26 Sep. 1864	Natal Central Railway Company ... ..	
Law No. 1, 1865	" PARTNERSHIPS (LIMITED)."	
" 8, 1865	Horses ... ..	Repealed by Act 42, 1898.
" 9, 1865	" JUSTICES OF THE PEACE."	
" 10, 1865	" ORDNANCE."	
" 11, 1865	" PARLIAMENT."	
" 12, 1865	" ARMS, AMMUNITION, &c."	<i>Repealed by Act-1, 1906.</i>
" 13, 1865	" ROADS (MAIN)."	
" 14, 1865	" FAKU'S TERRITORY."	
" 15, 1865	" PIETERMARITZBURG CORPORATION."	
" 16, 1865	Judges Pensions ... ..	Repealed by Law 12, 1876.
" 17, 1865	" QUIT RENTS."	
" 18, 1865	" COMPANIES (JOINT STOCK)."	
" 19, 1865	" VOLUNTEERS."	
" 20, 1865	" REGISTRATION (DEEDS)."	
" 21, 1865	" GRASS FIRES."	
" 22, 1865	" DURBAN CORPORATION."	
" 23, 1865	" MASTER AND SERVANT."	
" 25, 1865	Costs ... ..	Repealed by Act 39, 1896.
" 26, 1865	Volunteers ... ..	Expired.
" 27, 1865	Pounds ... ..	Repealed by Law 25, 1874.
" 28, 1865	" NATIVE LAW."	
" 29, 1865	Coolies ... ..	Repealed by Law 2, 1870.
" 30, 1865	Customs ... ..	Repealed by Law 18, 1866.
" 31, 1865	Excise ... ..	Repealed by Law 14, 1868.
Law No. 32, 1865	Scab ... ..	Repealed by Law 26, 1878.

No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Law No. 33, 1865	Witnesses' Expenses ... ..	Repealed by Law 13, 1888.
Law, 24 Aug. 1865	Durban Loan ... ..	Repealed by Law 12 Dec., 1866.
Law, 24 Aug. 1865	" DURBAN CORPORATION."	
Law, 24 Aug. 1865	Umgeni Extension Railway ... ..	Obsolete.
Law No. 6, 1866	Shipping ... ..	Obsolete.
" 7, 1866	Insolvency ... ..	Repealed by Law 47, 1887.
" 8, 1866	Noxious Animals ... ..	Repealed by Law 12, 1868.
" 9, 1866	Durban Circuit Court ... ..	Repealed by Law 3, 1885.
" 10, 1866	Game ... ..	Repealed by Law 23, 1884.
" 11, 1866	Gunpowder ... ..	Disallowed. See Proc. 8 Mar., 1867.
" 12, 1866	Postage ... ..	Repealed by Law 11, 1867.
" 13, 1866	" ANIMALS (DISEASES)."	
" 14, 1866	Lungsickness ... ..	Repealed by Law 22, 1869.
" 15, 1866	Dogs ... ..	Superseded by Law 27, 1875.
" 16, 1866	Coasting Trade ... ..	Repealed by Law 9, 1867.
" 17, 1866	" MORTGAGES."	
" 18, 1866	Revenue ... ..	Repealed by Act 13, 1899.
" 19, 1866	" COMPANIES (WINDING UP)."	
" 20, 1866	" HYPOTHECS."	
" 21, 1866	Registration (Deeds) ... ..	Repealed by Law 16, 1875.
" 22, 1866	Juries ... ..	Repealed by Law 10, 1871.
" 23, 1866	Excise ... ..	Repealed by Law 14, 1868.
Law, 3 Aug. 1866	" PIETERMARITZBURG CORPORATION."	
Law, 3 Aug. 1866	Berea Toll ... ..	Repealed by Law 18, 1872.
Law, 3 Aug. 1866	Commercial and Agricultural Bank ... ..	Wound up.
Law, 3 Aug. 1866	" NATAL BANK."	
Law, 3 Aug. 1866	" PIETERMARITZBURG CORPORATION."	
Law, 3 Aug. 1866	Umgeni Sugar Company ... ..	Obsolete.
Law, 12 Dec. 1866	" DURBAN CORPORATION."	
Law No. 1, 1867	Customs ... ..	Repealed by Act 23, 1894.
" 2, 1867	Public Works Loan ... ..	Repealed by Law 8, 1867.
" 8, 1867	Public Works Loan ... ..	Repealed by Law 16, 1871.
" 9, 1867	Repealing Law 16, 1866 ... ..	Had effect.
" 10, 1867	" CRIMINAL LAW."	
" 11, 1867	Postage ... ..	Repealed by Law 22, 1884.
" 12, 1867	" CRIMINAL LAW."	
" 13, 1867	Fish ... ..	Repealed by Law 8, 1868.
" 14, 1867	Small Debts ... ..	Repealed by Law 22, 1889.
" 15, 1867	Mineral Leases ... ..	Repealed by Law 23, 1883.
" 16, 1867	" REGISTRATION (BIRTHS, &c.)."	
" 17, 1867	Coolies ... ..	Repealed by Law 2, 1870.
" 18, 1867	" PARLIAMENT."	
" 1, 1868	" LUNATICS."	
" 2, 1868	" WILLS."	
" 3, 1868	" CRIMINAL LAW."	
" 4, 1868	Cattle Stealing ... ..	Repealed by Law 10, 1876.
" 5, 1868	" PROBATE ADMINISTRATION, &c."	
" 6, 1868	Small Debts ... ..	Repealed by Law 22, 1889.
" 7, 1868	Savings Banks ... ..	Repealed by Law 11, 1882.
" 8, 1868	Fish ... ..	Repealed by Law 21, 1884.
" 9, 1868	Witnesses' Expenses ... ..	Repealed by Law 13, 1888.
" 10, 1868	Magistrates ... ..	Repealed by Law 22, 1889.
" 11, 1868	" ESCHEATS."	
" 12, 1868	Repealing Law 8, 1866 ... ..	Had effect.
" 13, 1868	Shipping ... ..	Repealed by Act 13, 1899.

No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Law No. 14, 1868	"REVENUE."	<i>Repealed by Act 33/04</i>
" 15, 1868	Durban Circuit Court ... ..	Repealed by Law 3, 1885.
" 16, 1868	Postage ... ..	Expired.
" 17, 1868	Tolls ... ..	Expired.
" 18, 1868	Stamp Duties ... ..	Expired.
" 21, 1868	Insolvency ... ..	Repealed by Law 47, 1887.
" 22, 1868	Insolvency ... ..	Repealed by Law 47, 1887.
" 23, 1868	"QUIT RENTS."	
" 1, 1869	Native Marriages ... ..	Repealed by Law 13, 1875.
" 2, 1869	"REVENUE."	
" 3, 1869	"REVENUE."	
" 4, 1869	"CRIMINAL LAW."	
" 5, 1869	Cattle Stealing ... ..	Repealed by Law 10, 1876.
" 6, 1869	"ESCHEATS."	
" 7, 1869	"ECCLESIASTICAL GRANTS."	
" 9, 1869	Small Debts ... ..	Repealed by Law 22, 1889.
" 10, 1869	Tolls ... ..	Expired.
" 11, 1869	Insolvency ... ..	Repealed by Law 47, 1887.
" 12, 1869	Quit Rents ... ..	Repealed by Law 33, 1887.
" 13, 1869	"PROBATE ADMINISTRATION, &c."	
" 14, 1869	"OATHS."	
" 15, 1869	"VAGRANTS."	
" 16, 1869	Search for Gold ... ..	Repealed by Law 23, 1883.
" 17, 1869	Parliament ... ..	Repealed by Law 19, 1887.
" 21, 1869	Railway ... ..	Obsolete.
" 22, 1869	Lungsickness ... ..	Repealed by Law 9, 1871.
" 24, 1869	Stamp Duties ... ..	Expired.
" 25, 1869	"CROWN LANDS."	
" 1, 1870	"PARLIAMENT."	
" 2, 1870	Coolie Immigrants ... ..	Repealed by Law 25, 1891.
" 3, 1870	"TOWNSHIPS."	
" 4, 1870	"PATENTS."	
" 5, 1870	"EVIDENCE AND WITNESSES."	
" 6, 1870	Gaols ... ..	Repealed by Law 39, 1887.
" 9, 1870	"OUTSPAN."	
" 1, 1871	"REVENUE."	<i>Repealed by Act 33/01.</i>
" 2, 1871	Steam Tug ... ..	Expired.
" 4, 1871	"SHIPPING."	
" 5, 1871	"PATENTS."	
" 6, 1871	Extradition (O.F.S.) ... ..	Repealed by Law 13, 1882.
" 7, 1871	Extradition (S.A.R.) ... ..	Repealed by Law 6, 1892.
" 8, 1871	Glasgow Natal Sugar Company ... ..	Obsolete.
" 9, 1871	Lungsickness ... ..	Repealed by Act 30, 1897.
" 10, 1871	"JURIES."	
" 11, 1871	Natal, &c., Building Association ... ..	Wound up.
" 12, 1871	Post Office ... ..	Repealed by Law 22, 1884.
" 14, 1871	Coolies ... ..	Repealed by Law 20, 1874.
" 15, 1871	"MASTER AND SERVANT."	
" 16, 1871	"LOANS."	
" 17, 1871	"COMMUNITY OF GOODS."	
" 2, 1872	Customs ... ..	Repealed by Act 23, 1894.
" 3, 1872	"PENSIONS."	
" 4, 1872	"IMMIGRATION (EUROPEAN)."	
" 5, 1872	Railways ... ..	Repealed by Law 6, 1874.
" 7, 1872	Master and Registrar ... ..	Repealed by Act 39, 1896.
" 10, 1872	"JURIES."	
" 11, 1872	Insolvency ... ..	Repealed by Law 47, 1887.
" 12, 1872	Coolies ... ..	Repealed by Law 25, 1891.

No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Law No. 13, 1872	"DUTCH REFORMED CHURCH."	
" 14, 1872	"OUTSPAN."	
" 15, 1872	Volunteers ... ..	Repealed by Law 27, 1885.
" 16, 1872	"LANDS CLAUSES CONSOLIDATION."	
" 18, 1872	Berea Toll ... ..	Repealed by Law 18, 1880.
" 19, 1872	"MUNICIPAL CORPORATIONS."	
" 20, 1872	Customs ... ..	Repealed by Act 23, 1894.
" 21, 1872	Lungsickness ... ..	Repealed by Act 30, 1897.
" 22, 1872	"ARMS, AMMUNITION, &c."	<i>Repealed by Act 4, 1896.</i>
" 1, 1873	"PARLIAMENT."	
" 2, 1873	Weenen County ... ..	
" 2, 1874	Volunteers ... ..	Repealed by Law 27, 1885.
" 3, 1874	Railways ... ..	Repealed by Law 4, 1875.
" 4, 1874	Police ... ..	Repealed by Law 5, 1876.
" 5, 1874	"TELEGRAPH."	<i>Repealed by Act 16/01</i>
" 6, 1874	Railways ... ..	Repealed by Law 4, 1875.
" 7, 1874	Submarine Telegraph ... ..	Repealed by Law 30, 1874.
" 8, 1874	Naturalization ... ..	Repealed by Law 23, 1874.
" 9, 1874	Natal Bank ... ..	Repealed by Law 18, 1875.
" 10, 1874	"GOVERNOR."	
" 11, 1874	Railway Company ... ..	Disallowed. See Proc. 5 Feb., 1875.
" 13, 1874	"TRESPASS."	
" 14, 1874	"INDEMNITY."	
" 15, 1874	Alarming Reports ... ..	Disallowed. See Proc. 14 June, 1875.
" 17, 1874	"ARMS, AMMUNITION, &c."	<i>Repealed by Act 9/06.</i>
" 18, 1874	Convicts ... ..	Disallowed. See Proc. 14 June, 1875.
" 19, 1874	Indian Immigrants ... ..	Repealed by Law 25, 1891.
" 20, 1874	"IMMIGRATION (INDIAN)."	
" 21, 1874	Native Law ... ..	Repealed by Act 49, 1898.
" 22, 1874	"PENSIONS."	
" 23, 1874	"ALIENS."	<i>Repealed by Act 18/05</i>
" 24, 1874	"JURIES."	
" 25, 1874	Pounds ... ..	Repealed by Act 42, 1898.
" 27, 1874	"DURBAN CORPORATION."	
" 28, 1874	Loan ... ..	Repealed by Law 1, 1876.
" 29, 1874	"ANIMALS (DISEASES)."	
" 30, 1874	Submarine Telegraph ... ..	Expired.
" 31, 1874	"ANIMALS."	
" 32, 1874	Auction Dues ... ..	Had effect.
" 33, 1874	"ROADS (MAIN)."	
" 34, 1874	Repealing s. 18, Law 19, 1874 ... ..	Had effect.
" 35, 1874	"LITERARY AND OTHER SOCIETIES."	
" 36, 1874	"REVENUE."	<i>Repealed by Act 33/01</i>
" 38, 1874	"LANDS IMPROVEMENT &c."	
" 39, 1874	Mount Moreland ... ..	Repealed by Law 6, 1887.
" 1, 1875	Natal Bank ... ..	Repealed by Law 18, 1875.
" 2, 1875	"NORTH BARROW."	
" 3, 1875	Parliament ... ..	Expired.
" 4, 1875	"RAILWAYS."	
" 5, 1875	"LOANS."	
" 6, 1875	Point Railway ... ..	Superseded by Law 18, 1876.
" 10, 1875	Steam Tug ... ..	Expired.
" 11, 1875	Customs ... ..	Repealed by Act 23, 1894.
" 12, 1875	Revenue ... ..	Repealed by Act 13, 1899.

No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Law No. 13, 1875	"NATIVE LAW."	
" 14, 1875	Indian Immigrants ... ..	Repealed by Law 25, 1891.
" 15, 1875	Master and Servant ... ..	Disallowed. See Proc. 10 June, 1876.
" 16, 1875	"REGISTRATION (DEEDS)."	
" 17, 1875	"REGISTRATION (BIRTHS, &c.)."	
" 18, 1875	Natal Bank ... ..	Repealed by Law 43, 1888.
" 19, 1875	"ROADS (MAIN)."	
" 20, 1875	"ROADS (MAIN)."	
" 21, 1875	"FOREIGN RECRUITING."	
" 22, 1875	"PENSIONS."	
" 23, 1875	"SHIPPING."	
" 24, 1875	Shipping Casualties ... ..	Repealed by Law 27, 1880.
" 25, 1875	"VOLUNTEERS."	
" 26, 1875	"NATIVE LAW."	
" 27, 1875	"DOGS."	
" 1, 1876	"IMMIGRATION (INDIAN)."	
" 2, 1876	"MARRIAGE."	
" 3, 1876	Gaols ... ..	Repealed by Law 39, 1887.
" 5, 1876	Police ... ..	Repealed by Act 1, 1894.
" 6, 1876	"ARMS, AMMUNITION, &c."	<i>Repealed by Act 1, 1906.</i>
" 8, 1876	Gaols ... ..	Repealed by Law 39, 1887.
" 9, 1876	"CRIMINAL LAW."	
" 10, 1876	Criminal Law ... ..	Repealed by Act 1, 1899.
" 11, 1876	"JUDGES."	<i>Repealed by Act 5 of 1901.</i>
" 12, 1876	Judges ... ..	Obsolete. See Act 39, 1896.
" 13, 1876	Native Law ... ..	Repealed by Act 49, 1898.
" 14, 1876	Excise ... ..	Repealed by Law 8, 1892.
" 15, 1876	"TAXES."	
" 16, 1876	"QUIT RENTS."	
" 17, 1876	"QUIT RENTS."	
" 18, 1876	"RAILWAYS."	
" 19, 1876	"IMMIGRATION (INDIAN)."	
" 20, 1876	"LANDS IMPROVEMENTS, &c."	
" 21, 1876	Immigration Board ... ..	Repealed by Act 4, 1894.
" 22, 1876	Townships ... ..	Repealed by Act 4, 1894.
" 23, 1876	Weenen Commonage ... ..	Repealed by Act 4, 1894.
" 2, 1877	"RAILWAYS."	
" 3, 1877	Railways ... ..	Expired.
" 4, 1877	"GREY'S HOSPITAL."	
" 5, 1877	Customs ... ..	Repealed by Act 23, 1894.
" 6, 1877	"EXTRADITION."	
" 7, 1877	"EXPLOSIVES."	
" 8, 1877	Shipping casualties ... ..	Repealed by Law 27, 1880.
" 9, 1877	Shipping ... ..	Repealed by Act 13, 1899.
" 10, 1877	Witnesses' Expenses ... ..	Repealed by Law 13, 1888.
" 11, 1877	Judge in Chambers ... ..	Repealed by Act 39, 1896.
" 12, 1877	Police ... ..	Repealed by Law 29, 1880.
" 13, 1877	Harbour ... ..	Repealed by Law 29, 1880.
" 15, 1877	"EDUCATION."	
" 16, 1877	"EDUCATION."	
" 17, 1877	Volunteers ... ..	Repealed by Law 27, 1885.
" 1, 1878	Railway Surveys ... ..	Repealed by Law 3, 1880.
" 2, 1878	Railway Fares ... ..	Repealed by Laws 25, 1880 and 9, 1882.
" 3, 1878	"RAILWAYS."	
" 4, 1878	Railway Compensation ... ..	Repealed by Law 2, 1880.

No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Law No. 5, 1878	"TELEGRAPH."	
" 6, 1878	Police ... ..	Repealed by Act 1, 1894.
" 7, 1878	Volunteers ... ..	Repealed by Law 27, 1885.
" 8, 1878	"JURIES."	
" 9, 1878	Durban Circuit Court ... ..	Repealed by Law 3, 1885.
" 10, 1878	"CRIMINAL LAW."	
" 11, 1878	Refractory Prisoners ... ..	Repealed by Law 1, 1880.
" 14, 1878	Tolls ... ..	Repealed by Law 14, 1889.
" 15, 1878	Loan ... ..	Repaid.
" 16, 1878	"PIETERMARITZBURG CORPORATION."	
" 17, 1878	"REVENUE."	<i>Repealed by Act 33/01</i>
" 18, 1878	Indian Immigrants ... ..	Repealed by Law 16, 1881.
" 19, 1878	Indian Immigrants ... ..	Repealed by Law 25, 1891.
" 20, 1878	Indian Immigrants ... ..	Repealed by Act 5, 1894.
" 21, 1878	Native Law ... ..	Repealed by Act 13, 1894.
" 22, 1878	Intoxicating Liquors ... ..	Repealed by Act 38, 1896.
" 23, 1878	Intoxicating Liquors ... ..	Repealed by Act 38, 1896.
" 24, 1878	"SUNDAY."	
" 25, 1878	"GAMBLING."	
" 26, 1878	Scab ... ..	Repealed by Law 12, 1882.
" 1, 1879	Railways ... ..	Expired.
" 1, 1880	Refractory Prisoners ... ..	Repealed by Law 39, 1887.
" 2, 1880	"RAILWAYS."	
" 3, 1880	"RAILWAYS."	
" 4, 1880	"EDUCATION."	
" 5, 1880	Attorneys, &c. ... ..	Repealed by Act 39, 1896.
" 6, 1880	"GAOLS."	
" 7, 1880	"REVENUE."	
" 8, 1880	Bursaries ... ..	Repealed by Law 20, 1881.
" 12, 1880	"ARMS, AMMUNITION, &c."	<i>Repealed by Act 1, 1906.</i>
" 13, 1880	Fish ... ..	Repealed by Law 21, 1884.
" 14, 1880	Railways ... ..	Expired.
" 15, 1880	"IMMIGRATION (INDIAN)."	
" 16, 1880	Pounds ... ..	Repealed by Act 42, 1898.
" 17, 1880	"CRIMINAL LAW."	
" 18, 1880	"DURBAN CORPORATION."	
" 19, 1880	"DURBAN CORPORATION."	<i>Repealed by Act 37/05</i>
" 20, 1880	"GAOLS."	
" 21, 1880	Wharf Dues ... ..	Expired.
" 22, 1880	Volunteers ... ..	Repealed by Law 27, 1885.
" 23, 1880	"PIETERMARITZBURG CORPORATION."	
" 24, 1880	Pension ... ..	Had effect.
" 25, 1880	Railways ... ..	Expired.
" 26, 1880	"PROBATE, ADMINISTRATION, &c."	
" 27, 1880	Shipwrecks ... ..	Repealed by Law 17, 1881.
" 28, 1880	Pietermaritzburg Loan ... ..	Repealed by Law 10, 1881.
" 29, 1880	Harbour ... ..	Repealed by Act 3, 1894.
" 34, 1880	"CENSUS."	
" 35, 1880	"LOANS."	
" 1, 1881	"RAILWAYS."	
" 2, 1881	Steam Tug ... ..	Expired.
" 3, 1881	Wharf Dues ... ..	Expired.
" 4, 1881	Customs ... ..	Repealed by Act 23, 1894.
" 9, 1881	Pietermaritzburg ... ..	Repealed by Act 22, 1894.
" 10, 1881	"PIETERMARITZBURG CORPORATION."	
" 11, 1881	"TOWNSHIPS."	
" 12, 1881	Townships ... ..	Obsolete.
" 13, 1881	Immigration Board ... ..	Repealed by Act 4, 1894.

No. or Date of Statute.		Title, or if Repealed, Subject Matter.	Repealing Statute.
Law No.	14, 1881	Extradition ... ..	Repealed by Law 13, 1882.
"	15, 1881	" PLANTS (DISEASED)."	<i>Repealed by Act 45/04</i>
"	16, 1881	Indian Immigrants ... ..	Repealed by Law 25, 1891.
"	17, 1881	Shipwrecks, &c. ... ..	Repealed by Law 10, 1883.
"	18, 1881	" BANKERS."	
"	19, 1881	" MARRIAGE."	
"	20, 1881	Education ... ..	Repealed by Law 3, 1886.
"	1, 1882	" RAILWAYS."	
"	2, 1882	Quarantine ... ..	Repealed by Act 3, 1894.
"	3, 1882	" VACCINATION."	<i>Repealed by Act 24/06.</i>
"	4, 1882	" PUBLIC HEALTH."	
"	5, 1882	Legalising Government Expenditure ... ..	Had effect.
"	9, 1882	" RAILWAYS."	
"	10, 1882	" LOANS."	
"	11, 1882	" SAVINGS BANK."	
"	12, 1882	Scab ... ..	Repealed by Law 48, 1887.
"	13, 1882	" EXTRADITION."	
"	14, 1882	" COMMUNITY OF GOODS."	
"	15, 1882	" GREY'S HOSPITAL."	
"	16, 1882	Prisoners ... ..	Repealed by Law 39, 1887.
"	17, 1882	" MASTER AND SERVANT."	
"	18, 1882	Tolls ... ..	Repealed by Law 14, 1889.
"	19, 1882	Cartridge Cases ... ..	Repealed by Law 40, 1888.
"	20, 1882	Durban Circuit Court ... ..	Repealed by Law 3, 1885.
"	21, 1882	Indian Immigrants ... ..	Repealed by Law 25, 1891.
"	22, 1882	" BRANDS."	
"	1, 1883	" PARLIAMENT."	
"	2, 1883	" PARLIAMENT."	
"	3, 1883	" DURBAN CORPORATION."	
"	7, 1883	Pension ... ..	Obsolete.
"	8, 1883	" SURVEYS."	
"	9, 1883	" LOANS."	
"	10, 1883	" SHIPPING."	
"	11, 1883	" PUBLIC HEALTH."	
"	12, 1883	" PLEADING, PRACTICE, &c."	
"	13, 1883	" DIVORCE."	
"	14, 1883	" JURIES."	
"	15, 1883	" EXPLOSIVES."	
"	16, 1883	Election Petitions ... ..	Repealed by Act 19, 1895.
"	17, 1883	Road Boards ... ..	Repealed by Law 36, 1888.
"	18, 1883	" PORTS AND HARBOURS."	
"	19, 1883	" REGISTRATION (DEEDS)."	
"	20, 1883	" NATAL SHIPPING COMPANY."	
"	21, 1883	" DURBAN BOTANIC SOCIETY."	
"	22, 1883	" AGRICULTURAL SOCIETIES."	
"	23, 1883	Search for Minerals ... ..	Repealed by Law 17, 1887.
"	24, 1883	Judges ... ..	Repealed by Act 39, 1896.
"	1, 1884	" EDUCATION."	
"	2, 1884	" PUBLIC HEALTH."	
"	3, 1884	Harbour ... ..	Repealed by Act 3, 1894.
"	4, 1884	" SHIPPING."	
"	5, 1884	" INQUESTS (FIRE)."	
"	6, 1884	" EVIDENCE AND WITNESSES."	
"	7, 1884	" SAVINGS BANKS."	
"	8, 1884	" PORTS AND HARBOURS."	
"	9, 1884	Supreme Court ... ..	Repealed by Act 39, 1896.
"	10, 1884	Durban Circuit Court ... ..	Repealed by Law 3, 1885.



No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Law No. 11, 1884	"CARRIERS."	
" 12, 1884	"CONTRACTS."	
" 13, 1884	"MUNICIPAL CORPORATIONS."	
" 14, 1884	Customs ... ..	Repealed by Act 23, 1894.
" 15, 1884	Customs ... ..	Repealed by Law 14, 1885.
" 16, 1884	Excise ... ..	Repealed by Act 48, 1898.
" 17, 1884	Amending Law 1, 1884 ... ..	Obsolete.
" 18, 1884	Gaols ... ..	Repealed by Law 39, 1887.
" 19, 1884	"REGISTRATION (DEEDS)."	
" 20, 1884	Railways ... ..	Expired.
" 21, 1884	"FISH."	
" 22, 1884	"POST OFFICE."	
" 23, 1884	Game ... ..	Repealed by Law 28, 1890.
" 24, 1884	Customs ... ..	Repealed by Law 4, 1889.
" 26, 1884	"BURIAL."	
" 27, 1884	"DURBAN CORPORATION."	
" 30, 1884	Criminal Law ... ..	Repealed by Act 1, 1899.
" 31, 1884	"DURBAN CHAMBER OF COMMERCE."	
" 32, 1884	"PATENTS."	
" 33, 1884	"DURBAN CORPORATION."	
" 35, 1884	"EDUCATION."	
" 36, 1884	Education ... ..	Repealed by Act 5, 1894.
" 37, 1884	Medical Practitioners ... ..	Repealed by Act 35, 1896.
" 38, 1884	Stamps, &c. ... ..	Repealed by Act 43, 1898.
" 39, 1884	"TOWNSHIPS."	
" 40, 1884	"BONDS (RENUNCIATIONS)."	
" 41, 1884	"NATIVES."	
" 42, 1884	"DURBAN CORPORATION."	
" 43, 1884	"PUBLIC HEALTH."	
" 44, 1884	"LOANS."	
" 45, 1884	"PIETERMARITZBURG COLLEGIATE INSTITUTION."	<i>Repealed by Act 45/03.</i>
" 46, 1884	Criminal Law ... ..	Repealed by Act 1, 1899.
" 47, 1884	"PIETERMARITZBURG CORPORATION."	
" 48, 1884	"NATIVES."	
" 49, 1884	"COURTS (SUPREME)."	
" 50, 1884	Immigration ... ..	Repealed by Act 4, 1894.
" 1, 1885	Durban Voters Roll ... ..	Obsolete.
" 2, 1885	Customs ... ..	Repealed by Act 13, 1899.
" 3, 1885	Durban Circuit Court ... ..	Repealed by Act 39, 1896.
" 4, 1885	"TRADE MARKS."	
" 5, 1885	Immigration ... ..	Repealed by Act 4, 1894.
" 6, 1885	"NEWCASTLE CORPORATION."	
" 7, 1885	"WILLS."	
" 8, 1885	"COURTS (SUPREME)."	
" 9, 1885	"CONTRIBUTION AND INDEMNITY."	
" 10, 1885	"VACCINATION."	<i>Repealed by Act 24/06</i>
" 11, 1885	Revenue ... ..	Repealed by Act 13, 1899.
" 12, 1885	"MASTER AND SERVANT."	
" 13, 1885	Native Education ... ..	Repealed by Act 5, 1894.
" 14, 1885	Customs ... ..	Repealed by Act 50, 1898.
" 18, 1885	"DURBAN CORPORATION."	<i>Repealed by Act 34, 05</i>
" 19, 1885	Road Boards ... ..	Repealed by Law 36, 1888.
" 20, 1885	Stamps, &c. ... ..	Repealed by Act 43, 1898.
" 21, 1885	Railways ... ..	Expired.
" 22, 1885	Native Law ... ..	Repealed by Act 49, 1898.
" 24, 1885	Game ... ..	Repealed by Law 28, 1890.
" 25, 1885	Money Grant ... ..	Had effect.

No. or Date of Statute.		Title, or if Repealed, Subject Matter.	Repealing Statute.
Law	No. 26, 1885	Search for Gold ... ..	Repealed by Law 17, 1887.
"	" 27, 1885	Volunteers ... ..	Repealed by Law 19, 1888.
"	" 28, 1885	Natal Bank ... ..	Repealed by Law 43, 1888.
"	" 1, 1886	" LOANS."	
"	" 2, 1886	Education ... ..	Repealed by Act 5, 1894.
"	" 3, 1886	Education ... ..	Repealed by Act 5, 1894.
"	" 4, 1886	Customs ... ..	Repealed by Act 50, 1898.
"	" 6, 1886	Revenue ... ..	Repealed by Act 13, 1899.
"	" 7, 1886	Revenue ... ..	Repealed by Act 13, 1899.
"	" 2, 1887	" LOANS."	
"	" 3, 1887	" STATUTES."	
"	" 4, 1887	Medical Practitioners ... ..	Repealed by Act 35, 1896.
"	" 6, 1887	" MOUNT MORELAND."	
"	" 7, 1887	" DURBAN CORPORATION."	
"	" 8, 1887	" BILLS OF EXCHANGE."	
"	" 9, 1887	" CRIMINAL LAW."	
"	" 10, 1887	" POST OFFICE."	
"	" 11, 1887	" PENSIONS."	
"	" 12, 1887	" TOWNSHIPS."	
"	" 13, 1887	" HYPOTHECS."	
"	" 14, 1887	Glanders ... ..	Repealed by Act 19, 1898.
"	" 15, 1887	Customs ... ..	Repealed by Law 6, 1888.
"	" 16, 1887	" CRIMINAL LAW."	
"	" 17, 1887	Mining ... ..	Repealed by Law 34, 1888.
"	" 18, 1887	" FISH."	
"	" 19, 1887	" PARLIAMENT."	
"	" 20, 1887	Railways ... ..	Expired.
"	" 21, 1887	" LOANS."	
"	" 22, 1887	Volunteers ... ..	Repealed by Law 19, 1888.
"	" 23, 1887	Registration of Natives ... ..	Not proclaimed as allowed.
"	" 24, 1887	" LOANS."	
"	" 25, 1887	" RAILWAYS."	
"	" 26, 1887	" LANDS, IMPROVEMENT, &c."	
"	" 27, 1887	Criminal Law ... ..	Repealed by Act 22, 1898.
"	" 28, 1887	" PARLIAMENT."	
"	" 29, 1887	" PARLIAMENT."	
"	" 30, 1887	" FENCES."	
"	" 32, 1887	Railways ... ..	Expired.
"	" 33, 1887	" QUIT RENTS."	
"	" 34, 1887	" BURIAL."	
"	" 55, 1887	" POST OFFICE."	
"	" 36, 1887	" FENCES."	
"	" 39, 1887	" GAOLS."	
"	" 40, 1887	Customs ... ..	Repealed by Act 50, 1898.
"	" 41, 1887	" EXPLOSIVES."	
"	" 42, 1887	" ARMS, AMMUNITION, &c."	<i>Repealed by Act 1, 1906.</i>
"	" 43, 1887	Edictal Citations ... ..	Repealed by Act 39, 1896.
"	" 44, 1887	" NATIVE LAW."	
"	" 46, 1887	" MARRIAGE (NATIVES)."	
"	" 47, 1887	" INSOLVENCY."	
"	" 48, 1887	" SHEEP (DISEASE IN)."	
"	" 49, 1887	" LOANS."	
"	" 50, 1887	" TAXES."	
"	" 51, 1887	Licenses and Stamps ... ..	Repealed by Act 43, 1898.
"	" 52, 1887	" NATIVES."	
"	" 1, 1888	" TAXES."	
"	" 2, 1888	" PARLIAMENT."	
"	" 3, 1888	" EXPORTATION (PROHIBITED)"	

No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Law No. 4, 1888	Loan ... ..	Repealed by Law 12, 1888.
„ 5, 1888	“RAILWAYS.”	
„ 6, 1888	Revenue ... ..	Repealed by Act 13, 1899.
„ 7, 1888	Railways ... ..	Expired.
„ 8, 1888	“EXPORTATION (PROHIBITED)”	
„ 9, 1888	“LOANS.”	
„ 10, 1888	Revenue ... ..	Repealed by Act 13, 1899.
„ 11, 1888	Intoxicating Liquors ... ..	Repealed by Act 38, 1896.
„ 12, 1888	“LOANS.”	
„ 13, 1888	Witnesses' Allowances ... ..	Repealed by Act 8, 1898.
„ 14, 1888	“STATUTES.”	
„ 15, 1888	Police ... ..	Repealed by Act 1, 1894.
„ 16, 1888	“LOANS.”	
„ 17, 1888	“TELEGRAPH.”	
„ 18, 1888	Kafir Beer ... ..	Repealed by Act 38, 1896.
„ 19, 1888	Volunteers ... ..	Repealed by Act 23, 1895.
„ 20, 1888	“PIETERMARITZBURG CORPORATION.”	
„ 21, 1888	“REGISTRATION (SERVANTS).”	
„ 22, 1888	“TRADE MARKS (COUNTERFEITING).”	
„ 23, 1888	“POST OFFICE.”	
„ 24, 1888	“REVENUE.”	<i>Repealed by Act 33/01</i>
„ 25, 1888	Rape, &c. ... ..	Repealed by Act 22, 1898.
„ 26, 1888	“POST OFFICE.”	
„ 27, 1888	“CRIMINAL LAW.”	
„ 29, 1888	“DURBAN CORPORATION.”	
„ 30, 1888	Tolls ... ..	Repealed by Law 14, 1889.
„ 31, 1888	“STOCKBROKERS.”	
„ 33, 1888	Licenses and Stamps ... ..	Repealed by Act 43, 1898.
„ 34, 1888	Mining ... ..	Repealed by Act 43, 1899.
„ 36, 1888	“ROAD BOARDS.”	<i>Repealed by Act 35/01</i>
„ 37, 1888	“EVIDENCE AND WITNESSES.”	
„ 38, 1888	Education ... ..	Repealed by Act 5, 1894.
„ 39, 1888	“REGISTRATION (DEEDS).”	
„ 40, 1888	“ARMS, AMMUNITION, &c.”	<i>Repealed by Act 1, 1906</i>
„ 41, 1888	Immigration ... ..	Repealed by Act 4, 1894.
„ 42, 1888	“DURBAN CORPORATION.”	
„ 43, 1888	“NATAL BANK.”	
„ 1, 1889	Customs ... ..	Repealed by Act 50, 1898.
„ 2, 1889	Education ... ..	Repealed by Act 5, 1894.
„ 3, 1889	Excise ... ..	Repealed by Law 8, 1892.
„ 4, 1889	Customs ... ..	Repealed by Act 50, 1898.
„ 5, 1889	“PARLIAMENT.”	
„ 6, 1889	“GAOLS.”	
„ 7, 1889	“MARRIAGE.”	
„ 8, 1889	Revenue ... ..	Repealed by Act 13, 1899.
„ 9, 1889	“INDUSTRIES (COLONIAL).”	
„ 10, 1889	Harbour Board ... ..	Repealed by Act 3, 1894.
„ 11, 1889	“TRADE MARKS (COUNTERFEITING).”	
„ 12, 1889	“RAILWAYS.”	
„ 13, 1889	“EARMARKS.”	
„ 14, 1889	“TOLLS.”	
„ 15, 1889	“NATAL BANK.”	
„ 17, 1889	Rape, &c. ... ..	Repealed by Act 22, 1898.
„ 19, 1889	Volunteers ... ..	Repealed by Act 23, 1895.
„ 21, 1889	Railways ... ..	Repealed by Act 34, 1894.
„ 22, 1889	Magistrates' Courts ... ..	Repealed by Act 22, 1896.
„ 23, 1889	“FENCES.”	
„ 1, 1890	“SHIPPING.”	

No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Law No. 2, 1890	"CRIMINAL LAW."	
" 3, 1890	Extradition ... ..	Repealed by Law 6, 1892.
" 4, 1890	"CRIMINAL LAW."	
" 5, 1890	"REGISTRATION (DEEDS)."	
" 6, 1890	"CRIMINAL LAW."	
" 7, 1890	"CIVIL SERVICE."	
" 8, 1890	"POST OFFICE."	
" 9, 1890	Customs ... ..	Repealed by Act 50, 1898.
" 10, 1890	Intoxicating Liquors ... ..	Repealed by Act 38, 1896.
" 11, 1890	Stamp Duties ... ..	Repealed by Act 43, 1898.
" 12, 1890	Railways ... ..	Expired.
" 13, 1890	Native Law ... ..	Repealed by Act 49, 1898.
" 14, 1890	"INDUSTRIES (COLONIAL)."	
" 15, 1890	"LADYSMITH LOCAL BOARD."	
" 16, 1890	"PUBLIC HEALTH."	
" 18, 1890	Supreme Court ... ..	Repealed by Law 5, 1892.
" 19, 1890	Customs ... ..	Repealed by Act 50, 1898.
" 20, 1890	Intoxicating Liquors ... ..	Repealed by Act 38, 1896.
" 21, 1890	"DURBAN CORPORATION."	
" 22, 1890	"DURBAN CORPORATION."	
" 25, 1890	Inferior Courts ... ..	Repealed by Act 22, 1896.
" 26, 1890	"FENCES."	
" 27, 1890	"FISH."	
" 28, 1890	Game ... ..	Repealed by Law 16, 1891.
" 29, 1890	"LOANS."	
" 1, 1891	"LOANS."	
" 2, 1891	"INSOLVENCY."	
" 3, 1891	"MASTER AND SERVANT."	
" 4, 1891	Customs ... ..	Repealed by Act 50, 1898.
" 5, 1891	"CARRIERS."	
" 6, 1891	"REGISTRATION (DEEDS)."	
" 7, 1891	Railways ... ..	Expired.
" 8, 1891	"LUNATICS."	
" 9, 1891	"DURBAN CORPORATION."	
" 10, 1891	"STATUTES."	
" 11, 1891	"ARMS, AMMUNITION, &c."	<i>Repealed by Act 1, 1906.</i>
" 12, 1891	"DURBAN COLLEGIATE INSTITUTION."	<i>Repealed by Act 41/1903.</i>
" 16, 1891	"GAME."	<i>Repealed by Act 8, 1906.</i>
" 17, 1891	Cattle Stealing ... ..	Repealed by Act 1, 1899.
" 18, 1891	"DIVORCE."	
" 19, 1891	"NATIVE LAW."	
" 20, 1891	"DURBAN CORPORATION."	
" 21, 1891	"CARRIERS."	
" 22, 1891	"MUNICIPAL CORPORATIONS."	
" 23, 1891	"DURBAN CORPORATION."	<i>Repealed by Act 37/05</i>
" 24, 1891	Railways ... ..	Obsolete.
" 25, 1891	"IMMIGRATION (INDIAN)."	
" 26, 1891	"LANDS, IMPROVEMENT, &c."	
" 27, 1891	"DURBAN CORPORATION."	
" 28, 1891	"RAILWAYS."	
" 1, 1892	"INDEMNITY."	
" 2, 1892	"JUDGES."	<i>Repealed by Act 5/01</i>
" 3, 1892	Magistrates' Courts ... ..	Repealed by Act 22, 1896.
" 4, 1892	"JURIES."	
" 5, 1892	Supreme Court ... ..	Had effect.
" 6, 1892	"EXTRADITION."	
" 7, 1892	"DURBAN CORPORATION."	
" 8, 1892	"REVENUE."	<i>Repealed by Act 33/01</i>

No. or Date of Statute.		Title, or if Repealed, Subject Matter.	Repealing Statute.
Law	No. 9, 1892	Customs ... ..	Repealed by Act 50, 1898.
"	13, 1892	Railways ... ..	Had effect.
"	14, 1892	Railways ... ..	Expired.
"	15, 1892	Railways ... ..	Had effect.
"	16, 1892	"DURBAN CORPORATION."	<i>Repealed by Act 37/05</i>
"	17, 1892	Intoxicating Liquors ... ..	Repealed by Act 38, 1896.
"	18, 1892	"PARLIAMENT."	
"	1, 1893	Railways ... ..	Expired.
"	2, 1893	"CONTRACTS" and "REVENUE."	
"	3, 1893	Customs ... ..	Repealed by Act 13, 1899.
"	4, 1893	Customs ... ..	Repealed by Act 13, 1899.
"	7, 1893	"LOANS."	
"	8, 1893	"NEWCASTLE CORPORATION."	
"	9, 1893	"SHEEP (DISEASE IN)."	
"	10, 1893	"NEWCASTLE CORPORATION."	
"	11, 1893	"LOANS."	
"	12, 1893	"DOGS."	
"	13, 1893	"MUNICIPAL CORPORATIONS."	
"	14, 1893	"PARLIAMENT."	
"	15, 1893	"PIETERMARITZBURG CORPORATION."	
"	17, 1893	"TOWNSHIPS."	
"	18, 1893	"PIETERMARITZBURG CORPORATION."	
"	19, 1893	"COMPANIES (JOINT STOCK)."	
Act	No. 1, 1893	"PARLIAMENT."	
"	1, 1894	"POLICE."	
"	2, 1894	Native Law ... ..	Repealed by Act 13, 1895.
"	3, 1894	"PORTS AND HARBOURS."	
"	4, 1894	"IMMIGRATION (EUROPEAN)."	
"	5, 1894	"EDUCATION."	
"	8, 1894	Judges ... ..	Repealed by Act 38, 1896.
"	9, 1894	Railways ... ..	Expired.
"	10, 1894	"RAILWAYS."	
"	11, 1894	"REVENUE."	<i>Repealed by Act 33/04</i>
"	12, 1894	"PENSIONS."	
"	13, 1894	"NATIVE LAW."	
"	14, 1894	"CROWN SUITS."	
"	15, 1894	"PUBLIC HEALTH."	
"	16, 1894	"RAILWAYS."	
"	17, 1894	"REGISTRATION (BIRTHS, &c.)."	
"	18, 1894	"ACCOUNTS (PUBLIC)."	
"	19, 1894	"PROBATE, &c."	
"	20, 1894	"TOWNSHIPS."	
"	21, 1894	"CIVIL SERVICE."	
"	22, 1894	"MUNICIPAL CORPORATIONS."	
"	23, 1894	Customs ... ..	Repealed by Act 50, 1898.
"	24, 1894	"GAME."	<i>Repealed by Act 8/06</i>
"	25, 1894	Parliament ... ..	Repealed by Act 8, 1896.
"	26, 1894	"POST OFFICE."	
"	27, 1894	"RAILWAYS."	
"	28, 1894	Railways ... ..	Had effect.
"	29, 1894	"FENCES."	
"	30, 1894	"DURBAN CORPORATION."	
"	32, 1894	"RAILWAYS."	
"	33, 1894	"RAILWAYS."	
"	34, 1894	"RAILWAYS."	
"	35, 1894	Customs ... ..	Repealed by Act 13, 1899.
"	36, 1894	"IMMIGRATION (INDIAN)."	
"	37, 1894	"IMMIGRATION (INDIAN)."	

No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Act No. 38, 1894	"ANIMALS (DISEASES)."	
" 39, 1894	Lungsickness ... ..	Repealed by Act 30, 1897.
" 40, 1894	"MASTER AND SERVANT (NATIVE)."	
" 1, 1895	Railways ... ..	Expired.
" 2, 1895	"PATENTS."	
" 3, 1895	"EXTRADITION."	
" 4, 1895	Magistrates' Courts ... ..	Repealed by Act 22, 1896.
" 5, 1895	"SHIPPING."	
" 7, 1895	"WILLS (NATIVES)."	
" 8, 1895	"REVENUE."	
" 11, 1895	"CRIMINAL LAW."	
" 12, 1895	Criminal Law ... ..	Repealed by Act 22, 1898.
" 13, 1895	Native Law ... ..	Repealed by Act 1, 1899.
" 14, 1895	"RAILWAYS."	
" 15, 1895	"JURIES."	
" 16, 1895	"CRIMINAL LAW."	
" 17, 1895	"IMMIGRATION (INDIAN)."	
" 18, 1895	Licenses and Stamps ... ..	Repealed by Act 43, 1898..
" 19, 1895	"PARLIAMENT."	
" 20, 1895	"VERULAM LOCAL BOARD."	
" 21, 1895	"SHEEP (DISEASE IN)."	
" 22, 1895	"MUNICIPAL CORPORATIONS."	
" 23, 1895	"VOLUNTEERS."	<i>Superseded by Act 36/03</i>
" 24, 1895	"PUBLIC HEALTH	<i>Repealed by Act 49/03.</i>
" 25, 1895	"NATIVES."	
" 26, 1895	"DURBAN CORPORATION."	
" 27, 1895	"PARLIAMENT."	
" 28, 1895	"SAVINGS BANK."	
" 29, 1895	"DURBAN CORPORATION."	
" 30, 1895	"PIETERMARITZBURG CORPORATION."	
" 31, 1895	"GRASS FIRES."	<i>Repealed by Act 33/01.</i>
" 32, 1895	"REVENUE."	<i>Repealed by Act 40/04</i>
" 33, 1895	"LANDS, IMPROVEMENT, &c."	
" 34, 1895	"IMMIGRATION (INDIAN)."	
" 35, 1895	"JUDGES."	
" 36, 1895	"COPYRIGHT."	
" 1, 1896	Animals (Diseases) ... ..	Expired.
" 2, 1896	Railways ... ..	Expired.
" 3, 1896	"COMPANIES (JOINT STOCK)."	
" 4, 1896	"EXTRADITION."	
" 5, 1896	"REGISTRATION (BIRTHS, &c.)."	
" 7, 1896	"IMMIGRATION (INDIAN)."	
" 8, 1896	"PARLIAMENT."	
" 9, 1896	Copyright ... ..	Repealed by Act 17, 1897.
" 10, 1896	"DESTITUTE PERSONS."	
" 11, 1896	"NATIVES."	
" 12, 1896	"EMPLOYERS' LIABILITY."	
" 13, 1896	"MASTER AND SERVANT."	
" 14, 1896	Customs ... ..	Repealed by Act 50, 1898.
" 15, 1896	"OUTSPAN."	
" 17, 1896	"COPYRIGHT."	
" 19, 1896	Revenue ... ..	Repealed by Act 13, 1899.
" 20, 1896	"RAILWAYS."	
" 21, 1896	Criminal Law ... ..	Repealed by Act 1, 1899.
" 22, 1896	"COURTS (MAGISTRATES')."	
" 23, 1896	Criminal Law ... ..	Repealed by Act 1, 1899.
" 24, 1896	Criminal Law ... ..	Repealed by Act 1, 1899.
" 25, 1896	"VOLUNTEERS."	<i>Superseded by Act 36/03</i>

No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Act No. 26, 1896	"PIETERMARITZBURG CORPORATION."	
" 27, 1896	" PARLIAMENT."	
" 28, 1896	" DURBAN CORPORATION."	
" 29, 1896	" SAVINGS BANK."	
" 30, 1896	" MEDICAL PRACTITIONERS."	
" 31, 1896	" TOWNSHIPS."	
" 32, 1896	"PIETERMARITZBURG CORPORATION."	
" 33, 1896	" WILD BIRDS' PROTECTION."	
" 34, 1896	Cattle Diseases ... ..	Expired.
" 35, 1896	" MEDICAL PRACTITIONERS."	
" 36, 1896	" LABOUR TOUTS."	<i>Repealed by Act 46/01.</i>
" 37, 1896	" NATIVE LAW."	
" 38, 1896	" INTOXICATING LIQUORS."	
" 39, 1896	" COURTS (SUPREME)."	
" 40, 1896	" NATIVE LAW."	
" 1, 1897	" IMMIGRATION (RESTRICTED)."	<i>Repealed Act 30/03.</i>
" 2, 1897	" PUBLIC HEALTH."	
" 3, 1897	" ANIMALS (DISEASES)."	
" 4, 1897	" PARLIAMENT."	
" 5, 1897	" EDUCATION."	
" 6, 1897	" TRESPASS."	
" 7, 1897	" FRIENDLY SOCIETIES."	
" 8, 1897	" NATIVE LAW."	
" 9, 1897	" NATIVES."	
" 10, 1897	" MUNICIPAL CORPORATIONS."	
" 11, 1897	Pounds ... ..	Repealed by Act 42, 1898.
" 12, 1897	" FENCES."	
" 13, 1897	Railways ... ..	Expired.
" 14, 1897	" IMMIGRATION (INDIAN)."	
" 15, 1897	Marriage ... ..	Repealed by Act 45, 1898.
" 16, 1897	" ATTORNEY-GENERAL."	
" 17, 1897	" COPYRIGHT."	
" 18, 1897	" DEALERS (WHOLESALE AND RETAIL)."	
" 19, 1897	" VILLAGES (WATER SUPPLY)."	
" 20, 1897	" RAILWAYS."	
" 21, 1897	" RAILWAYS."	
" 22, 1897	" RAILWAYS."	
" 23, 1897	" LANDS' CLAUSES CONSOLIDATION."	
" 24, 1897	"PIETERMARITZBURG CORPORATION."	
" 25, 1897	" PENSIONS."	
" 26, 1897	" CIVIL SERVICE."	<i>Repealed by Act 46, 1902.</i>
" 27, 1897	" COURTS (MAGISTRATES)."	
" 28, 1897	" IMMIGRATION (INDIAN)."	
" 29, 1897	" PUBLIC EMPLOYEES."	
" 30, 1897	" ANIMALS (DISEASES)."	
" 31, 1897	" DURBAN CORPORATION."	
" 32, 1897	" NATAL BANK."	
" 33, 1897	" DUNDEE LOCAL BOARD."	
" 37, 1897	" ZULULAND."	
" 1, 1898	Customs ... ..	Repealed by Act 50, 1898.
" 2, 1898	" STANGER (TOWN OF)."	
" 4, 1898	" DUNDEE LOCAL BOARD."	
" 5, 1898	" NATIVE LAW."	
" 6, 1898	" REVENUE."	
" 7, 1898	" LOANS."	
" 8, 1898	" EVIDENCE AND WITNESSES."	
" 9, 1898	Railways ... ..	Expired.

No. or Date of Statute.	Title, or if Repealed, Subject Matter.	Repealing Statute.
Act No. 10, 1898	" PARLIAMENT."	
" 11, 1898	" REVENUE."	
" 12, 1898	" POST OFFICE."	
" 13, 1898	" MASTER AND SERVANT."	
" 17, 1898	" ZULULAND."	
" 18, 1898	" ARMS, AMMUNITION, &c."	<i>Repealed by Act-1, 1906.</i>
" 19, 1898	" IMMIGRATION (INDIAN)."	
" 20, 1898	" EDUCATION."	
" 21, 1898	" IMMIGRATION (INDIAN)."	
" 22, 1898	" CRIMINAL LAW."	
" 23, 1898	" EXPLOSIVES."	
" 24, 1898	" ARBITRATION."	
" 25, 1898	" CIVIL SERVICE."	
" 26, 1898	" MUNICIPAL CORPORATIONS."	<i>Repealed by Act 45/01.</i>
" 27, 1898	" HORSES."	
" 28, 1898	" DURBAN CORPORATION."	
" 29, 1898	" MUNICIPAL CORPORATIONS."	
" 30, 1898	" LANDS, IMPROVEMENT, &c."	<i>Repealed by Act 40/04</i>
" 31, 1898	" DURBAN CORPORATION."	
" 32, 1898	" PIETERMARITZBURG CORPORATION."	
" 33, 1898	" COURTS (MAGISTRATES)."	
" 34, 1898	" SAVINGS BANK."	
" 35, 1898	" RAILWAYS."	
" 36, 1898	" DURBAN CORPORATION."	
" 37, 1898	" POLICE."	
" 38, 1898	" LOANS."	
" 39, 1898	" PIETERMARITZBURG CORPORATION."	
" 40, 1898	ANIMALS (DISEASES)."	
" 41, 1898	" DURBAN CORPORATION."	<i>Superseded by Act-14/10</i>
" 42, 1898	" POUNDS."	
" 43, 1898	" REVENUE."	
" 44, 1898	" COPYRIGHT."	
" 45, 1898	" MARRIAGE."	
" 46, 1898	" ZULULAND."	
" 47, 1898	Revenue ... ..	Repealed by Act 13, 1899
" 48, 1898	" REVENUE."	<i>Repealed by Act-33/01</i>
" 49, 1898	" COURTS (NATIVE)."	
" 50, 1898	" REVENUE."	<i>Repealed by Act-14/03.</i>
" 1, 1899	" CRIMINAL LAW."	
" 2, 1899	" RAILWAYS."	
" 3, 1899	" PORTS AND HARBOURS."	
" 4, 1899	" POST OFFICE."	
" 5, 1899	" JURIES."	
" 6, 1899	" ARMS, AMMUNITION, &c."	<i>Repealed by Act-1, 1906.</i>
" 9, 1899	" LOANS."	
" 10, 1899	" RAILWAYS."	
" 11, 1899	" DURBAN CORPORATION."	
" 12, 1899	" DURBAN CORPORATION."	<i>Repealed by Act 39, 1905</i>
" 13, 1899	" REVENUE."	
" 14, 1899	" PUBLIC HEALTH."	
" 15, 1899	" RAILWAYS."	
" 16, 1899	" HORSES."	
" 17, 1899	" ROADS."	
" 18, 1899	" COPYRIGHT."	
" 19, 1899	" COPYRIGHT."	
" 20, 1899	" REVENUE."	
" 21, 1899	" MEDICAL PRACTITIONERS."	
" 22, 1899	" CRIMINAL LAW."	<i>Repealed by Act 3/03</i>



No. or Date of Statute.		Title, or if Repealed, Subject Matter.	Repealing Statute.
Act No.	23, 1899	"EXPLOSIVES."	
"	24, 1899	"ATTORNEY-GENERAL."	
"	25, 1899	"TRESPASS."	
"	26, 1899	"PUBLIC HEALTH."	
"	27, 1899	"ANIMALS (DISEASES)."	
"	28, 1899	"NEWCASTLE CORPORATION."	
"	29, 1899	"EVIDENCE AND WITNESSES."	
"	30, 1899	"ANIMALS (DISEASES)."	
"	31, 1899	"COURTS (SUPREME)."	
"	32, 1899	"HOWICK VILLAGE."	
"	33, 1899	"COMPANIES (JOINT STOCK)."	
"	34, 1899	"PIETERMARITZBURG CORPORATION."	
"	35, 1899	"MASTER AND (NATIVE) SERVANT."	
"	36, 1899	"INTOXICATING LIQUORS."	
"	37, 1899	"CRIMINAL LAW."	
"	38, 1899	"INTESTATE ESTATES."	
"	39, 1899	"LADYSMITH CORPORATION."	
"	40, 1899	"STANGER AND KEARSNEY RAILWAY."	
"	41, 1899	"PENSIONS."	
"	42, 1899	"ZULULAND (RAILWAY)."	
"	43, 1899	"MINES AND COLLIERIES."	
"	1, 1900	"IMMIGRATION (INDIAN)." <sup>(A)</sup>	

(A) The remaining Acts of 1900, having been promulgated whilst this Volume was in the Press, but not in time for inclusion in it, the Editor intends to publish under their proper titles such of the Acts as fall within Vols. II. and III., and to collect the others in an Appendix to the third Volume.

ACCOUNTS (PUBLIC).

*See Act 18/09  
University College AfS*

ACCOUNTS (PUBLIC).

Act No. 18, 1894.

*Rep. by act 21/1911 sec 1.*

*Union*

“To regulate the Audit of the Public Accounts of the Colony.”

[7th July, 1894.]

WHEREAS it is desirable to define the Office of the Auditor-General and to provide for the more efficient audit of the Public Accounts:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. There shall be an officer to be called the Auditor-General, who shall be appointed by the Governor in Council.

Appointment of Auditor-General. Salary.

2. The Auditor-General shall be paid a salary of not less than Six Hundred Pounds per annum.

3. The Auditor-General shall hold his office during good behaviour, subject, however, to removal on an address praying for such removal, presented to the Governor by the Legislative Council and Legislative Assembly (hereinafter jointly referred to as Parliament). If Parliament be not sitting, it shall be lawful for the Governor in Council to suspend the Auditor-General from his office for inability or misbehaviour, and in such case a full statement of the cause of such suspension shall be laid before both Houses of Parliament within one week, if then in session, or otherwise within one week of the commencement of the next session, and if an address shall at any time during the session be presented to the Governor by both Houses of Parliament, praying for the restoration of the Auditor-General to his office, he shall be restored accordingly, but if no such address shall be so presented it shall be lawful for the Governor in Council to confirm the suspension and to declare the office of Auditor-General vacant, and the same shall thereupon become vacant.

Office to be held during good behaviour

How Auditor-General may be removed.

4. The Auditor-General shall examine, enquire into, and audit the accounts of all persons entrusted with the collection, custody, receipt, payment, or issue of moneys belonging to the public revenue, and all accounts of a public nature which he may be directed by the Governor, or required by Law, or by rules under this Act, to examine, enquire into and audit. He shall examine all money, stamps, valuable securities, or other property in the custody of a public officer. He shall also see that all payments are supported by proper vouchers or proof, and are properly authorised. He shall also perform such other and further duties as shall be enjoined by rules made under this Act.

Examination of public accounts &c.

5. The Auditor-General shall be empowered to call upon all officers in charge of public moneys, or whose accounts he may be directed or required to examine, enquire into, and audit, for all necessary or proper explanations respecting their receipts and expenditure, and all matters necessary to enable him to discharge his duties under this Act.

Officers required to furnish explanations.

6. The Auditor-General, and any person or persons duly authorised by him in that behalf in writing, shall have free access, at all convenient times, to the books of account, vouchers, and documents relating to the accounts of public departments, and may make, or cause to be made, extracts therefrom, without the payment of any fee or charge.

Auditor-General to have access to documents.

7. The Auditor-General is hereby empowered to call for all books, vouchers, and documents relating to any account forwarded to him in pursuance of this Act or otherwise for examination or audit, and also

Auditor-General may call for documents and examine witnesses.

**Act 18, 1894.** to examine witnesses touching the said account; and every public officer is hereby required to produce any such books, vouchers, and documents in his possession or control, and to give such attendance as the Auditor-General shall order or direct by summons under his hand, stating the object for which such public officer is required to attend, and specifying the books, vouchers, and documents to be produced.

Penalty for refusing to give information.

8. Every public officer who without reasonable cause shall fail to attend as required by any such summons, or to submit himself to examination, or to answer any lawful question which shall be put to him by the Auditor-General, or to produce any such books, vouchers, or documents, as aforesaid, shall, for any such offence, be liable to a fine of not exceeding Twenty Pounds, to be recovered in the Court of the Magistrate of the district in which the offender resides.

Surcharge of deficiencies or improper expenditure.

9. If after calling for an explanation it shall appear to the Auditor-General that any deficiency has occurred in the collection of and accounting for public money, or that any money has been improperly paid, or that any money, stamps, securities, or other property are deficient, or if a proper explanation be not furnished in regard to any such matters, it shall be lawful for the Auditor-General to disallow any such expenditure, and to surcharge the amount thereof, or of any deficiency, against the salary of the officer who is, under the rules, responsible for such matters.

Appeal to Governor in Council

10. Any person who may be dissatisfied with any disallowance or surcharge made by the Auditor-General, may submit the question for the decision of the Governor in Council, and the Governor in Council may confirm the disallowance or surcharge, or may give such other decision thereon as shall be just, and such confirmation or decision shall be final.

Rules.

11. The Governor in Council may, from time to time, make and alter rules for defining the System of Audit of the Public Revenue and Expenditure, and the mode of enforcing and carrying out the Audit, the rendering of Accounts of Revenue and Expenditure, and for all the purposes of this Act. Such rules shall be laid before both Houses of Parliament, if in Session; otherwise within seven days of the beginning of the next Session.

Auditor-General's annual accounts.

12. On or before the first day of January in every year, the Auditor-General shall furnish to Government, Accounts of the Revenue and Expenditure of the Colony for the Financial Year ended the 30th June preceding, and an account of the Appropriation of the several Supply Grants comprised in the Acts of Supply, and also of all sums expended without the authority of an Act of Supply.

Appropriation accounts.

13. The Appropriation Accounts shall exhibit on the charge side thereof the sum or sums appropriated by Parliament for the service of the financial year to which the account relates; and on the discharge side thereof the sums which may actually have come in course of payment within the same period; and no advance, of the application of which an account may not have been rendered to and allowed by the Accounting Department, shall be included on the discharge side thereof.

Auditor-General's report.

14. The Auditor-General shall, at the same time, report to the Government upon the accounts so furnished by him, and, in reporting on such accounts, he shall call attention to every case in which it may appear to him that a grant has been exceeded, or that money received by a department from other sources than the grants for the year to which the account relates has not been applied or accounted for according to the directions of Parliament, or that a sum charged against a grant is not supported by proof of payment, or that a payment so charged did not occur within the period of the account, or was for any other reason not properly charged against the grant.

15. The Accounts and Report furnished by the Auditor, as aforesaid, shall be laid before Parliament within one week after Parliament shall be next assembled.

Accounts and report to be laid before Parliament.

16. This Act shall be known as the Audit Act, 1894.

Short title.

*Accountants, Public, Reg<sup>n</sup> of, Act 35/94*

ACTS OF PARLIAMENT.

[See "Statutes."]

ADMINISTRATION (LETTERS OF).

[See "Intestate Estates," "Wills," "Probate, etc."]

ADMIRALTY AND VICE-ADMIRALTY COURTS.

[See "THE BERMONDSEY," N.L.R. May 4th, 1864.]

ADMIRALTY RESERVE.

[See Law No. 42, 1888, tit. "DURBAN CORPORATION."]

ADVOCATES.

[See "Attorneys, etc."]

AGRICULTURAL SOCIETIES.

*Agricultural Societies Act-44/1883*

AGRICULTURAL SOCIETIES.

Law No. 22, 1883.

"To provide for the Registration of Agricultural Societies."

[12th November, 1883.]

WHEREAS it is advisable to provide for the Registration of Agricultural Societies:

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Definition.

1. Whenever the words "Agricultural Society" are used in this Law they shall be held to mean any Society or Association having for its object the advancement of the Agricultural or Horticultural Industries of the Colony.

Registration of Society.

2. It shall be lawful for the members of any Agricultural Society to register such Society under the provisions of this Law.

Mode of registration.

3. If the members of any Agricultural Society desire to register under this Law, they shall forward to the Registrar of Deeds a copy of the Rules of their Society, together with a certified copy of the Resolution authorising the registration passed at any meeting of members duly convened, and the Registrar of Deeds shall, on the payment of a fee of Ten Shillings and Sixpence sterling, give to the Secretary, Chairman, or other authorised officer of such Society, a certificate setting forth the facts of such registration.

Appointment of Trustees.

4. Every Society prior to registration shall at a meeting convened for the purpose nominate and appoint one or more person or persons as Trustee or Trustees, hereinafter called the Trustees, and a copy of the Resolution making such appointment shall be forwarded to the Registrar of Deeds to be filed with a copy of the Rules in his office.

Immovable property of society to be vested in the Trustees.

5. All immovable property belonging to any Society registered under this Law shall be vested in such Trustees or their successors for the time being, for the use and benefit of such Society and the members thereof; and in all actions or suits or indictments in any Court the same shall be stated to be the property of the Trustee without any further description.

Trustees to bring or defend actions concerning immovable property of Society.

6. The Trustees are hereby authorised to bring or defend any cause, suit, action, or prosecution in any Court, touching or concerning the right or claim to immovable property of any Society of which they are Trustees, and may sue and be sued in their proper names as Trustees without further description: And in the event of the death or resignation of Trustees, or of their removal from office, any action or suit may be proceeded with by or against their successors in office as though no such death, resignation, or removal from office had taken place.

Liability of Trustees.

7. The Trustees shall not be liable to make good any deficiency which may arise or happen in the funds of the Society, unless such deficiency shall arise from their wrongful act, neglect, or default.

Amendments in Rules.

8. It shall be competent for any Society registered under this Law to register any alterations and amendments in its Rules in the office of the Registrar of Deeds on payment of a fee of 5s. for each and every such registration.

Secs. 4, 5, and 6 not to apply to Society whose Law does not require trustees. Commencement

9. Clauses 4, 5, and 6 of this Law shall not apply to any incorporated society if the Law incorporating such Society shall not require the appointment of Trustees.

10. This Law shall commence and take effect from and after the date of the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A).

## ALIENS (A).

## Ordinance No. 5, 1856.

“To empower the Lieutenant Governor to make Grants of Land to the American Board of Commissioners for Foreign Missions, and to enable it to hold the same”(B).

[11th February, 1856.]

WHEREAS, by Ordinance No. 3, 1851, entitled an “Ordinance for imparting to Aliens residing, or who may hereafter come to reside, within this District, some of the privileges of naturalization,” it is enacted, among other provisions, that no alien shall hold land within this District, unless he shall obtain a certificate of naturalization:

And whereas, it is expedient to enable the Lieutenant Governor to grant lands to the aforesaid missionary body:

BE IT THEREFORE ENACTED, by the Acting Lieutenant Governor, with the advice and consent of the Legislative Council, as follows:—

1. The aforesaid American Board of Commissioners for Foreign Missions, shall and may have and hold lands, within this District, to all intents and purposes, as though they were naturalized subjects of this District, subject to such conditions as the Lieutenant Governor may see fit to impose. Board may hold lands.
2. It shall be lawful for the Lieutenant Governor, with the advice of the Executive Council, by proclamation, to extend the privileges of this Ordinance to any other missionary bodies. Privilege may be extended.
3. This Ordinance shall take effect from and after the publication thereof in the “GOVERNMENT GAZETTE.” Commencement

## Ordinance No. 6, 1856.

“To enable persons, not being naturalised subjects, to hold Lands within the District”(C).

[11th February, 1856.]

WHEREAS, by Ordinance No. 3, 1851, entitled “An Ordinance for imparting to Aliens residing, or who may hereafter come to reside, within the District of Natal, some of the privileges of naturalization”(D), it is enacted, among other provisions, that no alien shall be entitled to hold land within the said District without obtaining a certificate of naturalization:

And whereas, by reason of the difficulties arising to aliens from having property situate in other countries, it is expedient to make a more liberal provision to enable such persons to wind up their affairs in such other countries, prior to becoming naturalized subjects of this District:

BE IT THEREFORE ENACTED, by the Acting Lieutenant Governor, by and with the advice and consent of the Legislative Council, as follows:—

1. Any alien residing, or who may hereafter come to reside, within this District, may purchase, or having purchased, may hold Transfer of Lands in this District, upon the following conditions:— Aliens may hold lands.

(A) As to disabilities of aliens in regard to franchise, see “PARLIAMENT.”

(B) See Law 7, 1858, post, which practically supersedes this Ordinance.

(C) See note (B).

(D) Repealed by Law 1, 1860, which was repealed by Law 8, 1874, the latter being repealed by Law 23, 1874, post.

**Ord. 6, 1856.**

Right to extend for period of four years.

Execution on lands not impeded by this Ordinance.

Fine if letters of naturalization be not taken out in four years.

Coparcenary rights not prejudiced.

Conflicting laws not to annul this Ordinance.

Commencement

2. Such right aforesaid shall not extend to a period beyond that of four years from the date of the registration of the transfer of such land, and during such time as aforesaid, no alien shall be at liberty to sell, transfer, or otherwise alienate such land, without the express permission of the Lieutenant Governor, which it shall be lawful for him to grant upon due cause being shown.

3. Nothing herein contained shall operate so as to defeat any suit at law in which such land may be liable to be taken in execution, or otherwise be subject to any order or judgment of court.

4. If such aliens, holding land as aforesaid, shall not take out letters of naturalization within this District within the period of four years from the date of registration of the title to such land as aforesaid, then, and in that case, such person shall be liable to a fine not exceeding £100, to be recovered at the suit of the Crown.

5. Nothing herein contained shall operate to affect or prejudice the coparcenary rights of any naturalized subject, who shall have entered into partnership with any alien aforesaid.

6. Any of the provisions of the Ordinance No. 3, 1851, Ordinance No. 5, 1856, or any other law in force in this District, shall not be construed to annul the provisions of this Ordinance.

7. This Ordinance shall take effect from and after the publication thereof in the "GOVERNMENT GAZETTE."

**Law No. 7, 1858.**

"For enabling Aliens to hold Fixed Property in this Colony."

[10th April, 1858.]

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

BE IT ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. From and after the commencement and taking effect of this Law, it shall be lawful for aliens to purchase, acquire, and own fixed property in this Colony, and to dispose of, and give transfer of said property, in like manner as natural born subjects of Her Majesty; but nothing in this Law contained shall be deemed or taken to naturalize any alien, or to bestow upon any alien any of the privileges conferred by certificate of naturalization, save and except only the privilege of purchasing, acquiring, owning, disposing, and giving transfer of fixed property.

2. This Law shall commence and take effect from and after the promulgation of Her Majesty's confirmation thereof(A).

Aliens may own and give transfer of fixed property in Natal.

Commencement

**Law No. 23, 1874.**

"To repeal and re-enact, with amendments, Law No. 8, 1874, 'For further facilitating the Naturalization of persons of European birth or descent.'"

[30th September, 1874.]

WHEREAS it is expedient to repeal and re-enact, with amendments, Law No. 8, 1874, "For further facilitating the Naturalization of persons of European birth or descent":

(A) There does not appear to have been any promulgation of Her Majesty's confirmation.

*Legal Op. 338.*

*Repealed Act 19/05*

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, Law 23, 1874.  
with the advice and consent of the Legislative Council thereof, as follows:—

1. Law No. 8, 1874, entitled "Law for further facilitating the Naturalization of persons of European birth or descent," as well as any Law or Ordinance heretofore in force in this Colony, which may be repugnant to or inconsistent with any of the provisions of this Law, are hereby repealed, save and except as to anything already done and any Letters of Naturalization already granted thereunder in this Colony, all which Letters of Naturalization shall be of the same force and effect as Letters of Naturalization authorised to be granted under this Law, and save also and except so far as regards all applications for certificates of Naturalization already made, all which applications shall be considered as made under this Law.

Repeal.

2. Any alien of European parentage or descent who shall have attained the age of twenty-one years, and who shall have resided within the Colony for a period of two years, and who shall have taken an Oath of Allegiance to Her Majesty the Queen, or Her successors, as hereinafter provided(A), shall be entitled to apply to the Lieutenant Governor for a certificate of Naturalization upon the payment of a registration fee of five shillings to the Colonial Treasurer: Provided that no person who shall have been convicted of any infamous crime (B) or offence shall be entitled to such certificate of Naturalization, unless such applicant shall have received a free pardon from the Sovereign or Ruler of the State or Country, in which such offence was committed.

Who may apply for certificates of naturalization.

Persons not entitled to such certificate.

3. The applicant shall adduce, in support of his application, such evidence of residence as the Lieutenant Governor may require.

Evidence of residence required.

4. The Governor in Council shall take the case into consideration, and may give or withhold a certificate of Naturalization to such applicant.

Governor may grant or withhold certificate.

5. Any alien to whom a certificate of Naturalization shall have been granted in the Colony of Natal, shall, after the date of taking the Oath of Allegiance in this Law mentioned, be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which any British subject, born in the United Kingdom and resident in Natal, is entitled or subject in Natal: Provided that any such certificate of Naturalization which may be obtained by a person who by reason of his having been previously convicted of any infamous crime or offence is not entitled thereto, shall be null and void, unless such applicant shall have received such free pardon as aforesaid.

Political and other rights conferred by certificate.

6. Any Magistrate of the District in which the alien has resided, or Justice of the Peace within this Colony, shall be competent to administer the Oath of Allegiance.

Persons competent to administer oath.

7. When and as soon as such Oath of Allegiance has been taken, the Resident Magistrate or Justice of the Peace shall transmit to the Master of the Supreme Court a certificate signed by himself, setting forth the name, birthplace, age, profession, trade, or calling, and present place of residence of the alien, and such Master of the Supreme Court shall publish the same in the "GOVERNMENT GAZETTE."

Certificate of name, age, &c., to be transmitted to Master of Supreme Court for publication.

8. Upon the publication of the said notice in the "GOVERNMENT GAZETTE," and upon application being made (c) the Lieutenant Governor shall cause to be issued to the said applicant Letters of Naturalization.

Letters of Naturalization.

(A) See Law 14, 1869, s. 4, tit. "OATHS," and the Schedule to that Law.

(B) See s. 46 of 24 & 25 Vic. c. 96, as to what shall be deemed an "infamous crime" within the meaning of that Act.

(c) As in Sec. 2.



**Law 23, 1874.**      9. This Law may be cited for all purposes as "The Naturalization  
 Short title.      Law, 1874."  
 Commencement      10. This Law shall commence and take effect from and after the  
 promulgation thereof in the "NATAL GOVERNMENT GAZETTE," after the  
 passing thereof(A).

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(A) Oct. 6, 1874.

*Angora Ram Shows - Support - Day on Oct - 12 1907.*

ANIMALS (A).

[See "BRANDS," "EARMARKS," "DOGS," "WILD BIRDS PROTECTION," &c.]

*Repealed by Act 8. 1914.  
sect. 1*

Law No. 31, 1874.

"To prevent cruelty to animals"(B).

[24th November, 1874.]

WHEREAS it is necessary to provide by Law for the prevention of cruelty to animals:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Law may be called "Cruelty to Animals Law, 1874." Short title.  
 2. In this Law the word "animal" shall mean any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog, cat, or other domestic animal(c), and shall also mean and include birds. Definition.

3. The 9th section of Law No. 13, 1865(d), shall be and the same is hereby repealed, save as to any offences committed against the provisions of the said section before the passing of this Law, which offences shall and may be dealt with, and the offenders proceeded against and punished as if this Law had not been passed. Repeal.

4(e). If any person shall, from and after the passing of this Law, cruelly beat, ill-treat, overdrive, abuse, or torture(f), or cause, or procure to be cruelly beaten, ill-treated, overdriven, abused, or tortured any animal(g), every such offender shall for every such offence forfeit and pay a penalty not exceeding five pounds. Penalty for cruelty to animals.

5(h). Every person who shall in any manner encourage, aid, or assist at the fighting or baiting (j) of any bull, bear, dog, or other animal(k), shall forfeit and pay a penalty not exceeding five pounds for every such offence. Aiding at fighting or baiting of animals.

(A) As to killing or wounding cattle, see "CRIMINAL LAW." As to care of impounded cattle, see "POUNDS."

(B) Compare this Law with 12 & 13 Vic. c. 92.

(c) Cf. s. 29 of 12 & 13 Vic. c. 92; see also s. 3 of 17 & 18 Vic. c. 60. As to what have been held to be domestic animals or not within these Acts, see *Colam v. Pagett*, 12 Q.B.D. 66; 53 L.J., M.C. 64; 32 W.R. 289; *Aplin v. Perrett*, [1892] 2 Q.B. 57; 62 L.J. M.C. 144; 69 L.T. 433; and *Harper v. Marcks*, [1894] 2 Q.B. 319; 10 T.L.R. 488.

(d) See "ROADS."

(e) The words of this sec. follow precisely s. 2 of 12 & 13 Vic. c. 92.

(f) Any operation causing pain is within these words unless it be justified by showing that it was done for some lawful purpose, for some purpose legalized by custom, for the benefit of the animal, or for making it more serviceable for the lawful use of man (*Murphy v. Manning*, 2 Ex.D. 307; 46 L.J., M.C. 211; 36 L.T. 592; 25 W.R.

540). Cutting off the combs of cocks—an operation which causes pain—cannot be justified on the ground that it is done for the purpose of winning prizes at an exhibition (*ib.*) Spaying sows was held not to be within 12 & 13 Vic. c. 92 (*Lewis v. Fermor*, 18 Q.B.D. 532, per Day and Wilson J.J.), but dishorning cattle has been held to come within it (*Ford v. Wiley*, 23 Q.B.D. 203; 58 L.J., M.C. 145; 61 L.T. 74; per Coleridge C.J., and Hawkins, J.); but both in Scotland (*Renton v. Wilson*, 15 Justic. Ca. 84) and Ireland (*Reg. v. McDonogh*, 28 L.R., Ir. 204) there are decisions otherwise as to dishorning.

(g) See definition of "animal" in s. 2.

(h) Cf. s. 3 of 12 & 13 Vic. c. 92.

(j) As to what is "baiting" see *Pitts v. Millar*, L.R. 9 Q.B. 380; 43 L.J., M.C. 96; but note that s. 3 of 12 & 13 Vic. c. 92 refers to animals "whether of domestic or wild nature," whilst the word "animal" in this section is limited as to its meaning by s. 2.

(k) See note (j).

**Law 31, 1874.**

Damage to animals by ill-treatment.

Compensation to person damnified.

No bar to action against the offender.

Apprehension of offenders.

Release of offender on giving security for his appearance.

Offences determined by Magistrates summarily.

Or by summons, whether the accused appear or not.

6(A). If any person shall by cruelly beating, ill-treating, over-driving, abusing, or torturing any animal, do any damage or injury to such animal, or shall thereby cause any damage or injury to be done to any person or property, every such offender shall on conviction of such offence pay to the owner of such animal, or to the person who shall sustain damage or injury as aforesaid, such sum by way of compensation not exceeding ten pounds as shall be ascertained and determined by the Resident Magistrate by whom such person shall be convicted: Provided that the payment of such compensation, or any imprisonment for the non-payment thereof, shall not prevent the punishment to which such person or the owner of such animal may be liable for or in respect of the beating, ill-treating, or abusing of said animal: Provided also that nothing herein contained shall prevent any proceeding by action against such offender, or the employer of such offender, where the amount of damage or injury is not sought to be recovered under this Law.

7(B). When and so often as any of the offences against the provisions of this Law shall happen, it may be lawful for any constable, policeman, or field-cornet, upon his own view thereof, or upon the complaint and information of any other person who shall declare his or her name or place of abode to said constable, policeman, or field-cornet, and who shall, to the knowledge of such constable, policeman, or field-cornet, be qualified to serve as a jurymen, or be returned on the Jury List for any County or Division in the Colony under "Jury Law, 1871," and within six hours after the committal of such offence, to seize and secure any such offender, and forthwith, without any other authority or warrant, to convey such offender before a Resident Magistrate, to be dealt with by such Resident Magistrate for such offence according to Law(c).

8. The constable, policeman, or field-cornet, arresting any person for any offence against this Law, or the person in charge of the station-house or gaol where any such offender may be confined, shall liberate any such offender upon such offender making a deposit of Five Pounds in cash, or giving other security or recognizance, to the satisfaction of such officer, to appear at the time and place notified by the officer taking such deposit, security or recognizance; and, failing such appearance, such money shall be forfeited, and such security or recognizance be estreated by the Resident Magistrate before whom such offender undertook to appear, and the proceeds thereof distributed and appropriated in terms of this Law.

9. Every offence committed against this Law may be heard and determined by any Resident Magistrate within whose jurisdiction such offence shall be committed, or within which the offender shall be found, in a summary way upon the complaint of any person and without any summons, when the offender is in custody; and any such Resident Magistrate, in all cases where the offender is not in custody, may summon such person to appear before said Resident Magistrate at a time and place mentioned in such summons, and on the appearance of the party accused, and in default of such appearance upon proof of the service of such summons, the said Resident Magistrate shall proceed to examine into the matter, and if, upon the confession of the party

(A) Cf. s. 4 of 12 & 13 Vic. c. 92.

(B) Cf. s. 13 of 12 & 13 Vic. c. 92.

(C) If, under this sec., a constable be required by another person to take a third party into custody for cruelty to a horse, *not committed in the officer's own*

*view*, the officer before taking the party into custody, should either enquire into all the particulars or see the animal, so as to form a judgment as to what has occurred (*Hopkins v. Crowe*, 7 C. & P. 373).

accused, or upon the oath of one or more credible witness or witnesses, the party accused shall be convicted of having committed the offence charged, shall pay such penalty, damage, or compensation as the said Resident Magistrate shall, according to the provisions of this Law adjudge order, or award, together with the costs of conviction, to be settled by the Resident Magistrate, or to be otherwise dealt with according to the provisions of this Law.

Law 31, 1874.

10. Any such summons issued by any such Resident Magistrate shall be deemed and taken to be well and efficiently served in case a copy thereof shall be served personally on such person, or shall be left at his usual or last known place of abode, in whatever county or place it may be served or left.

Service of summons.

11. Any Resident Magistrate may, without issuing any summons as aforesaid, forthwith issue his warrant for the apprehension of any person charged with any offence against the provisions of this Law, whenever good grounds for so doing shall be stated on oath before such Resident Magistrate.

Warrant may be issued without summons.

12. In every case of a conviction under this Law, where the sum imposed as a penalty or the amount awarded for compensation or damage, together with costs, if any, by any Resident Magistrate for or in respect of any offence against the provisions of this Law, shall not be paid within such time as the convicting Resident Magistrate shall appoint and limit in that behalf, such Resident Magistrate is hereby required to commit the offender to gaol, there to be imprisoned with or without hard labour for any time not exceeding two months, unless payment be sooner made.

Non-payment of penalty, damage or costs, to be followed by imprisonment.

13. Whenever any person having charge of any vehicle or any animal shall be arrested for any offence against the provisions of this Law, such constable (A) may take charge of such vehicle or animal, upon direction of a Resident Magistrate, and deposit the same in some place of safe custody, until the owner, or some one deputed or authorised by him, accepts charge of the same; and the Resident Magistrate shall thereupon inform the owner of such vehicle or animal, by post, in the usual way, that the vehicle or animal has been detained, and will be released on the payment of the expenses incurred by taking charge of such vehicle or animal(B).

Vehicles may be detained upon arrest of person in charge.

Owner to be informed of detention.

14. In case any person shall at any time or in any manner unlawfully obstruct, hinder, molest, or assault any constable, keeper of a pound, or any other person in the exercise of any power or authority under or by virtue of this Law, every such person shall forfeit and pay a penalty not exceeding Five Pounds for every such offence.

Penalty for obstructing persons in exercise of authority under this Law.

15. All pecuniary penalties which shall be recovered under the provisions of this Law, shall be paid and distributed in the following manner:—One moiety to Her Majesty, her heirs and successors, and unless remitted, shall be paid to the uses of the Government of this Colony; the other moiety, may, at the discretion of the Resident Magistrate, be paid to the person who shall complain and prosecute, or to such other person as to such Resident Magistrate may seem proper. And every sum of money adjudged to be paid as and for any damage or injury under this Law shall be paid to the person who may have sustained such damage or injury.

Distribution and disposal of penalties.

Half penalty may be paid to complainant.

16. When any complaint shall be made before any Resident Magistrate against the driver or leader of any cart, wagon, or other

Proprietors of vehicles may be summoned to give information which may lead to the apprehension of their servants.

(A) Presumably the constable making the arrest, see s. 7.

(B) Quære whether in the event of the owner not appearing to take charge there is any power to sell.

**Law 31, 1874.** vehicle for any offence committed by him against the provisions of this Law, it shall be lawful for such Resident Magistrate, if he shall think fit, to summon the proprietor or owner of such cart, wagon, or other vehicle to give such information as will enable the Resident Magistrate to apprehend the driver or leader or any other servant by whom such offence was committed, and in case such proprietor or owner, after being duly summoned, shall fail to give such information, such Resident Magistrate may proceed in the absence of such driver, leader, or servant, in the same manner as if he had been apprehended, to adjudge payment by the said proprietor or owner of any penalty or sum of money or costs in which the driver, leader, or servant shall be convicted, unless the Resident Magistrate shall be satisfied that the owner is unable to give the information required; and any sum of money which shall be so paid by such proprietor or owner shall and may be recovered from the driver, leader, or servant through whose default such sum shall have been paid, in the same manner as penalties may be recovered under this Law.

Private prosecutions.

17. Any private person may prosecute any person charged with having committed any offence against the provisions of this Law.

Commencement

18. This Law shall commence and take effect from and after the publication thereof, after the passing thereof, in the "GOVERNMENT GAZETTE"(A).

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(A) 1st Dec. 1874.

ANIMALS (DISEASES).

[See "HORSES" (Glanders); "SHEEP" (Scab).]

*Introduction of  
Exotic animals  
Act-15/09.*

*Rep. by Act 14/1911*

Law No. 13, 1866. *sec. 1 - Union*

"To empower the Lieutenant Governor to prohibit the importation and introduction into the Colony of Natal, of cattle and other animals, from places where contagious or infectious diseases prevail, and of cattle and other animals suspected of being infected with contagious or infectious diseases, and to provide measures of protection against the spread of such diseases, and to extend the provisions of Ordinance No. 6, 1854."

[3rd August, 1866.]

WHEREAS the prevalence of a virulent and contagious disease among the cattle of the United Kingdom of Great Britain and Ireland, and elsewhere, known as the rinderpest, renders it expedient and necessary to confer on the Lieutenant Governor, acting with the advice of his Executive Council, special power and authority to provide against the dangers likely to arise therefrom :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. It shall be lawful for the Lieutenant Governor, with the advice of the Executive Council, whenever it shall be deemed necessary, to prohibit, by Proclamation in the "GOVERNMENT GAZETTE," the importation into the Colony of Natal, either by sea or land, or both, of live stock (A) of any or of all kinds, and whenever, after the issuing of such Proclamation as aforesaid, any such live stock shall be so imported, to order the destruction of the same, except in certain cases hereinafter provided for.

Government may prohibit importation of cattle;

And order destruction thereof if imported.

2. When any person shall have imported any stock, the shipment of which shall have taken place before the issuing of the Proclamation aforesaid, it shall be lawful for the Lieutenant Governor to award, in case of the destruction of such animal, in accordance with Clause 1, compensation to such person equal to the market value in this Colony of the animal destroyed; provided that such animal, on its arrival in this Colony, be not infected with any contagious disease; provided also, that it shall be proved to the satisfaction of the said Governor, that it was not in the power of the importer, after the issuing of the Proclamation aforesaid, to have countermanded or prevented such shipment and importation. The value of the animal in such cases to be decided by two arbitrators, to be chosen respectively by the Government and the importer, and in case of difference, said arbitrators shall choose an umpire, whose decision shall be final.

Government may award compensation for animals destroyed, if not diseased.

Value to be fixed by arbitration.

3. It shall be lawful for the Lieutenant Governor, as aforesaid, to permit healthy animals, although included in the prohibition aforesaid, to be admitted to quarantine for such period and on such terms and regulations, as may be determined on by the Lieutenant Governor and accepted by the importer or owner.

Government may admit imported cattle to quarantine on terms.

4. In the event of any such virulent and contagious disease breaking out in any portion of the Colony, it shall be lawful for the Lieutenant Governor, as aforesaid, to declare, by Proclamation in the "GOVERNMENT

If disease breaks out in Colony, Governor may proclaim any portion infected, and order destruction of cattle therein.

(A) "Stock" in this Law means any animal; see Act 38, 1894, s. 2, post.

*Rep. by Act 14/1911 sec. 1 - Union*

**Law 13, 1866.** GAZETTE," such portion within certain limits to be infected, and to cause the immediate destruction within such limits of all stock as may be deemed liable to spread such disease, in which case compensation shall be made to the owners of healthy animals destroyed in virtue of such Proclamation at an equitable rate to be hereafter determined upon.

Governor may proclaim rules and impose penalty of £50.

Penalties may be prosecuted for in Magistrate's Court.

5. It shall be lawful for the Lieutenant Governor, as aforesaid, to make and proclaim such rules and regulations as may be required to carry out the objects of this Law, and to impose such penalties, not exceeding £50, for each separate contravention of the Proclamations issued under its provisions as may be found necessary to enforce the same; and that all such penalties shall be payable to Her Majesty, her heirs, and successors, for the uses of the Colonial Government, and may be prosecuted for by the respective Clerks of the Peace in the courts of the respective Resident Magistrates, with power to such Resident Magistrate in cases of non-payment, to levy by warrant of distress and sale, and also with power of committal of offenders to the common gaol for a period not exceeding six months, with or without hard labour; and with all other powers granted to Resident Magistrates in like cases of non-payment of penalties, by Ordinance No. 16, 1846, entitled, "Ordinance for creating Resident Magistrates within the District of Natal"(A).

Commencement

6. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE"(B).

*Rep. by Act 14/1911*

**Law No. 29, 1874.**

*sec. 1 - Union*  
"To remove nuisances from the Public Roads, and to prevent the spread of infectious and contagious diseases amongst cattle."

[24th November, 1874.]

WHEREAS the practice of leaving the carcases of dead animals on or near the Public Roads has become so general that it has been found dangerous to the health and safety of travellers, and tends to extend the spread of infectious and contagious diseases amongst cattle:

AND WHEREAS it is expedient to make provision by law to check and prevent this evil:

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:

Magistrate may authorise removal of carcases.

1. It shall be lawful for the Lieutenant Governor to authorise any Resident Magistrate or any other person to cause the carcase of any dead animal to be removed from any public road and buried at the public expense.

How and where dead animals may be buried.

2. It shall be lawful to bury any dead animal on any farm on which such animal may have died, or on any farm adjoining the road near where such animal may have died: Provided any such animal be not buried in cultivated or enclosed land, nor within five hundred yards of any dwelling house: Provided also that such animal shall be buried at least three feet below the surface.

Commencement

3. This Law shall take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (C).

(A) Repealed by Law 22, 1889, which was repealed by Act 22, 1896, tit. "COURTS (MAGISTRATES)."

(B) Aug. 7, 1866.  
(C) Dec. 1, 1874.

*Rep. by act 14/1911*  
*sec. 1 - Union*  
 Act No. 38, 1894.

*See Acts 40/98*  
 " 9/93  
 " 30/94  
 " 28/03.

"For preventing the Spread of Contagious and Infectious Diseases among Animals"(A).

[30th July, 1894.]

WHEREAS it is necessary to provide against the introduction and spread of Contagious and Infectious Diseases among animals:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. This Act shall be known as the Animals Diseases Act, 1894.

Short title.

2. The word "stock" occurring in Law No. 13, 1866, shall mean any animal.

Law 13, 1866.

3. Nothing in this Act shall be construed to repeal the provisions of any special Law or Act relating to the diseases of Lung sickness(B), Glanders and Farcy(C), and Scab(D), [or to apply to any of the said diseases while any such special Law or Act shall be in force(E)].

Special Laws not affected by this Act.

4. Every person who shall have in his possession or under his charge any animal affected with or showing symptoms of cattle plague or rinderpest, foot and mouth disease, or any other contagious or infectious disease, save as is in the third section of this Act excepted, shall immediately isolate such animal, and forthwith give notice of the disease to the owners or occupiers of adjoining properties, and to the Magistrate of the Division, who shall thereupon pass on such notice to the Colonial Secretary.

Isolation of animals showing symptoms of disease.

5. Whenever it shall appear to any Magistrate that there is reason to suspect that any animal in his Division is affected as aforesaid, he shall cause such enquiry and inspection as may be necessary to be made.

Enquiry and inspection.

6. On receiving information that any animal appears to be affected as aforesaid, the Magistrate may cause the suspected animal to be examined at the place of its isolation by a Veterinary Surgeon, and by two landed proprietors in the district, and in the event of there being no Veterinary Surgeon available, then by three landed proprietors in the district.

Examination.

7. Immediately after such examination the Veterinary Surgeon and the said landed proprietors may issue an order for the isolation or destruction of such animal at the place at which the animal is isolated.

Isolation or destruction.

8. No animal showing symptoms of any such disease as aforesaid shall be removed from the land on which it is when found in such condition, unless it be found upon a road or thoroughfare, or in a town or village, or on a commonage, outspan, or other public place, in which case it shall be removed by the nearest way to an adjacent place to be isolated or destroyed. Save as last aforesaid no such animal shall be driven or otherwise conveyed or taken upon any road, railway, or thoroughfare, or unto or across any other land than that on which it was found in such condition.

Removal of diseased animal.

9. Whenever any contagious or infectious disease exists among animals in any district, the Governor in Council may, if it shall seem proper to do so, proclaim any district or place defined in the Proclamation to be an infected area, and may by such Proclamation forbid the removal from

Proclamation of infected districts.

(A) Act 40, 1898 (see sec. 4), post, and this Act are to be read as one.

(B) See Act 30, 1897, post.

(C) See Act 27, 1898, tit. "HORSES."

(D) See "SHEEP (DISEASE IN)."

(E) The words in brackets are expunged by Act 30, 1899, post.



ANIMALS (DISEASES)—ISOLATION, &c.

Act 38, 1894. or bringing into such area of any of such animals as are named in the Proclamation, whether such animals are or are not affected with any disease: Provided that the Governor in Council may by such Proclamation make such exceptions as may appear expedient in regard to animals not affected with any disease.

Prohibition of introduction from proclaimed countries.

10. The Governor in Council may, by Proclamation, prohibit the introduction into Natal of any stock from any country in which any of the diseases mentioned in Clause 4 of this Act are found by the Government to be prevalent.

Prohibition of importation of diseased animals.

11. It shall not be lawful to import into Natal by sea or over any inland border any animal suffering from, or showing symptoms of, any infectious or contagious disease, or the carcase or any part of the carcase of an animal which has died from an infectious or contagious disease. The owner, or agent of the owner of an animal imported in contravention of this section shall be deemed guilty of the contravention, if he has accompanied such animal, or shall have been present at the time of importation, or shall have had reason to know that such animal was so diseased; otherwise the person in charge of such diseased animal shall be deemed guilty of the contravention.

Isolation of animals which have mixed with diseased animals.

12. The Magistrate is hereby empowered, upon the recommendation of the Colonial Veterinary Surgeon, or other Veterinary Surgeon, or majority of landed proprietors aforesaid, to direct the isolation at such places as he may determine, of any animals which he shall be satisfied have been in contact with an animal affected with a contagious or infectious disease, for such period and under such restrictions as he may deem necessary.

Disinfection, &c., of utensils, clothing, buildings, &c.

13. The Colonial Veterinary Surgeon may by himself or by any Veterinary Surgeon or officer acting under him, give orders for the disinfection or destruction of utensils, clothing, coverings or other articles likely to disseminate disease, and for the purification to his satisfaction of any vehicle, building or place where a diseased animal has been kept.

Officers.

14. The Governor may appoint officers for carrying out this Act, who shall be officers of the department of the Colonial Veterinary Surgeon.

Regulations.

15. The Governor in Council may make regulations for carrying out the purposes of this Act. Such regulations may provide for penalties for contravention thereof, or of this Act, not exceeding in any one case £50 with the alternative of imprisonment, with or without hard labour, until the payment of the fine, such imprisonment, however, not to exceed the term of three months: Provided that no such regulations shall have effect until after promulgation thereof in the "NATAL GOVERNMENT GAZETTE."

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Compensation for destruction of animal not diseased.

16. If upon examination of the carcase of any animal destroyed under the provisions of this Act, it shall be ascertained that such animal was not suffering from a contagious or infectious disease, the owner shall be entitled to be paid from the Public Revenue the value of such animal immediately before death.

Assessment of value.

17. In determining the value of an animal which has been imported into Natal, the Court may take notice of the actual cost of the purchase and importation thereof, due regard always being had to any other circumstances which may affect its value.

Prosecutions.

18. Every contravention of this Act or of the Regulations shall be cognizable, and may be tried in the Court of the Resident Magistrate of the Division in which the contravention occurred, or in which the person accused may be.

Act No. 3, 1897.

'To continue, with amendments, the Cattle Diseases Acts of 1896.'

[17th May, 1897.]

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

1. Act No. 1, 1896, "The Cattle Diseases Act, 1896," and Act No. 34, 1896, "The Cattle Diseases Act Amendment Act, 1896," shall continue in force until the 31st day of December, 1898(A). Continuation of Acts 1 and 34, 1896.

2. If any cattle from outside the Colony shall be driven through any fence erected for the exclusion of cattle from the Colony, or shall be allowed to break down or pass through such fence into the Colony, in violation of any prohibition, proclamation, or regulation, such cattle shall at once, and without any adjudication of forfeiture, become forfeited to and the property of the Government of Natal, and may be seized by any constable or guard or like officer, and be destroyed or dealt with as Government may have directed or may direct. Cattle breaking through fences may be seized and forfeited.

3. If any person shall wilfully introduce, or attempt to introduce, any cattle disease into Natal, or wilfully spread such disease in Natal, he shall be deemed guilty of an offence, and upon conviction in the Supreme Court or a Circuit Court shall be liable to be imprisoned, with or without hard labour, for any term not exceeding five years, and all his property, movable and immovable, shall become forfeited to Her Majesty. Punishment for wilfully spreading cattle disease.

4. If any such person be beyond the jurisdiction of the Supreme Court of Natal, his property within the Colony may be seized and attached, and he may be sued for the forfeiture thereof. Forfeiture of offender's property.

5. The Governor may from time to time define the powers and duties of Commissioners appointed in terms of Section 10 of Act No. 34 of 1896, and such Commissioners shall carry out instructions given to them by or on behalf of the Government. Definition of duties of Commissioners.

6. The word "cattle" in this Act, and in Acts Nos. 1 and 34 of 1896, shall include all horned cattle, sheep, goats, swine, horses, asses, mules, dogs and any other animal which may be further included by a Proclamation. Interpretation.

Act No. 30, 1897. (a) Rep. by Act 14/1911. See 1 U.S.

See Act 38/15/0

"For the better prevention of Lung sickness among the Cattle of the Colony" (B).

[29th May, 1897.]

WHEREAS it is desirable to make better provision for the prevention of Lung sickness among the Cattle of the Colony, and for this purpose, to amend in certain respects, and to consolidate the Laws relative thereto:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. The short title of this Act shall be the "Lung sickness Prevention Act, 1897." Short title.

(A) These Acts were not continued after this date, and have expired.

(B) See Act 38, 1894, s. 3, ante.

Act 30, 1897.  
Repeal.

2. The Laws and Act mentioned in Schedule A to this Act are hereby repealed: Provided that—

- (1) This repeal shall not affect the validity of any Order in Council, rule, by-law, warrant, certificate, or document made, granted or issued, or of any appointment made under any enactment hereby repealed.
- (2) Any document referring to any law or enactment hereby repealed shall be construed to refer to this Act or to the corresponding enactment in this Act.
- (3) This repeal shall not affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed, or affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, or liability, or affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed as if this Act had not been passed.

Interpretation:  
"Owner."

3. In this Act the expression "owner," when used with reference to the ownership of cattle, shall mean the actual owner, or the person in whose possession or control such cattle shall be for the time being, or the occupier or lessee of land on which the cattle shall then be with his knowledge and consent; and in cases where cattle, the ownership of which is in dispute, belong to, or are running with, the cattle belonging to any Native kraal, the expression "owner" shall mean and include the headman of the kraal or group of kraals to which such cattle may belong, or at which such cattle may be running or may be kraaled; and where cattle shall be found grazing or running on land the property of any borough, or Township proclaimed under Law No. 11, 1881, or on waste lands of the Crown, or on any lands set apart for any township or village, the expression "owner" shall mean the person in whose use or possession, or under whose control, or in whose charge such cattle last were or had been within one month previous to the time of their being so found grazing or running.

"Vendor."

The word "vendor" in this Act shall, in all cases where the person instructing any agent or auctioneer to sell any cattle resides within this Colony, be taken and deemed to mean the person so instructing the said agent or auctioneer; but where the person so instructing the said agent or auctioneer resides beyond the boundaries of this Colony, then the agent or auctioneer so instructed shall be taken and deemed to be the "vendor" of such cattle for all the purposes of this Act, unless, in the case of an auctioneer, such auctioneer shall, before offering each lot of cattle for sale, announce that such cattle are from beyond the boundaries of the Colony: Provided, however, that this exception in favour of an auctioneer shall not apply in any case where it shall be proved that the auctioneer, during the time that the cattle in question were being offered for sale, refused to inform any person whether the said cattle were from beyond the Colony on such person making enquiry of him to that effect.

"Cattle,"  
"Animal."

The terms "cattle" and "animal" include all animals of the ox tribe.

"Magistrate."

The term "Magistrate" shall include any Assistant Magistrate.

"Herd."

The term "herd" shall include a single animal, or any number of cattle running together.

"Inoculation."

The term "inoculation" shall mean the subcutaneous introduction into the system of cattle of the specific virus of lungsickness.

See  
Act 15/04.

The term "drench" shall mean the internal administration of virus taken from the lung or chest of the animal infected with lungsickness.

"Lungsickness" shall mean the disease known as pleuro-pneumonia.

4. The Principal Veterinary Surgeon of the Colony shall be responsible for carrying out the provisions of this Act, and of any orders, rules, and regulations made under authority of this Act throughout this Colony.

*Minister  
of Agric.*

5. The ~~Governor in Council~~ may from time to time appoint an Inspector or Inspectors of cattle for this Colony, or for any district thereof, and may from time to time remove or dismiss such Inspector or Inspectors; and every person so appointed shall have full power, should he have reason to believe that any cattle may be infected with lungsickness, at any time to inspect such cattle within this Colony, or the district thereof for which he shall be appointed, wherever such cattle may be kept, driven, or depastured, and shall have, exercise, and discharge within this Colony, or the district thereof for which he shall be appointed, the several powers, authorities, and duties hereinafter mentioned, and if any person shall refuse to allow any Inspector to enter upon his land, pasturage, or premises, or to examine any cattle belonging to him, or in his care or possession, or shall attempt to impede or hinder any Inspector from examining such cattle, or shall give false information regarding the last outbreak, or shall not, when required by any Inspector, render him every reasonable assistance, or, after demand made by the Inspector, shall fail to collect and produce to him within reasonable time his herd or herds of cattle, such person shall, on conviction, before any Magistrate, forfeit and pay any sum not exceeding Ten Pounds Sterling for each offence, or in default of payment thereof, be imprisoned for any period not exceeding two months.

Act 30, 1897.

"Drench."

"Lungsickness."

Responsibility of Principal Veterinary Surgeon.

Appointment of Inspectors with certain powers.

*Act*

*Minister*

6. The ~~Governor~~ may, from time to time, appoint and remove Inspectors to enforce and carry out in Native Locations the provisions of this Act, and such other officers throughout the Colony as may be necessary for the purposes of this Act, all which inspectors and officers shall be officers of the Department of the Principal Veterinary Surgeon of the Colony.

Appointment of other officers.

*Act*

7. If any person obstructs or impedes an officer acting in execution of this Act or of any orders, rules, or regulations thereunder, he and every person aiding and assisting him therein shall be guilty of an offence against this Act, and the officer, or any person whom he calls to his assistance, may seize the offender and take him before a Magistrate, to be dealt with according to law.

Offence of obstructing officer in execution of his duty.

8. In the event of any herd being declared by such Inspector to be infected with the disease of lungsickness, the owner of such herd shall be granted a licence, conforming as near as may be to the form of licence set forth in Schedule B, to keep such cattle for a period of six weeks for the purpose of drenching or inoculating the herd, or at once destroying any animal showing symptoms of lungsickness. Every such licence shall contain a condition that the cattle thereby licensed shall, at the owner's option, be at once drenched or inoculated to the satisfaction of the Inspector, or all animals showing symptoms of the disease shall be immediately destroyed. At the expiry of such licence the Inspector shall re-inspect such herd, and should there have been a case of lungsickness in such herd within the period of the licence, the licence shall be renewed for a further period of six weeks, dating from such last appearance, and such inspection shall be renewed every six weeks until such herd is found free from the disease. No cattle shall be allowed to be removed from the land on which they are licensed, until the Inspector shall declare the herd clean, under a penalty not exceeding Twenty-five Pounds Sterling, or in default of payment thereof, to imprisonment not exceeding three months,

License to keep infected herd.

*See Act-*

*Sec. 4.*

Renewal of license.

Penalty for removing infected cattle.

*Rep. by act 14/1911 - sec. 1 - Union*

Act 30, 1897.

Owner to give notice of outbreak of disease, &c., to Magistrate or Inspector, and to neighbours.

9. On the outbreak of lungsickness in any herd of cattle, or, should there be no outbreak, in the case of inoculation or drenching, the owner of such cattle shall forthwith give notice of the disease, either by word of mouth in presence of a witness, or in writing, to the owners or occupiers of adjoining properties, if resident, and, if not resident, then to the servants of such owners or to any other person occupying the land, and to the Magistrate of the Division, or to the Local Inspector appointed under this Act, who shall thereupon inform the Principal Veterinary Surgeon of the Colony. In case of neglect or failure to comply with the requirements of this section, the owner of such cattle shall, on conviction, be liable to a fine not exceeding Twenty Pounds Sterling for each such offence, and in default of payment be imprisoned for a period not exceeding three months.

10. All cattle so licensed shall be isolated by herding, or otherwise, at a distance not less than ten yards from the boundary of the property on which they are licensed, and from any public road. For every breach of such provision the owner shall, upon conviction, forfeit a sum not exceeding Five Pounds Sterling, or in default of payment thereof, be imprisoned for a period not exceeding one month: Provided, that should it be proved to the satisfaction of the Inspector in the case where a farm is intersected by a public road or roads, that it is absolutely necessary for licensed cattle to cross or be driven along such road or roads on such farm, the Inspector is empowered to allow such removal under the restrictions contained in Section 13 of this Act.

11. Any owner allowing cattle from a licensed herd to trespass, shall be liable for all damage caused by such trespass to any herd with which the diseased cattle so trespassing may have come in contact: Provided always, that infection be proved by the outbreak of lungsickness, to have been communicated within twenty-one days by such contact, and that immediate notice has been given to the owner, if known, or as soon as known, of such cattle so trespassing.

12. If any cattle being on or driven along any public road, highway, or street, or on lands set apart as commonage for any town or village, or for public outspan, or on land which is not in the lawful occupation of the owner of such cattle, should show symptoms of being infected with lungsickness, the person in charge of such cattle shall immediately destroy such cattle, and have them buried or burned, or otherwise destroyed; and in case of his failing to do so, shall, on conviction, pay a fine not exceeding Twenty-five Pounds Sterling, or in default thereof be imprisoned for a period not exceeding three months.

13. The remainder of such cattle shall not be driven along any public road, township, outspan, street or village, without the owner first informing the nearest Magistrate, Field-Cornet, or Inspector, who shall place such cattle under license, and who, at his discretion, may order such cattle either to be isolated, as provided for under Sections 8 and 10 of this Act, or forwarded to their destination under supervision, and by sending a person or persons, at least one hundred yards in advance of such cattle, to warn travellers of the approach of infected cattle, and to prevent such cattle coming in contact with any cattle that may be at, on, or near, a public road, outspan, highway, street, or village, under a penalty not exceeding Twenty-five Pounds Sterling, or in default of payment thereof, to imprisonment for any period not exceeding three months, and shall further be liable for any damage caused through infection, as provided in Section 11 of this Act.

14. The provisions of Section 12 of this Act shall apply to any cattle seized, levied on, or forfeited by any officer of the Government or of the law, and to any person who may remove any such cattle.

*Debt. Det. Sec. 15/07 Sec. 5*  
Penalty for neglect.

Licensed cattle to be isolated by herding or otherwise.

*Sec 7 Act 15/07*

Liability of owner for damage caused by trespass of cattle from a licensed herd.

Destruction of infected cattle not being on their owner's land.

Remainder of such cattle not to be driven without first informing nearest Magistrate, Inspector, &c.

*act 15/1907*  
*sec. 4*

Application of sec. 12 to cattle seized, &c., by officer of Government,

15. Whenever any cattle shall be sold at any public auction, or by the market-master at any public market, the auctioneer or market-master shall be bound to warrant, and shall be deemed to have warranted, all and every such cattle to be free from lungsickness, and if any such cattle shall die of or exhibit symptoms of being infected with such disease within fourteen days from date of sale, exclusive of such day, the auctioneer or market-master may be sued under such implied warranty for restitution of the price paid for such diseased cattle. The provisions of this section shall not apply to sales of cattle by poundmasters under the provisions of the Pound Law, 1874, or Law No. 16, 1880(A).

Act 30, 1897.  
Public Auction :  
Implied warranty against lungsickness by auctioneer or market-master.

16. If any person who shall purchase cattle at any public auction, or at any public market, shall prove that he has sustained damage from lungsickness which may have broken out within thirty days after the date of such purchase in the herd which was in his possession at the time he bought such cattle, and that any of the cattle so bought have shown symptoms of lungsickness previous to any animal belonging to the said herd showing such symptoms, and if it shall be proved that the vendor was aware, or had sufficient opportunity to be aware, that any such cattle were so diseased, or had been running among cattle so diseased, at or within two months previous to the time of sale, then such vendor shall be liable to make good all loss or damage which the vendee may have sustained by reason of such diseased cattle so purchased communicating such disease to cattle the property of the purchaser.

Liability of vendor in public sales.

17. In all private sales of cattle the vendor shall be deemed to have warranted the same, and shall be in all respects liable under such implied warranty as if such cattle had been sold at a public sale, unless it shall have been otherwise stipulated and agreed in writing between the vendor and vendee, or their agents.

Private sales :  
Implied warranty by vendor.

18. It shall not be lawful to expose for sale, or to sell at any public auction, or at any public market, any inoculated or drenched cattle, unless the same shall have been inoculated or drenched not less than six weeks previously to the day of sale ; and if any person who shall purchase any such cattle shall prove that the same have been inoculated or drenched within six weeks previous to the day of sale, he shall be entitled to annul the sale, and sue the vendor for restitution of the price paid for such cattle, and for all loss or damage which the vendee may sustain in the event of such diseased cattle communicating lungsickness to other cattle.

Recently inoculated or drenched cattle not to be brought to public sale.

19. Whenever inoculated or drenched cattle shall be sold in any private sale, the vendor shall be deemed to have warranted that the same have not been inoculated or drenched within six weeks previously to the date of the sale ; and if the vendee shall prove that they have been so inoculated or drenched within such period of six weeks he shall be entitled to annul the sale, and to sue the vendor for restitution of the price paid for such cattle ; and if it shall be proved that the vendor was aware that any such cattle had been inoculated or drenched within the period of six weeks prior to the day of sale, then such vendor shall, in addition, be liable to make good all loss or damage which the vendee may sustain in the event of such cattle communicating lungsickness to other cattle : Provided such warranty may be waived or modified by written agreement between the vendor and the vendee, or their agents.

Private sales :  
Implied warranty against recent inoculation or drenching.

20. It shall be incumbent on the vendee, when suing for damages, to show that he has taken precaution to prevent the spread of lungsickness amongst his herd as soon as he saw any symptoms that such disease had broken out amongst the said purchased cattle, and that he had, with that view, taken care, as far as possible, to keep the said purchased cattle

In action for damages vendee to prove steps taken to prevent spread of disease.

(A) Both repealed by Act 42, 1898, tit. "POUNDS."

*Rep. by Act 14/1911- Sec. 1. Union*

Act 30, 1897. separate from the said herd, after the discovery of such symptoms, as aforesaid, and the extent to which such precautions shall have been taken shall be considered by the Court when awarding damages.

Forms and proceedings to be followed and taken by vendee

21(A). No action for restitution of the purchase price of any such purchased cattle which may have shown symptoms of lungsickness, or for damages caused by such cattle communicating the disease, shall be sustained under the provisions of this Act, unless, within forty-eight hours of the first symptoms of lungsickness having been seen in the said cattle by the vendee or any of his servants, the said cattle shall have been examined by two witnesses, and unless notice that such symptoms have been seen has been given within forty-eight hours as aforesaid to the auctioneer or market-master and to the vendor. Such notice shall not be considered given unless it shall have been delivered at the usual residence of the person for whom it is intended, or if such residence is more than twenty miles from the place where such diseased cattle then are, the said notice shall have been sent by telegraph where available or through the post in the usual way, of which sending proof may be demanded; but if two witnesses do not examine the said diseased cattle, as provided in this section, the said action shall be sustained if information that such cattle show symptoms of lungsickness shall have been delivered to the nearest Magistrate, Field Cornet, or Inspector, within seventy-two hours of such symptoms having been seen as aforesaid, who shall cause the said cattle to be inspected, and if either of the said officers, or anyone on his behalf, or either of the said witnesses shall have reasonable cause to believe the said cattle to be affected with lungsickness, such person shall destroy one of the said cattle, and shall examine it to ascertain more certainly whether it was affected with lungsickness; and if such person find the said cattle to be so affected, he shall take the necessary steps to identify the said purchased cattle, and all other cattle in the possession of the vendee with which such purchased cattle may have been running, and the Court when awarding damages shall take into consideration all reasonable expenses<sup>(B)</sup> which may have been incurred by the vendee or in his behalf in connection with such purchased cattle.

Landowner or occupier may destroy lungsick cattle found on his land.

22. Any person finding any cattle, showing symptoms of lungsickness, on any land, his property or in his lawful occupation, may destroy such cattle on his own responsibility, and shall open and examine all cattle so destroyed in the presence of disinterested and competent witnesses: Provided, that the owner of such cattle so destroyed shall not be entitled to recover compensation for such cattle if the person so destroying them can prove, by his own evidence and the evidence of two of the said witnesses, that such cattle were infected with lungsickness when so destroyed; and also provided the person so destroying such cattle shall report that he has done so, by despatching either a verbal or written message to the Magistrate or Inspector of the district in which he resides within twenty-four hours after the killing of such cattle, and stating in such report the marks of the cattle so killed.

Destruction of lungsick cattle found on public highway, &c.

23. Any cattle showing symptoms of lungsickness being on, or driven along any public highway or street, or on lands set apart as commonage for any town or village, or for public outspan, may be destroyed by any person on his own responsibility, on the conditions provided in the last preceding section, or any person may send information respecting such cattle to the nearest Magistrate, Field Cornet, or Inspector, and such officer shall forth-

(A) This sec. substantially reproduces s. 13, Law 9, 1871, but the provision for giving notice by telegraph is new.

(B) As to the meaning of "expenses" see *Fell v. Mullins*, 4 N.L.R. 93 (per Connor, C.J.) decided on sec. 13, Law 9, 1871, of which this sec. is practically a reproduction.

with cause such cattle to be destroyed if such officer or the person sent on his behalf to destroy such cattle has reasonable cause to believe them to be infected with lungsickness, and such officer or person shall forthwith cause such cattle so destroyed to be opened and examined, and should the said cattle be found to be free from Lungsickness, compensation shall be granted as provided for under Section 24 of this Act; and each Magistrate or Inspector shall keep a record of all cases of cattle so destroyed within his district, and shall furnish a copy thereof to the Principal Veterinary Surgeon. Act 30, 1897.

24. If upon the examination of the organs of any animal destroyed under the provisions of this Act, it shall be ascertained that such animal was not suffering from lungsickness, the owner shall be entitled to be paid from the public revenue the value of such animal immediately before death: Provided that the payment shall in no case exceed the rates set forth in Schedule C. Compensation for destruction of healthy animals under Schedule C.

25. Any owner of cattle who may allow, or cause the same to be driven or herded, or permit the same to stray on any public road, street, market, or on any land other than such as is his property, or of which he is the lawful occupier, knowing the same to have been inoculated or drenched within six weeks previous thereto, or to be affected with lungsickness, shall, on conviction, pay a fine not exceeding Twenty Pounds Sterling, or in default thereof be imprisoned for a period not exceeding three months(A). Owners must confine infected cattle to their own land.

26. Whenever it shall come to the knowledge of a Magistrate that any animal within the Division is affected with lungsickness, 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 animal from such land for a sufficient period, to be stated in such notice, to enable the Governor, if he thinks fit, to issue the proclamation referred to in the next succeeding section. Declaration of lands as infected area.

Such notice shall be published in some newspaper circulating in the Division and posted at the office of the Magistrate. 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 out of such infected area shall be guilty of an offence against the provisions of this Act.

27. Whenever lungsickness is known to exist among animals in any Division, the Governor may, by proclamation, declare such Division, or any area embracing or forming part of such Division, to be an infected area, and may by such proclamation order and direct that it shall not be lawful to remove any animals from such area, whether the same are or are not infected with lungsickness. Governor may proclaim infected areas.

28. The Governor may, by proclamation, repeal or alter any such proclamation as in the last preceding section is mentioned, or may declare any proclaimed area or any part thereof to be no longer an infected area. Governor may repeal or alter such proclamation.

29. In all cases of disputed ownership of cattle under this Act the onus of proving that some other person is owner shall rest upon the occupier or lessee of the land on which such cattle shall be found grazing or running, and in case of Natives on the headman of the kraal or group of kraals to which such cattle may belong, or at which such cattle may be running or may be kraaled, and in cases of cattle found grazing or running on town, village, or waste lands of the Crown, on the person in whose use or possession, or under whose control or charge such cattle shall have been or had been within one month previous to the time of their being found so grazing or running. Onus probandi in cases of disputed ownership.

(A) This sec. is practically a re-enactment of sec. 8, Law 9, 1871, under which it was held (*Pahlana v. Reg.*, 17 N.L.R. 10) that straying cattle coming from an infected herd must be proved to be themselves affected. See also *Clerk of the Peace v. Umjiba*, 11 N.L.R. 175.



**Act 30, 1897.**

Lungsick cattle in public Pounds to be destroyed.

30. Every poundmaster shall so soon as any animal in the pound appears to him to show symptoms of lungsickness, cause such animal to be destroyed in the presence of two witnesses, and in the presence of such witnesses shall open and examine the said animal, to ascertain whether it had been infected with lungsickness.

Poundmasters must report outbreak of lungsickness in Pound to Magistrate or Inspector.

31. Poundmasters are, under this Act, required to immediately report to the Magistrate or Inspector the appearance of lungsickness in the pound, and the Magistrate or Inspector may order the slaughter of all cattle in the pound up to the number of five, provided the poundmaster can prove actual contact has existed with the infected beast. If any number above five are in the pound at the time, the conditions of Sections 8 and 10 shall be enforced. In case a pound shall become infected by reason of the pounding therein of infected cattle, it shall be the duty of the poundmaster to establish another pound at a safe distance from the pound so infected (A).

No impounding of cattle can take place in the pound so infected until such pound is declared by the Inspector to be free from disease. The Inspector or Magistrate shall cause to be made known, by advertisement, the fact of the pound being infected.

Poundmaster to declare date of last case in Pound before any sale.

32. The poundmaster shall not sell any cattle at the pound unless he shall have first publicly, at the time of such sale, declared at what date the last case of lungsickness occurred in the pound.

Poundmaster's books.

33. Every poundmaster shall keep a book for the sole purpose of entering therein a record of each case of lungsickness, showing the date when the animal was destroyed, and stating whether, on examination, the poundmaster and the witnesses, or any of them, pronounced the animal to be infected with lungsickness, and recording the marks by which such animal was distinguished; and such book shall be evidence if any question arises concerning the destruction of any animal under the provisions of this Act, or concerning compensation in respect thereof.

Penalty on Poundmasters for neglect.

34. For each act or neglect of any part of his duty under this Act, the poundmaster shall be liable, on conviction, to a fine not exceeding Five Pounds Sterling.

Governor may proclaim infected areas within commonages.

35. Every commonage of, or set apart for, any borough, township, or village, whether proclaimed under Law No. 11, 1881, or not, shall, for the purposes of this Act, be regarded as a farm, and it shall be competent for the Governor in Council to proclaim certain areas within such commonages or lands to be infected, the owners of the cattle within such areas to be under all the obligations and penalties of this Act.

Destruction of cattle in Boroughs.

36. Any cattle destroyed under the authority of this Act within the boundaries of any borough, or township proclaimed under Law No. 11, 1881, may be dealt with as the then existing laws or bye-laws of such borough or township may provide.

Penalty for introduction into Colony of lungsick or inoculated cattle.

37. Any person bringing, or causing to be brought into the Colony, any cattle knowing them to be infected with lungsickness, or knowing that they have been inoculated or drenched within six weeks previous to the date of the arrival of such cattle in the Colony, shall for every such offence, on conviction, pay a fine not exceeding One Hundred Pounds Sterling, or in default of payment, be imprisoned for any period not exceeding six months, and in addition shall be liable for all damages caused by infection from such cattle, accruing within thirty days after the date of such arrival.

Governor may prohibit introduction of cattle

38. The Governor in Council may, by proclamation, prohibit the introduction into Natal of any cattle from any country in which lungsickness shall be prevalent.

(A) For which compensation is allowed not exceeding £5; see Act 42, 1898, tit. "POUNDS."

39. The Governor in Council may make orders, rules, and regulations for the purposes of this Act and for carrying into effect the objects thereof, and revoke or vary any order, rule, or regulation so made, and every order, rule, or regulation so made shall, while in force, have the same effect as if enacted in this Act. Act 30, 1897.  
Rules and  
Regulations.

Such rules may, amongst other things, provide for the quarantine, isolation, care, safe-keeping or other treatment of any animals in an infected area, and for the destruction of any animals if deemed expedient, and may empower the Governor to make such exceptions as he shall think fit with regard to the removal from an infected area of any animals not affected with lungsickness.

All orders, rules, and regulations purporting to be made in pursuance of this section, may be made either generally or with reference to any particular case or class of cases.

Orders, rules, and regulations may provide for penalties for contravention thereof, not exceeding Twenty Pounds, or three months' imprisonment in default of payment.

40. All orders, rules, and regulations made under this Act shall be published in the "NATAL GOVERNMENT GAZETTE," and shall be laid before the Legislative Council and Legislative Assembly as soon as may be after they are made. Rules and  
Regulations to  
be laid before  
Parliament.

The notification in the "NATAL GOVERNMENT GAZETTE" of any order, rule, or regulation, made in pursuance of this Act, shall be evidence that the order, rule, or regulation was made and came into operation in manner provided by this Act.

41. Every breach of this Act, or any part thereof, and the omission to do any act, matter, or thing required to be done, and not so done, under and in strict accordance with the provisions hereof, shall be deemed and taken to be contraventions of this Act. Contraventions  
of Act.

42. For any contravention of this Act for which no special fine or other punishment is imposed, a fine may be inflicted, not exceeding, in each case, the sum of Twenty Pounds Sterling, or in default of payment thereof to imprisonment, with or without hard labour, not exceeding three months. Penalties.

43. All persons contravening this Act, or any regulation made thereunder, shall be prosecuted in any Court of any Magistrate of any County or Division within which the offender shall be found, or where the offence shall be committed, by the Clerk of the Peace for such County or Division. Prosecutions.

44. An action or proceeding shall not lie against any person acting or intending to act under the authority, or in the execution or in pursuance of this Act for any alleged irregularity or trespass or other act or thing done or omitted by him under this Act, unless notice in writing (specifying the cause of the action or proceeding, and the name and residence of the intending plaintiff or prosecutor, and of his attorney or agent in the matter) is given by the intending plaintiff or prosecutor to the intended defendant one month at least before the commencement of the action or proceeding, nor unless the action or proceeding is commenced within three months next after the act or thing complained of is done or omitted, or in case of a continuation of damage, within three months next after the doing of such damage has ceased. Actions against  
persons relying  
for their  
authority on  
this Act.

45. In any such action the defendant may plead generally that the act or thing complained of was done or omitted by him when acting or intending to act under the authority or in the execution, or in the pursuance of this Act, and may give all special matter in evidence. General plea  
sufficient.

46. On the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action not stated in his notice. Plaintiff  
restricted to  
his notice.

47. The plaintiff in any such action shall not succeed if tender of sufficient amends is made by the defendant before the commencement Tender of  
amends or pay-  
ment into Court.

Act 30, 1897. of the action; and in case no tender has been made the defendant may, by leave of the Court in which the action is brought, at any time pay into the Court such sum of money as he thinks fit, whereupon such proceeding and order shall be had and made in and by the Court as may be had and made on the payment of money into Court in any ordinary action.

Powers, rights, &c., additional to those conferred by any other Law.

48. All powers, rights and remedies given by this Act shall be in addition to, and not in derogation of any other powers, rights and remedies conferred by any other Law or enactment, and all such powers, rights, and remedies may be exercised and put in force in the same manner, and by the same authority as if the Act had not been passed.

Prosecutions not to affect civil remedy.

49. A proceeding or conviction for any act punishable under this Act, or under any order, rule or regulation made pursuant to this Act, shall not affect any civil remedy to which any person aggrieved by the Act may be entitled.

SCHEDULE A.

Schedules.	No. of Law.	Title of Law.
	Law No. 9, 1871,	"For the better prevention of lungsickness among the cattle of this Colony."
	Law No. 21, 1872,	"To amend Law No. 9, 1871."
	Act No. 39, 1894,	"To amend Law No. 9, 1871, entitled Law 'For the better prevention of lungsickness among the Cattle of this Colony,' and Law No. 21, 1872, entitled Law 'To amend Law No. 9, 1871.'"

SCHEDULE B.

Sec. 8

Act-15/07.

I certify that a herd of [state number] cattle belonging to \_\_\_\_\_, on farm \_\_\_\_\_, in Ward \_\_\_\_\_, County of \_\_\_\_\_, are affected with lungsickness, and I hereby grant to the said \_\_\_\_\_, license to keep the same for six weeks from date, for the purpose of complying with the conditions of Sections 8, 9, and 10 of Act No. 30, 1897, as endorsed hereon.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_

Inspector.

SCHEDULE C.

1. Calves under twelve months	...	...	0-15	0	5-00
2. Yearlings (Oxen and Heifers)	...	...	1	10	0 7-00
3. Two-year olds (Oxen and Heifers)	...	...	3	0	0 9-00
4. Cows and Heifers, three-year olds and upwards	...	...	4	0	0 11-00
5. Oxen and Bulls	...	...	5	0	0 14-00

2427/03

See also Schedule to Act-15/07.

Rep. by Act 24/03 + substituted

Rabies. Act 29/03.

Rhodocytus Redwater Act 32/03

see " 28/1903

ANIMALS (DISEASES)—RINDERPEST.

*Rep. by act 14/1911 sec. 1 - Union*

Act No. 40, 1898. *Act 28/03.*

"To extend the provisions of Act No. 38, 1894, entitled Act 'For Preventing the Spread of Contagious and Infectious Diseases among Animals.'"

[23rd August, 1898.]

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

1. Whenever any cattle shall be sold by private contract, public auction, or by the marketmaster at any public market, the vendor, auctioneer, or marketmaster, as the case may be, shall, unless it be otherwise expressly stipulated, either in the conditions of sale or by special agreement, in writing with the purchaser, be bound to warrant, and shall be deemed to have warranted, all such cattle to be free from the disease of Rinderpest, and if any such cattle shall die of or exhibit symptoms of being infected with Rinderpest within eight days from the date of sale, exclusive of such day, the vendor, auctioneer, or marketmaster may, in the absence of such special stipulation as aforesaid, be sued under such implied warranty for restitution of the price paid for such diseased cattle: Provided always, that the purchaser shall be bound to use all reasonable means to keep the cattle isolated.

Sale of cattle: Implied warranty against rinderpest.

2. No action for restitution of the purchase price of any such purchased cattle which may have shown symptoms of Rinderpest shall be sustained under the provisions of this Act unless, within twenty-four hours of the first symptoms of Rinderpest having been seen in the said cattle by the vendee or any of his servants, the said cattle shall have been examined by two witnesses, and unless notice that such symptoms have been seen has been given within twenty-four hours as aforesaid to the auctioneer or marketmaster or to the vendor. Such notice shall not be considered to have been given unless it shall have been delivered in writing at the usual residence of the person for whom it is intended, if such residence be within twenty miles from the place where the cattle then are, or if such residence be at a greater distance, unless the notice shall have been despatched through the post by registered letter properly addressed to the residence of such person, or shall have been despatched by telegraph where the telegraph is available.

Forms and proceedings to be followed and taken by vendee

3. The provisions of this Act shall not apply to sales of cattle by poundmasters under the provisions of any of the Pound Laws of the Colony, nor to cattle which may have been sold and may have left the Colony during the said period of eight days referred to in Section 1 of this Act.

Certain sales to which the Act does not apply.

4. This Act and Act No. 38, 1894, shall be construed together as one Act.

Construction.

*Rep. by act-14/1911 sec. 1 - Union*  
*See Also Act 14/107.*

Act No. 27, 1899. (c)

"To provide for the inspection and examination of cattle arriving in this Colony by sea, and to prevent the introduction of the disease of Tuberculosis."

[28th August, 1899.]

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

1. The word "cattle," as used in this Act, shall include all animals of the bovine tribe.

Interpretation.

*Act 14/07. Sec. 2*

Act 27, 1899.

Entry by sea.

Examiners.

Condition upon which cattle may be landed.

Quarantine depot.

Tuberculin test to be applied to animals in quarantine.

Affected animal to be destroyed or re-shipped.

Disposal of carcase.

Incidence of expenses.

Duties of officers.

Rules.

Duties of owners and persons in charge of cattle.

Penalty.

Provisions affecting slaughter cattle.

Giving false undertaking or disposing of cattle otherwise than for slaughter.

2. No cattle shall be allowed to enter this Colony by sea <sup>or land.</sup> except upon compliance with this Act.

3. One or more Veterinary Surgeons belonging to the Veterinary Department of the Colonial Government, to be called "Examiners," shall be appointed by the Principal Veterinary Surgeon as examiners for the purposes of this Act.

4. If there shall be produced to the examiner a certificate to his satisfaction, signed by a duly qualified veterinary surgeon of the country from which any cattle have been despatched to Natal, that such cattle have before being embarked been submitted to the test known as the tuberculin test, and have thereby been proved to be free from the disease of tuberculosis, and if, upon inspection, the examiner shall have reason to believe that they are free from any disease unfitting them to be introduced into Natal, he shall give permission for their being landed and despatched to their destination.

5. In the absence of a satisfactory certificate as aforesaid the examiner shall direct the cattle to be placed in quarantine at the quarantine depot provided for that purpose.

6. The tuberculin test shall be applied by an officer duly appointed for that purpose to every animal placed in quarantine, and if such animal shall be found to be free from the disease of tuberculosis the officer shall give his certificate in the form of the Schedule to this Act.

7. In the event of any such animal proving to be affected with the disease of tuberculosis it shall not be removed alive from the quarantine station, but shall be destroyed there: Provided that the owner may have the option of returning or re-shipping the animal, in which case it shall be taken direct from the quarantine station to the vessel.

8. The carcase of an animal so destroyed may be disposed of in such a manner as the owner may think fit: Provided that if the officer shall consider that the flesh is unfit for food, it shall not be disposed of for such purpose.

9. All expenses of inspection, quarantine, destruction, and otherwise shall be borne by the owner of the cattle.

10. The examiners and the quarantine officers shall in all matters appertaining to their duty conform to the instructions of the Principal Veterinary Surgeon.

11. The Minister of Agriculture may make any rules necessary for the proper carrying out of this Act.

12. All owners or persons having charge of cattle brought to this Colony by sea shall comply with the obligations of this Act, and shall obey all lawful orders of the examiner or quarantine officer, and all rules made as aforesaid; and for any disobedience or wilful disregard of such obligations, orders, or rules, they shall be liable to a penalty not exceeding Twenty Pounds Sterling, to be recovered in the court of a magistrate by the Principal Veterinary Surgeon or any proper officer of his Department.

13. The foregoing provisions of this Act shall not apply to cattle imported solely for purposes of slaughter, provided that before being landed they shall be inspected by the examiner, and the owner or the importer shall sign and deliver to the examiner an undertaking to the effect that none of such animals shall be used or disposed of for breeding or for any other purpose than for slaughter for food.

14. Any person who shall give a false undertaking, or who shall use or dispose of any such cattle otherwise than for slaughter, shall, for every animal so used or disposed of or referred to in the undertaking, be liable to the like penalties as are hereinbefore provided.

*Sec 5 Act 14/07*  
*See also Sec. 6 Act 14/07*

SCHEDULE.

Act 27, 1899.  
Schedule.

Act No. , 1899.  
No.....

Date.....

I hereby certify that I have applied the tuberculin test to  
property of the imported  
by the ship and declare the same  
to be free from any reaction indicating the existence of the disease of  
Tuberculosis.

Signed.....  
Examiner.

Act No. 30, 1899.

“To amend the Animals Diseases Act, 1894.”

*Repealed by Act 14/19  
sec. 1-4*

[31st August, 1899.]

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with  
the advice and consent of the Legislative Council and Legislative As-  
sembly of Natal, as follows:—

1. The words “or to apply to any of the said diseases while any  
such special Law or Act shall be in force” shall be expunged  
from Section 3 of Act No. 38, 1894.

ANTE-NUPTIAL CONTRACTS.

[See “COMMUNITY OF GOODS.”]

APOTHECARIES.

[See “MEDICAL PRACTITIONERS.”]

APPRENTICES.

[See “MASTER AND SERVANT.”]

## ARBITRATION.

## ARBITRATION.

Act No. 24, 1898.

"To declare the Law relating to Arbitration"(A).

[9th August, 1898.]

WHEREAS it is expedient to define the Law relating to Arbitration :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal as follows :—

## PART I.—PRELIMINARY.

1. This Act is divided into Parts, as follows :—

Part I.—Preliminary.

II.—Arbitrations.

III.—References under Order of Court.

IV.—General.

2. This Act may be cited as the Arbitration Act, 1898.

3(B). In this Act, unless the contrary intention appears :

"Submission" means a written (c) agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not(d).

"Court" means—

(a) The Supreme Court of Natal, or

(b) Any Judge in Chambers or Circuit Court having jurisdiction.

"Judge" means a Judge of the Supreme Court of Natal.

"Rules of Court" mean rules duly made by the Supreme Court of Natal.

"Official Referee" means any referee appointed by the Court, in terms of any general rule of Court, without reference to any particular matter.

"Special Referee" means any particular person appointed to be a referee in any particular matter.

## PART II.—ARBITRATIONS.

4. A submission, unless a contrary intention is expressed therein, shall be irrevocable except by leave of the Court, or by consent of all parties thereto, and shall have the same effect in all respects as if it had been made an Order of Court.

5. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the Schedule to this Act, so far as they are applicable to the reference under the submission.

6. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made by all the parties to the submission shall, subject to any order of the Court, hear and determine the matters agreed to be referred.

(A) Cf. 52 & 53 Vic. c. 49.

(B) Cf. s. 27 of 52 & 53 Vic. c. 49.

(C) See *Baker v. Yorkshire Fire Insurance Co.*, [1892] 1 Q.B. 144; *Aitken v. Batchelor*, 62 L.J., Q.B. 193; 68 L.T. 530.

(D) But not including, under the English Act, a reference to mere valuers to fix a price (*Carus Wilson, In re*, 18 Q.B.D. 7; 56 L.J., Q.B. 530; 55 L.T. 864; 35 W.R. 43—C.A.)

Division into parts.

Short title.  
Definitions.

Submission to be irrevocable and to have effect as an order of Court.

Provisions implied in submissions.

Reference to official referee.

7. If any party to a submission, or any person claiming through or under him, commences any legal proceedings (A) in any Court against any other party to the submission, or any person claiming through or under him, in respect to any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before (B) delivering any pleadings or taking any other steps in the proceedings (C), apply to that Court to stay the proceedings, and that Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may (D) make an order staying the proceedings subject to such terms and conditions as may be just.

Act 24, 1898.

Power to stay proceedings where there is a submission.

8. Criminal cases, so far as the prosecution or punishment thereof is concerned, shall not be submitted to arbitration, nor, without special leave of the Court, shall any of the following matters be submitted to arbitration, viz:—

Criminal cases and other matters not to be submitted to arbitration.

- (a) Matters relating to status;
- (b) Popular actions;
- (c) Matrimonial causes; or
- (d) Matters in which minors or other persons under legal disability may be interested.

9(E). In any of the following cases :

- (a) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;
- (b) Where an appointed arbitrator or umpire refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or the arbitrators, as the case may be, do not supply the vacancy, or cannot agree who shall be appointed to supply such vacancy;
- (c) Where the parties or arbitrators are at liberty to appoint an umpire, or another, or other arbitrators, and do not appoint him or them in any case where such appointment is requisite for the decision of the matters in dispute or the due conduct of the arbitration;
- (d) Where more than one arbitrator has to be appointed and the parties do not agree in any such appointment so far as the submission may require such agreement;

Notice to appoint, or agree in appointment, of arbitrator or umpire under a submission.

then any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint (F), or, if agreement be necessary, to agree in the appointment of some arbitrator or umpire, as the case may be.

10. If the appointment is not made or agreed to, as the case may be, within seven clear days after the service of such notice, the Court may, (G) on application, upon notice to the other party, by the party

When the Court may appoint.

(A) Similar words in s. 4 of 52 & 53 Vic. c. 49, held to include proceedings by counter claim (*Chappell v. North*, [1891] 2 Q.B. 252).

(B) See *West London Dairy Society v. Abbott*, 44 L.T. 376.

(C) E.g., an application for security for costs (*Adams v. Catley*, 66 L.T.

687); but see also *Brighton, &c., Co. v. Woodhouse*, [1893] 2 Ch. 486.

(D) See *Lyon v. Johnson*, 40 Ch. D. 579; *Carlisle, In re*, 44 Ch. D. 200.

(E) Cf. s. 5 of 52 & 53 Vic. c. 49.

(F) See *Eyre's Case*, [1892] 1 Q.B. 136.

(G) As to how far imperative, see *Eyre's Case*, supra.



Act 24, 1898. who gave the first notice, appoint an arbitrator, umpire, or another or other arbitrators, who shall have the like powers to act in the reference and make an award as if he or they had been appointed by consent of all parties.

Power to supply vacancy.

11. Where the submission provides that the reference shall be to two or more arbitrators, one or more of whom may be appointed by each party, then, unless the submission expresses a contrary intention :

- (a) If any of the appointed arbitrators refuse to act or be incapable of acting, or die, the party who appointed him may appoint a new arbitrator in his place ;
- (b) If one party fails to appoint any arbitrator or arbitrators whose appointment the submission vests in him for seven clear days after the other party, having appointed his arbitrator or arbitrators, has served the party making default with notice to make the appointment, then the party who has either originally, or by way of substitution, as aforesaid, appointed an arbitrator or arbitrators, may direct that arbitrator, or those arbitrators, to act as sole arbitrator or arbitrators in the reference, and his or their award shall be binding on both parties as if he or they had been appointed by consent of all parties :

Procedure where one party fails to appoint an arbitrator.

Provided that the Court may set aside any appointment made in pursuance of this section.

Arbitrator must be disinterested.

12. Every arbitrator and umpire must be, and continue throughout the reference to be disinterested with reference to the matters referred and the parties to the reference, and any party to a reference may require any arbitrator or umpire to make a sworn declaration before beginning, or continuing his duties as such arbitrator or umpire, that he has no interest direct or indirect in the matters referred or in the parties to the reference, and knows of nothing disqualifying him from being impartial and disinterested in the discharge of such duties. Provided always, that any party may expressly waive any right to object to any arbitrator or umpire on the grounds of interest or the like.

Removal of arbitrator by Court.

13. The Court may at any time, upon motion, remove any arbitrator or umpire against whom a just ground of recusation is found to exist, or who has misconducted himself in connection with the matters referred to arbitration(A).

On disagreement of arbitrators matter to go to umpire.

14. Where the arbitrators, or a majority of them, do not agree in their award, their decision shall not be taken to be either the least amount or least right of relief awarded by them, or the average of what has been awarded by them, but the matter shall thereupon become referable to the umpire, unless the submission otherwise provides.

Powers of arbitrators or umpire.

15(B). The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power :

- (a) To administer oaths to or take the affirmations of the parties and witnesses appearing ;
- (b) To state an award, or a conditional award dependent upon the finding of the Court on any points reserved for the Court's decision as to the whole or part of the matters referred in the form of a special case for the opinion of the Court ; and

(A) And may set aside the appointment or award, see s. 18.

(B) Cf. s. 7 of 52 & 53 Vic, c. 49.

(c) To correct in any award any clerical mistake or any error arising from any accidental slip or omission. **Act 24, 1898.**

16. The time for making an award may, from time to time, be enlarged by order of the Court, whether the time for making an award has expired or not. **Enlargement of time for award.**

17. (a) In all cases of reference to arbitration the Court may, from time to time, remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire. **Remittal of case by Court for re-consideration.**

(b) Where an award is remitted the arbitrators or umpire shall, unless the Court otherwise directs, make their award within three months after the date of the order(A).

18. Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the appointment or award aside and may award costs against any such arbitrator or umpire personally(B). **Setting aside appointment or award for misconduct.**

19. An award which has been made a judgment of the Court may be enforced in the same manner as any judgment or order to the same effect. **Enforcing award.**

20. Where the submission does not provide in what place the arbitration shall be held, the arbitrators or umpire may, from time to time, decide upon such place as may be reasonably accessible to the parties and convenient for the purposes of the reference. **Place of arbitration.**

**PART III.—REFERENCES UNDER ORDER OF COURT.**

21. Subject to Rules of Court and to any right to have particular cases tried by a jury, the Court may refer any questions arising in any cause or matter (other than a criminal proceeding by the Crown) for enquiry or report to any official or special referee or officer of the Court. **Reference of questions arising in a cause for report.**

22. The report of any official or special referee or officer of the Court may be adopted wholly or partially by the Court, and with or without such amendments as to the Court may seem meet, and when so adopted, may be enforced as a judgment to the same effect; or the Court may remit the report for further consideration, or make such other order thereon as may be just. **Adoption or otherwise of report.**

23. In any cause or matter (other than a criminal proceeding by the Crown): **Reference of cause or question therein for trial.**

(a) If all the parties interested who are not under disability consent; or

(b) If the cause or matter requires any prolonged examination of documents or any scientific, technical, or local investigation which cannot, in the opinion of the Court, conveniently be made before a jury, or conducted by the Court through its ordinary officers;

(A) Cf. s. 10 of 52 & 53 Vic. c. 49, which was taken from the repealed s. 8 of the Common Law Procedure Act, 1854. Under the last mentioned repealed enactment it was held that the Court would not remit the matter for a defect merely disclosed upon affidavit if

the award was good on the face of it; *Hodgkinson v. Fernie*, 27 L.J., C.P. 60; and see *Allen v. Greenslade*, 33 L.T. 567.

(B) For grounds of setting aside an award, see *Russell on Arbitration*.

Act 24, 1898.

(c) If the question in dispute consists wholly or in part of matters of account<sup>(A)</sup>;

the Court may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator agreed on by the parties, or, failing agreement, appointed by the Court, or before any official referee or officer of the Court appointed by the Court.

Office and authority of such referee, &amp;c.

24. In all cases of reference to an officer of the Court or to an official or special referee or arbitrator under an order of the Court in any cause or matter,<sup>a</sup> the official or special referee shall be deemed to be an officer of the Court, and they, or any such officer of the Court, shall have such authority, and shall conduct the reference in such manner as may be prescribed by any special order, or by Rules of Court.

Effect of report or award.

25. The report or award of any officer of the Court, official or special referee, or arbitrator, on any such reference shall, unless set aside by the Court, be equivalent to the verdict of a jury.

Remuneration of referee, &amp;c.

26. The remuneration to be paid to any officer of the Court, official or special referee, or arbitrator, to whom any matter is referred under order of the Court, shall be determined by order of the Court or by Rules of Court.

Making report or award a judgment of Court.

27. The report or award of any officer of the Court or official or special referee or arbitrator may, upon motion by any party, after due notice to the other parties, be made a judgment of the Court.

Powers of Court.

28. The Court shall, as to references under order of the Court, have all the powers which are by this Act conferred on the Court as to references by consent out of Court<sup>(B)</sup>.

## PART IV.—GENERAL.

Summoning witnesses.

29. The issue of a subpoena or summons on a witness to compel his attendance and the production of things or documents before an arbitrator, arbitrators, umpire, officer of the Court, and official or special referee, as the case may be, may be procured in the same way, and subject to the same conditions, as if the matter were an action pending in the Court:

- (a) By any party to a submission or any arbitrator, arbitrators, or umpire thereunder;
- (b) By the parties to any reference under any order of Court; or
- (c) Any officer of the Court, official or special referee, hearing any reference under any order of Court:

Provided always:

- (1) That any person shall not be compelled on any such subpoena to produce any document or thing, the production of which would not be compellable on trial of an action.
- (2) That the Clerk of the Court of any Magistrate may issue such subpoena in the name and on behalf of the Registrar of the Court<sup>(c)</sup>, upon payment of the same fees as are chargeable for the issue of a subpoena in the Magistrate's Court.

(A) Cf. sub-s. (c) of s. 14 of 52 & 53 Vic. c. 49, in which the word "part" means any part, and the jurisdiction to refer may be exercised, though in certain events it may become unnecessary to determine the matter of account

(Hurlbatt v. Barnett, [1893] 1 Q.B. 77; 62 L.J., Q.B. 1—C.A.)

(B) See Part II., ante.

(c) That is to say, the Court as defined by s. 3.

30. The Court may order that a subpoena or summons on a witness shall issue to compel the attendance before any officer of the Court or official or special referee, or before any arbitrator or umpire, of a witness wherever he may be in Natal, or may order any prisoner to be brought up for examination before any such officer of the Court, official or special referee or arbitrator or umpire.

Act 24, 1898.

Power to compel attendance of a witness or prisoner.

31. Any officer of the Court, referee, or arbitrator, or arbitrators, or umpire, may, at any stage of the proceedings under a reference, and any officer of the Court, if so directed by the Court, shall state in the form of a special case for the opinion of the Court, any question of law arising in the course of the reference.

Referee, &c., may state case.

32. Any order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

Costs.

33. Any person who wilfully and corruptly gives false evidence before any officer of the Court, referee, arbitrator, or umpire, shall be guilty of perjury in the same way as if the evidence had been given in open Court, and may be dealt with, prosecuted, and punished accordingly.

False evidence punishable as perjury.

34. This Act shall, except so far as otherwise may be expressly provided, apply to any arbitration to which the Government of Natal is a party; but nothing in this Act shall empower the Court to order any proceedings to which the Government is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer, without the consent of the Government, or shall affect the law as to costs payable by the Government.

Cases to which Government is a party.

35. This Act shall apply to every arbitration under any Ordinance, Law, or Act passed before or after the commencement of this Act, as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Ordinance, Law, or Act regulating the arbitration, or with any Rules, or procedure authorised or recognised by that Ordinance, Law, or Act.

Application of Act to arbitrations under special laws.

36. This Act shall not affect any arbitration pending at the commencement of this Act, but shall apply to any arbitration commenced after the commencement of this Act under any agreement made before the commencement of this Act.

Saving of pending arbitrations.

SCHEDULE.

*Provisions to be Implied in Submissions unless otherwise therein directed*(A).

- (a) If no other mode of reference is provided, the reference shall be to a single arbitrator.
- (b) If the reference is to two arbitrators, then for the decision of any question they must both agree, but if to more than two, then the decision of the majority of arbitrators shall determine any questions.
- (c) If reference is to two or more arbitrators, they may appoint an umpire at any time within the period during which they have power to make an award.
- (d) The arbitrator or arbitrators shall make his or their award in writing within three months after entering upon the reference, or after having been called on to act by notice in writing from any party to the submission if the latter be the earlier date, or on or before any later day to which the arbitrator or arbitrators by any writing signed by him or them may from time to time enlarge

(A) See s. 5, ante.

Act 24, 1898.  
Schedule.

- the period for making the award. Provided that such further period shall not exceed four months.
- (e) If the arbitrator or arbitrators have allowed the time or extended time to expire without making an award, or have delivered to any party to the submission, or the umpire, a written notice stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.
  - (f) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrator or arbitrators has expired, or on or before any later day to which the umpire may, by any writing signed by him from time to time, enlarge the period for making his award; provided that such further period shall not exceed three months.
  - (g) The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator or arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall produce before the arbitrator or arbitrators or umpire, all books, deeds, papers, accounts, writings, documents, and things within their possession or power respectively, which may be required or called for, and the production of which could be compelled on the trial of an action.
  - (h) The witnesses on the reference shall, if the arbitrator, arbitrators, or umpire think fit, be examined on oath or affirmation.
  - (i) The oral evidence of witnesses shall be recorded by the arbitrator, arbitrators, or umpire, before whom it may be given, in such manner as may be by him or them from time to time directed, if not recorded by the arbitrator, arbitrators, or umpire themselves.
  - (j) The umpire shall be at liberty to act upon the evidence recorded before the arbitrators, and to make his award without hearing any witnesses, or receiving any fresh evidence. Provided, nevertheless, that he shall be entitled, if he so think fit, to re-hear the witnesses or any of them, or to call for further evidence.
  - (k) The umpire shall be at liberty to sit together with the arbitrators and to hear the evidence given from time to time, and shall be entitled then and there to decide any interlocutory matter upon which the arbitrators disagree. Provided, however, that the umpire shall not, unless called upon to give an award, or unless the parties have requested him so to sit, be entitled to demand remuneration from the parties in respect of his attendance on the reference with the arbitrators.
  - (l) If the arbitrators, where there is more than one, or a majority of them, cannot agree as to any matter of procedure, or any interlocutory question, they may refer such matter or question forthwith to the umpire for decision, and he shall give his decision thereon forthwith.
  - (m) The arbitrator, arbitrators, or umpire, shall be at liberty to proceed "ex parte" in case any party, after reasonable notice, shall at any time neglect or refuse to attend on the reference without having shown previously to

them what they may consider good and sufficient cause for omitting to attend. **Act 24,, 1898.**  
Schedule.

- (n) If any party to the arbitration die, the arbitration shall be stayed subject to any order that the Court may make, until the appointment of an Executor or other proper representative of such deceased party, and the time for making an award shall be extended for the same period as may elapse between the death of the party and the appointment of an Executor or other proper representative, and such Executor or other proper representative shall, when called upon by the other party or parties to the submission to proceed with the arbitration, be subject to the same rules, provisions and conditions as the deceased party.
- (o) The award to be made by the arbitrator, arbitrators, or umpire, shall be in writing, and shall, if made in terms of the submission, be final and binding on the parties and the persons claiming under them respectively.
- (p) The costs of the reference and award shall be in the discretion of the arbitrator, arbitrators, or umpire, who may direct to, and by whom, and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client. Provided always: (1) That if no direction be given as to the scale on which such costs are to be taxed, they shall be taxed on the tariff allowed in Magistrates' Courts from time to time, if the award is such as a Magistrate might have pronounced as a judgment in his Court, but otherwise such costs shall be taxed on the tariff in force from time to time in the Supreme Court of Natal. (2) Where no provision is made in the submission for the fees payable to arbitrators or umpire, such fees, notwithstanding that they may have already been paid by the parties, shall be subject to taxation at the expense of the parties desiring taxation by the taxing officer of the Supreme Court, with the right of appeal to the Court. (3) If the arbitrator, arbitrators, or umpire do not forthwith tax such costs, or if the arbitrators cannot agree in their taxation, then the taxing officer of the Court may tax them.
- (q) The award may be made a judgment of the Supreme Court, or any other Court having jurisdiction, upon motion by any party, after due notice to the other party or parties.

*Arbitration Act 24 of 1898*

*Repealed by Act 1/06.*

ARMS, AMMUNITION, &c.

[See "EXPLOSIVES;" "EXPORTATION (PROHIBITED);" "ZULULAND."]

Law No. 5, 1859.

"For preventing the Sale of Gunpowder and Fire-arms to, and prohibiting the possession of the same by Natives"

[21st June, 1859.]

WHEREAS, by the disallowance by Her Majesty of a Bill passed by the Legislative Council, entitled "For securing the better protection and peace of the Colony," the laws now in force in this Colony regulating the sale and possession of fire-arms and gunpowder are ineffectual in preventing the sale of fire-arms and gunpowder to, and in prohibiting the possession of fire-arms and gunpowder by, natives within this Colony; and whereas it is expedient to amend the said laws:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Penalty for supplying fire-arms or gunpowder to natives.

1. Any person who shall in this Colony give, lend, sell, or barter, to any person of the native tribes of this Colony, or to any person of the native tribes of the countries adjacent thereto, any gun, or pistol, or gunpowder, unless by the written permission to that effect of the Governor, shall be liable to a fine not exceeding fifty pounds, and, at the discretion of the Resident Magistrate, to imprisonment for any term not exceeding two years, and with or without hard labour; and any such gun, or pistol, or gunpowder, may be seized and forfeited(A).

Natives may not possess fire-arms or powder without written permission of Governor.

2. No person of the native tribes of this Colony, and no native of the tribes residing in the countries adjacent thereto, shall be allowed or entitled to possess any gun, or pistol, or gunpowder, in this Colony, without the written permission of the Lieutenant Governor; and every Resident Magistrate shall, upon the production of such permission, cause every such gun or pistol to be marked and registered, and shall mark upon every such gun or pistol the number of such registration, and shall record in his office the name of the party so registered, and the date and number of such registration.

*Amended Act 15/1901*

Fire-arms, &c., may be seized.

3. All guns, or pistols, or gunpowder, found in this Colony in the possession of any person of the native tribes of this Colony, or of any person of the native tribes of the countries adjacent thereto, without the written permission of the Governor as aforesaid, shall be seized and forfeited, whether the said gun or pistol be marked and registered or not; and the party in whose possession, as aforesaid, any such gun, or pistol, or gunpowder, may be found, shall be liable to a penalty not exceeding fifty pounds, or at the discretion of the Resident Magistrate to imprisonment for any term not exceeding two years(B).

Penalty.

By whom fire-arms may be seized.

4. Any Magistrate, Justice of the Peace, Field Cornet, or Police-man, may stop any person of the native tribes of this Colony, or any native of the tribes residing in the countries adjacent thereto, who may

(A) But see Law 12, 1862, s. 11, post, enabling natives to obtain special permit.

(B) As to what constitutes "possession," see *Mikalo v. Clerk of the*

*Peace*, Broome's Digest 176. Fine or imprisonment, as a penalty, cannot be inflicted alternatively (ib).

have in his possession, contrary to the provisions of this Law any gun or pistol, or gunpowder, and seize the same, and forthwith carry the offender before the Resident Magistrate, or Justice of the Peace, of the county. Law 5, 1859.

5. All fines imposed by this Law shall be paid into the Colonial Treasury: provided that the Court may, in any case, award and direct any portion, not exceeding one-half thereof, to any person, or persons, who shall have given such information as may have led to the conviction of any offender. Fines.

Award to informer.

6. Any gun, or pistol, or gunpowder, seized under this Law, shall be forfeited to Her Majesty, without any adjudication of forfeiture being required. Forfeitures.

Offences, how cognizable.

7. All contraventions of this Law shall be cognizable in any Court of any Resident Magistrate of any county or division in which the offender shall be found, or where the offence shall have been committed.

8. This Law shall commence and take effect from such date as the Lieutenant Governor shall fix and determine by Proclamation in the GOVERNMENT GAZETTE (A). Commencement

*Repealed by Act 706.*  
Law No. 11, 1862. + Act 4, 1907.

“To make better provision relative to the Importation, Registration, and Sale of Fire-arms.”

[13th August, 1862.]

WHEREAS it has been found necessary to make better provision relative to the importation, registration, and sale of fire-arms in this Colony, so that legitimate trade in these articles may be protected by the enactment of regulations to prevent the indiscriminate sale and possession of fire-arms, to the danger of the peace of the Colony:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. The Law No. 9, 1857, entitled, a Law “For the registration and sale of fire-arms,” and Law No. 8, 1859, entitled, a Law “To amend the 33rd section of Law No. 9, 1857,” shall be, and the same are, hereby repealed. Repeal.

2. The Lieutenant Governor shall appoint a board (B), to consist of not more than five persons, to hear applications from persons wishing to import fire-arms (c) into the Colony. Board to be appointed.

3. The said board shall meet at Durban, and sit with open doors for the hearing and determining of all such applications, on the 15th day of every month, or, if falling on a Sunday or a holiday, on the day following such Sunday or holiday. Place and day of meeting of board.

4. Three members of the board shall be a quorum, and the decision shall be that of the majority. Quorum.

5. The Clerk of the Peace at Durban shall act as the secretary of the said board. Secretary of board.

(A) Proclaimed Feb. 7, 1860.

(c) For definition of “fire-arms” see

(B) Abolished by Law 6, 1876, s. 2, s. 58, post.  
post; applications now to be made to Controller of Arms.



**Law 11, 1862.**

Applications to import fire-arms, how to be addressed.

Applications to be published in "Government Gazette."

When applications cannot be entertained.

Meetings of board.

Application may be opposed.

No licence to be granted without recommendation.

Recommendation to be transmitted.

Decision of board may be remitted for re-consideration.

Controller to grant or refuse licence in terms of Governor's instructions.

Licence to specify certain particulars.

6. Every person desirous of obtaining a licence to import (A) fire-arms, shall make application in writing, addressed to the secretary of the said board(B), setting forth his name and surname, and his place of residence, and stating the number and description of fire-arms he wishes to import.

7. The said Secretary shall publish in the "GOVERNMENT GAZETTE" a notice of the said application setting forth the name of the applicant, and the number and description of the fire-arms he seeks to import, and also specifying the sitting of the board at which the question of granting such application will come before the said board(C).

8. The board shall not entertain any application until a period of at least fourteen days shall have intervened between the publication of the notice last aforesaid, and the sitting of the board(D).

9. At the sitting appointed for the determination of the question of granting such application, the said board (E) shall, with open doors, proceed to determine the same, and shall hear the objections, if any, of any householder resident in the Colony, whether grounded on the character, misconduct, or unfitness of the applicant, or the number of licences previously granted for a similar purpose; and the said board shall also hear what shall be urged by the applicant in answer to such objections, and shall, if necessary, examine the parties, or any other person, upon oath, touching the matter in question, and may then grant or refuse such application, or may grant the application in part, and refuse it in part, as circumstances shall require.

10. The [Attorney General(F)] may, by himself, or by any person deputed by him, oppose the granting of any such application before the board, on any grounds that may to him seem relevant.

11. No licence shall be granted to any person to import fire-arms, without the recommendation of the said board(G).

12. If the board shall determine on granting any such application, the same shall be in form of a recommendation, and the applicant shall obtain from the secretary of the board a minute of such decision, and shall transmit such minute to the [Attorney General(H)].

13. The [Attorney General] may, if he see cause, remit the decision of the board to the secretary of the same, to be reconsidered by the board in regard to any point which shall be specified in such remission(I).

14. The [Attorney General(K)] shall take the instructions of the Lieutenant Governor upon every recommendation made by said board, and shall grant or refuse a licence of importation, in terms of such instructions.

15. The licence shall be signed by the [Attorney General(L)], and shall specify the time during which it shall be in force, and the number and kind of fire-arms thereby licensed to be imported.

16. [Repealed by Law No. 42, 1887(M)].

(A) That is, either over an inland border of the Colony or by sea; see Act 18, 1898, post.

(B) Abolished by Law 6, 1876, s. 2, post; applications now to be made to Controller of Arms.

(C) See note (B).

(D) See note (B).

(E) See note (B).

(F) See Law 6, 1876, ss. 2 & 7, post, which substitutes the Controller of Arms for the Attorney-General.

(G) See Law 6, 1676, s. 2, post.

(H) See note (F).

(I) See note (F).

(K) The Controller of Arms, see Law 6, 1876, s. 2, post.

(L) See note (F).

(M) See infra.

17. Any person intending to settle or reside within this Colony, coming overland, may bring with him such fire-arms as are required for personal use or defence, and every such person shall, as soon as practicable after his arrival in this Colony, repair to the seat of magistracy of the county or division which he first does enter, and report to the Resident Magistrate of the same the number of fire-arms he has brought with him, and exhibit the same, and the said Resident Magistrate, if he shall be satisfied that such fire-arms are required for personal defence, and are bona fide the property of such person, may register the same, as required under the provisions of this Law: Provided always, that any person, not belonging to any native tribe in South Africa, being a resident of the Cape Colony, the Free State, or the Transvaal, resorting to this Colony for a temporary purpose, may bring with him overland such fire-arms as are necessary, or required for his personal use or defence: and provided also, that no such person shall, during his stay in this Colony, sell or dispose of any such fire-arms, except under the provisions of this Law.

Law 11, 1862.

Persons coming overland may bring fire-arms under certain conditions.

18. It shall not be lawful for any person to import or bring into this Colony any fire-arms, save as hereinbefore is excepted, without having first obtained the licence hereinbefore required, and all fire-arms imported contrary to the provisions of this Law, shall be forfeited to Her Majesty, her heirs and successors.

Fire-arms not to be imported without a licence.

19. No licence granted by the [Attorney General(A)] as aforesaid shall be transferable, or capable of being assigned, nor shall the name of any person, other than the person so licensed to import fire-arms, be substituted in any way, or for any purpose, or in any entry in the Custom House, in lieu of the person obtaining such licence.

Licence not transferable.

20. The Lieutenant Governor may, at any time, and from time to time, by Proclamation, prohibit the importation of any fire-arms, and such prohibition shall extend to all fire-arms, whether licensed to be imported or not.

Governor may prohibit importation.

21. The Collector of Customs may refuse a warrant for the unloading of any fire-arms, but shall not allow the same when landed, to be delivered out of the Queen's Warehouses, until the said importer shall produce his licence to import such fire-arms, nor until the said Collector of Customs is satisfied, by examination, that the fire-arms sought to be landed or delivered correspond in number and description with the licence under which they have been imported.

Collector of Customs may refuse a warrant for unloading.

22. No person shall, in this Colony, sell in the way of trade, or keep any fire-arms for sale, without a licence so to do, signed by the [Attorney General(B)].

Fire-arms not to be sold without licence.

23. The [Attorney General] may grant a licence to sell fire-arms in the way of trade, and to keep fire-arms for sale, to all licensed importers, and to all fit and proper persons who may make application for the same: Provided, that the [Attorney General] shall not grant any such licence until it shall have been made to appear, to his satisfaction, that the person requiring such licence is a fit and proper person, and already established in trade or business. And the [Attorney General] is hereby authorised, in every case, before granting such licence, to require the person applying for the same to enter into a recognizance, with one or more good and sufficient security or securities, liable as principal debtor or debtors(c).

Controller may grant licence to sell fire-arms.

Bond required.

(A) The Controller of Arms, see Law 6, 1876, s. 2, post.

(B) The Controller of Arms, see Law 6, 1876, s. 7.

(c) See s. 55 as to when recognizance becomes due.

**Law 11, 1862.**

Importer may sell to licensed dealers.

24. Any importer may sell and deliver to any licensed dealer, or one licensed dealer may deliver to any other licensed dealer, the whole or any part of the guns then actually in the possession of such importer, or licensed dealer, as the case may be; and the importer or licensed dealer so selling, shall notify his having done so to the [Attorney General(A)], and such fire-arms shall be removed under, and subject to the provisions of this Law.

All fire-arms sold to be entered in a book.

25. Every person licensed to import, or to sell fire-arms in the way of trade, shall keep a book, in which he shall enter, or cause to be entered, an account of all such articles sold by such person, and the name and residence of the person to whom the same are, and the respective times at which the same were, sold, and shall, every month, return a copy of such account to the [Attorney General(B)], and if any such person shall not keep such book, or shall not truly enter, or cause to be entered, such account as aforesaid, or shall omit to make any such return as aforesaid, he shall, for every such offence, be deemed guilty of a contravention of this Law.

Monthly return

Holders of fire-arms to apply for a licence within fourteen days.

26. Every person having fire-arms in his possession not required for his own use or personal defence, must, within fourteen days after the publication of this Law, apply for a licence to the [Attorney General (c)] to sell, or keep such fire-arms for sale, and the [Attorney General] may, at his discretion, refuse to grant such licence, or may grant permission to any such person to sell or transfer the same to a licensed dealer under this Law. And such licence, when so granted, must specify the fire-arms licensed to be sold, the place where the same may be sold or exposed for sale, the time within which the same may be sold or exposed for sale, and shall not be taken to be, or be a licence to sell, or keep for sale, fire-arms under this Law. And provided, that in every such case the [Attorney General] may require such recognizance from such applicant, as is required from licensed dealers under this Law(D).

Licensed importers or dealers to apply to Magistrate to keep the fire-arms.

27. Every person licensed to import or keep for trade any fire-arms, shall, within three days after the delivery to him, or to his authorised agent, of such fire-arms, deliver, or cause to be delivered, an application in writing, in the form in the schedule annexed, to the Resident Magistrate for the county or division in which he may reside, and the said Resident Magistrate shall, upon the production thereof, and upon the production of his licence to import, or keep for trade, make an order for granting to such person a licence to keep the fire-arms therein specified, and every such licence shall be in the form A in the schedule annexed, and shall specify the number and description of fire-arms, the keeping of which such licence is to authorise.

Fire-arms, when sold, to be taken to Magistrate to be registered.

28. Any person licensed to sell fire-arms in the way of trade as aforesaid, shall, upon the sale of any fire-arms by him, produce such fire-arms so sold, together with such licence in which such fire-arms shall be specified to the Resident Magistrate(E), accompanied by the purchaser of such fire-arms, and the Resident Magistrate, if the purchaser appear to him to be a proper person to have fire-arms, shall thereupon erase from such seller's licence the particular fire-arms so sold, and shall issue to the person purchasing the same a ticket of registration in the form marked B, and shall also stamp a mark on every such fire-arm, the number and letter of such registration, and shall forthwith register the same in a book to be kept for that purpose.

(A) The Controller of Arms, see Law 6, 1876, s. 6, post.

(B) See note (A).

(C) See note (A).

(D) As in sec. 23.

(E) See Law 6, 1876, s. 3, post.

29. Any importer, or person keeping fire-arms for sale, may lawfully remove the same from any licensed place to any other licensed place, upon obtaining a licence from the Resident Magistrate, which licence shall set forth and describe the number of fire-arms intended to be removed, the time within which the removal must take place, and the place to which they may be removed.
30. The Resident Magistrate granting such authority shall notify, in writing, to the Magistrate of the place to which such arms are to be removed, his having done so, and shall also forward with such notification a certified copy of the licence, or licences, authorising such removal.
31. The person so removing such fire-arms as aforesaid shall, within the time specified in the licence, and at the licensed place, produce the same to the Resident Magistrate of the place to which he has removed the said fire-arms, who shall compare the said fire-arms produced with such copy of the licence forwarded as aforesaid.
32. No person shall wilfully obliterate, alter, or deface any licence issued under this Law, and every licence so defaced, altered, or obliterated, shall be deemed to be invalid.
33. No person shall convey, by any means whatsoever, any fire-arms through this Colony, or any part thereof, for sale, or trade, or barter, to any place, or to any person, beyond the boundaries of this Colony, except upon special licence and permission from the [Lieutenant Governor(A)], and under such conditions and regulations as may be stipulated and sanctioned by him.
34. The master of every ship arriving at the port of this Colony shall, within twenty-four hours after such arrival, in addition to any report required by Ordinance No. 6, 1855(B), make a special report in writing to the Collector of Customs of the number and description of fire-arms on board such vessel, specifying the fire-arms which form part of the cargo, and those fire-arms which belong to the ship as part of her equipments or furniture.
35. Every master of a vessel leaving this port shall, previous to his departure, give satisfactory proof to the Collector of Customs that the fire-arms specified in his report, as appertaining to his vessel's equipment or furniture, are then on board said vessel.
36. No fire-arms shall, at any port or place within this Colony, be shipped, or placed on board any ship or vessel, or be placed or put on board any boat in order to be conveyed to any ship or vessel being in or near such port or place, in order to be carried to any other port or place whatsoever, without the permission in writing of the Collector of Customs first had and obtained, and the Collector of Customs shall, before granting such permission, require the parties applying for the same to enter into a bond, in the form hereunto annexed, with one or more security.
37. It shall and may be lawful for the Collector of Customs, or any Resident Magistrate (c) or Justice of the Peace, to enter and search for, or, by warrant under his hand, to authorise any constable or other person named, to enter and search any building, place, ship, boat, wagon, or other vehicle, or examine and search any person or animal in which, or upon which, or by whom, such Collector of Customs, or Magistrate, or Justice of the Peace, shall have reasonable grounds to suspect any fire-arms shall be deposited, or kept, or conveyed, contrary to the provisions of this Law, and if any fire-arms be found

**Law 11, 1862.**

Importers or dealers may remove fire-arms on licence from Magistrate.

Magistrate to notify his having granted a licence to remove.

Person removing to produce fire-arms.

Licence not to be altered or defaced.

Fire-arms not to be conveyed through the Colony without licence.

Masters of vessels on arrival to make a special report of fire-arms.

On departure to account for them.

Fire-arms not to be shipped without permission of Collector of Customs.

Export Bond.

Buildings, ships, boats, wagons, etc., may be searched.

(A) To be signed by the Controller of Arms, see Law 6, 1876, s. 8, post.

(B) Repealed by Act 13, 1899, tit. "REVENUE."

(C) See Law 6, 1876, s. 3, post.

Law 11, 1862. therein, or thereupon, contrary to the provisions of this Law, to seize and carry away the same.

Persons carrying more than one gun may be apprehended and brought before Magistrate.

38. When any person shall be found carrying more fire-arms than one gun, or be in the possession of, or conveying by any means when absent from his place of residence, more than one gun, it shall be lawful for any Resident Magistrate, Justice of the Peace, Field Cornet, or Constable, or any other person duly empowered under warrant from the Resident Magistrate or Justice of the Peace, to examine such fire-arms, and to require the person so found carrying fire-arms to tell his name in full, and place of abode, and in case such person so found carrying fire-arms shall refuse to tell his name as aforesaid, or place of abode, or such person found carrying fire-arms be not duly licensed, it shall be lawful for the Justice of the Peace, Field Cornet, or Constable, so requiring as aforesaid, and also for any person acting by his order, and in his aid, to seize such fire-arms and apprehend such offender and bring him, as soon as conveniently may be, before a Resident Magistrate, and such Resident Magistrate may, if he shall think fit, cause the offender so apprehended and brought before him to give sufficient security for his appearance to answer such charge as may be brought against him, and in default thereof may commit such person to any gaol, there to remain to answer such charge.

Fire-arms to be taken to Magistrate for registration.

39. Every person within the Colony who shall, now or hereafter, be the owner of, or shall have in his possession, any fire-arms, shall cause the same to be registered as hereinafter provided, and for that purpose shall take every such fire-arm to the Resident Magistrate of the county or division in which such person shall reside: Provided, that any fire-arm already registered under any former Law need not be again registered: And provided also, that any such former registration, and any fire-arm under such former registration, shall be deemed a registration and a fire-arm registered under this Law.

Those registered under former Law excepted.

Magistrate to register and issue ticket.

40. The respective Resident Magistrates shall, if the person so applying appear to him to be a fit and proper person to have fire-arms, forthwith register every such fire-arm in a book to be kept for that purpose, in the form in the schedule to this Law annexed, marked C, and shall issue to the person registering the same a ticket of registration in the form marked B, and shall also stamp or mark on every such fire-arm the number of such registration.

Sellers, not being importers or dealers, to appear before Magistrate to transfer fire-arms.

41. The seller of any fire-arm, not being an importer, or a person keeping fire-arms for sale or trade, shall forthwith take such fire-arm together with the ticket of registration appertaining thereto, to the Resident Magistrate for registration, as hereinbefore required, in the name of such purchaser; and the said Resident Magistrate shall thereupon, if the purchaser appear to him to be a proper person to have fire-arms, cancel such ticket, and issue another in lieu thereof, bearing the same number as the original ticket, with the name of the new owner, and shall keep a registry of such alteration.

Importers or dealers to register before transfer.

42. Every person importing, or any person keeping fire-arms for sale or trade, shall, before delivering any fire-arm out of his possession, cause the same to be registered in the name of the purchaser.

Fee for registration.

43. There shall be payable by the person causing such registration a fee of 6d. for every fire-arm so registered, to the officer registering the same, for his own use (A).

(A) Amended by Law 17, 1874, post, which makes the fee payable to Colonial Treasurer.

44. Every person, licensed importer or trader (A) who shall be found in the possession of any fire-arms required to be registered, and not registered under this Law, or any former Law requiring such fire-arms to be registered, shall be deemed guilty of a contravention of this Law.

**Law 11, 1862.**  
Persons found with unregistered arms guilty of a contravention.

45. Any person who shall wilfully obliterate, alter, or deface the registration number on any fire-arm, or the number or name inscribed upon any registration ticket, shall be deemed guilty of a contravention of this Law.

Obliterating or defacing registration number or ticket.

46. Any armourer, blacksmith, gunsmith, or other person, who shall take, or have in his possession, any fire-arms, for the purpose of being stocked or otherwise repaired, without such fire-arms being marked or stamped as registered, shall be deemed guilty of a contravention of this Law: Provided, that any importer or licensed dealer, or any person not residing within the Colony, may, upon the written permission of any Resident Magistrate, give to any person for the purpose of being stocked or otherwise repaired, any fire-arms in such permission mentioned.

Gunsmith not to repair fire-arms without their being registered.

Exceptions.

47. Nothing in this Law contained shall apply to affect any fire-arms the property or in the possession of this Government, or any person serving in Her Majesty's forces, or in any corps of volunteers or militia actually embodied, or any policeman, in respect of any fire-arms entrusted to, or used by any of them in their respective capacities aforesaid.

Fire-arms of the Government or H. M. forces excepted.

48. Every person licensed under this Law to import or trade in fire-arms, shall from time to time, when thereto required by a Resident Magistrate within his jurisdiction, by warrant under his hand, produce to any constable, or other person named in such warrant, the fire-arms which he shall be so licensed to keep. Every person having any fire-arms registered in his name shall, from time to time, when thereto required by a Resident Magistrate having jurisdiction over the same, produce to any constable or other person named in such warrant, the fire-arms which shall be so registered in his name, or failing to produce such fire-arms, shall be compelled to account satisfactorily for their absence.

Fire-arms to be produced when called for.

49. It shall and may be lawful for the [Lieutenant Governor(B)], for the time being, by an order in writing under his hand, from time to time, whenever and so often as he shall deem it expedient, and for such period of time as he may deem necessary, to withdraw, cancel, or suspend any licence granted under this Law; and the person to whom such licence shall have been granted shall be duly compensated for the fire-arms imported by him, and which may be still undisposed of, upon his delivering up the same: Provided that such withdrawing, cancellation, or suspension of the licence shall not have been caused by any bad conduct, or contravention of this Law on the part of such licensed dealer.

Licenses may be suspended.

50. [Repealed by Act No. 18, 1898.]

51. Every breach of this Law or any part thereof, or any act, matter, or thing required to be done, and not so done, under and in strict accordance with the provisions thereof, or any of them; or any act, matter, or thing which is forbidden, or which when done would be contrary to the provisions of this Law, or any one of them; or any proceeding which would be in any way in breach of the said Law, or

What to be deemed contraventions of this Law.

(A) The words "licensed importer or trader" do not confine the sec. to persons of that class, the word "every" being held to govern the first three

nouns (*Reg. v. Thompson*, Broome's Digest, 175).

(B) The Controllor of Arms, see Law 6, 1876, s. 8, post.

Law 11, 1862.

any part thereof, shall be deemed and taken to be contraventions of the said Law and be indictable.

Contraventions, where to be prosecuted.

52. All contraventions of this Law shall be prosecuted by indictment by the Attorney General, at the suit of the Queen, in the usual manner before the Supreme Court or any Circuit Court; and in the latter case it shall not be necessary for the prosecutor to show, nor shall it be material whether the contravention charged was committed within the jurisdiction of such Circuit Court: Provided, however, that it appear that such contravention occurred within the Colony.

Powers of Court as to punishment.

53. The Court may, on conviction of any contravention of this Law, impose any fine not exceeding one hundred pounds, and, in default of payment, award imprisonment for any period not exceeding twelve months, or until the said fine be paid; and may, in addition to such fine, sentence any person so convicted to imprisonment, with or without hard labour, for any period not exceeding two years; and may also, in addition to such fine and imprisonment, decree that any fire-arms dealt with in contravention of this Law, and in respect of which such conviction was had, be forfeited to the Queen, her heirs and successors.

Proof of license or exemption to rest with defendant.

54. In any prosecution or proceeding under this Law, if any question shall arise as to whether any party is duly licensed, or as to whether any person has given any notice or declaration required by this Law, or as to the benefit of any permission or exemption, or licence granted by this Law, the proof that the party is so licensed, or has given such notice or declaration, and that he is entitled to the benefit of such permission or exemption, shall be on the party against whom such prosecution or proceeding shall be had, and not on the party complaining.

Recognizance, when due.

55. The recognizance and bond of any such surety, as provided by this Law, shall be considered due, and to be a liquid document of debt due to the Queen by such surety, and proper for granting of a provisional sentence, in every case in which there shall be shown any single breach of the conditions thereof by the principal, either within the Colony or beyond the boundaries, and whether the principal shall be convicted of such breach or not, or whether such principal shall be absent from the Colony or not, and the amount may be levied on the goods and chattels of such security within the Colony.

Fines payable to the Queen.

56. All fines imposed by this Law shall be paid to Her Majesty the Queen, her heirs and successors, for the public uses of the Colony: Provided that the Court may, in any case, award to be paid any portion, not exceeding one-half thereof, to any person who shall have given such information as may have led to the conviction or detection of the offender in such case.

Limitation of action in respect of matters done under this Law.

57. In case any action or suit shall be commenced against any person or persons for any matters or things done or executed in pursuance of this Law, such action or suit shall be commenced within three calendar months next after the alleged cause of action shall accrue, and the defendant or defendants in such action may plead the general issue, and the special matter in evidence on any trial to be had thereon, and prove the same was done under the authority of this Law.

Definition of "fire-arms."

58. In the construction of this Law, the word "Fire-arms" shall be deemed and construed to include any description of guns, pistols, or any gun or pistol, lock, stock, or barrel.

Contraventions of former Laws may be prosecuted.

59. Any contravention, or breach of, or proceeding under the Laws, or any of the Laws hereby repealed, may, notwithstanding such repeal, be prosecuted or proceeded in under the provisions of such repealed laws or any of them, anything herein contained to the contrary notwithstanding.

60. Nothing herein contained shall affect, or abrogate, or repeal, or interfere with the provisions of Law No. 5, 1859, entitled, "Law for preventing the Sale of Gunpowder and Fire-arms to, and prohibiting the possession of the same by Natives."

Law 11, 1862  
Law 5, 1859, not affected or repealed.

61. The terms "Magistrate" (A) and "Resident Magistrate" occurring in this Law, shall be taken to be and to mean the Resident Magistrate of any County or Division, and shall not be deemed to mean or extend to any Mayor, or to any Borough or other local or Municipal Court, or the Mayor or other person presiding in such Court, now existing or hereafter to be created.

Interpretation.

62. This Law shall commence and take effect from and after the publication thereof in the "GOVERNMENT GAZETTE," after the passing thereof (B).

Commencement

SCHEDULE A.

*Form of Licence to keep Fire-arms.*

This is to certify, that upon the application of A.B., of who produced to me his licence to import Fire-arms, I have this day granted a licence to him the said , to keep at Street, in , the following Arms:

Guns.	Pistols.	Any other Fire-arms, describing them.
Single.		
Double.		

Given at this day of  
.....  
Resident Magistrate  
for the of

SCHEDULE B.

*Registration Ticket.*

This is to certify, that, having taken into consideration the application of A.B. of , I have this day granted him a licence, to keep at in the County of , the following Fire-arms:

Guns.	Pistols.	Other Fire-arms, describing same.	Letter Stamped.	No. Stamped.

Given at this day of  
.....  
Resident Magistrate  
for the of

(A) Includes Controller of Arms, see Law 6, 1876, s. 3, post.

(B) Aug. 19, 1862.



Law 11, 1862.

SCHEDULE C.

*Resident Magistrate's Office.*

Date.	Name.	Residence.	Trade or Calling.	Description of Fire-arms.	Letter.	Number.

*Form of Recognizance.*

Before me, \_\_\_\_\_ Resident Magistrate of the \_\_\_\_\_  
of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, appeared  
residing at \_\_\_\_\_, and \_\_\_\_\_, residing at \_\_\_\_\_,  
who acknowledge themselves to be jointly and severally  
indebted to our Sovereign Lady the Queen, her heirs and successors,  
in the Sum of Two Hundred Pounds Sterling, to be levied upon their,  
or each of their, goods, chattels, and property, moveable and im-  
moveable; upon condition, that if \_\_\_\_\_, to whom a licence has  
been granted to sell Fire-arms, and keep and expose the same for sale  
or trade at \_\_\_\_\_, shall well and truly observe and perform all  
the provisions of the laws now in force concerning Fire-arms, required  
to be observed and performed on his part, as such licensed dealer, then  
this recognizance to be void, or else to remain in full force.

A. B.  
C. D.

Before me,

.....  
Resident Magistrate  
of the \_\_\_\_\_

*Bond for Exportation of Fire-arms.*

Know all men by these presents, that we \_\_\_\_\_ of \_\_\_\_\_,  
and \_\_\_\_\_ of \_\_\_\_\_, are held and firmly bound to our  
Sovereign Lady the Queen in the Sum of \_\_\_\_\_ Pounds Ster-  
ling, to be paid Her Majesty, her heirs and successors; to which pay-  
ment, well and truly to be made, we bind ourselves, and each of us  
by himself, in solidum, each for the whole, and our heirs, executors,  
and administrators, and every of them, firmly by these presents.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

Whereas, the above bounden \_\_\_\_\_ hath, under Law No.  
\_\_\_\_\_, 1862, entitled "A Law to make better provision relative to  
the Importation, Registration, and Sale of Fire-arms," applied for  
permission to ship on board the \_\_\_\_\_, of \_\_\_\_\_, whereof  
\_\_\_\_\_ is Master, the following Fire-arms:

to be on and by said ship carried to and landed at \_\_\_\_\_

Now the condition of this Bond is such, that if the said  
\_\_\_\_\_ shall, within \_\_\_\_\_ months from the date hereof, produce and  
deliver to \_\_\_\_\_ [Collector of Customs in Natal], a  
certificate signed by [some officer at port of destination], certifying that  
all said Fire-arms have been landed at \_\_\_\_\_, or if the above  
bounden \_\_\_\_\_ shall account for the said Fire-arms to the  
satisfaction of the Collector of Customs at Natal, then this Bond to be  
void, otherwise to remain in full force and virtue.

A. B.  
C. D.  
E. F.

In the presence of \_\_\_\_\_

} Witnesses.

*Repealed by Act 706*  
Law No. 12, 1862.

“Law to amend the Law regulating the dealing in Gunpowder.”

[13th August, 1862.]

WHEREAS the laws now in force in this Colony in regard to the sale and custody of gunpowder are insufficient to prevent the illegal sale and custody thereof, and it is expedient to amend the same:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of the Colony of Natal with the advice and consent of the Legislative Council thereof, as follows:—

1. That Law No. 22, 1861, entitled “Law to amend the Laws regulating the Dealing in Gunpowder,” shall be, and the same is, hereby repealed.

Repeal.

2. From and after the commencement of this Law, it shall not be lawful for any person to import or bring into this Colony by sea, any gunpowder, percussion caps, or cartridges (A), except the Lieutenant Governor (B).

Who to import gunpowder, &c.

3. No gunpowder, percussion caps, or cartridges, shall be imported or brought into this Colony overland, unless by permission in writing of the [Lieutenant Governor (C)]: Provided always, it shall be lawful for any person, being a resident of the Orange Free State, the Transvaal Territory, or the Cape Colony, and not being a native of any of the tribes in South Africa, to bring with him, for his own use, overland into this Colony, a quantity of gunpowder not exceeding three pounds weight.

Permission required for importing gunpowder, &c., overland.

4. If any person, other than the said Lieutenant Governor, shall, without such authority as aforesaid, import or bring into this Colony any gunpowder, percussion caps, or cartridges, the same shall be forfeited to Her Majesty, her heirs and successors, and may be seized by any Resident Magistrate, or by any officer in Her Majesty's Customs, or any police constable; and any person importing or bringing the same, whether the owners thereof or not, shall for every such importation or bringing thereof, be liable upon conviction to imprisonment, with or without hard labour, for any period not exceeding two years.

Penalty for importing gunpowder, &c., contrary to this Law.

5. All gunpowder, percussion caps, or cartridges imported or brought into this Colony by sea, shall be landed at the Port of Natal, at such place as the Collector of Customs shall, from time to time, fix and appoint, or at such other place in the Colony as shall be appointed for the purpose by writing under the hand of the [Lieutenant Governor (D)].

Gunpowder, &c., where to be landed.

6. The Collector of Customs may make such regulations as to the landing and conveyance of gunpowder, percussion caps, or cartridges, as to him may seem fit, and by such regulations may impose any penalty, not exceeding ten pounds, upon any person offending against the same: Provided, that no such regulation shall be of any force, until the same shall have received the sanction of the Lieutenant Governor, and be published in the “GOVERNMENT GAZETTE.”

Collector of Customs to make regulations.

(A) But not including empty cartridge cases for sporting purposes only, see Law 40, 1888, s. 3, post.

(B) See Law 12, 1863, post, which makes certain exceptions. See also Law 12, 1865, post, as to officer importing on behalf of Government; and Law 22, 1872, post, as to persons residing out

of the Colony; and Law 11, 1891, post, as to importation for transmission to Inland States.

(C) To be signed by the Controller of Arms, see Law 6, 1876, s. 8, post.

(D) May be signed by the Controller of Arms, see Law 6, 1876, s. 9, post.

**Law 12, 1862.**

Masters of vessels on arrival to make special report.

7. The master of every ship arriving at any port of this Colony, shall, within twenty-four hours after such arrival, in addition to any report required by Ordinance No. 6, 1855(A), make a special report in writing to the Collector of Customs, of the quantity of gunpowder, percussion caps, or cartridges, on board the said vessel, specifying the gunpowder which forms part of the cargo on board, and that which belongs to the ship, as part of her equipment or furniture; and, if any master fail to make such report, or wilfully make an untrue report, he shall forfeit for every such offence any sum not exceeding fifty pounds sterling, and all gunpowder, percussion caps, or cartridges, found on board such vessel may be seized, and shall be forfeited to Her Majesty, her heirs and successors.

Penalty.

On departure to account for ammunition.

8. Every master of a ship leaving the port of Natal shall, previous to his departure, give satisfactory proof to the Collector of Customs that the gunpowder, percussion caps, or cartridges appertaining to his ship's equipment or furniture are then on board said vessel, or shall satisfactorily account for the same; and any master who shall fail or neglect to give such satisfactory proof, or to account for such gunpowder, percussion caps, or cartridges, shall be liable to a fine not exceeding fifty pounds sterling, and to imprisonment for any term not exceeding six months, and may be arrested by warrant, signed by such collector, and committed to gaol, there to remain to answer such charge, unless bail be given by two competent persons for that purpose.

Penalty.

Magazines to be authorised.

9. The Lieutenant Governor shall duly authorise depots or magazines for the storing and sale of gunpowder, percussion caps, or cartridges, in the towns of Durban, Pietermaritzburg, and Ladysmith; and by proclamation, from time to time, at such other place or places as to him shall seem fit.

Officers to be appointed to sell gunpowder, &c., and control magazines.

10. The Lieutenant Governor may, from time to time, and at all times, appoint such persons as he may think proper to sell gunpowder, percussion caps, or cartridges, or otherwise dispose of the same at such depots or magazines as aforesaid, and to control and manage such depots and magazines.

Granting of permits to be in discretion of Magistrates, except in certain cases.

11. Any Resident Magistrate may, at his discretion, grant to any person whom he may think fit and proper, residing in his division, a permit or permits, enabling and entitling him to obtain from the person duly appointed to sell the same, the quantity of gunpowder, percussion caps, and cartridges, in such permits mentioned: Provided always, that no Resident Magistrate shall grant or issue any permit or permits to any one person, within twelve months, entitling him to obtain more than ten pounds weight of gunpowder, except with the permission in writing of the [Lieutenant Governor(B)]: And provided also that the said Resident Magistrate may, in deciding on the question of the granting such permit, either wholly refuse the same, or grant the same for a less quantity of gunpowder than that applied for: Provided always, that it shall not be lawful for any Resident Magistrate to grant any permit to any foreign or native Kafir, or to any Hottentot, except with the permission of the [Lieutenant Governor]: And provided, that in no case more than half a pound of powder be issued to one such individual in one year, and that each such permit be registered and published in the usual way.

Ten pounds of gunpowder to be the maximum quantity for one year.

Kafirs or Hottentots half a-pound only.

*Ant 200 Oct 15, 1899*

(A) Repealed by Act 13, 1899. tit. "REVENUE."

(B) To be signed by the Controller of Arms, see Law 6, 1876, s. 8, post; and as to granting permits to one person at

request of another, see Law 40, 1888, post, which adds a proviso to this sec. See also Law 22, 1872, as to granting permits to residents of neighbouring States.

12. No such person appointed as aforesaid shall give, sell, or barter to any person any gunpowder, percussion caps, or cartridges, except in strict accordance with such permit as aforesaid, and to the person named therein, and at such price as the Lieutenant Governor shall, from time to time, determine.

Law 12, 1862.  
Gunpowder, &c., to be sold in accordance with permit.

13. The Resident Magistrates respectively shall register all permits enabling the holder to obtain gunpowder, percussion caps, or cartridges, granted under this Law(A).

Permits to be registered.

14. Any person, other than the person or persons appointed by the Lieutenant Governor as aforesaid, who shall sell or barter any gunpowder, percussion caps, or cartridges, in this Colony, shall be liable upon conviction to imprisonment, with or without hard labour, for any period not exceeding two years, and all gunpowder, percussion caps, or cartridges, in the possession of such person shall be forfeited.

Penalty for unauthorised persons selling gunpowder, &c.

15. No person appointed as aforesaid (B) shall keep or store any gunpowder, percussion caps, or cartridges, otherwise than is hereinbefore provided.

Gunpowder, &c., how to be stored.

16. Any person, other than the person or persons appointed as aforesaid(c), who shall have in his possession, or who shall store any quantity of gunpowder, or who shall be found conveying, or any person who shall be proved to have conveyed, or any person who shall be found removing, or shall cause to be removed, or be proved to have removed by any means whatever, any gunpowder exceeding ten pounds in weight, without the permission in writing of the [Lieutenant Governor(D)], shall be liable upon conviction to imprisonment, with or without hard labour, for any period not exceeding two years, and all gunpowder, percussion caps, or cartridges so found shall be forfeited.

Penalty for unauthorised persons storing, conveying, or removing gunpowder.

17. Any person or persons who shall be found conveying, or who shall be proved to have conveyed, by any means whatever, any gunpowder, percussion caps, or cartridges, for the purpose of trade, barter, or sale, without the permission in writing of the [Lieutenant Governor], shall be liable to a fine not exceeding fifty pounds, and to imprisonment, with or without hard labour, for any period not exceeding two years; and all gunpowder, percussion caps, and cartridges, found in the possession of such person, together with every vehicle or animal used in the conveyance thereof, shall be forfeited.

Gunpowder, &c., not to be conveyed for purpose of trade unless by permission of Controller of Arms.

Penalty.

18. The person or persons appointed as aforesaid (E) shall, on the first Monday of every month, transmit to the Resident Magistrate of the place where any gunpowder, percussion caps, or cartridges are kept for sale, a return in writing containing the name and residence of all persons to whom gunpowder has been sold, and the quantity sold to each, supported by the permits required by this Law, and showing the quantity still on hand.

Storekeepers to send monthly returns to Magistrate.

19. The respective Resident Magistrates shall, on the first Monday in every quarter, transmit to the Colonial Secretary, copies of the said returns for publication in the "GOVERNMENT GAZETTE"(F).

Magistrates to send returns to Colonial Secretary.

20. It shall and may be lawful for the Collector of Customs, or any Resident Magistrate(G), Justice of the Peace, Field Cornet, Constable, or any officer of Her Majesty's Customs, to enter into and search any house, place, ship, boat, wagon, or other vehicle in which there may be reason to suspect that any gunpowder, percussion caps, or cartridges,

Who may search suspected houses, ships, vehicles, &c.

(A) See Law 6, 1876, post, sec. 3.

(B) As in sec. 10.

(C) See s. 10.

(D) To be signed by the Controller of Arms, see Law 6, 1876, s. 8. post.

(E) See s. 10.

(F) The publication is now unnecessary, see Law 22, 1872, s. 6, post.

(G) The Controller of Arms has all the powers of a Magistrate, see Law 6, 1876, s. 3.

Law 12, 1862. are kept contrary to this Law, and also to stop and to search any person, wagon, vehicle, or animal, by whom or upon which there may be reason to suspect that any gunpowder, percussion caps, or cartridges are being conveyed contrary to the provisions of this Law.

Search warrants.

21. Any Resident Magistrate or Justice of the Peace may grant his warrant, addressed to any other person, to make such search as aforesaid(A).

Limitation of action against Magistrate.

22. No civil action shall be maintainable against any Magistrate or other officer for any act or proceeding under this Law unless the summons shall be issued by, or at the suit of, the party complaining against such Magistrate or other officer, within three months from the date of the act or proceeding complained of.

Magistrate, &c., may plead the general issue.

23. Any Magistrate or other officer may, in answer to any such civil action, plead the general issue, and under such plea may give any special matter of defence in evidence at the trial.

Fines, appropriation of.

24. All fines imposed by this Law shall be paid to Her Majesty, her heirs and successors, and, unless remitted, shall be applied to the use of the Government of this Colony: Provided that the court may in any case award and direct to be paid any portion, not exceeding one-half thereof, to any person or persons who shall have given such information as may have led to the conviction of any offender.

Regulations for conveyance of gunpowder through the Colony.

25. The Lieutenant Governor may make such rules and regulations as he may see fit for the conveyance through the Colony of any gunpowder, percussion caps, or cartridges, imported into this Colony.

Gunpowder, &c., seized, to be forfeited.

26. Any gunpowder, percussion caps, or cartridges, seized under this Law, shall be deemed forfeited to Her Majesty, without any adjudication of forfeiture being required.

Law not to extend to gunpowder, &c., the property of Her Majesty.

27. Nothing herein contained shall extend to any gunpowder, percussion caps, or cartridges, the property of Her Majesty, or of Her Government: Provided that such gunpowder, percussion caps, or cartridges shall not be sold in this Colony to any other person than the Lieutenant Governor.

How gunpowder, &c., can be exported.

28. No gunpowder, percussion caps, or cartridges, shall be exported from this Colony without the permission, in writing, of the [Lieutenant Governor(B)]: and such exportation shall only be allowable under bond, in schedule to this Law annexed, with sureties for the due delivery of said gunpowder, at the port for which permission has been obtained, and such bond to remain in force till the Collector of Customs has been satisfied that the said gunpowder has been duly delivered as aforesaid.

Existing stocks of gunpowder, &c., to be taken over by Government.

29. At the date from which this Law takes effect, the officer or officers appointed by the Lieutenant Governor for the importation and sale of gunpowder, percussion caps, or cartridges, shall take over all existing stocks of percussion caps or cartridges then in the hands of private importers, at the cost price thereof with thirty per cent. added, and in the event of any dispute as to such cost price, then at such cost price as shall be fixed by a majority of any three persons appointed in that behalf by the Lieutenant Governor: Provided always, that if any such percussion caps or cartridges shall be found damaged, or of a quality to render them useless for sale, the same shall be destroyed under the provisions of this Law.

Price, how to be fixed.

30. For any contravention of this Law, for which no special fine or other punishment is provided, the party, for every such contraven-

Penalty for contravention of this Law, where no special penalty provided.

(A) The Controller of Arms has all the powers of a Magistrate. see Law 6, 1876, s. 3. (B) To be signed by the Controller of Arms, see Law 6, 1876, s. 8, post.

tion, shall forfeit, upon conviction thereof, any sum not exceeding fifty pounds, or be liable to imprisonment, with or without hard labour, for any period not exceeding two years. **Law 12, 1862**

31. In any prosecution or proceeding under this Law, if any question shall arise as to whether any party is duly licensed, or as to whether any person has given any notice or declaration required by this Law, or as to the benefit of any permission or exemption granted by this Law, the proof that the party is so licensed, or has given such notice or declaration, and that he is entitled to the benefit of such permission or exemption, shall be on the party against whom such prosecution or proceeding shall be had, and not on the party complaining. **Proof of license or permission to rest with defendant.**

32. All contraventions of this Law shall be prosecuted by indictment by the Attorney General at the suit of the Queen in the usual manner before the Supreme Court or any Circuit Court; and in the latter case it shall not be necessary for the prosecutor to show nor shall it be material whether the contravention charged was committed within the jurisdiction of such Circuit Court: Provided, however, that it appear that such contravention occurred within the Colony. **Prosecutions to be by indictment by Attorney-General.**

33. The Lieutenant Governor may wholly exempt any gunpowder, percussion caps, or cartridges brought into this Colony, and the person bringing the same from the operation of this Law, when the person so importing or bringing the same shall not be a resident in Natal, and shall make it appear to the satisfaction of the Collector of Customs, or a Resident Magistrate, that such gunpowder, percussion caps, and cartridges, were imported in ignorance of the Law, and for his own special use. **Exempting clause.**

34. Any contravention of, or proceeding under, the laws hereby repealed, may, notwithstanding such repeal, be prosecuted or proceeded in under the provisions of such repealed laws, anything herein contained to the contrary notwithstanding. **Contravention of former Laws may be prosecuted.**

35. Nothing herein contained shall affect, abrogate, repeal, or interfere with the provisions of Law No. 5, 1859, entitled "Law for Preventing the Sale of Gunpowder and Fire-arms to, and prohibiting the possession of the same by, Natives," save as is provided in clause 11 of this law. **Law 5, 1859, not abrogated or repealed, save as specified.**

36. The term "Magistrate" and the terms "Resident Magistrate" occurring in this Law, shall be taken to be and to mean the Resident Magistrate of any county or division, and shall not be deemed to mean or extend to any Mayor; and the term "cartridge" shall be taken to mean only cartridges containing gunpowder. **Interpretation.**

37. This Law shall commence and take effect from the promulgation thereof in the "GOVERNMENT GAZETTE"(A). **Commencement**

#### SCHEDULE.

Know all men by these presents, that we are held and firmly bound unto the Colonial Secretary of the Colony of Natal, in the sum of \_\_\_\_\_ of good and lawful money of this Colony, to be paid to the said Colonial Secretary, or to the person for the time being acting as such, to which payment, well and truly to be made, we bind ourselves, and each of us by himself, in solidum, each for the whole, and our heirs, executors, and administrators, and every of them, firmly by these presents. **Schedule.**

Sealed with our Seal.—Dated this \_\_\_\_\_ day of \_\_\_\_\_ in the Year of our Lord 186

*Rep. by act 1/00.*

Law 12, 1862.  
Schedule.

Whereas the above bounden \_\_\_\_\_ hath, under the Law No. 12, entitled, "Law to amend the Laws regulating the dealing in Gunpowder," applied for permission to ship on board the [vessel's and master's name], [quantity of gunpowder intended to be shipped], to be on and by the said ship carried to, and landed at [place of destination]. Now the condition of this obligation is such, that if the said [the person about to make the shipment], shall within \_\_\_\_\_ months from the date hereof, produce and deliver to the officer of customs at the port of shipment, or other functionary, as agreed on], as proof that the \_\_\_\_\_ has been duly disposed of, or [whatever mode of proof may have been agreed on, such as certificate in writing signed by \_\_\_\_\_ certifying that all and singular the said matters and things have been landed at \_\_\_\_\_ or otherwise, according to the circumstances], or if the above bounden [the person about to make the shipment] shall account for the \_\_\_\_\_ to the satisfaction of [the officer of customs at the port of shipment, or other functionary, as agreed on], then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed, and delivered, in presence of \_\_\_\_\_

Law No. 16, 1862.

"To regulate, in certain respects, the conduct of Inland Trade, by persons residing in the Colony."

[13th August, 1862.]

WHEREAS persons residing in this Colony are in the habit of carrying on trade with the natives and others residing beyond the land boundaries of the same, and whereas other persons engage in hunting and shooting, and for these purposes proceed from, and return to the Colony in prosecution thereof; and whereas it is expedient so to regulate the conduct of such traders and hunters, to the end that the illicit trading in fire-arms and munitions of war may be prevented, and for this purpose to provide measures which will reach and apply to such traders and hunters before their departure from, and after their return to the Colony.

BE IT THEREFORE ENACTED, by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. That it shall and may be lawful for the several Resident Magistrates (A) of this Colony to grant a licence to trade beyond the boundaries thereof to any person who shall apply for the same, and who shall satisfy the Resident Magistrate that he is a person of good character, and fit to be entrusted with such licence.

2. Every trader or hunter (B) shall, before obtaining such licence, produce to a Magistrate a statement in writing (C), signed by such trader or hunter, of the fire-arms (D), and all and every of them, he means to take with him for the defence of himself and property, or for his use in shooting and hunting, which statement shall contain a description of such fire-arms, and of each of them, and shall be signed by such trader or hunter.

(A) Includes Controller of Arms, see Law 6, 1876, s. 3.

(C) See s. 9.

(D) See "fire-arms" defined in s. 9.

(B) See definition of these terms in s. 9.

*A. 28/34 s. 37  
repeals*

Magistrate to grant licenses.

Statement of fire-arms to be produced to Magistrate by trader or hunter

3. The Magistrate shall retain such statement in writing in his possession, and shall give to such trader or hunter a duplicate thereof, marked and signed as approved by such Magistrate. **Law 16, 1862.**  
Statement to be retained.

4. Every trader and hunter shall be bound, whenever called upon within the Colony by any Magistrate, Field Cornet, or Constable(A), or by any military commissioned or non-commissioned officer, or by any person specially appointed thereto, to produce such statement, and also the fire-arms therein described, to any such person as aforesaid calling for the same. **Statement and fire-arms to be produced when called for.**

5. Any of the persons in the last preceding section mentioned may, on the refusal of such trader or hunter to produce such statement, or the fire-arms therein mentioned, or, producing the statement, shall fail to produce the fire-arms, or shall produce fire-arms other than those mentioned in such statement, or a greater number than there are mentioned in such statement, or, producing the fire-arms, shall fail to produce such statement, may then arrest such trader or hunter, and cause him and any vehicle used by him, and the property therein, together with the animals drawing the same; or in cases where no vehicle is used, then the animals or persons carrying such property, together with such property, to be conveyed to the nearest Resident Magistrate. **Liabilities for failure to produce statement or fire-arms therein described.**

6. Every person who shall knowingly aid or assist any trader or hunter in conveying fire-arms or munitions of war contrary to this Law, or who shall knowingly aid or assist any trader or hunter in evading any of the provisions of this Law, shall be guilty of a misdemeanour. **Aiding or assisting in the conveyance of fire-arms, &c., a misdemeanour.**

7. Every trader or hunter shall, with one other person residing in the Colony as surety, before proceeding to trade or hunt, enter into the recognizance (B) to this Law annexed, before any Magistrate, who shall transmit the same to the [Attorney General(c)] within one month after the date of the execution thereof. **Bond required.**

8. Every trader or hunter on returning to the Colony(D) shall cause the vehicles of conveyance to stop at the first convenient place adjacent to the boundaries of the Colony, and shall immediately report his return to the nearest Magistrate, Field Cornet, or to any person appointed in that behalf by the Lieutenant Governor, who shall forthwith proceed thither, and shall require such trader or hunter to produce the said statement in writing, and the fire-arms in the possession of such trader or hunter, and if the number produced shall not correspond with that in the statement, or if the fire-arms produced are other than those described in such statement, and such trader or hunter shall not be able satisfactorily to account for any diminution of the number or change of such fire-arms, then such trader or hunter shall be arrested and dealt with by such Magistrate, Field Cornet, or other officer, as is provided in the fourth section of this Law. **Trader or hunter to report his return.**

9. The word "trader" shall be taken to mean and to include any person conveying goods, by any means whatever, for the purpose of traffic, sale, or barter, with the natives beyond the boundaries of the Colony(E); the word "hunter" shall be taken to mean and include any person going beyond the boundaries of this Colony for the purpose of hunting or shooting, or taking beyond the boundaries of this Colony any fire-arms; the word "statement" required in writing by the first section (F) of this Law shall be required for every trading journey, or **And to produce or account for his fire-arms.**

**Interpretation:**  
"Trader."

"Hunter."

"Statement."

(A) See "constable" defined in s. 9.

(B) As to when recognizance becomes due, see s. 14.

(C) The Controller of Arms, see Law 6, 1876, s. 10.

(D) See interpretation of "on returning to the Colony" in s. 9.

(E) But see the proviso to this sec.

(F) The reference apparently should be to the second section.



Law 16, 1862.

“On returning to the Colony.”

“Magistrate.”

“Place of residence,” &c.

“Firearms.”

Trader not to convey munitions of war.

Magistrate to note on statement the munitions of war allowed.

Definition of “munitions of war.”

Penalty.

Bond, when due.

Contraventions, how prosecuted.

Fines, how disposed of.

part of a trading journey; and the terms “on returning to the Colony” shall be taken to mean every time that any such trader or hunter returns to the Colony from beyond the boundaries; the word “Magistrate” shall mean and include the Resident Magistrate and Justices of the Peace within the Colony; the word “Constable” shall mean any officer of the law or any officer, non-commissioned officer, or private man employed in any police force or corps in the Colony; the terms “place of residence in the Colony”(A), occurring in the first section, shall mean not only the actual residence of the trader or hunter, but also any place in which such trader or hunter may casually be, or in the course of his business or pursuit may resort to with the view of prosecuting his journey; the word “fire-arms” shall mean and include every double or single gun or pistol, of whatever kind, or the stocks or barrels or locks thereof, either together or attached, or separate, or apart: Provided, always, that no person resident in this Colony, or departing therefrom to trade or shoot in any of the South African Republics, shall be considered a trader or hunter within the meaning of this Law.

10. No trader, not carrying fire-arms for his defence, shall be permitted to have in his possession, or to convey, by any means whatever, any munitions of war(B).

11. Every Magistrate with whom any trader or hunter shall lodge the written statement required by this Law(C), shall determine and state in writing, both on the original thereof deposited with him, and the duplicate delivered to the trader or hunter, what munitions of war such trader or hunter has been allowed to take on the journey to which such statement relates; and if such trader or hunter shall be found to have any greater quantity of such munitions of war, or of a description different from that described on the duplicate statement, he shall incur the like responsibilities, and shall be dealt with precisely in the same manner as in this Law provided in the case of fire-arms.

12. The terms “munitions of war” shall mean and include gun-powder, gun caps, flints, cartridges, saltpetre, sulphur, lead, zinc, and pewter.

13. There shall be paid by any offender, upon every conviction for a contravention of this Law, a fine, in the discretion of the court, not exceeding £100, and such court may also award imprisonment, with or without hard labour, for any period not exceeding two years.

14. The recognizance of every surety as provided by this Law, shall be considered due and to be a liquid document of debt due to the Queen by such surety, and proper for the granting of a provisional sentence in every case or cases in which the Crown shall show any single breach of the conditions thereof by the principal.

15. All contraventions of this Law shall be prosecuted by indictment by the Attorney General, at the suit of the Queen, in the usual manner before the Supreme Court or any Circuit Court; and in the latter case it shall not be necessary for the prosecutor to show, nor shall it be material, whether the contravention charged was committed within the jurisdiction of such Circuit Court: Provided, however, that it appear that such contravention occurred within the Colony.

16. All fines imposed by this Law shall be paid to Her Majesty, her heirs and successors, and, unless remitted, shall be applied to the uses of the Government of this Colony: Provided, that, in any case, the court may direct and award any portion, not exceeding one-half of

(A) This phrase does not occur in s. 1, nor anywhere in the Law.

(B) See definition in s. 12.

(C) See s. 2.

said fine, to any person or persons who may have given such information as may have led to the conviction of any offender. **Law 16, 1862.**

17. This Law shall commence and take effect from and after the publication thereof in the "GOVERNMENT GAZETTE" (A). **Commencement**

## SCHEDULE.

*Form of Recognizance.*

Before me \_\_\_\_\_, Resident Magistrate of the \_\_\_\_\_ of \_\_\_\_\_ in the Colony of Natal; \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_, acknowledge themselves to be jointly and severally indebted to Our Sovereign Lady the Queen, her heirs and successors, in the sum of One Hundred Pounds Sterling, to be levied on their, and each of their property, of what nature soever, moveable and immoveable, upon condition that \_\_\_\_\_ shall, whenever called upon by any person having authority so to do, produce the statement granted by me \_\_\_\_\_, and all fire-arms therein mentioned, and also produce, or satisfactorily account for, the munitions of war therein mentioned; and during the time he shall sojourn, travel, or be in Africa, beyond the boundaries of this Colony, conduct himself, and, as far as in him lies, cause his assistants and servants to conduct themselves, in a quiet and peaceable manner, towards all and every person with whom they shall meet beyond the said boundaries, and that he and his servants will, in case of attack or aggression on him or them, only act in defence of themselves, and his or their property; and that the said \_\_\_\_\_ will not give, barter, sell, or otherwise dispose of, or permit or suffer his assistants to do so, any fire-arms or munitions of war to natives beyond the boundaries, or any other person whomsoever, and shall immediately upon his return, report himself to the nearest Magistrate, Field Cornet, or to any person appointed in that behalf by the Lieutenant Governor, and produce to whomsoever he has so reported himself, all the fire-arms in his possession, and shall also produce or satisfactorily account for, the fire-arms and all munitions of war in the statement mentioned. **Schedule.**

*Repealed by Act 1706.*

**Law No. 12, 1863.**

"To allow the Importation of Cartridges and Percussion Caps in certain cases."

[28th July 1863.]

WHEREAS the Laws now in force in this Colony regulating the dealing in gunpowder, prevent the importation of gunpowder except by the Lieutenant Governor, and only permit certain persons appointed by the Governor to sell the same: and whereas it is expedient to allow, in certain cases and under certain restrictions, certain persons to import cartridges containing gunpowder, and percussion caps, for their own use; and licensed dealers in guns to import similar cartridges and percussion caps, and to dispose of them to buyers:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. From and after the commencement of this Law, it shall be lawful for any person resident in this Colony to import into this Colony

Persons having guns registered in their name may import certain number of cartridges for same.

(A) Aug. 19, 1862.

Law 12, 1863. any cartridges requisite for any gun registered in his name, and containing either gunpowder and ball, or gunpowder and shot: Provided, that the quantity of gunpowder contained in said cartridges, imported by any one person, shall not exceed ten pounds in weight in any twelve months, and that no such importer shall sell any such cartridges, nor the gunpowder therein contained, without the permission of the Lieutenant Governor first had and obtained(A).

Licensed dealer in fire-arms may import cartridges for breech-loaders, and sell same, under certain restrictions.

2. Any person duly licensed to sell and trade in fire-arms under the Law now in force, may import cartridges containing gunpowder for any breech-loader for which they may have obtained a licence of importation, and when they sell any breech-loader to any person duly approved of by any Resident Magistrate, may sell to such registered owner of such breech-loader all or any cartridges so imported as aforesaid, and appertaining to the same: Provided, that no such dealer should import more than one thousand cartridges for such breech-loader; and any person entitled, under this or the preceding section, to import cartridges, may, together therewith, import any number of percussion caps required for said cartridges.

Law 12, 1862, not abrogated.

3. Nothing herein contained shall affect, abrogate, repeal, or interfere with the provisions of Law No. 12, 1862, entitled, "Law to amend the Law regulating the dealing in gunpowder," save and except in the power of importation and selling, as is by this Law provided.

Commencement

4. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE"(B).

*Repealed by Act 1/06*

Law No. 12, 1865.

"To amend Law No. 12, 1862, entitled Law "To amend the Law regulating the Dealing in Gunpowder."

[24th August, 1865.]

WHEREAS a Law was duly made and passed in this Colony on the 29th day of July, 1863, and numbered 14, 1863, entitled "To amend Law No. 12, 1862, entitled 'Law to amend the Law regulating the dealing in Gunpowder:'" And whereas by the third section of the said Law it was enacted that the said Law shall take effect from and be in force for two years after the promulgation thereof in the "GOVERNMENT GAZETTE": And whereas the said Law was duly promulgated in the "GOVERNMENT GAZETTE" of the 4th August, 1863, and will cease to be of any force or effect on the 4th day of August, 1865: And whereas it is expedient to continue the powers vested in the Lieutenant Governor by the aforesaid Law No. 14, 1863:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Governor may appoint officer to import gunpowder, &c.

1. From and after the commencement of this Law, it shall and may be lawful for the Lieutenant Governor of Natal, from time to time, and at all times, to nominate and appoint some fit and proper person, being an officer of Government, to import or bring by sea into Natal, gunpowder, percussion caps, and cartridges, for and on behalf of the Colonial Government(c).

(A) To be signed by the Controller of Arms, see Law 6, 1876, s. 8, post.

(B) Aug. 4, 1863.

(C) See Law 6, 1876, post, ss. 5, 13.

2. So much of said Law No. 12, 1862, as is repugnant to, or inconsistent with, the provisions made by this Law, is hereby repealed.

3. This Law shall commence and take effect from and after the publication thereof in the "GOVERNMENT GAZETTE" (A).

Law 12, 1865.

Effect of Law  
12, 1862.

Commencement

Law No. 22, 1872.

*Repealed by Act 1/06.*

"Law to amend the Law No. 12, 1862, entitled 'Law to amend the Law regulating the dealing in Gunpowder'" (B).

[20th December, 1872.]

WHEREAS by the said Law No. 12, 1862, Resident Magistrates of the Colony of Natal are empowered to grant to fit and proper persons residing within their respective counties or divisions a permit or permits enabling such persons to purchase gunpowder, percussion caps, and cartridges under certain restrictions and limits therein specified, but no provision is thereby made for enabling fit and proper persons residing out of the Colony to purchase within the Colony any such articles without special application to the Lieutenant Governor, and the delay necessarily caused by such special application is injurious to the trade of the Colony:

AND WHEREAS it is deemed desirable to remove such obstacle to the trade of the Colony, by sanctioning the grant by such Resident Magistrates of permits for such purpose to such non-resident persons, under the restrictions and conditions hereinafter contained, and in other respects to amend the said Law No. 12, 1862:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:

1. The Law No. 12, 1862, dated the Thirteenth day of August, 1862, and entitled, Law "To amend the Law regulating the dealing in Gunpowder," shall be, and the same is hereby, amended.

Law 12, 1862,  
amended.

2. It shall be lawful for any Resident Magistrate(c), subject to the restrictions and provisions herein contained, to grant to any fit and proper person or persons residing in the Orange Free State or in the South African Republic, or in the adjacent Colony of the Cape of Good Hope, not being a native or foreign Kafir, or Hottentot, a permit or permits enabling any such person or persons to purchase from the proper officers appointed by the Lieutenant Governor under such Law any gunpowder, percussion caps, or cartridges, in such quantities as such Magistrate may deem fit, and shall set forth in any such permits; Provided that no such permit or permits shall be granted for the purchase of more than ten pounds weight of gunpowder by any one such person in any one year.

Residents in  
O. F. State,  
S. A. Republic,  
or Cape Colony  
(except Kafirs  
and Hottentots)  
entitled to  
permits for  
ammunition.

Restriction to  
ten pounds per  
annum.

3. Every such person applying for any such permit or permits must produce to the Magistrate a recommendation signed by a householder in the town or district where such application is made, setting forth and attesting that each such person is a fit and proper person to purchase gunpowder, percussion caps, and cartridges.

Applicants for  
permits must  
produce recom-  
mendation.

4. It shall be lawful for the Lieutenant Governor, and also for any Resident Magistrate, or any other person, with a general permission for

Permits for  
larger quanti-  
ties, how  
obtained.

(A) Aug. 29, 1865.

(B) This Law is not applicable to empty cartridge cases used for sporting

purposes only, see Law 40, 1888, s. 3, post.

(C) See Law 6, 1876, s. 3, post.

**Law 22, 1872.** such purpose under the hand of the Lieutenant Governor(A), to grant to any such person or persons as in the preceding sections are mentioned, a permit enabling any such person or persons so to purchase any quantity of gunpowder in excess of such ten pounds weight in any one year.

Governor in Executive Council may suspend operation of Law.

5. The Lieutenant Governor shall have power on due and sufficient cause to him appearing, and with the advice of his Executive Council, to suspend by proclamation in the "GOVERNMENT GAZETTE," the power of granting permits given under the provisions of this Law to the Resident Magistrates or any of them, or to any other person, for such time as he shall deem necessary.

Publication of names of purchasers unnecessary.

6. It shall not be necessary hereafter to publish quarterly in the "GOVERNMENT GAZETTE" the names of all persons who have purchased gunpowder, percussion caps, or cartridges, anything contained in Law No. 12, 1862, to the contrary notwithstanding.

Commencement

7. This Law shall commence and take effect from and after the publication thereof in the "GOVERNMENT GAZETTE"(B).

*Repealed by Act 1/06*

Law No. 17, 1874.

"To amend the Laws relating to the Importation and Registration of Firearms."

[15th January 1874.]

WHEREAS it is expedient to amend the Laws relating to the Importation and Registration of Firearms

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:

Registration fees payable to Treasurer.

1. From and after the commencement of this Law all fees chargeable under the provisions of Law No. 11, 1862, for the Registration, Stamping, and Transfer of Firearms, shall be paid to, and collected by, the several Resident Magistrates, to be by them paid over to the Colonial Treasurer for the public uses of this Colony in the same manner as other payments are made into the revenues thereof.

2. [Repealed by Act No. 23, 1894.]

Law 11, 1862, amended.

3. Laws Nos. 11, 1862, and 1, 1867, in so far as they are repugnant to the provisions of this Law shall be and they are hereby amended(C).

Commencement

4. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" after the passing thereof(D).

*Repealed by Act 1/06.*

Law No. 6, 1876.

"To make provision for the appointment of a Controller of Arms and Ammunition, and to amend the Laws relating to Firearms and Ammunition accordingly."

[11th November, 1876.]

WHEREAS, pursuant to Resolution of the Legislative Council, an officer has been appointed by the Lieutenant Governor, under the style

(A) To be signed by the Controller of Arms, see Law 6, 1876, s. 8.

(C) Law 1, 1867, was repealed by Act 23, 1894.

(B) Dec. 24, 1872.

(D) Jan. 20, 1874.

or title of "Controller of Arms and Ammunition:" and whereas it is expedient to authorise such appointment by law, and to amend the Laws with regard to Firearms and Ammunition: **Law 6, 1876.**

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:

1. The Lieutenant Governor may, from time to time, nominate and appoint some fit and proper person to be the Controller of Arms and Ammunition in this Colony; and, upon such appointment, all Returns and Documents now in the custody of the Attorney General, and also all Returns and Documents in the custody of the Board appointed under Law No. 11, 1862, to hear applications from persons wishing to import Fire-arms into this Colony, shall be transferred to and placed under the custody of the said Controller of Arms and Ammunition: Provided that the Controller of Arms and Ammunition already appointed, as aforesaid, shall, on the taking effect of this Law, be, and he is hereby declared to be, the Controller of Arms and Ammunition to be appointed under this Law, and all the powers, authorities, and obligations by this Law vested in and imposed upon the said Controller shall be applicable to him as if he had been appointed under this Law.

Controller of Arms and Ammunition may be appointed.

Present Controller declared to be Controller appointed under this Law.

2. The said Board, appointed under Law No. 11, 1862, to hear applications for importations of Fire-arms, shall be and the same is hereby abolished; and all such applications shall henceforth be made to the Controller of Arms and Ammunition, and such Controller shall have the same powers and authorities, and shall perform and execute the same duties, as are at present imposed on or given to the Attorney General under the 14th and 15th sections of the said Law No. 11, 1862: Provided always that the Lieutenant Governor shall nominate two unofficial persons to be associated with the said Controller in hearing and determining such applications, and that the granting or refusing of such applications shall be decided by a majority of votes of the persons so appointed<sup>(A)</sup>; and provided further that such hearing shall take place either at Pietermaritzburg or Durban at such times as shall be appointed and notified in the "GOVERNMENT GAZETTE" by the said Controller.

Fire-arms Board abolished, and arrangements made in lieu thereof.

3. The said Controller of Arms and Ammunition shall have and exercise all the powers of a Resident Magistrate, for the purposes of Laws Nos. 11, 12, and 16, 1862, and Law 22, 1872.

Controller to have powers of Magistrate in certain cases.

4. It shall and may be lawful for the Controller of Arms and Ammunition, or any person appointed by him, at all times to enter into the premises of any person licensed to import or to sell fire-arms in the way of trade, and to require the production of all books, accounts, and documents relating to such trade or business, or to such fire-arms, and also the production of any fire-arms on hand by such licensed person, and also to require such licensed person satisfactorily to account for all fire-arms which have come into his possession or have passed through his hands; and any person hindering, obstructing, or preventing such Controller, or person, in the performance of his duty, or failing, neglecting, or refusing to give such satisfactory account as aforesaid, shall be liable to the penalty imposed by said Law No. 11, 1862, for any contravention thereof<sup>(B)</sup>.

And may enter premises of licensed dealers and require production of books, documents, fire-arms, &c.

5. The said Controller of Arms and Ammunition shall be deemed to be and is hereby appointed an importer for and on behalf of the

Controller to be importer for Government, under Law 12, 1865.

(A) Two members to form a quorum, see Law 12, 1880, post.

(B) See Law 11, 1862, s. 53, ante.

**Law 6, 1876.** Colonial Government for the purposes, and within the meaning of Law No. 12, 1865.

Returns under sec. 25, Law 11, 1862, to be sent to Controller.

6. All returns or copies of account of articles sold, under the 25th section of Law No. 11, 1862, shall from and after the commencement of this Law, be returned and sent to the said Controller, instead of to the Attorney General as heretofore.

Controller, and not Attorney-General, to grant licences under Law 11, 1862.

7. The power of granting licences to sell fire-arms in the way of trade, or keep fire-arms for sale, shall be and the same is hereby transferred to the said Controller; and so far as the Law No. 11, 1862, refers to said licences, the name of the Controller of Arms and Ammunition shall be deemed to be substituted for that of the Attorney General.

Certain permits, licenses, and orders to be signed by Controller for and under instructions of Governor.

8. All permits authorised to be granted by the Lieutenant Governor under Law No. 12, 1862, sections 3, 11, 16, 17, and 28, Law 12, 1863, section 1, and Law 22, 1872, section 4; and all licences under Law 11, 1862, section 33; and all orders under Law 11, 1862, section 49, shall be signed by the said Controller for and on behalf and under the instructions of the Lieutenant Governor; and all such permits, licences, and orders under the signature of the said Controller, shall be as good, effectual, and available, to all intents and purposes, as if granted and signed by the Lieutenant Governor in his own proper person, and shall, for the purposes and within the meaning of the said recited Laws, and for all other purposes, be deemed to be the permits, licences, and orders respectively of the Lieutenant Governor.

Appointments of places under sec. 5, Law 12, 1862, may be signed by Controller.

9. All appointments of places under Law 12, 1862, section 5, therein required to be under the hand of the Lieutenant Governor, may be likewise so signed by the Controller of Arms and Ammunition, instead of the Lieutenant Governor.

Recognizances under Law 16, 1862, to be sent to Controller.

10. All recognizances under Law No. 16, 1862, section 7, shall be transmitted to the Controller of Arms and Ammunition, instead of to the Attorney General as heretofore.

Fire-arms must be registered within two months of payment of import duty.

11. Every person who shall import for the purposes of trade into this Colony any fire-arms, shall within two months of the date of payment of import duty on such fire-arms produce the same to the Resident Magistrate of the county, division, or borough in which such importer may reside or carry on his trade, for the purpose of being stamped and registered, under a penalty for every fire-arm not so produced not exceeding three pounds sterling.

Collector to advise Magistrate of certain matters.

12. The Collector of Customs, on the payment of the import duty on any fire-arms shall advise the Resident Magistrate of the county, division, or borough in which the importer resides or carries on business, of the name of such importer of firearms, and the number and description of the same.

Existing Laws amended by this Law.

13. The Laws Nos. 11, 12, and 16, 1862; No. 12, 1863; and No. 12, of 1865; and any other Laws which may be in anywise repugnant to or inconsistent with any of the provisions of this Law, shall be and the same are hereby so far amended; and the said amended Laws shall be construed together with this Law.

Commencement

14. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE," after the passing thereof (A).

(A) Dec. 12, 1876.

## Law No. 12, 1880.

*Repealed by Act-106*

"To alter and amend Law No. 6, 1876, entitled Law 'To make provision for the appointment of a Controller of Arms and Ammunition, and to amend the Laws relating to Fire-arms and Ammunition accordingly.'"

[20th March, 1880.]

WHEREAS it is expedient to alter and amend Law No. 6, 1876, entitled Law "To make provision for the appointment of a Controller of Arms and Ammunition, and to amend the Laws relating to Fire-arms and Ammunition accordingly;" and whereas it is expedient that two members of the Board appointed under the provisions of section 2, of the said Law No. 6, 1876, should form a quorum:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:

1. Two members of the Board constituted and appointed under the provisions of section 2 of Law No. 6, 1876, entitled Law "To make provision for the appointment of a Controller of Arms and Ammunition, and to amend the Laws relating to Fire-arms and Ammunition accordingly," shall form a quorum, and shall be competent to perform all matters and things which may be done by the said Board, under the provisions of the said Law, No. 6, 1876.

Two members of the Board appointed under sec. 2, Law 6, 1876, to form a quorum.

2. This Law and Law No. 6, 1876, entitled Law "To make provision for the appointment of a Controller of Arms and Ammunition, and to amend the Laws relating to Fire-arms and Ammunition accordingly," shall be read together and construed as one Law.

Construction.

3. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE"(A).

Commencement

## Law No. 42, 1887.

*Repealed by Act-106*

"To repeal the 16th Section of the Law No. 11, 1862, entitled Law 'To make better provision relative to the importation, registration, and sale of fire-arms,' and to make other provisions in lieu thereof."

[31st August, 1887.]

WHEREAS it is expedient to make better provision in respect of fire-arms brought into this Colony by private persons, not being licensed importers, arriving in the Colony by sea:

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof as follows:—

1. The 16th Section of the Law No. 11, 1862, entitled Law "To make better provision relative to the importation, registration, and sale of fire-arms," shall be and the same is hereby repealed, and in lieu thereof the following clause shall be substituted, that is to say: Any person, not a licensed importer, arriving in this Colony by sea, may bring such fire-arms, being his bona-fide property, as are usually carried for personal defence or for purposes of sport: Provided that no such fire-arms as aforesaid shall be permitted to be landed, or, when landed, shall be allowed to leave the Custom House, until the person bringing the same shall have made a declaration before the Collector of Customs, detailing the number of fire-arms, and stating the purposes

Repeal of sec. 16, Law 11, 1862.

Substituted clause.

(A) March 23, 1880.



**Law 42, 1887.** for which the same are required; and the Collector of Customs shall thereupon register the said fire-arms in the same manner as fire-arms are required to be registered by a Resident Magistrate in the case of private owners: Provided further, that the provisions of this Clause shall not extend to more than two fire-arms imported by any one person on arrival.

**Commencement** 2. This Law shall commence and take effect from and after the date of the publication thereof in the "NATAL GOVERNMENT GAZETTE" (A).

**This Law to be read with Law 11, 1862.** 3. This Law shall be read and construed together with Law No. 11, 1862, as one Law.

*Repealed by Act 1/06.*

**Law No. 40, 1888.**

"To amend in certain respects the Laws relating to the sale and purchase of Gunpowder and Ammunition."

[10th December, 1888.]

WHEREAS it is desirable to afford greater facilities for obtaining the Permits, provided for under Law No. 12, 1862, for the purchase and sale within this Colony of Gunpowder, and to remove the restrictions upon obtaining empty cartridges for sporting purposes fitted with percussion caps:

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

**Sec. 11, Law 12, 1862, amended.**

1. Section 11 of Law No. 12, 1862, entitled Law "To amend the Law regulating the dealing in Gunpowder," shall be amended by the insertion therein, after the first proviso therein contained, of the following words:—Provided also, that it shall be lawful for any Resident Magistrate, in his discretion, upon the production to him of a signed written request by any person residing in the Magisterial Division for a permit to purchase and receive gunpowder, to grant any such permit as aforesaid to the person named in the request on behalf of the writer thereof: Provided further, that the person so named shall be of European race.

**Repeal.**

2. The Law No. 19, 1882, entitled Law "To allow the importation, under certain restrictions, of empty cartridge cases fitted with percussion caps," shall be, and the same is, hereby repealed.

**Empty cartridge cases for sporting purposes.**

3. Nothing contained in the Laws No. 12, 1862, No. 22, 1872, and No. 7, 1877, shall be deemed to apply to empty cartridge cases, known as, and being for sporting purposes only, fitted with percussion caps.

**Commencement**

4. This Law shall commence and take effect from and after the First day of January, 1889.

(A) Sept. 6, 1887.

## Law No. 11, 1891.

*Repealed by Act 106.*

“To provide for the Importation of Gunpowder or Ammunition by or on behalf of the Governments of Inland States, or persons residing therein.”

[17th July, 1891.]

BE IT ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. In this Law “Inland State” includes the South African Republic and the Orange Free State, and any other country in South Africa, other than Natal, which the Governor in Council shall by Proclamation bring within the operation of this Law.

Interpretation.

“Ammunition” includes percussion caps, cartridges, and any other articles used in the discharge of fire-arms and ordnance.

2. It shall be lawful for the Controller of Arms to entertain applications on behalf of the Government of an Inland State, or by or on behalf of any person resident in an Inland State, for leave to import gunpowder and ammunition into Natal for transmission to such Government or person.

Applications for leave to import gunpowder, &amp;c., for transmission to Inland State.

3. The Controller of Arms may require any information which he may think necessary to be furnished in reference to an application, and if any required information be not supplied, or if in the case of an application not made by or on behalf of the Government of an Inland State, the Controller of Arms shall not be satisfied that the gunpowder or ammunition is bona fide required for lawful purposes by the person for whom the same is intended to be imported, or that the application is in every respect genuine, or if he shall for any reason believe that such gunpowder or ammunition is intended to be supplied to Natives in any country outside the Inland State, or be used for any purposes of hostility to Her Majesty's Government, or to the Government of any State with which Her Majesty is at peace, he may refuse to grant the application. The decision of the Controller of Arms shall be subject to an appeal to the Governor in Council, whose decision shall be final.

Controller of Arms to be satisfied in regard to application.

4. A written permit by the Controller of Arms produced to the Collector of Customs shall be sufficient authority for the importation of any gunpowder or ammunition into Natal for transmission to a place and person in an Inland State, to be named in the permit, subject to the provisions of this Law, and to any special conditions set forth in the permit.

Appeal from decision of Controller.

Permit for importation.

5. Any gunpowder or ammunition imported under authority of a permit may, upon its being duly entered inwards and landed at the port of Port Natal, or after having been warehoused be removed, for the purpose of being conveyed to the place in the Inland State specified in the permit upon payment of the Customs duties, and upon such special conditions and restrictions as to the transport and conveyance of such gunpowder or ammunition, and the routes to be followed, and otherwise as may be imposed by any rules made under section 9 of this Law, or specially imposed by the terms of the permit: Provided always that no such gunpowder or ammunition shall be removed until the person applying for such removal shall furnish to the Controller of Arms security to his satisfaction, which security may, at the option of such Controller, be by means of a surety bond entered into by two sufficient sureties to be approved by the Controller of Arms in a sum equal to the value of such gunpowder or ammunition, that the several provisions of this Law, and all rules and regulations framed thereunder shall be duly kept, and observed, and that the gunpowder or ammunition so

Removal and conveyance to Inland State.

Security to be given.

**Law 11, 1891.** removed as aforesaid shall be delivered to the person at the place in the Inland State specified in the permit within a time to be fixed in the security or bond, and that proof of such delivery shall be given as required by any rules for the time being in force, or that the gunpowder or ammunition shall be otherwise accounted for to the satisfaction of the Controller of Arms.

Condition as to carriage by rail.

6. It shall be a condition of the security or bond given in connection with the removal of any gunpowder or ammunition, that such gunpowder or ammunition so removed shall be conveyed to the boundary of Natal, or so far towards the boundary as shall be practicable, by and upon the Natal Government Railways, at such rates of carriage and subject to the laws and regulations for the time being applicable to the carriage and transport of such powder and ammunition: and in the removal and carriage of such gunpowder and ammunition overland, under the provisions of this Law, to an Inland State, the person forwarding the same shall be bound to send such gunpowder or ammunition as far as the same may be practicable by the open lines of railway worked and maintained by the Government, and at such rates of carriage, and subject to such laws and regulations as may from time to time be applicable to the transport and carriage of gunpowder and ammunition; and it shall be the duty of the Collector of Customs to see that the gunpowder and ammunition are duly delivered for carriage to the Natal Government Railways.

Provision as to bond under sec. 47, Ord. 6, 1855.

7. The bond required by section 47 of Ordinance No. 6 of 1855(A), to be given in respect of the warehousing of any gunpowder or ammunition shall be deemed sufficient for the purposes of this Law if entered into by two sufficient sureties to be approved by the Collector of Customs.

Time allowed for clearance and removal.

8. All gunpowder or ammunition imported and warehoused under the provisions of this Law, shall be cleared and removed within three months from the date of entry, and if any such gunpowder or ammunition be not so cleared and removed, it shall be lawful for the Collector of Customs to cause the same to be sold, and the proceeds of such sale shall be applied firstly to the payment of the duties, next, to the payment of warehouse rent, auction, and other charges, and the residue shall be held by him on account of the importer: Provided always, that it shall be lawful for the Collector of Customs, if he shall deem it necessary, to grant further time for any such gunpowder or ammunition to remain warehoused.

Rules.

9. The Governor in Council may from time to time make and alter rules for the effective carrying out of this Law, and by such rules appoint a penalty not exceeding Ten Pounds for any contravention thereof. Any such rules shall be in force from the date of their publication in the "NATAL GOVERNMENT GAZETTE."

Forfeiture for improper disposal.

10. If any gunpowder or ammunition for the sending whereof to an Inland State a security or bond shall have been given as provided in Section 6, shall be disposed of, or attempted to be disposed of in this Colony contrary to Law, the same shall be liable to seizure and to be forfeited to Her Majesty.

Partial repeal of Law 12, 1862.

11. So far only as in conflict with the provisions of this Law, the Law No. 12, 1862, entitled "Law to amend the Law regulating the dealing in gunpowder" shall be repealed, and this Law and the Law No. 12, 1862, shall, save as aforesaid, be read and construed together as one Law.

(A) Repealed by Act 13, 1899, tit. "REVENUE."

Act No. 18, 1898.

*Repealed by Act 1/0*

“To amend Law No. 11, 1862, entitled Law To make better provision relative to the Importation, Registration, and Sale of Fire-arms.”

[25th July, 1898.]

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. Section 50 of Law No. 11, 1862, is hereby repealed.

2. Whenever in the said Law No. 11, 1862, any reference is made to the importation of fire-arms, such reference shall be deemed to refer to the importation of fire-arms over any inland border of the Colony as well as to the importation of fire-arms by sea.

Repeal.  
Amendment of Law 11, 1862.

Act No. 6, 1899.

“To assimilate the Law of the Province of Zululand relating to Fire-arms and Gunpowder with that of other parts of Natal.”

*Repealed by Act 1*

[1st July, 1899.]

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. Sections 66, 67, 68, and 69 of the Regulations under Zululand Proclamation No. II., 1887, bearing date the Twenty-first day of June, 1887, shall be repealed without prejudice to anything done or any right acquired or liability incurred thereunder.

2. The several Laws and Acts now in force within the Colony of Natal relating to Fire-arms and Gunpowder shall henceforth apply to the Province of Zululand in the same manner as to other parts of the Colony of Natal.

Repeal.  
Natal Fire-arms and Gunpowder Laws to apply to Zululand.

## ATTORNEY-GENERAL.

## ARREST.

[See "CRIMINAL LAW."]

## ARREST (CIVIL).

[See Act No. 22, 1896, tit. "COURTS (MAGISTRATES)."]

*Assurance - Act 47/04 & Act 43/06.*

## ATTORNEYS, &amp;c.

[See Act 39, 1896, ss. 71 and 72, tit. "COURTS (SUPREME)"; see also Act 49, 1898, s. 76, tit. "COURTS (NATIVE)."]

*See. act. 24/99*

## ATTORNEY-GENERAL.

[See "CRIMINAL LAW (PROCEDURE)."]

## Act No. 16, 1897.

"To make provision for the discharge of the duties of the Attorney-General of this Colony during the illness or absence of that officer."

[26th May, 1897.]

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 Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

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 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 Legislative Assembly, or 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 Act, 1893."

2. This Act may be cited as the "Attorney-General's Office Act, 1897."

In what cases  
Governor may  
appoint person  
to act for  
Attorney-  
General.

Short title,

Act No. 24, 1899.

“To extend the provisions of the Attorney-General’s Office Act, 1897.”

[28th August, 1899.]

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. The Governor may from time to time authorise a principal officer of the Attorney-General’s Department to sign documents, other than indictments, which according to law are required to be signed by the Attorney-General.

Principal officer of Attorney-General’s Department may sign documents.

2. Any signature made under the authority of this Act shall be expressed to be made on behalf of the Attorney-General, and any document so signed shall for all purposes be deemed to be signed by the Attorney-General.

Signature, how to be made.

3. The authority granted under this Act may at any time be revoked.

Revocation of authority.

4. The officer to whom such authority is given shall in all things conform to the instructions of the Attorney-General.

Officer to conform to instructions.

AUDIT—AUDITOR-GENERAL.

[See “ACCOUNTS (PUBLIC).”]

## BANKERS.

## BAIL.

[See Ord. 18, 1845, ss. 42, 54 to 63, 68 and 69, tit. "CRIMINAL LAW (PROCEDURE);" Law 3, 1868, s. 7, tit. "CRIMINAL LAW;" and Act 22, 1896, ss. 27 to 29, tit. "COURTS (MAGISTRATES)," &c., &c.]

## BALLOT.

[See "PARLIAMENT."]

## BANKERS.

[See "BILLS OF EXCHANGE," "COMPANIES," and "NATAL BANK."]

*Amended by Act 4 of 1917*

## Law No. 18, 1881.

"To provide for the Periodical Publication of Statements showing the Assets and Liabilities of Joint-Stock Companies trading as Bankers in this Colony."

[20th December, 1881.]

WHEREAS it is expedient that statements of the Assets and Liabilities of Joint-Stock Companies trading as Bankers in this Colony should be periodically published for general information:

BE IT THEREFORE ENACTED by the Administrator of the Government of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. From and after the coming into effect of this Law every Joint-Stock Company trading as Bankers in this Colony and being a Bank of Issue shall publish or cause to be published half-yearly statements of its assets and its liabilities.

2. The half-yearly statements aforesaid shall be so framed as to show the assets and liabilities of every such Bank as the same shall stand at the close of each of the days following, that is to say, the Thirtieth day of June and the Thirty-first day of December in each year: Provided that in case either of the said days shall fall upon a Sunday or a Public Holiday (A), then the statement shall show the assets and liabilities of every such Bank as they stood on the day next preceding such day.

3. Every such statement shall be published not later than twenty-one days next after the day to which such statement relates.

4. Whenever, after the coming into effect of this Law, any Joint-Stock Company shall commence business as Bankers in this Colony, such Company shall not be bound to publish any statement under this Law for or in respect of that one of the days in the second section mentioned which shall next ensue after an office or place of business for

Half-yearly statements of assets and liabilities to be published.

Mode of framing statements.

Date of publication of statements.

First statements of Banks commencing business after coming into effect of this Law.

(A) For Public Holidays see Law 15, 1862, tit. "HOLIDAYS."

the transaction of the business of such Company shall have been opened in this Colony, but such Company shall be bound to publish a statement for or in respect of every succeeding day, as in the second section mentioned, in the same manner as if such Bank had been in existence at the time of the coming into effect of this Law.

Law 18, 1881.

5. Every such statement as aforesaid shall be published in the "NATAL GOVERNMENT GAZETTE."

Mode of publication.

6. Every Bank and every Branch Bank, within this Colony, shall publish its statements in like manner as though it were a separate and independent Bank; and the statements of every Bank or Branch Bank shall be published as aforesaid, and shall be signed by the Manager or Cashier thereof, and by the Officer, if any, who shall be or act as the Accountant of such Bank.

Branch banks to publish independent statements.

7. Any Director, Manager, or other Officer of any Bank who shall sign any statement so published as aforesaid, or who shall permit any such statement to be published containing any item or particular which such Director, Manager, or other Officer, shall know to be false or erroneous, shall upon conviction be liable to be imprisoned, with or without hard labour, for any term not exceeding three years.

Penalty for false statement.

8. All contraventions of the provisions of the foregoing section of this Law shall be prosecuted by indictment by the Attorney-General, at the suit of the Queen, in the usual manner, before the Supreme Court, or before any Circuit Court having jurisdiction in the place in which the Bank to which such false or erroneous statement relates shall be situated.

Offences, how prosecuted.

9. If any Bank shall fail to publish within the time specified in this Law any statement by this Law required to be published, then such Bank shall pay to the Public Treasury the sum of Twenty Pounds sterling for every day, after the last day prescribed for such publication, during which such statement shall remain unpublished. Any sum so forfeited may be sued for and recovered, by civil process, before the Supreme Court of the Colony of Natal, or before any Circuit Court having jurisdiction in the place in which such Bank in default shall have its office or place of business: Provided that it shall be lawful for the Governor, upon the application of any such Bank so in default, and upon proof to his satisfaction that such default was not wilful, to remit or reduce the sum to be paid by such Bank.

Penalty for failure to publish statement.

Penalty, how recovered.

Governor may reduce penalty.

10. The production of the "GOVERNMENT GAZETTE" containing any such statement as aforesaid shall be prima facie proof that the Officer or Officers, or the Manager or Officer or Officers whose names are attached to such statement, signed the same in order to the publication thereof for the purposes of this Law.

Proof of signature.

11. Every such statement as aforesaid shall be, in substance, as follows:—

Form of statement.

THE BANK OF \_\_\_\_\_

*Statement of Liabilities and Assets of*

The \_\_\_\_\_ Branch of the \_\_\_\_\_ on the \_\_\_\_\_ 18—.

LIABILITIES.	£ s. d.	ASSETS.	£ s. d.
To Subscribed Capital... ..	...	By Coin in Bank Coffers ...	...
To Paid-up Capital ... ..	...	By Drafts on Colonial Treasury	...
To Reserve Fund ... ..	...	By Notes on hand of other	...
To Circulation, viz.:		Banks and Branches ...	...
Notes outstanding this day	...	By Cheques on other Banks and	...
Post Bills ... ..	...	Branches ... ..	...
To Bills Payable ... ..	...	By Bills of Exchange on hand	...



## BANKERS.

Law 18, 1881.	£ s. d.	£ s. d.
To Deposits, viz.:		By Balance due by other
Fixed ... ..		Branches ... ..
Floating ... ..		By Balance due by other Banks
Due to other Banks ... ..		By Bills and Notes under Dis-
To Balances due to London		count and not yet due ...
Office and Branches		By Bills and Notes overdue
To Bills received for Collection		and unpaid... ..
		By ditto (Specially Secured)...
		By Accounts covered by Pro-
		duce and other Securities
		By Loans to Public Bodies ...
		By Accounts Overdrawn ...
		By Bank Premises ... ..
		By Stationery, Furniture and
		Stamps ... ..
		By Bills receivable (as per
		Contra) ... ..
	_____	Total Assets ... ..
Total Liabilities ... ..	_____	_____

We certify that we have examined the above statement, and find it true and correct.

\_\_\_\_\_ Manager.

\_\_\_\_\_ Accountant.

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Commencement  
and short title.

12. This Law shall be in operation from such date as the Governor shall fix and determine by Proclamation in the "NATAL GOVERNMENT GAZETTE," and may be cited for all purposes as "The Banks Statements Law, 1881" (A).

## BANKRUPTCY.

[See "INSOLVENCY."]

## BENEFICIA.

[See "BONDS."]

(A) Proclamation issued Jan, 16, 1882. Law came into operation Jan. 17, 1882.

BILLS OF EXCHANGE.

*William* Law No. 8, 1887. *See also Act-18/01.*  
*Act 40, 1887*  
 "To declare the Law relating to Bills of Exchange, Cheques, and Promissory Notes."

[14th January, 1887.]

WHEREAS it is desirable to assimilate in certain respects the Law of Natal relating to Bills of Exchange, Cheques, and Promissory Notes to that of the United Kingdom of Great Britain and Ireland, and to declare the same by Law (A):

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

PART I.

*Preliminary.*

1. In this Law, unless the context otherwise requires—

"Acceptance" means an acceptance completed by delivery or notification.

Interpretation of terms.

"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.

"Bankrupt" includes any person whose estate is vested in a Trustee or Assignee, under the Laws for the time being in force in Natal relating to bankruptcy, insolvency, or assignment.

"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.

"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.

"Stamped Paper" means paper upon which a stamp has been impressed.

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, re-

Definition of Bill of Exchange

(A) On comparison it will be found that this Law bears a close resemblance to the Bills of Exchange Act, 1882 (45 & 46 Vic. c. 61) and that most of the decisions on the parent statute are

applicable hereto. The English decisions here given are taken from the foot-notes of Chitty's Statutes, tit. "BILL OF EXCHANGE," to which the reader is referred for further authorities.

Law 8, 1887. quiring 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.

(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 re-imburse himself, or a particular account to be debited with the amount, or

(b) A statement of the transaction which gives rise to the bill, 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.

Inland and foreign bills.

3. (1) An inland bill is a bill which is, or on the face of it purports to be, both drawn and payable within the Colony of Natal.

Any other bill is a foreign bill.

Effect where different parties to the bill are the same person.

4. (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.

Address to drawee.

5. (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.

Certainty required as to payee.

6. (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.

(3) Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer (A).

What bills are negotiable.

7. (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.

(A) A similar provision in 45 & 46 Vic. c. 61 held to apply where the payee was a real person not having, or intended by the drawer to have, any right upon it, and to a document in the form of a bill manufactured by a person who forged the signature of the named drawer, obtained by fraud the signature

of the acceptor, forged the signature of the named payee, and presented the document for payment, both the named drawer and the named payee being ignorant of the circumstances (*Bank of England, apps., v. Vagliano Bros., resps.* [1891] A.C. 107; 60 L.J., Q.B. 145; 64 L.T. 353.

(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. Law 8, 1887.

(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.

8. (1) The sum payable by a bill is a sum certain within the meaning of this Law, although it is required to be paid Sum payable.

- (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 (A) 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.

9. (1) A bill is payable on demand—

- (a) Which is expressed to be payable on demand, or at sight, or on presentation; or Bill payable on demand.
- (b) In which no time for payment is expressed (B).

(2) Where a bill is accepted or endorsed 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.

10. A bill is payable at a determinable future time within the meaning of this Law which is expressed to be payable— Bill payable at a future time.

(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 (c).

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

11. 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 Omission of date of bill payable after date.

(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.

12. (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 Presumption of correctness of date.

(A) Sec. 9, sub-s. (d), 45 & 46 Vic. c. 61 reads:—"According to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill."

(B) Therefore if a payee adds to such a bill the words "on demand," it is not

a material alteration, as they merely express the effect of the bill as it originally stood (*Aldons v. Cornwall*, L.R., 3 Q.B. 573). See also sec. 63, post.

(c) *E.g.* on the death of a person (*Cooke v. Colehan*, 2 Stra. 1217).

**Law 8, 1887.** to be the true date of the drawing, acceptance or indorsement, as the case may be (A).

Ante-dating  
and post-dating.

(2) A bill is not invalid by reason only that it is ante-dated, or post-dated (B), or that it bears date on a Sunday.

Computation of  
time of pay-  
ment.

13. Where a bill is not payable on demand, the day on which it falls due is determined as follows:—

(1) When the day on which it falls due is a Sunday, Christmas Day, New Year's Day, Good Friday, Easter Monday, Whit Monday, the Queen's Birthday, Michaelmas Day, All Saints' Day, or any day appointed by Proclamation of the Governor of the Colony as solemn fast or day of thanksgiving, the bill is due and payable on the succeeding business day in terms of Law No. 15, of 1862 (c).

(2) There are no days of grace in this Colony (D).

(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.

(5) The term month in a bill means calendar month.

Referee in case  
of need.

14. 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.

Optional stipu-  
lations by  
drawer or in-  
dorser.

15. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(1) Negating or limiting his own liability to the holder ;

(2) Waiving as regards himself some or all of the holders' duties.

Acceptance.

16. (1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions, namely:—

(a) It must be written on the bill and be signed (E) 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.

Time for accept-  
ance.

17. A bill may be accepted—

(1) Before it has been signed by the drawer, or while otherwise incomplete.

(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 (F), 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.

(A) Where no date, the date is for the jury to determine (*Anderson v. Weston*, 5 B.N.C. 296).

(B) See *Gatty v. Fry*, 2 Ex. D. 265, and the cases there cited.

(C) See tit. "HOLIDAYS."

(D) The English Act (s. 14) adds three days of grace to the time of payment fixed by the bill (unless specially excluded) and the bill is payable on the last day of grace.

(E) See as to signature sec. 90, post.

(F) See *Wynne v. Raikes*, 5 East, 514.

18. (1) An acceptance is either—

(a) General, or (b) Qualified.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms (A) 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 any 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 be 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.

19. (1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a prima facie authority to fill it up as a complete bill for any amount the 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 prima facie authority to fill up the omission in any way he thinks fit.

**Law 8, 1887.**  
General and qualified acceptance.

Inchoate instruments.

(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 a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact:

To be filled up within a reasonable time.

Provided that if any such instrument after completion is negotiated to the 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.

20. (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:

Delivery.

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).

(A) An acceptor desiring to qualify must do so on the bill in clear and unequivocal terms, so that any person taking the bill could not, if he acted reasonably, fail to understand that it was accepted subject to an expressed qualification (*Meyer v. Decroix* [1891]

A.C. 520; 61 L.J., Q.B. 205; 65 L.T. 653).

(B) Quære whether posting is effectual delivery if the addressee never receive the bill. See *Household Fire Insurance Co. v. Grant*, 4 Ex. D. 216, in which an allotment of shares posted but not received was held to bind.

Law 8, 1887.

(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.

*Capacity and Authority of Parties.*

Capacity of parties.

21. (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 of exchange, accepted or indorsed by a woman, the explanation, insertion, or renunciation of the benefits "senatus consulti vellejani," and "authenticæ si qua mulier" (A), shall not be requisite: Provided also that nothing in this section shall enable a Corporation to make itself liable as drawer, acceptor, or indorser, of a bill unless it is competent to it so to do under the Law for the time being in force relating to Corporations (B).

(2) Where a bill is drawn or indorsed by an infant, minor (c) or Corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Signature essential to liability.

22. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that

(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.

Forged or unauthorised signatures.

23. Subject to the provisions of this Law (D), 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 a forgery.

Procurator signature.

24. A signature by procurator 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 (E).

Person signing as agent or in representative capacity.

25. (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

(A) See these benefits explained in Law 40, 1884, tit. "BONDS (RENUNCIATION)."

(B) A corporation (taking the word in its widest sense) is not under English law generally so competent. See *Bateman v. Mid Wales Rail Co.*, L.R., 1 C.P. 499. See also s. 95, sub-s. (2).

(C) There does not appear to be any legal difference between the terms "infant" and "minor."

(D) See s. 53, sub-s. 2, and ss. 54, 59, 79, and 81, post.

(E) See *Attwood v. Mannings*, 7 B. & C. 28; *Prescott v. Flinn*, 9 Bing. 19.

of a principal, or in a representative character, he is not personally liable thereon (A). Law 8, 1887.

(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.*

26. (1) Valuable consideration for a bill may be constituted by—

- (a) Any consideration sufficient to support a simple contract ;
- (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.

Value and holder for value.

(2) Valuable consideration for a bill is not necessary to entitle the holder to sue therefor.

(3) 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.

(4) 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 (B).

27. (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.

Accommodation bill or party.

(2) An accommodation party is liable on the 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.

28. (1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it (c), under the following conditions, namely :

Holder in due course.

- (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 Law when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, 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.

29. (1) Every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value.

Presumption of value and good faith.

(A) Sec. 26 of 45 & 46 Vic. c. 61, adds, "but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability." See also *Tatham v. White*, 11 N.L.R. 84.

(B) See *Attenborough v. Clarke*, 27 L.J., Ex. 128.

(c) These words include a post-dated cheque bearing a penny stamp (*Hitchcock v. Edwards*, 60 L.T. 636—per Cave, J.)



**Law 8, 1887.** (2) Every holder of a bill is prima 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 subsequent negotiation of the bill is affected with fraud, duress, or force and fear, 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 (A).

*Negotiation of Bills.*

Negotiation of bill.

30. (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 (B).

(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 indorsement of the transferor.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negate personal liability.

Requisites of valid indorsement.

31. 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 (C) 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 indorsement, 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 indorsees 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 indorsees 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.

(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.

32. Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

(A) See *Jones v. Gordon*, 2 App. Cas. 627. When fraud is proved, the burden of proof is on the holder to prove both that value has been given, and that it has been given in good faith without notice of the fraud (*Tatam v.*

*Haslar*, 23 Q.B.D. 345; 58 L.J., Q.B. 432).

(B) As to delivery see s. 20, ante.

(C) An "allonge" is a slip attached to a bill where there is no room for further endorsements.

33. (1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer. Law 8, 1887.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable. Indorsement in blank and special indorsement.

(3) The provisions of this Law relating to a payee (A) 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.

34. (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" (B). Restrictive indorsement.

(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.

35. (1) Where a bill is negotiable in its origin it continues to be negotiable until it has been Negotiation of overdue or dishonoured bill.

(a) Restrictively endorsed, 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 acquire 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.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is prima 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 of title attaching thereto at the time of dishonour; but nothing in this sub-section shall affect the rights of a holder in due course.

36. 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 Law, 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.

37. The rights and powers of the holder of the bill are as follows:— Rights of 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.

(A) See ss. 6 and 7, ante,

(B) See *Sigourney v. Lloyd*, 5 Bing. 525.

Law 8, 1887.

(3) Where his 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.*

When presentment for acceptance is necessary.

38. (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 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.

39. (1) Subject to the provisions of this Law (A), when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time (B).

(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.

40. (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 personal representative.
- (d) Where the drawee is bankrupt, or has assigned his estate, presentment may be made to him or his trustee.
- (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 bankrupt (c), 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.

(A) See s. 40, sub-s. 2, post.

(B) What is a reasonable time would seem to be a question of law. See *Darbyshire v. Parker*, 6 East, 5,

(c) The word "bankrupt" is used in the English Statute, but perhaps "insolvent" is better understood in this Colony.

(c) Where although the presentment has been irregular, acceptance has been refused on some other ground. **Law 8, 1887.**

(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured, does not excuse presentment.

41. When a bill is duly presented for acceptance, and is not accepted within the customary time (A), 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. **Non-acceptance**

42. (1) A bill is dishonoured by non-acceptance:—

(a) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Law is refused or cannot be obtained; or **Dishonour by non-acceptance and its consequences.**

(b) When presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Law (B) when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

43. (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 acceptance.**

(2) Where a qualified acceptance is taken, and the drawer or an endorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or endorser is discharged from his liability on the bill (c).

The provisions of this sub-section do not apply to a partial acceptance whereof due notice has been given. Where a foreign 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.

44. Subject to the provisions of this Law 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 Law, 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 the 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.

(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.

(A) The customary time, "which it is reasonable that the drawee should be allowed to deliberate whether he will accept or no," would seem to be, in *general*, 24 hours. See Byles, p. 185, 13th ed.

(B) See s. 64, post.

(C) See *Sebag v. Abithol*, 4 M. & S. 462.

Law 8, 1887.

(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 wherever 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 a personal representative, 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.

Excuses for delay or non-presentment for payment.

45. (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 Law, 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.
- (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 endorser, 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.

Dishonour by non-payment.

46. (1) A bill is dishonoured 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 Law (A), when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and endorsers accrues to the holder.

(A) See ss. 64—69, post,

47. Subject to the provisions of this Law, 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—

**Law 8, 1887.**  
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 (A).

(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.

48. 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 (B).

(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 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 a personal representative, if such there be, and, with the exercise of reasonable diligence, he can be found.

(10) Where the drawer or indorser is bankrupt or has assigned his estate notice may be given either to the party himself, or to the trustee or assignee (c).

(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.

(A) See *Dunn v. O'Keefe*, 5 M. & S. 282.

(B) See *Chapman v. Keane*, 3 Ad. & E. 193.

(c) See *Ex pte. Baker*, 4 Ch. D. 795.

Law 8, 1887.

- (b) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day 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.

(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.

Excuses for non-notice and delay.

49. (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.

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 Law 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 (A).

(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.
- (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.

Noting or protest of bill.

50. (1) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(A) See the cases cited in *Bickerdike v. Bollman*, 1 T.R. 406; 2 Sm. L.C.

(2) Where a foreign bill, appearing on the face of it to be such, 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. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary. Law 8, 1887.

(3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4) Subject to the provisions of this Law, 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, or may have effect as from the date of the noting.

(5) Where the acceptor of a bill becomes bankrupt or 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.

(6) 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 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.

(7) 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.

(8) 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.

(9) Protest is dispensed with by any circumstance which would dispense with notice of dishonour (A). 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.

51. (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.

Duties of holder as regards drawee or acceptor.

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(A) See s. 49, sub-s. (2), ante.



**Law 8, 1887.** (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.

*Liabilities of Parties.*

Funds in hands of drawee.

52. A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof (A), and the drawee of a bill who does not accept as required by this Law, is not liable on the instrument.

Liability of acceptor.

53. The acceptor of a bill, by accepting it—

(1) Engages that he will pay it according to the tenour of his acceptance.

(2) Is precluded from denying to a holder in due course (B) :

(a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill (C).

(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 indorsement.

(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 drawer or indorser.

54. (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.

55. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

Stranger signing a bill liable as indorser.  
Measure of damages against parties to dishonoured bill.

56. 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

(A) It appears that the payee of a cheque has no remedy against the banker for dishonouring it. See *Hopkinson v. Foster*, L.R. 19 Eq. 74.

(B) See s. 28, ante, as to "holder in due course."

(C) See *Garland v. Jacob*, L.R. 8 Ex. 216, Ex. Ch.

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— **Law 8, 1887.**

- (a) The amount of the bill.
- (b) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case (A).
- (c) The expenses of noting, and where the protest is necessary and 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 Law 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.

57. (1) Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it he is called a "transferor by delivery."

Transferor by delivery and transferee.

(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 (B).

*Discharge of Bill.*

58. (1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

Payment in due course.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(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 endorsements, and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

59. When a bill payable to order on demand is drawn on a banker, or when a bill is payable with 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 endorsement has been forged or made without authority.

No liability on banker who pays demand draft, indorsement being forged.

(A) See *Keene v. Keene*, 27 L.J., C.P. 88.

(B) See *Fenn v. Harrison*, 3 T.R. 757, and *Gompertz v. Bartlett*, 23 L.J., Q.B. 65.

Law 8, 1887.  
 Acceptor being  
 holder,  
 Express waiver.

60. 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.

61. (1) When the holder of a bill at or after its maturity absolutely and unconditionally (A) renounces his rights against the acceptor the bill is discharged. The renunciation must be in writing (B), 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.

62. (1) Where a bill is intentionally cancelled (c) 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 indorser 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.

Material alteration of bill.

63. (1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is discharged, except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers: Provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenour.

(2) In particular, the following alterations are material, namely:— 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 (D).

#### *Acceptance and Payment for Honour.*

Acceptance for honour supra protest.

64. (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.

(A) See *George, In re, Francis v. Bruce*, 44 Ch. D. 627; 59 L.J., Ch 709; 63 L.T. 49.

(B) Quære whether signature necessary. See *George, In re*, supra.

(C) As to what is cancellation see *Wilkinson v. Johnson*, 3 B. & C. 428, and *Ingham v. Primrose*, 7 C.B., N.S. 82. In the latter case the acceptor tore a bill in two to destroy it, and the drawer fraudu-

lently pieced the bits together, and a bona fide holder of these joined pieces was held entitled to recover from the acceptor.

(D) See *Burchfield v. Moore*, 23 L.J., Q.B. 261. This list is not presumed to be exhaustive. For list of material and immaterial alterations see *Chalmers' Digest*, p. 216. See also note to s. 9, ante.

(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. Law 8, 1887.

(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.

65. (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.

66. (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 forwarded not later than the day following its maturity, or by the next succeeding post, 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.

67. (1) Where a bill has been protested for non-payment, any person may 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. Payment for honour supra protest.

(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 subrogated 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.

## Law 8, 1887.

*Lost Instruments.*

Holder's right to duplicate of lost bill.

68. 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 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.

Action on lost bill.

69. In any action or proceeding upon a bill (A), the court or a judge may order that the loss of the instrument shall not be set up, 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 (B).

*Bill in a Set (c).*

Rules as to set.

70. (1) Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

(2) Where the 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 subsection 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 (D).*

Rules where laws conflict.

71. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows:—

(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 the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made.

(A) As to bank notes see s. 88, post, and Law 43, 1888, s. 35, tit. "NATAL BANK." This sec. applies so as to enable the holder of halves of bank notes to recover their amount from the bank, the other halves having been lost. (*Natal Bank v. Ismail Cassim*, 13 N.L.R. 152.)

(B) The indemnity must be given before action brought, *ib.*

(C) See *Société Générale and Met. Bank*, 27 L.T. 854; *Holdsworth v. Hunter*, 10 B. & C. 449.

(D) See *Byles on Bills*, Ch. XXXII.; *Chalmers' Dig.*, p. 53.

Provided that—

Law 8, 1887.

- (a) Where a bill is issued out of the Colony of Natal, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue:
- (b) Where a bill, issued out of the 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 Natal.

(2) Subject to the provisions of this Law, the interpretation of the drawing, indorsement, acceptance, or acceptance supra protest of a bill, is determined by the law of the place where (A) contract is made:

Provided that where an inland bill is indorsed in a foreign country the indorsement shall, as regards the payer, be interpreted according to the Law of Natal.

(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 Natal, and the sum payable is not expressed in currency of the Colony of Natal, 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 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.*

72. A cheque is a bill of exchange drawn on a banker payable on demand (B). Except as otherwise provided in this part, the provisions of this Law applicable to a bill of exchange payable on demand apply to a cheque.

Cheque defined.

73. Subject to the provisions of this Law—

(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.

Presentment of cheque for payment.

(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 (c).

(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.

(A) 45 & 46 Vic. c. 61, s. 72 reads, "where such contract is made."

(B) See *McLean v. Clydesdale Bkg. Co.*, 9 App. Cas, 95; 50 L.T. 457. Read also in conjunction with this definition s. 52, ante.

(c) *In general* a reasonable time is, if

customer and banker reside in the same place, the day after the cheque is received (*Alexander v. Burchfield*, 7 M. & G. 1061). As to residence in different places, see *Rickford v. Ridge*, 2 Campb. 53; and *Hare v. Henty*, 30 L.J., C.P. 302.

die „Bills of Exchange Proclamation, 1902” van Transvaal  
artikel *tagtig* van die „Bills of Exchange Ordinance, 1902”  
die Oranje-Vrystaat, word hiermee vervang deur die voorende  
artikel, wat as artikel *tagtig, een-en-tagtig, tagtig* en  
respektieflik, in die plek van genoemde artikels gestel word.

„ True owner of stolen or lost crossed cheque marked ‘not negotiable’ entitled to compensation from certain subsequent possessors. (1) If a cheque has been stolen or lost was crossed as hereinbefore provided, and it bore on it the words ‘not negotiable’, and it has been paid by the banker upon whom it is payable under circumstances which do not render the banker liable in terms of this Act to the true owner of the cheque for any loss he may sustain on account of the cheque having been paid, the true owner, if he has suffered any loss as a result of the theft or loss of the cheque, shall be entitled to recover from any person who has been the possessor thereof at the time of the theft or loss, and either gave a consideration therefor or took it as a donee, an amount equal to the amount of the owner’s said loss, but not exceeding the amount of the cheque.

(2) A person who has after the theft or loss of any such cheque introduced it into his account with a banker after having paid or for the purpose of paying the amount of the cheque or part thereof to the



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 Law, 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.

Law 8, 1887.

79. 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.

Protection to banker and drawer where cheque is crossed.

80. 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.

Effect of crossing and adding the words "not negotiable."

81. Where a banker in good faith, and without negligence (A), 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.

Protection to collecting banker.

Substituted s. 25/1943 a

⊗ s. 81 has inserted by A. 25/1943 see. 2.

PART IV.

*Promissory Notes.*

82. (1) A promissory 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, 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 not a note within the meaning of this section unless and until it is dorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made payable within the Colony of Natal, is an inland note. Any other is a foreign note.

83. A promissory note is inchoate and incomplete until delivery to the payee or bearer (B).

Delivery necessary.

84. (1) A promissory note may be made by two or more makers, and may be liable thereon jointly, or jointly and severally, according to tenour (c).

Joint and several notes.

(2) Where a note runs "I promise to pay," and is signed by two more persons, it is deemed to be their joint and several note.

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.

(A) See *Bissell v. Cox*, 53 L.T. 193—C.A.

(B) As to delivery see s. 20, ante.

(C) Where a promissory note is signed by two makers, not being bound jointly

and severally, each is liable for one-half the amount only (*Jee v. Buguto and Salwan*, 2 N.L.R. 12) ; *Jee v. Umtambam and Camallas*, 2 N.L.R. 60, followed in *Havemann v. Lazarus*, 2 N.L.R. 123.



**Law 8, 1887.** (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 (A).

(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.

Presentment  
for payment.

86. (1) Where a promissory 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. In any other case presentment for payment is not necessary in order to render the maker liable.

(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 promissory 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 Law relating to bills of exchange, apply, with the necessary modifications, to promissory 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;

(4) When a foreign note is dishonoured, protest thereof is unnecessary.

## PART V.

### *Supplementary.*

Good faith.

89. A thing is deemed to be done in good faith, within the meaning of this Law, where it is in fact done honestly, whether it is done negligently or not.

Signature.

90. (1) Where, by this Law, any instrument or writing is required to be signed (B) 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.

(2) In the case of a Corporation, where, by this Law, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal. But nothing in this section shall be construed as requiring the bill or note of a Corporation to be under seal.

(A) See *Chartered Bank v. Dickson*,  
L.R., 3 P.C. 574.

(B) *E.g.*, by ss. 2 and 82.

91. Where, by this Law, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. "Non-business" days for the purpose of this Law mean :— Law 8, 1887.  
Computation of time.

- (a) Sunday, New Year's Day, Good Friday, Easter Monday, Whit Monday, the Queen's Birthday, Michaelmas Day, All Saints' Day, Christmas Day (A).
- (b) A day appointed by proclamation of the Governor as a solemn fast or day of thanksgiving.

92. For the purposes of this Law, 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. 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 householder or substantial resident 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 Law may be used with necessary modifications, and if used shall be sufficient. Protest when notary not accessible.

94. The provisions to this Law as to crossed cheques shall apply to a warrant for payment of a dividend, and to a coupon for payment of interest. Dividend warrants and interest coupons.

95. Nothing in this Law shall affect the provisions of—

- (1) The "License and Stamp Law, 1885" (B), or any Law or enactment for the time being in force relating to the revenue: Laws not affected by this Law.
- (2) The provisions of the "Joint Stock Companies' Liabilities Law, 1864," or laws amending it, or any Law relating to any Joint Stock Bank or Company.

96. This Law shall be known and may be cited as "The Bills of Exchange Law, 1886." Short title.

97. This Law shall commence and take effect at the expiration of thirty days following its promulgation in the "NATAL GOVERNMENT GAZETTE" (c). Commencement

SCHEDULE.

Form of protest which may be used when the services of a Notary cannot be obtained.

Know all men, that I, A.B. [householder], of \_\_\_\_\_, in the County of \_\_\_\_\_, Colony of Natal, 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.

(A) See Law 15, 1862, tit. "HOLIDAYS."

(B) Repealed by Act 43, 1898, tit. "REVENUE."

(c) Promulgated Jan. 25, 1887.

## BIRDS.

[See "WILD BIRDS PROTECTION."]

## BIRTHS.

(B) Amended by act [See "REGISTRATION (BIRTHS, &amp;C.)."]

13/1909  
Birken, Imp. Act of 26. 1907

## BONDS (RENUNCIATIONS).

Law No. 40, 1884. 6?

"To regulate renunciations in Bonds."

[8th November, 1884.]

WHEREAS several renunciations are in practice mentioned pro forma in Bonds, without being well understood by either debtors or creditors, and there is therefore introduced into business an element of unreality and it is expedient to make better provision in that behalf:

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Omission of renunciations in bond.

Proviso.

1. Any Bond or Power of Attorney to pass a Bond to be executed after this Law shall have come into operation, shall be as effectual against the debtor and his representatives without containing renunciation of any of the "Beneficia" specified in the Schedule A hereto, as such Bond or Power would have been if it had contained any such renunciation: Provided always, that nothing in this section contained, shall prevent there being inserted in any bond a statement reserving to any party to such bond, any of the benefits specified in Schedule A hereto, which benefits may in a general way be rendered into English as in the schedule expressed, having annexed thereto for certainty the Roman Law cited in each case: Provided also that such reservation may be expressed in substance as follows:—

The said \_\_\_\_\_ reserving to himself the benefits  
numbered respectively \_\_\_\_\_ in Schedule  
A to Law No. \_\_\_\_\_, 1884.

When female is debtor.

2. In any such future Bond or Power of Attorney in which the proposed debtor shall be a female, any renunciation of "Beneficia" specified in Schedule B hereto, shall, though inserted, be of no avail, but such respective renunciations' effects may be accomplished by such debtor signing a statement to be annexed to such Bond or Power to the respective effects of those contained in Schedules C and D hereto respectively, and certified as therein described and required (A): Provided always, that nothing in this section nor in Schedules C and D hereto respectively shall be deemed to give to females any greater protection than the benefits specified in Schedule B hereto would, when not renounced, have respectively given, if this Law had not been passed.

(A) See *Standard Bank v. Moreland*, 4 N.L.R. 108; and *S. A. Loan, Mortgage, &c., Agency v. Nash*, 6 N.L.R. 18.

3. In this Law and for the purposes thereof, the word "debtor" shall include any obligor. Law 40, 1884.  
Interpretation.
4. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A). Commencement

SCHEDULE A.

1. Beneficium ordinis seu Excussionis.  
(The benefit whereby the creditor is obliged to sue and excuss the principal debtor before the surety.—Code. 8, 41, 3.—De Authent.) Beneficia.
2. Beneficium divisionis.  
(The benefit of claiming that the debt shall be paid equally by each surety.—Institutes 3, 21, 4.)
3. Beneficium novæ constitutionis de duobus vel pluribus reis debendi.  
(The benefit by which two or more principal debtors can claim release on paying their respective shares.—Novella 99.)
4. Causa debiti.  
(The cause or origin of the debt.—Digest. 4, 2, 6, and 12, 7.)
5. Non numeratæ pecuniæ.  
(That the money had not been all paid over to the debtor.—Code. 4, 30.)
6. Revision of account.
7. Errors of calculation. (Code. 2, 5.)

SCHEDULE B.

1. Beneficium Senatus Consulti Velleiani.  
(Benefit whereby women are protected as to becoming sureties.) Beneficia.
2. Beneficium Authenticæ Si qua mulier.  
Benefit whereby married women are protected as to becoming sureties for their husbands.)

SCHEDULE C.

*Sec Act 13/09.*

Statement by a female, to be used instead of the renunciation of the "Beneficium" No. 1 in Schedule B. Statement by female renouncing the Beneficium Senatus Consulti Velleiani.

I (name and residence), who purpose to bind myself in a Bond for the sum of (insert both letters and figures of the principal sum and rate of interest if any) as or in the nature of a surety for (name and residence of principal debtor), am aware that by protection of the Law I am entitled notwithstanding my having purported to bind myself as above to refuse to pay anything in respect of the said Bond unless I renounce with knowledge of such legal protection any intention of availing myself of the same, and I hereby with full knowledge as aforesaid, and of my own absolute free will and consent do waive, renounce, and reject the benefit of such legal protection.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

(Signature).

I (name and office) hereby certify that the above-named \_\_\_\_\_ affixed her signature above written in my presence, and that before doing so she appeared to me fully to understand the meaning

## BONDS (RENUNCIATIONS).

**Law 40, 1884.** of the statement so signed by her, and to execute it freely of her own will and consent.

Given under my hand this                      day of

A B (who must be the Master of the Supreme Court, or some Resident Magistrate, or Notary Public, or Justice of the Peace in the Colony).

*See Act 13/04.*

## SCHEDULE D.

Statement by female renouncing the Beneficium *Authenticæ si quæ mulier.*

Statement by a female, to be used instead of the renunciation of the "Beneficium" No. 2 in Schedule B.

I (name and residence) who purpose to bind myself in a Bond for (insert as in Schedule C) in the interests of my husband (name and residence) am aware (continue as in Schedule C, and with a similar certificate).

## BOOKS.

[See "COPYRIGHT."]

## BOROUGHES.

[See "MUNICIPAL CORPORATIONS."]

## BRANDS.

[See "EARMARKS."]

## Law No. 22, 1882.

"To declare the Law relating to the Fraudulent Marking or Branding of Ostriches and Cattle, and the Fraudulent Obliteration or Alteration of Brands or Marks on Ostriches and Cattle."

[4th September, 1882.]

WHEREAS it is expedient to declare the Law relating to the Fraudulent Marking or Branding of Ostriches and Cattle, and the Fraudulent Obliteration or Alteration of Brands or Marks on Ostriches and Cattle :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. Every person who, with intent to defraud, or to enable another to defraud, any person, shall mark or brand, or cause or procure to be marked or branded, any ostrich or cattle, with any mark, brand, or ear-mark, shall be guilty of the crime of falsity.

The fraudulent marking or branding of ostriches or cattle to constitute falsity.

2. Every person who, with intent to defraud, or to enable another to defraud, any person, shall obliterate or alter, or cause or procure to be obliterated or altered, any mark, brand, or ear-mark on any ostrich or cattle, shall be guilty of the crime of falsity.

Fraudulent obliteration or alteration of marks, &c., on ostriches or cattle to constitute falsity.

3. The provisions of the foregoing Section shall not affect the prohibition contained in the proviso attached to Section 18 of the Scab Law, 1882 (A).

Scab Law, 1882, not affected.

4. All contraventions of this Law shall be prosecuted by indictment, by the Attorney-General, at the suit of the Queen, before the Supreme Court of the Colony of Natal or any Circuit Court in the said Colony having jurisdiction.

Offences, how prosecuted.

5. In this Law the word "cattle" shall be taken and deemed to mean any bull, cow, ox, heifer, or calf, and any goat, ram, sheep, ewe, or lamb, and any horse, mare, gelding, colt, filly, mule, or ass.

Interpretation of word "cattle."

6. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (B),

Commencement

## BROKERS.

[See "STOCKBROKERS."]

(A) Repealed. See Law 48, 1887, tit. "SHEEP (DISEASE IN)."  
(B) Sept. 5, 1882.

## BUILDING SOCIETIES.

Law No. 12, 1858,

"For the Regulation of Building Societies."

[10th April, 1858.]

WHEREAS, certain Societies, commonly called Building Societies, have been established in this Colony, principally amongst the industrious classes, for the purpose of raising, by small periodical subscriptions, a fund, to assist the members thereof in obtaining immovable property, and it is expedient to afford encouragement to such Societies, and protection to the property obtained therewith:

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:

1. It shall and may be lawful for any number of persons in this Colony, to form themselves into, and establish Societies for the purpose of raising, by the monthly or other subscriptions, of the several members of such Societies, shares, not exceeding the value of one hundred pounds for each share, such subscriptions not to exceed, in the whole, one pound per month for each share, a stock, or fund, for the purpose of enabling each member thereof to receive, out of the funds of such Society, the amount or value of his, or her, share, or shares, therein, to erect or purchase one or more dwelling house, or dwelling houses, or other immoveable property (A), to be secured, by way of mortgage, to such Society, until the amount or value of his or her shares shall have been fully repaid to such Society, with the interest thereon, and all fines or other payments incurred in respect thereof, and to and for the several members of each Society, from time to time, to assemble together, and to make, ordain, and constitute such proper and wholesome rules and regulations, for the government and guidance of the same, as to the major part of the members of such Society, so assembled together, shall seem meet, so as such rules shall not be repugnant to the express provisions of this Law, and to the general Laws and Ordinances of the Colony; and to impose and inflict such reasonable fines, penalties, and forfeitures, upon the several members of any such Society who shall offend against any such rules, as the members may think fit, to be respectively paid to such uses, for the benefit of such Society, as such Society, by such rules, shall direct; and also, from time to time, to alter and amend such rules as occasion may require, or annul or repeal the same, and to make new rules in lieu thereof, under such restrictions as are in this Act contained; provided that no member shall receive, or be entitled to receive, from the funds of such Society, any interest or dividend, by way of annual or other periodical profit, upon any shares in such Society, until the amount or value of his or her share shall have been realized, except on the withdrawal of such member, according to the rules of such Society then in force.

2. Every such Society so to be established as aforesaid, before any of the rules thereof shall be confirmed in manner hereinafter directed, shall, in one or more of the rules to be registered by the Registrar of the Supreme Court, declare all and every the intents and purposes for which such Society is intended to be established, and shall also, in and by such

(A) Where the rules of a Building Society did not comply with the requirements of this sec., held that they were not proper for registration (*In re Durban Building, &c., Society*, 1 N.L.R. 137).

Formation and powers of Society.

Rules of Society to set forth the purposes for which the Society is formed, and to direct the application of monies.

Loam Clubs  
(Hollenses) See Act 31/04  
62/34 S. 62

rules, direct all and every the uses and purposes to which the money shall from time to time, be subscribed, paid, or given to or for the use or benefit of such Society shall be appropriated and applied, and in what shares and proportions, and under what circumstances, any member of such Society or other person shall become entitled to the same, or any part thereof; provided, that the application thereof shall not, in any wise, be repugnant to the uses, intents, and purposes of such Society, or any of them, so to be declared as aforesaid, and all such rules, during the continuance of the same, shall be complied with and enforced; and the monies so subscribed, paid, or given, or so arising to or for the use or benefit of such Society, or belonging thereto, shall not be divested or misapplied, either by the treasurer, trustee, or any other officer or member of such society, entrusted therewith, under such penalty or forfeiture, as such Society shall by any rule impose or inflict for such offence.

Law 12, 1858.

3. Two transcripts of all rules made in pursuance of this law, signed by three members and countersigned by the secretary, with all convenient speed after the same shall be made, altered, or amended, and so, from time to time, after any making, altering, or amending thereof, shall be submitted to Her Majesty's Attorney General, or to such advocate as he may appoint, for the purpose of ascertaining whether the said rules of such Society, or alteration or amendment thereof, are calculated to carry into effect the intention of the parties framing such rules, alterations, or amendments, and are in conformity to the provisions of this Law. And the said Attorney General or Advocate shall give a certificate on each of the said transcripts that the same are in conformity to law, or point out in what part or parts the said rules are repugnant thereto; and one of such transcripts, when certified by the Attorney General or said Advocate, shall be returned to the Society, and the other shall be transmitted to the Registrar of the Supreme Court; and such transcripts shall be filed by the Registrar of the Supreme Court with the records of the Court in his custody, without fee or reward; and the said Registrar shall endorse on the same the date of filing such transcript, and shall furnish a certificate of such registration to the secretary of such Society. And that all rules, alterations, and amendments thereof, from the time when the same shall have been filed by the said Registrar of the Supreme Court, shall be binding on the several members and officers of the said Society and all other persons having any interest therein; and a copy of such transcript, examined with the registered transcript and proved to be a true copy, shall be received in all Courts in this Colony as evidence of such rules respectively in all cases. Provided always, that there shall be payable to the person perusing the said rules, for his certificate thereon, a fee not exceeding one guinea.

Rules, when made or altered, to be submitted to Attorney-General, &c.

Attorney-General, &c., to certify rules. A copy to be filed by Registrar of Supreme Court.

Fee for certifying rules.

4. In case such Attorney General or Advocate shall refuse to certify all or any of the rules so to be submitted for his perusal and examination, it shall then be lawful for any such Society to submit the same to the Supreme Court, together with the reasons assigned, in writing, by such Attorney General or Advocate, for any such rejection or disapproval of any one or more of such rules; and the said Court shall upon motion, if they think fit, order the Registrar to file the same, notwithstanding such rejection or disapproval.

If Attorney-General, &c., refuse to certify rules, they may be submitted to Supreme Court.

5. It shall and may be lawful to and for any such Society, in and by the rules thereof, to describe the form or forms of transfer, agreement, bond, or other instrument, which may be necessary for carrying the purposes of said Society into execution, and which shall be specified and set forth in a schedule to be annexed to the rules of such Society, duly certified and filed as hereinbefore provided.

Rules may describe forms of transfer, bond, &c.

6. No rule, registered in manner aforesaid, shall be altered, rescinded, or repealed, unless at a general meeting of the members of such Society as

Rules not to be altered except at a general meeting.



**Law 12, 1858.** aforesaid, convened by a written notice, signed by the secretary or president or other principal officer or clerk of such Society, and delivered or transmitted by post to each member, at least seven days previous to such meeting of such Society, to be held next before such general meeting for the purpose of such alteration or repeal, unless a committee of such members shall have been nominated for that purpose at a general meeting of the members of such Society convened in manner aforesaid; in which case such committee shall have the like power to make such alteration or repeal; and unless such alteration or repeal shall be made with the concurrence and approbation of three-fourths of the members of such Society then and there present, or by the like proportion of such committee as aforesaid, if any shall have been nominated for that purpose.

Rules to specify places of meeting, &c.

7. The rules of every Society formed under the authority of this Law shall specify the place or places at which it is intended such Society shall hold its meetings; and shall contain provisions with respect to the powers and duties of the members at large, and of such committees or officers as may be appointed for the management of the affairs of such Society.

Society may appoint officers.

8. Every such Society shall and may from time to time, at any of their usual meetings, or by their committee, if any such shall be appointed for that Society, elect and appoint such person or persons into the office of president, treasurer, trustees, and secretary of such Society, as they shall think proper, and also shall and may, from time to time, elect and appoint such clerks and other officers as shall be deemed necessary to carry into execution the purposes of such Society, for such space of time, and for such purposes, as shall be fixed and established by the rules of such Society, and from time to time to elect and appoint others in the room of those who shall vacate, die, or be removed; and such president, treasurer, trustees, secretary, and all and every other officer, or other person whatever, who shall be appointed to any office in anywise touching or concerning the receipts, management, or expenditure of any sum of money collected for the purpose of any such society, before he, she, or they, shall be admitted to take upon him, her, or them, the execution of any such office or trust, shall become bound in a bond, according to the form prescribed in the schedule to this Act annexed, with two sufficient sureties, for the just and faithful execution of such office or trust, and for rendering a just and true account, according to the rules of such Society, and in all matters lawful to pay obedience to the same, in such penal sum of money as by the major part of such Society, at any such meeting as aforesaid, shall be thought expedient, and to the satisfaction of such Society; and that every such bond to be given by or on the behalf of such president, treasurer, trustees, secretary, or of any other person appointed to any other office or trust, shall be given to the Clerk of the Peace of the county where such Society shall be established, for the time being, without fee or reward; and in case of forfeiture it shall be lawful to sue upon such bond, in the name of the Clerk of the Peace for the time being, for the use of the said Society, fully indemnifying and saving harmless such Clerk of the Peace from all costs and charges in respect of such suit.

Officers to give security.

Bonds to be given to Clerk of the Peace.

Society may elect a committee. Powers and duties of committee.

9. Every such Society shall and may, from time to time, elect and appoint any number of the members of such Society to be a committee, the number thereof to be declared in the rules of every such Society, and shall and may delegate to such committee all or any of the powers given by this law to be executed; who, being so delegated, shall continue to act as such committee for and during such time as they shall be appointed for such Society for general purposes, the powers of such committees being first declared in and by the rules of such Society, registered as in manner hereinbefore directed; and a majority of the members of such committee shall, at all times, be necessary to concur in any act, and such committee shall, in all things

delegated to them, act for and in the name of such Society. Provided always, that the transactions of such committee shall be entered in a book belonging to such Society, and shall be, from time to time, and at all times, subject and liable to the review, allowance, or disallowance, and control of such Society, in such manner and form, as such Society shall, by their general rules, registered as aforesaid, have directed and appointed, or shall, in like manner, direct and appoint. Law 12, 1858.

10. It shall and may be lawful to and for the president, treasurer, or trustees, for the time being, of any such Society, and he, she, and they, is and are, hereby authorised and required, from time to time, by and with the consent of such Society, to be had in such manner as shall be directed by the general rules of such Society, to lay out and dispose of such part of all such sums and money as shall at any time be collected, given, or paid, to and for the beneficial ends and purposes of such Society, as the exigencies of such Society shall not call for the immediate application or expenditure of, either on moveable or immoveable securities, to be approved of as aforesaid, or to invest the same in any of the banks of the Colony, in the name of the president, or trustees, for the time being, and from time to time, with such consent as aforesaid, to alter and transfer such securities, and to make sale thereof, and that all dividends, interests, and proceeds, which shall from time to time arise from the monies so laid out, or invested as aforesaid, shall be applied to and for the use of such Society, according to the rules thereof. Investment of funds of Society.

11. Every person who shall have or receive any part of the monies, effects, or funds, or securities of or belonging to any such Society, or shall in any manner have been or shall be entrusted with the disposal, management, or custody, thereof, or of any securities, books, papers, or property relating to the same, his or her executors and assigns respectively shall, upon demand made or notice in writing given, at last or usual place of residence of such persons, in pursuance of any order of such Society or committee thereof, give in his or her account at the usual meetings of such Society, or to such committee thereof, to be examined and allowed or disallowed by such Society or committee thereof, and shall on the like demand or notice, pay over all the monies remaining in his or her hands, and transfer and deliver all securities and effects, books, papers, and property, standing in his or her name, or being in his or her hands or custody, to the president, treasurer, or trustees, for the time being, or to such other person as such Society or committee thereof shall appoint; and in case of any neglect to deliver such account, or to pay over such monies, or to transfer and deliver securities, and effects, books, papers, and property, in manner aforesaid, it shall and may be lawful to and for every such society, in the name of the secretary thereof, to apply, by motion to the Supreme Court, who shall and may summarily proceed thereon, and make such order therein as to such Court, in their discretion, shall seem just, which order shall be final and conclusive. Persons entrusted with monies, books, &c., of Society, to render account on demand.

12. It shall not be lawful for any such Society, by any rule, at any general meeting or otherwise, to dissolve or determine such Society, so long as the intents, or purposes, declared by such Society, or any of them, remain to be carried into effect, without obtaining the votes of consent of five-sixths in value of the then existing members of such Society, to be ascertained in manner hereinafter mentioned, and also the consent of all persons then entitled to any benefit from such Society, testified under their hands; and for the purpose of ascertaining the votes aforesaid, every member shall be entitled to one vote, and an additional vote for every two shares of which he may be the owner; provided also, that no one member shall have more than five votes in the whole, and in all cases of dissolution, the intended appropriation of the funds or other property of such Society, shall be fairly and distinctly stated in the proposed plan of dissolution, How and when Society may be dissolved.

**Law 12, 1858.** prior to such consent being given; and in the event of such dissolution or misappropriation of the funds of such Society, without the consent thereby declared to be requisite, the president, trustees, or other officer or person aiding or abetting therein, shall be liable to prosecution, as in cases of fraud.

Officers, &c., of Society not responsible for deficiencies beyond the amounts received by them.

13. No president, trustees, treasurer, secretary, or other officer of any Society, registered under this law, shall be liable to make good any deficiency which may arise in the funds of said Society: Provided always, that the president, trustees, treasurer, secretary, and every other officer of any such Society shall be and are hereby declared to be personally responsible and liable for all monies actually received by him, her, or them, on account of, or to and for the use of the said Society: Provided always, that the receipts in writing of the president, or secretary for the time being of such society, for any monies payable to or on account of such Society, shall effectually release the person or persons paying the same, from all claims of such Society for the said monies, both at law and in equity, and discharge the party so paying the same from all obligation of seeing to the application thereof.

Rules to declare whether matters of dispute shall be referred to Resident Magistrate or to arbitrators.

14. Provided always, that provision shall be made by one or more of the rules of such Society, registered as aforesaid, specifying whether a reference of every matter in dispute between any such Society, or any person acting under them, and any individual member thereof, or person claiming on account of any member, shall be made to such Resident Magistrate as may act in and for the county in which such Society may be formed, or to arbitrators to be appointed in manner hereinafter directed; and if the matter so in dispute shall be referred to arbitration, certain arbitrators shall be named and elected at the first meeting of such Society, or general committee thereof, that shall be held after the registration of its rules, none of the said arbitrators being beneficially interested in the funds of the said Society, of whom not less than three shall be chosen by ballot, in each such case of dispute, the number of the said arbitrators being determined by the rules of the Society, their names shall be duly entered in the book in which the rules are entered as aforesaid, and it shall be made lawful to and for the said Society or committee thereof, and they are hereby required to name and elect one or more arbitrator or arbitrators as aforesaid, to act in the place of any arbitrator or arbitrators dying, or refusing or neglecting to act, and whatever award made by majority of the said arbitrators according to the meaning of the rules of such Society, shall be binding and conclusive on all parties, and shall be final, without appeal; and should either of the said parties in dispute refuse or neglect to comply with, or conform to the decision of the said arbitrators, it shall and may be lawful for any Resident Magistrate, upon proof to him of such award having been made, and of the refusal of the party to comply therewith, to summon the person against whom such complaint shall be made, to appear at a time and place to be named in such summons, and upon his or her appearance, or in default thereof, upon due proof of the service of such summons, the said Resident Magistrate may proceed to make such order thereon as to him may seem just; and if the sum of money so awarded, together with the sum adjudged for costs shall not immediately be paid, then such Magistrate shall, by warrant under his hand, cause such sum, and costs as aforesaid, to be levied by distress and sale of the monies, goods, property, securities, and effects belonging to the said party or to the said Society.

Arbitrations.

Matters referred to arbitrators, and not settled by them, may be determined by Magistrate.

15. When the rules of any Society provide for a reference to arbitrators of any matter in dispute, and it shall appear to any Resident Magistrate on the complaint on oath of a member of any such Society, or of any person claiming on account of such member, that application has been made to such society, or to the secretary thereof, for the purpose of having

any dispute so settled by arbitration, and that such application has not, within twenty days, been complied with, or that the arbitrators have declined or refused to make any award, it shall and may be lawful for such Resident Magistrate to summon the trustee, secretary, or other officer of the Society, or any one of them against whom complaint is made, and to hear and determine the matter in dispute, in the same manner as if the rules of the said Society had directed that any matter in dispute, as aforesaid, should be decided by the Resident Magistrate. Law 12, 1858.

16. Every sentence, order, and adjudication of any Resident Magistrate under this Law shall be final and conclusive to all intents, and shall not be subject to appeal or review. Order of Magistrate to be final.

17. No rules of any such Society, or any copy thereof, nor any transfer of any share or shares, shall be subject or liable to or charged with any stamp duty or duties whatsoever. Exemptions from stamp duty.

18. Every such Society, in all actions, suits and legal proceedings, shall sue and be sued in the name of its secretary, and may take mortgage bonds, bills of exchange, and other securities in the name of its secretary. And no such action, suit, or legal proceeding shall abate by reason of the person filling such office dying, or otherwise ceasing to fill that office, but may be continued by his successor in office for the time being; and in case of the person filling such office dying or otherwise ceasing to hold that office, all mortgage bonds, bills of exchange, and other securities formerly executed in his favour, or that of any of his predecessors, shall belong to his successor in office for the time being, and may be put in force, sued upon, and cancelled, and the monies due thereon be received by such successor, without cession or endorsement, as if the same had been originally taken in his name. Society to sue, and be sued, in name of secretary.

19. When and so often as it shall happen that any person seized or possessed of any lands or houses, or in whose name there shall be any bonds, bills, mortgages, or other securities for money standing, being, or existing as trustee for any such Society, shall be absent out of the jurisdiction of the Supreme Court, or shall be an insolvent or lunatic, or it shall be uncertain whether such trustee be living or dead, it shall and may be lawful for the Supreme Court, or one of the Judges thereof, to order the aforesaid lands, bonds, bills, mortgages, or other securities for money to be transferred, paid, or assigned into the name of such person as such Society, or a committee thereof, may appoint; and all such transfers and assignments so made shall be, and are hereby declared to be, valid and effectual to all intents and purposes whatsoever, any Law, Ordinance, or custom to the contrary thereof in anywise notwithstanding. In case of absence, insolvency, &c., of trustee, &c., possessed of effects of Society, Supreme Court may give orders.

20. All Building Societies established prior to the First day of February, 1858, shall be entitled to the protection and benefits of this Law, on their present rules being duly certified and registered as directed by this Law; and no Society shall be entitled to the benefits of this Law until their rules have been so certified and registered. Societies existing prior to 1st Feb., 1858, to come under this Law.

21. This Law shall be deemed a Public Law, and shall be taken notice of as such by all Judges, Justices, Resident Magistrates, and other persons whatsoever, without the same being specially shown or pleaded. This Law a Public Law.

22. This Law shall take effect from and after the promulgation thereof (A). Commencement

SCHEDULE.

*Form of Award.*

We, the major part of the arbitrators, duly appointed by the Society, established at \_\_\_\_\_, in the county of \_\_\_\_\_, do hereby award and order that A. B. Schedule.

(A) April 15, 1858.

BUILDING SOCIETIES.

Law 12, 1858. [specifying by name the party, or the officer of the Society], do on the Schedule. day of , pay to C. D. the sum of

, [or, we do hereby reinstate in, or expel, A. B. from the said Society, as the case may be].

Dated this day of , one thousand eight hundred and

E. F.  
G. H.

Form of Bond.

Know all men by these presents, that we, A. B., of Secretary [or other officer of Society], of the Society, established at , in the County of , and C. D., of , and G. H., of , are jointly and severally held and firmly bound to J. B. R., the present Clerk of the Peace for the County of , in the sum of £ , to be paid to the said J. B. R., or his successor, the Clerk of the Peace of the said County for the time being, or his certain Attorney, for which payment, well and truly to be made, we jointly and severally bind ourselves, and each of us by himself, our, and each of our heirs and executors, firmly by these presents.

Dated the day of , in the year of our Lord

A. B.  
C. D.  
G. H.

Whereas, the above bounden A. B. hath been duly appointed Secretary [or Trustee, &c.], of the Society, established as aforesaid, and he, together with the above bounden C. D. and G. H., have entered into the above written bond, subject to the condition hereinafter contained: Now, therefore, the condition of the above written bond is such, that if the said A. B. shall and do justly and faithfully execute his office of Secretary [or Trustee] of the said Society, established as aforesaid, and shall and do render a just and true account of all monies received and paid by him, and shall and do pay over all the monies 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 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 and faithfully perform and fulfil his office of Secretary [or Trustee, &c.], to the said Society, according to the rules thereof, then the above written bond shall be void and of no effect, otherwise shall be and remain in full force and virtue.

*Natal Building Society  
Act 27/09  
County Permanent B.S.  
Act 34/09*

*For extent of repeal see schedule to Ord. 19/1924.*

BURIAL (A).

*" 11/26 Sec. 2 (1).*

Law No. 26, 1884.

“To provide for the payment of the Funeral Expenses of Paupers and Destitute Persons dying within the limits of a Borough or Township.”

[8th November, 1884.]

WHEREAS it is expedient that the liability for defraying the cost of the burial of paupers and destitute persons dying within the Corporate Boroughs or Townships proclaimed under Law No. 11, of 1881, of this Colony should be declared by Law :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. From and after the coming into effect of this Law whenever any pauper or destitute person shall die within the limits of a Corporate Borough, or of any town or village proclaimed under Law No. 11 of 1881, it shall be the duty of the Corporation, or Local Board, upon the fact of such death being reported to them, to cause the corpse of every pauper or destitute person dying, as aforesaid, to be decently and properly interred, subject to the regulations relating to burials contained in the Borough By-laws, or the By-laws under Clause 28 of Law No. 11 of 1881.

Corporations and Local Boards to bury corpses of paupers or destitute persons.

2. The cost of such interment, as aforesaid, shall be primarily chargeable against the Borough or Township Fund: Provided, however, that the Corporation or Local Board shall be entitled to recover the cost of any such interment from any property which may thereafter appear to be possessed by the deceased person.

Expense chargeable against Borough or Township Fund

3. In case of the refusal or neglect of any Corporation or Local Board to carry out the provisions of this Law, the Resident Magistrate of any such Borough or Township, so refusing or neglecting, may give directions for the burial of any such pauper or destitute person, and all expenses properly connected in and about the burial of any such pauper or destitute person may be recovered from the Corporation or Local Board refusing or neglecting to carry out the provisions of this Law.

If Corporation or Local Board neglect, Magistrate may direct burial.

4. This Law shall not be taken to affect the manner of burial of paupers or destitute persons who at the time of their death shall be inmates of any public Hospital, Gaol, or Lunatic Asylum.

Not to affect burial of inmates of public Hospital, Gaol, or Asylum.

5. This Law shall commence and take effect from and after the promulgation thereof in the “NATAL GOVERNMENT GAZETTE” (B).

Commencement

Law No. 34, 1887.

“To provide for the due interment of servants dying whilst in service, within the limits of any Borough constituted under the Law No. 19, 1872.”

[18th July, 1887.]

WHEREAS it is expedient that the obligation of duly interring servants dying within any Borough should be imposed upon their masters in the first instance :

(A) As to the duties of an undertaker, minister, or others in respect of death certificate before burial, see Law

16, 1867, tit. “REGISTRATION (BIRTHS, &c.)”

(B) Nov. 11, 1884.

## BURIAL.

**Law 34, 1887.**

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof as follows:—

Interment of servant within meaning of Law 2, 1850, dying within the limits of a borough.

1. In the event of the decease, within the limits of any Corporate Borough constituted under the provisions of Law No. 19 of 1872, of any person being a servant within the meaning of Law No. 2, 1850 (A), during the continuance of such servant's contract of service, and whose body may not be claimed within reasonable time by his relatives or friends, the master of such deceased servant shall cause the body to be decently and properly interred in some place within such Borough which shall have been duly set apart as a place of burial under any regulations duly made in that behalf in such Borough.

Cost of burial to be a charge against wages due, or may be recovered from parents.

2. The cost of such interment as aforesaid shall in the first instance be borne by the master of the deceased servant: Provided, however, that if the deceased should have died possessed of any estate, or entitled to any wages, the necessary cost of such interment shall be a charge by the master against any wages so due, and against the estate of such servant, ranking in the usual order of preference accorded to burials: And provided further that if there shall be any parents or natural guardians of such deceased servant, the necessary cost of interment shall be recoverable by the master from such parents or natural guardians.

Commencement

3. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE"(B).

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(A) See tit. "MASTER AND SERVANT." 40, 1894, ss. 17 and 18, tit. "MASTER AND (NATIVE) SERVANTS."  
See also a similar provision for the burial of *Native* servants made by Act (B) Aug. 2, 1887.

## CAPITAL PUNISHMENT.

[See "GAOLS."]

## CARRIERS.

[See also Law 9, 1882, Sec. 19., tit. "RAILWAYS."]

Law No. 11, 1884. (A)

*Rep'd by Act 22, 1916, sec. 1. in  
so far as this law relates  
to Rlys.*

"To make provision for the more effectual protection of Railway Companies, Mail Contractors, and other Common Carriers for Hire, against the Loss of or Injury to Parcels or Packages delivered to them for conveyance, the value and contents of which shall not be declared to them by the owners thereof."

[29th August, 1884.]

WHEREAS by reason of the frequent practice of Bankers and others of sending by Railway, Mail Carts, Wagons, Vans, and other public conveyances by land for hire, parcels and packages containing Money, Bills, Notes, Jewellery, Gold, Precious Stones, and other articles of great value in small compass, much valuable property is rendered liable to depredation, and the responsibility of Railway Companies, Mail Contractors, and other Common Carriers by land for hire is greatly increased:

AND WHEREAS through the frequent omission by persons sending such parcels and packages to notify the value and nature of the contents thereof, so as to enable such Railway Companies, Mail Contractors, and other Common Carriers, by due diligence to protect themselves against losses arising from their legal responsibility, they have become exposed to great and unavoidable risks and have thereby sustained heavy losses:

AND WHEREAS it is expedient to diminish the responsibility of Railway Companies, Mail Contractors, and other Common Carriers for Hire, in respect of the safe custody and carriage of parcels and packages containing articles of great value in small compass:

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. No Railway Company, Mail Contractor, or other Common Carrier by land for Hire, shall be liable for the loss of or injury to any article or articles or property of the description following (that is to say), the current gold or silver coin of this Colony, under the proclamation of "GOVERNMENT GAZETTE," February 14th, 1882, or of any other part of Her Majesty's dominions, or of any foreign state, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks, or timepieces of any description, trinkets, bills, notes, of any Bank in Her Majesty's Dominions, or of any Foreign Bank, orders, notes, or securities for payment of money, whether foreign or otherwise, stamps, maps, writings, title deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks, in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other

No liability for loss of goods over £10 value, unless certain conditions complied with.

(A) Cf. this Law with 11 Geo. 4 &amp; 1 Will. 4, c. 68.



**Law 11, 1884.** materials, furs, lace, ostrich feathers, or any of them, contained in any parcel or package which shall have been delivered, either to be carried for hire or to accompany the person of any passenger in any railway carriage, mail cart, wagon, or other public conveyance, when the value of such article or articles or property aforesaid contained in such parcel or package shall exceed the sum of Ten Pounds sterling, unless at the time of the delivery thereof at the office, warehouse, or receiving house of such Railway Company, Mail Contractor, or other Common Carrier, or to its, his, her, or their clerk, bookkeeper, driver, or other servant, for the purpose of being carried or of accompanying the person of any passenger as aforesaid, the value and nature of such article or articles or property shall have been declared by the person or persons sending or delivering the same, and such increased charge as hereinafter mentioned, or an engagement to pay the same be accepted by the person receiving such parcel or package.

*See also  
Act 10  
Sec. 10(b)*

Increased rate may be charged when value of parcel exceeds £10.

2. When any parcel or package containing any of the articles above specified shall be brought or delivered, and its value and contents declared as aforesaid, and such value shall exceed the sum of Ten Pounds, it shall be lawful for such Railway Company, Mail Contractor, and other Common Carriers, to demand and receive an increased rate of charge, as a compensation for the greater risk and care to be taken for the safe conveyance of such valuable articles; and all such persons sending or delivering to any of the above-named parties, parcels or packages containing such valuable articles as aforesaid, shall be bound by all the conditions of this Law without further notice.

Carriers to give receipts, otherwise not entitled to protection of this Law.

3. When the value shall have been so declared, and the increased rate of charge paid, or an engagement to pay the same shall have been accepted as hereinbefore mentioned, the person receiving such increased rate of charge or accepting such agreement shall, if thereto required, sign a receipt for the package or parcel acknowledging the same to have been insured; and if such receipt shall not be given when required, the Railway Company, Mail Contractor, or other Common Carrier as aforesaid, shall not have or be entitled to any benefit or advantage under this Law, but shall be liable and responsible as at the Common Law, and be liable to refund the increased rate of charge.

Notices not to limit liability of carrier at Common Law.

4. On and from the expiration of one month next after the passing of this Law, no public notice or declaration heretofore made or hereafter to be made, shall be deemed or construed to limit, or in anywise affect the liability at Common Law of any such Railway Company, Mail Contractor, or other Common Carrier as aforesaid, for or in respect of any articles or goods sent or delivered for conveyance by any such Railway Company, Mail Contractor, or other Common Carrier as aforesaid; but all and every such Railway Company, Mail Contractor, or other Common Carrier as aforesaid shall from and after the expiration of the said month be liable as at Common Law, to answer for the loss of or any injury to any articles or goods in respect whereof they may not be entitled to the benefit of this Law, any public notice or declaration by them or any of them respectively made and given contrary thereto, or in anywise limiting such liability, notwithstanding (A).

Every office, &c., to be deemed a receiving house.

5. For the purposes of this Law every office, warehouse, or receiving-house which shall be used or appointed by any Railway Company, Mail Contractor, or other such Common Carrier as aforesaid, for the receiving of parcels or packages to be conveyed as aforesaid, shall be deemed and taken to be the receiving-house, warehouse, or office of such Railway Company, Mail Contractor, or other Common Carrier; and any one or more of such Railway Companies, Mail Contractors, or other Common Carriers, shall be liable to be sued by its, his, her, or their name or names only;

Mode of suing carrier.

(A) As to construction of this sec., see *Lamb v. Sparks*, 11 N.L.R. 102.

and no action or suit commenced to recover damages for loss of or injury to any parcel, packages, or person shall abate for the want of joining any co-proprietor or co-partner in such Railway, Mail, or other Public Conveyance by land for hire as aforesaid (A).

Law 11, 1884.  
 Repealed in 20 for as it relates to Regs (see Stat 22, 1916, sect. 1)

This Law not to affect special contracts.

6. Nothing in this Law contained shall extend or be construed to annul or in anywise to affect any special contract between any such Railway Company, Mail Contractor, or other Common Carrier, and any other parties for the conveyance of goods and merchandises; but no such special contract shall be binding upon or affect any such party unless the same be signed by him or by the person sending or delivering such goods and merchandises, as the case may be.

In case of loss, extra rate charged to be refunded, in addition to value of parcel.

7. Where any parcel or package shall have been delivered at any such office, warehouse, or receiving-house, or into the possession of one or other of the above-named parties, and the value and contents declared as aforesaid, and the increased rate of charges been paid, and such parcels or packages shall have been lost or damaged, the party entitled to recover damages in respect of such loss or damage shall also be entitled to recover back such increased charges so paid as aforesaid, in addition to the value of such parcel or package.

Carrier not protected against felonious act or neglect of servant.

8. Nothing in this Law shall be deemed to protect any Railway Company, Mail Contractor, or other Common Carrier for hire from liability to answer for loss or injury to any goods or articles whatsoever arising from the felonious acts of any guard, porter, bookkeeper, driver, or other servant in its, his, her, or their employ, nor to protect any such guard, porter, bookkeeper, driver, or other servant from liability for any loss or injury occasioned by his, her, or their own personal neglect or misconduct.

Value to be proved by party suing.

9. Such Railway Companies, Mail Contractors, or other Common Carriers for hire shall not be concluded as to the value of any such parcel or package by the value so declared as aforesaid, but shall in all cases be entitled to require from any party suing in respect of any loss or injury proof of the actual value of the contents by the ordinary legal evidence, and shall be liable to such damages only as shall be so proved as aforesaid, not exceeding the declared value, together with the increased charge as hereinbefore mentioned.

10. [Repealed by Law No. 5, 1891.]

11. In all actions to be brought against any such Railway Company, Mail Contractor, or other Common Carrier by land for hire as aforesaid, for the loss of or injury to any goods delivered to be carried, whether the value of such goods shall have been declared or not, it shall be lawful for the defendant or defendants to pay money into court in the same manner and with the same effect as money may be paid into Court in any other action.

Defendant may pay money into Court in action under this Law as in any other action.

12. This Law shall come into operation and effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE," and may be cited for all purposes as "The Carrier Law, 1884" (B).

Commencement and short title.

**Law No. 5, 1891.**

"To amend the Carriers' Law, No. 11 of 1884."

[16th July, 1891.]

WHEREAS it is expedient to repeal Section 10 of the "Carriers' Law No. 11 of 1884":

(A) As to construction of this sec., see *Lamb v. Sparks*, 11 N.L.R. 102. (B) Sept. 2, 1884.

Law 5, 1891.

BE IT THEREFORE ENACTED by the Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows:—

Repeal of Sec. 10, Law 11, 1884.

1. The Section 10 of the "Carriers' Law No. 11 of 1884," shall be and the same is hereby repealed: Provided that this repeal shall not affect the past operation of the section hereby repealed, or the liability of any person to be sued thereunder in respect of anything done or liability incurred under the provisions of the section hereby repealed.

*Provision in this Law relat<sup>d</sup> to  
Rlys has been rep<sup>d</sup>  
by Act 22, 1916, sect: 1*

§ Law No. 21, 1891.

"To regulate the liability of Railway Companies and other Common Carriers in respect of the loss of, or injury to horses, cattle, and other animals delivered to them for carriage."

[19th August, 1891.]

BE IT ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. In this Law:

Interpretation.

"Carrier" shall include the Natal Government Railways, or any other Railway Company and other Common Carriers.  
"Cattle" shall include bull, cow, ox, heifer, and calf.

Limitation of carrier's liability for injury to certain animals.

2. No carrier to whom any of the animals hereinafter mentioned shall be delivered for carriage shall be liable by reason of the loss of, or injury done to, any such animals beyond the sums hereinafter mentioned, that is to say:— (a)

*Extended by act - 22  
1910 - sec. 10 (a)*

For any horse—Fifteen Pounds  
For any cattle—Seven Pounds per head  
For any ass or mule—Ten Pounds

*See also Act - 21  
1910 S. 10*

For any sheep, goat, pig, or dog—Twelve Shillings and Sixpence,

Unless higher values be declared and increased rate agreed to.

Unless the person sending or delivering the same to such Carrier shall, at the time of such delivery, have in writing declared them to be respectively of higher value than as above mentioned, and such increased charge as is hereinafter mentioned shall, in addition to the ordinary rate of charge, have been paid, or have been agreed to be paid to, and such engagement to pay shall have been accepted by, the Carrier.

Increased charge when value of animal declared.

3. When any animal shall be delivered to a Carrier for carriage, and the value shall be declared as aforesaid, and shall exceed the sum mentioned in the preceding section in respect of each animal, it shall be lawful for the Carrier to demand, and receive an increased charge as compensation for the greater risk and care thereby occasioned. Such increased rate of charge shall be notified by some notice affixed in legible characters in some conspicuous part of the office, warehouse, or other receiving place where such animals as aforesaid are received by the Carrier for the purpose of conveyance, stating the increased rates of charge required to be paid over and above the ordinary rate of carriage as a compensation for the greater risk and care to be taken for the safe conveyance of such animals, and all persons sending any such animals shall be bound by such notice without proof that the same shall have come to their knowledge: Provided always, however, that the liability of a Carrier shall in no case exceed the amounts following, that is to say:—

Notice of increased rate.

Extreme limit of carriers' liability.

				£
Horses and Mares	...	...	...	250
Bulls	...	...	...	150
Cows	...	...	...	50
Rams	...	...	...	100
Ewes	...	...	...	50
Goats	...	...	...	50
Jackasses, imported	...	...	...	100

4. When the value shall have been so declared, and the increased rate of charge paid, or an engagement to pay the same shall have been accepted, the Carrier shall, if thereto required, sign a receipt for the animal acknowledging the same to have been so received; and if such receipt shall not be given when required, the Carrier as aforesaid, shall not have or be entitled to any benefit or advantage under this Law, but shall be liable and responsible as at Common Law.

Law 21, 1891.  
Carrier to give receipt for animal received at special rate, or to be liable as at Common Law.

5. Nothing in this Law shall be deemed to dispense with the obligation devolving upon any person claiming damages for the loss of or injury to any animal to prove the value of such animal or the amount of injury done.

Obligation of plaintiff to prove extent of injury.

## CATTLE.

[See "ANIMALS"; "BRANDS"; "CRIMINAL LAW"; "POUNDS"; "PUBLIC HEALTH."]

## CATTLE STEALING.

[See "CRIMINAL LAW."]

*Rep. by act of 1910 - Act of Monson*

Law No. 34, 1880.

“To provide for taking a Census of the Population of the Colony of Natal.”

[30th December, 1880.]

WHEREAS it is expedient that provision should be made for taking a Census of the Colony:

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Governor to cause a census to be taken,

1. It shall be lawful for the Governor, as soon as may be, to cause a Census to be taken of the population, lands, live stock, and produce of this Colony (A).

And to appoint enumerators.

2. The Governor shall appoint by Notice in the “GOVERNMENT GAZETTE,” one or more fit and proper persons to act as enumerators in each Ward for the purpose of collecting the information required, and shall also appoint such Central Board as may be necessary for the due collection and classification of the information acquired.

Who to be enumerator of inmates of Gaol, Hospital, &c.

3. The Superintendent or Keeper of every Gaol, and the Manager or Master of every Hospital or Lunatic Asylum, shall be the enumerator of the inmates thereof.

Particulars of information to be collected and duties of enumerators, &c., to be announced by Governor.

4. The Governor shall announce and make known, by a Proclamation in the “NATAL GOVERNMENT GAZETTE,” the nature and particulars of the information to be collected by the enumerators appointed as aforesaid, and the duties to be discharged by such enumerators, and by the inhabitants of the Colony respectively, and shall specify the forms of the returns to be made, and all other matters necessary for the due carrying into effect of this Law.

Governor to fix day for taking census.

5. The Governor shall, in such Proclamation, name some certain day as the day in regard to which the number of persons then in this Colony, and all other particulars necessary for the purposes of the Census, are, as accurately as circumstances will permit, to be ascertained.

Town Councils, &c., to aid in taking census.

6. It shall be the duty of the Town Councils of the Boroughs of Pietermaritzburg and Durban (and of any Local Boards which may hereafter be established) to aid, as far as is in their power, in the taking of the said Census, by supplying such information as they may be able to afford, and by performing such duties as shall by any such Proclamation be assigned to them.

Householders and occupiers of land to furnish information.

7. Every householder and every occupier of land residing in the Colony of Natal, on the day to be hereafter fixed for taking the Census, shall be required to furnish the information specified in the Proclamation to be issued by the Governor as aforesaid.

Duties of enumerators.

8. The enumerators appointed as aforesaid shall, upon the day proclaimed for taking the Census, proceed to receive or take an account in writing of the number of persons who were within the limits of their respective districts on the night preceding the day so fixed by Proclamation, and to inform themselves of the several particulars required by the said Proclamation.

Blank forms to be distributed by Resident Magistrates.

9. In order to facilitate the collection of the information required as aforesaid, the several Resident Magistrates shall cause to be distributed blank forms of returns, in English or Dutch, at least seven days before the day appointed for taking the Census, to every householder and occupier of land within their respective Counties or Divisions, for the purpose of

(A) This Law is referred to as the authority for an *annual* census.

the same being filled in on the morning of the day appointed for taking the Census, and being delivered to the enumerators when called for.

Law 34, 1880.

10. The said enumerators are hereby authorised and empowered to ask such questions of the persons residing or being within their respective districts, concerning all matters and things as shall enable the said enumerators to obtain the information required by the Governor in terms of the Proclamation issued as aforesaid; and every such person refusing or neglecting to answer, or wilfully giving a false answer to any such question, or wilfully furnishing a false return, shall, for every such refusal or neglect, or false answer or return, forfeit and pay a sum not exceeding Five Pounds, with the costs of prosecution, at the discretion of the Resident Magistrate before whom complaint thereof shall be made.

Powers of enumerators.

Penalty for refusing to answer or giving false answer to question.

11. Every enumerator appointed as aforesaid, making wilful default in any of the matters required of him by this Law, or making any wilfully false statement, shall for every such wilful default or false statement forfeit a sum not exceeding Fifteen Pounds.

Penalty for default of enumerator.

12. All fines imposed by this Law may be sued for by the Attorney-General or the Clerks of the Peace, and shall be recoverable in a summary manner before a Resident Magistrate, and when recovered shall be paid into the Colonial Treasury.

Penalties, how recovered and appropriated.

13. This Law shall commence and take effect from and after the date of the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A).

Commencement

*Act F. 1900.*

## CESSION OF ACTION.

[See "CONTRIBUTION AND INDEMNITY."]

## CHARTERS.

[See "PARLIAMENT."]

## CHEMISTS.

[See "MEDICAL PRACTITIONERS."]

## CHILDREN (PROTECTION OF).

*Act 38, 1907.*  
[See "DESTITUTE PERSONS," "CRIMINAL LAW."]

(A) Jan. 11, 1881.

*Church Properties Act 9/10*

CIVIL SERVICE.

*Rep. by act 29/1912  
etc. 46.  
see sub-sec. (4) of sec. 45)*

CIVIL SERVICE.

[See "PUBLIC EMPLOYEES." See also The Zululand Annexation Act, 37, 1897, s. 8, tit. "ZULULAND."]

*For amendments  
See Act 9/10/1.*

Law No. 7, 1890. <sup>(a)</sup>

"To establish a Public Service Guarantee Fund."

[28th May, 1890.]

WHEREAS it is expedient to make provision by law for the establishment of a Guarantee Fund in security for the fidelity of officers of the Public Service of the Colony :

BE IT THEREFORE ENACTED, by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Bond Board to fix amount of security to be given by each public officer.

1. It shall be the duty of the Bond Board to fix and determine the amount of security to be given by the holder of every office in the Public Service of the Colony of Natal involving the receipt, custody, or payment of public money, or the receipt, issue, or custody of stamps, and to frame a schedule for the guidance of public officers, showing the amount so fixed in respect of such offices, and from time to time to amend such schedule as circumstances may require.

Creation of Public Service Guarantee Fund.

2. In order to provide proper security for the faithful and punctual discharge of the duties of the holders of offices from whom security is required, and to enable the practice heretofore followed of obtaining the guarantee of private persons, or of a public company to be discontinued, a fund shall be created to be styled the "Public Service Guarantee Fund," which shall provide such security for all persons who shall contribute thereto under the provisions of this Law.

Moneys to be lodged in Treasury.

3. All contributions or other moneys payable to the said fund shall be lodged in the Treasury, and shall be accounted for by the Colonial Treasurer.

Deductions to be made from salary of officer who has not previously contributed to fund.

4. Whenever any person who has not previously contributed to the Public Service Guarantee Fund, in respect of any appointment previously held by him, is appointed to any office in the Public Service of the Colony, the holder of which is required to give security, a deduction of one-eighth per cent. on the amount for which he is required to give security shall be made on account of such fund from the first payment of salary in respect of such office, and such person shall thereafter annually contribute to such fund at the rate of one-eighth per cent. on such amount.

Contributions by officer hereafter appointed who has contributed in respect of an office previously held.

5. Should any person hereafter appointed to any such office have contributed to such fund in respect of an office previously held by him, then, in case the amount of security required in respect of his new office shall be either less than or equal to that required in respect of such former office, he shall contribute to such fund at the rate of one-eighth per cent. per annum on the amount of security required in respect of such new office, and such contribution shall accrue from the termination of the period for which he shall have already contributed, or if such period shall have already terminated, then from the date of his entering on the discharge of the duties of such new office; and in case the amount of security required in respect of his new office shall be greater than that required in respect of his former office, a deduction at the rate of one-eighth per cent. on the increase in the amount for which the security is required shall be made

on account of such fund from the first payment of salary in respect of such new office, and such person shall thereafter annually contribute to such fund at the rate of one-eighth per cent. on such higher amount of security: Provided that if the period for which he shall have previously contributed shall not have expired, a portion of such previous contribution, proportionate to such unexpired period, shall be deducted from the first contribution required by this section.

Law 7, 1890.

6. Any person who at the time of taking effect of this Law, holds an office in respect of which security has been given, shall from and after the First day of January, 1891, contribute to the said fund as if then first appointed to such office, and on his so doing his sureties shall be relieved from all responsibility in respect of his subsequent transactions: Provided that any person may, should he desire, so contribute at any time before that date.

Officer who has given security to contribute after 1st Jan., 1891, as if then first appointed.

7. Every person who, at the date of the taking effect of this Law, holds an office in the public service of the Colony in respect of which, in the opinion of the Bond Board, security should be given, but who has not been required to give, or if so required, has not given, any security, shall contribute to the Public Service Guarantee Fund, as if he had been first appointed to such office at such date.

Contribution where security is required but not previously given.

8. In respect of every first contribution to the said fund, an amount proportionate to the period between the date from which it commences to accrue, and the First day of January next ensuing shall be deducted from the first payment of salary payable to the holder of the office in respect of which security is given, and thereafter the annual contribution shall be payable in advance, on the 1st day of January in each year, and shall be deducted from the payment of salary for the month of January, and should any deduction not be made as prescribed in this Law, the amount shall be forthwith recovered from the person in default.

Apportionment of first contribution.

Subsequent annual contributions.

9. Should any person who has become a contributor to the Public Service Guarantee Fund cause any pecuniary loss to the public revenue of the Colony, by reason of any wrongful act or omission, the amount of such loss shall be charged against such person, and shall, as far as possible, be recovered from him, in such manner as the Governor may direct; and in case the amount recovered shall be insufficient to cover such loss, it shall be lawful for the Colonial Treasurer, on being authorised so to do by warrant from the Governor of the Colony, to pay out of the aforesaid fund such sum as shall be sufficient to make good the amount of loss sustained by the said revenue, not exceeding, however, the amount for which security was given by the defaulter: Provided that if any amount be subsequently recovered from such defaulter, such amount shall be applied (firstly) to make good the deficiency, if any, still remaining due to the Revenue; and (secondly) to the re-imbusement of such fund.

Recovery of pecuniary loss to revenue caused by contributor.

*see Act 9/05  
Part 2*

10. It shall be lawful for the Governor to cause interest to be paid from and out of the public revenue, at the rate of four per cent. per annum, on the uninvested balance at the close of each financial year to the credit of the fund in the books of the Colonial Treasurer, and such interest shall be placed to the credit of the fund.

Interest on uninvested balance of fund

11. It shall be lawful for the Governor, on the recommendation of the Colonial Treasurer, to cause to be invested any portion of the balance to the credit of the fund, in Government debentures or stock, and to sell any such debentures or stock which may have been previously purchased.

Investment of balance of fund.

12. A statement of all moneys received and disbursed under the provisions of this Law and of all investments and sales under the provisions of the last preceding section, shall be laid before the Legislative Council annually (A).

Statement of moneys received and disbursed.

(A) See Law 14, 1893, s. 41, tit. "PARLIAMENT."



Law 7, 1890.

Quinquennial  
statement to be  
laid before  
Legislative  
Council.

*Rep. by act*

*9/1912 see 76  
at see see 48*

13. At the end of every period of five years, the first period being reckoned from the taking effect of this Law, a complete statement of all moneys received and disbursed under the provisions of this Law, and of the position of the Public Service Guarantee Fund, together with all such further particulars connected therewith, as may be required for a full investigation into the working and condition of the said fund, shall be prepared by the Colonial Treasurer and laid before the Legislative Council (A) during the first session after the expiration of every such period.

Act No. 21, 1894. <sup>(B)</sup>  
X

"To Organize and Regulate the Civil Service of Natal."

[16th July, 1894.]

WHEREAS it is expedient to organize and regulate the Civil Service of Natal, to establish therein an equitable and uniform system of appointment to and removal from office, to regulate leave of absence, and retiring allowance, and to make other provisions for the regulation of the Service:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

Short title.

Interpretation.

1. The short title of this Act shall be the "Civil Service Act, 1894."
2. In the construction of this Act, the terms within inverted commas shall have the meanings set against them respectively unless inconsistent with, or repugnant to, the context, viz:—

"Civil Service" or "Service." The body of persons, other than Judges of the Supreme Court, who have been heretofore appointed and regarded as members of the permanent Civil Service of the Colony, and all persons who may become members of such permanent Civil Service in terms of this Act.

"Officer." Any member of the Civil Service.

"Minister." The responsible Minister of the Crown presiding over a Ministerial Department.

"Ministerial Department." Any department of the Government presided over by a Minister, embracing any number of departments.

"Department." Any separate branch of the public service included in a Ministerial Department.

"Head of Department." The Under Secretary or Chief Assistant of a Ministerial Department, the Chief Officer of any Department, or any other Officer whom the Governor may rank as a Head of department.

"The Board." The Civil Service Board appointed under this Act.

#### PART I.—CIVIL SERVICE BOARD.

Civil Service  
Board.

3. The Governor in Council shall appoint five persons to be a Civil Service Board for performing the duties hereinafter mentioned. Three members shall form a quorum. One member shall retire annually, and shall be eligible for re-appointment.

(A) See Law 14, 1893, s. 41, tit. "PARLIAMENT."

4. The Board shall, within thirty days after being appointed, and afterwards annually in the month of January, elect a Chairman, who shall be the medium of communication with the Minister, and in the absence of the Chairman from any meeting, the members present may elect one of their number to preside. The Chairman shall, in case of equality of votes, have in addition to his ordinary vote, a second or casting vote. The Board shall meet at least twice in each month, and shall cause minutes of the meetings to be kept by its Secretary, who shall be appointed by the Governor in Council.

Act 21, 1894.  
Chairman of Board.

5. Whenever any vacancy shall occur on the Board through the retirement, insolvency, removal, death, or resignation of any member, or by his absence from its meetings for three consecutive months without leave obtained, the Governor in Council shall fill up such vacancy.

Vacancies on Board.

6. Heads of Departments shall transmit to the Board annually a return showing the number of officers in their departments, and also of persons temporarily employed therein, and the salaries received by them respectively, and shall specify all periods of absence, and the causes thereof, and such returns shall be preserved as a permanent record for reference in considering claims for promotion.

Returns to be furnished to Board.

7. When any vacancy shall occur the Board shall take into consideration whether the vacant office should be continued in the class determined by the salary of the late occupant, and if the Board shall consider that the office had been ranked in a higher class than was required by the nature of the duties to be performed, they shall report the vacancy as one in a lower class, and such power of re-classification when a vacancy occurs may be exercised by the Governor in Council on the express recommendation of the Minister. It shall also be competent for the Board to recommend that the vacancy be filled by an appointment in a higher class than that held by the late occupant.

Classification of offices by Board.

8. It shall be lawful for any Minister to at any time refer to the Board such question as he may think fit connected with the administration of the Civil Service in the matter of appointment, promotion, salary, or inquiry, or other questions connected with the efficiency and welfare of such Service, and it shall be the duty of the Board to report for the consideration of the Government on every question so referred, and it shall have power and authority to take evidence and to call for and obtain papers.

Questions for decision by Board.

PART II.—APPOINTMENTS.

9. [Repealed by Act No. 25, 1898.]

10. Every candidate for admission to the Service shall make his application in writing to the Board, which shall record the name, age, place of birth, and residence of each candidate.

Applications.

11. [Repealed by Act. No. 25, 1898.]

12. [Repealed by Act No. 25, 1898.]

13. In any special case if the Minister shall deem it expedient to secure the services of some person who is not in the Service, but who is specially qualified by professional or special attainments or experience, the Governor in Council on a recommendation, under the Minister's hand specifying the grounds thereof and the reasons for dispensing with examination or probationary service, may appoint such person without either examination or probation and without regard to age; and the Board shall in its annual report specify all such appointments and the reasons assigned therefor.

Special exceptions from probationary service.

14. Official lists of candidates who have passed the Civil Service Examination shall be kept by the Board.

Lists of candidates.

CIVIL SERVICE.

Act 21, 1894.  
Appointments.

15. All appointments to the Civil Service shall be made by the Governor in Council. Whenever it becomes necessary to admit a person into the Civil Service, the Board shall be called upon to submit from the official list of candidates the names of the three persons best fitted, in the Board's opinion, to fill the vacant office, and the Governor in Council shall thereupon appoint, upon probation, one of the three persons whose names have been submitted by the Board. The person so selected shall not be placed on the fixed establishment of the Civil Service until he shall have served on probation for a period of at least six months, and until he shall have satisfied the Ministerial Head of his department of his fitness to be permanently employed in that department, and that his conduct and diligence during probation have been uniformly satisfactory.

Period of probation.

22/10/1911

Certain appointments under control of Ministers.

16. [Repealed by Act No. 25, 1898.]

17. The Ministerial Head of a department may, subject to the necessary votes in an Act of Supply, appoint such of the officers and persons named in the Schedule of this Act as are required for the efficient working of his department. Such appointments shall be terminable by the Minister on one month's notice, or such shorter notice as may be required by the terms of the appointments.

Civil service officers to be subject to six months' notice.

18. With the exception of the officers mentioned in the Schedule to this Act who hold their appointments subject to one month's notice, every Civil Servant receiving his first appointment in the Service after the date of coming into effect of this Act shall be deemed to hold office subject to six months' notice, and may be removed therefrom at any time upon six months' notice being given him by order of the Governor in Council.

19. Any officer on the fixed establishment of the Civil Service who may desire to resign his appointment shall be required to give such notice, not exceeding six months, of his intention so to do, as the Ministerial Head of his Department may require, and any such officer leaving the Service without having given such notice shall forfeit such sum not exceeding six months' salary as the Governor in Council may determine. An officer resigning his appointment before reaching the age at which he is eligible to retire on pension shall forfeit all deductions from his salary which may have been made in terms of Clause 31 of this Act. Such officer shall also forfeit all claim to pension, unless such resignation is consequent upon ill health permanently unfitting the officer for further service, evidence whereof must be supported by medical certificate to the satisfaction of the Government.

See: 1/6 except 20 much as relates to pension rights  
if new provision  
See Act 44/09

Ref. Act 7/23 § 102

PART III.—SUSPENSION AND DISMISSAL.

Causes for which officers may be suspended.

20. If in the opinion of the Minister, or of any officer by him duly authorised to investigate any matters or accounts, any officer shall have been guilty of an act or omission which appears to him to justify suspension, or be reported to have been guilty of dishonourable conduct, or to be addicted to excessive use of intoxicants or stupefying drugs, or shall appear unfit for his post in the Civil Service, such officer may be immediately suspended from his office by the Minister, or by the officer appointed by him pending a report, and another officer may be temporarily appointed to perform his duties. In the event of such suspension not being made by the Minister, the officer making such suspension shall immediately lay before the Minister a report stating his reasons for such suspension, and the Minister may either confirm the same or restore such officer to his office.

Act 29/1912

Dismissal; Reduction; Reprimand.

21. If the Minister order or confirm the suspension of any officer, he shall report the same to the Governor, who may call on the officer

for explanation. On receiving the officer's explanation, the Governor in Council may remove the suspension or, according to the nature of the offence, may dismiss such officer from the Service, or call upon him to resign as an alternative to dismissal, or may reduce him to a lower class in the Service, or to a lower salary within his class, or deprive him of such future annual increase as he would otherwise have been entitled to receive, or of any part thereof during any special time, or may reprimand him. Any officer dismissed or resigning as aforesaid, shall forfeit all deductions from his salary which may have been made in terms of Clause 31 of this Act. The Governor in Council may before deciding any such matter direct the Board, or may appoint one or more persons, to inquire into the case, and the Board or such person shall have authority to receive evidence and shall transmit a report, together with the evidence taken, to the Minister, to be laid before the Governor in Council for final decision: Provided that nothing in this section contained shall prejudice the right competent under the 54th Section of the Constitution Act of 1893 (A) to any Civil Servant who shall have been in the public service of the Colony at the date of the commencement of that Act.

Act 21, 1894.

22. If any officer be convicted of any serious crime or infamous offence he shall be summarily dismissed, and if he become bankrupt or apply to take the benefit of any Act now or hereafter in force for the relief of insolvent debtors, or make an assignment for the benefit of his creditors, he shall be deemed to have forfeited his office: Provided, however, that if such officer prove to the satisfaction of the Governor in Council that his pecuniary embarrassment has not been caused or attended by any fraud, extravagance, or dishonourable conduct, the Governor in Council may reinstate such officer.

Summary dismissal for criminal conduct.  
Bankruptcy.

23. An officer acquitted on a criminal charge is not thereby rendered exempt from suspension on account of his conduct in the matter; and the usual proceedings for suspension may be taken notwithstanding such acquittal.

Suspension not barred by acquittal.

24. If the suspension of any officer be confirmed by the Governor in Council and such officer be dismissed from the service or called upon to resign, he shall not be entitled to any salary or other emolument of office during the time of such suspension, but if sufficient grounds for consideration be shown the Governor may authorise an amount to be paid to him or his family not exceeding one-half of such salary and emoluments as would otherwise have been payable to him during the duration of such suspension.

Forfeiture of salary during period of suspension.

PART IV.—LEAVE OF ABSENCE: HOLIDAYS.

25. Every officer shall be entitled without diminution of salary to leave of absence for three weeks in each year at such time as the Minister may on the recommendation of the Head of the Department deem convenient. If any officer shall not take such leave in any year, he shall be entitled to it in any subsequent year in addition to the leave for such year, but no such accumulated leave shall exceed three months.

Yearly leave of absence.

Accumulated leave.

26. In addition to the leave specified in the foregoing section, the Governor in Council may, subject to the exigencies of the Service, grant to any officer of six years' service leave of absence not exceeding three months upon half salary, or six weeks upon full salary; and in respect of each period of six years' service leave may be granted to that extent, but leave under this section may not accumulate for more than twelve months upon half salary, or six months upon full salary. The Governor in Council may make Regulations to govern the leave of absence to be

Added leave.  
£. 7. 463 - 09  
" 235 - 08

Long leave in special cases.

(A) Law 14, 1893, tit. "PARLIAMENT."

CIVIL SERVICE.

Act 21, 1894.

Sick leave.

granted to officers, such as medical superintendents of Hospitals or Asylums, and others, whose duties are of a special character, and as such entitle those officers to special consideration in the matter of long leave.

27. In cases of illness or other pressing necessity, the Governor may, on the recommendation of the Minister, grant to any officer leave of absence not exceeding three months on full or any less salary as may be deemed fit, and may renew such leave on the same or other terms. In all cases of illness the request for leave or for renewal thereof shall be accompanied by a medical certificate to the satisfaction of the Minister. In cases of pressing necessity the circumstances must be stated to the Minister in writing, and if such leave shall extend to one month such officer shall forfeit his right to his next ordinary annual leave or any portion thereof as provided in Section 25.

Public holidays.

28. All holidays under Law No. 15, 1862 (A), and any other day which shall be proclaimed by the Governor as a holiday, shall be observed as holidays in the public offices: Provided that any Minister may require any department to be kept open in the public interest for the whole or any portion of such holiday, and may require the attendance of any officers of such department, but such officers shall be entitled to a day's holiday in lieu thereof.

Probationary officers not entitled to leave.

29. No officer serving on probation with a view to being placed on the fixed establishment of the Civil Service shall be granted the vacation leave mentioned in Section 25.

PART V.—SUPERANNUATION.

Who are officers within the Pension Law.

30. Officers within the meaning of this Act shall be deemed to be officers of the public service within the meaning of Law No. 22, 1874 (B). For the purposes of superannuation, officers of the permanent staff of the Legislative Council (other than the President), and Legislative Assembly (other than the Speaker), shall be deemed to be officers within the meaning of this Act. In the cases of officers who, at the time of the passing of this Act, are not officers of the Permanent Civil Establishment, it shall be competent for the Governor in Council to bring such officers within the provisions of this Act, subject to future monthly deductions from their salaries, and also subject to Rules and Regulations providing for some equitable money payment or other equitable adjustment in respect of past services, the salaries for which were fixed on the condition that the recipients were not entitled to pension.

Deduction of 3 per cent. from salaries.

31. A monthly deduction at the rate of Three Pounds per centum per annum shall be made from the salary of every officer who shall receive his first appointment on the fixed establishment of the Civil Service after the commencement of this Act. All sums so deducted shall be paid into the Treasury to the credit of the general revenue.

Refund to officer retired upon notice.

32. When the services of any officer are dispensed with in consequence of notice being given in terms of Clause 18 of this Act, he shall be entitled to receive a refund of the whole sum of the deductions from his salary under Clause 31 of this Act, with compound interest at the rate of four per centum per annum, together with such further sum, if any, which the Governor in Council may see fit to authorise as a gratuity to such officer. In no case, however, shall such gratuity exceed the amount of the refund made to him in terms of this section.

Retirement before ten years service.

33. The limit of ten years appointed by Section 3 of Law No. 22, 1874, shall not apply in the case of officers contributing towards superannuation who may be compelled by permanent illness or disablement to retire from the Service within ten years of the date of their first appointment.

(A) See "HOLIDAYS (PUBLIC)."

(B) See "PENSIONS."

34. If any officer shall be killed or die from bodily injury received without his own default in the active discharge of his public duty, the Governor in Council may grant to the widow or children or at his discretion to any other relations of such officer an allowance not exceeding one year's salary. If any officer shall die while in the public service, the Governor in Council may grant to his widow or children, or other relative dependent on such officer, or to such persons as the Governor in Council may direct in trust on her and their behalf, a gratuity not exceeding two months' pay at his then rate of salary for each year of service, and not exceeding in the whole one year's salary. In either of the cases mentioned in this section there shall be added to the gratuities respectively the whole amount of the deductions made from the officer's salary under Section 31 of this Act. It shall be lawful for the Governor in Council to increase the gratuities up to two years' salary in consideration of special or long service rendered by the deceased officer, or of any circumstances meriting special consideration. In the case of the death, while in the service of the Government, of an officer holding an appointment specified in the Schedule to this Act, the Governor in Council may grant to the widow or children, or to such persons as the Governor in Council may direct in her or their behalf, a gratuity not exceeding one month's pay at his then rate of salary for each year of service, and not exceeding in the whole six months' salary.

Act 21, 1894.

Allowance to relations of officers killed in discharge of duty.

Return of deduction under Sec. 31.

Death of officers mentioned in schedule.

PART VI.—RULES, ETC.

35. The Governor in Council may from time to time make and alter Rules concerning the examination of candidates for admission to the Civil Service, the manner in which the members of the Civil Service Board shall retire, and the transaction of business by such Board, the duties to be performed and the hours to be observed by officers of the Civil Service, and the discipline to be observed in the performance of such duties, the classification of officers, and all such matters as are necessary for the carrying into effect of this Act and for the proper control of the Civil Service. The Governor in Council may make Rules for defining the offices, duties, appointments, and determination thereof of all the officers and persons enumerated in the Schedule of this Act, and Rules relating to discipline, leave of absence, and all matters whatsoever in connection with such offices. All such Rules shall be published in the "NATAL GOVERNMENT GAZETTE."

Rules, 223-94  
 § 12. 522-09  
 15-09  
 190-10  
 (Number) 1153-11

36. All notices of appointments, retirement, and removal of officers of the public service shall be published in the "NATAL GOVERNMENT GAZETTE," and every such notice shall be conclusive evidence of every such appointment, retirement, or removal respectively.

Notification of appointments, &c.

*Repealed by act 29/1912 - sec. 46*

SCHEDULE (A).

- Sheep Inspectors ;
- Field Cornets ;
- Extra Lockers, and Watchmen in the Customs Department ;
- Messengers, Attendants, or Servants attached to Government Departments or in any Government employment, or attached to Hospitals, Asylums, and the like ;
- Gunpowder Officers and Caretakers ;
- Letter Carriers and Extra Sorters of the Postal Department ;
- Temporary assistants employed in the public service ; employees of any department whose salaries are not specially voted by any Act of Supply.

(A) See sec. 34.

CIVIL SERVICE.

Act No. 26, 1897.

*repealed Act 16/1902*  
"To amend the Pension Law, No. 22, of 1874."

[29th May, 1897.]

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

1. In the case of an officer of the Civil Service over the age of fifty years, whose faculties have become impaired, or whose retirement may be otherwise desirable in the interests of the Public Service, it shall be lawful for the Governor in Council to require him to retire on a pension calculated under the Schedule to Law No. 22, 1874.

Certain officers over fifty years of age may be retired on pension.

*55.  
Compensation 650*

Act No. 25, 1898. <sup>(B)</sup>

*See Act-43/01.*

"To amend the Civil Service Act, 1894."

[15th August, 1898.]

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

1. The Department of Education shall be deemed to be, and to have been, a Department of the Civil Service of this Colony within the meaning of the Civil Service Act, 1894 (hereinafter referred to as the principal Act), and all members thereof, whether appointed before or after the date of the passing of this Act, holding offices of a permanent nature in the exclusive service of the Government, and whose salaries are paid from the general revenue, shall be entitled to the benefits of the principal Act, subject to the payment of the contributions appointed by the 30th and 31st Sections thereof: Provided that nothing herein shall be deemed to require any such payment to be made by any officer of the Department of Education who was a member of the Civil Service at the date of the commencement of the principal Act, or to take away any rights acquired before the passing of this Act (A).

Department of Education declared to be a department of the Civil Service.

2. Any person who shall have passed an examination prescribed or approved by the Minister of Education may, upon the recommendation of the Minister of Education, be appointed by the Governor in Council to any office in the Department of Education without being required to pass the examination provided for by Section 6 of this Act.

Appointment of officers in Department of Education.

3. The title of Superintending Inspector of Schools shall be altered to that of Superintendent of Education, and the title of Assistant Inspector of Schools shall be altered to that of Inspector of Schools.

Superintendent of Education: Inspector of Schools.

4. Sections 9, 11, 12, and 16 of the principal Act are hereby repealed.

Repeals.

5. No person shall be accepted as a candidate for the Civil Service of the Colony unless

Qualifications of candidates for Civil Service.

- (a) He is over sixteen and under twenty-five years of age: Provided that this Sub-section shall not apply to the Departments of the Post and Telegraph and any other special branch of the Civil Service, to be determined by rules made under the Act, and that for Departments so set apart candidates may be accepted between the ages of fourteen and twenty-five years.

(A) For Education Act see Act 5, 1894, tit. "EDUCATION."

(b) He is free from any physical defect or disease which would be likely to interfere with the proper discharge of his duties. Act 25, 1898.

(c) He is of good character and free from any legal disability :

Provided that any person who has been employed in the permanent Civil Service, and whose services have been dispensed with by reason of the reduction of establishments, may be re-employed without reference to the provisions of this section : Provided also that any person who was, at the time of the passing of the principal Act in the service of the Government, shall be eligible for an appointment in the permanent Civil Service without reference to the provisions of this section.

6. No person shall be admitted as a member of the Civil Service until he shall have attained the age of seventeen years, and, save as is in this Act and the principal Act otherwise specially provided, no person shall be so admitted unless

Qualifications for admission as members of Civil Service.

(a) He is under the age of twenty-five years ; and

(b) He shall, by examination held as hereinafter provided, satisfy the examiners of his fitness to hold office in the Civil Service, or shall produce satisfactory proof of having passed some public examination approved by rules made under the principal Act as a sufficient test of qualification.

7. The Governor shall appoint examiners to conduct the examination of candidates. Examinations shall take place not less than once in each year, and shall be of such character and be conducted in such manner as the rules shall prescribe. The examiners shall report the result to the Government in such form as may be directed by the rules.

Examination of candidates.

8. With the exception of the Departments of the Post and Telegraph and the Department of Education and such other special branches of the Service as may be determined by regulations, the Civil Service shall, for the purposes of appointments, promotion, transfer and general administration, be considered as one Service, and save as aforesaid, every person serving therein shall be liable at any time to be transferred or removed by the Governor in Council from one office or department to another, and from one station to another, on promotion or otherwise whenever the interests of the Service may require it: Provided that the foregoing exception shall not apply to any person who, having been admitted as a member of the Civil Service under the provisions of Section 10 of this Act, shall, before attaining the age of twenty-five years, have passed an examination as provided in Sub-section (b) of Section 6 of this Act: And provided also that nothing in this section shall be construed to affect or lessen the rights, status, or privileges of any person who may be a member of the Civil Service at the time of the passing of this Act.

Civil Service to be considered as one service, with certain exceptions.

*Regno. for custom  
G. N. 574/06*

9. Any officer of the Civil Service who may be transferred or removed from one office, department, or station to another, shall, unless such transfer be made at his own request, be paid the travelling expenses of himself and family in accordance with the scale in force for the time being. No person, unless disrated in manner provided in Part III. of the principal Act, shall be transferred without his own consent to an office of a lower grade or one to which a lower salary, inclusive of house rent, but exclusive of local allowances, is attached.

Removal allowances.

Officer not to be transferred to lower office unless disrated.

10. The Governor in Council may make and alter regulations for the acceptance, training, and payment of candidates for the Post and Telegraph Departments, and any other such special branch of the Civil Service as aforesaid, and such regulations may prescribe special examinations for the admission of candidates as members of any such department or branch of the Civil Service (A).

Governor may make special regulations for certain departments.

(A) See Laws 22, 1884, and 8, 1890, tit. "POST OFFICE," which empower the Governor to make regulations for the conduct and guidance of officers of the Postal and Telegraph Departments respectively.



Act 25, 1898.  
Special leave to  
volunteers.

11. The rules made under the principal Act may amongst other things provide for the granting of special leave to officers of the public service who are members of the Volunteer Force, for the purpose of enabling them to attend encampments, military service, or training, and such leave shall not be counted as leave of absence within the meaning of Part IV. of the said Act.

*Act 43, 1901, Amendment Act*

## CLERKS OF THE PEACE.

[See "CRIMINAL LAW."]

## COLLIERIES.

[See "MINES AND COLLIERIES."]

*Commencement of Oaths Act 13/1904*

## COMMON LAW.

[See "ROMAN-DUTCH LAW."]

*Common Law Act 35, 1904*

## COMMUNITY OF GOODS.

## Ordinance No. 1, 1856 (A).

“To grant to certain natural born subjects of Great Britain and Ireland, resident in this District, the right to dispose, by Last Will and Testament, of their real and personal property, according to the law of England.”

[15th January, 1856.]

WHEREAS it is expedient to exempt persons settled in this District, being natural born subjects of the United Kingdom of Great Britain and Ireland, from the operation of the laws in force in this District (B) relating to testamentary dispositions of property, both real and personal, and also to make provision for exempting such natural born subjects of the United Kingdom of Great Britain and Ireland from the said law in cases of marriage contracted within this District:—

BE IT THEREFORE ENACTED, by the Acting Lieutenant Governor of the District of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. Any natural born subject of Great Britain and Ireland (C), resident within this District, may exercise all and singular the rights which such natural born subject could or might exercise according to the laws and customs of England, in regard to the disposal, by last will or testament, of property, both real and personal, situated in this District, to all intents and purposes as if such natural born subject resided in England.

Natural born subjects of the Queen may dispose of property by will, according to the Law of England.

2. Any such natural born subject as aforesaid, who has contracted marriage prior to the passing of this Ordinance, either in this District or in the Colony of the Cape of Good Hope, and resident in this District, may reserve to himself the rights extended to natural born subjects of the United Kingdom of Great Britain and Ireland by this Ordinance; provided that the parties to such marriage shall duly and jointly execute, before a notary public in this District, a deed, testifying their consent to such natural born subject exercising all and singular the rights possessed by such natural born subject as to the disposal, according to the laws and customs of England, by last will and testament, of property, both real and personal, situated in this District.

If married in Cape Colony or Natal prior to date of this Ordinance, joint deed to be executed by the spouses.

3. Any natural born subject as aforesaid, who shall, after the passing of this Ordinance, enter into marriage within this District, shall not be entitled to exercise the rights aforesaid, or any of them, unless, previous to the solemnization of such marriage, the parties thereto shall by contract, in writing, jointly executed (D), agree to reserve to such natural born subject, notwithstanding the solemnization of such marriage, the exercise of the rights contained in the first section.

Ante-nuptial contract required by those who marry after date of this Ordinance.

4. In every case in which any natural born subject of Great Britain and Ireland shall contract marriage in this District, without having duly executed the ante-nuptial contract mentioned in the last preceding section of this Ordinance, his property, both real and personal, in this District, shall be administered and divided according to the law in force within this District (E).

Without which, property to be administered according to Roman Dutch Law.

(A) See also this Ord. under tit. “WILLS.”

(B) See tit. “ROMAN-DUTCH LAW.”

(C) See definition in s. 8, post.

(D) See definition in s. 8, post.

(E) See Law 22, 1863, and amending Laws, post. See also Act 38, 1899, s. 58, tit. “INTESTATE ESTATES.”

Ord. 1, 1856.

Persons married in Great Britain may devise according to law of England.

Repeal of conflicting laws.

Present Law not to affect community of goods between spouses during their life.

Definition of terms.

Contracts may be registered Commencement

5. Any such natural born subject, having lawfully contracted marriage in the United Kingdom of Great Britain and Ireland, may, if resident in this District, by will or testament, dispose of or devise property within this District, both real and personal, in the same way as under the laws and customs of England they could or might do if resident in England.

6. Any law now in force, contrary to the provisions of this Ordinance shall be and the same is hereby repealed.

7. Provided that nothing in this Ordinance contained shall be construed as in any wise affecting, or altering, the law in force in this District, in respect to the community of goods, between spouses married in community of goods, or in respect of the rights, privileges, and powers of such spouses respectively so named in community of goods, or as to the joint estate of such spouses, during their life.

8. The words "contract in writing jointly executed," shall mean and be taken to mean any contract duly signed and executed before any Notary Public, or in the presence of two witnesses, by the spouses or the intended spouses, duly assisted, if need be, by their curators or guardians: and the words "natural born subjects of Great Britain and Ireland," shall mean and be taken to mean all subjects of Her Majesty the Queen where-soever born.

9. Every such contract may be registered by the Registrar of Deeds.

10. This Ordinance shall commence and take effect from the date of the publication thereof in the "GOVERNMENT GAZETTE"(A).

Law No. 22, 1863.

*ee Law. 14/82  
Date No. 2/25  
(Natal.)*

"To prevent Community of Goods attaching to certain Marriages, and to enable the Spouses of such Marriages to devise their properties."

[3rd August, 1863.]

WHEREAS it is expedient to exempt certain spouses from the laws in force in Natal relating to community of goods, and relating to testamentary disposition of property, and to make provision for wives in cases of death and intestacy of the husbands, and to enable persons married in South Africa to avail themselves of the provisions thereof:

BE IT ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

This Law not to affect instrument regulating ownership of property save where otherwise provided.

1. Nothing in this Law contained, save where otherwise expressly provided, shall operate in contravention of any provision of any instrument in writing, wherever executed, so far as the same would, if this Law had not been passed, have been effectual to regulate or control the ownership of, or right to, or interest in, any property.

*ct*  
*18*  
Community of goods not to exist between parties married out of South Africa;

2. Community of goods, or any of the liabilities or privileges resulting therefrom, shall not attach to, or exist between, or be deemed to have attached to, or existed between, any spouses who have been or shall be married elsewhere than in South Africa, unless such spouses shall, by an instrument in writing, signed by each of them in the presence of two persons, who shall subscribe thereto as witnesses, express their wish to be exempt from the provisions of this Law, and such instrument shall be registered with the Registrar of Deeds within six months after execution thereof, the person requiring such registry, paying therefor and thereupon the fee of one pound sterling.

*89/23*  
*18/2/26*  
but such spouses may exempt themselves from this Law.

*47/3-1 s.103*

(A) 22nd Jan., 1856.

3(A). None of the restrictions upon or against devising property hereinafter specified, shall affect any person's power of disposing, by will or codicil, of his or her property, whether such person has been or shall be married out of South Africa, or shall not have been married: that is to say, the law of legitimate portion, including therein the Trebellian or Falcidian portion, the law in respect of second and other subsequent marriages known as the "lex hac edictali," or any other law of similiar nature, or any omission to name an heir: Provided always, that the foregoing provisions of this section shall only apply to the wills or codicils of persons who shall be alive when this Law shall come into operation (B).

Law 22, 1868.

Certain impediments against power of devising removed

Legitimate portion.

Trebellian or Falcidian portion.  
"Lex hac edictali."

Every person married out of South Africa and domiciled in Natal may dispose of all property by will.

4. Every married person domiciled in the Colony of Natal, and whose marriage has been celebrated in some place not in South Africa, may devise, bequeath, or dispose of, by his or her will or codicil, all property, moveable or immoveable, situate or being in the Colony of Natal, which he or she shall or may be entitled to at the time of his or her death; and which, if not devised, would have devolved on his or her heirs, or would be administered as his or her estate.

Rights of wife on death of husband intestate where community of goods excluded.

Repealed by  
A. 12/34 s. 1/3

5. When the husband of any such marriage, from which community of goods is excluded by the provisions of this Law, shall die intestate and leave his wife him surviving, then, in any such case, the wife so surviving her husband shall be entitled to receive and have one-half of the property, moveable and immoveable, belonging to her deceased husband (C); but in case there shall be lawful issue of her husband, him surviving, then, in any such case, the wife so surviving shall be entitled to receive and have one-third of the property, moveable and immoveable, belonging to her deceased husband.

Earnings of the spouses, to whom they belong.

6. Property heretofore or hereafter acquired by the labour, care, skill, or diligence, and ordinarily known as earnings of the spouses, or either of them, during the continuance of the marriage, shall, if such spouses come under the provisions of this law, be deemed to be the property of the husband, subject to any liability in respect of debts which would have existed if this law had not been passed: Provided always, that this section shall not apply to any such earnings as shall be acquired during the continuance of a separatio bonorum, or of any malicious desertion of the wife by the husband, but any such earnings acquired as aforesaid by the wife shall belong to, and be the property of, the wife, unaffected by any rights of the husband or his creditors: Provided, also, that nothing herein contained shall affect the liability of the husband to maintain his wife: Provided, also, that any such spouses may at any time, by an instrument in writing, signed by each such spouse in the presence of two persons, who shall subscribe thereto as witnesses, make any other arrangement than that by this section provided, in respect of such earnings, or any part thereof; and so, from time to time, may, in like manner, vary any such arrangements, not however being enabled by any such arrangements to exempt from liability to debts any property which otherwise would have been liable thereto.

7. This Law shall extend to any marriage already had, or to be had, before or after the passing of this Law in Natal, or elsewhere in South Africa, if the spouses (D) of such marriage shall, by an instrument in writing (E), signed by each of them in the presence of two persons,

How spouses married in South Africa may bring their marriage within the provisions of this law. *See La 14/82 See A. 47*

(A) See this sec. interpreted in *Laughton's Estate, in re*, 5 N.L.R. 129. See also *Holman, in re*, 5 N.L.R. 235, and Law 7, 1885, tit. "WILLS."

(B) Law 17, 1871, post, adds the words "or who shall be born after the commencement of this Law."

(C) This sec. applies to all cases dealt with by the Law, including those mentioned in sec. 2; see *Curley's Estate*, 7 N.L.R. 79.

(D) See Law 14, 1882, s. 1, post.

(E) See Law 14, 1882, s. 2, post.

**Law 22, 1863.** who shall subscribe their names as witnesses thereto, express and signify their wish, desire, or intention, to be brought within the provisions of this Law; and such instrument in writing shall be capable of being registered by the Registrar of Deeds, and upon every such registration there shall be paid by the person requiring the same to be registered a fee of one pound sterling, and no more; and such instrument shall not be binding if not registered in the Registrar of Deeds' Office within six months after execution (A): Provided always, that the previous execution of any deed, or other instrument, under the Law No. 1, 1856, shall not affect the power hereby expressed to be given (B).

Definition of words "South Africa."

8. The words "South Africa" shall be taken to mean and include any place or territory in South Africa, being to the southward of the twenty-fifth degree of south latitude.

Law not to apply to certain marriages.

9. This Law shall not apply to any marriage which shall have been dissolved by death or otherwise before the Law shall be in operation.

Commencement

10. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (C).

**Law No. 17, 1871.** *See Law. 14/1882*

"To amend the Third Section of Law No. 22, 1863, entitled a Law 'To prevent Community of Goods attaching to certain Marriages, and to enable the Spouses of such marriages to devise their properties.'"

[29th November, 1871.]

WHEREAS, in the proviso to the 3rd Section of Law No. 22, 1863, it is enacted that certain provisions of said section, from which it was intended to exclude the wills or codicils of persons deceased before the coming into operation of the said Law, "shall only apply to the wills or codicils of persons who shall be alive" when said Law came into operation: And whereas the words of said proviso do not correctly express such intention, and it is expedient to amend the said section accordingly, and to declare the true intent and meaning thereof as aforesaid:

BE IT ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Addition to Sec. 3, Law 22, 1863.

1. The following words shall be added, and shall be deemed to have been included at the date of its enactment, to the Third Section of Law No. 22, 1863, that is to say:

"or who shall be born after the commencement of this Law," and the said recited section of the said Law No. 22, 1863, is hereby amended accordingly.

Commencement

2. This Law shall take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (D).

(A) This does not mean not binding on third parties merely, but that it is void as regards the spouses; see *Trustees of B. Sturrock v. Ewors. Test. Estate, J. T. Sturrock*, 18 N.L.R. 253.

(B) A post-nuptial contract executed under the provisions of this sec. dissolved the community, but made no

division of the property. Per Tumbull, J.—such contract vests the property of the spouses in the husband. Per Gallwey, C. J.—the question of what is a fair division is one proper for judicial decision (*Doran v. Doran*, 13 N.L.R. 29).

(C) Aug. 11, 1863.

(D) Dec. 5, 1871.

## Law No. 14, 1882.

“To amend the Law No. 22 of 1863, entitled ‘Law to prevent Community of Goods attaching to certain marriages, and to enable the Spouses of such Marriages to devise their Properties.’ ”

[4th September, 1882.]

WHEREAS it is expedient to extend the provisions of the Law No. 22 of 1863, and to solve certain doubts in reference thereto :

BE IT THEREFORE ENACTED by the Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows :—

1. The Law No. 22 of 1863, entitled “Law to prevent Community of Goods attaching to certain Marriages, and to enable the Spouses of such Marriages to devise their Properties,” shall extend to any marriage already had or to be had in Natal, or elsewhere in South Africa, if the intended spouses, duly assisted if need be by their curators or guardians, by an instrument in writing or antenuptial contract signed by each of them, in the presence of two persons, who shall subscribe their names as witnesses thereto, shall have already expressed and signified, or shall hereafter express and signify, their wish, desire, or intention that the marriage about to be solemnised between them shall be brought within the provisions of the said Law.

Law 22, 1863,  
may be ex-  
tended to  
any marriage  
solemnized in  
South Africa.

*See A. 47/37 d. 11*

2. The instrument in writing mentioned in Section 7 of the said Law No. 22 of 1863 shall include and mean any such instrument in writing as shall already have been, or may hereafter be, executed by the spouses of the marriages therein mentioned at any time during the existence of any such marriage.

Definition of  
term “instru-  
ment in writ-  
ing.”

3. This Law shall be read and construed together with the Laws No. 22 of 1863 and No. 17 of 1871 as one Law, and shall commence and take effect from and after the date of the publication thereof in the “GOVERNMENT GAZETTE”(A).

Construction  
and commence-  
ment.

(A) Sept. 5, 1882.

## COMPANIES (JOINT STOCK).

[See "BANKERS," "COMPANIES (WINDING UP)."]

## Law No. 10, 1864.

"To limit the liability of Members of certain Joint Stock Companies."

[16th September, 1864.]

WHEREAS it is expedient to enable members of certain Joint Stock Companies to limit the liability for the debts and engagements of such companies to which they are, or may be, subject :

BE IT ENACTED, by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows :

Meaning of  
"Joint Stock  
Company."

1. The term "Joint Stock Company" in this law shall mean every partnership whereof the capital is divided, or agreed to be divided, into shares, and so as to be transferable without the express consent of all the partners ; and also every partnership which at its formation, or by subsequent admission, shall consist of more than ten members : Provided, however, that nothing in this Law contained shall apply to any joint stock company formed for the purpose of banking.

Not to apply to  
banks.

Conditions  
upon which  
Joint Stock  
Companies may  
obtain a certifi-  
cate of registra-  
tion with  
limited liability.

2. Any joint stock company may obtain a certificate of registration with limited liability, from the Registrar of Deeds of the Colony, upon complying with the conditions following ; that is to say :—

1. The directors, or provisional directors, shall in their application to the Registrar of Deeds for such registration, state that such company is to be formed with limited liability.
2. The word "limited" shall be the last word of the name of the company.
3. The deed of settlement shall contain a statement to the effect that the company is formed with limited liability.
4. The deed of settlement shall be executed by shareholders, not less than ten in number, holding shares to the amount in the aggregate of not less than three-fourths of the nominal capital of the company, and there shall have been paid up by each of such shareholders on account of his shares, not less than five pounds per centum (A).
5. The payment of the above per centage shall be acknowledged in, or endorsed on, the deed of settlement, and the fact of the same having been bona fide so paid, shall be verified by a declaration of the directors, or provisional directors, or any two of them, made before a Justice of the Peace, and a true copy of such deed of settlement and of the names of all the persons who shall at the time the company applies for a certificate of registration with limited liability hold shares in the company, with their places of residence and the number of shares held by each, attested as such true copy by a declaration of the directors or provisional directors, or any two of them, made before a Justice of the Peace, shall be lodged with the Registrar of Deeds to be kept by him for future reference.

(A) As to meaning of words "paid-up," see *Re Zuurberg G.M. Co.*, 7 N.L.R. 191.

And upon such conditions being complied with, and such other matters and things done, the Registrar of Deeds shall grant a certificate of registration with limited liability to any such company. Law 10, 1864.

3. Any joint stock company, except as aforesaid (A), already established, may obtain a certificate of registration, with limited liability, in manner and subject to the conditions following, that is to say:—The directors of such company may—with the consent of not less than three-fourths in number and value of its shareholders who may be present personally, or by proxy (where proxies are allowed by the deed of settlement), at any general meeting summoned for that purpose, by a notice of not less than six weeks in the “GOVERNMENT GAZETTE” and in some one or more papers published at the place, or if there is no paper published thereat, in some one or more papers published in the town or village nearest to the place where the business of such company is carried on—make such alteration in the name, the amount of capital paid up, and in the deed of settlement of the company generally, as may be necessary for enabling it to comply with the conditions hereinbefore mentioned with respect to joint stock companies seeking to obtain certificates of registration with limited liability; and upon compliance with such conditions the Registrar of Deeds shall grant to such company, by its new name, a certificate of registration, with limited liability, and thereupon all privileges and obligations hereby attached to companies with limited liability, their shareholders, directors, and officers, shall attach to the company named in such certificate, its shareholders, directors, and officers.

Conditions upon which Joint Stock Companies already established may obtain certificates.

4. Every company that has obtained a certificate of registration with limited liability, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraved in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, cheques, orders for money, bills of parcels, invoices, receipts, letters, and other writings used in the transaction of the business of the company.

Company having obtained certificate to keep its name painted outside place of business, and mentioned in all notices and advertisements

5. If such company do not paint or affix, and keep painted or affixed, its name in the manner aforesaid, each of the directors thereof shall be liable to a penalty not exceeding five pounds, for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and if any director or other officer of the company, or any person on its behalf, use any seal purporting to be a seal of the company, whereon its name is not so engraved as aforesaid, or issue, or authorize the issue of any notice, advertisement, or other official publication of such company, or of any bill of exchange, promissory note, cheque, order for money, bill of parcels, invoice, receipt, letter, or other writing used in the transaction of the business of the company, wherein its name is not mentioned in the manner aforesaid, he shall be liable to a penalty of twenty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money, for the amount thereof, unless the same shall be duly paid by the company.

Penalties for default.

6. No increase to be made in the nominal capital of any company that has obtained a certificate of registration with limited liability shall be advertised or otherwise treated as part of the capital of such company until it has been registered with the Registrar of Deeds; and no such registration shall be made unless a deed is produced to the Registrar,

Every increase of nominal capital to be registered.

(A) See proviso to sec. 1.



**Law 10, 1864.** executed by shareholders holding shares to the amount in the aggregate of at least three-fourths of the proposed increased capital of the company, nor unless it is proved to the Registrar by such acknowledgment and declaration as hereinafter mentioned, that upon each of such shares there has been paid up by the holder thereof an amount of not less than five pounds per centum; and if any such increase of capital as aforesaid be advertised or otherwise treated as part of the capital of the company before the same has been so registered, every director of such company shall incur a penalty of fifty pounds; and the payment of the above percentage shall be acknowledged in, or endorsed on the deed so produced, and the fact of the same having been bona fide so paid shall be verified by a declaration of the directors, or any two of them, made before a Justice of the Peace.

Penalty for failure.

Copy of every new or supplementary deed of settlement to be transmitted to the Registrar of Deeds.

Return of transfers of shares.

7. Within one month after the date of any new or supplementary deed of settlement which may at any time or times during the continuance of any joint stock company which has obtained a certificate of registration with limited liability under this law, there shall be transmitted by the directors of every such company to the Registrar of Deeds a true copy of such new or supplementary deed of settlement, attested as such true copy in the manner aforesaid, and to be kept for future reference as aforesaid. And in the months of January and July in every year the directors of every such joint stock company which has obtained a certificate of registration with limited liability shall make or cause to be made the following return to the Registrar of Deeds, namely:

A return according to the schedule hereunto annexed, and containing the particulars therein set forth of every transfer of any share in such company which shall have been made in the share transfer list or book kept by the said company since the preceding half-yearly return, or, in the case of the first of such returns made by such company, since the registration thereof as aforesaid by the Registrar of Deeds, and also of the changes in the names of all shareholders of such company whose names shall have been changed by marriage or otherwise since the last preceding half-yearly return, or since the registration of the company by the Registrar of Deeds, as the case may be (A).

Penalty for failure.

Return to be made to Resident Magistrate in any other county but Pietermaritzburg.

Penalty.

And if within any such period any such return be not made, then every director of such company shall be liable to a fine not exceeding twenty pounds: Provided that if any joint stock company which has obtained its certificate as aforesaid shall have its chief place of business in any county or division of the Colony other than Pietermaritzburg and the county or division thereof, then a true copy of the aforesaid return, attested as such true copy in the manner aforesaid, shall, besides being transmitted to the Registrar of Deeds, be transmitted to the Resident Magistrate of such county or division; and, in case such return shall not be transmitted in the months aforesaid, every director of the company so failing to make such return shall be liable to a fine not exceeding twenty pounds (B).

Any party to a transfer of share may request directors to make return forthwith.

Any person may inspect or request certified copy of returns, deeds, and registers on payment of a fee.

8. If at any time any party to a transfer of a share request in writing the directors of any such company to make a return thereof, then forthwith on such request the directors shall make the same accordingly: Provided, however, that the directors may require the party making such request to defray any expense they may be put to in making the return aforesaid.

9. Every person shall be at liberty to inspect the returns, deeds, registers, and indexes which shall be made to or kept by the said Registrar

(A) These returns are not now required; see Act 3, 1896, post. (B) See note (A).

of Deeds and Resident Magistrates in pursuance of the provisions of this Law; and there shall be paid for such inspection such fees as may from time to time be appointed by the Lieutenant Governor, with the advice and consent of the Executive Council, in that behalf, not exceeding one shilling for each such inspection; and any person shall be at liberty to require a copy or extract of any such return or deed, to be certified by the said Registrar of Deeds; and there shall be paid for such certified copy or extract such fee as the Lieutenant Governor, with the advice and consent of the Executive Council, may from time to time appoint in that behalf, not exceeding ninepence for each folio of such copy or extract; and that in all courts of the Colony every such copy or extract, so certified, shall be received in evidence, without proof of the signature thereto or of the seal of office affixed thereto.

Law 10, 1864.

10. Every company shall, on being registered or on receiving a certificate of registration with limited liability, pay to the Registrar of Deeds the following sums (A):

Fees to be paid to Registrar of Deeds by companies registered.

When the nominal capital shall be five thousand pounds or under, the sum of ten pounds.

*g. N. 424. 1884*  
*Rep. by Act 30. 19*  
*sec. 1. Union fr. 1*

When the nominal capital shall be above five thousand and not exceeding twenty thousand pounds, the sum of twenty pounds.

When the nominal capital shall be above twenty thousand pounds, the sum of thirty pounds.

11. The members of any joint stock company which has so obtained a certificate of registration with limited liability, after such certificate is granted, shall not be liable (any Law to the contrary notwithstanding) under any judgment, decree, or order which shall be obtained against such company, or for any debt or engagement of such company, further or otherwise than is hereinafter provided.

Members of registered Joint Stock Companies not to be liable, except as herein provided.

12. If any execution or other process in the nature of execution shall have been issued against the property or effects of any shareholder for the time being, and there cannot be found sufficient whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any former holder or holders of the shares held by such shareholder for the time being for such amount as such shareholder for the time being shall have failed to pay in satisfaction of the execution or other process in the nature of execution issued: Provided, however, that nothing herein contained shall be taken to render any such former holder or holders of shares aforesaid liable for any larger amount than he or they would have been liable for under the provisions of this Law if he or they had been, at the time of the issuing of such execution or other process in the nature of execution, the holder or holders of such shares: Provided, also, that in the case of execution against any former shareholder, such shareholder shall have been a shareholder at the time when such contract or engagement for which such judgment, decree, or order may have been obtained was entered into, or became a shareholder during the time such contract or engagement was unexecuted or unsatisfied, or was a shareholder at the time of the judgment, decree, or order being obtained: Provided further, that in no case shall execution be issued on such judgment, decree, or order against the person, property, or effects of any such former shareholder, after the expiration of two years next after the return of the transfer of the shares of the person or persons sought to be charged shall have been made to the Registrar of Deeds, as provided in sections seven and eight of this Law.

Former shareholders in some cases liable to execution.

Must have been shareholders at date of contract, sued upon, or while it was unsatisfied.

Not liable after 2 years from return of transfer of shares.

(A) As to annual licenses, see Act 43, 1898, Sched. II., tit. "REVENUE."

**Law 10, 1864.**

Directors paying dividends after insolvency of company liable severally for all debts of company, but not beyond amount of dividend.

13. If the directors of any such company shall declare and pay any dividend when the company is known by them to be insolvent, or any dividend the payment of which would to their knowledge render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall thereafter be contracted, so long as they shall respectively continue in office: Provided that the amount for which they shall be so liable shall not exceed the amount of such dividend, and that if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall file their objection, in writing, with the clerk of the company, they shall be exempted from the said liability.

Note to company not to be considered as payment of money due on share.

14. No note or obligation given by any shareholder to the company whereof he is a shareholder, whether secured by any pledge or otherwise, shall be considered as payment of any money due from him on any share held by him.

Registration of existing companies not to affect liabilities previously incurred.

15. Where any company established previous to the taking effect of this Law shall obtain a certificate of registration with limited liability, the grant of such certificate shall not prejudice or affect any right which previously to the grant of such certificate has accrued to any creditor or other person against the company in its corporate capacity, or against any person then being, or having been, a member of such company, but every such creditor or other person shall be entitled to all such remedies against the company in its corporate capacity, and against every person then being or having been a member of such company, as he would have been entitled to in case such certificate had not been obtained.

Nor change of name under this Law.

16. No alteration made by virtue of this Law in the name of any company shall prejudice or affect any right which previously to such alteration has accrued to such company as against any other company or person, or which has accrued to any other company or person as against such company. But every such company as against any other company or person, and every other company or person as against such company, and the members thereof shall be entitled to all such remedies as they or he would have been entitled to if no such alteration had been made, and no such alteration shall abate or render defective any legal proceeding pending at the time when such alteration is made.

Short title.

17. This Law may be cited for all purposes as "The Joint Stock Companies' Limited Liability Law, 1864."

Commencement

18. This Law shall commence and take effect on and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A).

SCHEDULE [see Sections 7 and 8 (B)].

*Return made pursuant to the "Joint Stock Companies' Limited Liability Law, 1864."*

Transfer of Shares.

Name of the Company.	Business or Purpose.	Place (or principal place if more than one) of Business.	Name and Place of abode of Person by whom Transfer is made.	Name and Place of Abode of Person to whom Transfer is made.	Distinctive Number of Shares transferred.	Date of Transfer.

(A) Oct. 4, 1864.

(B) See Act 3, 1896, post.

Return made pursuant to the "Joint Stock Companies' Limited Liability Law of 1864." Law 10, 1864.

Shareholders whose names have become changed by marriage or otherwise.

Former Name.	Former Place of Abode.	Present Name.	Present Place of Abode.	Distinctive Number of Shares.

Date.....

Signature.....

**Law No. 18, 1865.**

*By A 46/26*  
*S 230*

"To amend the Law No. 10 of 1864, entitled 'Law to limit the Liability to Members of certain Joint Stock Companies.'"

[24th August, 1865.]

WHEREAS it is expedient to amend the said Law, and to make provision for the levying or enforcing execution, or other process in the nature of an execution, against the property or effects of any Joint Stock Company registered under the "Joint Stock Companies' Limited Liability Law, 1864 :"

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. If any execution, or other process in the nature of an execution, shall be issued against the property or effects of any company registered or to be registered under the "Joint Stock Companies' Limited Liability Law, 1864," and if there cannot be found sufficient whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any of the shareholders to the extent of the portions of their shares respectively in the capital of the company not then paid up ; but no shareholder shall be liable to pay, in satisfaction of any one or more such execution or other process, a greater sum than shall be equal to the portion of his shares not paid up : Provided always that no such execution shall issue against any shareholder except upon an order of the Court, or of a judge of the Court in which the action, suit or other proceeding shall have been brought or instituted ; and such Court or judge may order execution to issue accordingly, with the reasonable costs of such application and execution, to be taxed by the taxing officer of the said Court ; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution at all reasonable times to inspect the register of shareholders without fee.

Execution may issue against property of shareholders to the extent of their unpaid-up shares.

Order of Court required.

2. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE"(A).

Commencement

(A) Aug. 29, 1865.

## Law No. 19, 1893.

By  $\$46/24$   
S 230

“To amend Law No. 10 of 1864, entitled ‘Law to limit the liability of Members of certain Joint Stock Companies.’”

[16th September, 1893.]

BE IT ENACTED by the Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows:—

Shares issued as fully-paid for certain valuable considerations, to be considered as actually fully paid.

Contract to be made and filed.

Liability of directors and others in respect of shares stated to be fully paid which are not so.

Proviso.

Requirements in regard to share certificates.

1. If any Company registered with limited liability at the date of the coming into force of this Law shall heretofore have issued, or shall hereafter issue, shares as being fully paid up in exchange for or 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, such shares shall be considered to be actually fully paid up, and shall entail no further responsibility or liability upon the members to whom they have been or may be issued, or upon subsequent holders, than would have been entailed upon them if the shares had been actually fully paid up in cash: Provided, that in case of Companies to be hereafter registered, then every share in any such Company 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 of Deeds, at or before the issue of such share; and, further, unless such share in terms of such contract be issued in exchange for or 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, 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 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 Law, when, as a fact, the whole amount of such share has not been paid in cash, shall be liable to make good to the bona 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

- (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 Sterling in respect of each certificate so issued or signed.

**Law 19, 1893.**  
Penalty.

2. This Law may be cited as the Joint Stock Companies' Amendment Law, and shall be read and construed together with the Laws No. 10 of 1864 and No. 18, 1865.

Short title.  
Construction.

**Act No. 3, 1896.**

"To amend the Joint Stock Companies' Limited Liability Law, 1864."

*By A 46/26*  
*S 230*

[23rd May, 1896.]

WHEREAS it is expedient to amend "The Joint Stock Companies' Limited Liability Law, 1864":

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. So much of Section 7 of "The Joint Stock Companies' Limited Liability Law, 1864," as required the making of returns to the Registrar of Deeds and Resident Magistrates of the transfer of shares and of shareholders whose names have become changed by marriage or otherwise, shall be and is hereby repealed.

**Act No. 33, 1899.**

"To define the Legal Character of Pledges of Certificates of Shares in any Joint Stock Company incorporated or registered with limited liability."

*By A 46/26*  
*S 230*

[4th September, 1899.]

WHEREAS it is desirable to define the legal character of pledges of certificates of shares in any Joint Stock Company incorporated or registered with limited liability, and to enable such certificate of shares to be validly pledged:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. This Act may for all purposes be cited as the "Share Pledge Act, 1899."

Short title

2. In this Act:—

- (a) The word "share" means any share or interest in the capital stock of any joint stock company with limited liability represented by a certificate signed and issued by the directors or other proper officers of such company, and whether the property of such company be moveable or immoveable, or both.
- (b) The word "share" includes any form of stock issued by any such company.
- (c) The words "an instrument of pledge" mean a document stating the fact of the pledge signed by the pledgor in the presence of a witness, and dated at the time of the signature.

Interpretation.

3. Every share is hereby declared to be moveable property.

Share is  
moveable  
property.

Act 33, 1899.

How shares  
may be pledged.

Saving of  
rights of com-  
pany upon its  
own shares,  
and rights of  
registered  
holder.

Application of  
Act to future  
pledges.

4. Shares may be validly pledged by the legal holder thereof by delivery of the certificates thereof, together with an instrument of pledge; and every such pledge shall be valid and effectual as against the pledgor or his creditors, and as against the creditors of the registered holder, whether in execution, or insolvency.

5. Nothing in this Act contained shall be held to defeat the lien or other right of a company upon or in respect of its own shares, in terms of its articles of association, or law or charter of incorporation, or to alter or affect the mutual rights or claims of any company in which any share pledged exists, and of the registered holder of any such shares, which rights or claims, notwithstanding any such pledge, shall be deemed and judged of precisely as if such pledge had never been effected, and as if this Act had not been passed, and no such company shall be in any wise affected by notice of any such pledge.

6. This Act shall apply to any pledge of a share which may be effected after the coming into force of this Act (A).

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(A) This Act was published on 5th Sept., 1899, and therefore came into force on the following day, in terms of Law 3, 1887, s. 6., tit. "STATUTES."

## COMPANIES (WINDING-UP).

Law No. 19, 1866.

"To facilitate the Winding-up of Joint Stock Companies."

By A46/20  
S 230

[12th December, 1866.]

WHEREAS it is expedient to make provision for facilitating the winding-up the affairs of joint stock companies :

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :

1. The terms "Joint Stock Companies" and "Company" (A) used in this Law, shall refer to and embrace every company having its capital divided into transferable shares, and managed for the common advantage of the shareholders by one or more directors elected by such shareholders (B).

Definition of Joint Stock Companies and Company.

2. In the event of any company being wound up under the provisions of this Law, the existing shareholders shall be liable to contribute to the assets of the company, to an amount sufficient to pay the debts of the company, and the costs, charges, and expenses of winding up the same, with this qualification, that if the company is limited, no contribution shall be required from any shareholder exceeding the amount, if any, unpaid on the shares held by him, or the amount to which he is otherwise legally liable under the Law of Incorporation, or Deed of Settlement of such company, or under the provisions of this Law.

Liability of shareholders.

In limited companies.

3 (c). In the event of any company other than a limited company being wound up under the provisions of this Law, any person who has ceased to be a shareholder within the period of two years prior to the commencement of the winding-up, shall be deemed, for the purposes of contribution towards payment of the debts of the company, and the costs, charges, and expenses of winding up the same, to be an existing shareholder, and shall have, in all respects, the same rights and be subject to the same liabilities to creditors, as if he had not so ceased to be a shareholder, with this exception, that he shall not be liable in respect of any debt of the company contracted after the time at which he ceased to be a shareholder.

Liability in unlimited companies.

4. In the event of any limited company being wound up under the provisions of this Law, any person who has ceased to be a holder of any share or shares within the period of two years prior to the commencement of the winding-up, shall be deemed, for the purposes of contribution towards payment of the debts of the company, and the costs, charges, and expenses of winding up the same, to be an existing holder of such share or shares, and shall have in all respects the same rights, and be subject to the same liabilities to creditors as if he had not so ceased to be a shareholder (D).

Shareholders in limited companies liable for two years retrospectively.

(A) See *In re The Druid Syndicate*, 13 N.L.R. 65.

(B) Order for winding-up granted in the case of a company, styled "limited," which had done business acts and had a Board of Directors, but had not been registered, on its appearing that the interests of justice would be best served by such order (*Re British Reef G.M. Co.*, 8 N.L.R. 151).

(c) As to liability for calls under ss. 3 and 4 of this Law, and on other

matters; see *Broome's Digest* 111-123.

(D) Where shareholders under the provisions of this section had paid a call, and it was afterwards found that there was a surplus to be distributed, held that they were entitled to full repayment of their calls without deduction for winding-up expenses, in preference to existing shareholders (*In re Natal Boating Co., Ltd.*, 5 N.L.R. 206).



**Law 19, 1866.**

Who can apply to have a company wound up.

Grounds for petition.

Insolvency.

Declaration of inability to meet engagements.

Judgment debt remaining unsatisfied for sixty days.

Order or decree of Court unliquidated within time specified.

Action brought against a contributory and company not paying or satisfying same in ten days.

5. Any person who shall be a creditor (A) of any joint stock or other company, and whose debt shall amount to £50 and upwards, or who shall claim to be a contributory (B) of a company, may present a petition to the Supreme Court in a summary way for the winding up of the affairs of such company in any of the following cases, that is to say :

1st. If any company shall have committed any act of insolvency under the Ordinance No. 24, of 1846, entitled "Ordinance for regulating the due collection, administration, and distribution of Insolvent Estates within the District of Natal." (c)

2nd. If any company shall, by virtue of a resolution passed in that behalf at a meeting of the shareholders of such company or of the directors of such company, have filed, or have caused to be filed, in the office of the Registrar of the Supreme Court of this Colony, a declaration in writing that such company is unable to meet its engagements (d).

3rd. If any person shall have recovered judgment for any debt or demand in any court of this Colony against such company, or against any person authorized to be sued as the nominal defendant on behalf of such company, or against any one or more of the members of such company, acting in that behalf, and such judgment debt shall remain unpaid or unsecured or uncompounded for the space of sixty days from the date of such judgment.

4th. If any decree or order shall have been pronounced in any cause pending in any such court, or any order made therein in any matter of insolvency or lunacy or minority against any such company or person authorized to be sued, or against any one or more of the members or contributories of such company on that behalf, or acting on the behalf of other members or contributories thereof, ordering any sum of money to be paid by such company, and such company shall not have paid the same at the time when the same ought, according to the exigency of such decree or order, to be paid.

5th. If any action shall have been brought against any contributory of a company for any debt or demand which shall be due or claimed to be due from or by such company, and such company shall not, within ten days after notice in writing by such contributory of such action, have paid, secured, or compounded for such debt or demand, or have otherwise procured such action to be stayed, or shall not have indemnified the defendant to his satisfaction against such action, and all costs, damages, and expenses to be incurred by him by reason of the same.

(A) A winding-up order was granted on Petition signed by the creditor's attorney, the Court being satisfied by affidavit as to the agent's authority (*In re Contractors G.M. Co.*, 11 N.L.R. 47). See also the following cases bearing on the construction of the term "creditor" in s. 82 of the Companies' Act, 1862 (25 & 26 Vic. c. 89):—*Paris Skating Rink Co.*, *In re* 5 Ch. D: 959 (assignee of a debt); *Masonic, &c., Co.*, *In re*, 32 Ch. D. 373 (executor of a creditor before

probate); *Gold Hill Mines Co.*, *In re* 23 Ch. D. 210 (a claimant of unliquidated damages *not* within the term); *Lister's Petition*, 23 Ch. D. 292 (purchase money of land taken by the company and assessed by arbitration under the Lands Clauses Act).

(B) See definition in s. 44, post.

(c) Repealed by Law 47, 1887, tit. "INSOLVENCY."

(d) See also sub-s. 8, post.

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| <p>6th. If any creditor of a company, whose debt shall amount to £50 and upwards, shall have filed an affidavit with the Registrar of the Supreme Court that such debt is justly due to him from such company, and shall have sued out the process of the said court for the recovery thereof, and such company shall not, within three weeks after the service of notice thereof, have paid, secured, or compounded for such debt to the satisfaction of such creditor, or have made it appear, to the satisfaction of a Judge of the Supreme Court, that it is the intention of such company to defend such action on the merits, and shall not, within three weeks after service of such notice, have caused appearance to be entered to such action.</p> | <p><b>Law 19, 1866.</b><br/>Creditor for £50 filing affidavit of debt and suing out process against company, not liquidated within three weeks.</p> |
| <p>7th. If any company shall have dissolved, or shall have ceased to carry on business, or shall be carrying on business only for the purpose of winding up its affairs, and the same shall not have been completely wound up.</p>   | <p>Where company dissolved, or ceased business, or voluntarily winding-up.</p>  |
| <p>8th. Whenever the company, in general meeting, has passed a special resolution requiring the company to be wound up by the Court.</p>   | <p>Resolution to dissolve.</p>  |
| <p>9th. 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 (A).</p>  | <p>Business suspended for a year.</p>   |
| <p>10th. Whenever the shareholders are reduced in number to less than seven (B).</p>   | <p>Shareholders less than seven.</p>  |
| <p>11th. Whenever three-fourths of the paid-up capital of the company have been lost or become unavailable.</p>  | <p>Three-fourths of capital lost.</p>   |

6. Every petition and proceeding under this Law shall be entitled, "In the matter of the Winding-up Law of 1866," and in the matter of the company to which such proceeding shall relate, describing such company by its most usual style or firm.

7. Every petition for winding up the affairs of any company under this Law shall be advertised for three consecutive weeks in the "NATAL GOVERNMENT GAZETTE," and shall be served at the head or only office upon any member, officer, or servant of the company there; or, in case no such member, officer, or servant can be found, then by being left at such office; or, in case no office of the company can be found, then upon any member, officer, or servant of the company: Provided, that in case no office of the company, nor any member, officer, or servant thereof, can be found, the said court may proceed to hear, and to make any order on any petition for winding up, on production of the numbers of such "GAZETTE" containing such advertisement as aforesaid, and without proof that such notice has been served in manner aforesaid.

8. It shall be lawful for the said court, at the hearing, to direct any such petition, whether the same shall have been served as aforesaid or not, to stand over, and to direct such service or such further service of the petition as to said court shall seem meet.

9. On the hearing of such petition, it shall be lawful for the said court, if it shall not think fit in the first instance to make any order to require any parties to show cause, within such time as the said court shall think fit, why the company should not be wound up under this Law, to make an order for the winding up of such company conditional on the non-

(A) Sub-s. 2, sec. 79 of the Companies' Act, 1862, is in precisely similar terms, and has been construed by the Courts liberally in favour of the Company.

See *New Gas Generator Co., In re*, 5 Ch. D. 874.

(B) See *Sanderson's Patents Association, In re*, L.R. 12 Eq. 188.

**Law 19, 1866.** fulfilment of such terms, and by such parties as the said court shall think fit, or to refer it to the Master, or any other officer or person, to make preliminary enquiries as to the necessity or expediency of the winding up of such company; and it shall be lawful for such court, in case no sufficient cause be shown, or in case the terms of any such conditional order be not fulfilled, or in case it shall appear from the Master's report, or the report of such other person, upon such reference as aforesaid, that the winding up of any such company under this Law is necessary or expedient, to make such order absolute, as hereinafter mentioned.

Or refer to Master;

Before making absolute.

Court may direct application of conditions of contract

10. It shall be lawful for the court hearing the petition, if it shall think it practicable and expedient before making any order absolute, to direct the application or performance either wholly or in part, and by such parties as it shall think proper, of any provisions contained in or supplied by the constitution of the company towards the purposes of such winding up, or towards considering or ascertaining the necessity or expediency of such winding up.

Court may dismiss petition, or make special order.

11. It shall be lawful for said court, on the hearing of any petition for winding up, either originally or subsequently, or on further directions, to dismiss such petition, with or without costs, or to make an order for the winding up of the company under the provisions of this Law, with or without such special directions as it shall think fit to impose; and by such order it shall be competent to wind up the affairs of the company accordingly, under the provisions of this Law.

Order to be advertised in Gazette, and served.

12. Every such order as last aforesaid, made by the court, shall, within ten days after the date thereof, be advertised once in the "GOVERNMENT GAZETTE," and shall be served in such manner, and upon such persons, as the court shall direct.

Company's business to be suspended thereon.

13. From the date of any order, as aforesaid, or from any date to be therein fixed for that purpose, the company therein specified shall be absolutely interdicted and prevented from acting as a company, and every director or manager shall cease to have or to perform any act, matter, or thing in relation to the affairs of such company.

Order to be further advertised in Gazette and newspaper;

14. Upon any such order being made, the court shall direct that an advertisement be inserted by the party presenting such petition in two successive numbers of the "GOVERNMENT GAZETTE," and also in such other newspapers or in such other manner as the court shall appoint, giving notice that the court will proceed, at a day, hour, and place to be stated in such advertisement, such day to be within fourteen days of publication of first advertisement, to appoint an official manager or managers of the company under this Law, either originally, or in the room of any official manager who shall have died, resigned, or have been removed; and all persons being or claiming to be contributories or creditors of such company, shall be entitled to attend at such time and place, and to offer proposals and objections to any such appointment; and it shall be lawful for the court, if it shall think fit, to adjourn the appointment of any official manager to another time and place, to be stated and made known to the parties present at the time and place originally fixed for the making of such appointment.

With notification of intended appointment of official manager.

Proceedings at meetings so convened.

15. At the time and place fixed in such advertisement, or at any adjournment thereof, the said Supreme Court shall appoint a person or persons to be the official manager or managers of the company; and the said court shall have power, from time to time, in its discretion, to remove any such official manager or managers, and also upon the death or resignation of any such official manager or managers, to appoint, in manner aforesaid, any other person to be official manager or managers in the stead of any such manager or managers who shall be removed, die, or resign his office.

Court may appoint official manager and remove him.

16. In making the first, or any subsequent appointment of an official manager, it shall be lawful for the court to adopt the proposal of any of the parties attending before it, in the matter of such appointment, and in making such appointment the proposal of any of the parties who shall have appeared shall not be on that account entitled to any preference, and the court may, if it see fit, act independently of any proposal and appoint any person it shall think fit as such official manager, although such person shall not have been proposed by any party.

Law 19, 1866.

Proposals of parties to be taken into consideration on appointment.

17. Every official manager shall, within such time as shall be fixed by the court, together with two or more persons as his securities, to be approved of by the court, enter into recognizances for the due performance of his duties, in such sum as the court shall in each case direct.

Official manager to give security.

18. Upon the appointment of any official manager or managers as aforesaid, the court shall by its order direct that all the books of account, deeds, securities, cash, bills, notes, papers, and other writings of and belonging to the company, shall within a time to be limited in that behalf, be delivered up by every person in whose custody, possession, or power the same may be, to the official manager, and shall be kept by him, and upon, and immediately after the appointment of any new official manager, all the same matters shall be in like manner ordered to be, and shall accordingly be, delivered up to him.

Books of account, &c., to be delivered to official manager

19. On every such appointment of official manager, all the estate, effects, and credits, and rights of action of the company, shall, except so far as the court shall direct to the contrary, become absolutely vested in the official manager so appointed; and such official manager shall be deemed as entitled to possess and possessing the like powers in all respects in regard to the winding up of any company's estate, as any trustee of an insolvent estate by Law possesses under the provisions of the aforesaid Insolvent Ordinance.

Company's estate vested in official manager.

20. It shall be lawful for the Court to allow such salary or remuneration, by way of per centage or otherwise, as it shall think proper, to the official manager, and to increase or diminish such salary, from time to time, whether such official manager shall be a member of such company or not.

Salary, &c., of official manager

21. The official manager or managers shall proceed with all convenient speed in the making up, continuing, completing, and rectifying the books of the company, and in providing and keeping such other books as shall be necessary for showing the debts and credits of the company, including a ledger, which shall contain the separate accounts of the contributories (and in which every contributory or joint contributory shall be debited, from time to time, with the amount payable by him of any call to be made, as by this Law provided), and in balancing all such books, and the accounts of the respective contributors, in getting in, selling, and converting the estate and assets, and winding up the business and affairs of the company, in paying the debts, and dividing and distributing the surplus assets amongst the parties entitled thereto.

Duties of official manager

22. It shall be lawful, in all cases after the appointment of an official manager, for the major part in value of the creditors at a public meeting thereof, convened by advertisement in the "NATAL GOVERNMENT GAZETTE," for any such purpose, at the instance of any such creditors (such advertisement to be published at least ten days before such meeting) to appoint one or more inspector or inspectors on their behalf to act concurrently with any such official manager or managers, and which inspector or inspectors shall be entitled at all times to call for, and have access to, and inspect at the office of the official manager all the books, vouchers, securities, accounts, papers, and other documents relating to such estate, then in the possession or under the control of the official man-

Creditors may also appoint inspectors.

## Law 19, 1866.

Contributories may appoint inspectors.

Duties of inspectors.

Official manager to make lists of contributories &c.

Assignments of shares.

Contributory may apply to Court to have other persons' names placed on list.

Official manager to prepare half-yearly reports.

When dividends to be paid;

And distributions made.

ager, and otherwise to watch the proceedings of the official manager in the conduct of the liquidation and winding up of such company's affairs: And it shall also be lawful for a majority in value of the contributories of any such company, under the same circumstances and in the same manner in every respect as in this section above specified and set forth, to appoint one or more inspectors to act on their behalf; and such inspector or inspectors shall have and possess all and singular the like functions and powers, to all intents and purposes, as the other inspectors so appointed by the creditors: Any such inspector or inspectors shall be entitled at any time, should he or they deem it advisable for the interests of his or their constituents so to do, to make application to such court as against the official manager, requiring any such official manager to do, or to abstain from, any act which such inspector or inspectors may, in the interests of his or their constituents think necessary or objectionable; and the court shall thereupon make such order with reference thereto as to it shall seem fit; and it shall be lawful for the said Supreme Court to appoint one or more contributories or creditors to attend, and watch the proceedings of the liquidation and winding up of such company.

23. The official manager shall make lists of the members and contributories of such company, containing the names, addresses, and the number of shares, or extent of interest to be attributed to each, and such list shall, as far as practicable, distinguish the several classes of such contributories, and in case any of the contributories, after the making of such lists, assign, or dispose of any share, right, title, or interest of the company, or the profits thereof, it shall be lawful for the official manager, upon the application of such contributory, or of the person in whose favour such assignment shall have been made, or of any other contributory, to introduce into the list of contributories the name of the person to whom any assignment shall have been so made: Provided, that no such assignment or disposal shall take place without the permission of the Supreme Court first had and obtained, or shall release or exonerate the party making the same, from any liability as a contributory, further or otherwise than he would be released or exonerated, if the affairs of the company were not wound up under this Law.

24. Any person whose name shall stand upon the list of contributories, upon application by motion to the Supreme Court, may call upon any other person whose name shall not be in such list to show cause why his name should not be included in the same; and the said court shall consider the alleged liability of the person so called upon to be inserted in such list, and shall thereupon make such order as the justice of the case shall require.

25. The official manager shall from time to time, half yearly, prepare and, as he may deem best, lay before joint or separate meetings of the creditors and contributories, to be convened by him for that purpose, at the expiration of every six months, correct, full, and detailed reports and statements of all and every the debts, liabilities, engagements, and assets of every such company, and of the general condition of every such company's estate, and shall thereupon report to the Supreme Court all resolutions which any such creditors or contributories shall have passed thereat.

26. The moneys and assets of the company, or such of them as shall be got in and realised, or any part thereof, shall, with all convenient speed, be paid by the official manager, under the direction of the court, in or towards the satisfaction of the debts, or any of the debts, of the company, in such manner (whether by dividend or otherwise), as the court shall direct. And in all cases, where not otherwise ordered by the court, such official manager shall, from time to time, distribute and pay the same by dividends, to be by him declared, if the funds and assets

of the company will admit thereof, at the expiry of every three months, reckoned from the date of his appointment as such manager (A). **Law 19, 1866.**

27. At any time before the whole of the assets of said company shall have been collected or converted, and if the assets remaining to be collected or converted shall not be capable of being immediately realised, although such assets may not appear to be insufficient, and also after the assets of the company shall have been wholly exhausted, the Supreme Court shall, from time to time, direct the official manager to make calls on the contributories, or on such individual contributories, or class of contributories, as the court shall think proper, to the extent to which they are legally liable, as well for raising such amount as may be necessary to pay the debts or liabilities, or any of the debts or liabilities of such company, or any part thereof, or the costs, charges, and expenses of the winding up of the same, as also for the purpose of adjusting and settling the respective claims of contributors upon each other, or upon the company, whether such claims shall have arisen since or before the date of the order for winding up, and the amount to be raised by the means of such calls, and also the residue of the assets of the estate of the company, after the payment of all debts and liabilities, costs, charges, and expenses, shall be paid and distributed by the official manager, under the directions of the court, so and in such manner as shall, as far as possible, satisfy all such claims, and shall finally wind up and settle the affairs of the company (B).

Court may order calls to be made on contributories.

Distribution thereon.

28. The filing of any such petition with the Registrar of the Court shall have the effect of suspending and staying all and every action and actions, or other proceedings at law, which may at the filing thereof be pending, or which may thereafter be instituted against such company, or any of the contributories thereof, for or on account of any claim upon the company, or upon any such contributory, except in so far as is in this section hereinafter provided for; and such suspensive effect shall continue until such petition shall be dismissed, or such suspensive effect be removed by the said court; and pending the winding up (C) of such company, no suit, action, or other legal proceeding shall be proceeded with, or commenced against the company or the official manager thereof, or any member of the company in respect of a debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose (D).

Filing of petition stays all pending actions

No action to be commenced except by leave of Court.

29. In all actions by or against any such company, in respect of any matter, or thing, or debt, due to or by the said company before the order for winding up the affairs of the same, or recurring thereafter, the company may sue or be sued in the name of the official manager.

Proceedings to be in name of official manager.

30. No suit, or action, or other proceeding, shall abate by reason of the death, removal, or other incapacity of the said official manager.

Action not to abate through death.

31. So soon as an order absolute for winding up the affairs of any company shall be made, the property of every description belonging to such company shall vest in the Master of the Supreme Court until the appointment of an official manager or managers, as hereinbefore provided.

Property vests in Master until official manager appointed.

32. The Supreme Court may, at any time, appoint any officer or person to examine and report upon the state of the accounts and other pro-

Court may appoint special officer to report on estate, &c.

(A) See *In re Colonial Bank, ex pte. City Bank*, N.L.R. 1867, 25.

(B) As to the order of preference in which the debts are to be paid, see *In re Colonial Bank, ex pte. City Bank*, N.L.R. 1875, 27.

(C) The words "pending the winding up" mean "until the affairs of the

company are finally adjusted by the Official Manager" (*In re Colonial Land Co.*, N.L.R. 1869, 48).

(D) Cf. s. 87 of 25 & 26 Vic. c. 89, under which a mortgagee is usually allowed to proceed with an action to realise his security (*Lloyd v. Lloyd & Co.*, 6 Ch. D. 339).

**Law 19, 1866.** ceedings under the control of the official manager, and also as to the disposal by him of any funds or other assets belonging to such company.

Official manager may endorse bills, &c.

33. The official manager may endorse any bill or note made payable to the said company, or any officer thereof, and such endorsement shall be deemed a sufficient negotiation of such bill or note, if made payable to order.

And execute cessions.

34. The said official manager may also pass and execute any cession of any debt due to the company, or give cession of action on the part of the company in respect of any debt or claim due to it.

And execute deeds.

35. The said official manager may also pass and execute any deed of transfer or other deeds relating to immoveable property, which, but for the order for winding up the affairs of such company, the company could lawfully have passed or executed.

Official manager not to be personally liable for endorsements, &c., unless mala fide.

36. The official manager shall not, as regards the endorsement of any such bill or note, or the passing of any such cession, transfer, or other deeds as aforesaid, be deemed personally liable for the same: Provided always, that where such official manager shall be shown not to have acted bona fide in so endorsing such bill or note, or so passing or executing such cession, transfer, or other deed, he shall be held personally liable for any loss or damage which may be thereby occasioned to the said company, or any creditor or creditors, or any shareholder or shareholders, of the same.

Official manager may, on approval of Court, sell immoveable property.

37. The said official manager may, subject to the approval of the court, sell any of the immoveable property belonging to any such company, subject to such conditions and stipulations as the court may, in each case, direct to be imposed (A).

Employment of clerks and attorneys

38. The official manager may retain, or employ such or so many persons as clerks or book-keepers, as the Supreme Court may consider essential for the due and proper conduct of the affairs of any such company, and such persons shall be paid in such manner, and at such rates, and from such funds, as the Supreme Court shall direct or appoint, and he shall also be at liberty to appoint and employ an attorney or attorneys in and about the company's affairs.

Creditors and others may call on official manager to answer complaints.

39. Any creditor, or any shareholder, or contributor of such company, may at any time, by motion to the Supreme Court, call upon the official manager to show cause with reference to any matter affecting the administration for winding up of the affairs of such company, whereby the interests of such applicant, or the creditors, or shareholders generally, may be affected; and the said Supreme Court may thereupon make such order in the premises as to it shall seem just.

Upon contributories agreeing to pay all liabilities, Court may cancel appointment of official manager, and release estate.

40. Whenever any one or more of the contributories, or persons liable to contribute towards the liquidation of the liabilities of any such company, shall agree to pay the debts and liabilities of the same, and shall show to the satisfaction of the Supreme Court that they are able and in a position to pay such debts and liabilities, it shall be lawful for the said court to cancel the appointment of such official manager, and thereupon it shall be competent for the shareholders of such company to continue the same free of the operation of the provisions of this Law, but subject to any actions or proceedings then pending in the Supreme Court with reference to the claims or liabilities of any contributories, creditors, or other persons: Provided always, that such release from the operation of this Law shall not make void any act or

(A) Where the shareholders of a company had agreed that the immoveable property of the company situate in the Z.A.R. should revert to the vendors in satisfaction of their claims, the Court refused to make an order authorising transfer, being of opinion

that the transaction was not a sale within the meaning of this sec., and declined to interfere under s. 27, inasmuch as the land was not within the jurisdiction (*In re Deep Kloof G.M. Co.*, 12 N.L.R. 66).

deed sanctioned by the said court or lawfully done by the said official manager previously thereto; and that any shareholder, who shall be unwilling to continue in such company, may then withdraw from the same.

Law 19, 1866.

41. In the event of any shareholder so withdrawing, he shall be entitled to receive from the company reasonable compensation for all his shares in the company, calculated upon the then marketable value of such shares; and in case of any difference arising as to such value, the same shall be ascertained and declared by reference to arbitration, in usual course thereon.

Shareholders then withdrawing to be compensated for their shares.

42. The official manager shall be bound to satisfy and liquidate all claims upon such company within eighteen months from the date of his appointment; and in order the better to effect such object, the official manager shall, at latest within four months after his appointment, make rateable calls on the shareholders and contributories of the company, proportionate to the then ascertained liabilities of such shareholders and contributories, in respect to the debts of such company; and from time to time every four months thereafter, in like rateable proportion, make further calls on such shareholders and contributories, until the whole claims on the company are liquidated and satisfied. Provided always, that upon cause shown to the Supreme Court, the said period may be extended for such further reasonable time as creditors representing two-thirds in value of the liabilities of the company may agree to. Provided further, that in the case of a limited liability company, such claims shall only be satisfied so far as the funds legally available under the provisions of this Law will allow and admit of.

Official manager to satisfy claims within eighteen months, and make calls on shareholders every four months.

Court may extend time for winding-up.

Exemption of limited companies.

43. In every case in which any such company shall be the executors testamentary, tutors, or curators of the person or property of any person, or the trustee of any insolvent estate, the official manager shall act in the said capacities, or any of them, and shall continue to administer such property as shall be found in the possession of such company, and to recover any sums due to such persons or estate.

Official manager to act for any company appointed executors, &c.

44. The term "contributory" and "contributories" and "shareholders" shall include and be deemed to apply to every person and every company or firm of persons holding shares, or liable as a shareholder or conjoint shareholders to meet the liabilities or any of the liabilities of such company, and shall also in all proceedings for determining the persons who are to be deemed shareholders or contributors, and in all proceedings prior to the final determination of that question, include any person or persons deemed or alleged to be a contributory or contributories, or shareholders.

Definition of terms "Contributory" and "Shareholder."

45. The Supreme Court is hereby empowered to make all orders, rules, and regulations that it may deem requisite and necessary with reference to any proofs of claims and debts under this Law, and to the production of any documents, and to the examination of any witnesses, and as to the trial or settlement of disputes thereon or otherwise relating to the provisions of this Law; and until such rules are made and published, and also in the absence of any direct rule in any particular case, the general practice of the Supreme Court, including the practice in insolvency, shall, so far as applicable, and not inconsistent with this Law, apply to all proceedings for winding up (A).

Supreme Court to make rules.

In absence of rules, practice applicable to insolvent estates to prevail.

46. All questions which may arise in carrying out the provisions of this Law as to the winding up of companies, and not specially provided for herein, shall be regulated as near as may be, and circumstances will

Imperial Statute (Companies' Act, 1862) to be applied to the administration of this Law.

(A) It is not necessary that an Official Manager's accounts should be confirmed as in insolvency (*In re the Durban*

*Assurance, &c., Co., Ltd.*, 10 N.L.R. 125 and 133).



**Law 19, 1866.** admit of, by the provisions contained in the fourth part of "The Companies' Act, 1862," passed by the Imperial Parliament of Great Britain and Ireland, entitled "An Act for the incorporation, registration, and winding up of trading companies and other associations." And it shall be lawful for the Supreme Court on any petition or other proceeding that may be brought before the said Court under this Law, to apply the principles and modes of procedure therein contained if it should be considered desirable by the said Court to any particular case before the said Court so far as the same shall be applicable and not repugnant to the provisions of this Law.

Short title.

Commencement

47. This Law may be cited for all purposes as the "Winding up Law of 1866," and shall take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE." (A).

### CONCEALMENT OF BIRTH.

[See "CRIMINAL LAW."]

### CONTAGIOUS DISEASES.

[See "PUBLIC HEALTH."]

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(A) Dec. 18, 1866.

*Contagious Diseases Act - 21-1866*

CONTRACTS.

[See "CONTRIBUTION AND INDEMNITY." See also Law 2, 1893, tit. "REVENUE," as to contracts with South African Republic.]

Law No. 12, 1884 (A.)

"To render a Writing necessary for Actions in respect of certain Contracts."

[29th August, 1884.]

WHEREAS litigation and injustice are occasioned by alleged verbal promises in certain cases being regarded as constituting causes of action, and it is expedient to make better provision in that behalf :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. No action shall be maintainable on any contract made after this Law shall have come into operation in respect of any subject matter hereafter in this section specified, unless and save so far as such contract shall be evidenced by some writing signed by or on behalf of the person sought to be bound thereby or by or on behalf of some person for whose contracts the person sued may then be liable. The foregoing provisions shall apply to the following cases, that is to say :

Certain contracts to be evidenced by writing.

- (a) Any contract of suretyship or for liability for a debt or other obligation of any person other than the person so contracting (b),
- (b) Any contract for the sale, purchase, mortgage, charge, or gift of, or on any immoveable property or any interest therein (c),
- (c) Any contract to grant or take a lease or sub-lease of immoveable property or of any interest therein for a period exceeding two years from the time of making such contract or for the cession of any such lease or sub-lease having then more than two years to run,
- (d) Any other contract that is not to be performed within the space of one year from the making thereof: Provided always, that a contract, as to any standing crop of one season, and which can be completely performed within twelve months after the time of making the contract, shall not be deemed within sub-section (b) of this section: Provided also, that the foregoing sub-section (a) and the present sub-section (d) shall not be deemed to apply to contracts

(A) There is a strong affinity between this Law and secs. 1-4 of the English Statute of Frauds (29 Car. II., c. 3). A long series of decisions of the Courts has so refined the construction of the words of these sections as to leave little room for doubt. References to the most important decisions will be found in notes to Chitty's Statutes, tit. "FRAUDS." Doubtless these decisions give great assistance in the interpretation of the Natal Law, but there is so little similarity in the *wording* of the

two Statutes that it has not been deemed advisable to incorporate them in these notes.

(B) See *Pearse v. Owen & Collier*, 5 N.L.R. 143.

(c) As to Agent's liability on a contract signed by him q.q. for an undisclosed principal, see *Surveyor-General v. Gallwey*, 15 N.L.R. 215.

As to the nature of shares in a Limited Company, see Act 33, 1899, sec. 3, tit. "COMPANIES (JOINT STOCK)," which declares them to be moveable property.

## Law 12, 1884.

between any of the persons ordinarily known in this Colony as Natives, and who are still under Native Law.

Section 1 not to apply to contract where there has been part performance.

2. The foregoing section shall not apply to any contract in respect of which it shall appear to the Court in which the action shall be pending, or to any Court of Appeal therefrom, that there has been part performance by any party or his representative in such a way as is inconsistent with any other reasonable conclusion than the actual existence of such a contract in the whole or in part (A). And in the latter case such part may be enforceable though the whole may not be.

Efficacy of written contract.

3. Nothing in this Law contained shall be deemed to increase or lessen the efficacy of any written contract.

Interpretation of word "contract."

4. The word "contract" shall, in and for the purposes of this Law, be deemed to include any obligation, engagement, or promise concerning any such subject matter as in the first section hereof is specified.

Commencement

5. This Law shall commence and take effect at the expiration of three months from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (B).

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(A) See application of this sec. in *Executors of Evans v. Stranack*, 11 N.L.R. 12, and *Mallandain v. Mangena*, 14 N.L.R. 50.

(B) Sept. 2, 1884.

CONTRIBUTION AND INDEMNITY.

Law No. 9, 1885.

“ To amend the Law as to Cession of Action.”

[23rd September, 1885.]

WHEREAS doubts exist as to how far persons under a liability not primary in nature can compel indemnification or contribution without a cession of action, and it is expedient to put an end to such doubts as far as may be :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. When any person is liable with any other person in respect of any obligation, then so far as the former shall have satisfied beyond his share such obligation he shall not be prevented from requiring contribution from any such other person by reason of his not having received cession of action, but shall have in respect thereof the like rights as he would have had if at the time of such his satisfaction he had obtained cession by or on behalf of the person so satisfied of action as a means for obtaining such contribution.

Cession of action not necessary for right of contribution.

2. Any person liable otherwise than primarily in respect of any obligation, and who has satisfied in whole or in part such obligation, without obtaining cession of action in respect of such satisfaction, shall not be prevented from requiring indemnity or repayment, or the like, from any person to or with him precedently or jointly liable, but shall have in respect thereof the like rights as he would have had if cession of action had been made to him at the time of such satisfaction, and by or on behalf of the person to or in respect of whom such satisfaction shall have been made, and as a means for obtaining such redress.

Nor for indemnity.

3. The foregoing sections shall respectively also apply to the case of any person paying or satisfying any charge on or against any property in whose value such person shall have an interest.

Nor for right to prior charge.

4. This Law shall apply to any case not by judgment or prescription or compromise or other agreement or acceptance or the like concluded before its coming into operation.

Application of Law.

5. Nothing in this Law contained shall be deemed to increase the effect of any cession of action or of any payment or satisfaction, save so far as may result from cession of action being made unnecessary.

Effect of Law.

6. This Law shall have operation on and after the day next following that of its promulgation in the “ NATAL GOVERNMENT GAZETTE ” (A).

Commencement

*Contribution - see Law.*

CONVEYANCES.

[See “ REGISTRATION (DEEDS).”]

*Conveyances Act 23/07*

CONVICTS.

[See “ GAOLS.”]

(A) Sept. 29, 1885.

## COPYRIGHT.

Act No. 36, 1895.

“To secure the Right of Property in Telegraphic and other Messages.”

[21st September, 1895.]

WHEREAS it is expedient to secure the Right of Property in Telegraphic Messages :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. Whenever there shall be received at any office of the Telegraph Department any message transmitted by telegraph for the purpose of publication in any newspaper or other printed paper, printed or published within the Colony of Natal, no person or persons shall, without the consent, in writing, of the person or persons, or the proprietor or proprietors of such newspapers, to whom such message shall be addressed, or his or their 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 seventy-two hours from the time of the first publication of such message by the person or persons entitled to publish the same : Provided that such period shall not extend beyond fifty hours (A) 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 or newspaper publishing the same) of the intelligence therein contained, shall be deemed to be a publication thereof.

2. If any person or persons print or publish, or cause to be printed or published, any matter contrary to the provisions of this Act, he or they shall, upon conviction, be liable to a penalty not exceeding Twenty Pounds Sterling, and in default of payment of such fine to imprisonment for a term not exceeding three months, and any person or persons who shall be convicted of any subsequent offence against this Act shall be liable to a penalty not exceeding Forty Pounds Sterling, and in default of payment of such fine to imprisonment for a term not exceeding six months.

3. Every telegraphic message published under the protection of this Act, shall be published under the heading of “By Telegraph” or “Telegrams,” and the day of its despatch shall be stated, and such statement, together with date of publication, shall be prima facie evidence of the despatch and publication, respectively, of such message.

4. During the period of fifty hours (B) above mentioned, no intelligence protected by this Act shall be transmitted by telegraph to any person or persons for publication by or on behalf of any person or persons, other than the proprietor or proprietors of the newspaper, who, under the provisions of this Act, shall be entitled to the exclusive use of such intelligence, and any person or persons 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,

(A) Altered to “one hundred hours”  
by Act 17, 1896, post.

(B) Altered to “one hundred hours”  
by Act 17, 1896, post.

*Repealed by Act 26 of 1917  
Sect. 6*

Protection during limited period of rights of publication of telegraphic messages.

Punishment for infringement of rights.

Form of publication.

Prohibition against telegraphing a protected message.

and not exceeding Forty Pounds Sterling for any subsequent offence, and in default of payment of fines to imprisonment as aforesaid. **Act 36, 1895.**

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 the newspaper or person or persons lawfully entitled to receive the same by the Telegraph Department, shall be prima facie evidence that such message is a message within the meaning of this Act. **Evidence of protection.**

6. The protection provided in Section 1 of this Act to messages transmitted by telegraph, shall extend also to messages transmitted by pigeon and other special despatch. **Other special messages.**

7. This Act may be cited as "The Telegraphic Messages Copyright Act, 1895." **Short title.**

### Act No. 17, 1896.

"To amend Act No. 36, 1895."

[23rd June, 1896.]

WHEREAS it is expedient to amend "The Telegraphic Messages Copyright Act, 1895":

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. Sections Nos. 1 and 4 of "The Telegraphic Messages Copyright Act, 1895," are hereby amended by substituting therein for the words "Fifty Hours" the words "One Hundred Hours." **Act 36, 1895, amended.**

2. This Act shall be read and construed with Act No. 36, 1895, as one Act. **Joint construction of Act.**

*Rep'd by Act 9, 1916.*

### Act No. 17, 1897.

*sect: 194*

"To amend the Law of Copyright" (A).

[29th May, 1897.]

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

1. This Act shall be known as "The Copyright Act, 1897," and shall commence on such date as shall be proclaimed by the Governor after the passing thereof (B). **Short title. Commencement**

2. Act No. 9, 1896, "The Copyright Act, 1896," is hereby repealed. **Repeal.**  
Such repeal shall not affect any copyright now existing under the said Act, but any such copyright shall continue as if created by this Act, and the registration thereof shall be deemed to be a registration under this Act.

3. In this Act

"Copyright" means the sole and exclusive right of multiplying copies of any work, whether by printing, copying, engraving, or otherwise. **Interpretation.**

(A) Cf. 5 & 6 Vic. c. 45.

(B) Took effect from 31st August, 1897.

Act 17, 1897.

“Book” (A) includes every volume, part or division of a volume (B) pamphlet, sheet of letterpress (C), sheet of music, and map, chart, or plan (D) separately published.

“Work of Art” means a painting or drawing and the design thereof, or a photograph and the negative thereof, or an engraving.

“Work” includes book and work of art.

“Serial Work” includes encyclopædia, review, magazine, periodical work, or work published in a series of books or parts.

“Produced” means, in the case of a book, published, and in the case of a work of art, made.

“Copy” in reference to a work of art means also repeat, colourably imitate, or otherwise multiply.

“Author” means the author, inventor, designer, engraver, or maker of any work, and in the case of a posthumous book means the proprietor of the manuscript.

“Assigns” includes every person in whom the interest of an author in copyright shall be vested, whether derived from such author before or after publication, and whether acquired by sale, donation, legacy, or by operation of law or otherwise.

Application.

4. This Act shall apply to the copyright in Natal of works first produced in Natal, save as is hereinafter excepted.

Reservation of existing rights.

5. Nothing in this Act, or in the Copyright Act of 1896, shall be deemed to lessen, or to have lessened, any rights in respect to copyright in Natal which existed prior to the passing of the Act of 1896, in virtue of any Act of the Imperial Parliament, or any order of Her Majesty in Council made thereunder.

Duration of copyright.

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

Duration of copyright in posthumous books.

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

Duration of copyright of original works of art.

8. The author of every original work of art, produced after the passing of the Copyright Act of 1896, and his assigns shall have the copyright of such work for the term of the natural life of the author, and for seven years after his death: Provided, that when any painting, or drawing, or the negative of any photograph, shall, for the first time after the passing of

(A) The definition in this Act corresponds with that of 5 & 6 Vic. c. 45 (s. 2).

(B) See *University of Cambridge v. Bryer*, 16 East, 317; *British Museum v. Payne*, 2 Y. & J. 166.

(C) As to what is or is not included in these words, decisions have been given in England on the following matters:—Wood Engravings (*Bogue v. Houlston*, 5 De G. & Sm. 267), maps (*Stannard v. Lee*, L.R. 6 Ch. 346), newspapers (*Walter v. Howe*, 17 Ch. D. 708;

*Trade Auxiliary Co.'s case*, 40 Ch. D. 425—C.A.; *Walter v. Steinkopf*, [1892]

3 Ch. 489), the title of a book (*Dicks v. Yates*), 18 Ch. D. 76—C.A.).

(D) See *Hollinrake v. Truswell*, [1893] 2 Ch. 377.

(E) Gratuitous circulation would seem to amount to a publication, see *Novello v. Suddow*, 12 C.B. 177; *Dr. Paley's case*, cited 2 V. & B. 23.

(F) This sec. and the next are a transcription of sec. 3 of 5 & 6 Vic. c. 45

this Act, be sold or disposed of, or shall be made or executed for or on behalf of any other person for a good or a valuable consideration, the person so selling or disposing of or making or executing the same shall not retain the copyright thereof, unless it be expressly reserved to him by agreement in writing, signed at or before the time of such sale or disposition by the vendee or assignee of such painting or drawing, or of such negative of a photograph, or by the person for or on whose behalf the same shall be so made or executed : but the copyright shall belong to the vendee or assignee of such painting or drawing, or of such negative of a photograph, or to the person for or on whose behalf the same shall have been made or executed (A).

Act 17, 1897.

9. This Act shall not prejudice the right of any person to represent any scene or object, notwithstanding that there may be copyright in some representation of such scene or object.

Right to represent scene or object not prejudiced.

10. It shall be lawful for the proprietor of copyright in any work to make entry of his copyright in the proper register as hereinafter provided.

Registration.

11. There shall be kept at the office of the Registrar of Deeds a Registry Book called the "Register of Copyright in Books," in which may be registered, as hereinafter provided, the proprietorship of copyright in books and assignments thereof.

Register of copyright in books.

12. Two printed copies of the whole of every book which shall be first published in this Colony after the passing of this Act, 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 published, shall within three months after such book shall first be sold, published, or offered for sale within this Colony, be delivered gratis, on behalf of the publisher thereof, to the Colonial Secretary of this Colony or his nominee ; and if the publisher of any book shall neglect to deliver the same, pursuant to this Act, he shall for every such default forfeit a sum of Five Pounds Sterling, to be recovered by the Colonial Secretary, for and on behalf of the Government.

Copies to be delivered to Colonial Secretary.

13. There shall also be kept at the office of the Registrar of Deeds a Registry Book, called the "Register of Copyright in Works of Art," in which may be registered, as hereinafter provided, the proprietorship of copyright in works of art and assignments thereof.

Register of copyright in works of art.

14. Each Register shall contain the following particulars in reference to every copyright entered therein :—

Particulars required to be entered in register.

In the case of a book first published in Natal, the title and date of first publication in Natal, and the name and place of abode of the publisher thereof, and of the proprietor of the copyright ;

In the case of a work of art first made in Natal, the name and abode of the proprietor of the copyright, the title, if any, of the work, a short description of the nature and subject thereof, and, if the person registering so desire, a sketch, outline, or photograph of such work ;

and all such further particulars as shall be prescribed by rules made in that behalf.

15. For every entry of proprietorship or assignment of copyright in the Register there shall be paid to the Registrar of Deeds the sum of Five Shillings Sterling.

Fees for entry in register.

16. The Books of Registry shall at all convenient times be open to the inspection of any person on payment of One Shilling Sterling for

Inspection of registers and copies of entries

(A) Such person can restrain the sale of his photographic likeness (*Pollard v. Photographic Co.*, 40 Ch. D. 345). Cf. this section with 25 & 26 Vic. c. 68.



Act 17, 1897. every entry which shall be searched for or inspected; and the Registrar of Deeds shall, whenever thereunto reasonably required, give a copy of any entry in such Book, certified under his hand, to any person requiring the same, on payment to him of the sum of Five Shillings Sterling; and such copies so certified shall be received in evidence in all Courts, and shall be prima facie proof of the proprietorship or assignment of copyright as therein expressed and of the matters therein stated, but subject to be rebutted by other evidence.

Assignment.

17. It shall be lawful for the registered proprietor of copyright to assign his interest, or any portion of his interest therein, by making entry in the Registry Book of such assignment, and of the name and place of abode of the assignee thereof; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty.

Persons aggrieved by any entries may apply to Supreme Court.

18. If any person shall deem himself aggrieved (A) by any entry made under colour of this Act in the Registry Book, it shall be lawful for such person to apply by motion to the Supreme Court, or a Judge thereof, for an order that such entry may be expunged or varied, and thereupon such Court or Judge shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such Court or Judge shall seem just (B); and the Registrar of Deeds shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same accordingly.

Copyright of serial works and books projected, &c., by publishers.

19 (c) If any publisher or other person (in this and the two succeeding sections referred to as the publisher) has either before or after the passing of this Act projected, conducted, or carried on, or is the proprietor of any serial work, or of any book whatever, and shall have employed any persons to compose such work, or any volumes, parts, essays, articles, or portions thereof, for publication in or as a part thereof, and the same shall have been composed under such employment, on the terms that the copyright therein shall belong to such publisher, and be paid for (D) by the publisher, the copyright in every such serial work, or book, and in everything so composed, shall be the property of such publisher, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this Act, except only that in the case of essays, articles, or portions forming part of and first published in serial works, after the term of twenty-eight years from the first publication thereof respectively, the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act.

Publisher not to publish certain works without consent of author.

20. During the aforesaid term of twenty-eight years the publisher shall not publish any such essay, article, or portion separately or singly without the consent previously obtained of the author or his assigns (E).

(A) Compare this sec. with 5 & 6 Vic. c. 45, s. 14, from which it appears that "persons aggrieved" are those whose title conflicts with that of the person registered (*Chappell v. Purday*, 12 M. & W. 303; *Graves's case*, L.R. 4 Q.B. 715; 39 L.J., Q.B. 31; see also *Ex pte. Hutchins*, 4 Q.B.D. 90, 483).

(B) As to the manner in which the English Courts exercise powers under a similar provision in 5 & 6 Vic. c. 45, s. 14, see *Ex pte. Davidson*, 18 C.B. 297; 25 L.J., C.P. 237, and *Ex pte. Davidson*, 2 E. & B. 577).

(c) This and the two succeeding sections, read in conjunction with sec. 3,

appear to have a similar effect to sec. 18 of 5 & 6 Vic. c. 45.

(D) Under the Imperial Act it has been held that actual payment is a condition precedent to the vesting of the copyright of the article in the proprietor of the work; a contract for payment is not sufficient (*Richardson v. Gilbert*, 1 Sim., N.S. 336).

(E) Held, under the Imperial Act, that to republish in any other form than by reprinting entire numbers, e.g., by a republication in supplemental numbers, is a separate publication (*Smith v. Johnson*, 4 Giff. 632; 33 L.J., Ch. 137).

21. Nothing in either of the two foregoing sections shall affect any right of separate publication reserved by the composer of any such composition, but he shall be entitled to the copyright in such composition when published in the separate form, without prejudice to the rights of the publisher. **Act 17, 1897.**  
Right of separate publication reserved by composers.
22. The proprietor of the copyright in any serial work shall be entitled to all the benefits of the registration under this Act, on entering in the Register of Copyright in Books the title of such work, the time of publication of the first volume, number or part thereof, and the name and place of abode of the proprietor and publisher thereof. Effect of entry of particulars in Register by proprietors of copyright in serial works.
23. If any person shall, in Natal, print or cause to be printed any book in which there shall be subsisting copyright (A) without the consent in writing of the proprietor thereof, or shall import for sale or hire from parts beyond the Colony any such book so printed, or knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose for sale or hire, or shall have in his possession for sale or hire, any book so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to an action for damages at the suit of the proprietor of such copyright. Persons printing, selling, &c., copyrighted books liable in damages.
24. If any person shall, in Natal, copy or cause to be copied any work of art in which there shall be registered copyright, without the consent in writing of the proprietor thereof, or shall import for sale or hire from parts beyond the Colony any such work so copied, or knowing such work to have been so unlawfully copied, shall sell, publish, or expose for sale or hire, or shall have in his possession for sale or hire, any work or copy of any work so unlawfully copied or imported without such consent as aforesaid, such offender shall be liable to an action for damages at the suit of the proprietor of such copyright. Persons copying, selling, exposing, &c., copyrighted works of art liable in damages.
25. All copies of any work wherein there shall be registered copyright, and which shall have been unlawfully printed or copied in Natal, or having been so printed or copied shall be imported without the consent of the registered proprietor of such copyright, in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright who is registered as such, and such registered proprietor shall, after demand thereof in writing, be entitled to demand delivery up to him of all existing copies, and to sue for and recover the same, or damages for the detention or conversion thereof, in an action against the party who shall detain the same. Forfeiture to proprietor of all copies imported, published &c., without consent
26. From and after the passing of this Act it shall not be lawful for any person, not being the proprietor of the copyright, or some person authorised by him, to import into this Colony any reprint or copy, as the case may be, made out of Natal, of any work in which there shall be, in the case of a book, subsisting copyright, and in the case of a work of art, registered copyright, under the provisions of this Act, or of any Act for the time being in force in this Colony relating to copyright. Prohibition of importation of reprints.
27. If any person, not being such proprietor or person authorised as aforesaid within the meaning of the foregoing section, shall import or bring, or cause to be imported or brought, any such reprint or copy into this Colony contrary to the true intent and meaning of this Act, or shall knowingly sell, let, publish, or expose for sale or hire any such reprint Forfeiture of reprints or copies imported published, &c.

(A) The footnote to s. 15 of 5 & 6 Vic. c. 45. in Chitty's Statutes, says, "The question, what is an infringement of an author's copyright, is frequently one of great difficulty, and is one which must depend upon the circumstances of each particular case, having regard to

the nature of the work into which the pirated parts are imported, and the value and extent of the infringement." The editor then gives a long list of decisions, especially as affecting various compilations, such as road-books, directories, diaries, law reports, &c., &c.

Act 17, 1897. or copy, then every such reprint and copy shall be forfeited, and shall be seized by any Officer of Customs, and the same shall be destroyed or disposed of in such manner as the Governor shall direct; and every person so offending, being duly convicted thereof before any Magistrate's Court shall also for every such offence forfeit the sum of Ten Pounds Sterling, and double the value of every copy of such book or work which he shall so import or bring, or cause to be imported or brought into the Colony, or shall knowingly sell, let, publish, or expose for sale or hire, or shall cause to be sold, let, published, or exposed for sale or hire, or shall have in his possession for sale or hire contrary to the true intent and meaning of this Act. Five Pounds Sterling of such penalty shall be paid to the use of such Officer of Customs, and the remainder to the proprietor of the copyright.

Actions by proprietors of copyright in books first produced in Natal.

28. No proprietor of copyright in a book first produced in Natal shall maintain any action in respect of the infringement of his copyright, unless before commencing such action he shall register his copyright: Provided that the omission to register shall not affect the copyright in any book, but only the right to sue as aforesaid.

Actions by proprietors of copyright in works first produced in Natal.

29. No proprietor of copyright in a work of art, first produced in Natal, shall be entitled to the benefit of this Act until he shall have registered his copyright, nor shall any prosecution nor action be competent for anything done before registration.

Extension of Sections 23, 24, 25, 26, and 27 to copyrights of Cape of Good Hope.

30. The provisions of Sections Nos. 23, 24, 25, 26, and 27 of this Act shall apply in respect of a reprint of any book or copy of any work in which there shall be registered copyright in the Colony of the Cape of Good Hope, under any Act for the time being in force in the said Colony, as to which the proprietor or his agent shall have given to the Collector of Customs of Natal a notice in writing, accompanied by a certificate of the existence of such copyright, such certificate being issued from, and bearing the seal of, the office for the registry of copyrights in the Colony of the Cape of Good Hope, and stating when such copyright expires.

For the purposes of this section any reference in Sections Nos. 23, 24, 25, 26, and 27 to reprinting or copying in Natal, or out of Natal, shall be deemed a reference to reprinting or copying in the Colony of the Cape of Good Hope, or out of the Cape of Good Hope, as the case may be.

Rules.

31. The Governor in Council may, from time to time, make rules for carrying out the objects of this Act.

pd by Act 9, 1916. Sect: 194

#### Act No. 44, 1898.

“To declare the Law affecting Play Rights.”

[3rd September, 1898.]

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

Short title and commencement

1. This Act shall be known as the “Play Rights Act, 1898,” and shall commence and take effect from such date as shall be proclaimed by the Governor after the passing thereof (A).

Interpretation.

2. In this Act,  
“Play right” means:—

(a) The sole and exclusive right to represent, perform, act, play, or exhibit any dramatic, operatic, or musical work being a tragedy, comedy, play, opera, farce, scene,

(A) Took effect 28th March, 1899.

pantomime (or its class), song, dance, or other scenic or musical or dramatic production or representation registered under this Act; Act 44, 1898.

(b) The sole and exclusive right of converting or adapting any work registered under this Act into any form, whether dramatic or otherwise.

“ Author ” means the inventor or writer or adapter of any and every work capable of registration under this Act, and in the case of posthumous work, means the proprietor of the manuscript.

“ Assigns ” means every person in whom the interest of an author or proprietor in play right shall be vested, whether derived from such author or proprietor before or after the publication of any play right work, and whether acquired by sale, gift, or bequest, or by operation of law, or otherwise.

“ Representation : ” “ Perform ” shall mean the representation or performance of any play right work, either in public or private (A).

“ Copy ” means to repeat or colourably imitate.

3. This Act shall apply to play right in Natal of works first produced in Natal, save as is hereinafter excepted (B). Application of Act.

4. It shall be lawful for the author of any work, or his assigns, to make entry of his play right in the proper register as hereinafter provided. Work may be registered.

5 There shall be kept at the office of the Registrar of Deeds a book of registry, wherein may be registered the proprietorship in any play right, together with all assignments thereof, and certificates affecting such play right shall be kept and issued in the office and by the officer appointed for the purpose. Registry book.

6. Each register shall contain the following particular, in reference to every play right registered therein :— Particulars of register.

The title and date of first performance in Natal, and the name and place of abode of the proprietor, and a short description of the nature and subject of the work.

The book of registry shall be open to inspection by any person, and in the event of a copy of such register being required, the officer appointed shall issue a copy under his signature and seal. Such duly attested copy shall be admissible as evidence in any court of justice, and shall be prima facie proof of the proprietorship or assignment of a play right, and of the right of representation or performance. Inspection of register.  
Certified copies admissible in evidence.

7. A copy of all works registered under this Act shall be lodged with the Registrar by the author or assignee, provided that in case any such work is in manuscript, or shall not have been committed to writing, it shall be sufficient for the author or his assignee to register only the title thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor thereof, and the time and place of the first performance, and a short description of the work. Copy of registered work to be lodged.  
Manuscript or unwritten work.

8. The play right in every work registered under this Act shall endure for the natural life of the author and for a further term of seven years, commencing at the time of his death, and shall be the property of the author or his assigns ; provided always that if the said term of seven years shall expire before the end of forty-two years from the date of registration of such work, the play right shall in that case endure for such Duration of play right.

(A) These words expunged and others substituted by Act 18, 1899, post

(B) See sec. 18.

**Act 44, 1898.** period of forty-two years; and the play right in every work which shall be registered after the death of its author shall endure for the term of forty-two years from the date of registration thereof.

Mode of assign-  
ing play right.

9. It shall be lawful for every registered proprietor of a play right to assign his interest or any part thereof by making entry in the book of registry of such assignment, and of the name and place of abode of the assignee. Any assignment so entered shall be effective in law to all intents and purposes whatsoever, and it shall be of the same force and effect as if the assignment had been made by deed.

Exclusive rights  
of proprietor  
of registered  
work.

10. From and after the passing of this Act, the proprietor of any work registered under this Act, whether the same be composed before the passing of this Act or not, shall during the period of protection have the sole right of representing or performing or causing or permitting to be represented or performed, any such work.

Damages for  
breach of play-  
right.

11. If any person other than the proprietor shall, after the passing of this Act, perform or represent (A) any play right work without the written (B) consent of the proprietor, or if any person shall cause to be performed or represented (C) any play right work without such consent aforesaid, such offender shall be liable to an action for damages at the suit of the proprietor of the play right, and general damages may be awarded without proof of special loss.

False entries  
and copies.

12. If any person shall wilfully or knowingly make or cause to be made any false entry in any register kept under this Act, or shall wilfully or knowingly produce or cause to be produced or tendered in evidence any document purporting to be a copy of any false entry in any such register, he shall be guilty of an offence, and shall on conviction thereof be liable to a fine not exceeding One Hundred Pounds Sterling, or to imprisonment with or without hard labour for Twelve Months.

Infringement of  
play right by  
copying, &c.

13. It shall be an infringement of a play right if any person shall, without the consent in writing of the proprietor or his agent, copy any play right work, either by dialogue, scenic effect, or composition, or in any manner whatsoever, or if any person shall adapt, multiply, or publish, or expose for hire, sell, or import any imitation of any play right work, or any portion of any play right work.

Actions for  
infringements.

14. Every action for infringement of play right shall be heard before the Supreme Court, and it shall be lawful for a Judge of such Court to make, vary, and dissolve orders affecting the representation or performance of any play right work, summarily or otherwise.

Personal prop-  
erty.

15. All play rights registered under this Act shall be deemed to be personal property.

Fees of office.

16. All fees of office fixed by the Governor for payment under this Act shall be paid to the Registrar of Deeds.

Benefits of Act.

17. No proprietor of play right first produced in Natal shall be entitled to the benefit of this Act until he shall have registered his play right, nor shall any prosecution or action be competent for anything done before registration.

(A) Cf. 3 & 4 Will. IV. c. 15, s. 2. Under that enactment it has been held that such person only is liable who, by himself or his agent, actually takes part in the representation which is a violation of the copyright, and that the landlord of the rooms in which the performance takes place is not, as such, liable (*Russell v. Briant*, 8 C.B. 836; 19 L.J., C.P. 33); and see further as to this point, *Lyon v. Knowles*, 3 B. & S. 556; 32 L.J., Q.B. 71, affirmed 5 B. & S.

751; *Marsh v. Conquest*, 17 C.B., N.S. 418; 33 L.J., C.P. 319.

(B) Compare the Imperial Act (*vide supra*) which reads, "consent in writing." This need not be in the handwriting of the author, but may be given by an agent having due authority (*Morton v. Copeland*, 16 C.B. 517; 24 L.J., C.P. 169; see further, *Fitzball v. Brooke*, 2 Dowl. & L. 477; *Shepherd v. Conquest*, 25 L.J., C.P. 127; 17 C.B. 427).

(C) See note to sec. 2.

18. Nothing in this Act shall be deemed to lessen any rights in respect to play right in Natal which existed prior to the passing of this Act in virtue of any Act of the Imperial Parliament, or any order of Her Majesty in Council made thereunder.

Act 44, 1898.  
Saving of rights

Rep'd by Act 9, 1916. Sect: 194  
Act No. 18, 1899.

"To amend the Play Rights Act, 1898."

[15th August, 1899.]

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

1. The words—

"Representation": "Perform," shall mean the representation or performance of any play right work, either in public or private,"  
occurring in Section 2 of the Play Rights Act, 1898, shall be expunged, and in lieu thereof the following shall be substituted:—

Amendment of  
Sec. 2, Act 44,  
1898.

"Representation" or "Performance" shall mean the representation or performance of any playright work in a public place.

Rep'd by Act 9, 1916. Sect: 194  
Act No. 19, 1899.

"To provide for the Registration of Designs" (A).

[28th August, 1899.]

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

#### DEFINITIONS.

"Registrar" means Registrar of Deeds for the Colony.

"Design," in and for the purposes of this Act, means any design applicable to any article of manufacture or to any substance, artificial or natural, or partly artificial and partly natural, whether the design is applicable for the pattern or for the shape or configuration or for the ornamentation thereof, or for any two or more such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, pressing or stamping, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for sculpture.

"Copyright" means the exclusive right to apply a design to any article of manufacture, or to any such substance as aforesaid in the class or classes in which the design is registered.

(A) This Act is founded upon the Imperial Statute of 1883, 46 & 47 Vic. c. 57, which, however, is of much wider scope.

Act 19, 1899.

“Proprietor” means the author of any new or original design unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor, and every person acquiring for a good or valuable consideration a new and original design or the right to apply the same to any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired and to that extent, but not otherwise.

REGISTER OF DESIGNS.

Register of designs to be kept, and person not entitled to sue for damages for infringement, unless design registered.

1. A register of designs as defined by this Act and of the proprietors thereof, shall be established and kept by the Registrar, and from and after the date of the promulgation of this Act, a person shall not be entitled to institute any proceedings to prevent or to recover damages for the infringement of any design as defined by this Act until and unless such design is registered in pursuance of this Act.

Evidence of matters in the register.

2. The register of designs shall be prima facie evidence of any matters by this Act directed or authorised to be entered therein.

Notice of trust not to be registered.

3. There shall not be entered in any register kept under this Act, or be receivable by the Registrar, any notice of any trust expressed, implied, or constructive.

Register to be open to inspection.

4. Every register kept under this Act shall at all convenient times be open to the inspection of the public subject to the provisions of this Act, and to such regulations as may be prescribed, and copies certified by the Registrar of any entry in such register shall be given to any person requiring the same on payment of the prescribed fee.

Certified copies or extracts to be received in evidence.

5. Printed or written copies or extracts purporting to be certified by the Registrar of, or from any documents, register, or other books kept in the Deeds Registry Office under the provisions of this Act, shall be admitted in evidence in all Courts and in all proceedings without further proof or production of the originals.

Supreme Court may make, expunge, or vary an entry.

6. The Supreme Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person from any register kept under this Act or by any entry made without sufficient cause in any such register, make such order for making, expunging or varying the entry as the Court thinks fit, or the Court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

Court may decide any question for rectification of register.

7. The Court may in any proceeding under this Section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact either upon pleadings or in such other manner as the Court may think fit, and may award damages to the party aggrieved.

Notice of rectification.

8. Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the Registrar.

Certificate by Registrar to be prima facie evidence as to entry, &c.

9. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorised by this Act, or any rules and regulations made thereunder, to make or do, shall be prima facie evidence of the entry having been made, and of the contents thereof, for the matter or thing having been done or left undone.

## REGISTRATION OF DESIGNS.

Act 19, 1899.

10. The Registrar may, on application by or on behalf of any person claiming to be the proprietor of any new or original (A) design not previously published in this Colony register the design under this Act, and shall grant a certificate of registration to the proprietor of the design when registered.

Application for registration.

11. The same design may be registered in more than one class.

Class.

12. The Registrar may, if he think fit, refuse to register any design presented to him for registration, but any person aggrieved by such refusal may appeal therefrom to the Supreme Court, and due notice thereof shall be given to the Registrar. The said Court may make an order determining whether and subject to what conditions, if any, registration is to be permitted.

Refusal to register, appeal to Supreme Court.

## COPYRIGHT IN REGISTERED DESIGNS.

13. When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

Copyright on registration.

14. Before delivery or (b) sale of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration) furnish to the Registrar the prescribed number of exact representations or specimens of the design; and if he fail to do so, the said Registrar may erase his name from the register, and thereupon his copyright in the design shall cease.

Representations or specimens of design to be furnished to Registrar.

15. Before delivery or (c) sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark or with the prescribed word or words denoting that the design is registered, and if he fail to do so, the copyright in the design shall cease, unless the proprietor shall show that he took all proper steps to ensure the marking of the article.

Articles to be marked so as to denote that the design is registered.

16. During the existence of copyright in a design the design shall not be open to inspection except by the proprietor or a person authorised by the Attorney-General or by the Supreme Court, and furnishing such information as may enable the Registrar to identify the design, nor except in the presence of the Registrar, nor except on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design or of any part thereof: Provided that where registration of a design is refused on the ground of identity with a design already registered the applicant for registration shall be entitled to inspect the design so registered.

Inspection of registered designs during copyright is restricted.

17. When the copyright in a design has ceased the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

Inspection when copyright has ceased.

18. On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the Registrar to identify the design, and on payment of the prescribed fee, it shall be

Information may be obtained as to existence of copyright.

(A) This sec. is similar, in substance, to sec. 47 sub-s. (1) of 46 & 47 Vic. c. 57, under which the novelty or originality consists in the application of the design to an article of manufacture, so that a design in metal for the handles of spoons and forks representing a view of Westminster Abbey taken from a

photograph, was held a proper subject for registration (*Saunders v. Wiel*, [1893] 1 Q.B. 470; 62 L.J., Q.B. 341; 68 L.T. 183; 41 W.R. 356—C.A.).

(B) Sec. 50, sub-s. (2), 46 & 47 Vic. c. 57, has "before delivery on sale."

(C) Cf. s. 51, 46 & 47 Vic. c. 57.



**Act 19, 1899.** the duty of the Registrar to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date of registration and the name and address of the registered proprietor.

Cesser of copy-  
right in certain  
events.

19. If a registered design is used in manufacture elsewhere than in this Colony, and is not used in this Colony within six months of its registration in this Colony, the copyright in the design shall cease.

Assignment of  
copyright in  
design.

20. Where a person becomes entitled by assignment, transmission, or other operation of law to the copyright in a registered design, the Registrar shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the copyright in the design in the register of designs as the case may be. The person for the time being entered in the register of designs as proprietor of a copyright in a design shall, subject to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licenses as to or otherwise deal with the same, and to give effectual receipts for any consideration for such assignment, license, or dealing.

#### FEEs.

Fees to be paid  
in stamps.

21. There shall be paid in respect of applications and registrations, and other matters under this Act, the fees set forth in the Schedule to this Act, and such fees shall be paid in stamps.

#### RULES.

Rules to be  
laid before  
Parliament.

22. The Registrar may, from time to time, with the consent of the Governor, make, and when made, alter, annul, or vary such general rules as to the registry of designs and as to the classification of goods for the purposes of this Act, and generally for the purpose of carrying into effect this Act, as he may deem expedient. Any rules made in pursuance of this Section shall be forthwith laid before both Houses of Parliament if Parliament be then sitting, or if not then sitting then within ten days after the then next assembling of Parliament, and shall be of the same validity as if they had been enacted by Parliament: Provided that if either House of Parliament resolve within one month after such rules have been laid before such House that any of such rules ought not to continue in force, any rule in respect of which such resolution has been passed shall after the date of such resolution cease to be of any force, without prejudice nevertheless to the making of any other rule in its place, or to anything done in pursuance of any such rules before the date of such resolution.

#### LEGAL PROCEEDINGS.

Penalty on  
piracy of regis-  
tered design.

23. During the existence of copyright in any design

- (a) It shall not be lawful for any person without the license or written consent of the registered proprietor to apply, or cause to be applied, such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for the purposes of sale to any article of manufacture or to any substance artificial or natural, or partly artificial and partly natural.
- (b) It shall not be lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitations thereof shall have been so applied (A) without the consent of the registered proprietor.

(A) Sub-s. (b) of s. 58 of 46 & 47 Vic. c. 57, here inserts the words "knowing that the same has been so applied."

Any person who acts in contravention of this Section shall be liable for every offence to forfeit a sum not exceeding £50 to the registered proprietor of the design, who may recover such sum in the Court of any Magistrate having jurisdiction: Provided that the total sum forfeited in respect of any one design shall not exceed One Hundred Pounds. Act 19, 1899.

24. Notwithstanding the remedy given by this Act for the recovery of such penalty as aforesaid, the registered proprietor of any design may, if he elect to do so, as an alternative to the remedy in the preceding section mentioned, bring an action for the recovery of any damages arising from the application of any such design or of any fraudulent or obvious imitation thereof, for the purpose of sale, to any article of manufacture or substance, or from the publication, sale, or exposure for sale by any person of any article or substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, such person knowing that the proprietor had not given his consent to such application. Action for damages.

OFFENCES.

25. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in such register, or produces, or tenders, or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of the crime of fraud. False entries in register or false copies.

26. Any person who describes any design applied to any article sold by him as registered which is not so shall be liable for every offence to a fine not exceeding Twenty Pounds, to be recovered in any competent Court. Describing un-registered design as registered.

27. A person shall be deemed for the purposes of this Act to represent that a design is registered if he sells the article with the word registered, or any word or words expressing or implying that registration has been obtained for the article stamped, engraved, or impressed on or otherwise applied to the article. What amounts to representation that design is registered.

INDUSTRIAL, INTER-COLONIAL, INTERNATIONAL, AND OTHER EXHIBITIONS.

28. The exhibition at an industrial, inter-colonial, or international exhibition, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor of a design or of any article to which a design is applied, or the publication during the holding of any such exhibition of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof, provided that both the following conditions are complied with, viz. :— Publicity during exhibition not to prevent registration of design, provided conditions complied with.

- (a) The Exhibitor must, before exhibiting the design or article, or publishing a description of the design, give the Registrar the prescribed notice of his intention to do so, and
- (b) The application for registration must be made before or within six months from the date of the opening of the exhibition.

SHORT TITLE.

29. This Act may be cited as the "Registration of Designs Act, 1899." Short title.

SCHEDULE.

	£	s.	d.
For every application to register one design, for one or more articles included in one class . . . . .	0	10	0
For every application to register more than one design for one or more articles included in one class, for each additional design after the first . . . . .	0	5	0

	£	s.	d.
Act 19, 1899. For every application to register a design in respect of goods in different classes, for every class after the first to which such design is extended an additional fee of ...	0	5	0
Schedule. For the registration of a single design ...	2	0	0
Where the same person is registered at the same time for the same design in respect of goods in different classes, for the registration of one design in each class after the first an additional fee of ...	0	5	0
Where the same person is registered at the same time for more than one design for one or more articles included in one class, for the registration of each additional design after the first ...	1	0	0
On every application to register a subsequent proprietor in cases of assignment or transmission, the first design ...	1	0	0
For every additional design assigned or transmitted at the same time ...	0	5	0
For altering address in the register for every design ...	0	5	0
For every entry in the register of a rectification thereof, or an alteration therein not otherwise charged ...	0	10	0
For every certificate of registration ...	1	0	0
For every copy of such certificate ...	0	5	0
For inspecting register for every quarter of an hour ...	0	2	0
On every application to Registrar under Section 18 for information as to whether registration still exists in respect of a design ...	0	5	0
For certified copy of an entry, for first 100 words ...	0	2	0
Every subsequent 100 words or portion thereof ...	0	1	0
For inspection of a design under Section 16 ...	0	5	0
For inspection of a design under Section 17 ...	0	2	0
For every copy of a design under Section 17 ...	1	0	0
For every amendment of an application for registration of a design ...	0	5	0

## CORONERS.

[See "MUNICIPAL CORPORATIONS."]

## CORPORATIONS.

[See "MUNICIPAL CORPORATIONS."]

## COSTS.

[See "PLEADING, PRACTICE, &amp;C."]

COUNTIES (DIVISION OF).

Ordinance No. 4, 1852.

“ Ordinance to provide for the more convenient division of the District for certain purposes.”

[23rd April, 1852.]

WHEREAS, it is necessary, for the purposes of local government, the better administration of justice and military organization of the population, to divide the District into more convenient divisions and subdivisions than those now existing :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. It shall be lawful for the Lieutenant Governor by proclamation, from time to time, to divide the District into counties, and to subdivide any such county into wards, and also to subdivide any such ward into townships, and to alter the limits of every such county, ward, or township.

Lieutenant-Governor may divide District.

2. It shall be lawful for the Lieutenant Governor, by proclamation, from time to time, to divide any such county, ward, or township, into two or more counties, wards, or townships, and also to consolidate any two or more counties, wards, or townships into one county, ward, or township as occasion may require.

Counties, &c., may be subdivided or consolidated.

3. It shall be lawful for the Lieutenant Governor, by proclamation, to declare the name by which every county, ward, or township, shall be known, and also to alter such name.

Name of counties, &c., may be declared by proclamation.

4. This Ordinance shall commence and take effect from and after the date of the promulgation thereof in the “ GOVERNMENT GAZETTE ” (A).

Commencement

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(A) May 11, 1852.

(B) Amended by Act 21/1909  
see also Act 3 of 05

COURTS (MAGISTRATES') (A).

[See " COURTS (NATIVE) "; " CRIMINAL LAW "; " EVIDENCE AND WITNESSES. "]

Repealed by Act 32 of 1917, Sect. 112

Act No. 22, 1896. <sup>3</sup>  
Act 32, 1905

"To amend and consolidate the Laws regulating Magistrates' Courts."

[30th June, 1896.]

WHEREAS it is expedient to amend and consolidate the laws relating to the Courts, jurisdiction, powers, duties, and Divisions of Magistrates :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

Short title.  
Commencement  
Laws repealed.

1. This Act may be cited as the " Magistrates' Courts Act, 1896."

2. This Act shall have effect on and after the first day of July, 1896.

3. The Laws and Act enumerated in the Schedule of this Act shall be, and are hereby repealed, without prejudice to any act or thing done or proceedings instituted under the authority thereof, or to any proclamation, appointment, rules, or orders made or published under any of the said Laws and Act, all of which, save so far as they may contain anything contrary to the provisions of this Act, shall have effect and be of force until the completion, alteration, or repeal thereof, as is provided by this Act.

Interpretation.

4. In the construction of this Act the following terms shall, unless inconsistent with the context or subject matter, have the following meanings assigned to them, that is to say :

" Division " shall mean that district or portion of the Colony appointed or established by the Governor as a Magisterial Division, and within which each Magistrate is to exercise his ordinary powers or jurisdiction.

" Court " shall mean the place or places appointed by the Governor for the trial in public of any matter, criminal or civil, by the Magistrate.

" Magistrate " shall mean the officer appointed by the Governor to exercise judicial power under this Act or any special Law or Act within the Division, or the person appointed by the Governor to act as such, or any Assistant Magistrate, and shall be deemed to include and to have included the term " Resident Magistrate " wherever mentioned in any Ordinance, Law, or Act.

" Jurisdiction " shall mean the limit within which any Magistrate shall exercise the powers conferred upon his office by this Act or any other Law or Act, whether relating to territory or to crimes and offences, or to punishments, or to debts or to other civil complaints, or to orders or appointments, or to other matters necessary to give full and complete effect to his function and duties.

" Appeal " shall include review, and shall mean the proceedings taken in bringing any sentence, judgment, or order of a Magistrate under the review or notice of the Supreme or any Circuit Court for correction, reversal, variation, or otherwise.

Creation of Divisions.

5. For the better and more convenient and effectual administration of justice, it shall and may be lawful for the Governor from time to time

(A) See Hillier's Magistrates' Court Practice.

to divide the Colony of Natal into Divisions, and to declare the names by which such Divisions shall be known, to fix and alter, if necessary, the limits and boundaries of the same, and to increase or decrease as may be desirable the number of such Divisions; and the Governor is further empowered to appoint the places in such Divisions where ordinary and occasional Courts shall be held, with power to alter the same and appoint others for the like purpose, and also to appoint Magistrates who shall preside over such Courts and administer justice therein. Act 22, 1896.

6. The creation and establishment of any such Division, together with the limits, name, and seat of Magistracy thereof, and the places where Courts are to be held therein, shall be declared and published by the Governor by proclamation in the "NATAL GOVERNMENT GAZETTE." There shall be one central or principal Court in each Division, and as many places for the holding of occasional or Branch Courts as in the opinion of the Governor the exigency of each Division may require. Proclamation of Divisions.

7. The officers to preside at such Courts and to exercise judicial powers and to administer justice within such Divisions shall be appointed by the Governor, and shall be called Magistrates, and may be stationed in any Division which the Governor may determine and may be moved therefrom and appointed to another, or otherwise as to the Governor may seem desirable. Appointment of officers.

8. The Governor may from time to time appoint for any Division one or more fit and proper person or persons, to be styled Assistant Magistrates, who shall, subject to the provisions of this Act, have and exercise all the power and jurisdiction of a Magistrate in all cases, criminal and civil, within the Division to which they have been appointed; or such Assistant Magistrates may be appointed with criminal jurisdiction only, or civil jurisdiction only. Assistant Magistrates.

9. Every person who shall in manner aforesaid be appointed to be a Magistrate or an Assistant Magistrate, or to act as a Magistrate, shall, as soon as may be after the acceptance of such office, take the oath of allegiance, and the oath of office or judicial oath in the manner and form as provided in the Law No. 14 of 1869, known as the "Promissory Oaths Law, 1869" (A), and such oaths shall be recorded in the record or note book of the criminal proceedings of his Court, or of the Court to which he shall have been appointed to act, as the case may be: Provided that no proceedings, judgment, sentence, or order shall be invalidated merely from any delay in taking such oaths, and provided also that whenever any Magistrate or Assistant Magistrate shall be appointed to any other Division such oaths shall not have to be taken and subscribed. Oaths of allegiance and office.

10. There shall be attached to each Court a Clerk of the Court and a Messenger (B), and so many other officers as to the Governor shall from time to time appear necessary. Messenger and other officers.

11. It shall be the duty of the Messenger to see to the due service of all summonses, writs, notices, orders, or other process of the Court, either by himself or deputy, or by an officer of Police, and an endorsement on any such writ or other document of a certificate of service signed by the Messenger, deputy, or Police Officer, shall be prima facie evidence that such service has been effected in the manner certified. Duty of Messenger.

12. Messengers of the Court may serve or execute any process within or out of the limits of the Division to which they have been appointed as may be found most convenient and economical, and all Messengers shall act as and shall be deemed to be the deputies of all other Messengers within their respective Divisions, and shall serve and execute all summonses, writs, notices, orders, or other processes of the Courts of other Divisions in the same manner as if issued by the Courts of their own Divisions. Service of process.

(A) See tit. "OATHS."

(B) See Act 1, 1894, sec. 23, tit. "POLICE."

Act 22, 1896.  
Interpreter.

13. Every Interpreter in a Magistrate's Court shall be sworn to interpret truly the evidence received through him, and any competent person may be employed by the Magistrate as Interpreter in case the services of a permanent Interpreter shall not be available when wanted.

Jurisdiction in criminal cases.

*tended by*  
*10. 1906*  
*sec. 16.*

14. The Magistrate shall have jurisdiction in all cases of crimes and offences with the exception of murder, rape, treason, culpable homicide, assault with intent to commit murder or rape (A), coining, bigamy, bestiality, sodomy, and any crime or offence for the trial of which a special Court has been or may be appointed, and any crime or offence, the punishment of which is placed beyond the jurisdiction of the Magistrate.

Remittal by Attorney-General.

15. In any case in which a Magistrate has committed a person for trial in the Supreme Court, or a Circuit Court, it shall be lawful for the Attorney-General, notwithstanding the provisions of the preceding section, to remit the case for trial in the Court of any Magistrate, if he be satisfied that the ends of justice will thereby be served, and the Magistrate shall have power and jurisdiction to try any such case so remitted to his Court (B): Provided that nothing in this section shall apply in respect of any case of Murder, Rape, or Treason.

Procedure in remitted case where accused has confessed his guilt.

16. Whenever any case shall be remitted to a Magistrate for trial under the last preceding section, and the accused person has, in his declaration duly made and certified at the preparatory examination, confessed himself guilty of any such crime or offence in respect of which the case has been remitted to the said Magistrate for trial, and there is otherwise reasonable evidence of the guilt of such accused person in respect of such crime or offence, the Magistrate shall, with all convenient despatch, cause the accused person to be brought before his Court, and shall inform him that the records of the preparatory examination, in the course of which he admitted his guilt, having been forwarded to the Attorney-General, have by him been remitted to the said Court for trial in respect of such crime or offence as aforesaid; and such Magistrate shall ask the accused person why, without further plea, sentence shall not then be passed upon him for the offence of which he has confessed himself guilty, and if such person shall not make answer to any such question, such Magistrate shall thereupon pass sentence upon him.

Witnesses.

17. If, in answer to the said question, the accused person shall desire to have any witness formerly examined recalled, or any person, not yet examined called as a witness, or if such accused person shall state any other ground why sentence should not then be passed upon him, the Magistrate shall consider what is urged by such accused person in support of his application for further evidence, or of his objection to be then sentenced, and shall pass sentence at once, or proceed with the hearing of the case.

Trial and judgment.

18. If such Magistrate shall deem it to be his duty to pass sentence at once, he shall make a note of the application or objection of the accused, and of the reasons for the disallowance thereof, on the record of the proceedings in the case (C).

Reasons for passing sentence to be noted.

Jurisdiction when crime committed in travelling, &c.

19. When any crime or offence within the jurisdiction of the Magistrate shall be committed upon any person, or on or in respect of any property, in or upon any vehicle whatever when on any journey or on board any vessel whatever employed upon any waters within the Colony of Natal, such crime or offence may be dealt with, enquired into, tried, and determined, and the offender punished by the Magistrate of any Division

(A) Indecent assault is specially made cognizable in Magistrates' Courts by Act 22, 1898, s. 5, tit. "CRIMINAL LAW—IV."

(B) See Law 16, 1861, s. 5, tit. "CRIMINAL LAW (PROCEDURE)," as to pri-

soner's right to be tried by jury, and *Regina v. Wilson*, 15 N.L.R. 153.

(C) As to how a Record which is incomplete can be rectified, see *Cox v. Gaitshana*, 12 N.L.R. 124.

through or into which such person, vehicle, or vessel shall have passed in the course of the journey or employment during which such crime or offence shall have been committed, in the same manner as if it had been actually and wholly committed in such Division. Act 22, 1896.

20. When any crime or offence of such a nature as to be within the jurisdiction of the Court of a Magistrate shall be committed on the boundary or boundaries of two or more Divisions, or within two miles of any such boundary or boundaries, or shall be begun in one Division and completed in another, every such crime or offence may be dealt with, enquired of, tried, determined and punished by the Magistrate of any of the said Divisions in the same manner as if it had been actually and wholly committed therein. Jurisdiction to extend two miles beyond boundary.

21. It shall not be lawful for the Magistrates (except in cases where greater jurisdiction may be conferred by special Laws) (A) to sentence or adjudge any person convicted of any crime or offence before their Courts to any higher sentence or punishment than the following, that is to say : To pay a fine of Twenty Pounds, to be imprisoned with or without hard labour for a period of six months, and, unless a female, to receive privately in prison a whipping of twenty lashes or the like number of strokes with a cane or rod. In the discretion of the Magistrate, imprisonment and whipping may be joined and form part of the same sentence, or any one of the said classes of punishment may be awarded alone ; or imprisonment may be awarded in conjunction with a fine as an alternative punishment, or by way of default in the payment of any fine. When any convicted person has been sentenced to pay a fine with the alternative of imprisonment, or to imprisonment in default of payment of a fine, payment of the fine during any part of the currency of the term of imprisonment shall entitle such person to immediate release from custody. (13) Limit of punishment.

650 on hand PA  
7.3 21/32/01  
+ 25 lashes

22. As often as any male not exceeding the age of fourteen years shall be convicted of any crime or offence, and shall be sentenced to receive a whipping in private, it shall be in the discretion of the Magistrate to request the father, reputed father, or guardian of such convicted person, or to direct any other person to inflict the said punishment, which punishment shall not exceed ten strokes with a cane or rod, and shall be carried out in private at a place and before a suitable person, to be selected by the Magistrate, to witness the administration of such correction. The ages of juvenile offenders so dealt with shall be determined by the Magistrate by sworn testimony, or by enquiry, or by the appearance of the offender. Whipping of boys.

23. When a fine or penalty has been imposed by a Magistrate under any Ordinance, Law, or Act now or hereafter in force, without any alternative punishment, it shall be lawful for the Clerk of the Court, should such fine or penalty remain unpaid for a period of fourteen days, to issue a warrant, addressed to the Messenger of the Court, authorising and directing him to levy upon the goods and chattels (save as hereinafter in the 59th Section excepted), if any, of the convicted person wherever found within the Colony for the amount of the fine or penalty, and for the costs and expenses of the warrant, and of the attachment and sale thereunder. The manner of executing such warrant, and of effecting an attachment and sale, shall be the same as in writs of execution in civil cases, and such warrants shall remain in force until the fine or penalty and costs be fully paid or lawfully remitted, or until such warrant and sentence be set aside or suspended on appeal. Proof of age. Warrant for levy of fine.

(A) See *Reg. v. Pupa*, 14 N.L.R. 285, conferring greater jurisdiction, see Act 22, 1896, tit. "CRIMINAL LAW—IV." and as an example of a special Law



Act 22, 1896.  
Imprisonment  
when warrant  
unsatisfied.

24. Whenever upon the return of a warrant issued under the provisions of the foregoing section for the levy of a fine or penalty it shall appear to a Magistrate that no sufficient goods or chattels of the offender can be found whereof to levy such fine or penalty within the Colony, it shall be lawful for such Magistrate to issue his warrant for committing such offender to the common gaol, to be imprisoned there, with or without hard labour, for any term not exceeding three months, unless such fine or penalty shall be sooner paid.

Imprisonment  
without levy.

25. If it shall appear to a Magistrate, either by the confession of an offender or otherwise, that he hath not sufficient goods or chattels in the Colony whereof to levy a fine or penalty imposed without any alternative punishment, such Magistrate may, in his discretion, without issuing such warrant as is in the 23rd Section of this Act provided, order the offender to be imprisoned in like manner as if a warrant had been issued, and a return of nulla bona made thereon.

Application of  
fines.

26. All fines imposed by any Magistrate shall, unless where otherwise directed or provided (A), be when paid accounted for by the Magistrate to the Treasury for the use of the Government of this Colony.

Bail.

27. When any person shall be arrested by a constable or other officer proper for making criminal arrests for an offence proper for trial in the Court of a Magistrate, and it shall not be possible to bring the person arrested before the Court for immediate trial, it shall be lawful for such constable or officer, if he shall think it prudent to do so, to liberate such person upon the payment of a reasonable sum of money by way of bail for his appearance to answer the charge. It shall be the duty of the constable or officer before liberating such person to require him to appear before the Magistrate's Court at a stated day and hour, naming the earliest Court day when the case can be heard.

Extension of  
bail.

28. It shall be lawful for a Magistrate before whom any person shall be required to appear as aforesaid to extend, upon sufficient cause appearing, the time for such person to appear to answer the charge against him.

Forfeiture of  
bail.

29. If such person shall not, at the time appointed, as provided in the last two sections, appear to answer the charge against him, the money paid by him as bail may be declared by the Magistrate to be forfeited, and it shall thereupon be dealt with as if it were money forfeited upon a conviction for the offence with which such person was charged: Provided, that such forfeiture of bail shall in no way have the effect of preventing or prejudicing the re-arrest or the prosecution of such person for the offence with which he was charged.

Commencement  
of term of  
sentence.

30. Whenever it shall happen that a person upon whom a sentence of imprisonment is passed has been previously convicted of any crime or offence, and is already undergoing or about to undergo imprisonment for the same, it shall be lawful for the Magistrate to declare that such sentence shall take effect from the expiration of the current term of imprisonment, or from the expiration of the imprisonment under a previous sentence, and all sentences not so deferred shall be deemed to commence on the day they were passed: save as provided in Section No. 74 of this Act (B).

Prosecutions.

31. Prosecutions for crimes and offences may be instituted and conducted by the Clerk of the Peace, or any other prosecutor duly authorised. In any case where a complainant and the person accused may consent to a summary trial, the complaint may be heard and determined without the intervention of a prosecutor. Private prosecutions may be instituted and conducted in accordance with the provisions of Ordinance No. 18, 1845 (c).

(A) *E.g.*, where part of the penalty is paid to an informer.

(B) Sec. 74 refers to detention during appeal.

(C) See "CRIMINAL LAW (PROCEDURE)."

X See also act 32/1905 sec. 2.

COURTS (MAGISTRATES').

32. In any case of private prosecution it shall be lawful for the Clerk of the Peace or other deputy of the Attorney-General at any stage of such prosecution to take up the prosecution at the public instance, or the Clerk of the Peace or other officer as aforesaid may apply by motion, founded upon an affidavit, to the Magistrate to stop all further proceedings in such case in order that a prosecution for the same crime or offence may be instituted at the public instance in some other form or Court, and such Magistrate shall thereupon make an order in terms of such motion.

Act 22, 1896.  
Private prosecution may be stopped and public prosecution ordered.

33. When in the course of any trial it shall appear to the Magistrate that the crime or offence under trial is from its nature or magnitude more proper for the cognisance of a Superior Court, the said Magistrate shall stop the trial and shall commence and take a preparatory examination under the provisions of Ordinance No. 18, 1845.

Trial may be stopped and preparatory examination begun.

34. Where any person or persons shall be accused of violent conduct, or of using language or behaving in a manner likely to provoke a breach of the peace, or of threatening injury to the person or property of another, Magistrates are empowered upon sworn information or complaint to arrest, if necessary, the person or persons complained of, or to cause them by notice to appear before their Courts; and they are also hereby empowered to inquire into and determine upon such complaint, and in their discretion to require the accused persons to give security for any period not exceeding six months to keep the peace towards, and to refrain from injuring the property of, the complainant (A), and to award costs for or against either party. And should any person, after being adjudged to give such security as aforesaid, refuse or fail to do so, Magistrates are further empowered to direct the person or persons so in default to be committed to prison until such security be found, but no such imprisonment shall be for a longer period than six months. In all cases of assault or injury which may come before Magistrates for trial it shall be competent for Magistrates, instead of awarding any of the punishments specified in the 21st Section of this Act, or in addition to such punishments, to direct that the convicted person give security to keep the peace and to refrain from committing any injury against the complainant. All such cases shall be duly recorded in the records of Magistrates' Courts.

Violent conduct, threats, &c.

Security to keep the peace.

35. All Magistrates shall have jurisdiction in civil cases (save as between Natives not exempted from Native Law, other than such cases as are hereinafter provided for in Section 45 of this Act), brought or instituted by or against any person, firm, company, board, society, or corporation, residing, or being, or carrying on business within their respective Divisions where the claim or the subject of the action does not exceed in amount or value £100 (B).

Jurisdiction in civil cases.

36. In any case where land or moveables of greater value than £100 may be mortgaged for the sum of £100 or less, such land or moveables may be made executable in satisfaction of a judgment for the mortgage debt up to £100.

Execution upon mortgaged land or moveables.

37. The jurisdiction of a Magistrate shall extend to cases of ejectment where the rent claimed is not in excess of his jurisdiction, and where the value of the land, if the title be disputed, does not exceed £100;

Ejectment.

(A) It seems the Magistrate has no power to order security for keeping the peace towards "all Her Majesty's subjects," this being in excess of the words of the Act. Security apparently should be in the form of a written obligation (*Ugijana v. Clerk of the Peace*, 11 N.L.R. 228).

mother, but the circumstances were not such as to give the Magistrate jurisdiction under sec 45, post, held that this sec. did not confer jurisdiction by reason merely of the subject of the action not exceeding in amount £100. (Per Mason, J. in *Lietzow v. Scott*, unreported—Durban Circ. Court, Feb. 1898.)

(B) See sec. 51, post. Where the claim was for delivery of a child to its

Durban + J. M. B.  
£200  
D. 2 44-32

Act 22, 1896.  
Execution on  
land.

Trials by con-  
sent, of cases  
beyond ordin-  
ary jurisdiction.

Orders and  
interdicts.

Enquiry into  
accounts in  
action for  
balance.

Set-off, recon-  
vention, &c.

Costs.

Taxation.

Courts of  
Record.

Security in  
cases of inter-  
dict.

Complaints re-  
garding custody  
of children of  
unmarried  
native women.

and execution may issue out of any Magistrate's Court against any landed property, the value whereof does not exceed £100.

38. Where the parties consent thereto in writing, duly signed by them or on their behalf, the Magistrate shall have jurisdiction to try and determine any action or proceeding, otherwise beyond his jurisdiction, in which a husband does not seek relief against a wife or a wife against a husband, or in which the claim to relief is not based wholly or in part upon public rights, or in which the rights of minors or persons under curatorship are not affected.

39. Magistrates shall have jurisdiction to make, confirm, and dissolve orders and interdicts, and to enforce the carrying out thereof in all cases wherein the value of the subject matter in dispute shall not exceed the limit of jurisdiction by this Act provided.

40. It shall be lawful for all Magistrates in actions where the sum claimed is in respect of the balance of an account to enquire into and take evidence if necessary upon the whole account, even although it may represent and contain items and transactions exceeding the amount of their jurisdiction: Provided that no judgment shall be given for any sum, excluding costs, in excess of their jurisdiction.

41. It shall be lawful for all Magistrates in any action or proceedings to accept and enquire into and determine upon any plea of set-off, or compensation, or any claim in reconvention, irrespective of the amount of such set-off or claim in reconvention, whether the plaintiff shall or shall not succeed in proving his claim: Provided that any judgment in respect of such set-off, or compensation, or claim in reconvention shall not exceed the jurisdiction of the Magistrate before whom the proceedings have been brought; and provided further that the Magistrate shall have power to stay execution in any case, if satisfied that there are reasonable grounds in respect of any reconventional claim in excess of his jurisdiction.

42. A Magistrate shall have a discretion as regards costs in cases tried before him, and may allow or disallow costs to the successful party or may disallow a part of the costs, or may fix a sum to be paid in lieu of costs, or may order the costs to be taxed by the Clerk of the Court, with power to the Magistrate to review and correct the taxation, and to disallow any costs which may appear to him to have been unnecessarily incurred.

43. The Courts of Magistrates shall be Courts of Record, and all proceedings shall be in public save where otherwise provided by Act No. 12, 1895 (A), or any other Act.

44. In any case where a Magistrate shall grant the process of interdict, he may make the issue of the order dependent on the lodging of reasonable security with the Clerk of the Court to answer any claim of damage or for costs in case the interdict should be set aside.

45. In all cases of complaint by the parent or guardian of any person under the age of twenty-one years, and in the case of Natives by the father or guardian (B) of any unmarried female of whatever age, that any person is harbouring or keeping the child or ward of such parent or guardian, or has hired and contracted with such child or ward as a domestic servant or otherwise, and prevents (C) such child or ward from returning

(A) Repealed by Act 22, 1898, tit. "CRIMINAL LAW." This refers to Rape, &c.

(B) Where there is no detention and access is allowed, a Magistrate has no jurisdiction to order the delivery up of a minor (*Wanger v. Masele*, 19 N.L.R. 168).

(C) As to the meaning of this term, see *Cox v. Gaitshana*, 12 N.L.R. 124 and

236. See also considered judgment of Mason, J., in *Lietnow v. Scott* (unreported—Durban Circ. Court, Feb., 1898), where the Court, upholding the Magistrate's decision, declined to order the return of an illegitimate child to its mother (residing out of the Colony), the child being of an age of discretion and objecting strongly to leave the Respondent.

to the parent or guardian thereof, the Magistrate having jurisdiction shall enquire into such complaint, and, upon sworn information, direct the Clerk of the Court to issue due and proper notice to the accused, which notice shall set forth the act complained of, and shall appoint a day for the hearing of the same. All such complaints shall be enquired into and determined in the same manner as actions or suits are dealt with in Magistrates' Courts, and the Magistrate may grant an order for access by the parent or guardian to the child or ward, or Native woman as the case may be, and may cancel any contract or agreement entered into by the said child or ward or Native woman, and may also make such further or other order as to the said Magistrate shall seem meet (including an order as to costs): Provided that in dealing with such cases and making orders therein the Magistrate shall have regard to the welfare of the child or ward or Native woman, and to the conduct of the parents or guardian, and to the wishes of the mother as well as of the father (A).

Act 22, 1896

*Repealed  
See Act 17*

46. All such orders as aforesaid may be enforced by the Messenger of the Magistrate's Court, or by a Police Officer in pursuance of a writ or warrant issued by the Clerk of such Court, and any disregard or contempt of such writ or warrant may be punished by fine not exceeding Five Pounds Sterling, or by imprisonment in default of payment thereof, not exceeding one month, with or without hard labour.

Enforcement of orders.

47. Any married woman being engaged in any trade or calling shall be entitled, without the assistance of her husband, to bring or defend proceedings in any Magistrate's Court for any sum which may become due or claimable in connection with her trade or calling (B).

Married women engaged in trade may sue.

48. No person or firm shall be summoned to appear as a defendant or defendants in any civil action before the Court of any other division than that in which he resides, or the firm carries on the whole or part of its business, unless by leave of the Magistrate of the Division wherein it is sought to institute the action, or wherein the plaintiff resides or carries on business, and no such leave shall be given unless the plaintiff or his duly authorised agent shall present to such Magistrate an affidavit setting forth the nature of the claim or debt, and that it was wholly or in part contracted or arose in the Division where the action is sought to be brought, or that the defendant or defendants resided therein, or that the firm carried on business therein within six months prior to the date of such affidavit (C).

Suit against defendant in another division.

49. Every Magistrate's Court shall have the same authority and power for summoning and compelling the attendance at the Court in any civil or criminal case of witnesses residing or being in any other Magisterial Division as such Court has in respect of witnesses residing or being within its jurisdiction.

Power to summon witnesses from other divisions.

50. As often as in any civil case brought in the Court of a Magistrate any witness or witnesses being within or out of this Colony, and within or out of the Magisterial Division, shall be unable to attend the Court to give evidence by reason of sickness or other necessity, whereof the Magistrate shall be satisfied, it shall be competent for the Magistrate, upon the

Taking evidence by commission.

(A) See *Lietzow v. Scott*, supra, where the Court took into consideration the fact that applicant (the mother) had, during many years, contributed nothing towards the maintenance and education of the child, and that practically the child had known no home but that of Respondent. See also *Reg. v. Gynghall*, 4 R. 456; and *Reg. v. Lewis*, 9 L.T. 226.

(B) Roman-Dutch Law requires, in general, that a married woman sue or

be sued duly assisted by her husband; see Broome's Dig., tit. "HUSBAND AND WIFE," 292.

(C) Where there were three defendants, and each resided in a different District, it was held that action was rightly brought in the Supreme Court, and costs were allowed on the Supreme Court scale (*Jaydine v. Mahomed, Hoosen & Mahomed*, 19 N.L.R. 53).

Act 22, 1896. application of either party, upon notice to the other party, and if it appear to him to be consistent with the ends of justice, to appoint some fit and proper person to be a Commissioner of the Court for the purpose of taking the evidence of such witness or witnesses upon written interrogatories or otherwise, as may be agreed by the parties or determined by the Magistrate. The Magistrate shall forward the interrogatories, if any, and all necessary instructions, together with such reasonable sum (to be advanced by the party applying) as the Magistrate shall deem requisite for the necessary expenses to be incurred in and about the taking of the evidence, to such Commissioner, who shall take down in writing the evidence of such witness or witnesses, and shall transmit the same with his certificate to the Magistrate; and such evidence (subject to all lawful exceptions) shall be received as evidence in such case as aforesaid (A).

Abandonment of claim in excess of jurisdiction.

51. A plaintiff having cause of action for more than the amount for which a plaint might be entered under this Act may abandon the excess; and the judgment of the Court shall be in full discharge of all demands in respect of such cause of action.

Summary trials

52. A Magistrate may, by the consent of parties, try and determine any cause in a summary manner without any formal plaint or summons, and may also with like consent enter judgment in terms of the consent, without plaint or summons.

Jury trials.

53. In any case pending in a Magistrate's Court where a jury shall have been demanded in terms of Section 30 of Law No. 10 of 1871 (B), a copy of the record certified by the Clerk of the Court shall be forthwith sent to the Registrar of the Supreme Court, or Circuit Court of the district, and thereafter the cause shall be proceeded with in the same manner as is provided with respect to jury trials in the Supreme Court.

Orders for satisfaction of judgment by instalments.

54. In any case in which a judgment has been given for the payment of any debt, damages, or costs, the Magistrate may, upon the application of either party and in the presence of the debtor and of the other party or his attorney or agent, and at the time when judgment has been delivered or subsequently, whether a writ of execution has been taken out in respect of such judgment or not, make orders concerning the time or times and by what instalments any debt, or damages, or costs, or any balance thereof shall be paid, with or without security for the due payment thereof, as to such Magistrate shall seem proper. When making any such order the Magistrate may examine, or cause to be examined, the defendant upon oath touching his estate and effects and the manner in which he contracted the debt or incurred the damages or liability the subject of the action in which the judgment has been given, and as to the means, property, and expectations he had when the cause of action arose and subsequently, and as to the disposal he may have made of any property within the twelve months prior to such enquiry. Provided that such order shall not prevent the taking out of a writ of execution at any time before the claim is discharged.

*See s. 46 and 47 of Act 22, 1896*  
*ended by*  
*21/1969*

Examination of debtor.

*also see s. 54 of Act 22, 1896*  
*32/1905*

*checked*  
*JJ*

Imprisonment for default of appearance, refusal to disclose facts, improperly obtaining credit, neglecting to pay instalments, &c.

*in case*

55. If any person against whom a judgment has been given shall, when duly summoned, not attend as required by such summons, or shall not prove sufficient cause for not attending, or shall if attending refuse to be sworn or to disclose any of the matters and things in the preceding section mentioned, or if he shall not make answer touching the same to the satisfaction of the Magistrate, or if it shall appear to the Magistrate either by the examination of the party or by other evidence that the defendant in incurring the debt or liability the subject of the action has obtained credit from the plaintiff under false pretences or by means of fraud or breach of

(A) See Act 29, 1899, tit. "EVIDENCE AND WITNESSES," which provides for taking evidence of persons in neighbouring State by interrogatories.  
 (B) See tit. "JURIES."

trust, or has wilfully contracted such debt or liability without having had at the time a reasonable expectation of being able to pay or discharge the same, or if he has made or caused to be made any gift, delivery, or transfer of any property, or shall have charged, removed, or concealed the same with intent to defraud the plaintiff or any of his creditors, or if it shall appear to the satisfaction of the Magistrate that the defendant has since the judgment obtained against him had sufficient means and ability to pay the debt or damages or costs recovered against him, either altogether or by any instalment or instalments, which the Court in which the judgment was obtained shall have ordered, and if he has refused or neglected to pay the same as shall have been so ordered, it shall be lawful for such Magistrate, if he shall think fit, to order that such defendant be committed to the prison of his Division, there to be detained with or without hard labour for any period not exceeding thirty days: ~~Provided that no person shall be sent to or kept in prison for refusal or neglect to pay if he shall have paid the original debt without interest or costs.~~

Act 22, 1896.

*See however  
Act 21/09  
also sees. 51  
of act 32/05*

*Proviso. Rep. con  
stituted by act  
32/1905 see*

56. No person against whom any judgment has been given, or any order made concerning the payment of such judgment or of the costs appertaining thereto, shall be committed to prison merely by reason of his inability from want of means to pay such judgment and costs.

No imprisonment for mere inability to pay.

57. No imprisonment under the 55th Section of this Act shall operate as a satisfaction or extinguishment of the debt or cause of action on which a judgment has been obtained, or shall protect the party indebted under such judgment from being anew summoned and imprisoned for any new fraud or other default mentioned in the said section, or prevent the plaintiff from taking out execution against the goods and chattels of the defendant in the same manner as if such imprisonment had not taken place.

Imprisonment not a satisfaction of the debt.

58. The Messenger of any Magistrate's Court executing any process of execution against any person shall by virtue thereof seize and take and lay under attachment any moveable property belonging to the defendant, or whereof he is the reputed owner, wheresoever the same may be found, whether in the possession of the defendant or of any other person who may be holding the same to his order or by his request: Provided that nothing herein contained shall invalidate any sale or transfer of property made in good faith and for fair and valuable consideration, to any person having at the time no knowledge of any action affecting the property being instituted; and provided further that upon satisfactory proof upon oath the Magistrate having jurisdiction may release from attachment property which has been in good faith sold by, lent to or hired by any such defendant, or which has been otherwise improperly attached, or to which any other person may, before the Magistrate, prove himself entitled.

What may be taken in execution.

59. Tools of trade and the implements of husbandry of any debtor to the value of £10, and his household furniture to the value of £10, and his wearing apparel and bedding, shall be free from the process of execution issued from a Magistrate's Court (A).

Sales for value and bona fide, protected.

Tools of trade, &c., how far protected.

60. If any person against whom any judgment or order has been made shall, being at the time indebted to a greater amount than he has means to pay, have conveyed, assigned, or transferred any moveable property belonging to himself, to his wife, children, or any of his relatives, or other person, or have delivered or made over to any such person any bonds, notes, or securities, for money belonging to himself, the Magistrate may (unless such conveyance, assignment or transfer shall have been made bona fide and upon just and valuable consideration) order the same

Voluntary assignments not protected.

(A) By English common law tools of trade up to any value are exempt, conditionally, from distress for rent, whilst

if they be in actual use they are exempt absolutely. See Woodfall, Land & Tent. ch. XI. s. 8.

Act 22, 1896. to be seized and sold by the Messenger of the Court, and every such sale shall be valid against such defendant, his wife, children, or relatives, or any other person claiming through the said defendant: Provided no such order shall be made except on notice to the person to be affected thereby.

Bills of exchange, securities for money, &c., how dealt with in execution.

61. The Messenger of the Court shall hold any cheques, promissory notes, bills of exchange, bonds, or other securities for money which shall have been seized by him as aforesaid on behalf of the plaintiff, and the plaintiff may sue upon such securities for money, in satisfaction of the judgment he has obtained, and by virtue whereof the said securities were seized, in like manner as if the judgment debtor had then ceded them to the judgment creditor, and the Messenger may attach and draw out the money of the judgment debtor in any Bank, subject to the existing claims of such Bank.

Judgments to be in force for six years.

62. All judgments, orders, and writs of execution, or other process for compelling payment of any judgment shall be of force and virtue, and may be acted upon as occasion may require, within six years from the date of the original judgment in the action. Should the plaintiff have died within such period of six years, his executors or other legal representatives shall have power to take up the proceedings and act under the judgment obtained by the plaintiff in all respects as he could have done if living, and should the defendant have died within such period of six years, his estate then in the hands of his legal representatives, in their capacity as such, shall be deemed to be liable under any judgment obtained against the defendant: Provided that no execution shall be taken out under any such judgment or order after the lapse of six years from the date thereof, without leave first had and obtained from the Court by which the same was made, which shall have power to grant revival of judgment.

Revival of judgment.

Arrest of absconding debtor.

63. Where it shall be made to appear to any Magistrate by any person that he has a judgment or a matter of claim (A) against any person, and that such person is about to leave the Colony or is about to remove his property and effects from the Colony, it shall be lawful for such Magistrate, if the sum claimed be within his jurisdiction, and be not less than Ten Pounds Sterling, to grant an order for the issue of the process of the Magistrate's Court for the arrest of such person or for holding him to bail and for his appearance upon a day to be named in such process, or to grant an order for the issue of a writ of attachment of such property and effects so about to be removed, to abide the judgment of the said Court upon such claim as aforesaid.

Attachment of property.

In what cases such arrest or attachment may issue.

64. No such process of arrest or attachment as in the preceding section is mentioned shall be issued unless the plaintiff, or his agent or other legal representative, shall make an affidavit setting forth the nature of the claim, and when and where it was contracted or arose and the particulars thereof, and that there exists no mortgage, pledge, or security for his demand, or none adequate thereto, and further, that the deponent believes the defendant to be about to leave the Colony or remove his goods therefrom, as the case may be, and stating the grounds of such belief.

No arrest for costs of arrest.

Security.

65. No arrest shall be made in respect of the costs of the arrest, and the Magistrate may make the issuing of the writ of arrest dependent on security being given to the Clerk of the Court up to an amount named by the Magistrate, to answer any claim for damages in case the arrest shall be set aside.

Release from attachment or arrest.

66. When any person has been arrested or any property attached, the person so arrested or any party having an interest in the property so

(A) An arrest can be made in this Colony of a person, about to leave it, on a Promissory Note, although not yet due (*Wood v. Reynolds*, 3 N.L.R. 31).

attached may at any time upon notice to the plaintiff apply for the release of such person or property to the Court having jurisdiction, and such Court may make such order as shall seem meet. Act 22, 1896.

67. In all cases where a defendant has been arrested by virtue of Section 63 of this Act, the Magistrate before whose Court such defendant shall be brought may, if thereto required by the plaintiff, should the judgment be or have been in his favour, proceed according to the provisions and directions of Section 55 of this Act, and may also direct the continuance of the arrest or bail bond until security has been found for the payment of the judgment and costs, if any: Provided that if it shall be made to appear to the said Magistrate that the defendant is unable from want of means to satisfy the said judgment, the said defendant shall be immediately released from arrest.

Proceedings subsequent to arrest.

68. It shall be competent for any prisoner or convicted person to appeal to the Supreme Court or to the Circuit Court having jurisdiction, and the Court appealed to may reverse, alter, vary, or confirm the Magistrate's judgment or sentence, and make such order thereon as to it shall seem proper: Provided that no order or judgment by a Magistrate shall be liable to be reversed by reason of any irregularity or defect in the record or proceedings, unless it shall appear to the Court of Appeal that a failure of substantial justice has in fact resulted therefrom, or that the prisoner may have been prejudiced thereby.

Appeal in criminal cases.

69. If any person being a party to any civil suit or action, or to any proceeding under the 45th section of this Act, shall be dissatisfied with the judgment or order of any Magistrate, or with any part of the proceedings in any such suit or action, it shall be competent for such person to appeal to the Supreme Court or to the Circuit Court having jurisdiction, and the Court appealed to shall revise the proceedings in the case, and may reverse, alter, or confirm the judgment or order of such Magistrate, or make such order thereon as to it shall seem proper (A): Provided that no proceedings for appeal shall be instituted in any case where the claim is for a less sum than £5, exclusive of costs, without the leave of a Judge of the Supreme Court (B): Provided also that the appellant shall give security to be approved by the Clerk of the Court for the costs of the appeal.

Appeal in civil cases.

70. Proceedings for appeal shall be instituted by issue of a writ of appeal or other process of appeal of the Supreme Court, or of the Circuit Court having jurisdiction, at latest within three weeks from the date of the order or judgment appealed from, and such appeal shall be set down in the Court appealed to for hearing within six weeks from the date of such order or judgment: Provided always

Limit of time for appeal.

(a) That if the last ten days of such period of six weeks shall not fall wholly within a term or session of the Court appealed to, then the period for setting down such appeal shall be extended so as to embrace the first ten days of the next succeeding term or session; and

(b) That the Supreme Court, or the Circuit Court having jurisdiction, upon application made to it upon due notice to all other parties, may, on sufficient cause appearing, order an extension of the time within which notice to appeal may be given or proceedings taken for the prosecution thereof (c)

(A) As to the principle guiding the Court in cases of appeal, see *Steinaecker v. Kneisel*, 19 N.L.R. 153.

(B) Leave should probably be produced to the Registrar before issuing writ; see *Chadwick v. Henwood*, 11 N.L.R. 202.

(c) The Court leans to giving an opportunity of appeal if the application be at all reasonable (Per Wragg, J.—*Umcamana and others v. Clerk of the Peace*, 18 N.L.R. 96). But see *Ex pte. Whitehouse*, 18 N.L.R. 192, where the Court refused leave as no good reason for an extension of time could be given.



**Act 22, 1896.**

Stay of execution in civil case by lodging security.

71. A judgment appealed against in a civil case may be carried into execution, unless the person against whom the judgment may be given shall lodge with the Clerk of the Court security to his satisfaction that the judgment in so far as it may not be reversed or varied will be fulfilled.

Suspension of judgment during pendency of appeal in criminal cases.

72. A judgment appealed against in a criminal case shall not be carried out until the appeal is heard and determined, or until the appeal has been abandoned, and any such appeal shall be deemed to be abandoned unless it is brought before the Supreme Court or a Circuit Court within the time limited by Section 70 (A).

Imprisonment during pendency of appeal unless security given.

73. If in the case of a criminal appeal the convicted person shall be sentenced to imprisonment, he shall be kept in prison, pending the appeal, without hard labour, unless he produces to the Magistrate two sufficient sureties, who shall become responsible in a sum approved by the Magistrate, that he will surrender himself, within twenty-four hours of the time when his appeal shall have failed or lapsed, to undergo his sentence.

When such imprisonment counts in fulfilment of sentence.

74. If in a case of criminal appeal the person convicted shall be sentenced to imprisonment without hard labour, his detention in gaol pending an appeal shall be counted as part fulfilment of the sentence; but if the sentence shall be with hard labour, then the detention in gaol without hard labour whilst the appeal is pending shall not be so counted.

§§§§

Statement of facts proved and reasons for judgment.

75. Where the judgment or order of any Magistrate in any criminal or civil case is appealed from, the Magistrate by whom such judgment or order was granted shall deliver to the Clerk of the Court for transmission to the Registrar of the Court for hearing the appeal a concise statement of the facts which he found to have been proved, and his reasons for the judgment or order pronounced: Provided always that such statement of facts and reasons for judgment may be applied for by any party in any criminal or civil case prior to the institution of proceedings upon appeal, and shall be placed on record with the case to which they refer not later than seven days after such application, and be available for the inspection of all persons interested therein.

Punishment for certain forms of contempt of Court.

76. If any person shall wilfully insult the Magistrate within his Court or its precincts, or any Clerk or Messenger or other Officer of such Court during his attendance therein, and while such Clerk, Messenger, or other Officer is engaged in his duties during the actual sitting of the Court and in Court (B), or shall wilfully interrupt the proceedings of such Court, or misbehave in such Court by being drunk or disorderly, or in any other manner, or if any person, when under examination as witness, wilfully prevaricates, it shall be lawful for any Constable, Messenger, or private person, by order of the Magistrate, to take such offender into custody, and to detain him until the rising of the Court, and the Magistrate shall be empowered to impose upon such offender a fine not exceeding £5, or in default of payment thereof to imprisonment not exceeding twenty days, with or without hard labour. All such cases shall be duly recorded in the records of the said Magistrates' Courts. Any person wilfully disobeying a lawful judgment or order of the Court of a Magistrate shall be deemed to be guilty of contempt of Court, and may be tried summarily and punished, as is in the previous part of this section set forth: Provided that in every case of contempt the accused shall have the right to be tried upon summons, and in the meantime to be released on bail.

(A) There can be no appeal where a prisoner has undergone his sentence of imprisonment (*In re Gunzberg*, 13 N.L.R. 278).

(B) See *Francis v. Clerk of the Peace, Iwopo*, 14 N.L.R. 107, which, however, would probably not be sustained under this sec.

77. Every Magistrate shall, as early as possible after the close of each month, prepare and transmit to the Attorney-General a list or return of all criminal cases adjudicated upon by him during the preceding month, or which may be pending or untried at the end of the month, and such return shall show the name of the prosecutor or complainant, the name of the person accused, the crime or offence charged, the judgment of the Court, and the sentence pronounced or the reason why the case has not been tried; and in cases where fines have been inflicted, whether the fine has been paid or alternative imprisonment has been undergone (A).

Act 22, 1896.  
Return of criminal cases to be sent to Attorney-General.

78. Advocates and Attorneys of the Supreme Court and persons enrolled at the date of the promulgation of this Act as Agents in Magistrates' Courts shall alone be entitled to practise in Magistrates' Courts: Provided that no law agent who has not hitherto been admitted to practise in the Court of the Magistrate of Durban, shall claim under this Act a right to so practise.

Who may practise in Magistrates' Courts.

79. An agent of a Magistrate's Court may be suspended from practice by the Magistrate of the Court in which he may be enrolled, for any reason to that Magistrate appearing sufficient, with a right to the Agent to appeal to the Supreme Court, or to the Circuit Court having jurisdiction, against such suspension.

Suspension of agent.

80. There shall be a Rules Board, consisting of the Crown Solicitor, a Magistrate from time to time appointed by the Governor, and any person appointed from time to time by the Committee of the Natal Law Society, and such Board shall have power from time to time to make Rules of Court for the purpose of carrying out the provisions of this Act, [and it shall be the duty of such Board to obtain confirmation of such Rules by an order of the Supreme Court, and such Rules shall have effect when so confirmed and promulgated in the "NATAL GOVERNMENT GAZETTE" (B)].

Rules Board.  
*repealed substitute*  
*J. G. Gov. 32/6/11 etc.*  
Rules of Court.  
*all*  
*G. N. 599. ob.*  
*Rep. by G. N. 12/19*

81. The Rules referred to in Section 80 may regulate and provide for any of the following matters in criminal and civil cases:—

Scope of Rules of Court.

- (a) The duties of the several officers of the Court.
- (b) The records to be kept and the forms of processes to be used.
- (c) The manner and form for requiring and compelling the attendance of prisoners, parties, and witnesses.
- (d) The judgments, decrees, or orders to be given, and the effect and duration of the same, and the manner of carrying the same into execution.
- (e) The mode of proceeding and the forms to be used in appeals.
- (f) The fees and charges to be made and taken by advocates, attorneys, and enrolled agents, and by attorneys or their clerks in serving processes.
- (g) The fees and charges to be imposed and taken in civil cases by officers of the Court. All such fees shall be payable to the Public Treasury as fees of Court: Provided that any Messenger appointed prior to the taking effect of the Police Act, 1894, shall be entitled to receive such monthly payment by way of compensation in lieu of fees as shall in each case after due enquiry and report by the Civil Service Board be determined by the Governor in Council.
- (h) The taxation of bills of costs for fees and charges incurred, and disbursements made, in connection with business in Magistrates' Courts, whether between party and party, or attorneys and agents and their clients, and as to proceedings in forma pauperis.

*G. N. 12/1910*

(A) In this connection see sec. 52 of Act 49, 1898, tit. "COURTS (NATIVE)."

(B) Words in brackets expunged by Act 27, 1897, post, and others substituted.

Act 22, 1896.

- (i) The allowances to be made to witnesses in civil cases for their attendance and travelling expenses.
- (j) And generally for giving full and complete effect to the jurisdiction of these Courts as conferred and established by any Law now or hereafter to be in force. ( )

82. [Repealed by Act No. 33, 1898.]

83. Any suit pending at the date of the promulgation of this Act in the Magistrate's Court, Durban, and where the subject of the action is beyond the limit of the Magistrate's Court, as defined by this Act, may be continued and determined as if this Act had not been passed.

*repealed by Act 32 of 1917*

Determination of suits now pending in Durban Court in excess of jurisdiction.

SCHEDULE.

No. of Law.	Title of Law.
Law No. 22, 1889—	“ For the establishment and regulation of Inferior Courts of Justice.”
Law No. 25, 1890—	“ To amend Law No. 22, 1889, entitled ‘ Law for the establishment and regulation of Inferior Courts of Justice.’ ”
Law No. 3, 1892—	“ To amend the Laws relating to Magistrates' Courts.”
Act No. 4, 1895—	“ To amend the Laws relating to Magistrates' Courts.”

Act No. 27, 1897.

*Repealed by Act 32 of 1917, Sect. 112*

“ To amend the ‘ Magistrates' Courts Act, 1896.’ ”

[29th May, 1897.]

WHEREAS it is expedient to amend the “ Magistrates' Courts Act, 1896 ” :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

Magistrates' Court Rules

1. Section 80 of the “ Magistrates' Courts Act, 1896,” is hereby amended by expunging therefrom the following words, that is to say :—

“ and it shall be the duty of such Board to obtain confirmation of such Rules by an order of the Supreme Court, and such Rules shall have effect when so confirmed and promulgated in the “ NATAL GOVERNMENT GAZETTE,”

and by adding in lieu thereof the following words :—

“ and such Rules shall have effect when promulgated in the “ NATAL GOVERNMENT GAZETTE.”

2. [Repealed by Act No. 33, 1898.]

Act No. 33, 1898.

*Repealed by Act 32 of 1917, Sect. 112*

“ To amend the ‘ Magistrates' Courts Act, 1896,’ and Act No. 27, 1897.”

[15th August, 1898.]

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

1. Section 82 of the “ Magistrates' Courts Act, 1896,” and Section 2 of Act 27, 1897, are hereby repealed.

Repeals.

2. It shall be the duty of the Rules Board appointed under the "Magistrates' Courts Act, 1896," to provide a simple and inexpensive process for the determination of cases by consent, with or without summons, and of undefended cases; and such rules may define what cases shall be deemed to be undefended cases, and may appoint separate tariffs of attorneys' and agents' charges in defended and undefended cases. In no case shall costs be awarded against a debtor who has consented to judgment against him before summons issued, and the creditor shall be entitled to judgment on such consent without any summons and without fees of Court.

Act 33, 1898.

Rules for cases  
by consent and  
undefended  
cases.

D. N. 444/8

No costs on  
consent before  
summons.

## COURTS-MARTIAL.

[See "POLICE"; "VOLUNTEERS."]

## COURTS (NATIVE).

## COURTS (NATIVE).

Act No. 49, 1898(C)

*See Act 30/10  
Extended Jurisdiction*

"To amend the Laws relating to the Administration of Justice."

[12th December, 1898.]

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

## CHAPTER I.

*Introductory.*

Short title.

1. This Act may be cited as "The Courts Act, 1898."

Commencement

2. This Act shall not come into operation unless and until the Governor shall notify by Proclamation in the "NATAL GOVERNMENT GAZETTE" that it is Her Majesty's pleasure not to disallow the same, and thereafter it shall come into operation upon such date as the Governor shall notify by the same or any other Proclamation (A).

Date of taking effect in Zululand.

3. This Act shall not take effect in the Province of Zululand until such date, after the commencement thereof, as the Governor in Council shall appoint by Proclamation in the "NATAL GOVERNMENT GAZETTE."

Repeals.

4. (a) The Ordinances, Laws, and Acts enumerated in the First Schedule shall be repealed to the extent shown in the third column thereof, and all other Ordinances, Laws, and Acts in so far as they may be inconsistent with this Act shall to that extent be repealed.

(b) Such repeal shall not invalidate or prejudice any thing or proceeding heretofore begun or completed which would otherwise be of force and effect, or any right or liability heretofore acquired or incurred.

(c) All decrees, judgments, sentences, and orders, as also all proclamations and appointments, heretofore made under the provisions of the said Ordinances, Laws, and Acts, shall be as good and valid as if this Act had not been passed.

(d) All proceedings which shall have been commenced under the said Laws, Ordinances, and Acts may be continued, prosecuted, and concluded as if this Act had not been passed.

*See Act 67*

(e) The repeal of Sections 2, 3, 4 and 5 of Law No. 26, 1875, shall not affect the jurisdiction conferred upon Native Chiefs in Natal by Law No. 19, 1891 (B).

(f) The Supreme Court Act, 1896, shall be deemed to be amended or repealed in so far as it is inconsistent with this Act, but no further.

Interpretation.

5. In this Act, unless a different meaning appears from the context, "Native" means and includes all members of the aboriginal races or tribes of Africa south of the Equator, ~~including the people called Griquas and Hottentots.~~

A Native exempted from the operation of Native Law shall be deemed to be a Native within the meaning of this Act for the purposes of a civil case involving rights under Native Law, to which he is a party, but save as aforesaid the word Native as used in this Act shall not include a Native who is exempted from Native Law.

(A) Took effect on June 15, 1899. See Proclamation in *Government Gazette* of May 30, 1899.

(B) See tit. "NATIVE LAW."

“ Cause ” or “ Case ” means any action, suit, motion, application, **Act 49, 1898.**  
or other judicial proceeding.

“ Native Case,” save as is hereinafter specially excepted, means a civil case in which all the parties are Natives, or a criminal case in which the accused person, or if more than one, all the accused persons are Natives.

“ Native Chief ” or “ Chief ” shall, with reference to the jurisdiction of a Chief in civil cases, include any district headman or other person appointed to exercise the powers of Native Chiefs for the trial of civil cases.

6. The following cases shall not be deemed to be Native cases within the meaning of this Act :

(a) Proceedings in insolvency, and civil or criminal cases under the Insolvency Laws.

Cases not to be deemed “native cases.”

(b) Cases involving questions of ownership of immovable property, or questions of present or future title thereto, or rights therein, or as to the boundaries thereof, or as to the effect of any mortgage of immovable property : Provided, that the foregoing provision shall not prevent judgment upon a bond, or an action in respect of immovable property, or the taking of immovable property in execution, when no such question is disclosed : And provided also, that if the Supreme Court shall see fit to direct the trial in the Native High Court of any civil case between Natives involving such questions as aforesaid, the case may be so tried as a Native case, subject to any instructions contained in the order of the Supreme Court.

(c) All cases relative to electoral or municipal franchise.

(d) Any case in which a native is charged jointly with a non-native in the same indictment or charge.”

*See Act-30/0  
sec. 3*

(e) Cases of crimes or offences created or defined by the Laws relating to the following subjects, including contraventions of such laws or of any by-laws, rules, or regulations made thereunder.

Municipal Corporations, Townships, Villages, Immigration Settlements.

Customs : Excise.

Railways.

Post : Telegraph.

Stamps.

Ports : Harbours.

Licenses other than those required under Native Law.

Mines.

~~Private~~ *See Act-30/0 sec - 3*

(f) Private prosecutions (including cases under the laws relating to Masters and Servants) in which the complainant is not a Native.

CHAPTER II.

*Native High Court.*

7. There shall be constituted a Court which shall be called the Native High Court, consisting of a Judge President and ~~two other~~ *not less than two other* Judges.

Constitution of Court.



vorderen gelijk aan de waarde van bedoelde recht  
doch niet meer dan de opbrengst van de verkoop van

Cause" or "Case" means any action, suit, motion, application, Act 49, 1898.  
or other judicial proceeding.

Native Case," save as is hereinafter specially excepted, means a civil case in which all the parties are Natives, or a criminal case in which the accused person, or if more than one, all the accused persons are Natives.

Native Chief" or "Chief" shall, with reference to the jurisdiction of a Chief in civil cases, include any district headman or other person appointed to exercise the powers of Native Chiefs for the trial of civil cases.

The following cases shall not be deemed to be Native cases within  
ning of this Act :

- a) Proceedings in insolvency, and civil or criminal cases under the Insolvency Laws.
- b) Cases involving questions of ownership of immovable property, or questions of present or future title thereto, or rights therein, or as to the boundaries thereof, or as to the effect of any mortgage of immovable property : Provided, that the foregoing provision shall not prevent judgment upon a bond, or an action in respect of immovable property, or the taking of immovable property in execution, when no such question is disclosed : And provided also, that if the Supreme Court shall see fit to direct the trial in the Native High Court of any civil case between Natives involving such questions as aforesaid, the case may be so tried as a Native case, subject to any instructions contained in the order of the Supreme Court.
- (c) All cases relative to electoral or municipal franchise.

Cases not to be deemed "native cases."

Actions for divorce or separation or the like, when the marriage of the spouses has been solemnised according to Christian rites.

*See Act-30/0  
sec. 3*

- (e) Cases of crimes or offences created or defined by the Laws relating to the following subjects, including contraventions of such laws or of any by-laws, rules, or regulations made thereunder.

Municipal Corporations, Townships, Villages, Immigration Settlements.

Customs : Excise.

Railways.

Post : Telegraph.

Stamps.

Ports : Harbours.

Licenses other than those required under Native Law.

Mines.

Piracy.

*See Act-30/0 sec - 3*

- (f) Private prosecutions (including cases under the laws relating to Masters and Servants) in which the complainant is not a Native.

CHAPTER II.

*Native High Court.*

There shall be constituted a Court which shall be called the High Court, consisting of a Judge President and ~~two other~~ <sup>not less than</sup>

Constitution of Court.



Act 49, 1898.  
Judges' tenure of office.

8. The Judges of the Native High Court shall be appointed by the Governor in Council, and shall hold office during good behaviour: Provided, nevertheless, that it shall be lawful for the Governor to remove any such Judge upon the address of both Houses of Parliament.

Retirement of Judge under 65 years of age on medical certificate.

9. A pension shall not be granted to any Judge of the Native High Court who shall be under sixty-five years of age, except upon a medical certificate, to the satisfaction of the Governor in Council, that he is incapable, from infirmity of mind or body, of discharging the duties of his office, and that such infirmity is likely to be permanent.

Retirement of Judge over 65 years of age.

10. The Governor in Council may at any time require any Judge of the Native High Court who shall have attained the age of sixty-five years to retire from office, if it appear to the satisfaction of the Governor in Council that such Judge is no longer capable of efficiently discharging the duties of his office.

Salaries of Judges.

11. The Judge President and the Judges of the Native High Court shall be paid out of the Revenue of the Colony the following yearly salaries, that is to say:—

Judge President, £900. *7/1000*  
Each other Judge, £800. *6/900*

*Act 47/1911*

Judges to be members of Civil Service.

12. Save as above specially provided, every Judge of the Native High Court shall, for the purposes of superannuation and otherwise, be deemed to be an officer of the Civil Service within the meaning of Act No. 21, 1894 (A). *Proviso A. 46/50 s 1.*

*Act 47/1911*

Qualification of one Judge.

13. One at least of the Judges of the Native High Court shall be an advocate of the Supreme Court of Natal of at least seven years' standing.

Acting Judges.

14. Whenever a temporary vacancy on the Bench of the Native High Court shall occur from the absence of a Judge or otherwise, the Governor may appoint some person to act as Judge of the said Court. Every such appointment shall be notified in the "NATAL GOVERNMENT GAZETTE."

Salary of Acting Judge.

15. Every person whilst so acting shall receive the salary of a Judge of the Native High Court.

*30/10*

Court of Record; Place of sitting.

16. The Native High Court shall be a Court of Record, and shall sit in full Court at Pietermaritzburg during not less than three months in each year, ~~and at Eshowe not less than once in each year.~~

Full Court; decision of majority.

17. The full Court shall be constituted by the three Judges of the Native High Court, and the decision of the majority of the Judges shall be the judgment of the Court. *See however Act 30/10 sec 8.*

Special sessions of full Court.

18. The Native High Court shall not sit in full Court elsewhere than at Pietermaritzburg ~~or Eshowe~~, unless the Governor shall by Proclamation appoint a special session thereof to be held at some other named place within the Colony.

No trial by jury in the Court.

19. Trials of civil and criminal cases in the Native High Court shall take place either before the full Court or before a Judge thereof. There shall be no trial by jury in the Native High Court.

Circuit Courts.

20. Courts, to be called Circuit Courts, shall be held by and before one Judge of the Native High Court at such times and places as the Native High Court, by Rules of Court or otherwise, from time to time shall direct or appoint. A Circuit Court may be held at Pietermaritzburg precisely as if such City were not the seat of the Native High Court.

Jurisdiction of one Judge in Circuit.

21. One Judge of the Native High Court sitting in Circuit shall have and exercise all the jurisdiction, powers, and authority of the

*t. by 6/50 s 2*

*Act 30/10 Sec 6 & 10*

*5/1911 Union*

(A) See tit. "CIVIL SERVICE."

Native High Court, save as is in this Act expressly excepted: Provided **Act 49, 1898.**  
always:—

- (a) That such Judge may at any time before the hearing or before giving judgment refer to the full Court any matter appearing to him to be better fitted for hearing by the full Court.
- (b) That the full Court shall have full power, authority, and jurisdiction to review, set aside, amend, or correct any order, judgment, or proceeding of a Judge, or to direct a case to be retried or reheard, by the same or any other Judge, or to make any such order upon the case as the interests of justice may require.

22. The jurisdiction of a Judge sitting in Circuit shall extend to the whole Colony.

Extends to whole Colony.

23. A Judge sitting otherwise than in full Court shall be deemed to be sitting in Circuit.

One Judge sits as Circuit Court

24. Any reference to the Native High Court shall, unless the contrary appears, include a Circuit thereof.

Reference to Court includes a Circuit.

25. The Native High Court shall exercise jurisdiction, over all Natives, subject to the provisions of this Act (A).

Jurisdiction over all natives.

26. The Supreme Court of the Colony of Natal shall not, whether directly or indirectly, or by way of appeal or otherwise, have cognisance of or jurisdiction in any cause, civil or criminal, in respect of which jurisdiction is given by this or any other Act to the Native High Court: Provided that—

Exclusion of jurisdiction of Supreme Court.

- (a) If any person other than a Native shall be allowed to intervene in any civil cause pending before the Native High Court or a Judge thereof, then if such person shall file a written consent to the cause being heard and determined by the said Court or Judge, the cause may be so heard and determined, but otherwise the record thereof shall be transferred to the Supreme Court, and the cause shall be cognisable only in the Supreme Court or a Circuit thereof.
- (b) If at any time during the pendency or trial of a case in the Native High Court it shall be made to appear to the full Court (upon application on notice, if the case be not then in course of hearing before the full Court) that the case is within the jurisdiction of the Supreme Court, and not within that of the Native High Court, the Court shall direct that the further proceedings be stayed and transferred to the Supreme Court, to be dealt with as that Court shall direct.
- (c) If the full Court shall, upon any such application decide that the case is within the jurisdiction of the Native High Court, then any party claiming that it is not within such jurisdiction shall have the right to apply to the Supreme Court, by motion on notice to all the other parties, for an order declaring that the case is not within the jurisdiction of the Native High Court and ordering the removal thereof to the Supreme Court, and the decision of the Supreme Court thereon shall be final.

27. If in the course of any civil or criminal case it appears to the Native High Court or the Judge before whom the case is tried that

Transfer of case to Supreme Court.

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(A) Also over all persons whomsoever for the purpose of enforcing its judgments, punishing contempts, &c., see sec. 44.

Act 49, 1898. the case is not a Native case within the meaning of this Act, it shall be lawful for such Court or Judge to stop the proceedings and order that the case be transferred to the Supreme Court.

Proceedings in respect of case.

Jurisdiction in respect of crimes.

28. The proceedings in any case transferred from the Native High Court to the Supreme Court shall be continued in such manner as may be provided by rules of the Supreme Court or by an order thereof.

29. The following crimes when committed by Natives shall be cognisable by the Native High Court, but without prejudice to any jurisdiction which may be possessed by the Courts of the Magistrates :

Faction fighting, and any homicide or other crime (except murder) occurring in the course of a faction fight. Crimes against public order of any of the following classes: Riot, Public Violence, Sedition, by whatever names the same may be known.

Rape, Indecent Assault, Sodomy, and all crimes of indecency, when any of the crimes mentioned in this sub-section is committed upon a Native; Bestiality.

Crimes included in any Law for the prevention of Cattle Stealing and Killing, and kindred crimes: Hut Burning: Perjury where committed in the course of a case in the Native High Court, or in the course of a Native case in a Magistrate's Court.

The crimes mentioned in this section shall include all attempts or assaults with intent to commit any of such crimes, or being accessory thereto, whether before or after the commission thereof, and every kind of criminal participation therein.

Saving always the authority hereinbefore expressly reserved to the Supreme Court, the said Supreme Court shall not exercise any jurisdiction in respect of the said crimes, or of any crimes which may hereafter by law be placed within the jurisdiction of the Native High Court.

30. The Native High Court shall for the purpose of the trial and punishment of the crimes in the preceding section mentioned here and exercise in the whole of Natal (inclusive of the Province of Zululand, from the date of the taking effect of this Act in the said Province), all the authority, jurisdiction, and powers which were at the time of the passing of this Act vested in or exercised by the Supreme Court in the Colony of Natal, ~~save that the Native High Court shall not have the power of sentencing any person to death.~~ Act-30/10 sec. 1

31. A Judge sitting on Circuit shall have and exercise all the jurisdiction, authority, and powers of the Native High Court for the trial and punishment of crimes. (B)

32. An appeal shall lie from the judgment of a single Judge to the full Court, at the instance of the Crown and of any convicted person, in every criminal case.

33. It shall be lawful for a Judge to reserve any question of law for the decision of the full Court, and the full Court may consider and determine upon such question, and may make any order thereon which may seem proper.

34. In any criminal case tried by a Judge of the Native High Court, the giving of notice shall have the effect of postponing the execution of the sentence until the appeal has been disposed of or abandoned, but the execution of a sentence shall not in any other case be suspended. Such appeal shall be considered to be abandoned unless instituted and brought on for hearing before the full Court within the time hereinafter limited (A).

see 2-4  
Act 47/1901

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See Act-30  
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see. 1

Powers of Court for trial and punishment of crimes.

Jurisdiction of Circuit in respect of crimes.

Appeal in criminal case.

Question of law may be reserved

Stay of execution of sentence in appeal.

Act 30/10

sisting Judges 150 5 3

Act-30/10 sec. 4

A 39/20

S 44(2)

(A) See sec. 42.

35. If in any criminal case tried by a Judge of the Native High Court the convicted person shall have been sentenced to imprisonment, he shall, after giving notice of appeal, be kept in prison without hard labour pending the appeal, unless he shall enter into a bond for such sum as may be fixed by the Registrar, together with two sufficient sureties approved by the Registrar, that he will surrender himself within twenty-four hours of the time when the appeal shall have failed or become abandoned and undergo his sentence.

Act 49, 1898. *139/2*  
 Detention or release on bail of convicted person in case of appeal. *544*

36. If in a case of criminal appeal the person convicted shall be sentenced to imprisonment without hard labour, his detention in gaol pending an appeal shall be counted as part fulfilment of the sentence; but if the sentence shall be with hard labour then the detention in gaol without hard labour whilst the appeal is pending shall not be so counted.

In what cases detention to count as part fulfilment of sentence.

37. The Native High Court shall have and exercise in the whole of Natal (inclusive of the Province of Zululand from the date of the taking effect of this Act in the said Province), all the jurisdiction and powers in all civil Native cases which were at the time of the passing of this Act vested in or exercised by the Supreme Court of the Colony of Natal.

*See Act*  
 Jurisdiction of Court in civil cases.

38. No civil case of first instance shall be tried before the full Court unless the full Court shall so order upon application of any of the parties on notice to all the other parties: Provided that such permission shall not be necessary in the following cases:—

Certain cases not to be tried before full Court except by leave.

- (a) Where the claim is for money or other property of a value of not less than One Hundred Pounds Sterling, or involves property of a value of not less than One Hundred Pounds Sterling, exclusive of costs.

*Act. 39 27 1*

- (b) In a matrimonial cause.

39. If any party to a civil case tried by a Judge on Circuit shall be dissatisfied with the judgment, it shall be competent to him to appeal to the full Court: Provided however that no such appeal shall be allowed in any civil case other than as follows:—

Appeal from judgment of Circuit Court.

- (a) Where the claim is for money or other property of a value of not less than Fifty Pounds Sterling, or involves property of a value of not less than Fifty Pounds Sterling, exclusive of costs;

- (b) In a matrimonial cause;

unless the Judge shall grant permission for such an appeal to be brought, or unless the full Court shall so order.

40. The judgment of a Judge appealed against in a civil case may be carried into execution, unless the appellant shall lodge with the Registrar security to his satisfaction that the judgment, in so far as it may not be reversed or varied, will be fulfilled, including the payment of costs, or unless the full Court shall otherwise order.

Execution or stay of execution in case of appeal.

41. The Judge before whom any civil case shall be tried (other than a case such as is described in the proviso of Section 39), shall have the discretion to order that no other or greater costs shall be allowed than would have been incurred had the case been brought in the Court of a Magistrate or Chief, as the case may be.

Discretion of Judge as to costs.

42. Proceedings in appeal from the judgment of a Judge on Circuit, whether in a criminal or civil case, shall be instituted by issue of a writ of appeal at least within two weeks from the date of the order, judgment, or sentence appealed from, and such appeal shall be set down for hearing within five weeks from the date of such order, judgment, or sentence, if the last six days of such five weeks fall within a term or session of the full Court, but if they do not, then within the first six days of the next succeeding term or session: Provided that the full Court may upon application,

Proceedings in appeal in civil and criminal cases.

Act 49, 1898. on notice given to all the other parties, grant an extension of the time for giving notice of appeal, or for prosecuting an appeal.

Cognizance of decrees of Court.

Jurisdiction of Court for enforcing its judgments, &c.

Certain references to Supreme Court to be deemed references to this Court.

Officers of the Court.

43. All Courts and all persons shall take cognizance of the judgments and orders of the Native High Court.

44. The Native High Court shall have jurisdiction over all persons whomsoever for the purpose of executing processes, for compelling the attendance of witnesses, for the punishment of contempt of Court, and for enforcing its judgments and orders, and generally for all matters necessary for giving complete effect to its jurisdiction.

45. Wherever in any Ordinance, Law, or Act the Supreme Court is mentioned in reference to committal for trial or to the hearing of a trial of, or any proceeding in a case which, by this or any other Act, is placed within the jurisdiction of the Native High Court, such reference shall, mutatis mutandis, be construed as a reference to the Native High Court.

46. The following officers shall be attached to the Native High Court:—

(a) A Registrar of the Court and such Assistant Registrars as may from time to time be appointed by the Governor.

Any reference in this Act to a Registrar shall, unless the contrary sense appear, apply also to an Assistant Registrar.

In the absence of the Registrar or Assistant Registrar the Clerk of the Court of the Magistrate of the Division in which a Circuit is held, or any other person named by the Judge, shall act as Registrar for the purposes of such Circuit.

(b) A Bailiff, whose duty it shall be, by himself or by his Deputy appointed under his hand, and for whom he shall be responsible, or by a member of the Natal Police Force, to serve and execute all summonses, writs, notices, orders, or other processes of the Court.

An endorsement on any such writ or other document of a certificate of service signed by such Bailiff, Deputy, or Police Officer, shall be prima facie evidence that such service has been effected in the manner certified.

(c) Such other officers as may be from time to time required.

Form of prosecutions.

47. Prosecutions for crimes shall be instituted in the Native High Court in the name of Her Majesty the Queen, at the instance of the Attorney-General, upon indictment or charge or the like as may be provided by Rules of Court, and may be held and conducted by a Prosecutor appointed by the Governor, or by any Clerk of the Peace, or by any person thereto deputed by the Attorney-General.

#### CHAPTER III.

*See Act*

#### *Magistrates' Courts and Courts of Native Chiefs.*

Courts of Administrators abolished.

48. Upon the taking effect of this Act the Courts of Administrators of Native Law shall be abolished, and the word "Magistrate" shall be substituted for the words "Administrator of Native Law" wherever they occur in any Ordinance, Law, Act, or other document.

Saving of authority of Administrator in other than judicial matters.

49. The foregoing section shall not be deemed to affect the office and authority of Administrators of Native Law, otherwise than in their capacity as judicial officers, save that their title shall be altered to that of Magistrate.

Jurisdiction of Administrator superseded by that of Magistrate.

50. In so far as the jurisdiction of Administrators of Native Law may be less than that of Magistrates it shall be superseded by the ordinary jurisdiction of Magistrates: Provided that this clause shall not have the effect

of increasing any punishment which may have been specially defined for any offence. **Act 49, 1898.**

51. Native cases in a Magistrate's Court shall be kept separate, and recorded, noted, and registered separately from other cases. If any person other than a Native is allowed to intervene in a Native case, such case shall thenceforth cease to be recorded or dealt with as a Native case. **Native cases to be recorded separately.**

52. (a) The returns of criminal cases which, by Section 3 of Law No. 44 of 1887 (A), are required to be transmitted to the Secretary for Native Affairs, shall include all Native cases, as hereinbefore defined, and such Native cases shall not be included in the returns of criminal cases which, by Section 77 of Act No. 22, 1896 (B), are required to be transmitted to the Attorney-General. **Returns of criminal cases.**  
*Amended by Act 49, 1898. sec. 1*

(b) In the Province of Zululand returns of all criminal cases tried in the Magistrates' Courts may be transmitted to the Crown Prosecutor instead of to the Secretary for Native Affairs or the Attorney-General.

53. The Rules of Courts of Administrators of Native Law heretofore in force shall, until other Rules have been made under this Act, and save so far as they may be inconsistent with this Act, apply to the trial of Native cases in the Magistrates' Courts. **Rules for Native cases.**

54. The Governor may from time to time prescribe the limits of territory within which Native Chiefs shall exercise jurisdiction. **Territorial jurisdiction.**

55. Appeals from the judgments of Magistrates in Native cases, whether civil or criminal, shall be allowed only as provided in this Act, and not otherwise. **Appeals.**

*added  
A 59/26  
S 59(2)*

56. The following provisions shall apply to appeals from the Courts of Native Chiefs and from the Courts of Magistrates in Native cases :— **Appeals from Chiefs' and Magistrates' Courts.**

(a) An appeal shall lie from every judgment of a Native Chief to the Magistrate in whose Division the parties reside, or in which the cause was first heard, but the Magistrate of any adjacent Division before whom an appeal is brought shall have jurisdiction, notwithstanding any question whether the appeal ought to have been brought before him or before some other Magistrate.

(b) The Chief shall appear either personally or by deputy before the Magistrate and shall state his reasons for the judgment. A fee of five shillings shall be paid to a Chief, and a fee of two shillings and sixpence to a deputy appearing for him for each day on which the Chief or deputy so attends. Such fee shall be paid by the Magistrate, and in a civil case shall be charged as a fee of Court.

(c) The Magistrate may confirm, alter, amend, or set aside the judgment of a Chief, and if he sees fit, may take further evidence, or may himself try the case afresh, or may remit the case for re-trial, having full power to deal with the case as the interests of justice shall require.

(d) An appeal shall lie from the judgment of a Magistrate in any civil or criminal Native case to a Judge of the Native High Court, whether the cause has been first tried by the Magistrate or heard by him on appeal from the judgment of a Chief, and the Judge may confirm, set aside, or alter the judgment of the Magistrate, or make such order as to him shall seem proper : *Sec 7.7  
Act 49, 1898.  
Amended by A  
S 4*

(A) See tit. "NATIVE LAW."

(B) See tit. "COURTS (MAGISTRATES)."

Act 49, 1898.

Provided that no such appeal shall be instituted without the permission of a Judge of the Native High Court in any civil case other than as follows :—

- (1) Matrimonial causes ;
- (2) Matters affecting arrest or the liberty of any person ;
- (3) Cases in which the claim is for more than Five Pounds Sterling, or involves property of a greater value than Five Pounds Sterling, in each case exclusive of costs ;

or at the instance of a convicted person in any criminal case, unless the Magistrate shall have imposed a sentence exceeding a fine of Five Pounds Sterling, or imprisonment for more than one month, or a whipping of more than ten lashes.

## CHAPTER IV.

*Clauses specially relating to the Province of Zululand.*

Repeal of laws in Second Schedule.

57. The Laws or Regulations of Zululand enumerated in the Second Schedule of this Act, and now in force in the Province of Zululand, shall be repealed to the extent shown in the second column of the schedule, subject to the same provisions as are contained in the fourth section of this Act, and the clauses in this chapter shall be enacted in lieu thereof.

Abolition of Courts of Chief Magistrate and High Court.

58. The Court of the Chief Magistrate and the High Court now established in the Province of Zululand, shall be abolished and cease. All the duties performed and the authority exercised by the Chief Magistrate in other than judicial matters shall be exercised by such officer as may be appointed to perform and exercise the same.

Application of Act 22, 1896, to Zululand.

59. Save so far as it may be altered by or inconsistent with this Act, or any other Act passed during the present session of Parliament, or that may be passed hereafter, Act No. 22, 1896, entitled "The Magistrates' Court Act, 1896," and Act No. 27, 1897, entitled "Act to amend the Magistrates' Court Act, 1896," shall apply to and be of force in the Province of Zululand.

Alteration of titles.

60. The title of "Resident Magistrate" shall be altered to "Magistrate," and the term "District" shall be altered to "Division." All existing appointments, districts, branch courts, and other arrangements shall be as good and valid as if made under this Act.

Exercise of powers of Attorney-General by Crown Prosecutor.

61. The powers and authority conferred by the Magistrates' Courts Act, 1896, and by any other Law, upon the Attorney-General for the prosecution, by himself or by any person deputed by him, and for the conduct, remittal, or other disposal of cases, shall in the Province of Zululand be exercised by the Crown Prosecutor, subject to the provisions of Section 10 of the Zululand Annexation Act, 1897.

Jurisdiction of Chiefs in civil cases.

62. Chiefs shall have original jurisdiction according to Native Law in all civil Native cases between Natives of their own tribes respectively, or in which the defendants are members of their tribes, except in matrimonial causes and cases arising in connection with marriages by Christian rites.

Jurisdiction of Chiefs in criminal cases.

63. Chiefs shall have jurisdiction according to Native Law in criminal cases committed by Natives of their own tribes, with the following exceptions :—

Murder, and all crimes punishable by death, and all crimes which are by this Act made cognisable in the Native High Court, and all attempts or participation of any kind therein ;

Offences committed against the person or property of persons not being Natives ;

Culpable homicide ;

Assault with intent to kill or to do grievous bodily harm ;

Pretended witchcraft ;

Act 49, 1898.

Crimes created by the Ordinances, Laws, and Acts of Natal or Zululand, which were not offences under the common law or the Native laws and customs of Zululand.

64. In adjudicating upon any matter, or in performing any judicial act, Chiefs are entitled to claim and exercise the privileges appertaining to Courts of Law, in respect of disobedience of their orders, or contempt of their persons or Courts, and may for such offences impose a fine not exceeding £2 Sterling.

Power of Chiefs to punish for contempt, &c.

65. In carrying out, or causing to be carried out, any order or request of the Supreme Chief, all Chiefs act as his minor deputies, and when so acting may impose a fine not exceeding £2 Sterling.

Chiefs act as deputies of Supreme Chief.

66. The mode of enforcing the judgments of Chiefs in civil and criminal cases may be determined by Rules of Court made under this Act.

Rules for enforcing judgments of Chiefs.

67. Chiefs will so far take cognizance of crimes which are beyond their jurisdiction that they shall promptly report the same to the Magistrate, and may have the offenders arrested and handed over to the Magistrate.

Chiefs to report crimes and arrest offenders.

68. Appeals from the judgments of Magistrates in Native cases and from the judgments of Native Chiefs shall be allowed in the same cases and in the same manner as is provided in this Act, and not otherwise.

Appeals.

69. The crime of murder and all other crimes shall in the Province of Zululand be punishable with the same punishments as in the Colony of Natal: Provided that this section shall not be construed to make any act punishable as a crime in the Province of Zululand which would not otherwise have been punishable, and provided also that this section shall not apply to any crime, the punishment whereof is specially and differently defined by the Laws in force in the Province of Zululand and in the remaining part of Natal.

Punishments for crimes.

70. All references to the Courts abolished by this Act shall, so far as is necessary for giving full effect to this Act, be deemed to be references to the Court exercising the jurisdiction formerly exercised by the said Courts respectively.

Reference to Courts.

CHAPTER V.

Miscellaneous.

71. The Native High Court may from time to time make Rules and Orders for regulating the following matters in the Native High Court, in Magistrates' Courts in Native cases, and in the Courts of Native Chiefs :

Rules of Court.

- (a) The duties of the officers of the Court, the records to be kept, and the forms of process.
- (b) The time and duration of the terms of the full Court, the holding of Circuit Courts, the forms and manner of procedure to be observed in the Court.
- (c) The practice, procedure, and pleadings in all actions, suits, and other matters, both civil and criminal, the mode of compelling the attendance of prisoners, parties, and witnesses, and of enforcing judgments.
- (d) The mode of proceeding and the forms to be used in appeal, and generally all matters whatever relative to appeals not specially provided for in this Act.
- (e) The allowance to be made to witnesses in civil cases.
- (f) The fees and charges to be taken and made by Advocates and Attorneys ; the taxation of costs.
- (g) The fees and charges to be imposed and taken by officers of the Court in civil cases.

*g.n. 316/02.  
Tariffs Regs. 4  
under Order of  
d/d. 16.6.03  
(see source of L  
fo. 4*



Act 49, 1898.

(h) Generally for giving full and complete effect to the jurisdiction of the said Courts.

Rules for Zululand Courts.

Separate rules may be made where necessary for the Courts in the Province of Zululand.

Matters not provided for by rules.

72. In any matters not specially provided for by rules, regard shall be had, as far as circumstances permit, to the rules, practice, and procedure in the Supreme Court, and in Magistrates' Courts in other than Native cases.

Supreme Court not to make rules.

73. The Supreme Court shall not have power to make rules for any matters which by this Act are taken out of the jurisdiction of the said Court.

Rules under Act 22, 1896, s. 80, not to apply.

74. The rules already made or hereafter to be made by the Board appointed under Section 80 of the Magistrates' Courts Act, 1896, shall not apply to Native cases.

Proceedings to be interpreted.

75. All the proceedings at the trial or hearing of Native cases shall be interpreted into the Zulu language by the interpreter of the Court.

Advocates and Attorneys.

76. Advocates and Attorneys of the Supreme Court entitled to practise therein shall be entitled to practise in the Native High Court: Provided that all bills of costs between party and party, and between attorney and client in all matters brought before the Native High Court, must be taxed by the Registrar of the Court according to a special tariff to be fixed by the Court.

Agents of Magistrates' Courts.

77. Agents of Magistrates' Courts shall not be admitted to practise in any of the Courts of the Colony, but saving the rights of any persons heretofore admitted to practise in the Courts of any Magistrates.

Suitors may plead in person.

78. Nothing in this Act shall be deemed to take away the right of any suitor to plead his own case in person.

Suspension of advocates, attorneys, &amp;c.

79. The rules of the Native High Court may provide for the suspension for a period not exceeding six months of any advocate or attorney for just cause. No advocate or attorney who has been suspended from practice in the Supreme Court shall be allowed while so suspended to practise in the Native High Court or a Magistrate's Court, and no advocate or attorney who has been struck off the roll of the Supreme Court shall be allowed to practise in the Native High Court or a Magistrate's Court.

Trial of civil cases by Native Law.

80. All civil Native cases shall be tried according to Native laws, customs, and usages, save so far as may be otherwise specially provided by law, or as may be of a nature to work some manifest injustice, or be repugnant to the settled principles and policy of natural equity; except that all civil cases arising out of trade transactions of a nature unknown to Native Law shall be adjudicated upon according to the principles laid down by the ordinary Colonial law in such cases: Provided that nothing in this section shall be deemed to extend the operation of any Law of limitation or prescription of action to any case to which but for this Act such Law would not have applied.

Cases not to be dismissed upon exceptions not affecting substantial justice.

81. No case brought on for hearing under the provisions of this Act shall be dismissed merely by reason of exceptions or objections founded upon irregularity or defect of procedure or the like, unless the Court shall be of opinion that a failure of substantial justice will result, or that the accused person in a criminal case will be prejudiced if the case be then proceeded with: Provided that if any exception or objection be such that the case ought not for the reasons aforesaid to be proceeded with, then any order made thereon shall be without prejudice to the case proceeding as soon as may be when the irregularity or defect is cured.

Principles to be observed in appeals.

82. All appeals heard under the provisions of this Act shall be adjudicated upon according to the following principles:—

(a) No judgment or proceeding shall, by reason of any irregularity or defect in the record or proceedings, be reversed.

set aside, quashed, or the like, unless it shall appear to the Court of Appeal that a failure of substantial justice has in fact resulted therefrom, or that in criminal cases the prisoner has in fact been prejudiced thereby, but the Court may nevertheless in all such cases correct or order to be corrected any such irregularity or defect. Act 49, 1898.

- (b) The Court of Appeal may in any Native case confirm, alter, amend, or set aside the judgment of any inferior Court, and, if the Court think fit, it may remit the case for re-trial, having full power to deal with the case as the interests of justice may require.

83. Nothing in this Act shall be deemed to interfere with any right of appeal to Her Majesty in Council.

Appeals to Her Majesty in Council.

FIRST SCHEDULE.

*Ordinances, Laws, and Acts Repealed.*

No.	Year.	Title.	Extent of Repeal.
2	1855	Ordinance to prevent unlicensed Squatting, and to regulate the occupation of Land by the Natives	Section 7.
15	1871	Law to facilitate the obtaining of Labour	Section 28.
13	1874	Law with regard to Trespass on Private Lands	Section 8.
21	1874	Law to apply the Native Law to certain offences	The whole Law.
38	1874	Xanthium Spinosum Law ... ..	Section 15.
26	1875	The Native Administration Law, 1875	Sections 2, 3, 4, and 5.
13	1876	The Native Administration Law of 1876	The whole Law.
22	1885	To enable the Governor to appoint Assistant Administrators of Native Law within the Colony	The whole Law.
44	1887	To amend "The Native Administration Law, 1875"	Section 2.
13	1890	To amend the fifth section of Law No. 44, 1887, entitled "Law to amend the Native Administration Law, 1875"	The whole Law.
19	1891	To legalise the Code of Native Law laid before the Legislative Council according to the provisions of Law No. 44, 1887	Schedule. Sections 242 to 249. The following words occurring in Section 256:— "All criminal cases arising out of public wrongs, offences, or crimes shall be instituted in the name of the Supreme Chief."

Act 49, 1898.

## SECOND SCHEDULE.

	Extent of Repeal.
Proclamation II. of 21st June, 1887	Sections 2 to 8 inclusively. Sections 13 to 22 inclusively. Section 26. Sections 29 and 30. Sections 32 to 34 inclusively as amended by Proclamation VI. of 6th March, 1894. Section 35.
Proclamation V. of 19th December, 1887	The whole.
Proclamation III. of 17th September, 1888	The whole.
Proclamation I. of 6th January, 1890	The whole.
Proclamation IV. of 25th April, 1890	The whole.
Proclamation VI. of 6th March, 1894	The whole.
Proclamation XIV. of 27th September, 1895	The whole.
Proclamation XII. of 24th December, 1896.	Schedule A. So much of Schedule B as refers to Fees of Court and to Fees and Horse Hire payable to Messengers.

And all other Laws, Proclamations and Regulations heretofore in force in the Province of Zululand which may be in conflict with this Act.

COURTS (SUPREME).

[See "JURIES"; "PLEADING, PRACTICE, &C."; and Act 46, 1898, tit. "ZULULAND."]

Ordinance No. 11, 1847.

"Ordinance for amending the Ordinance No. 14 of 1845, entitled 'Ordinance for erecting a District Court in and for the District of Natal.'"

[30th March, 1847.]

1. WHEREAS, by the 15th Section of Ordinance No. 14 of 1845 (A), entitled "Ordinance for erecting a District Court in and for the District of Natal," it is enacted as follows, that is to say: "Provided always, that every person who shall be appointed to be or act as Crown Prosecutor for the said District of Natal, shall, while he shall hold such appointment, be admitted to act as an advocate in the said Court in all cases in which he shall prosecute or appear for Her Majesty the Queen, and shall in all other cases be admitted to act as Attorney in the said Court;" and whereas it is expedient that other provisions should be made in regard to the rank and precedence in Court of such Crown Prosecutor as aforesaid:

BE IT THEREFORE ENACTED, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the said 15th Section of the Ordinance aforesaid as is hereinbefore recited and set forth shall be repealed, and the same is hereby repealed accordingly.

Repeal.

2. And be it enacted, that every person who shall be appointed to be or act as Crown Prosecutor (B) for the District of Natal, shall, while he shall hold such appointment, be admitted to act as an Advocate, and, save as is hereinafter provided, not otherwise than as an Advocate, in the District Court of Natal in all cases whatsoever in which he shall be retained or employed, and shall be entitled to take precedence and claim pre-audience in the said Court above or before all persons now or hereafter practising therein as Advocates or Attornies, in like manner and to the same extent as Her Majesty's Attorney-General, when admitted as an Advocate of the Supreme Court of the Colony of the Cape of Good Hope, is, by law or usage, allowed precedence and pre-audience in the said last mentioned Court above or before all other persons practising therein: Provided always, that nothing herein contained shall be construed so as to prevent the Crown Prosecutor for the time being from acting as an Attorney as well as an Advocate in all suits and proceedings in which he shall act or appear for Her Majesty the Queen.

Crown Prosecutor to act as an Advocate.

Precedence and pre-audience.

May act as Attorney for the Queen.

3. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof by any proclamation to be by the Lieutenant Governor of the said District for that purpose issued and posted upon or affixed to some public place in Pietermaritzburg.

Commencement

(A) Repealed by Law 10, 1857, which was repealed by Act 39, 1896, post.

(B) This officer is now called "the Attorney-General of Natal." See Ord.

18, 1856, tit. "CRIMINAL LAW (PROCEDURE)," and see tit. "ATTORNEY-GENERAL."

Law No. 49, 1884.

“ To provide for the payment to the Master of the Supreme Court of certain Moneys, and for the investment and disposal of the same.”

8th November, 1884.]

WHEREAS it is expedient that provision should be made by Law for the payment to and deposit with the Master of the Supreme Court, of moneys due to minors and to unknown heirs, in and to the estates of persons dying testate or intestate ; and of unclaimed moneys in the hands of executors, curators, and trustees ; and also to provide for the investment and disposal of such moneys :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

Unclaimed moneys and moneys due to minors in intestate estates to be deposited with Master.

1. All sums of money found to be due to minors in intestate estates, and all unclaimed sums of money in such estates, or in the hands of the executors or administrators of such estates shall, upon the confirmation by the Supreme Court or by one of the Judges thereof, of the liquidation and distribution accounts of such estates, be deposited with the Master of the Supreme Court, unless at the time of such confirmation the Supreme Court, or one of the Judges thereof, shall otherwise order (A).

Executors may deposit moneys of minors with Master.

2. Executors of testate estates may with the sanction of the Supreme Court, or one of the Judges thereof, deposit with the Master of the Supreme Court any or all sums of money in their hands or under their control, belonging to any minor heirs of such estates.

Unclaimed moneys in insolvent or assigned estates to be deposited with Master.

3. Trustees of insolvent or assigned estates shall deposit with the Master of the Supreme Court, to be dealt with under this Law, all dividends or other moneys remaining unclaimed in their hands for six months after the confirmation of their accounts.

Master to deposit moneys in Colonial Treasury.

4. The Master of the Supreme Court shall deposit in the Colonial Treasury all sums of money received by him under this Law or otherwise (fees of his office excepted), and separate entries and accounts shall be made and kept of all such moneys in the offices of the said Master and of the Colonial Treasurer.

Rate of interest.

5. On all sums of money deposited with the Master of the Supreme Court belonging to minors in intestate estates, interest shall be allowed at the rate of four per cent. per annum, and on moneys belonging to minors in testate estates at the rate of four per cent. per annum, and such interest shall be made up to the 30th of June and the 31st of December in each year, and be payable by the Colonial Treasurer upon the presentation of drafts drawn by the Master of the Supreme Court.

Interest only allowed on minors' moneys.

6. Interest shall not be allowed upon any moneys deposited with the Master of the Supreme Court, other than those belonging to minors, and all interest allowable upon the moneys of minors shall cease when such minors attain the age of majority.

7. [Repealed by Law No. 8, 1885.]

Creation of Board for investment of moneys.

8. For the purpose of investing the moneys which have already accumulated in the Colonial Treasury under the head of Master's Deposits, and the moneys to be hereafter deposited with the said Master by virtue of this Law, or otherwise, it shall be lawful for the Governor to appoint a Board to consist of the Colonial Treasurer, the Registrar of Deeds, and the Master of the Supreme Court.

How moneys to be invested and deposited.

9. In order to further and secure the due and proper investment of all such moneys which now are, or may hereafter be, deposited in the Colonial Treasury by the Master of the Court, the said Board may with

(A) See "INTESTATE ESTATES."

such moneys purchase British Colonial debentures, bonds, and British Government securities, may make deposits in Banks doing business in Natal, and may grant loans upon the security of immovable property : Provided that no loan secured upon the mortgage of immovable property shall be for a longer period than three years, nor exceed one-half of the ascertained value thereof (A). Law 49, 1884.

10. No more than seven eighths of the moneys deposited by the Master of the Supreme Court in the Colonial Treasury shall at any time be invested by the said Board. Limit of amount to be invested.

11. All income, revenue and profits accruing from investments made by the said Board, shall be paid into the Colonial Treasury, and shall in the first place be applied to the payment of interest due upon moneys belonging to minors, and to the payment of the costs of publishing the list of unclaimed moneys, and to any and all other charges connected herewith, and the balance if any remaining shall be appropriated for the benefit of the General Revenue of the Colony. Income from investments, how disposed of.  
*Rep. by ac  
24/1913*

12. All sums of money which now have, or hereafter shall have remained unclaimed in the hands of the Master of the Supreme Court, and which shall have been published as unclaimed in manner hereinbefore provided, for a period of 33 years, shall become forfeited to the Government of this Colony, and become part of the public revenue thereof, but without prejudice to the Governor, upon proof to his satisfaction by or on behalf of any person claiming any of such moneys being entitled thereto, directing payment of any sum of money which may have become forfeited by virtue of this Law. Unclaimed moneys become forfeited to Government after 33 years ; but Governor may remit forfeiture.

13. Nothing in this Law shall be deemed to restrict or in any way interfere with the authority or jurisdiction of the Supreme Court, or of any of the Judges thereof, over the disposition or appropriation of any or all of the moneys which have been or may hereafter be deposited with the Master of the Supreme Court. Jurisdiction of Supreme Court not restricted.

14. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (B). Commencement

#### Law No. 8, 1885.

"To amend Law 49, 1884, entitled Law 'To provide for the payment to the Master of the Supreme Court of certain Moneys, and for the investment and disposal of the same.'"

[23rd September, 1885.]

WHEREAS it is desirable to amend section 9 of the said Law 49, 1884, so as to limit the proportion of the moneys which may be invested thereunder upon the security of immovable property to one-half the total sum invested under the said Law : *Rep. by act  
24/1913*

AND WHEREAS it is further desirable to amend Section 7 of the said Law, so far as it deals with the publication of lists of unclaimed moneys in the hands of the Master of the Supreme Court :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. The following proviso is hereby added to Section 9 of Law 49, 1884 : "Provided also, that the loans secured upon the mortgage of immovable property shall not exceed one-half of the total sum invested under this Law." Proviso to Sec. 9, Law 49, 1884.

(A) See further proviso added by Law 8, 1885, s. 1, post.

(B) Nov. 11, 1884.

Law 8, 1885.  
Sec. 7, Law 49,  
1884, repealed.  
How list of  
unclaimed  
moneys to be  
advertised.

2. Section 7, of Law No. 49, 1884, shall be and the same is hereby repealed, and the following two sections are hereby enacted in lieu thereof :

3. The Master of the Supreme Court shall, in the month of January in each year, prepare and publish for general information in the "GOVERNMENT GAZETTE," and in one local newspaper, a list of all sums of money which, upon the preceding 31st day of December, shall have remained unclaimed in his hands for one year, and shall with such lists publish a notice calling upon all persons interested to present their claims to him : Provided that such list shall not include the moneys belonging to any minors, until one year after such minors shall have attained their majority.

Where claimants are supposed to be residing out of the Colony, lists must be advertised in the country where they reside.

4. Should any of the persons having an interest in such unclaimed moneys be known, or be supposed by the Master of the Supreme Court to be residing out of the Colony, so much of the aforesaid list of unclaimed moneys as refers to them shall also be published in the countries where such persons are known or are supposed to be then residing ; and whenever any such last mentioned publication shall be found or appear to be necessary, the said Master shall prepare the lists for such publication, and shall (together with a notice calling upon the persons interested to present their claims to him) forward the same to the Colonial Secretary, who shall transmit the same for publication accordingly.

5. This Law shall be read and construed together with the Law No. 49 of 1884 as one Law.

6. This Law shall not come into operation unless and until the Officer administering the Government notifies by Proclamation that it is Her Majesty's pleasure not to disallow the same ; and thereafter it shall come into operation upon such day as the Officer administering the Government shall notify by the same or any other Proclamation (A).

Construction of Law.

Commencement

### Act No. 39, 1896.

"To consolidate the Laws relating to the Supreme Court of the Colony of Natal" (B).

[29th July, 1896.]

WHEREAS it is expedient to make provision for the better and more effectual Administration of Justice within this Colony, and to consolidate and to amend the Laws with reference to the Supreme Court and Circuit Courts of the Colony of Natal :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

#### PART I.

#### *Repeal of Former Laws.*

1. The Ordinances, Laws, and Acts contained in the Schedule No 1 to this Act shall be, and the same are, hereby repealed to the extent therein set forth : Provided always, that whenever in any Ordinance, Law, Act, Rule, or Order of Court, or other document, the Supreme Court of the Colony of Natal is mentioned, the Supreme Court erected by this Act shall be deemed to be referred to ; and provided that this

(A) Proclamation of non-disallowance Dec. 22, 1885. Law came into operation on Jan. 19, 1886, see Proclamation in *Government Gazette* of that date.

(B) See Act 49, 1898, ss. 4 and 26, tit. "COURTS (NATIVE)," as to jurisdiction over natives. As to application of the Act to Zululand, see Act 46, 1898, tit. "ZULULAND."

Repeal.

*see Act 5/05 sec. 1*

*by act 1/1913*

*See also Acts 34/01 38/04 31/99.*

repeal shall not invalidate or prejudice any thing or proceeding heretofore begun or completed which would otherwise be of full force and effect, and also that the provisions made by Law No. 3, 1885, with reference to the Durban Circuit Court shall remain in force until altered or repealed under this Act. Act 39, 1896.

2. All decrees, judgments, sentences, and orders, as also all proclamations and appointments, heretofore made under the provisions of the said Ordinances, Laws, and Acts, shall be as good and valid as if this Act had not been passed. Former judgments, &c., valid.

3. All proceedings, whether civil, criminal, or mixed, which shall have been commenced under the said Ordinances, Laws, and Acts, may be continued, prosecuted, and concluded in any Court erected by this Act having jurisdiction. Pending proceedings.

PART II.

*Constitution and Jurisdiction of the Supreme Court.*

4. There shall be within this Colony a Court which shall be called the Supreme Court of the Colony of Natal, consisting of one Chief Justice and <sup>two</sup> ~~three~~ Puisne Judges (A). Creation of Supreme Court. 73

5. The said Supreme Court shall at all times be holden in Pietermaritzburg in the Colony of Natal. Where holden.

6. Such Supreme Court shall be a Court of Record and shall have cognisance of all pleas, and jurisdiction in all causes, whether affecting Europeans or Natives, or others, arising within the said Colony, and shall have jurisdiction over all Her Majesty's subjects and all other persons whomsoever within the said Colony (B). Court of Record  
Jurisdiction.

7. The Supreme Court shall have and exercise all the jurisdiction, powers, and authorities which were, prior to the Act No. 13, 1895, vested in or capable of being exercised by the Native High Court and the Court established by Law No. 10, 1876, or the Judge of either of the said Courts, subject always to the following provisions:— Powers of Native High Court and Cattle Stealing Court vested in Supreme Court.  
See A. 49/98.

(a) That the discretion which, by the 78th Section of the Schedule to Law No. 19, 1891, was exercised by the Native High Court, may be exercised by a Magistrate or Administrator of Native Law.

(b) That cases arising under Section 187 of the Schedule of Law No. 19, 1891, shall be within the jurisdiction of a Magistrate or Administrator of Native Law, if the value of the property or inheritance shall be less than Fifty Pounds Sterling or Thirty Head of Cattle.

(c) That crimes and offences which, but for the Act No. 13, 1895, or this Act, might have been tried in the Native High Court or the Court appointed by Law No. 10, 1876, may be tried by the Supreme Court, or in the discretion of the Attorney-General may be remitted for trial by a Magistrate without a jury (c).

8. The said Supreme Court shall have full power, authority, and jurisdiction to review the proceedings of all Inferior Courts of Justice or tribunals, and to exercise full supervision and control over all Magistrates and other Judicial Officers, and, if necessary, to set aside, amend or correct their proceedings. Review of proceedings of Inferior Courts.

(A) Altered to two Puisne Judges by Act 31, 1899, s. 3, post.

(B) See the question of jurisdiction discussed in *Tomlinson v. Pietermaritzburg Corporation*, 16 N.L.R. 146.

(c) See Act 49, 1898, tit. "COURTS (NATIVE)," repealing this Act so far as inconsistent therewith. As to cattle-stealing, see Act 1, 1899, tit. "CRIMINAL LAW."



Act 39, 1896.  
Trial of civil  
cases by a single  
Judge.

9. Trials of civil cases may be heard before one Judge of the Supreme Court without a jury whenever—

- (a) The parties thereto may consent to such trial ; or
- (b) The Court may by order or rule direct such cases to be so tried :

Provided always that this section shall not affect the right of any party to any civil case to have the same tried before a Jury.

Powers of a  
Judge in  
Chambers.

10. One Judge sitting in Chambers, or the like, shall have and exercise all the jurisdiction, powers, and authorities which are herein-before vested, or may now or at any time hereafter be vested in the said Supreme Court, save and except in matters of the nature expressly mentioned in the Schedule No. 2 of this Act : Provided always—

- (a) That such Judge sitting in Chambers, or the like, may refer to the full Court any matter brought before him, and appearing to be better fitted for hearing in full Court ; and
- (b) That the full Court shall have full power, authority and jurisdiction to review, set aside, amend, or correct any order, judgment, or proceeding of a Judge sitting in Chambers, or the like.

### PART III.

#### *Circuit Courts.*

Circuit Dis-  
tricts.

*Hub 198 d. 3*

11. To facilitate the holding Courts, the Governor may, by proclamation, divide the Colony into as many districts as to him may seem fit ; and, further, may, from time to time, as occasion may require, alter or amend such division.

Pietermaritz-  
burg may be  
included in a  
Circuit District.

12. In any proclamation dividing the Colony into districts, for the purpose of holding Circuit Courts in such district, the town of Pietermaritzburg may be included in such Circuit district precisely as if such town were not the seat of the said Supreme Court.

Circuit Courts :  
where held and  
before whom.

13. Courts, to be called Circuit Courts, shall be held in each of the districts into which the said Colony may be so divided, by and before one of the Judges of the said Supreme Court, at such times and at such places within each of the said districts as the Supreme Court shall from time to time direct and appoint.

Sub-division of  
Districts.

14. Any of such districts may from time to time be divided into sub-divisions in which Circuit Courts may also be held : Provided always, that such sub-division shall not prejudice the jurisdiction of the Circuit Court for a district, or give, either to the Circuit Court for the district or for the sub-division, any jurisdiction by way of appeal or otherwise for or in respect of such other Circuit Court.

Courts of  
Record.  
Jurisdiction.

15. Each Circuit Court shall be a Court of Record.

16. Each Circuit Court shall, in the district in which it is appointed to be holden, have and exercise all such and the same jurisdiction, powers, and authorities as are vested in the said Supreme Court.

Registrars.

17. The Clerk to any Magistrate within any such district, or any other person thereto appointed by the Governor, shall act as the Registrar of any such Circuit Court.

Transmission of  
records to  
Supreme Court.

18. Within one month of the close of each and every Circuit Court the Registrar, or other officer thereof, shall transmit the record and proceedings in all cases, civil and criminal, heard and determined before such Court, to the Registrar of the Supreme Court at Pietermaritzburg, to be kept by him and filed of record, in like manner as the records of the said Supreme Court, save and except so far as the Judge presiding at such Circuit Court may otherwise order ; and transmission of the

record of any case as aforesaid shall be deemed and taken to be a removal thereof from such Circuit Court to the said Supreme Court. **Act 39, 1896.**

19. After such transmission as aforesaid, all the judgments, decrees, or sentences, civil and criminal, of such Circuit Court may be carried into execution by means of the process of the Supreme Court or the said Circuit Court issued in that behalf by the Registrars thereof respectively, or by any Judge of the Supreme Court, according to any rules of the said Supreme Court for the time being in force.

Execution of judgments after transmission of record.

PART IV.

*Laws and Procedure.*

20. The Supreme Court of Natal shall apply, judge, and determine upon, and according to, the Laws which now are, or shall hereafter be, in force within this Colony (A).

Laws to be applied by Supreme Court.

21. The system, code, or body of law commonly called the Roman-Dutch Law, as accepted and administered by the legal tribunals of the Colony of the Cape of Good Hope up to the 27th day of August, 1845, and as modified by the Ordinances, Laws, and Acts now in force heretofore made or passed in this Colony by the Governor or Legislature thereof is the Law for the time being of the Colony of Natal and of Her Majesty's subjects and all others within the said Colony: Provided always—

Roman-Dutch Law, with modifications and exceptions, the Law of the Colony.

- (a) That nothing herein contained shall be deemed or taken to establish within this Colony any Law made in the Colony of the Cape of Good Hope at any time except when the Legislature of the Cape of Good Hope had power to legislate for the District of Natal.
- (b) That nothing herein contained shall prevent the said system, code, or body of laws from being hereafter added to or altered in regard to the Colony of Natal by the Legislature thereof; and
- (c) That all matters and disputes in the nature of civil cases between Natives living under Native Laws, shall be tried according to the Native Laws, customs, and usages for the time being prevailing, so far as the same shall not be of a nature to work some manifest injustice, or be repugnant to the settled principles and policy of natural equity, except that cases arising out of transactions in trade shall be dealt with according to the principles of Colonial Law.

22. [Repealed by Act No. 31, 1899.]

23. In the event of any difference of opinion amongst the three Judges sitting as the Supreme Court, the decision of a majority of such Judges shall be deemed and taken to be the judgment of the Court (B).

Judgment: how determined.

24. The pleadings and proceedings of the said Supreme Court shall be carried on, and the sentences, decrees, judgments, and orders thereof pronounced and declared in the English language and in open Court, and not otherwise: Provided always, that it shall be competent for any Judge at any time during the trial of any person charged with the crime of indecent assault or rape or attempted rape, upon any female to require that no person other than the accused or his legal adviser or advisers, shall have access to, or be, or remain in the Court without the consent of such Judge (c).

Proceedings to be in English and in open Court.

Exception.

(A) The validity of an Act of the Legislature duly assented to cannot be called in question on the ground that an error has occurred in the printing and promulgation thereof (*Colonial Government v. Natal Bank*, 6 N.L.R. 111).

(B) But see now Act 31, 1899, ss. 5

and 6, post, as to how judgment is arrived at when only two judges are sitting and they differ.

(c) As to the restrictions upon the publication of the evidence and proceedings in cases of this class, see Act 37, 1899, tit. "CRIMINAL LAW—IV."

# COURTS (SUPREME).

Act 39, 1896.

PART V.

## *Judges, their Appointment, Position, Salaries, and Pension.*

Qualification of Judges.

25. The said Chief Justice and Puisne Judges shall be respectively Advocates of the Supreme Court of Natal heretofore existing, or hereby created, or Barristers in England or Ireland, or Advocates of the Court of Session in Scotland, or of the Supreme Court of the Cape Colony.

Tenure of office.

26. The commissions of the present Judges of the Supreme Court and of all future Judges thereof shall be continued and remain in full force during their good behaviour: Provided, nevertheless, that it shall be lawful for Her Majesty to remove any such Judge upon the address of both Houses of the Legislature of the Colony.

Precedence of Chief Justice.

27. The Chief Justice for the time being shall have rank and precedence above and before all subjects whomsoever in the Colony of Natal, except the Governor, or other officer administering the Government for the time being, and the Senior Officer, if of the rank of General, in command of the Forces of Her Majesty for the time being within the same, and excepting all such persons as by law or usage in England take place before the Lord Chief Justice of England.

28. [Repealed by Act No. 31, 1899.]

Judges' salaries

29. Such salaries as are settled upon the Judges for the time being by Law, and also such salary as shall be voted to any Judge of the Supreme Court, shall in all time coming be paid and payable to every such Judge for the time being, so long as his patent or commission continues in force.

Judges' Pensions.

30. Any person having served the office of Judge of the Supreme Court for the full period of ten years, shall be entitled to retire from the said office and to receive a pension, to be ascertained as follows, that is to say: if he shall have served such office for a period of ten years or upwards, he shall be entitled to a pension equal to one half of the annual salary which shall have been paid to him for the three years immediately preceding his retirement; and if he shall have served for the period of fifteen years or upwards, then to a pension equal to two-thirds of such annual salary as aforesaid (A): Provided always that no such pension shall be paid to any Judge retiring before he shall have attained the age of sixty-five years, unless he shall be afflicted with some permanent infirmity disabling him from the due execution of his office: And, provided further, that in case any person serving the office of Judge shall, before he shall have served for such full period of ten years, or shall have attained the age of 65 years, happen to be afflicted with any permanent infirmity disabling him from the due execution of his office, he shall be entitled to receive such pension as the Governor, for the time being, shall, in the circumstances, consider to be reasonable, such pension not exceeding one-half of the annual salary which shall have been payable to him at the time at which he shall have ceased to be able to discharge the duties of his office: And provided that the present Chief Justice of Natal, having served as Attorney-General for a period of thirty-three years, and as Chief Justice for a further period of six years, may be deemed to have served the full judicial period of fifteen years within the meaning of this section.

31. No such Chief Justice or Puisne Judges shall accept or take any other office, place of profit, or emolument within the Colony; and the acceptance of any such other office or place, as aforesaid, shall vacate and avoid such his office of Chief Justice or Puisne Judge, as the case may be,

Judges not to accept other emoluments.

(A) See Act 31, 1899, post.

*act 5/1907.  
repealed by  
act 25/1904*

*change for the  
1500  
act 26/1907.  
in remore R.9.  
act 43/04.*

*See act 8/1908  
sec. 8.*

and the salary thereof shall cease accordingly : Provided always that this section shall not apply : Act 39, 1896.

- (a) To any office or appointment which may at any time be granted under the Royal Sign Manual and Signet to the Chief Justice or any Puisne Judge for the time being of the Supreme Court ;
- (b) To any provisional or acting appointment under this Act ;
- (c) To the office of Judge or Commissary, or the like, in or of the Court of Vice-Admiralty in this Colony ; and
- (d) To any office or place not being of pecuniary profit or emolument.

*see sec Act 8/19*

32. Whenever a vacancy on the Bench of the Supreme Court shall occur, whether by the death, resignation, sickness, incapacity, disqualification, or absence from the Colony, or suspension from office, of any Judge or Acting Judge of the Supreme Court, the Governor shall, within one month from the date of the event causing the vacancy, appoint some fit and proper person, qualified under this Act, to act in the place of the Judge, or Acting Judge, whose seat shall be so vacant.

Vacancy on Bench.

*Repealed Act 30/19 Repealed*

33. Every person so appointed to act as Judge shall be entitled to receive the same salary as the Judge in whose place or stead he may be acting.

Salary of Acting Judge.

*4/65 Act*

34. Every appointment of an Acting Judge under this Act shall be notified in the "NATAL GOVERNMENT GAZETTE," and the notice shall state the term for which the acting appointment shall be made.

Appointment to be notified.

35. An Acting Judge, appointed under this Act, shall hold office for the term of his appointment, subject to good behaviour.

Tenure of office.

PART VI.

*Supreme Court Seal.*

36. The said Supreme Court shall have and use a seal bearing a device and impression of the Royal Arms within an exergue or label having this inscription, "Supreme Court, Natal."

Seal.

37. The said seal shall be delivered to, and kept in, the custody of the said Chief Justice for the time being, with full power to deliver the same to any Puisne Judge of the said Court for any temporary purpose.

Custody of seal

PART VII.

*Change of Venue.*

38. If it shall be made to appear to the said Supreme Court that any suit, civil or criminal, depending therein may be more conveniently heard or determined before any other competent Court, the said Supreme Court may order such suit to be removed to such other Court accordingly, as the justice of the case may require.

Removal of suit

39. The Registrar of every Court making such order of removal shall certify the same, together with the process and proceedings in such suit, to the Court into which such suit shall be removed, and thereupon such last mentioned Court shall proceed in such suit, in like manner as if the same had been originally commenced and prosecuted therein, and shall have the like jurisdiction in respect of any such suit as the Court making the order for removal would have had if such order had not been made, or the Court to which the suit shall be removed would have had if such suit had been commenced and proceeded with therein.

Removal of record.

PART VIII.

*Trial by Jury.*

40. In any criminal case depending before the Supreme Court the trial of the person accused shall be before any one of the Judges of the

Criminal cases

*Part VIII repealed S. 3 Repealed by Act 31 Dec*

Act 39, 1896. said Supreme Court, and a jury of nine men, of whom not less than seven shall determine the verdict (A).

Trial by one Judge and a jury in civil cases.

41. Whenever an issue of fact, except in the cases hereinafter mentioned, shall have been joined in the Supreme Court in any civil action or cause, the same may, upon the application of either of the parties, his Attorney or Advocate in such case, be tried before one Judge of the Supreme Court with a jury in manner hereinafter mentioned, save and except in the following cases:—

- (a) Where the plaintiff claims a provisional judgment in virtue of any written acknowledgment of a debt, signed by the defendant or on his behalf.
- (b) Where a matter of record, as a judgment, or the like, is pleaded in any action, and the opposite party pleads that there is no such record existing; and
- (c) Where the sum or matter in dispute does not exceed Fifty Pounds Sterling, or does not involve, directly or indirectly, the title to property or to some civil right amounting to, or of the value of, Fifty Pounds Sterling, unless it shall be made to appear to the Court that the case is of such importance or of such a nature that a jury should be allowed.

Common jury.  
Special jury.

42. A common jury in civil cases shall consist of seven men, of whom not less than five shall determine the verdict, and a special jury of five men, of whom not less than four shall determine the verdict.

Application for jury.

43. Application for a jury, stating whether a common jury or a special jury is required, shall be made in writing to the Registrar, ten clear days in the case of a common jury, and in the case of a special jury seven clear days before the day appointed for the hearing of the case: Provided, always, that, notwithstanding application for a common jury shall have been made by one party to the cause, the other party shall be entitled, and, if a common jury shall not already have been summoned, to apply for and obtain a special jury, and the application for a common jury shall be thereby cancelled.

Notice of application.

44. Upon receipt of such application, together with the payment of such fees as the Supreme Court may from time to time direct, the Registrar shall cause notice thereof to be communicated forthwith to the other party in such cause, and shall certify to the Court the manner in which such notice has been served, and such certificate shall be deemed sufficient evidence that such notice has been so served: Provided always, that the Sheriff shall not summon a common jury until three days after the Registrar has received application therefor.

Jury may be sworn not to communicate with others.

aled by Act 31  
17. Sect. 391

45. The Judge presiding at any trial with a jury, may cause the jury to be sworn that they respectively will not, during any adjournment of the Court in the trial, previously to the verdict being given, communicate with others than their fellow jurors in the case, with reference to the evidence or verdict.

Jury to be kept apart while considering their verdict.

46. After the jury have been charged with any case, they shall be kept apart by themselves by an officer of the Court, until they have delivered their verdict, and the Judge presiding at any trial with a jury may, if the jury desire to withdraw to consider their verdict, direct that they shall be kept apart by themselves by an officer of the Court until they shall have considered their verdict and until they shall have been discharged by the Judge, and may direct that such officer shall be sworn to suffer no one to have access to, or speak to any of them, and that he will not speak to them himself except to ask them whether they have agreed upon their verdict.

(A) Under the repealed Law 10, 1857, a majority of six to three was sufficient.

47. In civil cases if either party object to the direction of the Court as to any point of law or fact during the trial, such objection shall be taken forthwith and immediately thereafter delivered in writing to the Registrar of the Court, and if objection be not so taken and delivered, the same may not be urged as a ground for an appeal, or for disturbing the verdict or judgment on the ground of misdirection by the Court.

Act 39, 1896.  
Objection to direction of the Court must be taken forthwith.

48. The Court may, in any case after the expiry of two hours after the jury have retired to consider their verdict, and after they have declared, and the Court is satisfied that there is no likelihood of the jury agreeing, discharge such jury, and cause a new jury to be impanelled, sworn, and charged with the case, and the trial shall be heard as if the first jury had not been impanelled.

Disagreement of jury.

49. In criminal cases the jury may acquit the prisoner of part of the charge against him, and find him guilty of the remainder.

Partial acquittal.

50. After the verdict returned by the jury in criminal cases is recorded the prisoner or his counsel may then, or at any time before the Court has passed sentence, move in open Court, the prisoner being there present, any legal objection in arrest of judgment, and the Court may arrest judgment, on any such objection or on any other grounds sufficient in Law, and the matter shall thereupon be referred to, and determined by the full Bench.

Arrest of judgment.

51. Every Court before which any trial shall be had by means of a jury, shall, and is hereby expressly required to, prevent any party or his attorney or advocate from addressing the jury upon any point not relevant to the issue, or from making any statement which cannot be proved by the evidence before the Court.

Irrelevant address.

52. In all cases the jury may return a special verdict finding on the facts of the case, and referring the law to the Court, and in civil cases it shall be competent for the Judge presiding to direct the jury to find specifically on certain issues to be submitted in writing to them (A): Provided, always, that the jury may in every case also find a general verdict for plaintiff or defendant if they so think fit.

Special verdict

53. The Judge presiding at a trial with a jury shall be entitled, if he considers there is no evidence upon which a jury may reasonably find for the plaintiff, to withdraw the case from the jury and enter a judgment of absolution from the instance in favour of the defendant, and shall also be entitled, notwithstanding the verdict of the jury, if he consider no other judgment can reasonably be given than for the plaintiff or for the defendant, as the case may be, to enter judgment accordingly (B).

Absolution from the instance.

Judgment contrary to verdict.

54. When the jury are prepared to deliver their verdict, the Registrar shall, in criminal cases, say to them, "Gentlemen, how say you, is the prisoner guilty or not guilty?" and in civil cases shall say, "Gentlemen, do you find for the plaintiff, or the defendant?" or otherwise, "What is your verdict upon the special issues submitted to you?" and the foreman shall thereafter, in criminal cases, pronounce a verdict of guilty or not guilty, and in civil cases shall pronounce a verdict for the plaintiff or the defendant, or upon any special issues, and thereafter the Registrar shall say to the jury, "So say how many of you?"

Mode of recording verdict.

*Repealed by Act of 1917, Sect 3 so far as it relates to criminal process*

55. Any person guilty of the offence of corruptly influencing, or attempting to influence, any juror, or consenting thereto, may be punished with a fine not exceeding Five Hundred Pounds Sterling, and imprisonment with or without hard labour for a period not exceeding three years, or by one or other of the said punishments.

Corrupting jury

(A) See judgment of Connor, C.J., in *McEwan's Curators v. Pietermaritzburg Corporation*, 6 N.L.R. 220.

(B) For an instance of the exercise of this power see *Bryant v. Colonial Government*—unreported—Durban Circuit, Dec., 1898.

12 <sup>\*</sup>Repealed by Act 31 of 1917, Sect. 391, in so far as it relates to or affects criminal proceedings. COURTS (SUPREME).

Act 39, 1896.

Reference in certain cases to English procedure.

56. All matters relating to trial by jury, whether of civil or criminal cases, not herein expressly or entirely provided for shall be determined as nearly as practicable according to the Law and usages of England for the time being.

See Sec 3 Act 34/01.

PART IX.

Appeals and New Trials.

Appeal in civil cases.

57. Any party to any civil suit or action or proceeding may appeal to the Supreme Court to set aside any proceeding, order, or judgment of any Circuit Court or of any single Judge, whether sitting in chambers or not, in any case in which in such appeal the sum or matter at issue exclusive of costs, exceeds Fifty Pounds Sterling, or involves directly or indirectly, title to property or to some civil right exceeding Fifty Pounds Sterling in value (A): Provided always, that if it shall be made to appear that any proceeding, order, or judgment is of such importance as to render it proper that an appeal should be allowed, such Circuit Court, or Judge, or the Supreme Court, may, notwithstanding the said limitation, allow such appeal to be made.

Appeal in civil case tried by a jury.

58. Any party in any civil suit or action tried with a jury may appeal to the Supreme Court against the verdict or decision of the jury, or the judgment of the Judge, upon any of the following grounds:—

- (a) Where the jury or any of them have accepted a bribe.
- (b) Where the jury or any of them have conversed otherwise than openly in the presence of the Court, with any party to the cause, or the agent, attorney, or advocate of such party, on the subject of the trial, after having been sworn.
- (c) Where the verdict was manifestly against the law, or the legal instructions of the Court, or was such as a jury might not reasonably have found upon the evidence adduced.
- (d) Where the Court has misdirected the jury upon any point of law or fact: Provided objection shall have been duly taken to the direction of the Court.
- (e) Where the debt or damages found by the jury are greatly too much or too little when compared with the evidence in the cause.
- (f) Where either of the parties has been taken by surprise at the trial by the production of evidence which he had no reason whatever to anticipate.

4 1917. Powers of Supreme Court in appeal.

59. The said Supreme Court may enquire into, hear, and decide all questions, whether of law or fact, arising upon such appeal, and may reverse, correct, or amend the judgment of any such Circuit Court or Judge, or the verdict or decision of any such jury, or may set the same aside and direct a new trial (B), and may impose such terms upon the parties or either of them as shall seem meet.

Court may refuse to interfere where substantial justice done.

60. The Court, if fully satisfied that substantial justice has been done, may refuse to disturb any rule, order, judgment, or proceeding of any such Circuit Court or Judge, or the verdict or decision of a jury, or the judgment of the Judge presiding at a trial with a jury.

Procedure in appeal.

61. Any party intending to appeal against any proceeding, order, or judgment of any Circuit Court or Judge, or against the verdict or

(A) The appeal of a creditor, whose debt amounted to less than £50, against the acceptance of his debtor's surrender, not allowed (*Re Steinacker*, 19 N.L.R. 197).

(B) The Court may order any number of new trials of same cause where substantial justice has not been done—per *Cadiz, J.*, in *Moreland v. Geekie*, 6 N.L.R. 105.

decision of any jury, or judgment of a Judge at any trial with a jury, shall comply with the following provisions:— **Act 39, 1886.**

- (a) Such party shall, within fourteen days after the delivery of the order, verdict, decision or judgment, or the taking place of the proceeding appealed from, give notice, in writing, to the Registrar and to the opposite party of his intention so to appeal.
- (b) Every such appeal shall be set down for hearing before the Supreme Court within six weeks from the date of the order, verdict, decision, judgment or proceeding appealed from: Provided always, that if the last ten days of such six weeks do not fall wholly within a term of the Supreme Court, then the period for setting down such appeal shall be extended so as to embrace the first ten days of the next succeeding term.
- (c) If such notice be not given or such appeal be not set down for hearing within the times aforesaid, the same shall be considered as ipso facto dismissed with costs.
- (d) Every such appeal or application shall be founded upon affidavit setting forth the precise grounds upon which the same is founded.
- (e) Seven clear days' written notice of the day of hearing of such appeal shall be given to the opposite party and also to the Registrar, together with copies of the affidavit, or affidavits, record of proceedings, notes of evidence, and all other documents intended to be used in support of such appeal.

The Supreme Court may, by rule of Court or special order, extend the time within which notice of appeal has to be given or such appeal prosecuted.

62. The giving of notice of appeal, or the prosecution of an appeal shall not stay execution of the order or judgment appealed against, unless and save so far as:—

Stay of execution.

- (a) The party appellant shall lodge security to the satisfaction of the Master of the Supreme Court for the due performance in full of the order or judgment appealed from; or,
- (b) The Judge against whose proceeding, order or judgment the appeal is made, shall, at the time or thereafter, order execution to be stayed; or,
- (c) The Supreme Court shall order execution to be stayed.

63. No Judge shall sit on the hearing of an appeal against any order, judgment or decree pronounced by him.

Judge not to sit on appeal against his own judgment.

#### PART X.

*Officers of the Court.*

*Registrar and Master.*

64. There shall be attached and belonging to the said Court one officer, to be called the Registrar of the Court, and one other officer, to be called the Master thereof: Provided always, that the offices of Master and Registrar of the Supreme Court may be filled up, and the respective duties thereof discharged, by one and the same person, and it shall be lawful for the Governor to appoint one person accordingly to be Master and Registrar of the Supreme Court.

Registrar and Master.



Act 39, 1896.

*Sheriff.*

65. The Governor shall appoint some fit and proper person to be the Sheriff of the Colony of Natal.

66. The said Sheriff shall, by himself or his sufficient deputies, to be by him appointed and duly authorised under his hand and seal, and for whom he shall be responsible, execute all the sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands, and processes of the said Supreme Court, and shall make a return of the same, together with the manner of the execution thereof, to the said Supreme Court, or to the Circuit Courts, as the case may be, and shall receive and detain in prison all such persons as shall be committed to his custody by the said Supreme Court, or by the Chief Justice, or by any Judge of the said Court.

67. Whenever any process shall be sued out against the Sheriff, the said Supreme Court shall appoint some other person to execute and return the same, and such process shall be directed to the person so appointed.

*Other Officers.*

68. The Governor may appoint such other officers of the Court as may, from time to time, appear necessary.

## PART XI.

*Rules.*

69. The Supreme Court may from time to time make such rules, orders, and regulations touching and concerning any of the following matters in connection with the Supreme Court, or any Circuit Court, or the Courts of Administrators of Native Law or other Native Courts, and repeal and vary the same as may to it seem meet:—

- (a) The carrying into effect fully and completely of the provisions of this Act;
- (b) The time of holding the said Courts, the forms and manner of procedure to be observed therein, and the rota of Judges to sit on the full Bench, and on the hearing of civil and criminal matters before a single Judge or before Circuit Courts;
- (c) Practice, procedure, and pleading in all actions, suits, or other matters, both civil and criminal;
- (d) The summoning of witnesses, and the appointment of commissioners to take bail, and to examine witnesses, and to administer oaths (A);
- (e) The examination of witnesses de bene esse, and allowing the same as evidence;
- (f) In what cases and in what manner actions and other proceedings against persons not within the Colony of Natal may be prosecuted;
- (g) Remuneration and expenses of witnesses in civil cases;
- (h) The proceedings of officers of the said Courts;
- (i) The examination and admission of advocates, attorneys, interpreters, translators, or other persons desiring to practise in the said Courts, and the conditions under which they may practise as such;

(A) As to appointment of Commissioners, see *In re Galbraith*, 19 N.L.R. 116.

- (j) The suspension from the right to practise, or the cancellation of admission and right to practise of any advocates, or attorneys, interpreters, translators, or other persons practising in the Courts, for any misconduct, or for any offence; Act 39, 1896.
- (k) The fees, charges, poundage, or perquisites to be lawfully demanded by, and payable to, advocates, attorneys, or other persons practising in the said Courts respectively, and to any officers of the said Courts in respect of any business connected therewith, and the taxation and recovery thereof; 9. 11. 79/
- (l) In what cases, civil and criminal, and under what conditions, appeals may be made from the Courts of Administrators and Assistant Administrators of Native Law, or other Native Courts;
- (m) All such other matters and things as may be necessary for the proper conduct and despatch of business in any ~~(n)~~ of the said Courts. *(A)* See 0.2. 20034

70. The rules, orders, and regulations touching and concerning the matters referred to in the preceding section at present existing, shall remain in force until and save so far as the Supreme Court may from time to time repeal or vary the same.

Existing rules remain in force for time being.

*Advocates and Attorneys.*

71. The Supreme Court may, subject to such rules and regulations as shall be made under the provisions of this Act, admit and enrol such persons as shall have been admitted as Barristers in England or Ireland, or Advocates in the Court of Session of Scotland, to act as Advocates or Attorneys in the said Supreme Court of Natal.

Who may be admitted as Advocates or Attorneys.

72. The Supreme Court may, subject to such rules and regulations as shall be made under the provisions of this Act, admit and enrol any person being an Attorney or Solicitor of any of Her Majesty's Courts of Record at Westminster or Dublin, or being Proctors admitted to practise in any Ecclesiastical Court in England or Ireland, or being writers to the Signet in Scotland, to act as Attorneys in the said Supreme Court of Natal.

Who may be admitted as Attorneys.

*See 7. 1. 20034  
Repealed 1  
A. 20/34. 1.1.*

PART XII.

*Miscellaneous.*

73. Any person may, by himself and without any attorney or advocate and attorney, begin, prosecute, and conduct any suit, action or proceeding in his own behalf, or in his capacity as executor, trustee, or the like, in the Supreme Court or in any other Court in respect of which the Supreme Court has power to make rules, orders or regulations; but no such person, not being a duly admitted advocate, attorney, or practitioner in such Court, shall be entitled to charge any fees, charges, poundage or perquisites allowed to attorneys, advocates or practitioners: Provided, however, that the Court may determine if it shall think proper what fee or remuneration shall be allowed to any such person for his labour or loss of time.

Parties may sue in person.

Remuneration.

74. The provisions of this Act and of any other Ordinance, Law, or Act, relating to the Supreme Court shall, unless the contrary clearly appear to be intended from the context, apply to any Circuit Court within its jurisdiction, and to any single Judge having jurisdiction: Provided that this section shall not extend the powers, authority, and jurisdiction vested by law in any such Circuit Court or single Judge.

Reference to Supreme Court to include Circuit Court.

**Act 39, 1896.**

Pendency of  
civil suit,  
And criminal  
suit.  
Short title.

Repealed by Act 31 of  
1914  
P  
Act. 391

75. Every civil suit shall be deemed to be pending so soon as the summons shall have been duly served on the defendant in such suit.

76. Every criminal suit shall be deemed to be pending so soon as the indictment or information shall be lodged with the proper officer of such Court.

77. This Act shall be known as the Supreme Court Act, 1896.

## SCHEDULE NO. 1.

No. of Law or Act.	Extent of Repeal.
Ordinance No. 32, 1846 ...	The whole.
Ordinance No. 2, 1855 ...	Section 11.
Law No. 10, 1857 ...	The whole.
Law No. 11, 1859 ...	The whole.
Law No. 3, 1864 ...	The whole.
Law No. 4, 1864 ...	The whole.
Law No. 25, 1865 ...	The whole.
Law No. 10, 1871 ...	Sections 30 to 47 inclusively, and Section 49, so far as they relate to the Supreme or Circuit Court.
Law No. 7, 1872 ...	The whole.
Law No. 10, 1872 ...	So much as refers to trials other than trials before a Magistrate.
Law No. 12, 1876 ...	Section 2.
Law No. 11, 1877 ...	The whole.
Law No. 5, 1880 ...	The whole.
Law No. 24, 1883 ...	The whole.
Law No. 9, 1884 ...	The whole.
Law No. 3, 1885 ...	The whole.
Law No. 43, 1887 ...	The whole.
Act No. 8, 1894 ...	The whole.
Act No. 12, 1895 ...	So much of Sections 1 and 2 as refers to trials other than trials before a Magistrate.
Act No. 13, 1895 ...	Sections 1, 2, 3, 4, 5, 6, 7, 11, 13, and 14.
Act No. 35, 1895 ...	Sections 3, 4, 6, and 7.

## SCHEDULE NO. 2 (A).

1. Trials not coming under Section 9 of this Act, save where and so far as there may be a consent to judgment.

2. Arguments on exceptions to pleadings.

3. Applications for new trials, or by way of appeal or review, or for arrest or reversal of judgment, in civil or criminal cases respectively, unless the matter has been referred to a single Judge, by order of the Supreme Court.

4. Objections to accounts in insolvency (B) or to the accounts of Guardians, Curators, Executors, or Trustees, or of the Master of the Supreme Court, or taken under any order of Court, or under the Companies or Winding-up Laws.

5. Rehabilitations in insolvency.

6. Admissions of persons to be advocates, attorneys, commissioners, or interpreters.

7. Any matter which, by any rule of Her Majesty's Privy Council, as to appeals, is at the time being assigned to the Court.

8. The making or issuing of Rules of Court.

(A) See sec. 10.

(B) See *In re Vos v. Colonial Govt.*, 15 N.L.R. 230.

Act No. 31, 1899. <sup>(B)</sup>

“ To amend the Supreme Court Act, 1896.”

[31st August, 1899.]

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

1. The service under the Government of Natal of any Judge of the Supreme Court, who, at the time of his appointment as such Judge, was an officer of the public service within the provision of Law No. 22, 1874, shall, for the purposes of Section 30 of the Supreme Court Act, 1896, be reckoned as if such service had been service in the office of Judge of the Supreme Court.

Service of Judge as public officer to be reckoned for purposes of pension.

2. Section 28 of the Supreme Court Act, 1896, shall be repealed, and in lieu thereof the following section shall be substituted:—

Repeal.

Puisne Judges shall have rank and precedence within the Colony of Natal next to Ministers appointed under the Constitution Act of 1893, and between themselves according to the priority of their respective appointments.

Rank and Precedence of Puisne Judges.

3. The Supreme Court of the Colony of Natal shall consist of one Chief Justice and two Puisne Judges, in place of one Chief Justice and three Puisne Judges as provided in Section 4 of the Supreme Court Act, 1896; but nothing in this section shall be deemed to affect the appointments, commissions, or salaries of the Chief Justice and the two Puisne Judges holding office at the time of the passing of this Act.

Supreme Court to consist of Chief Justice and two Puisne Judges.

*repealed 38/*

4. Section 22 of the Supreme Court Act, 1896, shall be repealed, and in lieu thereof the following shall be enacted:—

Repeal.

In all proceedings or causes depending before the Supreme Court other than criminal cases, or trials with a jury, or matters within the jurisdiction of a Judge in Chambers, or the like, the three Judges of the Supreme Court shall ordinarily act in full bench, but any two Judges shall form a quorum, and shall be competent to execute all and every the powers, jurisdiction, and authorities granted to, and vested in, the Supreme Court.

Quorum of Judges.

5. In the event of any difference of opinion between the Judges, when two Judges only are sitting, the decision of the Court shall be suspended until all the three Judges shall be present, and the decision of the majority of such three Judges shall be deemed and taken to be the judgment of the Court.

How when two Judges differ.

6. Notwithstanding the provisions of the preceding section, if upon any appeal from an order, judgment, or decree pronounced by a single Judge, the two Judges hearing the appeal shall be divided in their opinion, the order, judgment, or decree appealed from shall be considered as confirmed so far as relates to the matters upon which such division of opinion exists (A).

If two Judges differ on appeal from single Judge, matter stands confirmed.

7. It shall be lawful for the Governor in Council, upon the request of the Chief Justice, to appoint any person qualified under the Supreme Court Act, 1896, to be a Commissioner to preside in the place of a Judge of the Supreme Court at any Sessional or Circuit Court, and the person so appointed shall, whilst so acting, hold and exercise in that behalf all the powers and authority of a Judge of the Supreme Court, in like manner as if he had been appointed to act under Section 32 of the Supreme Court Act.

Commissioner may be appointed to preside at Circuit Court.

8. Every appointment of a Commissioner shall be notified in the “ NATAL GOVERNMENT GAZETTE,” and the notice shall state the session or circuit for which the appointment shall be made.

Appointment to be notified.

(A) But a Judge cannot sit on the hearing of an appeal against his own judgment, see Act 39, 1896, s. 63, ante.

## CRIMINAL LAW (A)—I. Pleading and Procedure.

[See "ATTORNEY-GENERAL"; "EVIDENCE"; "EXTRADITION"; "GAMBLING"; "GAOLS"; "INTOXICATING LIQUORS"; "JURIES"; "JUSTICES OF THE PEACE"; "LUNATICS"; "MASTER AND SERVANT"; "NATIVES"; "OATHS"; "POLICE"; "POUNDS"; "REVENUE"; "VACCINATION"; &c., &c.]

## Ordinance No. 18, 1845. (E)

"Ordinance for Regulating the Manner of Proceeding in Criminal Cases in the District of Natal."

[4th December, 1845.]

1. WHEREAS it is expedient to regulate the manner of proceeding in criminal cases within the District of Natal; BE IT THEREFORE ENACTED, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all laws and customs heretofore in force within the said District, in so far as the same are repugnant to, or inconsistent with, any of the provisions of this Ordinance, shall be, and the same are hereby repealed.

Crown Prosecutor.

2. And be it enacted, that there shall be within the said District an officer, to be called the "Crown Prosecutor for the District of Natal" (B), which officer shall, from time to time, be appointed by Her Majesty the Queen, Her heirs and successors, in such manner and form as to Her or them shall seem good; and which officer shall hold his office during the pleasure of Her said Majesty, Her heirs and successors.

Governor may appoint person to act as Crown Prosecutor.

3. And be it enacted, that it shall and may be lawful for the Governor of the Colony of the Cape of Good Hope, until such an appointment as is in the last preceding section mentioned, shall have been made, to appoint some fit and proper person to be and act as such Crown Prosecutor as aforesaid, who shall, pending the signification of Her Majesty's pleasure, hold his office in like manner as if he had been appointed by Her said Majesty under or in accordance with the provisions of the said last preceding section.

Oaths to be taken by such officer.

4. And be it enacted, that every person who shall be appointed to be such Crown Prosecutor as aforesaid shall, before entering upon his office, take, before the Lieutenant Governor of the said District, the oath of allegiance, and the oath of office, as the said oaths are set forth in the Schedule (c) to this Ordinance annexed, which said oaths the said Lieutenant Governor is hereby authorised and required to administer.

Rights and duties of Crown Prosecutor.

5. And be it enacted, that the Crown Prosecutor for the District of Natal shall be invested with the right and entrusted with the duty of prosecuting, in the name and on behalf of the Queen, all crimes which shall by law be legally cognizable by any of the Courts, erected or to be erected, within the said District.

How to exercise the right to prosecute.

6. And be it enacted, that the said right of prosecution shall be exercised by the Crown Prosecutor, in the District Court of Natal (D), in person: Provided always, that if, in regard to any case or cases, the Crown

(A) This title is subdivided as follows:—I. PLEADING AND PROCEDURE, II. OFFENCES AGAINST THE STATE, III. OFFENCES RELATING TO HER MAJESTY'S FORCES, IV. OFFENCES AGAINST THE PERSON, V. FORGERY, &c., VI. THEFT AND SIMILAR OFFENCES, VII. OFFENCES AGAINST PUBLIC MORALS, VIII. INJURIES TO PROPERTY.

(B) This officer designated and created Attorney-General by Ord. 18, 1856, post.

(C) See Law 14, 1869, tit. "OATHS."

(D) By Law 10, 1857, s. 61 (repealed by Act 39, 1896, tit. "COURTS, SUPREME") this term is to be taken to mean the Supreme Court of Natal or any Circuit Court.

Prosecutor shall be unable to prosecute in the said Court in person, it shall and may be lawful for any other person, thereto specially deputed by the Crown Prosecutor, to appear and act for him in such case or cases. **Ord. 18, 1845.**

7. And be it enacted, that the right and power of prosecution hereinbefore mentioned, and vested in the Crown Prosecutor, shall be absolutely under his own management and control. **Power of prosecution uncontrolled.**

8. And be it enacted, that the Crown Prosecutor shall have the power, at any time before conviction, of stopping all prosecutions commenced by him; but in the event of the defendant having been previously arraigned upon any charge, he shall be entitled to a verdict of acquittal in respect of such charge. **Power to stop prosecutions.**

9. And be it enacted, that the Crown Prosecutor shall have the power (except in the special case hereinafter excepted) of ordering the liberation of any person committed to gaol for further examination or for trial; for which liberation a writing setting forth that the Crown Prosecutor sees no grounds for prosecuting such person, and subscribed by him, shall be a sufficient warrant. **Power to liberate prisoners.**

10. And be it enacted, that where, in virtue of the right of prosecution hereinafter given to private parties, any private party intends to prosecute any person for whose liberation from gaol any warrant of the nature above mentioned may have been issued by the Crown Prosecutor, it shall be competent for such private parties, upon entering into a recognisance for the prosecution of the said defendant in the form hereinafter set forth, to apply to the District Court or, in case such Court shall not be then actually sitting, to the Recorder of the said Court, for a warrant for the further detention in gaol of such person (or in case the liberation has already taken place, for his re-committal to gaol for trial) upon which application the said Court or the said Recorder shall make such order as shall seem proper. **How private prosecution shall proceed in such a case.**

11. And be it enacted, that neither conviction or acquittal following on the prosecution of the Crown Prosecutor, shall be any bar to a civil action for damages at the instance of any person who may have suffered any injury from the commission of any alleged crime or offence. **Criminal prosecution no bar to civil action.**

12. And be it enacted, that in all cases where the Crown Prosecutor declines to prosecute for any alleged crime or offence, it shall be competent for any private party, who alleges that he has suffered injury by any such alleged crime or offence, to prosecute in any Court competent to the trial of the same the person alleged to have committed such crime or offence. **When private party may prosecute.**

13. And be it enacted, in order that no prosecution at the instance of a private party may take place until the Public Prosecutor shall have exercised his discretion whether he will prosecute the offender at the public instance, that it shall not be competent for any private party to obtain the process of any Court for summoning any party to answer to any indictment or complaint, unless the said private party shall produce to the officer authorised by Law to issue such warrant, the indictment or complaint, having endorsed thereon a certificate under the hand of and subscribed by the Crown Prosecutor that he has seen the indictment or complaint and declines to prosecute at the public instance for the offence therein set forth; which said certificate the Crown Prosecutor is hereby required to grant: Provided always, that it shall not be competent for any private party to require any such certificate from the Crown Prosecutor in any case, except one in which the person sought to be prosecuted shall have been committed for trial. **Restrictions on private prosecutions.**

14. And be it enacted, that to support a prosecution at the private instance the private party prosecuting must be able to show some substantial and peculiar interest in the issue of the trial, arising out of some **Conditions necessary to support private prosecution.**

Ord. 18, 1845. injury, which he individually has suffered by the commission of the alleged crime or offence set forth in the indictment or complaint.

Crimes committed against wives, wards, and persons dying thereby. 15. And be it enacted, that a husband shall possess this right of prosecution in respect of crimes and offences committed against his wife; and that the legal guardians of minors shall possess this right of prosecution in respect of crimes and offences committed against their wards; and that the wife or children or, where there is no wife or child, any of the next of kin of any deceased person, shall possess this right of prosecution in respect of any crime by which the death of such person is alleged to have been caused.

Costs of prosecution. 16. And be it enacted, that where a person prosecuted at the instance of a private party shall be acquitted, the Court in which the prosecution was brought may adjudge the prosecutor to pay the party prosecuted the whole or any part of the expenses which may have been occasioned to him by the prosecution (A).

Recognizance to be entered into by private prosecutor. 17. And be it enacted, that it shall not be competent for any private party to obtain the process of the District Court for summoning any party to answer to any indictment or complaint, unless such private party shall first enter into a recognizance in the sum of Twenty Pounds Sterling, together with two sufficient sureties in Ten Pounds Sterling each, to be approved of by the officer issuing such process, to prosecute the said indictment or complaint to a conclusion, according to the forms of Law at the time at which the summons requires the defendant to appear, and to pay and satisfy any costs or expenses which may be adjudged to be paid by the said private party.

Limitation of prosecution. 18. And be it enacted, that the right of prosecution for the crime of murder shall not be barred by any lapse of time; but the right of prosecution for any other crime or offence, whether at the instance of the Crown Prosecutor, or of the private party injured, shall be barred by the lapse of twenty years from the time when the crime or offence was committed.

Who may arrest. 19. And be it enacted, that the Recorder of the District of Natal, and any Magistrate, or Justice of the Peace, who has knowledge of any crime or breach of the peace by seeing it committed, may himself arrest the offender, or by a verbal order may authorise others to do so, who may follow the offender thus pointed out to them and execute the order on him out of the presence of such Magistrate, if he flee.

Who may grant warrants for arrest, and how. 20. And be it enacted, that it shall and may be lawful for the Recorder aforesaid, or any Magistrate, to grant warrant (B) for the apprehension of any person on a written application setting forth the offence alleged to have been committed and that from information, taken upon oath, there are reasonable grounds of suspicion against the person for whose arrest the warrant is sought, subscribed by the Crown Prosecutor; or upon the information to the like effect of any person, made on oath before the Judge or Magistrate granting the warrant: Provided always, that it shall not be lawful for any Magistrate to grant any such warrant, except when the offence charged has been committed within the jurisdiction of such Magistrate, or except when the person against whom the warrant is issued shall, at the time when such warrant is so issued, be known or suspected on reasonable grounds to be within the jurisdiction of the Magistrate issuing such warrant.

Who may execute such warrants. 21. And be it enacted, that every officer of the law within the said District, proper for the execution of criminal warrants, shall be hereby authorised and required to obey and execute every such warrant

(A) See *Himunchal v. Clerk of the Peace*, 10 N.L.R. 33.

(B) Warrants may be executed by telegraph, see Law 17, 1888, s. 2, tit. "TELEGRAPH."

issued by the said Recorder, and every such officer of the law shall be and is hereby authorised and required to obey and execute every such warrant issued or endorsed by any Magistrate of the Division in which such officer of the law has been appointed to act; and every criminal warrant issued by the said Recorder or any Magistrate shall have effect and may lawfully be executed anywhere within the limits of the said District, by any officer of the law, or by any private person to whom it shall be directed (A).

Ord. 18, 1845.

22. And be it enacted, that all officers of the law proper for the execution of criminal warrants shall be and are hereby authorised and required to arrest every person who shall commit any crime or breach of the peace in their presence; as also every person whom they shall have reasonable grounds to suspect of having 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; as also every person whom they shall see engaged in committing any affray, or whom they shall find attempting to commit a crime, or clearly manifesting an intention so to do.

Who may arrest without warrant, and when.

23. And be it enacted, that every private person, when called upon by any officer of the law, shall be and is hereby authorised and required to assist such officer in making any arrest, which by law such officer is authorised to make, of any person charged with or suspected of the commission of any crime or offence.

Private persons to assist officers of the law.

24. And be it enacted, that every private person in whose presence 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 goat, or other crime of equal degree of guilt with any of the crimes aforesaid, is committed or attempted to be committed, or who has knowledge that any such crime has been recently committed, shall be hereby authorised and required to arrest or forthwith to pursue the offenders; and every other private person, to whom the purpose of such pursuit shall be made known, shall be and is hereby authorised and required to join and assist in the same. And every private person who, on such pursuit being made, shall come up with any person having the property which has been stolen in his possession, or with any person whose traces have conducted his pursuers from the place where the crime was committed to the place where he shall be overtaken, shall be hereby authorised and required to arrest such person so having such stolen property in his possession, or so being traced as aforesaid.

In what cases a private person may arrest or pursue.

25. And be it enacted, that it shall and may be lawful for any private person to arrest any other person, upon reasonable suspicion that he has committed any of the crimes specified in the 24th Section of this Ordinance, or any other crime of an equal degree of guilt; but every arrest, or attempt to arrest, made by any private person upon suspicion, shall be made at his own peril if the party so arrested or attempted to be arrested be innocent.

Arrest on suspicion by private person to be at his own peril.

26. And be it further enacted and declared, that every private person shall be and is hereby authorised and required to lay hold of any person whom he may see engaged in committing an affray, in order to prevent such person from continuing the affray, and to suppress the same.

Affrays.

27. And be it enacted, that when any officer of the law or other person who shall by any of the provisions of this Ordinance be authorised

Killing to prevent escape, when justifiable homicide.

(A) See note to sec. 20, ante.



Ord. 18, 1845. and required to arrest or assist in arresting any person who has committed, or is on reasonable grounds suspected to have committed, any of the crimes in the said 24th Section mentioned or referred to, shall attempt to arrest such person, 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.

Killing a person attempting to make arrest, when murder or culpable homicide.

28. And be it enacted, that every person who, knowing the purpose for which any officer of the law or private person is acting, shall kill any such officer or person while attempting to make or assisting in making any arrest, or while interfering in order to suppress any affray, which in virtue of the provisions of this Ordinance such officer or person is authorised and required to make or to assist to make or to suppress, shall be deemed in law to be guilty of the crime of murder; and that every person who shall kill any private person while attempting to make any arrest under the circumstances set forth in the 24th Section of this Ordinance, knowing the purpose for which such private person so killed was acting, shall be deemed in law to be guilty of the crime of murder if he have committed, or of the crime of culpable homicide if he be innocent, of the crime on suspicion of which the person so killed attempted to arrest him; and that every person who shall kill any private person while attempting to make any arrest under the circumstances set forth in the 24th Section of this Ordinance, being ignorant of the purpose for which the person so killed was acting, shall be deemed in law to be guilty of the crime of culpable homicide if he have committed the crime on suspicion of which the person so killed attempted to arrest him; and that every person who shall kill any such officer or private person while attempting to make or assisting in making any arrest, which, in virtue of the provisions of this Ordinance such officer or person is authorised and required to make, or to assist to make, being ignorant of the purpose for which such officer or private person so killed was acting, shall be deemed in law to be guilty of the crime of culpable homicide; and that every person who shall kill any such officer or private person while attempting to make an arrest in virtue of any warrant hereinbefore mentioned which, by reason of the informality thereof shall not be in law sufficient to authorise the arrest of the person who shall kill such officer or private person, shall be deemed in law to be guilty of the crime of culpable homicide, whether he shall know or be ignorant of the purpose for which such officer or private person was acting.

Facts proved at trial for homicide not to be deprived of their former legal effect by this Law.

29. And be it further enacted and declared, that on the trial of any person for homicide committed in resisting any arrest, nothing herein contained shall extend or be construed to deprive any fact or circumstance (other than those the legal effect of which is hereinbefore specially provided for and declared) under which such homicide shall have been proved to have been committed of the effect, either in exculpating such person or in mitigating or aggravating his guilt, which, by law, such fact or circumstance would have had previously to the passing of this Ordinance.

Forcible entry to make arrest, how to be made.

30. And be it further enacted and declared, that it shall and may be lawful for every officer of the law, and every private person who shall by law be authorised or required to arrest any person known or suspected to have committed any crime or offence, for that purpose to break open the doors of and to enter and search any house in which such person is known or suspected to be; Provided always, that such officer or other person as aforesaid shall have previously failed to obtain admission after having audibly demanded the same, and notified the purpose for which he seeks to enter such house.

31. And be it enacted, that every warrant issued by any of the persons hereinbefore authorised to issue the same shall be to apprehend the party described in it, and to bring him before the person issuing the same, or such other Magistrate as the person issuing the said warrant shall there-in direct.

Ord. 18, 1845.  
Tenor of warrants.

32. And be it enacted, that it shall and may be lawful for any Magistrate, on receiving information of any crime or offence having been committed (except it shall plainly appear to be proper for the cognizance of some Court of summary jurisdiction to be hereafter created by some future Law or Ordinance) to commence a preparatory examination, and for that purpose he shall immediately issue a warrant for the apprehension of any person who, from information taken upon oath, may be reasonably suspected of having committed the said crime or offence, and shall summon those persons whom it shall appear necessary to examine as witnesses, and in case of refusal or failure to attend, after due proof of the service of such summons, the said Magistrate as aforesaid shall issue a further warrant under his hand to enforce the appearance of such witnesses; Provided always, that every Magistrate may, at all times, require and enforce the appearance of all persons whom it shall appear necessary to examine as witnesses, touching any supposed crime or offence, although the person by whom any such crime or offence has been committed may not be known or suspected, precisely as if such last mentioned person were clearly ascertained.

Preparatory examinations.

Apprehension of accused.

Witnesses.

33. And be it enacted, that every Magistrate instituting a preparatory examination shall examine every person who can give any information on the subject of the crime or offence under investigation.

All having knowledge of the crime to be examined.

34. And be it enacted, that all preparatory examinations shall be taken upon oath, and every witness, before giving his evidence, shall make oath before the Magistrate by whom he is to be examined, that in the whole of his deposition he will tell the truth, the whole truth, and nothing but the truth; and each witness shall be examined apart from the others. The depositions shall be taken down in writing in the presence of the accused party, or if taken in his absence shall be afterwards read over to him in the presence of the witnesses making the same, whom he shall be entitled to cross-examine; and such depositions shall be signed by the Magistrate and by the witnesses, and in case of their incapacity or refusal, then the same shall be signed by two persons in whose presence the same were taken; and if any witness shall obstinately refuse to give evidence he may be committed to and detained in prison until he shall comply.

Mode of taking preparatory examinations.

35. And be it enacted, that when any person, suspected of a crime or offence, is apprehended by virtue of the warrant hereinbefore described, the officer who executes the warrant shall, with all convenient speed, carry the prisoner before the Magistrate named in the warrant; or, if the warrant is general, or the arrest be made without warrant, before the Magistrate nearest to the place in which the apprehension takes place.

Before whom prisoner to be brought.

36. And be it enacted, that when any person suspected of a crime or offence is brought before any Magistrate for examination, such Magistrate, before commencing the examination of the witnesses, shall satisfy himself that the prisoner is in his sound and sober senses.

Magistrate to satisfy himself of prisoner's sanity.

37. [Repealed by Law No. 14, 1864.]

38. And be it enacted, that when there shall appear to any Magistrate sufficient grounds for putting any person brought before him on trial for the crime or offence of which he is accused, the Magistrate shall grant a warrant to commit him to some gaol of the division in and for which such Magistrate shall have jurisdiction to act, there to be detained till brought to trial for the said crime, or till liberated in due course of law; which warrant shall clearly express the crime or offence with which the prisoner is charged.

Commitment for trial.

Ord. 18, 1845.

To what gaol Magistrate may commit, if offence be charged as committed in other than his own district.

39. And be it enacted, that in every case in which any person charged with any crime or offence shall be apprehended and brought before any Magistrate of any Division other than that in which such crime or offence is charged to have been committed, and where such Magistrate shall see cause to commit such person either for trial or for further examination as hereinafter provided, it shall be lawful for such Magistrate to grant warrant to commit such person either to some gaol in the division in which the crime or offence is charged to have been committed or to the gaol of the division within which such Magistrate has jurisdiction to act.

Security for and detention of witnesses.

40. And whereas public justice will in many cases be defeated by the departure from the District or otherwise of witnesses, who have been examined as such under preparatory examinations taken before as to the commitment of offenders for trial before the Courts of criminal jurisdiction within the District, be it therefore enacted, that every Magistrate before whom any preparatory examination is taken may lawfully require any witness, either alone or together with one or two sufficient sureties, to the satisfaction of the said Magistrate, to enter into a recognizance under condition that the said witness shall at any time within six months from the date thereof appear and give evidence at the trial of the said case upon being summoned thereto at some certain place to be elected by such witness; and if any witness being so required to enter into any such recognizance shall refuse or fail so to do, it shall and may be lawful for the said Magistrate to commit and detain in prison the witness so refusing or failing until such recognizance shall have been entered into as aforesaid.

and by Act 40. 1914. Sect. 4

Commitment for further examination.

41. And be it enacted, that where sufficient grounds do not appear for at once committing the prisoner for trial or for discharging him, and there shall appear to the Magistrate probability that further evidence may be produced, the Magistrate may grant a warrant for committing him for further examination. Such re-commitment for further examination may, if necessary, take place oftener than once upon sufficient cause appearing to the said Magistrate, which cause shall be expressed in the warrant of re-commitment; and every warrant of commitment for examination shall specify the time when the prisoner is again to be brought before the Magistrate for examination.

Before commitment for trial, bail is in discretion of Magistrate.

42. And be it enacted, that until the warrant for commitment for trial is made out, no prisoner, even although the offence of which he is accused is a bailable offence, can insist on being admitted to bail, but it is in the discretion of the Magistrate to admit a prisoner accused of a bailable offence to bail before the preparatory examinations are concluded (A).

Access of friends and legal advisers.

43. And be it enacted, that no prisoner under commitment for examination shall be allowed the access of his friends or legal advisers but by the authority of a Magistrate, and under such restrictions as to him may appear requisite; but after commitment for trial the prisoner's friends and legal advisers shall have free access to him, subject to the regulations of the Magistrate, to whom the superintendence of the prison and the safe custody of the prisoners are entrusted (B).

Assistance of legal adviser.

44. And be it enacted, that a prisoner is not of right entitled to the assistance of a legal adviser while he is under examination (C).

Local inspections by Magistrate, or, in cases of homicide, best qualified persons.

45. And be it enacted, that it shall be the duty of the Magistrate who conducts the preparatory examination to make any local inspections which the particular circumstances of the case may render necessary;

(A) Relief may be granted by Supreme Court under sec. 62. See *In re Stephens*, 13 N.L.R. 165.

copies of depositions taken against him; see Law 16, 1861, post.

(B) The prisoner is also entitled, at the time of trial, to inspection and

(c) See Law 16, 1861, s. 4, post, and notes.

and, in cases of homicide and of serious injury to the person of any individual, to cause the dead body or the person injured to be examined by a regularly admitted medical man, if any such can be procured; and if not, then by the best qualified person or persons that can be obtained, who shall draw up and subscribe a written statement of the appearances and facts observed on such examination.

Ord. 18, 1845.

46. And be it enacted, that the Magistrate conducting the preparatory examination shall cause all writings and other articles exhibited by the witnesses in the course thereof, and likely to be used in evidence on the prisoner's trial, to be inventoried and labelled or otherwise marked in the presence of the person producing the same, so as they may be capable of being identified at the prisoner's trial, and shall cause the same to be kept in safe custody until the trial and to be then produced.

Identification of articles produced at preparatory examination.

47. And be it enacted, that it shall and may be lawful for the Crown Prosecutor, should he so think fit, to assist in person at any preparatory examination instituted by or before any Magistrate; or the Crown Prosecutor may specially depute any other person to attend and assist thereat.

Crown Prosecutor may assist at examinations.

48. And be it enacted, that the Recorder of the District aforesaid and all Magistrates therein, upon an information taken upon oath being transmitted to them by the Crown Prosecutor or upon the information of any person made on oath before such Judge or Magistrate, that there is reason to suspect that stolen goods are concealed in any place within the jurisdiction of the Judge or Magistrate to whom the information is transmitted or before whom the information is made, may, by warrant under his hand, cause every such place to be searched during the day time.

Search warrants, how obtained.

49. And be it enacted, that where a preparatory examination has been taken by any Magistrate, such Magistrate shall forthwith deliver or transmit the examinations to the Crown Prosecutor for his consideration.

Examinations to be sent to Crown Prosecutor forthwith.

50. And be it enacted, that after considering the preparatory examinations submitted to him, the Crown Prosecutor may either order that the prisoner shall be forthwith liberated, or that a further investigation shall take place; or shall forthwith take such measures, and give such directions for the trial of the prisoner in such competent Court of the District or place within which the offence was committed, as shall be most expedient for the ends of justice and the due execution of the laws (A).

That officer may liberate accused, or direct further inquiry;

51. And be it enacted, that if in any case in which a preparatory examination shall have been, as aforesaid, transmitted to the Crown Prosecutor the party accused shall have been already discharged by the Magistrate, it shall be competent for the Crown Prosecutor, should he so think fit, to apply to the District Court, or to the Recorder of the District in case the said Court shall not then be sitting, for a warrant to re-apprehend and commit to gaol such accused party in order to his trial; and upon such application the said Court or Recorder shall make such order as shall to justice appertain.

Or apply for warrant to re-apprehend.

52. And be it enacted, that the Magistrate of any Division shall and may lawfully, on an application to that effect signed by the Crown Prosecutor, grant warrant for the removal of any person detained in virtue of any legal warrant within the gaol of such division on any criminal charge to the gaol of any other division specified in such application, therein to be detained for further examination or for trial, or till liberated or removed therefrom in due course of law.

When Magistrates may remove prisoners to another district gaol.

53. And be it enacted, that in every case where a person is committed for trial he shall be entitled to demand a true copy of the warrant under the hand of the officer, bearer thereof, or the keeper of the gaol in which

Prisoner may claim copy of warrant.

(A) When trial directed before Magistrate's Court, prisoner may demand a jury; see Law 16, 1861, s. 5, post.

- Ord. 18, 1845. he is imprisoned, who shall be liable in the penalty of a sum not exceeding Fifty Pounds Sterling if he refuse to give it within six hours after it is demanded by the prisoner or his agent,
- When prisoner may be admitted to bail.  
Application for release on bail.
54. And be it enacted, that every prisoner committed for trial in respect of crimes not capital is entitled, as soon as the warrant of commitment for trial is made out, to be admitted to bail.
- Application subsequent to commitment.
55. And be it enacted, that for this purpose it shall be competent for the prisoner at the time of the commitment to apply verbally to the Magistrate granting the warrant of commitment to be immediately liberated on bail.
56. And be it enacted, that at any period subsequent to the time of commitment it shall be competent for the prisoner to apply by writing to the Magistrate who granted the warrant of commitment, or to the Magistrate within whose division he is imprisoned, or to the District Court, or to the Recorder thereof, to be admitted to bail; but when the commitment is on a warrant issued by the District Court or the Recorder thereof it shall only be competent to apply for bail to the said District Court or the said Recorder. Every such written application for bail shall be in form of a petition and shall be accompanied by a copy of the warrant of commitment or affidavit that a copy is denied.
- Determination as to bail to be within 24 hours.
57. And be it enacted, that every Magistrate to whom an application for bail is made shall, within twenty-four hours after such application, determine whether the crime is bailable; and if so, notify the amount of the bail to be given; and failing to do so shall be liable in the penalty of a sum not exceeding One Hundred Pounds Sterling.
- Upon what the determination is to rest.
58. And be it enacted, that in determining whether the crime for which the prisoner has been committed is bailable or not the Magistrate shall, in the ordinary case, take the charge against the prisoner as he finds it on the face of the warrant of commitment.
- Powers of Court in respect of bail.
59. And be it enacted, that the District Court shall have power to bail in all cases whatever, whether capital or not, where innocence may be fairly presumed, and in every case where the charge is not alleged with sufficient certainty.
- Where Magistrate may exercise a discretion.
60. And be it enacted, that in cases where a doubt may arise concerning the degree and quality of the crime from the uncertain issue of the deed which has been done—as in the case of a wound of which it cannot be foretold whether the sufferer shall die or recover—every Judge or Magistrate to whom application for bail is made may refuse to grant the same until all hazard of the life of the sufferer be at an end.
- Bail not to be excessive.
61. And be it enacted, that the amount of the bail to be taken in each case shall be at the discretion of the Judge or Magistrate to whom the application to be admitted to bail shall be made; provided, that no person shall be required to give excessive bail.
- Prisoner's remedy where he considers himself aggrieved by Magistrate's action.
62. And be it enacted, that in every case in which a prisoner considers himself aggrieved by the proceedings of any Magistrate in having illegally committed him to prison, or refused to admit him to bail, or in having required excessive bail, it shall be competent to such prisoner to apply to the District Court or, in case those Courts shall not be then sitting, to the Recorder of the said Court, who shall make such order thereon as in the circumstances of the case shall seem just.
- Recognizance.
63. And be it enacted, that the recognizance shall be taken by the Magistrate either from the prisoner alone or from the prisoner and one or more sureties at the discretion of the Magistrate, according to the nature and circumstances of the case; and the condition of such recognizance shall be, that the prisoner shall appear and answer to any indictment that shall be presented against him in any competent Court for the crime or offence wherewith he is charged at any time within the space of six months from the date thereof, and that he will accept service of any such indictment

and summons thereon at some certain place by him elected and therein expressed. Ord. 18, 1845.

64. And be it enacted, that the keepers of all the gaols within the District of Natal shall, under a penalty of Five Pounds Sterling, at each session of the District Court holden for the trial of criminal cases in the division in which such gaol shall be situated, deliver to the Court a list of all the persons confined within their respective gaols, which list shall specify the date of commitment of each prisoner and the cause of his imprisonment and the name of the committing Magistrate (A).

Gaol returns to be made.

*Rep. by Act  
13/1911 sec.  
Union*

65. And be it enacted, that every prisoner who shall have been committed for trial within any division of the District of Natal shall be brought to trial at the session of the District Court holden for the trial of criminals within such division next after such commitment, provided fourteen days shall have elapsed between his commitment for trial and such session, or else shall then be admitted to bail, unless it shall be made to appear to the satisfaction of the Court that in consequence of the absence of material evidence, or some other sufficient cause, the trial cannot then be proceeded in without defeating the ends of justice; or unless a warrant shall have been obtained from the said Court for the re-committal of the prisoner to gaol in order to his trial before the said Court elsewhere, or in order to his trial before any inferior Court: Provided always, that when any trial shall be postponed or removed at the instance of the prisoner he shall not, as matter of right, be entitled to be admitted to bail; And provided also, that if such prisoner shall not be brought to trial at the second session of the District Court holden after the day of his commitment for the trial of criminals within the division in which such prisoner shall have been committed and shall not previously have been tried before any inferior Court, or before the District Court holden elsewhere, such prisoner shall be discharged from his imprisonment for that offence for which he shall have been committed for trial (B).

Within what time prisoners must be brought to trial, or otherwise admitted to bail.

When untried prisoner must be discharged.

66. And be it enacted, that when a warrant shall have been obtained from the District Court for the re-committal to gaol of any prisoner in order to his trial before the said Court to be holden elsewhere, such prisoner shall forthwith be transmitted to the gaol mentioned in such warrant and shall be tried at the next session of the said Court holden for the trial of criminals in the place mentioned in such warrant; or otherwise shall be discharged from his imprisonment for that offence for which he was transmitted for trial.

Transmission of prisoner, when re-committal for trial in another district.

67. And be it enacted, that no person who has been once discharged from gaol in consequence of not being brought to trial within the period hereinbefore prescribed shall be subject to be re-committed to gaol, either for examination or for trial for the same offence.

Discharge under Sec. 65 bars re-committal for same offence.

68. And be it enacted, that no person who has been admitted to bail and who has not been duly brought to trial shall be obliged to find further bail, or shall be subject to be committed to gaol, either for examination or trial, for the same offence in respect of which he was formerly admitted to bail.

And if the party has been bailed, no fresh bail can be required.

69. And be it enacted, that neither any such discharge from imprisonment, nor the expiration of the recognizance shall be any bar to any person being brought to trial in any competent Court for any offence for which he was formerly committed to gaol or admitted to bail.

But in either case the accused is liable to be tried.

(A) See Law 27, 1888, post.

(B) The Attorney-General is in no way restricted by this section from bringing a prisoner to trial at any Criminal Sessions of the Supreme or

Circuit Court, if eight clear days' notice of trial has been served upon him, together with the indictment. *Reg. v. Umnyangweni*, 16 N.L.R. 4.

Ord. 18, 1845.  
When discharge  
must take place.

70. And be it enacted, that the District Court shall, at the close of each Session, discharge all such prisoners as by law shall then be entitled to liberation.

Penalties, how  
recoverable.

71. And be it enacted, that all the penalties hereinbefore provided shall be recoverable before the District Court at the instance either of the Crown Prosecutor, or of the party aggrieved, without prejudice to the right of the prisoner to insist also for damages against the person incurring such penalties, in a civil action before any competent Court.

Form of pro-  
ceeding.

72. And be it enacted, that the form and manner of proceeding to be observed in the trial of crimes in the District Court aforesaid shall be according to the rules, orders and regulations to be framed, constituted and established by the said Court.

Interpretation.

73. And be it enacted, that in the interpretation of this Ordinance, the terms "Magistrate," and "officer of the law proper for the execution of criminal warrants," shall respectively be taken to denote and comprehend all such persons as under and by virtue of any future Law or Ordinance shall be created, constituted and declared to be such Magistrates and officers respectively within the meaning of this Ordinance; and that whenever mention is made of any public functionary or officer the functionary or officer mentioned shall be deemed to be such functionary or officer for the time being, or the officer acting as such, and that the singular number shall include several persons as well as one person and that the masculine gender shall include females as well as males.

Commencement

74. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof by any Proclamation to be by the Lieutenant Governor of the said District for that purpose issued and posted upon or affixed to any public place in Pietermaritzburg aforesaid.

SCHEDULE (A).

*Form of Oath of Allegiance.*

*Form of Oath of Office.*

**Ordinance No. 18, 1856.**

"For abolishing the Office of Crown Prosecutor of Natal."

[29th December, 1856.]

WHEREAS, by the Ordinance No. 18, 1845, entitled "An Ordinance for regulating the manner of proceeding in criminal cases in the District of Natal," provision is made for creating the office of, and for the appointment of an officer therein styled and designated "The Crown Prosecutor of Natal:" And whereas an officer, so styled and designated as aforesaid, was duly appointed as required by Law: And whereas it is necessary to alter the title and designation of such officer:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows, viz.:

*Crown Prosecutor to be designated Attorney-General.*

1. The officer heretofore called "the Crown Prosecutor of Natal," as aforesaid, shall henceforth be, and he is hereby called, designated, and created, "The Attorney-General of Natal."

Crown Prose-  
cutor to be  
styled Attorney-  
General.

(A) The forms of oath given in this Ordinance are now superseded by Law 14, 1869, s. 1. See tit. "OATHS."

repealed by  
Act 31 of 1917  
sect. 391

2. The Attorney-General shall do and perform all duties, acts, matters, and things, civil or criminal, which by any Law, Ordinance, or Rule of Court in force in this Colony are required to be done or performed by the said Crown Prosecutor of Natal. Ord. 18, 1855.  
Attorney-General's functions.

3. The said Attorney-General shall have, hold, exercise and enjoy the same rights and privileges as are by law vested in the said Crown Prosecutor of Natal (A). And privileges.

*Office of Crown Prosecutor abolished.*

4. The office of Crown Prosecutor of Natal shall be and the same is hereby abolished. Abolition of former office.

*Pending Proceedings.*

5. Any act or proceeding done or performed by the said Crown Prosecutor, or which may be done by the said Crown Prosecutor, before the taking effect of this Ordinance, may be taken up by the Attorney-General on this Ordinance taking effect, to all intents and purposes as if the office of Crown Prosecutor had not been abolished. Proceedings devolve on Attorney-General.

6. Any indictment filed or to be filed by the said Crown Prosecutor, or any order or proceeding of a criminal nature taken by the said Crown Prosecutor, before the taking effect of this Ordinance, may in like manner be taken up, carried on, and prosecuted according to law by the said Attorney-General on this Ordinance taking effect, without any alteration in such indictment, order, or proceeding being required. Indictments &c., carried on.

*Miscellaneous Provisions.*

7. The provisions of this Ordinance shall not be deemed or taken to repeal any of the provisions of the said Ordinance No. 18, 1845, or any other Law, Ordinance, or Rule of Court now in force in this Colony, save and except as aforesaid. Ordinance No. 18, 1845, not repealed.

8. This Ordinance shall take effect at such time as shall be fixed for that purpose, by proclamation duly issued by the Lieutenant Governor (B). Commencement

**Law No. 16, 1861. (C)**

“For Improving the Administration of Criminal Justice.”

[16th August, 1861.] *Repealed by Act 31 of 19 Decr. 391*

WHEREAS offenders frequently escape conviction on their trials by reason of the technical strictness of criminal proceedings in matters not material to the merits of the case: And whereas, such technical strictness may safely be relaxed in many instances, so as to ensure the punishment of the guilty, without depriving the accused of any just means of defence: And whereas, a failure of justice often takes place on the trial of persons charged with offences against the law, by reason of variances between the statement in the indictment on which the trial is had, and the proof of names, dates, matters, and circumstances therein mentioned, not material to the merits of the case, and by the mis-statement whereof the person on trial cannot have been prejudiced in his defence:

BE IT THEREFORE ENACTED, by the Lieutenant Governor, with the advice and consent of the Legislative Council:

1. So much of any former Law, Act, or Ordinance, and of any rule of the Supreme Court, or the Courts of Resident Magistrates, as shall Repeal of Laws.

(A) See Ord. 11, 1847, tit. “Courts (SUPREME)” as to rights of precedence and pre-audience.

(B) Took effect Feb. 1, 1857; see Proclamation in *Government Gazette*, Feb. 3, 1857.



Law 16, 1861. be repugnant to, or inconsistent with, any of the provisions of this Law, is hereby repealed.

Prisoners  
entitled to  
inspect  
depositions.

2. Where preparatory examinations shall have been taken by any Magistrate, prisoners or their counsel shall be entitled, at the time of their trial, to inspect, without fee or reward, all depositions or copies thereof which have been taken against them.

Persons held to  
bail may have  
copies of the  
examination of  
witnesses upon  
payment.

3. All persons who, after the passing of this Law, shall be held to bail or committed to prison for any offence against the law, shall be entitled to require and have, on demand, from the person who shall have the lawful custody thereof, and who is hereby required to deliver the same, copies of the examination of the witnesses respectively upon whose deposition they have been so held to bail or committed to prison, on payment of a reasonable sum for the same, not exceeding twopence (2d.) for each folio of ninety words.

Legal advisers  
allowed when  
under commit-  
tal for examina-  
tion or trial.

4. From and after the taking effect of this Law, any prisoner under committal for examination or for trial shall be allowed the access of a legal adviser. Provided always, that the room or building in which any Resident Magistrate or Justice shall take such examination and statements as aforesaid, shall not be deemed an open Court for that purpose. And provided always, it shall be lawful for any Resident Magistrate or Justice, in his or their discretion, to order that no person (A) shall have access to, or be, or remain, in such room or building, without the consent or permission of such Resident Magistrate, or Justice, if it appear to him or them that the ends of justice will be best answered by so doing.

When trial  
directed before  
Magistrate's  
Court, prisoner  
may demand a  
jury.

5. Whenever the Attorney-General shall direct the trial of any defendant or prisoner before any Magistrate's Court, it shall be competent for, and the right of, such defendant or prisoner to insist upon being tried by a jury, in which case such prisoner or defendant shall be brought to trial before the then next practicable Supreme or Circuit Court (B).

The Court may  
order indict-  
ment to be  
amended.

6. From and after the taking effect of this Law, whenever, on the trial of any indictment in the Supreme Court, or any Circuit Court, for any crime or offence, there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof, in the name of any division, city, town corporate, parish, township, or place, mentioned or described in any such indictment, or in the name or description of any person or persons, or body politic or corporate therein stated, or alleged to be the owner or owners of any property, moveable or immovable, which shall form the subject of any offence charged therein, or in the name or description of any person or persons, body politic or corporate, therein stated, or alleged to be injured or damaged, or intended to be injured or damaged, by the commission of such offence, or in the Christian name or surname, or both Christian name and surname, or other description whatever of any person or persons whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, or in the ownership of any property named or described therein, it shall and may be lawful for the Court before which the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such indictment to be amended, according to the proof, by some officer of the Court, or other person, both in that part of the

(A) This includes the prisoner's legal adviser, who may be excluded at the discretion of the Magistrate (*Reg. v. Nomcaba and others*, 13 N.L.R. 247).

(B) This is not applicable to a case

tried in the Magistrate's Court on summons by the Clerk of the Peace where there has been no remittal by the Attorney-General (*Reg. v. Wilson*, 15 N.L.R. 153).

indictment where such variance occurs, and in every other part of the indictment which it may become necessary to amend on such terms, as to postponing the trial, to be had before the same or another jury, as such Court shall think reasonable; and after any such amendment, the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects, and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had occurred.

Law 16, 1861.

7. Every verdict and judgment which shall be given after the making of any amendment under the provisions of this Law, shall be of the same force and effect, in all respects, as if the indictment had originally been in the same form in which it was after such amendment was made.

Effect of verdict after amendment of indictment.

8. In any indictment for murder or culpable homicide, preferred after the taking effect of this Law, it shall not be necessary to set forth the manner in which, or the means by which, the death of the deceased was caused, but it shall be sufficient, in every indictment for murder, to charge that the defendant did wrongfully, unlawfully, and maliciously kill and murder the deceased; and it shall be sufficient, in every indictment for culpable homicide, to charge that the defendant did wrongfully or unlawfully kill the deceased.

Indictment for murder, or culpable homicide, need not state the manner in which death was caused.

9. In any indictment for forging, uttering, stealing, embezzling, destroying, or concealing any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile thereof, or otherwise describing the same or the value thereof.

Description of instrument in indictment for forgery, theft, or embezzlement, &c.

10. In all other cases wherever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consist wholly or in part of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile of the whole or any part thereof.

Description of any instrument averred in any indictment in other cases.

11. From and after the taking effect of this Law, it shall be sufficient, in any indictment for forging, uttering, offering, disposing of, or putting off, any instrument whatever, or for committing or attempting to commit theft, by means of false pretence, to allege that the defendant did the act with intent to defraud, without alleging the intent of the defendant to be to defraud any particular person; and on the trial of any of the offences in this section mentioned, it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person, but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud.

Indictment need not allege the intent to defraud any particular person.

12. And whereas offenders often escape conviction by reason that such person ought to have been charged with attempting to commit offences, and not with the actual commission thereof: for remedy thereof be it enacted, that if, on the trial of any person, charged with any crime or offence, it shall appear to the jury or Court of Resident Magistrate, as the case may be, upon the evidence, that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict, and the Court aforesaid to pronounce as its judgment, that the defendant is not guilty of the crime or offence charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular crime or offence charged in the said indictment: and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the crime or offence for which he was so tried.

Defendant not to be acquitted by reason of his not having completed the offence charged.

**Law 16, 1861.**

In indictment for robbery, jury may bring in verdict of guilty of assault with intent to rob.

In indictment for assault, with intent to commit murder, jury may find prisoner guilty of assault with intent to do grievous bodily harm, or of common assault

Indictment for theft; property stolen at different times.

Particular date of theft not required in indictment.

Money or bank notes may be described in indictment simply as money, without specifying any particular coin or bank note.

Indictment not to be held insufficient for want of the averment of any matter unnecessary to be proved.

13. If upon the trial of any person, upon any indictment for robbery, it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict, that the defendant is guilty of an assault with intent to rob, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for assaulting with intent to rob: And no person so tried as is herein lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried, and as often as any person shall be charged with the crime of assault with intent to murder, he may be found guilty of an assault with intent to do some grievous bodily harm, or of a common assault, and in like manner a person charged with assault, with intent to do some grievous bodily harm, may be found guilty of a common assault.

14. If upon any indictment for theft it shall appear that the property alleged in such indictment to have been stolen at one time, was stolen at different times, the prosecutor shall not, by reason thereof, be required to elect upon which taking he will proceed, and the prisoner shall be liable to be convicted of every such taking in like manner as if every such taking had been separately charged.

15. It shall be lawful in any indictment for theft to allege that the goods charged to have been stolen were taken at divers times between any two certain days stated in the indictment, and upon such an indictment, proof may be given of the stealing of the goods charged to have been stolen upon any day or days between or before, or after, the two certain days aforesaid: Provided also, that as often as any particular day shall be laid in any indictment as the day on which any act or crime was committed, proof that such act or crime was committed on any other day or time shall be taken to support such averment, in case time be not of the essence of that crime.

16. In every indictment in which it shall be necessary to make averment as to any money or any note of any bank, it shall be sufficient to describe such money or bank note simply as money, without specifying any particular coin or bank note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin, or of any bank note, although the particular species of coin of which such amount was composed, or the particular nature of the bank note shall not be proved; and in cases of money or bank notes by embezzlement and theft of money or bank notes by false pretences, by proof that the offender embezzled or obtained any piece of coin or of any bank note, or any portion of the value thereof, although such piece of coin or bank note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person, and such part shall have been returned accordingly.

17. No indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved; nor for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation instead of his proper name; nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence; nor for stating the offence to have been committed on a day subsequent to the filing of the indictment, or on any impossible day, or on a day that never happened; nor for want of or imperfection in the addition of any defendant, or any other person; nor for want of the statement of the value or price of any matter or thing, or the amount of damage, injury, or spoil, in any case where the value or price, or the amount of damage, injury, or spoil, is not of the essence of the offence.

18. Every objection to any indictment for any formal defect apparent on the face thereof, shall be taken by exception, or by motion to quash such indictment, before the jury shall be sworn, and not afterwards; and every Court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by such officer of the Court or other person; and thereupon the trial shall proceed as if no such defect had appeared.

**Law 16, 1861.**  
Objection to indictment to be taken by exception or motion to quash before jury sworn.

19. In any plea of a former conviction, or a former acquittal, it should be sufficient for any defendant to state that he has been lawfully convicted or acquitted (as the case may be) of the offence charged in the indictment.

Plea of former conviction or acquittal.

20. In any criminal case prosecuted in any Circuit Court at the instance of the Public Prosecutor, the process of such Circuit Court may be sued out, for summoning as a witness in such case, any person required to give evidence, although such person shall reside or be within some district of the Colony other than that in or for which such Circuit Court shall be appointed to be holden. And as often as it shall be necessary to summon any such last-mentioned person, the process of the Circuit Court in which such criminal case is pending shall be forwarded for execution to the Deputy Sheriff of the district in which such witness shall reside or be, or such other officer in such district as shall be proper for the execution of similar process when issued by or out of the Circuit Court of or for such last-mentioned district, and such Deputy Sheriff, or other officer receiving such process, shall execute the same in the manner as if it were the process of the Circuit Court of or for such last-mentioned district, and shall return such process, together with what he has done in the execution thereof, to the officer by whom the same was sued out and forwarded to him, and the return made by such Deputy Sheriff, or other officer, shall be prima facie evidence of the service of such process as in such return stated, and such process shall have the same force and effect, and entail all and singular the same consequences, as if the person so summoned had been served in the district for which the Circuit Court in which the case is pending shall be held.

Witnesses may be summoned out of their own district of the Colony into another.

21. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A).

Commencement

**Law No. 14, 1864.** (B)

"To repeal the Thirty-seventh Section of the Ordinance No. 18, 1845, and to make other provisions in lieu thereof."

*Repealed by Act 31 of 19 Sect. 391*

[17th September, 1864.]

WHEREAS it is expedient to make better provision in reference to the taking and proof of statements made by accused persons at preparatory examinations and also to put an end to certain doubts existing in relation thereto respectively :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :

1. The thirty-seventh section of the Ordinance No. 18, 1845, is hereby repealed without prejudice to the efficacy, sufficiency or admissibility in evidence of any statement taken thereunder before this Law shall have come into operation.

Sec. 37 of Ord. 18, 1845, repealed.

(A) Aug. 27, 1861.

Law 14, 1864.  
Provisions in  
lieu thereof.

Magistrate to  
caution the  
accused.

2. In lieu of the said thirty-seventh section of the said Ordinance No. 18, 1845, the following provisions of this section are enacted and substituted, that is to say: After the examination of the witnesses in support of the charge in presence of the accused person, or after the examinations have been read over to him if taken in his absence, the Magistrate shall address or cause to be addressed in his presence such accused person in these or equivalent terms: "Having heard the evidence, do you wish to say anything? You need not say anything unless you wish, and if any expectation of gain from your saying anything, or of injury from your not saying anything, has been held out to you, you are to pay no regard thereto. Anything which you do say will be taken down and may be used in evidence against you at your trial (A)." And if thereupon the accused person shall make any statement, the Magistrate shall cause the same or the interpretation thereof into English to be taken down in writing as nearly as may be; and when so taken down to be read over and if requisite interpreted to such accused person as his statement; and if such person thereupon shall desire any addition or correction to be made thereto or thereof, the Magistrate shall cause such to be made; and this statement, including any such additions and corrections, may be signed by the accused person if willing thereto; and such statement shall be entitled as a statement by the accused person by name; and the Magistrate shall, at the end of such statement, certify as nearly as may be in the following words: "I certify that the foregoing statement was made by the accused person A. B. in my presence after I had addressed [or caused him to be addressed] in manner directed in that behalf by the second section of the Law No. 14, 1864." And the Magistrate shall as such sign such certificate. And such statement shall be kept and transmitted with the depositions of the witnesses in ordinary course.

Statement of  
accused to be  
admissible in  
evidence  
against him.

3. Such statement, purporting to be certified and signed by the Magistrate as directed by the last foregoing section, shall be admissible in evidence against the accused person mentioned in such certificate at his trial without further proof of such statement having been in fact made by the accused person or of the truth of the certificate or of any other matter relating to the taking or the keeping or transmission of such statement, unless it shall be shown that such certificate was not signed by the Magistrate.

Statement of  
accused made  
at any other  
time not  
affected.

4. Nothing in this Law contained shall affect the admissibility in evidence of any statement by an accused person at any time other than that referred to in section two hereof.

Commencement

5. This Law shall be in operation on and from the promulgation thereof in the "GOVERNMENT GAZETTE" (B).

#### Law No. 9, 1876.

*Rep. by act 13/19 11  
sec. 1 - Union*

"To provide for the granting of Conditional Pardons."

[11th November, 1876.]

WHEREAS, by the Royal Charter of Natal, bearing date at Westminster, the 15th day of July, 1856 (C), full power and authority are given and granted to the Lieutenant Governor of the Colony of Natal, as he shall see occasion, and in the name and on behalf of Her Majesty,

(A) See Law 5, 1870, s. 8, tit. "EVIDENCE AND WITNESSES."

(B) Oct. 4, 1864.

(C) Revoked by Letters Patent dated July 20, 1893.

to grant to any offender, convicted of any crime in any Court, or before any Judge, Justice, or Magistrate, within the said Colony, a pardon either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender for any period as to the said Lieutenant Governor may seem fit :

Law 9, 1876.

AND WHEREAS it is expedient and necessary to make further provision in reference to the granting of conditional pardons by the Lieutenant Governor of Natal :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. Whenever the Lieutenant Governor shall be pleased to extend mercy to any offender convicted of any offence for which the said offender shall have been sentenced to the punishment of death, on condition of such offender being imprisoned with or without hard labour, or on other lawful conditions, such conditions shall stand in the place of the original sentence, and the Lieutenant Governor shall issue a warrant setting forth such conditions, and such warrant shall be as effectual as though it had been a sentence pronounced, made, and recorded by the Supreme Court of the Colony of Natal.

Conditional reprieve to have effect of sentence of Supreme Court.

2. It shall and may be lawful for the Lieutenant Governor of the Colony of Natal, whenever he shall think fit, upon the petition of any convict who shall have undergone three years of imprisonment under his then sentence, to grant to him a license to be at large during such portion of his remaining term of imprisonment, and upon such conditions in all respects as to the said Lieutenant Governor may seem fit : Provided, however, that no such license shall be granted conditional on the departure from and residence beyond the boundaries of the Colony : and it shall be lawful for the Lieutenant Governor to revoke or alter such license by a like order at his pleasure.

Licences to convicts to be at large upon certain conditions.

3. So long as any license granted under the provisions of the foregoing section shall continue in force and unrevoked, such convict shall not be liable to be imprisoned by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such license.

Effect of License

4. This Law shall commence and take effect from and after the promulgation thereof in the " NATAL GOVERNMENT GAZETTE," after the passing thereof (A).

Commencement

Law No. 27, 1888. *Rep. by Act 13/1911 Sec 1. Amend.*

" To amend Ordinance No. 18, 1845, entitled ' Ordinance for regulating the manner of proceeding in Criminal Cases in the District of Natal.' "

[12th November, 1888.]

BE IT ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. The list of persons confined in the several gaols of Natal, required by the provisions of the 64th Section of Ordinance No. 18, of 1845, to be delivered to the Court at the criminal session thereof, shall, so far as regards the central gaols of Pietermaritzburg and Durban, be deemed to be a list of such persons confined in those gaols respectively as are then awaiting trial or not then committed for trial, and of the prisoners discharged from each such gaol during the preceding month.

Lists of prisoners in central gaols Pietermaritzburg and Durban restricted to lists of persons not yet tried, or discharged during previous month.

Law No. 4, 1890.

“To provide for certain expenses incurred under the Foreign Jurisdiction Acts.”

[28th May, 1890.]

WHEREAS in the exercise of the jurisdiction out of Her Majesty's dominions conferred by the Foreign Jurisdiction Acts, expenses are incurred :

AND WHEREAS it is desirable to provide in certain cases for the payment out of the public revenue of this Colony of expenses so incurred :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. Whenever any person who is a native of this Colony, or ordinarily resident in this Colony, commits an offence in a foreign country in which Her Majesty the Queen exercises jurisdiction over British subjects, and whenever such person is either convicted of such offence, or is acquitted on the ground of insanity, the expenses incident to such conviction or acquittal, and of the removal of such person to this Colony or to the place in which he is to undergo his sentence, or be confined as a criminal lunatic, and of his maintenance during his imprisonment or confinement shall be a charge upon and payable out of the public revenue of this Colony.

2. A person shall be deemed to be ordinarily resident in this Colony who has resided here continuously for a period of not less than five years.

3. The expenses in the first Section specified may be ascertained and determined in such manner as may be provided by regulations published in any Order in Council, issued under the provisions of the Foreign Jurisdiction Acts, and failing such regulations then upon the production of the bills of disbursements with the proper vouchers attached, to the satisfaction of the Governor in Council of this Colony.

Act No. 11, 1895.

“To amend the Law relating to Clerks of the Peace.”

[8th August, 1895.]

WHEREAS it is expedient to repeal and re-enact with amendments Ordinance No. 3 of 1852, entitled “Ordinance for Creating the Office of Clerk of the Peace in the several Divisions of the District” :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. Ordinance No. 3 of 1852, entitled “Ordinance for Creating the Office of Clerk of the Peace in the several Divisions of the District” shall be and the same is hereby repealed.

2. Clerks of the Peace in office under Ordinance No. 3 of 1852 at the date when this Act takes effect shall be deemed to be appointed and sworn in terms hereof.

3. The Governor may appoint Clerks of the Peace, and may determine the Divisions in which such officers, whether appointed hereunder or under Ordinance No. 3 of 1852, shall act, and may dispense with the services of any Clerk of the Peace, and may alter any such Divisions.

4. A Clerk of the Peace shall take the oath of allegiance and an oath of office before entering on his duties (A).

(A) See tit. “OATHS.”

Expenses of trial, removal and confinement of native or resident of Natal committing offence in certain foreign countries to be payable out of Colonial revenue.

Who to be deemed “ordinarily resident.”  
Mode of ascertaining expenses.

Repeal of Ord. 3, 1852.

Continuation of existing appointments.

Appointment of Clerks of the Peace.

Oaths to be taken.

*repealed by Act 31 of 1917, Sect. 391*

5. No person hereafter to be appointed as Clerk of the Peace shall be regarded as a member of the Civil Service, or be entitled to pension rights, unless by the terms of his appointment he is required to give his whole time to the public service. Act 11, 1895.  
Status in relation to Civil Service.

6. A Clerk of the Peace shall within his Division discharge the following duties :— Duties.

- (a) Superintend, and if need be attend and assist at preliminary examinations instituted before the Magistrate in such way as may be directed by the Attorney-General ;
- (b) Conduct or assist in conducting public prosecutions before the Magistrate ;
- (c) Prosecute or assist in prosecuting in any Court on the delegation of the Attorney-General ;
- (d) Perform any duties connected with Civil business or proceedings which may be imposed upon or referred to him by the Attorney-General.

7. Nothing herein contained shall be construed to prevent prosecutions otherwise than through a Clerk of the Peace, where such prosecutions may be authorised by special Act, or by the Attorney-General, or to lessen the powers vested by Law in the Attorney-General. Prosecutions by others than Clerks of the Peace.

## II. OFFENCES AGAINST THE STATE.

### Law No. 3, 1868.

“To assimilate the Law of this Colony to the Law of the United Kingdom in relation to treasonable offences.”

[16th September, 1868.]

WHEREAS it is expedient to assimilate the law of this Colony to the law of the United Kingdom of Great Britain and Ireland in relation to treasonable offences, and with such object to re-enact in this Colony certain provisions of the Imperial Act, 11 and 12 Victoria, c. 12, entitled “An Act for the better security of the Crown and Government of the United Kingdom” :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :

1. If any person whatsoever, after the time at which this Law shall take effect, shall, within this Colony, compass, imagine, invent, devise, or intend, to deprive or depose our most Gracious Lady the Queen, her heirs or successors, from the style, honor, or Royal name of the Imperial Crown of the United Kingdom, or of any other of Her Majesty's dominions and countries, or to levy war against Her Majesty, her heirs or successors [within this Colony (A)], in order by force or constraint to compel her or them to change her or their measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe both Houses, or either House, of the Imperial Parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom, or any other Her Majesty's dominions or countries, under the obeisance of Her Majesty, her heirs or successors ; and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing,

Offences declared felonies by this Law to be punishable with imprisonment for life with or without hard labour.

(A) Words in brackets expunged by Law 4, 1869, post.



**Law 3, 1868.** or by open and advised speaking (A), or by any overt act or deed, every person so offending shall be guilty of an offence under this Law declared to be felony; and being convicted thereof, shall be liable, at the discretion of the Supreme or the Circuit Court to be imprisoned for the term of his natural life, or for any less term, with or without hard labour, as the said Court shall direct.

Time within which prosecution shall be commenced, warrant issued, &c.

2. No person shall be prosecuted for any offence declared to be felony by this Law, in respect of such compassings, imaginations, inventions, devices or intentions, as aforesaid, in so far as the same are expressed, uttered, or declared, by open and advised speaking (B) only, unless information of such compassings, imaginations, inventions, devices, and intentions, and of the words by which the same were expressed, uttered, or declared shall be given upon oath to one or more Justices of the Peace or a Resident Magistrate within six days after such words shall have been spoken, and unless a warrant for the apprehension of the person by whom such words shall have been spoken shall be issued within ten days next after such information shall have been given as aforesaid; and no person shall be convicted of any such compassings, imaginations, inventions, devices, or intentions, as aforesaid, in so far as the same are expressed, uttered, or declared by open and advised speaking as aforesaid, except upon his own confession in open court, or unless the words so spoken shall be proved by two credible witnesses.

How the words spoken must be proved.

Any number of acts may be charged in one indictment.

This Law not to diminish the force of law of high treason.

Indictments for felony under this Law valid though the facts may amount to treason.

repealed by  
Act 31 of 1914  
sect. 391

3. In any indictment for any offence made felony by this Law, any number of the matters, acts, or deeds by which such compassings, imaginations, inventions, devices, or intentions or any of them shall have been expressed, uttered, or declared may be charged against the offender.

4. Provided, nothing herein contained shall lessen the force of or in any manner affect the law of this Colony in regard to the crime of high treason, or "Crimen perduellionis."

5. If the facts or matters alleged in any indictment for any offence, by virtue of this Law made felony, shall amount in law to high treason or "Crimen perduellionis," such indictment shall not by reason thereof be deemed void, erroneous, or defective; and if the facts or matters proved on the trial of any person indicted for any offence made felony by this Law shall amount in law to high treason, or "Crimen perduellionis," such person shall not by reason thereof be entitled to be acquitted of such offence; but no person tried for any such offence shall be afterwards prosecuted for high treason or "Crimen perduellionis" upon the same facts.

As to the punishment of accessories.

6. In every case of an offence made felony, and punishable, under this Law, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as a principal in the first degree is by law punishable; and every accessory after the fact to any offence made felony by this Law shall on conviction be liable to imprisonment, with or without hard labour, for any term not exceeding two years.

Accused not entitled to bail without consent of Attorney-General or warrant of Supreme Court.

repealed by Act 31  
of 1917  
Commencement

7. No person committed for trial for any offence made felony by this Law shall be entitled to insist on liberation on bail, unless with the consent of the Attorney-General or by warrant of the Supreme Court or of any Judge in Chambers or of any Circuit Court; but the trial of any such person so committed shall be proceeded with and concluded in like manner and within such time as trials for other criminal offences under the law of this Colony.

8. This Law shall take effect from the promulgation thereof in the "GOVERNMENT GAZETTE" (c).

(A) As to the use and construction of these words see 1 Hale P.C. 111, 115, 223; 3 Inst. 5, 14; Fost. 200 et seq. As to the form of the indictment, see

*Morton v. Reg.*, 3 Cox C.L.C. 319; *Mulcahy v. Reg.* L.R. 3 H.L. 306.

(B) See note (A).

(C) Sept. 22, 1868.

Law No. 4, 1869.

“To amend Section 1 of Law No. 3, 1868.”

[22nd September, 1869.]

WHEREAS it is expedient to amend Section 1 of Law No. 3, 1868, entitled Law “To assimilate the Law of this Colony to the Law of the United Kingdom in relation to treasonable offences”:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:

1. The words “within this Colony,” occurring in section 1 of said Law, after the words “to levy war against Her Majesty, Her Heirs or Successors,” shall be and the same are hereby expunged.

Words “within this Colony” expunged.

2. This Law shall take effect from the promulgation thereof in the “GOVERNMENT GAZETTE” (A).

Commencement

*Am-14.1900*

III. OFFENCES RELATING TO HER MAJESTY’S FORCES.

Law No. 10, 1867.

“For the protection of Her Majesty’s Naval and Victualling Stores within the Colony of Natal.”

[4th October, 1867.]

WHEREAS it is deemed expedient to make provision for the protection, within the Colony of Natal, of Her Majesty’s Naval and Victualling Stores:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:

1. The marks described in the schedule to this Law may be applied within this Colony in or on Her Majesty’s naval and victualling stores to denote Her Majesty’s property in stores so marked, and if any such marks shall have been applied elsewhere, by lawful authority, in or on any such stores, such marks shall be deemed, for the purposes of this Law, to have been applied on or in such stores, within this Colony, by virtue hereof.

Marks in schedule may be applied to Her Majesty’s naval and victualling stores.

2. It shall be lawful for the Admiralty or any of their contractors, officers, or workmen within this Colony, who may be thereto duly appointed, to apply the said marks or any of them, in or on any such stores as are described in the said schedule.

Who may apply such marks.

3. If any person, without lawful authority (proof of which authority shall lie on the party accused) shall apply any of the said marks in or on any such stores as are mentioned or described in the said schedule, he shall be deemed guilty of a criminal offence and be liable to be prosecuted for the same, and upon conviction to be imprisoned for any term not exceeding two years, with or without hard labour.

Unlawfully applying marks.

4. If any person, with intent to conceal Her Majesty’s property in any naval or victualling stores, takes out, destroys, or obliterates, wholly or in part, any such mark as aforesaid, he shall be liable to prosecution for the same and upon conviction to imprisonment for any term not exceeding two years, with or without hard labour.

Obliterating marks.

5. If any person without lawful authority (proof of which authority shall lie on the party accused) shall receive, possess, keep, sell, or deliver any naval or victualling stores bearing any such mark as aforesaid, know-

Unlawfully receiving, selling, &c., marked stores.

(A) Sept. 28, 1869.

Law 10, 1867. ing any such stores to bear any such mark, he shall be liable to prosecution for the same, and on conviction thereof to be imprisoned for any term not exceeding one year, with or without hard labour.

Dealers in marine stores, &c., presumed to know that such stores are so marked.

6. When any person charged with contravening the provisions of the preceding section, was at the time at which the offence is charged to have been committed a dealer in marine stores or old metals, or in Her Majesty's service, knowledge on the part of such person that the stores to which the charge relates bore such mark as aforesaid, shall be presumed, until the contrary is shown.

Penalty on person charged with an offence as last aforesaid, in reference to stores not exceeding £5 in value.

7. Any person charged with such an offence as last aforesaid, in relation to stores the value of which does not exceed five pounds, shall be liable to prosecution in the court of any Resident Magistrate of the Colony summarily, and on conviction thereof to a penalty not exceeding twenty pounds, or in the discretion of the Magistrate, and also on default of payment of the fine, to be imprisoned for any period not exceeding six months, with or without hard labour.

Any person (not being a dealer in marine stores, &c.) unlawfully possessing, &c., such stores, liable to a penalty not exceeding £5.

8. If any naval or victualling stores, bearing any such mark, are found in the possession of any person not being a dealer in marine stores, or a dealer in old metals, and not being in Her Majesty's service, and such person upon being taken or summoned before a Resident Magistrate, does not satisfy the Magistrate that he came by the stores so found lawfully, he shall be liable to be prosecuted therefor summarily, and on conviction by the Magistrate, to a penalty not exceeding five pounds; and if any such person satisfies the Magistrate that he came by the stores so found lawfully, the Magistrate at his discretion as the evidence given and the circumstances of the case require, may summon before him every person through whose hands any such stores may appear to have passed, and if any such person as last aforesaid who has had possession thereof or of any of such stores does not satisfy the Magistrate that he came by the same lawfully, he shall be liable on like summary conviction by the Magistrate to a penalty not exceeding five pounds.

Magistrate may summon all persons through whose hands such stores have come.

9. For the purposes of this Law, stores shall be deemed to be in the possession or keeping of any person if he knowingly has them in the actual possession or keeping of any other person, in any house, building, lodging, apartment, field, or place, open or enclosed, whether occupied by himself or not, and whether the same are so had for his own use or benefit or for the use or benefit of another.

Stores deemed in possession of a person if in the possession of another for him.

10. It shall not be lawful for any person, without permission in writing from the Admiralty or from some person authorised by the Admiralty in that behalf, to creep, sweep, dredge, or otherwise search for stores in the shore, or sea, or bay of Port Natal, or other port or harbour, or place of debarkation or embarkation, belonging or immediately contiguous to the said Colony, or any tidal water within one hundred yards from any vessel belonging to Her Majesty, or in Her Majesty's service, or from any mooring place or anchoring place appropriated to any such vessels, or from any moorings belonging to Her Majesty, or from any of Her Majesty's wharves, or dock, or victualling yards, or other yards appertaining to the Colony. If any person acts in contravention of this provision he shall be liable on like summary conviction before a Resident Magistrate to a penalty not exceeding five pounds sterling.

No person to dredge, &c., for stores within 100 yards of vessels in Her Majesty's service;

Or dockyards, &c.;

Penalty £5.

11. Whosoever shall aid, abet, counsel, or procure the commission of any offence under this Law shall be liable to the same forfeiture and punishment as a principal offender is by this Law made liable.

Abettors may be punished as principals.

12. If any person shall be convicted of receiving, possessing, or keeping any such stores as aforesaid, in contravention of this Law, the Resident Magistrate before whom the case is heard shall have power to order the restitution thereof in a summary manner or, if he shall so think fit, to direct reasonable compensation to be paid therefor to whomsoever the said stores shall belong.

Magistrate may order restitution of or compensation for such stores.

13. If any credible witness shall prove upon oath before a Resident Magistrate, reasonable cause to suspect that any person has in his possession, or on his premises, any such stores on or with respect to which any offence punishable under this Law shall have been committed, the Resident Magistrate may grant a warrant to search for such stores, as in the case of stolen goods.

**Law 10, 1867.**  
Magistrate may grant warrant to search for stores on oath of a credible witness.

14. Where any person shall be charged on the oath of a credible witness before any Resident Magistrate with any offence punishable under this Law, the Magistrate may summon the person charged to appear at a time and place to be named in such summons, and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person by delivering the same to him personally, or by leaving the same at his usual place of abode) the Magistrate may proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person and bringing him before himself, or the Magistrate before whom the charge shall be made may (if he should so think fit), without any previous summons, issue such warrant, and when the person shall appear or be brought before him, proceed to hear and determine the case.

Magistrate may summon or grant warrant for apprehension of persons charged with offences against this Law.

15. In every case of a conviction under this Law, where a penalty shall be imposed by the Resident Magistrate and shall not be paid either immediately after the conviction, or within such period as the Magistrate shall at the time of the conviction appoint, the Magistrate may commit the offender to gaol, there to be imprisoned, with or without hard labour, for any term not exceeding three months, the commitment to be determined in each case upon payment of the penalty.

If penalty not paid, imprisonment not exceeding three months may be awarded.

16. No such conviction, or adjudication made on appeal therefrom, or review thereof, shall be quashed for want of form, and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be good and valid conviction to sustain the same.

No conviction or warrant of commitment to be quashed or void for want of form.

17. All actions and prosecutions to be commenced against any Magistrate, officer, or other person, for any thing done in pursuance of this Law, shall be commenced within six months after the fact committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action, and in any such action the defendant may plead the general issue, and give this Law and the special matter in evidence, at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant; and if a judgment or sentence be given for the defendant, or if the plaintiff shall become nonsuited, or discontinue such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant has by law in other cases, and though a verdict or other judgment shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be shall certify his approbation of the action.

Prescription of action against Magistrates and others.

No judgment shall be obtained against a Magistrate, &c., if tender of sufficient amends was made.

As to costs.

18. All offences mentioned in this Law which shall be committed on the sea, within three miles of the shore of the Colony of Natal, shall be liable to the same punishments as if they had been committed upon the land, within the jurisdiction of the Supreme Court of this Colony; and may be dealt with, inquired of, tried, and determined within any county or division of this Colony by the Resident Magistrate thereof in which the offender shall be apprehended or be in custody.

Offences committed within three miles of the shore may be tried in the Colony.

**Law 10, 1867.**

Saving of penalties under other Laws.

19. Nothing in this Law shall prevent any person from being liable under any other Law or otherwise, to any other or higher penalty or punishment than is provided for any offence by this Law, so that no person be punished twice for the same offence.

**Prosecutions.**

20. It shall not be competent for any person, other than the Attorney-General or Clerks of the Peace, to institute or carry on under this Law any prosecution or proceeding for any offence; and any penalty recovered under this Law shall belong to Her Majesty, her heirs and successors, and unless remitted, shall be applied to the uses of the Government of this Colony.

**Interpretation.**

21. "Dealer in marine stores," shall mean any person dealing in, buying, and selling anchors, cables, sails, or old junk, old iron, or marine stores of any description; "Dealer in old metals," shall mean any person dealing in, buying, and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, and whether such person deals in such articles only or together with second-hand goods or marine stores; the term "Admiralty" shall mean the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of the Lord High Admiral; the term "in Her Majesty's service," when applied to persons, applies also to persons in the employment of the Admiralty; the term "Resident Magistrate" and "Magistrate" shall include the assistant Resident Magistrate.

**Commencement**

22. This Law shall take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A).

SCHEDULE.

*Marks appropriated for Her Majesty's use in and on Naval and Victualling Stores.*

Stores.	Marks.
Hempen Cordage and Wire Rope	White, black, or coloured worsted threads, laid up with the yarns and the wire respectively.
Canvas, Fearnoughts, Hammocks, and Seaman's Bags	A blue line in a serpentine form.
Bunting ... ..	A double tape in the warp.
Candles ... ..	Blue or red cotton threads in each wick, or wicks of red cotton.
Timber, Metal, and other Stores, not before enumerated	The broad arrow.

**Law No. 12, 1867.**

"To repeal the Ordinance No. 2, 1847, entitled 'Ordinance for facilitating the apprehension, and regulating the mode of conveyance of Deserters from Her Majesty's land forces within the District of Natal, to their respective corps, and for the more prompt payment of rewards and expenses consequent thereupon,' and to make other more suitable provisions in lieu thereof."

[4th October, 1867.]

WHEREAS, by reason of various legislative enactments of the United Kingdom of Great Britain and Ireland, commonly called Mutiny

(A) Oct. 9, 1867.

Acts, it is deemed expedient to repeal the said Ordinance No. 2, 1847, and to re-enact the provisions thereof with amendments: Law 12, 1867.

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:

1. The Ordinance No. 2, 1847, entitled "Ordinance for facilitating the apprehension, and regulating the mode of conveyance of deserters from Her Majesty's land forces within the District of Natal, to their respective corps, and for the more prompt payment of rewards and expenses consequent thereupon," shall be, and the same is hereby repealed.

Repeal of Ord. 2, 1847.

2. Upon reasonable cause of suspicion that a person is a deserter from any of Her Majesty's land forces, it shall be lawful for any constable, or if no constable can be immediately met with, for any officer or soldier in Her Majesty's service, or other person, to apprehend or cause to be apprehended such suspected person, and forthwith to bring him, or cause him to be brought before any Resident Magistrate or Justice of the Peace living in or near the place where he was so apprehended, and acting for the county or division wherein such place is situate, or for the county or division adjoining such first-mentioned county or division, and such Magistrate or Justice is hereby authorised and required to inquire whether such suspected person is a deserter, and from time to time to defer the said inquiry, and to remand the said suspected person in the manner prescribed by the Laws of this Colony in preliminary examinations of persons accused of crimes; and if it shall appear to the satisfaction of such Magistrate or Justice, by the testimony of one or more witnesses, taken upon oath, or by the confession of such suspected person confirmed by some corroborative evidence upon oath, or by the knowledge of such Magistrate or Justice, that such suspected person is a deserter from any of Her Majesty's land forces, such Magistrate or Justice shall forthwith cause him to be conveyed to some public prison, if the regiment or corps to which he is suspected to belong shall not be in the Colony; or if the regiment or corps be in the Colony, the Resident Magistrate or Justice may deliver him into custody at the nearest military post, if within reasonable distance, although the regiment or corps to which such person is suspected to belong may not be stationed at such military post; and such Magistrate or Justice shall in every case transmit to the General or other officer commanding in this Colony a descriptive return in the form prescribed in the schedule to this Law annexed, to the end that such person may in due course, and with all reasonable speed, be removed by order of such officer and proceeded against according to law; and such descriptive return purporting to be duly made and subscribed in accordance with the law, shall in the absence of proof to the contrary, be deemed sufficient evidence of the facts and matters therein stated; and such Magistrate or Justice shall also send to such General or other officer commanding in this Colony a report stating the names of the persons by whom or by or through whose means the deserter was apprehended and secured; and the said officer shall, after having taken the directions of the Secretary of State for the War Department, thereupon transmit to such Magistrate or Justice an order for the payment to such persons of such sum, if any, not exceeding forty shillings, as the said Secretary of War shall be satisfied they are entitled to according to the true intent and meaning of the Mutiny Act in force for the time being; and for such information, commitment, and report as aforesaid, the clerk of any Magistrate or Justice shall be entitled to a fee of two shillings and no more for his own use; and any medical practitioner who, in the absence of a military medical officer, may have been required to examine such suspected person, and shall thereupon be required to give a certificate of such examination, shall be entitled to a fee of two shillings and sixpence.

Apprehension of suspected deserter.

Magistrate or Justice may commit deserter to prison, or send him to nearest military post;

And shall transmit return to officer commanding in Colony;

Such officer to transmit to Magistrate the reward for apprehension, on instructions from Secretary of State;

and fee to clerk and medical practitioner.

**Law 12, 1867.**

Gaoler to give order on Treasury for fee to Magistrate's clerk and medical practitioner.

3. Every gaoler or keeper of any public prison into whose custody any person charged with desertion is committed shall, immediately upon the receipt of the person so charged, give an order on the Treasury of the Colony for such fee of two shillings to such Magistrate's clerk, and also, on the production of a receipt from the medical practitioner who in the absence of a military medical officer may have been required to examine such suspected person, give in each such case an order on the Treasury for such fee of two shillings and sixpence.

Gaolers to receive deserters delivered under warrant of Magistrate, or order from Commandant.

4. Every gaoler or keeper of any public prison, gaol, or other public place of confinement, within this Colony, is hereby required to receive and confine therein every deserter who shall be delivered into his custody by any soldier, or other person, conveying such deserter, before a Magistrate or Justice of the Peace, or otherwise for removal under lawful authority, upon production of the warrant of the Magistrate or Justice, on which such deserter shall have been taken, or some order from the general officer or other officer commanding in the Colony; which order shall continue in force until such deserter shall have arrived at his destination; and every such gaoler or keeper shall be entitled to be paid one shilling for the safe custody of the said deserter, while halted on the march, and to such subsistence for his maintenance as shall be directed by Her Majesty's regulations, to be certified and paid in like manner. All sums which the gaoler is entitled to receive under this section shall be paid by the Colonial Treasurer.

Gaoler to receive subsistence money, &c., for deserters.

Colonial Treasurer to notify to Secretary of State payments made by Treasury.

5. The Colonial Treasurer is hereby required to notify the fact of all such payments to the Secretary of State for the War Department, and transmit a copy of each commitment, to the end that the said Secretary of State may order the repayment of all the sums paid by the Colonial Treasury under this Law.

Investigation as to collusion between deserter and person apprehending.

6. It shall be the duty of every Magistrate or Justice of the Peace, before whom any suspected deserter shall be brought, to investigate the circumstances attending such apprehension in order to ascertain whether or not there is reason to suspect the existence of collusion between such deserter and the person by whom, or by or through whose means, he shall have been apprehended; or whether or not such apprehension has been made in good faith, estimated from the length of time which may have elapsed since the date of such desertion, or from such deserter's not being fit for military duty, or from any other cause; and such Magistrate or Justice shall briefly set forth such circumstances in the return to be made by him as aforesaid.

Punishment for aiding or procuring desertion, concealing deserter, or rescuing deserter, &c.

7. Any person who shall in this Colony by any means whatsoever, directly or indirectly, procure any soldier to desert, or attempt to procure or persuade any soldier to desert, and any person who knowing that any soldier is about to desert, shall aid or assist him in deserting, or knowing any soldier to be a deserter, shall conceal such deserter, or aid or assist such deserter in concealing himself, or aid or assist in his rescue, shall be deemed guilty of a contravention of this Law, and shall on conviction thereof before any Resident Magistrate of the County or Division where any such offender shall at any time happen to be, be liable to be imprisoned, with or without hard labour, for such term not exceeding six calendar months as the said Magistrate shall think fit.

Commencement

8. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A).

SCHEDULE.

Law 12, 1867.

No. \_\_\_\_\_  
 Description Return of \_\_\_\_\_ who was apprehended  
 [or surrendered himself, as the case may be] on the \_\_\_\_\_  
 day of \_\_\_\_\_, and was committed to confinement at  
 \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, as a  
 deserter from [insert regiment or corps].

Age	... ..	
Height	... ..	Feet          Inches
Complexion	... ..	
Hair	... ..	
Eyes	... ..	
Marks	... ..	
Probable date of enlistment, and where		
Probable date of desertion, and from what place		
*	Name and occupation and address of the person by whom, or through whose means, the deserter was apprehended and secured.	
	Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner and upon what grounds.	

\* It is important for the public service, and for the interest of the deserter, that this part of the return should be accurately filled up; and the details should be inserted by the Magistrate or Justice, in his own handwriting, or under his direction by his clerk.

<p>I do hereby, certify that the prisoner has been duly examined before me as to the circumstances herein stated, and that he has declared in my presence that he* a deserter from the above-mentioned corps.</p> <p>_____                  Signature and address of the Magistrate or Justice.</p> <p>_____                  Signature of the Prisoner.</p> <p>_____                  Signature of Informant.</p> <p>* Insert "is" or "is not," as the case may be.</p>	<p>I certify, that I have inspected the prisoner, and consider him* for military service.</p> <p>_____                  Signature of the Military Medical Officer, or of † Private Medical Practitioner.</p> <p>* Insert "fit" or "unfit," as the case may be; and, if unfit, state the cause of unfitness.</p> <p>† No fee will be allowed to a private medical practitioner where a military medical officer is stationed, unless it shall be shown that his services were not available.</p>
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**Law No. 9, 1887.**

“To provide for the maintenance of discipline in Her Majesty's ships in Colonial Waters.”

[17th January, 1887.]

WHEREAS it is expedient in order to maintain discipline in Her Majesty's ships in the waters of this Colony, that spirituous or fermented liquors shall not be brought on board such ships without the consent of the Commander :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof as follows :—

No liquors to be brought on board H.M. ships without consent of commanding officer.

1. It shall not be lawful for any person to bring on board of Her Majesty's ships or vessels being or lying in any of the waters of this Colony any spirituous or fermented liquor of any description, without the previous consent of the officer commanding the ship or vessel on board of which the same may be brought ; and it shall be lawful for any officer in Her Majesty's service, or warrant or petty officer of the navy, or non-commissioned officer of marines, with or without seamen or persons under his command, to search any boat or vessel hovering about or approaching or which may have hovered about or approached any of Her Majesty's ships or vessels, and if any spirituous or fermented liquor be found aboard such boat or vessel, to seize such spirituous or fermented liquor, and the same shall be forfeited to Her Majesty ; and if any person shall bring any spirituous or fermented liquor on board of any of Her Majesty's ships or vessels without such previous consent as aforesaid, or shall approach or hover about any of Her Majesty's ships or vessels for the purpose of bringing any spirituous or fermented liquors on board the same, without such previous consent as aforesaid, or for the purpose of giving or selling, without such previous consent, spirituous or fermented liquors to men in Her Majesty's service, or of aiding or assisting any officer, seaman, or marine in Her Majesty's service to desert or improperly absent himself from his ship or vessel, every such person shall, upon a summary conviction thereof before a Resident Magistrate, forfeit and pay any sum not exceeding ten pounds for every such act and offence ; and it shall be lawful for any officer in Her Majesty's service, or any such warrant or petty officer or non-commissioned officer as aforesaid, or for any constable, with or without any warrant or other process, to apprehend or cause to be apprehended any such offender or person so acting, and to bring him or cause him to be brought before any Resident Magistrate, for the purpose of having the offender summarily convicted of the same, and any pecuniary forfeiture under this Law shall be paid as follows :—One moiety thereof shall be paid to the informer, and the remainder into the Colonial Treasury for the use of the Government of the Colony.

Liquors may be seized and forfeited.

Penalty for offence.

Application of pecuniary forfeiture.

Commencement

2. This Law shall commence and take effect from and after the promulgation thereof in the “NATAL GOVERNMENT GAZETTE” (A).

**Law No. 6, 1890.**

“To prevent Espionage of Military Works.”

[28th May, 1890.]

BE IT ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

What are Military Works.

1. In this Law “Military Work” shall include any Fort, Fortification, Battery, Field-work, or other work of Naval or Military Defence or Offence, and any Naval or Military Premises.

(A) Jan. 25, 1887.

2. From and after the passing of this Law (A) it shall not be lawful for any person whomsoever to make any sketch, plan, drawing, photograph, picture, painting, or note of any Military Work, without previously having obtained the permission, in writing, of the Governor, or the Officer Commanding the Troops. Such permission shall clearly and expressly state the nature of the sketches, plans, drawings, photographs, paintings, or notes that may be made by the person to whom such permission is given, and the place or places at which they may be made.

**Law 6, 1890.**  
No person to make sketch, plan, &c., of Military Work without permission.

3. Any person offending against the provisions of the last section may be arrested without warrant by any police constable or Naval or Military policeman, and upon conviction by the Magistrate of the Division shall be liable to imprisonment, with or without hard labour, for any period not exceeding six months, or to a fine not exceeding Twenty Pounds Sterling, with the alternative of imprisonment, with or without hard labour, for any period not exceeding six months, unless such fine be sooner paid, and all sketches, plans, drawings, photographs, paintings, notes or models, and all apparatus, instruments, tools and materials found in the possession of the offender shall at the discretion of the Magistrate be liable to forfeiture.

Arrest and punishment of offenders.

4. If any person shall be found trespassing within or upon any Military Work, such person shall, upon conviction by the Magistrate of the Division, be liable to a fine not exceeding Ten Pounds Sterling, with the alternative of imprisonment with or without hard labour for any period not exceeding one month, 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 Law, he shall in lieu of the penalty in this section provided be liable to the penalties in the third section mentioned, and may be arrested without warrant by any police constable or Naval or Military policeman.

Trespassing on Military Work.

Trespassing with intent.

5. Any person found in the immediate vicinity of any Military Work with sketching, drawing, photographic, painting, planning, or modelling materials or other apparatus in his possession, with the intention of contravening or evading the provisions of this Law, may be arrested without warrant by any police constable or Naval or Military policeman, and shall be liable, upon conviction by the Magistrate of the Division, to a fine not exceeding Ten Pounds Sterling, 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.

Punishment for being in vicinity of Military Work with intent.

IV. OFFENCES AGAINST THE PERSON (B).

**Ordinance No. 22, 1846.**

“Ordinance for punishing the Concealment of the Birth of Children within the District of Natal.”

[24th September, 1846.]

1. WHEREAS it is expedient to extend the provisions of the Ordinance No. 10, 1845 (c), entitled, “Ordinance for punishing the Concealment

(A) See 52 & 53 Vic. c. 52, s. 5, The Official Secrets Act, 1889.

(B) As to murder, culpable homicide, &c., see Ord. 18, 1845, ante.

(c) See infra.

Ord. 22, 1846.  
Ord. 10, 1845,  
extended to  
Natal.

of the Birth of Children," to the District of Natal: Be it therefore enacted, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the clauses and provisions of the said Ordinance shall be deemed and taken to extend and apply to and to be in force within the District of Natal, precisely as if the said clauses and provisions were herein again set forth as parts or portions of this Ordinance and applied to the said District in manner and form as the same are, in and by the said Ordinance No. 10, 1845, applied to this Colony.

Commencement

2. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof by any proclamation to be by the Lieutenant Governor of the District aforesaid for that purpose issued and posted upon or affixed to any public place in the town of Pietermaritzburg.

#### Ordinance No. 10, 1845.

"Ordinance for punishing the Concealment of the Birth of Children."

[14th May, 1845.]

Punishment for  
concealment of  
birth.

1. WHEREAS the concealment by mothers of the birth of their children is a highly suspicious and reprehensible proceeding; And whereas such concealment is not by the law of this Colony deemed to be a crime: And whereas it is expedient that such concealment should be constituted and declared a crime: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that if any woman shall be delivered of a child, and shall by secret burying or otherwise disposing of the dead body of the said child (A), endeavour to conceal the birth thereof, every such woman so offending shall be deemed to be guilty of the crime of concealing the birth of her child, and, being convicted thereof, shall be liable to be imprisoned with or without hard labour for any term not exceeding five years.

Proof of time  
of death not  
necessary.

2. And be it enacted, that upon the occasion of the trial of any person charged with the commission of the said crime, it shall not be necessary to prove whether the child died before, at, or after its birth.

Where woman  
has been  
acquitted of  
murder, jury  
may find ver-  
dict of conceal-  
ment of birth.

3. And be it enacted, that if any woman tried for the murder of her child shall be acquitted thereof, it shall be lawful for the jury by whose verdict she shall be acquitted to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof (but it shall not be necessary to prove whether the said child died before, at, or after its birth): And thereupon it shall and may be lawful for the Court to pass upon her any such sentence as might have been lawfully passed upon her if she had been convicted upon an indictment for the crime of concealing the birth of her child.

Commencement

4. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

(A) Cf. 24 & 25 Vic. c. 100, s. 60.

Act No. 22, 1898. (B)

“To amend the law relative to the trial and punishment of the Crimes of Rape and Indecent Assault and Conduct.”

[5th August, 1898.]

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. Law No. 27, 1887, entitled Law “To regulate and define the punishment for the crimes of Rape and Assault with intent to commit Rape and of Indecent Assault,” Law No. 25, 1888, entitled Law “To amend Law No. 27, 1887, entitled Law ‘To regulate and define the punishment for the crimes of Rape and Assault with intent to commit Rape, and of Indecent Assault,’” Law No. 17, 1889, entitled “Law to amend Law No. 27, 1887,” and Act No. 12, 1895, entitled Act “To amend the Law No. 27 of 1887,” shall be repealed.

Repeals.

2. Any person convicted of the crime of rape may be sentenced by the Judge before whom such person is tried to be hanged by the neck until he is dead, or such person may in the discretion of the Judge be sentenced to any less punishment which the said Judge may in the circumstances of the case consider to be sufficient.

*Repealed by Act 31 of 1900 Sect. 2*  
Punishment of the crime of rape  
*see act 9/190 sec. 2*

3. Any person accused of the crime of rape may be convicted of the crime of assault with intent to commit a rape, or of indecent assault, or of assault, if it shall appear at the trial that such lesser crime was in fact committed.

Conviction for less offences on charge of rape.

4. Notwithstanding the provisions of Clause 2 of this Act, every person found guilty of the crime of assault with intent to commit a rape shall be liable to imprisonment with or without hard labour for any period not exceeding ten years, with or without a flogging not exceeding forty lashes.

Punishment of assault with intent.

5. The crime of indecent assault shall be cognisable in the Courts of Magistrates, and upon conviction thereof the Magistrate shall have power to impose punishment by imprisonment for a period not exceeding one year, with or without hard labour, or by a whipping not exceeding twenty-five lashes, or by both such imprisonment and whipping (A).

Indecent assault cognisable by a Magistrate,

*see 2.1 Act 2*

6. This Act shall not be deemed to prevent the trial of the crime of indecent assault by the Supreme Court or other superior Court.

Or Supreme Court.

7. It shall be competent for any Magistrate or Judge at any time during the preparatory examination or trial of any person charged with the crime of rape, indecent assault, or assault with intent to commit rape, to require that no person with the exception of the accused and his legal advisers, the prosecutor, the witness under examination, and the officers of the Court, shall have access to, or be, or remain, in the Court or Room where such examination is being conducted, and such Magistrate or Judge shall have power to exclude any person save as aforesaid from being present thereat.

Onlookers may be excluded from the Court.

*Repealed by Act of 1917, Sect.*

8. This Act shall apply to all crimes tried after the commencement of the Act, but if any trial shall have been begun but not completed before the commencement of this Act, the procedure at such trial shall be the same as if this Act had not been passed, but no greater or other sentence shall be passed upon conviction than is authorised by this Act.

Application of Act to future crimes and the punishment of past crimes.

9. Any person who lewdly uses indecent language or gestures towards or in the presence or hearing of any woman, or who lewdly gives

Indecency towards women.

(A) Indecent assault being a common law offence, it is not necessary that the summons should contain any reference

to statute. *In re Reg. v. Usigutshwana and another* 17 N.L.R. 112.

*see see 2, Act 22/104*

Act 22, 1898. or sends any indecent letter or other writing or drawing or the like to any woman, and any person who writes or draws, or in any other way exhibits an indecent or lewd writing or drawing or the like so as to be likely to give offence to women, shall be guilty of the crime of indecency, and upon conviction in the Court of a Magistrate shall be liable to imprisonment, with or without hard labour, for any term not exceeding one year.

*22 Act 22/04*

Gross indecency between males. 10. Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure, the commission by any male person of any act of gross indecency with another male person, shall be guilty of a contravention of this Act, and upon conviction thereof in the Court of a Magistrate shall be liable to imprisonment with or without hard labour, for any term not exceeding one year.

*Brothels. Act 21. 1902*

Act No. 37, 1899. (a)

“For the Better Protection of Women and Children.”

[11th September, 1899.]

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

1. Any person unlawfully carnally knowing a girl under the age of fourteen years shall be guilty of the crime of Rape, and any person attempting to unlawfully carnally know a girl under the age of fourteen years shall be guilty of the crime of Assault with Intent to Commit Rape. In either of such cases the consent of the girl shall be immaterial and of no avail to an accused person.

*4 Act 3. 1916. Sect: 1*

Carnal knowledge of girl under 14 constitutes rape.  
Consent of girl no defence.

2. Nothing in this Act contained shall be held or construed to vary, alter, or repeal any of the provisions

Saving of provisions of certain Laws.

(1) of the Code of Native Law legalised by the Law No. 19, 1891, entitled “Law to legalise the Code of Native Law laid before the Legislative Council according to the provisions of Law No. 44, 1887, and any amendment thereof;

(2) of the “Indian Immigration Law, 1891,” entitled “Law to amend and consolidate the laws relating to the introduction of Indian Immigrants into the Colony of Natal, and to the regulation and government of such Indian Immigrants,” and any amendments thereof:

All of which shall remain in full force and effect, this Act notwithstanding.

3. Nothing in this Act shall be deemed to alter or impair the Law in regard to the crime of Rape upon females of the age of fourteen years and upwards.

Females above 14 years.

4. It shall not be lawful for any person to publish in writing or in print or the like any of the evidence or proceedings in a court of law, whether at the trial or preparatory examination, in any case of rape, incest, seduction, stupration, or indecent assault, or indecency, or to so publish any precis or other account of any such proceedings or evidence in any such case, except by leave of the Judge or Magistrate, signified in writing by the Registrar or Clerk of the Court: Provided that this section shall not be deemed to prevent a publication of the fact of the trial and the issue thereof. Any person contravening this section shall be liable to a fine not exceeding Fifty Pounds Sterling.

Publication of evidence or proceedings in certain cases prohibited.

5. Any contravention of the foregoing section in reference to a case in the Court of a Magistrate shall be cognisable in the Magistrate's Court.

*Contraventions and by Act 32 of Sect 112*

*6/35 S 115.*

V. FORGERY, &C.

Act No. 16, 1895.

“To Declare the Law relating to Fraudulent Passes.”

[8th August, 1895.]

WHEREAS it is expedient to declare the Law relating to Fraudulent Passes :

BE IT THEREFORE ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. This Act may be cited as “The Fraudulent Passes Act, 1895.”

Short title.

2. For the purposes of this Act, the word “Pass” means :—

Interpretation.

- (a) A pass under Law No. 22, 1878 (A), Section 8.
- (b) A pass under Law No. 46, 1884, or Law No. 17, 1891 (B).
- (c) A pass under Law No. 48, 1884, or any regulations thereunder.
- (d) A pass under Law No. 20, 1890, Section 6 (c).
- (e) A pass under regulations issued under Ordinance No. 3, 1849, as continued by Law No. 26, 1875, Section 1.
- (f) A pass under Law No. 15, 1869, or any regulations or byelaws lawfully made thereunder.
- (g) The written order required by Section 7 of Law No. 22, 1878, and by Section 5 of Law No. 20, 1890, or by any similar Law for the time being in force in place thereof (D).
- (h) Any document of a similar nature to the passes aforesaid, which may by any Law or Act be required to be borne by any person, or produced by or to any person as a token of a personal right or exemption from a burden or disability created by law.

3. Every person who forges or who signs a pass with any name other than his own, whether there be any such person as is named or not, and every person who utters, offers, disposes of or puts off any forged or false pass, or any forged or false document purporting to be a pass, with intent to evade any Law of this Colony, or to enable another to evade any Law of this Colony, or otherwise with intent to deceive, shall, subject to the provisions of this Act, and unless he proves that he acted without any such intent, be guilty of an offence against this Act.

Forging passes or using false passes.

4. A person shall be deemed to forge a pass who falsifies any genuine pass, whether by alteration, addition, effacement, or otherwise.

What constitutes forgery.

5. Every person who gives such a pass as is mentioned in Sub-section (g) of Clause 2 of this Act, such pass not being given for procuring liquor for the bona fide use of the person giving the pass or of his family or household, shall be deemed to utter a false pass ; and a pass so uttered shall not be deemed to be a genuine order within the meaning of Laws No. 22, 1878, and No. 20, 1890 (E).

Uttering false pass for obtaining liquor.

6. If any person falsely and deceitfully personates the person named in any pass, he shall be deemed guilty of an offence against this Act.

Personating person named in pass.

7. Every person who produces, exhibits, or has in his custody or possession any forged or false pass, or any forged or false document purporting to be a pass, or any forged or false document so nearly resembling a pass as to be calculated to deceive, or any pass in

Person producing or being in possession of forged or false pass must prove certain facts to clear himself of offence.

(A) Repealed by Act 38, 1896, tit. “INTOXICATING LIQUORS.”

(D) See Act 38, 1896, tit. “INTOXICATING LIQUORS.”

(B) See Act 1, 1899, s. 76, post.

(E) Both repealed by Act 38, 1896 tit. “INTOXICATING LIQUORS.”

(C) See note (A)

Act 16, 1895. the name of some other person, whether living or dead, or of a fictitious person, shall be guilty of an offence against this Act, 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 pass or pretended pass; and
- (b) That on demand made by or on behalf of the prosecutor, he gave all information in his power with respect to the person from whom he obtained such pass or pretended pass; or
- (c) That otherwise he had acted innocently.

Punishment of offences.

8. Every person guilty of an offence against this Act shall be liable, on conviction in any Magistrate's Court, to imprisonment with or without hard labour for any period not exceeding three months, or to a fine not exceeding Ten Pounds, and in case of a second or subsequent conviction, to imprisonment with or without hard labour for any term not exceeding six months, or to a fine not exceeding Fifty Pounds.

Saving of rights of prosecution for other offences.

9. Nothing in this Act shall be construed to prevent a prosecution for any offence which, but for this Act, any person might be deemed to have committed.

## VI. THEFT AND SIMILAR OFFENCES.

### Ordinance No. 5, 1855.

“Ordinance to prevent the illegal compounding of the crime of theft.”

[20th March, 1855.]

WHEREAS it is expedient to make provision for preventing the practice hitherto existing, of persons compounding crimes committed against their property, by desisting from giving to the proper authorities the information necessary for the due prosecution of offenders, and for this purpose to repeal any Law which may now exist in respect hereof:

BE IT THEREFORE ENACTED, by the Acting Lieutenant Governor of the District of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

#### *Repeal of Existing Law.*

Repeal.

1. Any Law which now exists, in respect of the compounding of the crime of theft, or receiving the stolen property, knowing the same to have been stolen, so far as the same is contrary to the provisions of this Ordinance, is hereby repealed.

#### *Illegal Compounding of Theft.*

Penalty for illegal compounding of theft.

2. Every person from whom any property shall have been stolen, who shall directly or indirectly agree with the offender, whether he be the thief or the person receiving the stolen property, knowing the same to have been stolen, to forego or fail to give the necessary information, with the view to his prosecution for such offence, upon the condition, express or implied, of receiving back such property, or receiving compensation for the same, shall, on conviction thereof, be liable to be imprisoned, with or without hard labour, for any period not exceeding one year, and shall forfeit to the Crown the value of the property or compensation so received.

3. Every offence under this Ordinance shall be tried in the District Court, and not otherwise.

4. This Ordinance shall commence and take effect on the publication thereof in the "GOVERNMENT GAZETTE" (A).

Ord. 5, 1855.  
Offences to be tried in District Court.  
Commencement

**Law No. 10, 1878.**

"To regulate the disposal of moveable property taken from Convicts in certain cases."

[9th September, 1878.]

WHEREAS it is expedient to make provision for the custody and disposal of property seized on or about or as connected with persons convicted of theft or other like crimes :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :

1. When any person shall after this Law shall have come into operation be convicted before any Court of the crime of Theft, or of receiving stolen goods, knowing them to have been stolen, or of obtaining money by false pretences, or of falsity, or of any other crime involving in its committal a loss of property to any person, and there shall, at the time of conviction or judgment, be in the custody of any officer of the Court or of the Police or the like, any moveable property found by the verdict or judgment to have been stolen or the like from such person, or which shall be deemed by the Court to belong to the Convict, the Court may authorise the handing over of such stolen property to, or on behalf of the person from whom it shall appear to have been so stolen, and may authorise such property so deemed to belong to the Convict to be detained by the Sheriff or his Deputy or by the Master or Registrar or Clerk or Messenger of the Court as the case may be, or the lodging thereof or of the produce thereof in any Bank or the like willing to receive the same for the purpose of such detention. Provided always that the Court may determine whether or not or how far there shall have been in effect found by the verdict or judgment that property was so stolen as aforesaid. Provided, also, that the Court may make further order from time to time for or in respect of detention or security of such property or any part thereof.

2. The Officer or Bank with whom such property shall have been so placed for detention shall as to the whole or any part thereof be regarded as a mere custodian for such person other than the Convict or any representative of him as shall in any civil proceeding or application whether against the Convict or any other person be adjudged the same in whole or in part (B), and such Officer or Bank shall not be liable to be sued in respect merely of such authorised detention.

3. If no such civil proceeding or application shall have been conducted to a termination within two years after the conviction, and sentence in the case, or within such further period as may at any time have been allowed for the purpose by the Court the said property shall be forfeited to Her Majesty the Queen through the Colonial Government. Provided, always, that no such forfeiture shall take place if before the time hereunder prescribed for it the Convict shall have duly received a pardon in respect of the charge in question ; and provided that no such forfeiture shall take place until six months' notice of application for that purpose shall have been given in the "GOVERNMENT GAZETTE."

*Repealed by  
Act 31 of 1914  
Sub. 3 of 1*

How certain property found in possession of persons convicted of certain crimes may be disposed of by any Court.

Proviso.

Officer or Bank with whom property may be placed not liable to be sued in respect of authorised detention.

If proceedings not taken property to be forfeited.

Proviso.

(A) March 27, 1855.

and *Walton and Tatham v. Gibson*, 2

(B) See *Reg. v. Gibson*, 1 N.L.R. 162,

N.L.R. 84.



**Law 10, 1878.**

To what property provisions of sec. 3 apply.

Application of property for benefit of convict.

Judgment having been obtained, nothing to prevent proceeding against Bank.

Property of a perishable nature.

Sheriff's fees.

Supreme Court or Judge may exercise power of Circuit Court

Commencement

4. The provisions in respect of forfeiture in the last foregoing section contained shall apply to any part of such property as in such civil proceeding or application shall not have been adjudged to any person claiming therein with or without costs as the case may be.

5. The Governor may apply any part of such forfeited property for the benefit of the Convict or his family, or towards costs which may have been incurred on such Convict's behalf.

6. Nothing in this Law contained shall prevent any proceeding or application by or on behalf of any person having obtained a judgment or order for any part of such property, or by or on behalf of the Colonial Government against any Officer, Bank, or the like, originally authorised to detain such property.

7. When any property within the provisions of this Law and deemed as aforesaid to belong to the Prisoner shall be of a perishable nature the Court may authorise a sale thereof, and such sale shall be good and valid as against all persons.

8. The Sheriff shall be entitled to fees in respect of any such detention by him at the rate of one pound per one hundred pounds for a year or any fractional part of a year during which such detention by him shall last.

9. Any authority given by this Law to a Court shall, in reference to cases tried in any Circuit Court, be deemed to include also the Supreme Court, or any Judge thereof, in like manner as if the case had been tried in the Supreme Court.

10. This Law shall be in operation from and after the promulgation thereof in the "GOVERNMENT GAZETTE"(A).

Act No. 1, 1899. *Law 10/1899*

"For the better prevention of the crime of Cattle Stealing and kindred crimes."

[12th June, 1899.]

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

Short title.

Commencement

1. This Act may be cited as the "Cattle Stealing Act, 1898."

2. This Act shall not come into operation unless and until the Governor shall by Proclamation notify that it is Her Majesty's pleasure not to disallow the same, and thereafter it shall take effect on such day as the Governor shall appoint by the same or any other Proclamation (B). *67/99*

PART I.

*Repeal and Interpretation.*

Repeal.

3. The Laws and Acts contained in Schedule No. 1 of this Act are hereby repealed; Provided always that all offences committed, all penalties or forfeitures decreed, and all judgments pronounced prior to the coming into effect of this Act shall be dealt with and have the same effect as if this Act had not been passed, and as if such repealed Laws and Acts were still in force

Zululand: application of Act.

4. It shall be lawful for the Governor in Council, from time to time by Proclamation, to declare that the Province of Zululand, or any named

(A) Nov. 5, 1878.

(B) This Act took effect upon the first day of July, 1899. See Proclamation

No. 67 in *Government Gazette* of 13th June, 1899.

part thereof, shall be excluded from the operation of any specified provisions of this Act, and in the same manner to revoke any such Proclamation, either wholly or in part (A). Act 1, 1899.

5. Unless the context otherwise requires the following words in this Act have the meanings assigned to them in this Section. Interpretation

“Cattle” shall mean and include animals belonging to any of the following classes: Sheep, goat, horse, ass, mule, pig, ostrich, and all horned cattle.

“Cattle Killing” and kindred words shall include killing of cattle, and any stabbing, wounding, maiming, poisoning, or the infliction of any physical injury on cattle.

“Cattle Stealing” and kindred words shall include the stealing, theft, or robbery of cattle, or any portion thereof, whether flesh, skin, horns, head, hoofs, or carcass, or any other part, or ostrich feathers, as also receiving cattle or any portion thereof as aforesaid, or ostrich feathers, knowing the same to have been stolen.

“Court” shall mean the Court or Judge having jurisdiction in the matter referred to, whether it be the Supreme Court, or the Native High Court, or any Circuit Court or any Judge of the Supreme Court or of the Native High Court, or the Court of the Magistrate.

“European” shall, for the purposes of this Act, mean any person other than an Asiatic or Native.

“Asiatic” shall include all aboriginal natives of Asia, and their descendants.

“Kraal” shall include the hut, house, residence, or place of abode of whatever description of any Native.

“Collection of Kraals” shall mean any number of kraals built or erected in the same neighbourhood.

“Native” shall mean and include all members of any of the aboriginal tribes of Africa south of the Equator, including Griquas and Hottentots, and shall also include illegitimate children of mixed European and Native parentage, and their descendants.

A Native who is exempted from the operation of Native Law shall not be deemed to be a native within the meaning of this Act: Provided that no person shall be entitled to the benefit of this provision unless he shall produce his letters of exemption or other certificate of exemption issued by lawful authority, or shall otherwise satisfactorily prove that he is so exempted; and no person acting in the bona fide belief that a person is a Native not so exempted shall be liable in damages or otherwise for any act which would be lawful in the case of an unexempted Native.

“Spoor” shall, in addition to its ordinary meaning, include 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 been at the place, or have passed along in any particular direction.

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(A) See Proclamation No. 68 published in the *Government Gazette* of 13th June, 1899, which excludes the Province

of Zululand from the operation of a considerable portion of this Act.

Act 1, 1899.

PART II. *Excludes Zululand*  
*Proc. 68/99*  
*Passes. Removal of Cattle. Detention of Natives or Asiatics and of Cattle.*

Pass for removal of cattle.

*20*  
*3-5-20-11/15*

Form of pass.

6. No person shall remove cattle from any place to any other place without a pass for that purpose, which pass shall, save as is hereinafter excepted, be signed by the owner or tenant, being a European, of the place from which the cattle are to be removed, or by a Magistrate or Justice of the Peace (hereinafter referred to as "proper officers,") or by the owner, being a European, of the cattle to be removed.

7. Every such pass shall be upon a printed form approved by the Government and supplied by the Magistrate, free of charge, and shall contain the following particulars:—

- The name and address of the person by whom it is granted;
- The date of issue;
- The name of the owner of the cattle;
- The number, description, and brands, if any, of the cattle;
- The place from which and the place to which the cattle are to be removed;
- The name of the driver.

Duration of pass.

8. No such pass shall be valid for longer than twenty-one days from the date of its issue, unless an extension of its period shall be endorsed thereon by a proper officer or police constable.

Consent.

9. The person to whom application is made for a pass for the removal of cattle shall not grant such pass unless he is satisfied that the cattle are the property or in the lawful possession of the person desiring to remove the same, and unless and until there be delivered to him the written consent of the owner or tenant of the place to which it is intended to remove the cattle. He shall also be required to carefully preserve such consent for a period of six months. The provisions of this section regarding consent shall be understood as referring to cases where cattle are being removed from the place on which they have been living to some place where they are intended to remain, and not to cattle being brought from a place where they have been put for a special and temporary purpose, or being taken to some place for a similar purpose. Such consent shall also not be required in the case of cattle intended to be removed to a Native Location or to Crown Lands occupied by Natives, or to any lands not occupied by Europeans.

Pass to be kept for six months. When consent is not necessary.

Certificate entitles native owners of cattle to dispense with pass.

10. Any Native, being the owner of a horse or cattle used for riding or draught may, upon application to the Magistrate, or other officer appointed for the purpose, or to the owner, being a European, of the land upon which the Native lives, obtain a printed certificate in such form as may be approved by Government, setting forth that he is the owner of the horse or cattle described therein; and the possession of such a certificate shall dispense him from the obligation of taking out a pass when using such horse or other cattle for riding or for draught purposes.

Duration of certificate.

11. No such certificate shall endure for more than one year, but a fresh certificate may be obtained from time to time.

Power to call for pass and impound cattle.

12. It shall be lawful for any proper officer or constable or any landowner or occupier through whose land cattle may be driven, or any keeper of a toll bar, or any person specially authorised by any Magistrate who may find any person removing cattle as aforesaid to call upon him to produce such pass as aforesaid, and, if he shall fail to produce such pass, or if the number and the description of the cattle being removed, or the manner and direction in which they are being removed, or the name of the driver or owner shall not correspond in all material respects with the pass produced, then any such proper officer, constable, landowner,

or occupier, toll-bar keeper, or any person specially authorised thereto by the Magistrate as aforesaid shall, if he be able to read such pass and know the same to be incorrect, be entitled to take possession of such cattle and cause the same to be conveyed to the nearest pound, there to remain until liberated by order of the Magistrate, or otherwise disposed of as hereinafter provided.

Act 1, 1899.

13. Any person so causing cattle to be impounded as aforesaid shall communicate in writing to the poundmaster the circumstances under which the same were seized, and the poundmaster shall forthwith inform the Magistrate of the Division, and shall also as soon as possible notify, by advertisement to be published and made known in the manner in which the pound notices for such district are published and made known, the number and description of the cattle, and such information regarding the same as the person causing such cattle to be impounded shall have communicated to him. The Magistrate shall at once inform the police of the impounding of such cattle.

Notice and advertisement of impounding.

14. The person from whom the cattle have been so taken, or any other person claiming cattle so impounded as his property, or lawfully in his possession, may apply to the Magistrate of the Division or to a Justice of the Peace for an order for the liberation thereof, and such officer shall enquire into the case, and if satisfied that such cattle are the property of the claimant, or were lawfully in his possession, then such officer shall give an order, in writing, directing the poundmaster of the pound in which such cattle shall be impounded to deliver the same to the claimant upon payment of the pound fees and charges; and the poundmaster shall, at the time of the delivering of the cattle, grant a pass for the protection of such cattle until the arrival thereof at the place to which it is intended to remove the same.

Application to Magistrate for release of cattle.

15. Should the person claiming any cattle so seized or impounded as aforesaid fail to show to the satisfaction of the Magistrate or Justice of the Peace that the cattle claimed are his property, or were lawfully in his possession, or should the cattle be unclaimed for a period of one month after notice given by such poundmaster as aforesaid, then the same shall be dealt with in all respects as if such cattle were impounded under the provisions of the Laws for the time being in force relative to the impounding of cattle; and the proceeds of sale of any such cattle shall be paid into the Public Treasury.

Impounded cattle may be sold.

16. It shall be lawful for any Magistrate, constable, or proper officer, or any other person specially authorised thereto in writing by the Magistrate, or any toll-bar keeper, or any landowner or occupier through whose land any cattle may pass while on his lands, to stop and arrest any Native removing, driving, or leading such cattle, who is not provided with a pass in terms of the preceding provisions of this Act, and also to stop and arrest such cattle until he or they shall be satisfied, or have made enquiry as to the ownership of the cattle, and as to any circumstances which shall in his or their opinion give rise to suspicion, and thereupon, if satisfied, to release such Native and the cattle, or otherwise, at his option, to send such cattle to the nearest pound, informing the poundmaster of such impounding, and thereupon the provisions of the Sections 14 and 15, and all other applicable sections of this Act, shall apply to such cattle in the same way as if they had been impounded under Section 12 of this Act: Provided always that any Native so stopped or arrested shall not be detained in custody by any person not otherwise authorised to stop and arrest him except for the purpose of forthwith delivering him to some proper authority upon some definite charge of an offence against the provisions of this Act, made bona fide and upon reasonable grounds, against such Native.

Natives removing cattle without passes may be arrested

**Act 1, 1899.**

Right of inhabitants of kraal to stop native and demand information as to cattle, and to detain same if necessary.

17. The inhabitants of a kraal shall have the right to stop any Native driving cattle past such kraal, and to demand from him information regarding the cattle, their owner, and the circumstances of their removal. If the person driving the cattle shall not satisfy them that he is lawfully driving such cattle, the inhabitants of the kraal may arrest him and detain the cattle. Such arrest and detention shall be at once reported to the Magistrate or the nearest police station to be communicated by the police to the Magistrate. The Magistrate shall, without loss of time, cause the circumstances to be enquired into, and may direct that the Native be discharged and the cattle released, or may detain the Native in custody, and have the cattle placed in the pound or otherwise taken charge of, with a view to the institution of criminal proceedings.

Native Chief or Headman to notify detention to Magistrate.

18. If any Native Chief or Headman, acting under the powers given to him by Native Law, shall detain any cattle brought into his district under suspicious circumstances, he shall at once notify such detention to the Magistrate or to the nearest police station.

Right of compensation for wrongful impounding.

19. If any person found driving cattle shall, upon being lawfully required thereto, produce to the person requiring the same a pass complying in all material respects with this Act, and, notwithstanding the same, the cattle found with such person shall be conveyed to the pound upon the allegation that the pass produced is not proper and sufficient, or if anyone shall, without reasonable and probable cause, wrongfully impound any cattle, or arrest any Native, under colour of the provisions of this Act, then the owner of the cattle, or anyone entitled to sue in place of the owner, or such Native, as the case may be, shall be entitled to recover compensation from such person for any damage which he may have sustained by reason of the impounding of such cattle (including all pound fees payable or already paid), and by reason of such arrest, if any.

Liability for wilful and malicious impounding or arrest.

20. Any person who shall wilfully and maliciously and without probable cause wrongfully impound any cattle, or arrest any Native, under colour of the provisions of this Act, shall be deemed guilty of an offence, and in addition to any other punishment to which he may be subject shall also be liable to pay to the owner of such cattle, or anyone entitled to sue in place of the owner, or to the Native arrested, such damages as the Court before whom the case is brought shall award, and as shall not have been awarded under the preceding section of this Act.

Offence of preventing arrest, pound rescue, &c.

21. Any person who shall, by force or violence, or by threatening to use force or violence, prevent, or attempt to prevent, any proper officer, constable, or land owner or tenant, or keeper of the toll-bar, or any person specially authorised by the Magistrate, from arresting any Native or cattle as aforesaid, or from conveying to the pound any cattle in cases in which he shall be entitled so to do under this Act, or who shall rescue, or attempt to rescue, any such native, or such cattle, against the will of the person in charge thereof, either on their way to the pound in terms of this Act, or after the same shall have been impounded with any pound-master, or otherwise, shall be guilty of an offence.

Offence of granting or procuring pass falsely, &c.

22. Any person who shall knowingly grant any pass required by this Act which shall contain any wilfully false statements or description in respect of any material matter, or who shall grant any such pass in contravention of the provisions of this Act, or who shall fraudulently alter any such pass, or who shall procure any such pass by wilfully false statements or representations, shall be guilty of an offence.

Saving of powers of Magistrate, Police Officer, &c., in respect of seizure and detention of cattle.

23. Notwithstanding anything contained in this Act, any Magistrate, Justice of the Peace, Police Officer, or other such authorised person, shall possess the same powers of arrest of persons, and the same powers in respect of seizure and detention of any cattle which he may have reasonable ground for supposing to have been stolen, or which he may by any other Law or Act be specially authorised to detain, as he possessed before the passing of this Act.

24. Any Native when removing cattle shall, so far as circumstances permit, drive them by the nearest way to a public road, and shall keep upon the road so far as possible towards his destination.

Act 1, 1899.  
Native to drive cattle by nearest road.

25. Any person, save as is excepted in the next section, who shall remove cattle in contravention of the foregoing sections of this Act shall be guilty of an offence.

Contraventions in respect of removal.

26. This part of the Act shall not apply to cattle removed by Europeans from one place to some other place within the Colony distant less than ten miles therefrom, nor to cattle used by Europeans, under saddle or pack saddle, or for the purposes of conveyance or transport, nor to cattle in the possession of any member of the Natal Police Force in that capacity.

Cattle removed or used by Europeans.

27. Notwithstanding the provisions of this part of the Act, any person riding a horse or driving cattle shall in the following circumstances, the proof of which shall rest with him, be allowed to proceed without being molested for not carrying a pass, unless there are reasons for believing that the horse or cattle have been stolen:—

Persons to be allowed to proceed in certain cases though not carrying a pass.

- (a) If he is driving the horse or cattle to the pound under the provisions of this Act, or of the Laws relating to pounds.
- (b) If he is engaged in a matter of emergency that will not admit of delay.
- (c) If he is a Native Chief, or accompanying a Native Chief as part of his escort, or acting as messenger of a Chief.
- (d) If he is lawfully driving cattle to or from a Court for bona fide purposes of evidence, or under a letter or direction of the Court.
- (e) If the cattle are drawing any vehicle used for transport.
- (f) If the cattle are being driven to or from their place of working or pasturage, such place being distant not more than three miles from the kraal of the owner of such cattle.

28. No cattle shall be deemed to be removed within the meaning of this part of the Act merely by reason that they are found moving from place to place within the limits of the land occupied by the owner of such cattle, or of which he has the lawful use, for the purpose of keeping, grazing, or watering such cattle.

Certain acts not to be deemed a "removal" of cattle.

29. The provisions of Sections 16, 19, 20, 21, and 24 of this Act shall apply to Asiatics in every respect in the same way as to Natives.

Asiatics.

PART III. Zululand excluded Proc. 687

*Purchase of Cattle from Native or Asiatic.*

30. Whenever a Native or Asiatic, while removing, leading, or driving cattle for which a pass is required under the provisions of the preceding part of this Act, shall offer to sell or dispose of any of such cattle, the person to whom such cattle shall be offered for sale and disposal, and the person acting or intending to act on behalf of any such Native or Asiatic in selling or disposing thereof, before making such purchase or sale, as the case may be, shall be required to demand and receive from such Native or Asiatic a pass in terms of the provisions of the preceding part of this Act in respect of each and all such cattle, and to satisfy himself of the genuineness thereof, and in every case to use all reasonable precautions to satisfy himself that such Native or Asiatic is the owner of such cattle or otherwise rightly entitled to sell the same.

Purchaser and agent of Native or Asiatic offering cattle for sale to satisfy themselves as to right to sell.

31. The person receiving such cattle as aforesaid shall retain the pass accompanying the same, and if the pass shall refer to and include any other cattle than those which he shall so receive, he shall be required to furnish to the Native or Asiatic an exact copy of the pass, stating at

Duties of person receiving cattle for sale in respect of pass.

Act 1, 1899. the foot or on the back of the copy the number and description of cattle which he has received, and certifying the same under his own name; or if he be unable to write, then he shall be required to obtain a copy certified by some trustworthy person, and to deliver the same to the Native or Asiatic.

Offence of purchasing or selling, &c., without complying with foregoing provisions.

32. Any person purchasing from or selling on behalf of a Native or Asiatic any cattle without first complying with the foregoing provisions of this part of the Act, or any person failing, neglecting, or refusing to furnish any Native or Asiatic with a certified copy of the pass in compliance with the provisions in the thirty-first section contained, shall be guilty of an offence.

Liability of purchaser or agent of seller who have not complied with Act, at suit of rightful owner.

33. Whenever any cattle shall have been sold or disposed of in fraud of the rightful owner or the person rightly entitled to possess the same, any person who shall have received the same from a Native or Asiatic or acted on behalf of such Native or Asiatic in selling or disposing of the same may, on being sued in a competent Court, be adjudged to make good to the owner or person rightly entitled to possess such cattle, the value of such cattle, unless he shall satisfy the Court that he had complied with the provisions of this Act: Provided that nothing in this section shall be deemed to deprive any person whose cattle have been so sold or disposed of, of any right or remedy which would otherwise be competent to him.

#### PART IV.

##### BUTCHERS AND AUCTIONEERS.

###### *Registers of Cattle.*

Butchers to keep register.

34. Every butcher shall keep at his place of business a register in the form of Schedule 2 of this Act, in which shall be recorded, according to the tenor of the headlines of the several columns, the particulars of all cattle purchased by him or received or used for the purposes of his business.

Auctioneers, merchants, traders, dealers, &c., to keep register.

35. Every auctioneer and every merchant or trader or dealer who shall as such buy or sell the cattle in the way of trade shall keep a register in the form of Schedule 3 of this Act, in which shall be recorded, according to the tenor of the headlines of the several columns, the particulars of every such sale or purchase of cattle.

Duties of butcher, auctioneer, &c., in respect of pass.

36. In the case of cattle purchased from Natives or Asiatics for which a pass is required in terms of this Act, the pass or a duly certified copy thereof, when taken from the Native or Asiatic, shall be numbered by such butcher, auctioneer, merchant, trader, or dealer with the same number as that inserted in the last column of the said registers, and shall be kept for not less than one year after such purchase or sale.

Inspection of registers.

37. Every such register and the passes therein referred to may at all reasonable hours be inspected by any member of the Police Force or any person duly authorised thereto in writing by a Magistrate or other officer of police holding rank equal or superior to that of a sergeant.

Offence of failing to keep register, or refusing inspection or information.

38. Any such butcher, auctioneer, merchant, trader, or dealer, who fails to keep a register as aforesaid, or refuses or fails to allow the same, together with the passes, to be inspected as hereinbefore provided, or to give to a member of the Police Force or any other person duly authorised as aforesaid, any information which he may have in regard to cattle so purchased or sold, shall be deemed to have committed an offence against the provisions of this Act.

Manager in charge of business subject to same liabilities as the butcher, auctioneer, &c.

39. The manager or other person in charge of the butcher's business, auctioneer's business, or merchant's, trader's, or dealer's business, or the branch thereof at which the register should be kept, shall be under the same obligations and liabilities, and be subject to the same punishments, as are hereinbefore provided in regard to such butchers, auctioneers, merchants, traders, or dealers.

## PART V.

Act 1, 1899.

*Provisions as to Spoor of Cattle.*

40. Whenever the spoor of any cattle which have disappeared under circumstances indicating the probability of theft (which cattle are in this and the next part of this Act referred to as stolen cattle), or of any person driving stolen cattle, or of any animal used in driving them, is traced to any Native kraal or close neighbourhood thereof, responsibility in respect of such stolen cattle shall be determined as is hereinafter provided: that is to say:

Responsibility  
for stolen cattle  
traced to kraal,  
how determined

- (a) The head of any Native kraal (umnumuzana) shall be responsible for the value of any stolen cattle, the spoor of which is traced to such kraal, when corroborative evidence is forthcoming, to the satisfaction of the Court trying the case that the theft in question was committed.
- (b) The owner of any stolen cattle, the spoor of which has become lost or obliterated in the close neighbourhood of any Native hut, kraal, enclosure, or lands, has a right of search for any traces of any such cattle in any such hut, kraal, enclosure, or lands, and any person who shall unduly prevent any such search, or cause any wilful obstruction, or shall wilfully cause the loss or obliteration of any spoor, may be convicted of an offence under this Act.
- (c) When the owner of any stolen cattle is on the spoor of such cattle, it shall be lawful for such owner to demand from the Natives living in the neighbourhood all reasonable assistance in following up the spoor, and whoever neglects or refuses to give such assistance, may be convicted of an offence under this Act.
- (d) When such spoor cannot be traced to any specific Native kraal or kraals, but is lost, or becomes obliterated on any lands, then the responsibility for the value of any such stolen cattle shall devolve upon the heads (abanumuzana) of the kraals adjacent to, and surrounding the spot where such spoor has been lost or obliterated; and it shall be lawful for the Magistrate so to fix such responsibility by a penalty not exceeding two head of cattle, or their money value, to be levied by such Magistrate. Any sum so levied shall be paid to the public revenue.
- (e) Whenever a spoor is traced to or within the confines of any locality occupied by any Native kraal, or kraals, or to or within an area occupied by any community or section of a tribe, if the Natives occupying such kraal or kraals or locality, or constituting such community or such section of tribe, without lawful excuse, neglect, or refuse to receive, to take over and follow such spoor, they may be convicted of an offence under this Act.

41. The preceding section shall apply to the following cases where there is corroborative evidence to the satisfaction of the Court that the offence was committed, in the same way as if the spoor therein mentioned had been that of stolen cattle traced to such kraal:—

Application of  
sec. 40 to certain  
other cases.

- (a) Where it shall appear that cattle have been stolen or removed without any spoor of the cattle being left, but where the spoor of the person so stealing or removing the same shall be traced from the place from which the cattle have been stolen to the kraal intended to be made responsible.



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(b) Where cattle have been killed and the spoor of some Native leads from the body of the animal killed, or the place of killing, to the kraal intended to be made responsible.

Offence of creating spoor or making search maliciously.

42. Whoever fraudulently or with intent to injure another shall create any spoor, or shall maliciously and without reasonable cause make the search referred to in Sub-section b of Section 40, shall, on conviction, be liable to either or both of the following punishments, namely:—

- (1) Imprisonment with or without hard labour for any period not exceeding one year ;
- (2) A fine not exceeding Fifty Pounds Sterling, and in default of payment, to imprisonment with or without hard labour for any period not exceeding one year.

## PART VI.

*Responsibility of Suspected Kraals.*

Suspected kraals may be notified by Magistrate that further thefts from person complaining, if thief not discovered, must be compensated by kraal heads.

43. Where the cattle of any person have been stolen or killed, and the delinquent cannot otherwise be discovered, but such person shall suspect the delinquent to be an inhabitant of one or more neighbouring kraals, he or some person on his behalf may thereupon give either to the Magistrate or to a member of the Natal Police Force (who shall transmit the same forthwith to the Magistrate) a written notice of the stealing or killing of his cattle, and of the kraal or kraals suspected, and thereupon the Magistrate, if satisfied by the affidavit referred to in the next section, or by further enquiry, that there is reasonable ground for suspecting such kraal or kraals, shall forthwith give, or cause to be given, a notice to the head or heads of such kraal or kraals that it is suspected that such stealing or killing has been done by an inhabitant of such kraals or one of such kraals, and that in the event of any more cattle belonging to such person being stolen or killed, and the offender not being discovered, such head or heads of kraals may be made liable to pay a penalty of the value of the cattle stolen or killed.

Person complaining must lodge, in addition to notice, an affidavit setting forth certain particulars.

44. The person whose cattle have been stolen or killed shall in every case, in addition to such notice, also lodge as soon as may be with the Magistrate or member of the Natal Police Force an affidavit setting forth the number, character, and description, so far as possible, of the cattle stolen or killed, the date of the stealing or killing, the effort to discover the offender, and the name of the kraal or kraals suspected ; and any person making any wilfully false statement in any such affidavit or notice shall be deemed guilty of the offence of perjury.

Procedure for penalising suspected kraal after notice given and further cattle stolen.

45. If after such notice has been given by such Magistrate to the head or heads of kraals, other cattle of the same person shall, within one year from the date of such notice, have been stolen or killed, such person shall, as soon as possible, if desirous of having the benefits of this Act, deliver to the Magistrate or a member of the Natal Police Force a like notice of such further stealing or killing and a sworn statement in the manner provided in the preceding section, and thereupon such Magistrate, if satisfied that there is reasonable ground for suspicion, shall give or cause to be given notice to such head or heads of kraals that further cattle of the said person have been stolen or killed, and that failing the discovery of the offender within a reasonable period to be fixed by the Magistrate, not being less than one month, such kraal head or heads may be subjected to a penalty of the value of the cattle stolen or killed.

Police constable to keep copy of notice.

46. Any member of the Natal Police Force to whom any notice is given under this Act shall take a copy of such notice and forward the original forthwith as soon as possible to the Magistrate within whose jurisdiction the kraal or kraals suspected may be.

47. Where the suspected kraals lie within more Magisterial Divisions than one, any Magistrate within whose jurisdiction any kraals may be shall have power to deal with the matter in the same way as if all the suspected kraals were within his jurisdiction.

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Where suspected kraals are in several Divisions.

48. If within the period appointed by the further notice the offender has not been discovered or compensation has not been made, the Magistrate may, without any formality of procedure, but in the presence of the kraal heads, enquire into the case.

Enquiry on non-compliance with notice.

49. Upon receiving a report from the Magistrate that he is satisfied that any of the inmates of the suspected kraals committed the theft or killing, or had a share in it, or knew of it and took no steps to bring the offenders to justice, it shall be lawful for the Governor in Council to impose upon the heads of each of the kraals so implicated a penalty, apportioned among them as may be considered proper up to the value of the cattle, and the cost of the search and inquiry. Any such penalty shall be paid to the general revenue.

On report from Magistrate, Governor may impose penalty on kraal heads.

50. Such penalty may be awarded against any one or more of such kraal heads, and where the penalty is awarded against the heads of more than one kraal, such kraal heads shall be severally as well as jointly liable, unless the Governor in Council shall otherwise apportion their mutual liability.

Kraal heads may be jointly and severally liable.

51. Where the stealing or killing of further cattle shall have taken place more than one year, but less than three years, from the date on which the first notice shall have been given, then a further notice may be given as provided in Section 45, and the provisions of Sections 47, 48, and 49 shall apply, except that a penalty shall only be awarded against the head or heads of the suspected kraals in case the Magistrate shall report that he be fully satisfied that the inhabitants generally of the kraals were directly implicated in the stealing or killing of such cattle.

Procedure where further stealing &c., has occurred more than one year from date of first notice.

52. This part of the Act so far as concerns stolen cattle shall not be applied in favour of any person who shall not have kept sufficient lists of the class or classes of cattle from which thefts have occurred during the period relating to the question at issue, and no such lists shall be deemed sufficient for the purposes of this part of the Act unless they contain a true record of the actual counting of such cattle made at intervals throughout such period of not less than one month.

Persons not entitled to benefit of Act who have not kept sufficient lists.

#### PART VII.

##### *Harbouring Cattle Stealers and Cattle Killers.*

53. If any inhabitant of any Native kraal or collection of kraals shall knowingly, or having reasonable ground of suspicion, harbour or receive any person who shall have either stolen or killed cattle, or shall prevent the apprehension of such person, or shall assist him to escape, such inhabitant shall be deemed to have committed an offence against this Act; and where it shall be proved that some inhabitant has so harboured or received, or prevented the apprehension, or assisted the escape of any such person, but it shall not appear which particular inhabitant was guilty of such offence, then the head of the kraal shall be deemed guilty of an offence against this Act.

Offence by native of harbouring, &c.

When kraal head to be deemed guilty for offence of inhabitant.

#### PART VIII.

##### *Provisions as to Evidence, Trial, and Compensation in Cattle Stealing and Cattle Killing Cases.*

54. Whenever there is reasonable evidence that cattle have been stolen and, upon any search, any portion (whether carcass, head, skin, fleece, flesh, horns, hoof, or any other part) of such cattle or any other cattle shall be found in the possession or on the premises or in the house or

Effect in evidence of finding portion of stolen cattle in possession or on premises, &c., of any person.

Act 1, 1899.

place or kraal, or in the immediate vicinity of the house, place, or kraal, of any person, and it shall not be made to appear to the Court that such person came lawfully by the same, or that the same was on his premises or in his house, place, or kraal, or in the immediate vicinity thereof, without his knowledge or assent, then such person may, upon any indictment or charge of having stolen the cattle first referred to or other cattle belonging to some person, whether known or unknown, be adjudged to be guilty according to such indictment or charge.

*A 26/29*  
*8/14*  
Person found in possession of cattle or portion of animal that is missing may be found guilty of having stolen same.

55. If any person shall be found in the possession of any cattle, or any portion thereof (whether carcass, head, skin, fleece, flesh, horns, hoof, or any other part) shown to be or to belong to an animal that is missing, or bearing a brand or mark shown to be that of someone else than the person in whose possession the same was found, such person may, unless it shall be made to appear to the Court that he came by the same lawfully, or that it was in his possession without his knowledge or assent, be adjudged guilty of having stolen the said cattle.

Attachment of property of native charged with cattle stealing or killing.

56. On the apprehension or committal of any Native charged with cattle stealing or cattle killing the Magistrate having jurisdiction shall cause the property of such Native (except property required to support those dependent on him) to be attached until such time as such Native can be tried, and if such Native shall be acquitted, or if upon conviction the Court shall make no order imposing or granting compensation, then such attachment shall, upon the acquittal or conviction of such Native, be at an end.

Punishment of native convicted of cattle stealing or cattle killing.

57. Every Native who shall be convicted of cattle stealing or cattle killing shall be liable :—

*Repealed*  
*29.1.1901/1902 substituted*  
*29.1.1901/1902*

- (a) On the first conviction to a whipping of not more than twenty-five lashes, or to imprisonment with hard labour for any term not exceeding two years, or to both such whipping and imprisonment ;
- (b) On the second conviction to imprisonment with hard labour for any term not less than three years and not exceeding six years ;
- (c) On any third or further conviction to imprisonment with hard labour for any term not less than six years and not exceeding twelve years ; and
- (d) On each second or subsequent conviction to a whipping of not more than thirty lashes, in addition to any sentence of imprisonment.

Provided always :—

- 1. That the punishment of whipping shall be in no case adjudged to be inflicted upon women.
- 2. That if at any time arrangements shall have been made by the Natal Government for the carrying out in any other colony or country of sentences of transportation, then upon a second or subsequent conviction the convicted person may, in lieu of any sentence of whipping or imprisonment, be sentenced to be transported to such colony or country for any term not less than three years and not exceeding twelve years.
- 3. That in the case of offenders who appear to be under the age of sixteen years any whipping shall be inflicted with a rod and not with a lash.

*- 5 Section repealed save in r. as they relate to cattle killing by A 26/29 8/14*

58. The Court may adjudge any person who may be convicted of cattle stealing or cattle killing to pay compensation to the person whose cattle have been stolen or killed for any damage which he may have sustained by reason of such stealing or killing, including any expenses

Court may adjudge compensation for cattle stolen or killed.

incurred in the search for such cattle, and any such judgment may be recorded and carried into effect in the same manner and with the same privileges as if it were a judgment by such Court in a civil action.

Act 1, 1899.

59. Any person who may be adjudged to pay compensation under the provisions of the foregoing section shall have the right to appeal to the Supreme Court or to the Native High Court, as the case may be, against the order adjudging such compensation. This section shall not be deemed to refer in any way to the verdict, judgment, or sentence in respect of the criminal charge.

Appeal against order adjudging compensation.

60. The compensation so awarded shall not be paid over to the judgment creditor until the lapse of one month from the date of judgment unless he shall give security to the satisfaction of the Registrar or the Clerk of the Court pronouncing the judgment for the repayment of such compensation if it shall have been diminished or annulled upon repeal :

Compensation not to be paid to creditor for one month from date of judgment unless security given against appeal.

Provided always :—

- (a) That if the judgment debtor give security to the satisfaction of the Registrar or Clerk aforesaid for the speedy prosecution of appeal against the said judgment, and for the due satisfaction thereof, so far as not reversed upon appeal, execution under any such judgment shall be stayed until the appeal shall have been disposed of or abandoned, unless the Court shall otherwise specially order ;
- (b) That upon proceedings of appeal being instituted by any judgment debtor against any such judgment the same shall be stayed unless the Court appealed from shall otherwise specially order, or unless the judgment creditor shall give security as aforesaid for the repayment of anything received under such judgment so far as the same may be reversed upon appeal.

Stay of judgment and execution thereunder pending appeal.

61. The Court before which any of the cases referred to in the two preceding sections are tried may at its discretion after verdict or judgment refer to the depositions in the case, and may also then and there, or at some other appointed time, take further evidence upon the question of the compensation to be awarded.

Further evidence on question of compensation.

62. Whenever judgment for any compensation is given in terms of this Act against more than one person, such persons shall be jointly and severally liable thereunder unless the Court shall otherwise specially order.

Joint and several liability for compensation.

63. It shall be lawful for the Court to impose upon the father or guardian of any Native or Asiatic who may be convicted of cattle stealing or cattle killing, and who, in the opinion of the Court, may be under the age of fourteen years, a fine not exceeding the value of the cattle so stolen or killed, as well as to adjudge such father or guardian to make compensation to the injured party in the same way as if such father or guardian had himself been convicted of stealing or killing the said cattle : Provided that such father or guardian shall not be liable to such fine or to make such compensation unless it appear that the offender was at the time of the commission of the offence under his authority and control.

Liability of father or guardian of Native or Asiatic under 14 years convicted of stealing or killing.

64. Any person who shall be found within a farm or part of a farm enclosed on all sides with a fence, or within any cattle kraal, upon or near which cattle stealing is prevalent, and who, when so found, was not proceeding along some road or thoroughfare traversing such farm or part of a farm, and who also was on such farm or part of a farm or in such kraal without the authority or consent of the owner or occupier or of someone who was entitled, or was by the person so found bona fide believed to be entitled to give such authority or consent, may be found guilty by the Court before which he is tried of an offence unless he shall satisfy the Court that he was not there with any criminal intent.

Person found on farm, &c., under suspicious circumstances may be found guilty of an offence.

*JS 64+65-Ref. G. H. 21  
S 14*

**Act 1, 1899.**

Person receiving stolen cattle without reasonable belief that same were lawfully disposed of, guilty of an offence.

Crimes by Natives, how cognizable.

Jurisdiction of Magistrate as regards punishment.

Cases within the summary jurisdiction of Magistrates.

Contraventions, how cognizable.

Saving of rights of prosecution.

Saving of right of action.

Right of police constable to apprehend.

Search warrants.

65. Any person who shall in any way acquire or receive into his possession any stolen cattle, without guilty knowledge of any theft, but without having reasonable cause (proof of which shall be upon him) for believing that the person from whom he acquired or received such cattle was lawfully entitled to dispose of the same, shall be deemed guilty of an offence: Provided always that this section shall not apply to cattle purchased on a public market, or at any auction sale or sale held under order of Court.

66. The crimes of cattle stealing and cattle killing and the crime of creating spoor as mentioned in Section 42 of this Act when committed by Natives shall be cognisable by the Native High Court, but any such charge may, in the discretion of the Attorney-General, be remitted for trial by a Magistrate.

67. The Magistrate to whom a case may be remitted for trial in terms of the preceding section may pass a sentence of imprisonment for any term not exceeding twelve months, with or without hard labour, and with or without lashes, in no case exceeding fifteen.

68. The following cases shall be within the summary jurisdiction of Magistrates, notwithstanding anything contained in this Act, that is to say:—

- (a) Such crimes and offences as are mentioned in Section 66, when committed by children, who, in the Magistrate's opinion, are under the age of fourteen years.
- (b) The theft of or unlawfully receiving or possessing only the skin or carcass or any portion of an animal.

69. Save as is otherwise specially provided, all contraventions of this Act shall be cognisable in the Courts of Magistrates, and punishable according to the ordinary jurisdiction of Magistrates' Courts.

70. No prosecution or conviction for contravention of this Act shall prevent a prosecution for any offence which, but for this Act, any person might be deemed to have committed: Provided that no person be twice punished for the same act; and provided also that a prosecution or conviction for the illegal removal of cattle or for purchasing cattle contrary to the provisions of this Act shall not prevent a prosecution of the same person for cattle stealing if the cattle prove to have been stolen, or for the crime of receiving such stolen cattle knowing the same to have been stolen.

## PART IX.

*Miscellaneous.*

71. Nothing in this Act shall be deemed to take away any right of action or remedy which would have been competent if this Act had not been passed.

72. If there be reasonable cause for believing that any person has stolen any cattle, or is or has been in unlawful possession thereof, it shall be lawful for any police constable to apprehend or cause to be apprehended such person without a warrant, and to convey him or cause him to be conveyed before a Magistrate.

73. Any Magistrate, Justice of the Peace, or Commissioned, or Non-Commissioned Officer of Police, upon being satisfied that there is reason to suspect that any stolen cattle or carcasses, or any portion of the carcasses of stolen cattle, are concealed in any building, hut, kraal, or enclosure, may search, or grant written authority to any person applying therefor to search such building, hut, kraal, or enclosure at any time during the day or night.

added by Act 31  
717, Sect. 391

74. Any European owner or tenant of land shall, in respect of buildings, huts, kraals, or enclosures, upon his own land, be entitled to exercise all powers conferred by the foregoing section upon the officers therein mentioned.

**Act 1, 1899.**  
Rights of European owner or tenant of land.

75. A Magistrate who is under this Act authorised to try any crime or offence may, in all cases in which the Court is entitled to award any compensation to the injured party, give judgment for such compensation notwithstanding that the claim or the amount awarded may exceed his ordinary jurisdiction.

Magistrate may award compensation beyond his ordinary jurisdiction.

76. The reference in Section 2, Sub-section (b) of Act 16, 1895, to a pass under Laws Nos. 46, 1884, and 17, 1891, shall be deemed to be a reference to a pass under this Act.

Act 16, 1895, amended.

77. Any reference in this Act to the crimes of cattle killing or stealing shall be deemed to include attempts to commit the said crimes.

Attempted crimes.

78. It shall be the duty of every Native receiving cattle for "sisa" purposes to report such cattle to the Magistrate of the Division in which he resides, and also to the Chief of his tribe. Such report shall state the name and residence of the owner of the cattle and their number and description. The Magistrate shall keep a register of all cattle placed out for "sisa" purposes. Any failure to report the "sisa" of cattle within fourteen days shall be deemed a contravention of this Act, and if any reason appears for suspecting that the cattle have been stolen, the Magistrate may order the head of the kraal not to remove them or allow them to be removed until the permission of such Magistrate be given.

Duty of Native receiving cattle for *sisa* purposes.

SCHEDULE NO. 1.

*Schedule of Repealed Laws and Acts.*

No. of Law or Act.	Extent of Repeal.
Law No. 10, 1876	The whole.
Law No. 30, 1884	The whole.
Law No. 46, 1884	The whole.
Law No. 17, 1891	The whole.
Act No. 13, 1895	The whole.
Act No. 21, 1896	The whole.
Act No. 23, 1896	The whole.
Act No. 24, 1896	The whole.

SCHEDULE NO. 2.

*Butcher's Register of Purchases.*

Register No.	Date of Purchase.	From Whom Purchased.	Residence of Owner.	Number and Description of Cattle. Cows. Oxen. Bulls. Calves. Horses. Sheep. Goats. Other Animals.	Brands.	Ear Marks or other Special marks.	Date of Slaughter.	How skins disposed of	Number placed on Pass taken from Indian or Native.

Act 1, 1899

SCHEDULE NO. 3.

*Register of Sales by Auctioneers, Merchants, Traders, or Dealers (or Purchases, as the case may be).*

Registered No.	Date of Purchase, or Sale, as the case may be.	By whose instructions sold, or, as the case may be, from whom purchased.	Residence of Owner.	Number of Cattle. Cows. Oxen. Bulls. Calves. Horses. Sheep. Goats. Other Animals.	Brands.	Date of Sale or Purchase, as the case may be.	Number placed on Pass taken from Native or Indian.

VII. OFFENCES AGAINST PUBLIC MORALS.

Law No. 15, 1869 (A).

*See Law. 39/84 s. 9  
act 16/95  
22/99.*

“For the punishment of idle and disorderly persons and vagrants within the Colony of Natal.”

[22nd September, 1869.]

WHEREAS it is expedient to make provision for ensuring greater security and protection to the inhabitants of Natal, and for punishing idle and disorderly persons and vagrants within such Colony :

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :

1. Any person who shall be found wandering over any land belonging to or lawfully and of right occupied by any private person or persons, or loitering on private property, near to or lodging in any house, out-house, or hut, without leave of the owner thereof, and who shall be unable to give a good and satisfactory account of himself, shall be deemed and may be arrested as idle and disorderly ; and every person who shall wilfully, lewdly, openly, and obscenely expose his person in any road or public path, or in view thereof, or in any place of public resort (not within any borough), with intent to insult any female ; and every person who shall publicly behave in a riotous or indecent manner shall be liable, on conviction before the Resident Magistrate of the county or division, on the complaint of the owner or occupier aforesaid, to imprisonment for any period not exceeding three months, with or without hard labour, and with or without spare diet, or to a fine not exceeding five pounds sterling,

Person wandering over private property, or loitering near, or lodging in, any house, &c., without owner's leave, and without lawful excuse, may be arrested.

Indecent exposure, riotous or indecent behaviour.

(A) This Law is a copy of part of the Act 5 Geo. IV. c. 83 (per Gallwey, C.J., in *Vinden v. Ladysmith Local Board*, 17 N.L.R. 78, where the scope and intention of this Law is explained.) See also Act 22, 1899, post, which is to be read

and construed with this Law. See also the laws relating to Municipal Boroughs and Local Boards as regards its application in the case of Boroughs and Townships.

and in default of payment thereof to such imprisonment as last aforesaid, with or without hard labour, and with or without spare diet; and any person hereby declared to be liable to be arrested as idle and disorderly may be so arrested and conveyed to gaol by the owner or occupier of the property or premises on which such person shall be found, or by his servants, or by any police constable or officer, at the request of such owner or occupier: Provided always, that any one who shall, under colour of this provision, wrongfully and maliciously, and without probable cause, arrest or cause to be arrested any person as idle and disorderly, shall be liable to pay a fine not exceeding one pound sterling, and to pay to the arrested person such amount as and for damages as the Magistrate before whom such arrested person is brought for trial shall award: Provided also, that this section shall not apply to boroughs, with respect to which special provision is hereinafter made.

Law 15, 1869.

Idle and disorderly persons may be arrested by owner or occupier.

Wrongful arrest, penalty and damages for.

This section not to apply to boroughs.

2. In every borough in the Colony constituted in the manner provided for by the provisions of Law No. 21, 1862, entitled, "Law amending and consolidating the Laws in regard to Municipal Corporations," (A) ~~every coloured person (B) found wandering abroad after and before such hour as such Corporation may fix, and not giving a good account of himself or herself~~; every person being found at any time in or upon any dwelling-house, warehouse, shop, stable, kitchen, or out-house, or in any enclosed yard or garden, and not giving a good account of himself, or herself; every person wilfully, openly, lewdly, and obscenely exposing his person in any street, road, or public path, or in view thereof, or in any place of public resort; every person publicly behaving in a riotous or indecent manner within a borough; and every person apprehended as an idle, disorderly, or suspicious person [and violently resisting any constable or policeman so apprehending him or her (C)], and being subsequently convicted for the offence for which he or she shall have been so apprehended, shall be deemed an offender within the true meaning and intent of this Law; and it shall be lawful for any Magistrate to commit such offender, on conviction, to the gaol, there to be kept to hard labour for any time not exceeding three months, or to inflict upon such offender such fine, not exceeding five pounds sterling as the Magistrate in his discretion may think fit.

Coloured persons wandering in boroughs between prohibited hours.

*act. 25/1869*

Persons found in or upon a dwelling-house, &c., or enclosed yard; or indecently exposing person in certain places, or publicly behaving in an indecent or riotous manner within a borough, and persons arrested as idle and disorderly and violently resisting officer, to be deemed offenders.

3. In all boroughs the Corporations of such boroughs shall erect, at or near the police-station or in some locality under the control and supervision of constables or policemen, some suitable building or buildings for the reception of such natives, not being residents in such boroughs, as cannot conveniently leave such boroughs before such hour as may be fixed by such Corporations, in which building or buildings such natives shall obtain shelter for the night.

Corporations shall erect buildings for reception for the night of non-resident natives.

4. It shall be lawful for the Corporations of such boroughs (three-fourths thereof being present at a meeting for the purpose) to fix such hours and to make from time to time such bye-laws, rules, and regulations as may seem requisite and necessary for carrying out the provisions of this Law: Provided that no such bye-laws, rules, or regulations shall be of any force until the same shall have received the sanction of the Lieutenant Governor.

Corporations may make rules for carrying this Law into effect.

5. In this Law the words "Resident Magistrate" shall include the Assistant Resident Magistrates, and also associated Justices of the Peace holding any branch courts under Law No. 6, 1859 (D), and the words "constable," "constables," "policeman," "policemen," shall mean such

Interpretation.

(A) Repealed by Law 19, 1872.  
 (B) See definition in sec. 5, post.  
 (C) Words in brackets are repealed, in so far as Boroughs and Townships

are concerned, by Law 16, 1887, post.  
 (D) Repealed by Law 22, 1889, which is also repealed by Act 22, 1896.



Law 15, 1869. persons as may be appointed as such under or by virtue of Ordinance No 5, 1846, or in the case of boroughs such persons as may be appointed by the Corporation generally, or for the special purpose of carrying out this Law; and the words "coloured person" shall mean any Hottentot, Coolie, Bushman, Lascar, or any of the people commonly called Kafirs, whether they are refugees from any of the surrounding states or tribes or belonging to the tribes originally in this Colony and its neighbourhood (A).

Commencement 6. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (B).

### Law No. 17, 1880.

"To enforce the Clothing of all Persons appearing in certain Public Places."

[20th March, 1880.]

WHEREAS it is expedient and advisable that all persons appearing in certain Public Places, as hereinafter defined, shall be decently clothed:

BE IT THEREFORE ENACTED by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

No person to appear in certain public places unless decently clothed.

1. No person shall appear in any of the following Villages or Towns, viz.:—Newcastle, Dundee, Ladysmith, Colenso, Weenen, Estcourt, Weston, Howick, Richmond, Ixopo, Harding, Umzinto, Isipingo, Pinetown, Verulam, Victoria, Williamstown, Stanger, Blackburn, Greytown, York, New Hanover, Hermansburg, or Edendale; or in any other Township, Village, or other place which shall be declared by the Lieutenant-Governor by a Proclamation to come under the operation of this Law, or at any Seat of Magistracy, or in or within fifty yards of any Roadside Inn, without being clothed with some garment or garments, extending from the neck to the knee: Provided that if any doubt shall exist as to the limits or boundaries of the villages or towns above-mentioned, such a definition shall be supplied and published by the Resident Magistrate of the District.

Magistrate, &c., may arrest persons found contravening this Law.

2. It shall be lawful for any Resident Magistrate, Justice of the Peace, Field-Cornet, Police Officer or Constable, with or without a warrant, to arrest any person or persons found contravening this Law, and to send and lodge any person or persons so arrested to and in the nearest Prison or Lock-up, for trial before the Resident Magistrate of the Division or County in which such offence was committed.

Magistrate to compel attendance of persons complained of.

3. Every Resident Magistrate shall, on any verbal or written complaint, compel the attendance before him of any person or persons so complained of; and shall, as soon as may be, hear and determine any such complaint, without being required to issue any plaint or summons.

Offences; how tried.

4. All complaints under this Law shall be heard and determined, in a summary manner, by the Resident Magistrate of the County or Division wherein the offence was committed.

Punishment.

5. Any person or persons found guilty of contravening this Law shall be liable to a fine not less than Two Shillings and Sixpence, and not exceeding One Pound Sterling, or in default of payment thereof to imprisonment not exceeding Three Days.

(A) The definition of "coloured person" discussed per Wragg, J., in *Vinden v. Ladysmith Local Board*,<sup>17</sup> N.L.R. 78.

(B) Sept. 28, 1869.

6. Nothing in this Law contained shall be deemed to apply to any person who may be temporarily unclothed in consequence of having to cross, or of having just crossed, any stream or river, or to any person entering the Colony and passing along the roads for the purpose of seeking service.

Law 17, 1880.  
Exceptions from operation of this Law.

7. This Law shall commence and take effect at the expiration of six months after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A).

Commencement

Law No. 16, 1887.

"To amend Section 2 of the Vagrant Law, No. 15, of 1869."

[2nd February, 1887.]

WHEREAS in Section 2 of Law No. 15, of 1869, it is provided among other things, that "every person apprehended as an idle, disorderly, or suspicious person, and violently resisting any constable or policeman so apprehending him or her, and being subsequently convicted for the offence for which he or she shall have been so apprehended, shall be deemed an offender within the true meaning and intent of this Law:"

And whereas, as the Law at present stands, many idle, disorderly, and suspicious persons escape punishment because they have not violently resisted the constable apprehending them:

And whereas it is necessary for the maintenance of order in Boroughs under Law 19, 1872, and Townships established under Law 11, 1881, to amend the said Law in this respect in so far as it applies to such Boroughs and Townships:

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. The words "and violently resisting any constable or policeman so apprehending him or her," occurring in Section 2 of Law 15, 1869, are hereby repealed in so far as Boroughs, under Law 19 of 1872, and Townships under Law 11 of 1881, are concerned. And from and after the passing of this Law such Section of the said Law shall be read and construed as if such words as aforesaid were not included therein in respect of the application of the Law to the said Boroughs and Townships.

Amendment of sec. 2, Law 15, 1869, as regards Boroughs and Townships.

2. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (B).

Commencement

Act No. 22, 1899.

*Repealed 22-31-1903*

"To amend the Criminal Law."

[28th August, 1899.]

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

1. Every person who

(a) Knowingly lives wholly or in part on the earnings of prostitution, or

(b) In any public place solicits or importunes for immoral purposes,

shall be deemed to be an idle and disorderly person within the meaning of Law No. 15, 1869.

Person living on earnings of prostitution or soliciting, to be deemed idle and disorderly person.

(A) Promulgated March 23, 1880.

(B) Feb. 15, 1887.

Act 22, 1899.

When warrant may issue to search suspected premises.

2. Upon information being given on oath that there is reason to suspect that any house or premises is or are used for purposes of prostitution, and that any person residing in or frequenting the house or premises is living wholly or in part on the earnings of prostitution, a Magistrate or Justice of the Peace may issue a warrant authorising any constable to enter and search the house or premises and to arrest such person.

Certain persons to be deemed knowingly living on earnings of prostitution.

3. Every person who shall be proved to live with or to be habitually in the company of a prostitute, and who has no visible means of subsistence, shall, unless he can satisfy the Court to the contrary, be deemed to be knowingly living on the earnings of prostitution.

Punishment.

4. Any person convicted under Law No. 15, 1869, or under any By-law made thereunder, for an offence as defined by this Act, shall be liable to be imprisoned for any term not exceeding six months, with or without hard labour, and with or without spare diet, or to a fine not exceeding Twenty Pounds Sterling: Provided that spare diet shall in no case be ordered for a longer term than one-third of the term of imprisonment or thirty days, whichever shall be the shorter.

Construction of Act.

5. This Act shall be read and construed together with Law No. 15, 1869, and shall apply to Boroughs and Local Townships in like manner as the said Law No. 15, 1869.

## VIII. INJURIES TO PROPERTY (A).

## Law No. 2, 1890.

“For the Protection of Submarine Telegraph Cables.”

[28th May, 1890.]

WHEREAS it is expedient to make provision for the protection of Submarine Telegraph Cables:

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Law may be cited as the “Submarine Telegraph Natal Protection Law, 1890.”

Injuring submarine cable.

2. (1) A person shall not unlawfully and wilfully, or by culpable negligence, break or injure any submarine cable, in such manner as might interrupt or obstruct in whole or in part telegraphic communication.

(2) Any person who acts or attempts to act in contravention of this section shall be guilty of an offence, and on conviction—

Wilful act.

(a) If he acted wilfully, shall be liable to imprisonment for a term not exceeding five years, with or without hard labour, and to a fine either in lieu of or in addition to such imprisonment; and

Culpable negligence.

(b) If he acted by culpable negligence, shall be liable to imprisonment for a term not exceeding three months, without hard labour, and to a fine not exceeding one hundred pounds either in lieu of or in addition to such imprisonment.

Saving of certain acts.

(3) Where a person does any act with the object of preserving the life or limb of himself or of any other person, or of preserving the vessel to which he belongs or any other vessel, and takes all reasonable precautions to avoid injury to a submarine cable, such person shall not be deemed to have acted unlawfully and wilfully within the meaning of this section.

(A) See also “GRASS FIRES.”

(4) Any person who within the Colony of Natal in any manner procures, counsels, aids, abets, or is accessory to the commission of any offence under this section, shall be guilty of an offence, and shall be liable to be tried and punished for the offence as if he had been guilty as a principal. **Law 2, 1890**  
Accessories.

3. Where any offence against this Law has been committed by means of a vessel, or of any boat belonging to a vessel, the master of such vessel shall, until some other person is shown to have been in charge of and navigating such vessel or boat, be deemed to have been in charge of and navigating the same, and be liable to be punished accordingly. Liability of master of vessel or boat by means of which offence has been committed.

*Amendment of Criminal Law*  
*Act-10/10.*

CROWN LANDS.

CROWN LANDS.

[See "QUIT RENTS." See also Law 41, 1884, tit. "NATIVES" as to Squatting on Crown Lands.]

*no. by act-10/1913  
Sec. 1*

Ordinance No. 4, 1853.

"Ordinance for empowering the Lieutenant-Governor to issue, by Proclamation, Orders and Regulations for cutting Timber and Bush on Crown Lands."

[10th September, 1853.]

WHEREAS it is deemed expedient to prevent the destruction of timber on Crown Lands :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :

Governor may make provision for preservation of bush, granting licenses to cut, &c.

*265/19*

1. It shall be lawful for the Lieutenant-Governor, with the advice of the Executive Council, from time to time, by Proclamation, to make provision for the preservation of the timber and bush growing on the lands belonging to the Crown, and for regulating the granting of licenses for cutting or using the same, or leasing the timber and bush growing on such lands.

Penalty for offence against regulations.

2. And for the purpose of giving effect to such regulations, it shall be lawful for the Lieutenant-Governor, with the advice of the Executive Council, by any such regulations to impose any penalty not exceeding Twenty Pounds for every offence against the same.

Recovery of penalties.

3. Every penalty imposed by such regulations as aforesaid shall be recovered in the Court of any Resident Magistrate ; and may be sued for at the instance of any Clerk of the Peace or Field-Cornet, or any person appointed by the Lieutenant-Governor for such purpose, and shall be paid into the public Treasury for the use of the Government of the District.

Imprisonment in default of payment of fine.

4. In any case in which any fine shall be imposed by such Court, it shall be lawful for such Court, in case such fine shall not be paid, to adjudge any person so convicted to imprisonment, with or without hard labour, for any period not exceeding three months, unless such fine be sooner paid.

Commencement

5. This Ordinance shall commence and take effect from and after the publication thereof in the " GOVERNMENT GAZETTE."

Law No. 25, 1869.

"To empower the Lieutenant-Governor to resume possession, on behalf of the Crown, of certain lands which have been allotted to certain immigrants, and to give compensation to any such immigrants whose lands may be so resumed."

[22nd September, 1869.]

WHEREAS, in or about the year 1851, certain lands in this Colony were allotted to certain emigrants from the United Kingdom, and deeds of transfer in favour of such several emigrants were executed and lodged in the office of the Registrar of Deeds of this Colony, for the purpose of being delivered to such emigrants upon payment by them to the Colonial Government of certain charges thereon ; and whereas a large number

of such deeds of transfer have not been taken out by such emigrants, and the charges thereon as aforesaid have not been paid; and whereas in most of such instances the sums of money so chargeable thereon exceed the present market value of the respective lands upon which the same are owing; and whereas it is expedient, and will tend to the public benefit, that certain of such lands, hereinafter specified, should become available for occupation, and that for such purpose the Government should again become possessed of such lands, in order that the same may be granted to other persons who have already been located thereon by the Government: And it is further expedient to empower the Lieutenant Governor in any case in which he shall exercise the power hereinafter conferred upon him, of resuming possession of such lands, to grant to the person to whom such lands were so originally allotted, upon the payment by such person of such charges as may be due and payable thereon, fair and reasonable compensation for the land so resumed:

Law 25, 1869.

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. The Lieutenant Governor shall be, and he is hereby authorised and empowered, if and whenever he shall see fit so to do, to direct the Registrar of Deeds to cancel and annul all or any of the deeds of transfer (A) in the schedule hereto mentioned, and the Registrar of Deeds, upon the receipt of any such directions under the hand of the Colonial Secretary, shall forthwith cancel the deeds of transfer therein mentioned, by endorsement under the hand of him, the said Registrar of Deeds, by virtue of this law.

Governor may direct Registrar of Deeds to cancel transfers mentioned in schedule hereto.

2. The effect of such endorsement of cancellation by the Registrar of Deeds under this law, shall be that the lands in such cancelled deed of transfer mentioned and described shall thereupon become re-invested in the Lieutenant Governor as land belonging to the Crown absolutely discharged from all and all manner of estates, charges, or incumbrances whatsoever, and may be held used and disposed of in such and the same manner as any other Crown lands in this Colony: Provided always, that the person named in such cancelled deed of transfer as the person to whom such land was conveyed thereby, or the heirs, executors, administrators, or assigns of any such person, shall, on payment to the Colonial Treasury of the charges and expenses due and payable upon or in respect of such transfer deed and of the land therein mentioned, and not otherwise, be entitled to fair and reasonable compensation for such land in manner hereinafter provided, and not otherwise.

Effect of endorsement of cancellation.

Transferee, or his heirs, entitled, on payment of charges, to compensation.

3. The compensation in the preceding section mentioned shall be made either in money, or in available crown lands taken at the usual Government upset price for such lands at the time when the deed of transfer shall have been cancelled; such compensation shall be only for the value of the resumed land, exclusive of buildings erected thereon at the date of the resumption; and such compensation shall, unless the amount of the same be mutually agreed upon, be fixed and ascertained in manner following:—The Colonial Secretary (on behalf of the Government) and the person claiming compensation shall each nominate and appoint a person as arbitrator, and the said arbitrators shall mutually determine such compensation as aforesaid; and if such arbitrators shall disagree respecting the compensation to be awarded for such land they, the said appointees or arbitrators, may nominate some third person to act as umpire, and the joint valuation of such arbitrators or the valuation of such umpires, as the case may be, shall be final and conclusive.

Compensation to be made in money or Crown lands.

No compensation for buildings.

Amount may be fixed by arbitration.

(A) See Law 4, 1872, s. 1, tit. "IMMIGRATION (EUROPEAN)."

## Law 25, 1869.

Expenses of arbitration.

Claims in respect of survey, or other fees, not affected by this Law.

## Commencement

4. In every case of arbitration under this Law, the expenses of such arbitration shall be borne by the Colonial Government.

5. Nothing in this Law contained shall in any way affect any claim any person, or the heirs, executors, administrators, or assigns of any person may have in respect of survey fees or any other fees which would have been payable in respect of any of these lots, had the allottee taken out such deed of transfer.

6. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" of this Colony (A).

## SCHEDULE.

*Deeds of Transfer.*

Claimant.	No. of Lot and Situation.	Registry No.	Extent.
Henry Richard Holton	19, Lots 2 and 3, Illovo; Lot 5, Block 2, Richmond	713	40 acres $\frac{1}{2}$ acre
J. Robson	54, Lots 2 and 3, Illovo; Lot 10, Block 2, Richmond	736	40 acres $\frac{1}{2}$ acre
Job Palmer	53, Lots 2 and 3, Illovo; Lots 1 and 3, O, Richmond	780	100 acres 1 acre
T. Howells	55, Lots 2 and 3, Illovo; Lot 10, Block K, Richmond	779	50 acres $\frac{1}{2}$ acre
Rebecca Lambert	56, Lots 2 and 3, Illovo; Lot 12, Block K, Richmond	737	20 acres $\frac{1}{2}$ acre
Francis Spring	64, Lots 2 and 3, Illovo; Lots 2, 4, 6, Block 2, Richmond	796	170 acres $\frac{1}{2}$ acre
Wm. Hart	124, Lots 2 and 3, Illovo; Lot 7 (X), Richmond	789	40 acres $\frac{1}{2}$ acre
Edward Reynolds	124a, Lots 2 and 3, Illovo; Lot 6, Block O, Richmond	727	20 acres $\frac{1}{2}$ acre
John Macpherson	162, Lots 2 and 3, Illovo; Lot 9, Block G, Richmond	818	80 acres $\frac{1}{2}$ acre
Alexander Patterson	163, Lots 2 and 3, Illovo; Lot 5, Block K, Richmond	791	20 acres $\frac{1}{2}$ acre
J. L. Thompson	164, Lots 2 and 3 Illovo; Lot 8, Block L, Richmond.	831	20 acres $\frac{1}{2}$ acre
John Kilgrave	169, Lots 2 and 3, Illovo; Lot 4, Block W. Richmond	815	20 acres $\frac{1}{2}$ acre
N. MacMillan	185, Lots 2 and 3, Illovo; Lot 10, (P), Richmond	824	60 acres $\frac{1}{2}$ acre
Robt. Spiers	170, Lots 2 and 3, Illovo; Lot 3, Block N, Richmond	702	90 acres $\frac{1}{2}$ acre
W. Robertson	171, Lots 2 and 3, Illovo; Lot 9, Block L, Richmond	852	40 acres $\frac{1}{2}$ acre
J. Simpson	172, Lots 2 and 3, Illovo; Lot 2, Block M, Richmond	853	20 acres $\frac{1}{2}$ acre
R. McLeod	173, Lots 2 and 3, Illovo; Lot 6, (M), Richmond	703	20 acres $\frac{1}{2}$ acre
C. T. Stacy	94, Lots 2 and 3, Illovo; Lot 2, Block P, Richmond	697	20 acres $\frac{1}{2}$ acre
Jas. Eagle	99, Lots 2 and 3, Illovo; Lot 6, Block S, Richmond	695	20 acres $\frac{1}{2}$ acre
J. Watkins	114, Lots 2 and 3, Illovo; Lot 5, Block W, Richmond	689	20 acres $\frac{1}{2}$ acre
Wm. Brockman	116, Lots 2 and 3, Illovo; Lot 5, Block (X), Richmond	823	85 acres $\frac{1}{2}$ acre
Geo. Ross	118, Lots 2 and 3, Illovo; Lot 8, Block (T), Richmond	719	20 acres $\frac{1}{2}$ acre

(A) Sept. 28, 1869.

## CROWN LANDS.

4

Law 25, 1869.

Claimant.	No. of Lot and Situation.	Registry No.	Extent.
H. Caldwell	183, Lots 2 and 3, Illovo; Lot 6, Block (P), Richmond	678	90 acres $\frac{1}{2}$ acre
J. H. Carrathurs	109, Lots 2 and 3, Illovo; Lot 4, Block (T), Richmond	839	45 acres $\frac{1}{2}$ acre
Nelson Grant	110, Lots 2 and 3, Illovo; Lot 11, Block G, Richmond	691	55 acres $\frac{1}{2}$ acre
G. Young	Lot 3, Tongaati; Lot 16, E, Mount Moreland	603	158 acres 1 acre
F. Dimock	Lot 12, Tongaati	646	90 acres
W. R. Quick	Lot 55, A, Umhloti; Lot 146, Verulam	274	20 acres 1 acre
J. Parsons	Lot 57, A, Umhloti; Lot 146, Verulam	272	20 acres 1 acre
Wm. Smith, senr.	Lot 67, B, Umhloti	487	90 acres
Chas. Rosier	Lot 68, B, Umhloti	497	45 acres
George Chaulbers	Lot 25, C, Umhloti	540	45 acres
J. G. Furnival	Lot 32, C, Umhloti	536	50 acres
A. Silvestre	Lot 41, C, Umhloti; Lot 10, C, New Glasgow; Lot 1, E, Verulam	553	107 $\frac{1}{2}$ acres $\frac{1}{2}$ acre 1 acre
Arthur Virtue	Lot 8a, Block C, Umhloti	521	90 acres
Henry Bowness	Lot 9, Block C, Umhloti	524	90 acres
John Steele	Lot 15, Block C, Umhloti	527	162 $\frac{1}{2}$ acres
Thomas Thompson	Lot 59, B, Umhloti	494	65 acres
T. Robertson	Lot 28, B, Umhloti	466	45 acres
John Abbott	Lot 5, Slang Spruit	56	20 acres
H. C. Lake	Lot 6, " "	81	120 acres
W. Petchell	Lot 10, " "	91	20 acres
D. Hamilton	Lot 29, " "	75	20 acres
Edward Burdsill	Lot 30, " "	60	20 acres
James Ennals	Lot 11, Block C, Umhloti	544	45 acres

*Instatements Suspension Act-22/10*



*Rep. by Act 1/1910 Union*

## CROWN SUITS.

## Act No. 14, 1894.

“To provide for the enforcement of claims against the Crown.”

[5th July, 1894.]

WHEREAS it is expedient to provide for the enforcement of Claims against the Crown :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

Certain claims against Crown cognizable by Supreme Court.

1. Any claim against Her Majesty founded upon and arising out of some one of the causes of action hereinafter mentioned, and for which cause of action a remedy would lie if the person against whom the same could be enforced were a subject of Her Majesty, shall be cognizable by the Supreme Court.

Causes for which actions may be brought.

2. The causes of action referred to in Section 1 of this Act are limited and confined to

(a) Breach of any Contract entered into by or under the lawful authority of the Governor of Natal on behalf of Her Majesty or of Her Majesty's Executive Government in Natal, whether such authority be express or implied ;

(b) A wrong or damage, independent of Contract, done or suffered by or under any such authority as aforesaid, in or upon or in connection with any railway, tramway, bridge, electric telegraph, or other work of a like nature, used by the Government of the Colony, or constructed by such Government out of moneys appropriated by Parliament, and the revenues derived from which form part of the General Revenue of the Colony.

Saving of Postal and Telegraph Services.

3. Nothing herein contained shall be taken to impose a liability upon the Crown for the acts or omissions of its Servants in the Postal or Telegraph Services of the Colony; or in respect of any cause of action of earlier date than the commencement of this Act (A).

Nominal defendant in action against Crown.

4. In any action or other suit which shall be instituted by virtue of this Act, it shall be competent for the 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.

How judgments to be satisfied.

5. 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.

(A) See the construction of this sec. discussed in *Methven v. Colonial Government*, 17 N.L.R. 12.

## CROWN SUITS.

Act 14, 1894.  
Removal of  
suits.

6. It shall be lawful for the Supreme Court to remove any such suit as aforesaid into any Circuit Court or the Court of any Resident Magistrate, and thereupon the provisions of this Act shall apply to the Court into which such suit shall have been removed.

Short title.

7. This Act may be cited as the Crown Suits Act, 1894.

## CRUELTY TO ANIMALS.

[See "ANIMALS."]

## CUSTOMS.

[See "REVENUE."]

" Ord. 11/1911 sec. 23 - Natal  
" Ord. 10/22.

" " DEALERS (WHOLESALE AND RETAIL).

4/23  
10/14  
6/16  
7/24

See Act- 26  
07  
P. M. Burg.

DEALERS (WHOLESALE AND RETAIL).

Act No. 18, 1897(F)

"To amend the Law relating to Licenses to Wholesale and Retail Dealers."

[29th May, 1897.]

See also

Act 22/09

WHEREAS it is expedient to regulate and control the issue of Licenses to wholesale and retail dealers not being Licenses under Act No. 38 of 1896 :

Amended by  
Act 19/1942 sec. 51

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

Sub-sec. (a)  
Sec. 71 Law 19,  
1872.

1. The Annual Licenses mentioned in Sub-section (a) of Section 71 of Law No. 19, 1872 (A), shall include Licenses to wholesale dealers.

Meaning of  
"retail dealers"  
and "retail  
Licenses."

2. For the purposes of this Act the expression "retail dealers" and "retail Licenses" shall be deemed to apply to retail dealers and retail Licenses of every description, not being Licenses under Act No. 38 of 1896 (B), including hawkers and Licenses to hawkers.

Licensing  
Officer.

3. Any Town Council or Town Board may, from time to time, appoint an officer to issue the Annual Licenses (not being Licenses under Act No. 38, 1896), required in the Borough or Township by wholesale or retail dealers.

Who to be  
deemed Licens-  
ing Officers.

4. Any person appointed to issue Licenses for wholesale or retail dealers under Law No. 38, 1884, or any like Stamp Act, or under this Act, shall be deemed to be a "Licensing Officer" within the meaning of this Act.

Licensing  
Officer may re-  
fuse a License.

5. A Licensing Officer shall have a discretion to issue or refuse a wholesale or retail License, not being a License under Act No. 38, 1896; and a decision come to by a Licensing Officer as to the issue or refusal of a License shall not be liable to review, reversal, or alteration, by any Court of Law, or otherwise than is in the next section provided (c).

Appeal from  
Licensing  
Officer's deci-  
sion.

6. There shall be a right of appeal by the applicant, or any other person having an interest in the question (d), from the decision of the Licensing Officer to the Town Council or the Town Board, if the License is sought for in a Borough or Township, or to the Licensing Board of the Division appointed under the Liquor Act, 1896, if the License is sought for elsewhere than in the Borough or Township; and the Town Council, Town Board, or Licensing Board, as the case may be, may direct that the License, the subject of appeal, shall be issued or cancelled (e).

extended by sec.  
of act 24/1909

7. No License shall be issued to any person who, when thereto required, fails to show to the satisfaction of the Licensing Officer or to the Town Council, Town Board, or Licensing Board, as the case may be, that he is able to fulfil the conditions of the Insolvency Law No. 47, 1887, Section 180, Sub-section (a), as regards the keeping of such books of account in the English language as are usual and proper in the business to be carried on. (f)

No License to  
be issued to  
person unable  
to keep books in  
English lan-  
guage.

(A) See tit. "MUNICIPAL CORPORATIONS."  
(B) See tit. "INTOXICATING LIQUORS."  
(C) This sec. and the next one oust the jurisdiction of the Supreme Court on appeal (Vanda v. Newcastle Corporation, 19 N.L.R. 28). This judgment was confirmed on appeal to Privy Council (20 N.L.R. 1), but it would seem that circumstances might arise of such a nature as to give the Supreme Court the right to interfere with the proceedings of the Town Council.  
(D) See Hoi Lee v. Dundee Local Board, 19 N.L.R. 204, as to what constitutes a sufficient interest.  
(E) The proceedings in appeal may be set aside for irregularity under a Writ of Mandamus (Solnath v. Durban Corporation, 19 N.L.R. 70).

DEALERS (WHOLESALE AND RETAIL).

2  
Repealed by Ord. 19/1942 etc.

8. No License shall be issued in respect of premises which are unfit for the intended trade, or unprovided with proper and sufficient sanitary arrangements, or not affording sufficient and suitable accommodation for salesmen, clerks, and servants, apart from the stores or rooms in which goods and wares may be kept in cases where premises are used for both purposes.

Act 18, 1897.

Premises unfit for intended trade not to be licensed.

9. Any person who shall carry on any wholesale or retail trade or business without a License (A), or who shall allow licensed premises to be in a condition which would disentitle him to a License, shall be deemed to have contravened this Act, and shall be liable to a penalty not exceeding Twenty Pounds Sterling for each offence, to be recovered (B) in the Court of the Magistrate by the Clerk of the Peace, or if the contravention is within a Borough or Township, by an officer appointed by the Town Council or Town Board.

Contraventions.

10. All penalties recovered under the foregoing section in respect of a business or premises within a statutory Borough or Township shall be paid to the funds of such Borough or Township.

Disposal of penalties.

11. Rules may be passed by the Governor in Council to regulate the mode of obtaining Licenses, and to regulate appeals from the Licensing Officer to the Board or Council having appellate jurisdiction.

Rules.

*Dealers in Old Metals, Act-11/07*

DEATHS.

[See "INTESTATE ESTATES" and "REGISTRATION (BIRTHS, &C)."]

92. 648 .  
.. 616 . 0  
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DECLARATIONS.

[See "OATHS."]

DEEDS.

[See "REGISTRATION (DEEDS)."]

DENTISTS.

[See "MEDICAL PRACTITIONERS."]

*Dentist's Act and Act 22/05.*

DESIGNS.

[See "COPYRIGHT."]

(A) No new license is created by this Act except that of a wholesale dealer (*Musa v. Dyer*, 19 N.L.R. 26).

(B) The reference to "recovery" of the penalty does not make the proceed-

ings civil in their nature; the use of the words "offence" and "penalty" indicate that criminal proceedings are contemplated (*Ebrahim v. Jennings*, 19 N.L.R. 93).

*See Act-38/01.*

## DESTITUTE PERSONS.

Act No. 10, 1896.

“For prevention of Destitution, and to make provision for the relief of Wives and Families deserted and left destitute.”

[1st June, 1896.]

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

Punishment for wilful neglect to support a family.

1. Every person being able, wholly, or in part, to maintain himself or his family, by work or by other means, and wilfully refusing or neglecting so to do, by which refusal or neglect he or any of his family whom he may be legally bound to maintain shall have become destitute, shall be deemed to be an idle and disorderly person, and upon conviction thereof before any Magistrate, shall be liable to a fine not exceeding Five Pounds Sterling, or failing payment of such fine to be imprisoned with or without hard labour for any period not exceeding three months.

Husband or father may be compelled to support wife or child.

2. When any husband unlawfully deserts his wife or leaves her without means of support, or when a father deserts any child being under fifteen years of age, or leaves it without any adequate means of support, if complaint thereof be made on oath to the Magistrate of the division in which such wife or such child shall respectively reside by the wife, or by any reputable person on her behalf, or in case of the child, by the mother or any reputable person, such Magistrate may issue his summons to such husband or father to show cause why he should not support his wife or child; and in cases of desertion, where such husband or father is absent from the Colony, the Magistrate may direct service of the summons to be made by publication thereof in the “NATAL GOVERNMENT GAZETTE,” and in some newspaper circulating at any place in South Africa where such Magistrate shall have reason to suppose that such husband or father resides or is.

Order for payment.

3. Upon the day appointed for the hearing, and upon proof of the service of the summons, whether the defendant be then present or not, such Magistrate shall enquire into the matter of the complaint; and if he be satisfied that the wife or child, as the case may be, is in fact without means of support, and that the husband or the father is able to maintain her or it, or to contribute to her or its maintenance, such Magistrate shall make an order in writing, directing him to pay either weekly or monthly, at the Magistrate's discretion, and to such person or in such manner for her or its use as such Magistrate may think fit, such moderate sum or allowance as he shall consider proper; and such an order shall have the effect of an ordinary judgment of the said Court.

Re-hearing of case tried during defendant's absence from the Colony.

4. It shall be competent for any husband or father, as the case may be, against whom judgment shall have been given during his absence from the Colony, within two months after his return to the Colony and having notice of such judgment, to take out the summons of the Court calling upon the complainant in the original suit to show cause why the order or authority as aforesaid shall not be cancelled, and if upon such re-hearing he shall prove to the satisfaction of the Court that he did not absent himself from the Colony for the purpose of avoiding the service of the summons, the case shall be re-opened and shall proceed as if he had appeared upon the original summons.

Enforcement of order by Magistrate, to whom transmitted.

5. Any order made by such Magistrate under this Act may be duly certified without fee by such Magistrate under his hand and transmitted

to any other Magistrate in whose division the defendant may at any time, or from time to time, reside or be, and shall on receipt be endorsed by such last-mentioned Magistrate, and shall thereupon be put into force and have such effect as though it had originally been pronounced by him, subject always to the provisions of Section 4. Act 10, 1896.

6. Any sentence passed or order made by any Magistrate in terms of this Act shall be subject to appeal to the Supreme Court or any Circuit Court. Appeal.

7. All and singular the rules of the Magistrates' Courts in regard to any sale in execution of the ordinary process of such Courts, or, in regard to appeals from such Courts, shall apply mutatis mutandis to any sale directed or appeal prosecuted in pursuance of this Act. Rules regarding sales in execution and appeals.

8. Whenever the Governor shall be advised that in any other Colony, State, or Territory in South Africa there is a law in force recognising the orders of a Magistrate under this Act duly certified under his hand, and providing for their enforcement against the defendant in the jurisdiction of such Colony, State, or Territory, it shall be lawful for the Governor to proclaim corresponding and reciprocal regulations providing for the recognition and enforcement in this Colony of orders made in such Colony, State, or Territory, under any Law similar to this Act (A), and, thereupon, so long as such provision shall exist in such other Colony, State, or Territory, an order made by any Magistrate in such Colony, State, or Territory under the corresponding Law there in force shall be recognised and enforced in this Colony in the same manner as a like order made by a Magistrate in this Colony under this Act. Enforcement in this Colony of orders made in other countries in South Africa.

9. This Act may be cited as "The Deserted Wives and Children Protection Act, 1896." Short title.

## DISTRIBUTION.

[See "INTESTATE ESTATES."]

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(A) A similar law being in force in the Colony of the Cape of Good Hope regulations have been proclaimed in this Colony in terms of this section.

## DIVORCE.

*See act. 11/19 20.*

Law No. 13, 1883.

"To amend the Law of Divorce."

[12th November, 1883.]

WHEREAS it is expedient to amend the Law of Divorce :

BE IT THEREFORE ENACTED by the Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows :—

Malicious  
desertion for  
eighteen months  
entitles party to  
divorce.

In proceedings  
by husband,  
damages and  
costs may be  
claimed against  
co-defendant.

Judgment for  
divorce to be  
provisional  
until a day  
named, after  
which it be-  
comes absolute,  
unless Court  
order otherwise  
or Attorney-  
General inter-  
venes.

Marriage of  
spouse during  
provisional  
period invalid.

In the event of  
collusion or  
other sufficient  
cause Clerk of  
the Peace may,  
under direction  
of Attorney-  
General and  
leave of Court,  
intervene.

Court may  
direct action to  
be laid before  
Attorney-  
General to  
determine  
whether he will  
intervene or  
not.

1. No Divorce shall be obtainable on the grounds of malicious desertion (A), unless such desertion shall at the commencement of any suit, the object of which is to obtain such a Divorce, have continued uninterruptedly for eighteen months next before such commencement (B).

2. In proceedings by a husband for Divorce for his wife's adultery, any person with whom such adultery is charged to have been committed may be made a co-defendant, and damages and costs respectively may be claimed against him.

3. Any judgment for Divorce shall be expressed to be provisional until a day to be named therein, and not to be less than three months, nor more than six months, after the date of such judgment being pronounced, but such judgment shall on and after such day become absolute, without further order unless the Court shall have otherwise ordered, or there shall have been such intervention on the part of the Attorney-General as is hereafter in this Law provided for : Provided always that no marriage of either spouse in the action taking place while judgment for Divorce remains provisional shall be valid in Law, though the judgment may subsequently become absolute (C).

4. At any time during the progress of any action of Divorce, or at any time before the judgment for Divorce shall be made or become absolute, any person may give information to any Clerk of the Peace of any matter material to the due decision of the case, who may thereupon take such steps as the Attorney-General may deem necessary ; and if from any such information or otherwise any Clerk of the Peace shall suspect that any parties to the suit are, or have been, acting in collusion for the purpose of obtaining a Divorce contrary to the justice of the case, he may under the direction of the Attorney-General, and leave of the Supreme or Circuit Court, or of a Judge of the Supreme Court, intervene in the suit alleging such case of collusion, or some other sufficient reason sustained by affidavit to the satisfaction of the Court.

5. The Supreme or Circuit Court in which any action for Divorce may be pending, whenever the said Supreme or Circuit Court consider it necessary for the proper disposal of any action for Divorce, or for nullity of marriage, direct (D) that it be laid before the Attorney-General in order that he may determine whether he should direct or order an appearance to be entered in such action.

(A) The question as to what constitutes "desertion" is discussed in *Boyer v. Boyer*, 15 N.L.R. 124.

(B) The summons must set forth the fact that the desertion commenced more than eighteen months before the date thereof (*Roberts v. Roberts*, 7 N.L.R. 128).

(C) It is not necessary, when there has been no intervention, to apply for provisional order to be made absolute,

and no order will be made (*Winter v. Winter*, 7 N.L.R. 107). But see also the later case of *Burton v. Burton*, (14 N.L.R. 53) which appears to be in conflict with the practice established by the earlier decision.

(D) The auxiliary verb appears to have been omitted in the first part of the sentence.

6. Such intervention may be by having entered with the Registrar, and served on the parties in the action who may then be within this Colony or be represented in the action, a statement of the grounds for intervention, and the Court, or any Judge thereof, may appoint a time for proof to be given to establish or repel such grounds, or against the same.

Law 13, 1883.  
Mode of intervention.

7. Costs or expenses shall not be claimable by or against the Attorney-General or the Colonial Revenue in reference to such cases of intervention.

Costs of intervention.

8. The Court may order any costs incurred in such intervention on the part of the Attorney-General to be paid out of the Colonial Revenue, subject to the vote of the Legislative Council.

Attorney-General's costs.

9. After judgment for Divorce, and on the application of any party in the action, or of any other person interested, the Court may alter the terms of any settlement made in connection with the marriage then dissolved, so as out of any property as far as under such settlement the guilty spouse may be interested therein, to make provision for the innocent spouse and the issue of the said marriage, or either or any of them: Provided always that nothing herein contained shall be construed as taking away or lessening any power of the Court of making any order in respect of property in reference to such Divorce.

On application after judgment Court may alter terms of marriage settlement, and make provision for innocent spouse and issue of marriage.

10. Every married woman shall be entitled to retain free from the control of her husband or his creditors any property she may earn or acquire during a period in which she may be deserted by her husband, and on prima facie evidence of desertion such woman shall be entitled to an order of a Judge or Magistrate protecting such property.

Married woman entitled to protection of property acquired during period of desertion.

11. This Law shall be in operation from and after the proclamation in the "GOVERNMENT GAZETTE" of Her Majesty's confirmation thereof or assent thereto (A).

Commencement

**Law No. 18, 1891.**

"To amend Law No. 43 of 1887."

[19th August, 1891.]

WHEREAS it is expedient to amend Law No. 43 of 1887:

BE IT THEREFORE ENACTED by the Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. Nothing in Law No. 43 of 1887 (B) contained shall be construed to disentitle any spouse who has resided in Natal for four years to edictal process for matrimonial relief against his or her wife or husband, if he or she shall have been deserted in Natal for an uninterrupted period of eighteen months, and if the deserting spouse shall be absent from the Colony at the date of the institution of such legal proceedings (C).

Edictal process for matrimonial relief.

2. In case any spouse deserted in the manner stated in Section 1 shall sue his or her husband or wife by edict for matrimonial relief, his or her suit shall not be defeated by any change in the domicile of the deserting spouse following such desertion.

Suit not to be defeated by change of domicile of deserting spouse after desertion.

(A) Proclaimed April 29, 1884.  
(B) Repealed by Act 39, 1896, tit. "COURTS (SUPREME)."  
(C) The application for leave to sue

by edict for divorce on the ground of desertion must aver that the plaintiff has resided in Natal for four years (*Hartley v. Hartley*, 14 N.L.R. 67).



DOGS.

*Document for copy Let 39-1902.*

DOGS.

*Rabies Act 29/03.*

Law No 13, 1874 (A).

“ With regard to trespass on Private Lands.”

[15th January, 1874.]

Dogs found trespassing uncontrolled and without collars may be destroyed.

4. If any dog shall be found trespassing (B) on any farm, estate, land, garden, yard, or premises belonging to any person, corporation, or company, as aforesaid, and at large, without being under the immediate custody, protection, or control of some competent person, or unless such dog shall have a collar round its neck, with the name of its owner (C) thereon, any such dog, whilst so found trespassing and at large, contrary to the provisions of this Law, may be immediately killed or destroyed by the owner, tenant, or occupier of such farm, estate, land, garden, yard, or premises, or by the agent or servant of such owner, tenant, or occupier.

Law No. 27, 1875.

“ For abating the nuisance and damage done to property, occasioned by the great number of Dogs in the Colony of Natal.”

[17th December, 1875.]

WHEREAS the Colony of Natal is infested by great numbers of dogs, which are allowed to go loose at all hours of the day and night, to the great danger and annoyance of passengers and others, and much loss is occasioned to the owners of sheep, poultry and other live stock in the Colony, and it is expedient to provide a remedy for this evil :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows :—

Dog tax.

1. There shall be payable to the Government of Natal for all dogs within the said Colony of Natal, a tax of ~~Five~~ <sup>Five</sup> Shillings per head per annum.

Liability for tax defined.

2. Every person who shall keep or cause to be kept, or have in his possession, care, or charge, any dog or dogs within the said Colony, shall be chargeable with and liable to pay in each and every year during any portion of which he may keep, or cause to be kept, or have in his care or charge, any dog or dogs, for each and every such dog, a tax or sum of ~~Five~~ <sup>Five</sup> Shillings; provided, nevertheless, that all dogs under the age of six months shall be exempted from the operation of this Law.

Dogs under 6 months old exempt.

Governor may authorise destruction of dogs not paid for or registered.

3. It shall be lawful for the Lieutenant-Governor at any time by Proclamation to authorise or direct the destruction of any or all dogs for which the aforesaid tax shall not have been duly paid, or of any dogs which, if any registration thereof shall have been by any such Proclamation required, shall not have been duly registered in accordance with any such Proclamation.

(A) See this Law at length, tit. “TRESPASS.”

(B) As to the right to kill “in quick pursuit,” see judgment of Connor, C.J., in *Raw v. Clerk of Peace*, P.M.B., 5 N.L.R. 292.

(C) In *Cuthbert v. North* (2 N.L.R.

178) the dog had a collar, but without a name on it. And see Act 25, 1899, tit. “TRESPASS,” which adds the words “legibly engraved or painted in English letters,” and amends this Law with regard to dogs found worrying sheep, pursuing game, &c.

4. It shall be lawful for the Lieutenant-Governor from time to time, and at any time, by and with the advice of his Executive Council, to frame and issue by Proclamation such rules and regulations as he may think best as to the time and payment of, and the manner or mode of collection of, the tax imposed by this Law, and of issuing licenses for the same, and as to any required registration of dogs thereunder, and to appoint any officers or other persons for the collection thereof; and to impose by such rules or regulations any penalties not exceeding Three Pounds, on every person failing to comply with this Law, or with any such rules or regulations, and for all other matters and things which may be requisite or necessary in order to give full force and effect to the provisions of this Law.

Law 27, 1875.

And with advice of Executive Council may make rules, &c.,

*Amel.* 12 -

And appoint collectors, " 66 - 1

And impose penalties.

5. The aforesaid tax on dogs charged and made payable under the provisions of this Law within any corporate borough shall be collected by the officers of the corporation of such borough, and shall form a portion of the borough fund; provided, however, that the Town Council of any corporate borough shall be subject to any rules or regulations proclaimed by the Lieutenant-Governor by virtue of this Law in respect thereto (A).

In boroughs the tax to be collected by corporation officers, and paid to borough fund.

6. In suing for damages for injury done to horses, cattle, goats, sheep, poultry or other live stock by dogs, it shall not be necessary for the person seeking such damages to show a previous mischievous propensity in the dog or dogs causing the injury, or the owner's knowledge of such previous mischievous propensity, or that the injury was attributable to neglect on the part of such owner.

Evidence in damages done by dogs.

7. The occupier of any house or premises and the headman of any Native kraal where any dog is kept or permitted to live or remain shall be deemed to be the owner of such dog for the purposes of this Law, unless the said occupier or headman can prove that he is not the owner of such dog, and that such dog was kept or permitted to live or remain in the said house, or premises, or Native kraal, without his sanction or knowledge.

Ownership of dog defined for purposes of this Law.

8. Every person having in his possession or custody any dog or dogs shall produce the license for such dog or dogs whenever so required by any Resident Magistrate, Field-Cornet, Police Constable, or owner or occupier of the farm on which such person resides, and shall in case of neglect or refusal, if licensed, be liable to a penalty of Five Shillings, or in default of payment be imprisoned for any period not exceeding seven days.

Owner of dog to produce license when required.

9. This Law shall be in force and extend only to such divisions, counties, or districts as the Lieutenant-Governor, by and with the advice of his Executive Council, shall by Proclamation declare to be under the operation of the Law, and the Lieutenant-Governor, by and with the advice of the Executive Council, may from time to time exempt, by Proclamation, any division, county, or district from the operation of this Law, and may from time to time include within the operation hereof any division, county, or district as may from time to time be found expedient (B).

Operation of this Law.

*Proc. 5 July 1875*

10. This Law shall have effect from the promulgation thereof in the "GOVERNMENT GAZETTE" (C).

Commencement

(A) See Law 39, 1884, s. 10, tit. "TOWNSHIPS," enabling Local Boards to collect and apply the tax in a similar manner.

(B) This Law applies to the whole of the Colony.

(C) Nov. 28, 1876.

**Law No. 12, 1893.**

“To provide for the destruction of dogs abandoned at inland borders of Natal during the currency of a certain Proclamation prohibiting the importation of dogs.”

[23rd June, 1893.]

WHEREAS by Law No. 13 of 1866 (A) it is amongst other things enacted that the Governor in Council may, by Proclamation, prohibit the importation of live stock of any or all kinds into Natal by sea or land :

AND WHEREAS by a Proclamation dated the 15th day of May, 1893, the Governor in Council did prohibit the importation into Natal by sea or land of dogs from any place beyond this Colony :

AND WHEREAS by reason of such Proclamation, dogs may be abandoned by their owners at the inland borders of Natal, and it is expedient to provide for the destruction of such dogs :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. Any dogs which shall be brought to an inland border of Natal, during the currency of the above-recited Proclamation, and which shall by reason of the prohibition in the said Proclamation be stopped from proceeding further into Natal, and shall be there abandoned, or shall not at once be removed by their owners, or the persons having charge of them, away from the border out of Natal, and any dogs which shall stray untended over the border into Natal during the currency of the said Proclamation, may be taken and immediately destroyed by any Field-Cornet, Constable, or Mounted Policeman. Such dogs may also be destroyed by any person thereto authorised by the Resident Magistrate of the Division, or acting under the orders of a Field-Cornet or Constable.

Destruction of dogs at inland border during currency of Proclamation of 15th May, 1893.

**DRUGS.**

[See “MEDICAL PRACTITIONERS,” and as to Adulteration see “MUNICIPAL CORPORATIONS.”]

**DRUNKENNESS.**

[See “INTOXICATING LIQUORS.”]

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(A) See tit. “ANIMALS (DISEASES).”

## DUNDEE LOCAL BOARD.

Act No. 33, 1897.

*See Act. 21/03.*

“To enable the Dundee Local Board to borrow a sum not exceeding Ten Thousand Pounds, for the purpose of supplying the Township of Dundee with water; to construct the necessary works for such purpose; to levy a water rate; and to prevent the pollution of water.”

[29th May, 1897.]

WHEREAS it is expedient to authorise the Local Board for the Township of Dundee to borrow a sum not exceeding Ten Thousand Pounds to enable the said Board to supply the Township of Dundee with water; to construct the necessary works for such purpose; and to levy a water rate; and to prevent the pollution of water; and to exercise all powers necessary for the purposes aforesaid:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of the Colony of Natal, as follows:—

1. This Act may be cited as “Dundee Loan and Waterworks Act, 1897.”

Short title.

2. The Local Board for the Township of Dundee is hereby authorised to borrow from time to time the moneys required for the construction of Waterworks for the Township of Dundee to an amount not exceeding Ten Thousand Pounds Sterling.

Local Board authorised to borrow for Waterworks.

3. The moneys borrowed under this Act shall be applied to the object mentioned in the last preceding section, and no other object.

Application of moneys.

4. The sums authorised to be borrowed under this Act and the interest payable thereon, shall be a charge upon the rates, rents, and revenues of the Township of Dundee.

Loan to be a charge on rates, &amp;c.

5. In case the interest payable on any moneys borrowed under this Act shall be in arrear and unpaid for thirty days after the time appointed for the payment thereof, it shall be lawful for the Supreme Court of the Colony of Natal, at the instance of any person whose interest shall be in arrear, and as often as such default shall occur, to cause a special rate to be levied upon the real or immovable property situate within the Township of Dundee, which is now or may hereafter be liable to be rated for Township purposes under any Law or Act now or hereafter to be in force in the Colony of Natal, to the intent that all arrear interest may be paid out of the proceeds of such special rate.

Special rate leviable in case of failure to pay interest.

6. The moneys borrowed under this Act shall be repayable within thirty years from the date of borrowing.

Repayment.

7. In case any moneys borrowed under this Act shall not be repaid upon demand at or after the date fixed for the payment thereof, it shall be lawful for the Supreme Court, as often as such default shall occur, and at the instance of any person whose claim shall be unsatisfied, to cause a sale or sales to be made of so much of the town lands of the township as may be necessary for the purpose of raising and paying the moneys due and payable under this Act, and in case the moneys received by such land sales shall be insufficient to pay and satisfy all moneys due and payable, then the deficiency shall be made good by a special rate or special rates to be levied in the manner hereinbefore provided with respect to the payment of arrear interest.

Sale of town lands and levy of special rate in case of failure to pay principal.

8. The moneys hereby authorised to be borrowed may be raised upon debentures or stock, to be called “Dundee Local Board Stock,” and hereinafter referred to by the word “Stock.”

Loan may be raised by debentures or stock.

T

Act 33, 1897.  
Interest on debentures or stock.

9. Such debentures or stock shall bear interest at a rate not exceeding four (A) per centum per annum, falling due on the 30th day of June and on the 31st day of December in each year and payable out of the rents, rates, and revenues of the Township, or out of the proceeds of the sales of land, and payment thereof shall be made by the Town Clerk.

Rules and Regulations.

10. The Local Board of Dundee may, from time to time, make rules and regulations providing for all or any of the following things:—

- (a) For registering Stock in the books to be kept for that purpose by the said Town Clerk;
- (b) For managing the creation, registration, issue, and transfer of Stock;
- (c) For paying interest on Stock;
- (d) For issuing Stock Certificates.

Incorporation of Lands Clauses Law.

11. For the purpose of the construction of the works authorised by this Act, the Lands Clauses Consolidation Law, 1872, and all the provisions thereof, shall be incorporated with this Act, save in so far as expressly varied by this Act.

Power to purchase and take lands.

12. The Local Board for the Township of Dundee may purchase or take such lands as may be required for the purposes of the works and undertakings authorised by this Act.

Confirmation of contract in Schedule.

13. The Contract between Charles George Willson and Samuel Bromley Kemp, the registered owners of the farms "Berning" and "Craigie Burn," of the one part, and the Dundee Local Board of the other part, entered into on the 4th day of May, 1897, and whereof a copy is printed as a Schedule to this Act, shall be and the same is hereby confirmed and validated.

Authority to construct necessary works.

14. The Local Board for the Township of Dundee is authorised to construct all works, and to do all things necessary for damming up the water upon the farms "Berning" and "Craigie Burn," in the Dundee Division of the County of Klip River, and for making reservoirs, filter-beds, and surface tanks, and for laying water pipes through the said farms "Berning" and "Craigie Burn," and through the Crown Lands and Town Lands and the Township of Dundee, and for leading water through such pipes, and for storing water on or near to the Town Lands of the Township of Dundee, and for distributing water through such portions of the Township as the Local Board may, from time to time, determine to bring within the water area, and to make such works, and to do and perform all such further and other acts, deeds, matters, and things as may be necessary for the due carrying out of the objects of this Act.

Plan of works.

15. The site upon which the said water shall be dammed and the route of the water pipes shall follow as near as may be the line laid down in the map or chart filed with the Clerk of the Legislative Assembly and in the Local Board Office in Dundee.

Compensation for damage.

16. If the taking, impounding, diversion, appropriation, or conveyance of water under the authority of this Act shall deprive any person other than the said Charles George Willson and Samuel Bromley Kemp, or their successors in title, as owners of "Berning" and "Craigie Burn," of any water or right of water which he may at the time of such taking, impounding, diversion, appropriation, or conveyance of water, possess, or be entitled to possess, and shall thereby cause damage to such person or to his property, such person shall be entitled to recompense or compensation, to be settled in case of difference as if the claim constituted damage to land within the meaning of the 65th section of the Lands Clauses Consolidation Law.

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(A) "Six" is substituted for "Four" by Act 4, 1898, post.

See Act 21/1903 Sec. 13  
" " " " " 20.

DUNDEE LOCAL BOARD.

\*17. The Local Board for the Township of Dundee ~~may from time to time levy a water rate not exceeding twopence halfpenny in the £ Sterling upon any portion of the immovable property situate within the Township, and liable to be rated under any Law or Act now or hereafter to be in force in the Colony of Natal: Provided that no property shall be liable to be rated unless the nearest point thereof shall be situate within 220 yards of the nearest point of the water system.~~

Act 33, 1897.

Levy of a water rate authorised.

*Ord. 19/22 is repealed.*

18. For the purpose of the water rates authorised by this Act, Sections 38, 39 43, 44, 47, and 48 of Law No. 11 of 1881, and Sections 12, 13, and 14 of Law No. 39 of 1884, and Section 9 of Law No. 17 of 1893, shall be construed conjointly with this Act (A).

Joint construction of Laws.

19. The power to make bye-laws given to Local Boards under any Law or Act now or hereafter to be in force in the Colony of Natal is extended to the Local Board for the Township of Dundee for all the purposes of this Act, but such power is specially extended so as to enable the said Board to make bye-laws:—

Power to make bye-laws.

- (a) To prevent the pollution of any water required or authorised to be used under this Act;
- (b) To prevent the obstruction of any person in the discharge of his duty in connection with the Waterworks hereby authorised;
- (c) To prevent the doing of any act or thing likely to cause damage to the said Waterworks or any portion thereof.

Any person convicted of any breach of any such bye-law shall be liable to a penalty for each offence not exceeding Ten Pounds Sterling, or in default of payment, to imprisonment with or without hard labour, for any period not exceeding one month. Any fine inflicted under the provisions of this Act shall be payable into and form part of the revenue of the Township. Any person charged with contravening any such bye-law may be prosecuted in the Court of the Magistrate having jurisdiction by any officer appointed for that purpose by the Local Board for the Township of Dundee.

Penalties.

Disposal of fines.

Prosecutions.

20. The Local Board for the Township of Dundee may regulate and control the mode of supplying water to private property, and may frame a tariff of charges in respect of such supply, and may also frame a tariff of special charges for any special consumption of water other than for domestic or household use, and may contract with the Natal Government for the supply of water for the use of the Government, and may contract for the supply of water to persons or corporations residing within or without the Township boundaries.

Board may regulate supply of water to private property and fix charges therefor.

21. The said Local Board, by its proper officers, shall have the right of access into private houses or on to private lands for the purpose of inspecting pipes, meters, and cisterns, provided no such right shall be exercised against the wish of a householder, except between the hours of 9 o'clock in the forenoon and 4 o'clock in the afternoon, and then only in pursuance of a notice in writing, to be delivered upon the premises not less than 24 nor more than 48 hours before the inspection.

Right of access to houses and lands for purposes of inspection.

22. This Act shall commence and take effect from and after the promulgation thereof in the " NATAL GOVERNMENT GAZETTE " (B).

Commencement

SCHEDULE. (c)  
Agreement.

Know all men whom it may concern—

That on this the fourth day of May, in the year of Our Lord One Thousand Eight Hundred and Ninety-Seven, before me, Frederick Spence Tatham, of Pietermaritzburg, in the Colony of Natal, notary public by the

(A) See " TOWNSHIPS."

(B) June 1, 1897.

Act 33, 1897. authority of Government, duly sworn and admitted, and in the presence of the subscribed witnesses, personally came and appeared Herbert William Wilkes, of Pietermaritzburg, solicitor (hereinafter called the appearer of the first part), he being duly authorised thereto by a power of attorney, which is hereto annexed, made and signed by Charles George Willson, of Dundee, in the Colony of Natal, gentleman, at Dundee, the 27th day of April, 1897, and by Samuel Bromley Kemp, of Volksrust, in the South African Republic, gentleman, at Volksrust, the 29th day of April, 1897, for themselves, their heirs, executors, administrators, assigns, or successors in title, and John Deane, of Pietermaritzburg, articulated clerk (hereinafter called the appearer of the second part), he being duly authorised by a power of attorney, which is hereto annexed, dated the 27th day of April, 1897, and executed by Charles George Willson and Francis John Birkett, in their capacities as Chairman and Town Clerk of the Local Board of the Township of Dundee :

And these appearers duly authorised as aforesaid, declared that whereas the principals of the appearer of the first part are the owners of the farms "Berning," in extent 1,019 acres, 3 roods, 7 perches, and "Craigie Burn," in extent 2,852 acres, 604.5 square yards, both situate in the Division of Dundee, Colony of Natal :

And whereas the principals of the appearer of the first part have agreed with the principals of the appearer of the second part, in their said capacity, to allow the said Local Board to obtain water and lay down mains from either or both of the two streams rising on the Impati Hill (Crown Lands), and running through the farms "Berning" and "Craigie Burn," for the purposes and upon the conditions hereinafter set out ; and whereas it is expedient that the said Agreement should be reduced to writing :

Now, therefore, these Presents witness :

1. The principals of the appearer of the second part shall be entitled to obtain and lead from either or both of the two streams rising on the Impati Hill (Crown Lands), and running through the farms "Berning" and "Craigie Burn," such water as the Local Board for Dundee may deem necessary for the purpose of creating and maintaining a constant and sufficient water supply for the use and benefit of the inhabitants of the said Township of Dundee, and such water may be collected, obtained, and led away at any point or points to be selected by the principals of the appearer of the second part.

2. For the purpose of enabling the principals of the appearer of the second part to obtain and lead the water as aforesaid, the principals of the appearer of the second part shall be entitled in perpetuity at all times to enter upon the respective farms, and to lay down, make, construct, and equip and maintain all such pipes, mains, buildings, excavations, and works as shall in their sole and absolute discretion be necessary, with power to construct dams or reservoirs for diverting or impounding the water, and from time to time to destroy the same or alter or re-construct the same, or to construct new works and to take material from either or both of the said farms for the purpose.

3. The principals of the appearer of the second part shall be entitled to construct and maintain all such dams, earthworks, reservoirs, excavations, or other works, and to erect such machinery, plant, and appurtenances thereto as may be necessary to enable them to collect, impound, lead, or carry away such water as shall be required for the purpose aforesaid.

4. The principals of the appearer of the second part shall be entitled at all times, by themselves or their servants, or any person or persons employed by them, whether under contract or otherwise, to enter upon

the said farms for the purpose of inspecting, repairing, maintaining, or protecting all works constructed by them on the said farms. Act 33, 1897.

5. In the event of the water flowing in the said streams falling below the quantity required for the supplies contemplated by this Agreement, the principals of the appearer of the second part shall divert water from the stream which flows on the north-east side of the valley, near to Mr. P. Smith's (junior) farm, into the main stream, by means of a suitable pipe, and shall cause the water so diverted to flow into the main stream at a point above where the present water supply for the homestead on the farm "Craigie Burn" now leaves the main stream. For the purposes of this clause, the principals of the appearer of the second part are hereby clothed with all the powers and authorities conferred upon them by this Agreement.

6. The principals of the appearer of the second part shall pay to the principals of the appearer of the first part for the rights and privileges hereby conferred the sum of Twelve Pounds Sterling per annum payable in advance on the first day of July in each year, beginning the first day of July, 1897, and payable so long as the principals of the appearer of the second part shall exercise any of the rights with respect to the said farms hereby conferred.

7. The principals of the appearer of the first part shall, should they at any time hereafter lay out building sites in blocks of erven not exceeding one acre in extent, for each erf on the farm "Craigie Burn," take a supply of water from the water pipes, which the principals of the appearer of the second part shall be bound to lay down for the use and benefit of the owners and occupants of such building lots, not exceeding 500 in number (the position being defined by the diagram hereto annexed), and in the event of their so doing, the principals of the appearer of the first part and their successors in title shall pay to the Local Board of Dundee annually a sum equal to a water rate upon the same basis and not exceeding the water rate for the time being levied upon erf-holders in the said Township of Dundee, and the principals of the appearer of the first part covenant and agree in the event of their selling or disposing of any portion or portions or the whole of the said erven that any such sale or disposition shall be made subject to the transferee accepting, in writing, the provisions of this clause, which shall be embodied in the title deed of such transferee and his successors in title as a perpetual servitude and so as to constitute a liability upon the subsequent owner or owners for the payment of such rates. The supply of water contemplated under this clause shall be regulated by the Board so as to furnish to the said contemplated building sites a supply proportionate to that supplied to the Township of Dundee, such proportion to be regulated by the extent of the respective populations served, but so as at all times to furnish a supply to the Township of Dundee sufficient for the use of the inhabitants thereof.

8. The principals of the appearer of the first part shall be entitled to lead water for domestic purposes only at their own expense from the said mains to the present homestead situate upon the farms, by means of one pipe not to exceed 1 inch in diameter, but not so as to cause any injury to the works of the principals of the appearer of the second part, and the said Local Board shall not be entitled to levy any rate or make any charge in respect of the water so led away.

9. The rights and privileges conferred upon the principals of the appearer of the first part by the last two preceding clauses are hereby expressly declared to be granted subject to the right of the Local Board to supervise and control all works executed thereunder, and all piping, stopcocks, and other materials and other appliances used in that connection shall, should the said Local Board so desire, be approved by the said Local Board prior to the execution of the work.



Act 33, 1897.

The principals of the appearer of the first part shall not waste or suffer to be wasted any of the water taken from the mains under the said two preceding clauses, and should any leakage occur in any of the works executed under Clause 8 hereof the principals of the appearer of the first part shall be obliged to repair the same forthwith.

In all respects, and so far as may be allowable, the supply of water granted to the principals of the appearer of the first part under the preceding Clause 7 hereof shall be subject to the provisions of the Laws 11 of 1881, 39 of 1884, 17 of 1893, and 31 of 1896 (Natal), and all amendments thereof.

10. The principals of the appearer of the second part shall be entitled at all times to stop temporarily the supply of water during repairs, or for other necessary cause.

11. In order the more effectually to secure the due performance hereof, these presents shall be registered in the office of the Registrar of Deeds of the Colony of Natal, and such endorsements made on the title deeds or diagrams of the said farms as may be expedient.

12. The rights hereby conferred shall be a perpetual servitude upon the said farms, and shall bind all subsequent owners thereof, and shall operate in favour of the principals of the appearer of the second part, and their successors in office.

13. Nothing herein contained shall be taken to mean or imply that the principals of the appearer of the second part shall be obliged to execute or maintain the said works or any portion thereof.

14. All costs in connection with the preparation and registration of these presents shall be borne and discharged by the principals of the appearer of the second part.

In witness whereof the Appearers have, together with me the Notary, and in the presence of the subscribed witnesses, hereunto set their hands, the day, month, and year first hereinbefore written, at Pietermaritzburg aforesaid.

H. W. WILKES, q.q. C. G. WILLSON.  
H. W. WILKES, q.q. S. B. KEMP.  
J. DEANE, q.q. Chairman,  
J. DEANE, q.q. Town Clerk,  
Dundee Local Board.  
Quod Attestor,  
F. S. TATHAM,  
Notary Public.

As Witnesses :

A. PATERSON, (L.S.)  
G. P. STEAD,

*Sum of 25,000 and 21. 1903*  
*5000 13. 1905*  
Act No. 4, 1898.

“To amend the Dundee Loan and Waterworks Act, 1897,”

[21st January, 1898.]

WHEREAS it is expedient to amend the “Dundee Loan and Waterworks Act, 1897” :

BE IT THEREFORE ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of the Colony of Natal, as follows :—

1. Section 9 of the “Dundee Loan and Waterworks Act, 1897,” shall be and the same is hereby amended by substituting the word “Six” for the word “Four,” occurring therein.

*Dundee (amended) Act 33/04*

## DURBAN BOTANIC SOCIETY.

## Law No. 21, 1883.

“To incorporate the Durban Botanic Society.”

[12th November, 1883.]

WHEREAS it is expedient to incorporate the Members of the Natal Agricultural and Horticultural Society under the name of the Durban Botanic Society, and to define the powers of the Society, and to enable it to borrow certain moneys upon the security of its lands :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. The members of the Durban Agricultural and Horticultural Society shall be, and they are hereby constituted a Corporation under the name of “The Durban Botanic Society,” with perpetual succession, save as hereinafter provided, and shall sue and be sued in its corporate name.

Incorporation of Society.

2. In case the yearly subscriptions and donations, exclusive of the Government aid, shall for a period of three successive years fall below the sum of £150, the said Society shall cease to be a Corporation, and thereupon the Lands of the Corporation, subject to any debt of the Corporation which may be registered against the land, shall vest in the Government of Natal as public property.

Conditions under which Society ceases to be a Corporation and lands vest in Government.

3. The Registrar of Deeds is authorised to transfer to the Society, under its corporate name, free of duty, the Lands the subject of the Deed of Grant in freehold, of date 8th September, 1854, being a grant unto Joachim Frederick Kahts and Alfred Winter Evans as Trustees of the Natal Agricultural and Horticultural Society of fifty acres of ground near the town of Durban, as more fully described in the Diagram annexed to the said Deed. And the Society shall concurrently transfer for the purpose of the Natal Observatory an area not exceeding two acres into such names as may be given for the purpose by the Colonial Government.

Lands to be transferred from original Trustees to Society free of duty.

Society to transfer certain land to Natal Observatory.

4. The objects of the said Society shall be the maintenance of Botanic Gardens for the introduction, cultivation, propagation and distribution of plants of every climate.

Objects of Society.

5. The business of the said Society shall be managed by a committee of nine persons inclusive of the Mayor of Durban, who shall have a seat in committee by virtue of his office. It shall be lawful for the Governor, should he see fit, to appoint at any time, and for such time as he may name in the letter of appointment, two persons to be members of the said committee, and six members shall be appointed by the members of the Society; provided that any agricultural association in the Colony shall have the power to nominate any person as an additional member of committee. The first committee to be elected by the members shall be appointed at a meeting of members to be held in Durban within one month after the passing of this Law. Every person who shall pay a yearly subscription of one guinea shall be a member of the Society for the year in respect of which such subscription is paid. Contributors of a sum of (£10 10s.) Ten Guineas shall be life members; and the Committee shall have power to appoint as honorary member any person who shall render service to the cause of agriculture or horticulture in or out of the Colony. The Committee shall have power to make By-Laws for the regulation of their own proceedings, to maintain order in the Gardens, to protect the property of the Society, to regulate the use of the Gardens

Affairs of Society to be managed by a Committee.  
Constitution of Committee.

Qualification of Members of Society.

Committee to make By-laws, subject to approval of Governor in Council.

- Law 21, 1883.** by the public, and to prevent any misconduct in the Gardens. Any person who shall contravene any By-Law may, on conviction thereof before the Resident Magistrate of Durban, at the instance of any person appointed to prosecute on behalf of the Society, be liable to a fine not exceeding Five Pounds. No By-Law shall have effect until approved by the Governor of Natal in Council, and published in the "NATAL GOVERNMENT GAZETTE," and once at least in two newspapers of Durban.
- Penalty for contravening By-laws.**
- Confirmation and publication.**
- Liability of Members.**
- Committee may borrow £1,500 for permanent improvements.**
- Appointment of officers.**
- Committee may enter into certain agreements.**
- Committee to transmit to Colonial Secretary yearly report and financial statement.**
- Governor may appoint Inspector to report on Society's Gardens.**
- Commencement**
6. No person shall incur any liability by reason of his membership in the Society beyond any unpaid subscription for which he may be liable.
7. The committee, with the prior consent of the Governor in Council, may borrow such money upon the security of the lands of the Society as may be necessary for defraying the cost of permanent improvements made, and about to be made, in and about the grounds not exceeding £1,500.
8. The committee may engage and discharge a curator, secretary, assistants, and necessary labourers.
9. The committee may enter into agreements with the Natal Government and the Durban Corporation for the appropriation of agreed portions of the lands of the Society for public or municipal purposes.
10. It shall be the duty of the committee to transmit to the Colonial Secretary for the information of the Legislative Council in each year a report and financial statement, and a report from the Curator made up to a date as nearly as possible within one month of the commencement of each session of the Legislative Council.
11. The Governor may at any time appoint an Inspector for the purpose of inspecting and reporting on the Gardens, and such Inspector shall have the right of access to every part of the Gardens and to all the records of the Society.
12. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A).

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(A) Nov. 13, 1883.

## DURBAN CHAMBER OF COMMERCE.

Law No. 31, 1884.

“To incorporate the members of the Natal Chamber of Commerce under the name of the Durban Chamber of Commerce.”

[8th November, 1884.]

WHEREAS in the Year One Thousand Eight Hundred and Fifty-six, there was formed in Durban, and now exists, an Association of persons engaged in Mercantile and Commercial pursuits called the “Natal Chamber of Commerce,” having for its objects the promotion and protection of the trade and commerce of Natal, and the development of the general industrial resources of this Colony :

AND WHEREAS it is expedient to incorporate the members of the said Association to enable it the more effectually to carry out its objects, and to hold, transfer, mortgage, and otherwise deal with immovable property in this Colony in its corporate name :

BE IT THEREFORE ENACTED by the Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows :—

1. The members of the Natal Chamber of Commerce and future members of the Durban Chamber of Commerce shall be, and are hereby incorporated, and declared a body corporate under the name and title of the Durban Chamber of Commerce for the purpose of assisting in the promotion and protection of the trade and commerce and in the development of the general industrial resources of this Colony, and the Chamber hereby incorporated shall by the name and title of the Durban Chamber of Commerce have perpetual succession in Law, and shall have and use a common seal, and have its office in Durban : Provided that in case in any year the subscriptions for the year actually paid by Members shall fall below the sum of Two Hundred Pounds, the said Chamber shall ipso facto cease to be incorporated, as from the first of January in the next year.

Incorporation of Durban Chamber of Commerce.

Condition under which incorporation shall cease.

2. That the said Chamber shall and may in its corporate name sue and be sued in any competent Court, and service of any notice or process at the office or last known office of the said Chamber shall be deemed good service upon the said Chamber.

Chamber may be sued in its corporate name.

3. That the said Chamber shall and may in its corporate name hold, acquire, and enjoy immovable property in this Colony under freehold, leasehold, or other tenure, and shall and may from time to time sell, transfer, mortgage, charge, exchange, or lease the same : Provided always that all acts, deeds of transfer, leases, mortgages, and other bonds and deeds required to be registered by the Registrar of Deeds of this Colony shall contain a reference to this Law and shall be passed by the Chairman for the time being of the said Chamber when duly authorised thereto by the committee of the said Chamber under the common seal thereof, or by his attorney duly authorised in that behalf.

Chamber may acquire and hold immovable property in the Colony under its corporate name.

4. 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 of the current year.

Liability of Members in respect of debts.

5. The said Chamber shall have power to make, rescind, and alter rules and regulations for the admission and expulsion of its members, and for the management and control of its affairs, and until any new rules and regulations shall have been framed and adopted, the existing rules and regulations of the Natal Chamber of Commerce shall be and

Chamber may make rules and regulations.

**Law 31, 1884.** continue in force as if they were rules of the Durban Chamber of Commerce hereby incorporated and all members now holding office in the Natal Chamber of Commerce shall continue to hold the same offices under the Durban Chamber of Commerce hereby incorporated.

How Chamber  
may be  
described in  
criminal pro-  
ceedings.

6. In any criminal prosecution, preliminary enquiry or proceeding or in any warrant, indictment, or other proceeding at law, it shall be sufficient if any goods or other things which shall or may be set out in any such indictment, warrant or other proceeding shall be described and said to be the property of the Chamber and the Chamber shall be described therein by its corporate name.

Commencement

7. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" of the Colony (A).

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(A) Nov. 11, 1884.

DURBAN COLLEGIATE INSTITUTION.

Law No. 19, 1861 (A). *Repealed Act 41/03 Sec. 1*

“ For Establishing, Regulating, and Providing for the Durban Collegiate Institution.”

[16th August, 1861.]

WHEREAS it is expedient, for the advancement of learning in this Colony, to establish a Collegiate Institution at Durban :

AND WHEREAS George Christopher Cato, Savery Pinsent, George Winder, Samuel Beningfield, and Robert Nimmo, have been appointed Trustees for the said intended Collegiate Institution, and certain lands are intended to be granted to the said Trustees for the endowment, erection, and maintenance thereof; and whereas it is expedient that a Law should be passed for carrying into effect such and other purposes, and for making more efficient provision for said Collegiate Institution and for the management thereof :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of the Colony of Natal, by and with the advice and consent of the Legislative Council thereof, as follows :

1. That the lands, funds, property, and revenue belonging to the said Collegiate Institution shall be vested in, and administered by, the said trustees, George Christopher Cato, Savery Pinsent, George Winder, Samuel Beningfield, and Robert Nimmo, who shall superintend and conduct the affairs of said College, subject to the limitations and provisions hereinafter contained, and in manner hereinafter provided; and shall continue as such Trustees until others be appointed to perform the trusts and fill the office in manner hereinafter set forth (B). Provided always, that in case any one or more of the before-named Trustees shall die, resign, or leave the Colony for a period exceeding four months, it shall be competent for the Lieutenant Governor to nominate a Trustee or Trustees, as the case may be, to fill any vacancy or vacancies caused as aforesaid.

Lands, funds, property and revenue to be vested in and administered by Trustees.

2. Provided always, that if at the time appointed for the election of the said Trustees the number of votes on the Voters' Register shall amount to and consist of less than one hundred votes, then the donors and subscribers shall be entitled only to elect one Trustee for each twenty votes, and the Lieutenant Governor and Mayor shall be entitled to nominate by rotation any deficiency in the number of elected Trustees, or all the Trustees in case there shall not be twenty votes on Voters' Register. Provided that when at the annual appointment of Trustees in the stead of retiring Trustees the number of voters on the Voters' Register shall not amount to fifty votes, then if both the retiring Trustees be elected Trustees, the Lieutenant Governor and Mayor may in rotation nominate one of the new Trustees. Provided also, that if the number of votes on said Register should amount to one hundred on any subsequent appointment, whether the retiring Trustees be nominated or not, the said voters shall elect the two new Trustees until the number of elected Trustees be five.

Donors and subscribers entitled to elect one Trustee for each twenty votes, Governor and Mayor to nominate remainder.

3. The Trustees for the time being shall stand seized, and be possessed of, and be entitled to, all the land sites and other property, im-

Powers of the Trustees.

(A) This Law is very largely modified by Law 12, 1891, post.

(B) The trusts now vest in the Governor in Council. See Act 5, 1894, tit. "EDUCATION."

**Law 19, 1861.** movable and movable, and all moneys, donations, subscriptions, fees and other dues already conveyed, granted, or given, or which hereafter may be conveyed, granted, or given to or on behalf of the said Collegiate Institution, in trust to erect, build, purchase, to hire, upon lease or otherwise, suitable buildings or premises for said Collegiate Institution, and to make such repairs as may be necessary from time to time, to enlarge and otherwise to increase and improve the accommodation of said Collegiate Institution from time to time, and at all times to appoint and dismiss the Principal and Masters, and all other officers and servants of said Collegiate Institution, to determine, to regulate, and fix and pay the salaries to the same respectively, and from time to time, and at all times, to diminish, increase or alter the same, to found or erect scholarships, to determine and fix upon the number of pupils to be admitted, and the mode or manner in which pupils are to be admitted, to accept such donations for the purpose of special scholarships, as they may deem advisable to regulate and authorize all disbursements out of the College funds, and generally to make such rules, bye-laws, and regulations for the due and efficient management, conducting, regulation, and supervision of the same as may be necessary and requisite, and from time to time to alter, repeal, or amend the same.

Records to be kept. Half-yearly statements and report to be forwarded to Colonial Secretary.

Trustees may sell, mortgage, or lease lands.

How long said Trustees to remain in office.

Mode of electing others in their stead.

4. The said Trustees shall cause true and correct records to be kept of all its proceedings, and true and correct accounts of all moneys received and expended on behalf and account of said Collegiate Institution, and shall transmit to the Colonial Secretary, for the information of the Governor, a statement of the revenue and expenditure during the past year, and a general report of the state and affairs of the said Collegiate Institution.

5. It shall and may be lawful for the said Trustees to sell, or exchange, or mortgage, or lease, any lands now, or which at any time hereafter may be vested in the said Trustees aforesaid, and to apply the proceeds or price of the lands so sold for any of the purposes connected with the said Collegiate Institution, for which they are empowered to act under the provisions of this Law.

6. The said Trustees, George Christopher Cato, Savery Pinsent, George Winder, Samuel Beningfield, and Robert Nimmo, shall remain in office until the first Thursday in June, 1862, and thenceforth until some other Trustees be appointed in their stead, and at the general half-yearly meeting which shall be held on the first Thursday of December, 1862, the said Trustees shall vacate their office, and other Trustees shall be elected in manner following. The Lieutenant Governor shall nominate one person, the Mayor of Durban shall nominate one person, and the subscribers and donors to said Collegiate Institution shall elect by vote five other persons, to be Trustees in the room and stead of the Trustees so already appointed. A list of the said Trustees shall be made up, and their seniority determined by lot, and the Trustees who stand lowest upon the list shall retire at the half-yearly meeting to be held on the first Thursday in December, 1863, and if the Trustees, or one of them, be a Trustee nominate, then the Lieutenant Governor, or the Mayor of Durban, as the case may be, or both, may nominate the retiring Trustee or some other person to fill the said office, or, if elected Trustees or Trustee, the subscribers and donors shall elect by vote two new Trustees or one new Trustee, as the case may be, in the place or stead of them or him so retiring, and in the same manner at each successive half-yearly meeting on the first Thursday in the month of December, the two Trustees at the foot of the list shall retire, and the Governor, or Mayor of Durban, or the subscribers and donors, in manner hereinbefore mentioned, shall nominate or elect two persons to be Trustees in the place and stead of those so retiring. Provided always, that any Trustee so retiring as aforesaid shall be eligible for renomination or re-election.

7. In the event of the death, incapacity to act, removal, or resignation of any Trustee, the same proceedings shall be had therein, within two months after the vacancy occurs, for the nomination or election of another Trustee as in last preceding section is mentioned, and when occasion may require a general meeting called for that purpose, and the Trustee then nominated or elected shall continue as Trustee until the period for which the Trustee so vacating, in any of the cases aforesaid, would otherwise have remained in office, and no longer.

Law 19, 1861.

Vacancy by death or otherwise, how filled.

8. Any Trustee who shall resign, retire, become disqualified, or be removed, shall nevertheless remain responsible and liable for any act performed by him as such Trustee, or done under pretence of his office as Trustee, for a period of five years from the time he may, from any of the reasons aforesaid, cease to be a Trustee.

Trustees to remain responsible for five years after retirement.

9. The Trustees shall hold general meetings every year on the first Thursday in June and December, and shall hold monthly meetings on the first Thursday in every month, and the said Trustees shall meet at any time when required by a notice in writing signed by the chairman, and delivered to each Trustee not later than twenty days previous to the time of meeting appointed, and the chairman shall, and is hereby required, to call a meeting of Trustees in like manner within ten days after being thereto required by a requisition signed by no less than three Trustees, setting forth the purpose for which the same is to be held, and it shall and may be lawful for the Trustees to adjourn any meeting to a future day, and at any adjourned meeting to adjourn the same.

Meetings of Trustees.

10. The Trustees shall, at their half-yearly meeting in December, every year elect from among themselves a chairman for the current College year, who, when present, shall preside at meetings of said Trustees. When such chairman shall be absent from any such meeting, the said Trustees shall elect one of themselves to act as chairman of such meeting, and in case the said Trustees shall at any time be equally divided, the chairman, or director acting as chairman, shall have a casting vote in addition to his own vote.

Trustees to elect a chairman.

11. Three Trustees shall form a quorum, and shall be competent to perform all matters and things which may be done by the Trustees under the provisions of this Law.

Three Trustees to form a quorum.

12. Every person who shall annually pay a sum of Thirteen Pounds sterling to the Trustees, shall for that year have the right of presentation of one pupil, and for that year be entitled to be registered on the Voters' Register for two votes.

Privileges of annual subscriber of £13.

13. Every person who shall annually pay a sum of Three Pounds sterling to the said Trustees, shall thereupon be for that year registered as a first-class subscriber, and shall be entitled to two votes.

Privileges of annual subscriber of £3.

14. Every person who shall pay a sum of One Hundred Pounds sterling to the said Trustees, shall, during the period of his natural life, have the right of presentation of one pupil to the said Collegiate Institution, and shall be entitled to be registered on the Voters' Register for two votes.

Privileges of contributor of £100.

15. Every person who shall pay a sum of Twenty-five Pounds sterling to the said Trustees shall be registered as a first-class subscriber, and shall be entitled to two votes.

Privileges of contributor of £25.

16. Every person who shall annually pay a sum of Twelve Pounds sterling to the said Trustees, shall for that year have the right of presentation of one pupil, and for that year be entitled to be registered on the Voters' Register for one vote.

Privileges of annual subscriber of £12.

17. Every person who shall annually pay to the Trustees of the said Collegiate Institution a sum of Two Pounds sterling, shall thereupon for that year be registered as an ordinary subscriber, and shall be entitled to one vote.

Privileges of annual subscriber of £2.



Law 19, 1861.  
Privileges of contributors of £50.

18. Every person who shall pay a sum of Fifty Pounds sterling to the said Trustees shall, for a period of five years after the payment thereof, have the right of presentation of one pupil to the said Collegiate Institution, and shall be entitled to be registered on the Voters' Register for two votes.

Privileges of contributors of £15.

19. Every person who shall pay a sum of Fifteen Pounds sterling to the said Trustees shall be registered as an ordinary subscriber, and shall be entitled to one vote.

Donors of more than £100.

20. When and so often as any person shall make a donation to the said Collegiate Institution of any greater sum than One Hundred Pounds, the donor thereof shall be registered as a first-class subscriber, and shall be entitled to as many votes as the scale to be fixed by the Trustees may warrant and authorize.

Donors of more than £25.

21. When and so often as any person shall make a donation to the said Collegiate Institution of any greater sum than Twenty-five Pounds, he shall be registered as a first-class subscriber, and shall be entitled to as many votes as the scale to be fixed by the Trustees may warrant and authorize.

Annual contributors of more than £13.

22. When any person shall annually pay to the said Trustees any sum exceeding Thirteen Pounds sterling, he shall thereupon for that year be registered as a first-class subscriber, and be entitled to as many votes as any scale to be fixed and determined by the Trustees may warrant and authorize.

Pupils by presentation may be withdrawn, and others substituted.

23. Any person, during the time for which he may be entitled to the right of presentation of one pupil to the said College, may at any time during said period withdraw the presentation from such pupil, and substitute another in his place and stead.

Voter's Register, how prepared.

24. The Trustees shall keep a book wherein they shall enter the names and addresses of all subscribers and donors, and shall therein register the same respectively, and shall on the first day of every month make out a list of all persons qualified to vote, and the number of votes any person thereon is entitled to give, which list shall be called the Voters' Register.

Trustees to issue certificates to each donor, which may be assigned, transferred, or devised.

25. The said Trustee shall issue a certificate to each donor, signed by the chairman of the said Trustees, which certificate shall specify the amount paid, and every such donor may assign, transfer, or devise the said certificate, and upon any such change of ownership the person to whom such certificate shall be so assigned, transferred, or devised shall not be entitled to any vote, or derive any advantage therefrom, until such change be registered by the said Trustees, who are hereby empowered, if they should so think fit, to register such change of ownership. Provided always there be paid upon every such change of ownership the sum of Three Pounds Sterling.

Subscribers and donors entitled to give the number of votes on Voters' Register.

26. In all matters submitted to the consideration of subscribers and donors, at any general or special meeting, all subscribers and donors shall be entitled to give the number of votes which on the Voters' Register are recorded in their names. Provided no person shall be entitled to vote whose name does not appear to be on the Voters' Register one month previous to such meeting, and provided that all voters not actually residing within the limits of the town of Durban, shall be entitled to vote by proxy.

At general half-yearly meetings, Trustees to lay before subscribers and donors a report of their proceedings, and of the state of the College.

27. At the general meetings to be held in the months of June and December, the Trustees shall lay before the subscribers and donors a report of their proceedings, and of the state of the Collegiate Institution during the preceding half-years, at which it shall be competent for the shareholders then present, upon motion duly made and seconded, to consider and determine upon the proceeding included in said report, and a general meeting of the subscribers and donors shall be held at any time, provided

the said Trustees shall give fourteen days' notice thereof, and of the purpose for which the same is to be held, in the "GOVERNMENT GAZETTE" of this Colony, and the trustees shall call a meeting of the subscribers and donors after having been thereto required by notice in writing, delivered to the Chairman of Trustees, signed by no less than twenty-five voters on the Voters' Register, and setting forth the purpose for which the same is to be held. Provided it shall not be lawful for any meeting of subscribers and donors to pass any resolution whereby any of the provisions of this Law shall be virtually altered or rendered ineffective, or which shall be inconsistent with any engagement duly entered into by the said Trustees with any person or persons relative to any matter whatever. Provided that no business shall be transacted at any such meeting by such subscribers or donors unless there shall be then present not less than thirty voters duly entitled to vote.

Law 19, 1861.

28. The officers of the College shall consist of a Principal, and such other Professors, Masters, and subordinate officers, as the Trustees shall, from time to time, determine and consider requisite. The Principal of said College shall be a graduate of the Universities of Oxford, Cambridge, Dublin, Edinburgh, or London. Provided always, in the case of any vacancy in the office of Principal, the said Trustees shall have power to appoint temporarily a Principal not qualified as aforesaid.

Officers of the College.

29. There shall be an Educational Council, composed of seven members, of which the Principal of the College shall be "ex officio" a member and chairman, and in case of equality of votes shall have a casting vote in addition to his vote as member, the remaining six shall be constituted and appointed in manner following, and shall each respectively hold their office for three years from the date of their appointment:—The Lieutenant Governor and Mayor shall each, from time to time, nominate and appoint one member each; the Trustees shall elect one member from among themselves, who shall hold his seat at the Educational Council as long only as he continues Trustee; the subscribers and donors shall elect three members of such Educational Council, provided the number of votes on the Voters' Register shall amount to fifty. When any member of the Educational Council shall either resign or otherwise vacate his office, or when the period for which he is to hold his office shall have expired, the same party who nominated or elected the same shall nominate or elect a member of the Educational Council in the lieu or stead of him so resigning or otherwise vacating. Any member who shall vacate his office shall be eligible for re-election or re-nomination.

Constitution of Educational Council.

30. The Educational Council shall control and determine and decide upon all matters relating to the discipline of the schools, the religious and moral training of the students, what books shall be used, the character of the various examinations for entry into the College, for competing for scholarships or other purposes, the subjects to be taught, the books to be used; and in said Council of Education shall be vested the superintendence and regulation of the discipline and instruction of the several scholastic departments and classes of the said Collegiate Institution, and for all or any of the purposes in this section contained, to frame and pass, from time to time, such rules and bye-laws as the said Council may deem necessary.

Powers of Educational Council.

31. No pupil shall be admitted into the College until he has satisfactorily passed such examination as the Council of Education shall from time to time determine and appoint, and in case there are more candidates to be admitted as pupils than there are vacancies, then the pupils, after having passed the examination in manner aforesaid, shall be admitted according to priority of application.

Pupils to pass an examination before admission.

32. There shall be one scholarship of the annual value of Thirty Pounds open for competition by public examination amongst pupils of the College, on such subjects as the Council of Education may direct and appoint.

Scholarship.

**Law 19, 1861.**

Scholarship to be competed for by sons of Colonists.

33. There shall be one scholarship of the annual value of Thirty Pounds to be competed for by the sons of colonists in such examination as the Council of Education may appoint. Provided no person shall be eligible thereto who shall hold any other scholarship in any other College in Natal. These scholarships shall be tenable for three years, provided the scholar thereto elected shall so long continue a pupil of the College.

Foundation scholarships.

34. There shall be two foundation scholarships, one in the gift of the Trustees, the other in the gift of subscribers and donors, to be selected from pupils who shall have passed the entrance examination, the sons of Colonists, such scholarships to be tenable for three years. Provided that if the votes on the Voters' Register should not amount to fifty, then the scholarship in the gift of the subscribers and donors shall be given away and nominated to by the Lieutenant Governor and Mayor alternately.

Governor and Mayor to be visitors of the College, with certain powers.

35. The Lieutenant Governor, and Mayor of Durban, and their successors in office, shall be visitors of the said Collegiate Institution; and shall, either separately or together, have power from time to time, and at all times, to visit the said Collegiate Institution, and call before them or him, and examine the Principal, Professors, and other subordinate officers thereof, and enquire into the government and management thereof, and to call for the production of all records, accounts, and other documents connected with the general management of the Collegiate Institution, and the due discharge of the trusts invested in the Trustees and Council of Education, and to examine and enquire into the same.

Action at law, by or against whom instituted.

36. All actions or other proceedings at law to be instituted by or against the Trustees or Council of Education of said Collegiate Institution shall be so instituted for, by, or against the Chairman of the Council of Trustees for the time being.

Commencement

37. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A).

**Law No. 12, 1891.**

*repealed by 4/1/03 sec. 1*  
"To repeal in certain respects Law No. 19, 1861, entitled 'Law for establishing, regulating, and providing for the Durban Collegiate Institution,' and to make other provision therefor."

[17th July, 1891.]

WHEREAS in the year 1861, the Law No. 19, 1861, was passed for establishing, regulating, and providing for a Collegiate Institution at Durban:

AND WHEREAS, under the provisions of the aforesaid Law No. 19 of 1861, certain lands, funds, property, and revenue have from time to time been vested in certain Trustees for and on behalf of the said Collegiate Institution:

AND WHEREAS no effective steps have been taken to establish the Institution contemplated by that Law:

AND WHEREAS it is expedient to appropriate the lands, moneys, and other property, by whomsoever granted, given or transferred under the said Law as aforesaid, to the Educational needs of the Colony as provided for in this Law:

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Partial repeal of Law 19, 1861.

1. So much of the Law No. 19, 1861, entitled "Law for establishing, regulating, and providing for the Durban Collegiate Institution," as is inconsistent with the provisions of this Law, shall be and the same is hereby repealed.

(A) Aug. 27, 1861.

2. All lands, funds, property, and revenue of every nature and description belonging to the said Collegiate Institution of Durban, by whomsoever originally conveyed, granted, promised, given, or transferred for the purposes of the said Institution, and all property, movable, and immovable of every description, and all rights, interest, rents and profits that may have been since derived from the said lands, funds, property, or investments thereof, so conveyed, granted, given, or transferred, shall be vested in and administered by the Council of Education of Natal, constituted and appointed under and by virtue of Law No. 15, 1877 (A). The Council of Education shall, from and after the commencement of this Law, stand seized and be possessed of, and be entitled to all the land and other property, movable and immovable, so conveyed, granted, promised, given, or transferred, as aforesaid, and the fruits thereof, to be applied by such Council of Education for the erection and maintenance, with all necessary boarding and residential accommodation, of a School for the Higher Education of Boys, to be managed, carried on, and conducted under the provisions of Law No. 16, 1877, upon the land granted, or to be granted, by the corporation of Durban, or on any other land that may be otherwise acquired.

Law 12, 1891.  
Transfer of property of Durban Collegiate Institution to Council of Education.

3. The said Council of Education of Natal may take and hold lands now or hereafter granted or transferred to them, within the Colony of Natal, or any interest in such lands, and may grant, sell, lease, or otherwise dispose of, the said lands in such wise as they shall deem fit for the purposes of Education in the Colony: Provided, however, that the approval of the Governor shall be first obtained to any such appropriation: And provided further, that any lands which may be vested in the said Council of Education by this Law shall be used only for the purposes of this Law.

Council of Education may hold and dispose of lands for purposes of education, subject to Governor's approval.

4. The Council of Education may, with the consent of the Governor, from time to time borrow and take up at interest any sum or sums of money, not exceeding the sum of Three Thousand Pounds Sterling, which may be wanted for any of the purposes of this Law, and may mortgage any lands by this Law vested in the said Council of Education for securing the payment of moneys so borrowed or of the interest thereon.

Borrowing powers of Council of Education for purposes of this Law.

5. All lands by this Law vested in the Council of Education, and all moneys borrowed under the provisions of the preceding section, shall be used and applied only for the purposes set forth in this Law.

Application of lands, and moneys borrowed.

6. This Law shall not come into operation unless and until the Mayor and Councillors of the Borough of Durban shall have paid to the Council of Education the sum of Three Thousand Eight Hundred Pounds Sterling, to be applied by the Council of Education in carrying out the purposes of this Law, and shall have transferred in freehold to the Council of Education a piece of land of suitable extent and site as approved by the Council of Education; and thereafter this Law shall come into operation upon a date to be appointed by the Governor by Proclamation in the "NATAL GOVERNMENT GAZETTE" (B).

Commencement

(A) See Act 5, 1894, s. 7, tit. "EDUCATION."

(B) Came into force Nov. 14, 1893. See *Government Gazette* of that date.

## DURBAN CORPORATION.

*Any land let 38/04*

Private Law, 1863.

*See also Act-24/06*

“To extend the powers of the Council of the Borough of Durban for Sanitary Purposes.”

[27th July, 1863.]

WHEREAS doubts have arisen on the general powers of Municipal Councils under the 52nd section of the Law No. 21, 1862 (A), and it is desirable, for sanitary reasons, that the Council of the Borough of Durban should be invested with ample and complete powers to make and construct water-courses, and drains, where necessary, through private land:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows:

Council may make water-courses, &c., through private land, and repair same, making compensation.

1. The Council shall have power and authority within the limits of the Borough, subject to the restrictions herein contained as to the plans to be prepared and the notice to be given, to evacuate and construct and lay water-courses, water pipes, conduits, sluices and drains through private land, and from time to time to repair the same, doing as little damage as may be, making full compensation to the owner and occupier thereof when any damage or injury is caused thereby.

Also through lands on which buildings are erected, or are in course of erection.

2. The Council shall have at all times power and authority to construct any drains or water-courses through private lands within the Borough on which buildings are erected, or are in course of erection: Provided, nevertheless, that the Council shall indemnify and be accountable to the owner or owners of such buildings and any person having any interest therein, for any losses or damage which may at any time be sustained by him or them in consequence of the construction of such drains or water-courses; and that the extent of such damage and the necessary compensation therefor shall be ascertained and assessed by competent valuers, to be appointed by the said Council and the proprietors or proprietor of such buildings respectively.

Twenty-four hours' notice to be given of intention to build over any drain.

3. No owner or holder of land shall begin to build, or allow to be built, any building over any drain, without first causing twenty-four hours' notice to be served at the Town Clerk's office of such intention to build over the said drain or water-course.

Precautions to be observed in building walls over water-course.

4. If any owner or holder of land shall intend to build a wall or walls over such drain or water-course after its construction, he shall use such precautions in the construction of such wall or walls as may be determined by the Town Surveyor to be requisite for the security of such drain or water-course.

Liabilities of Council in respect of drains through private lands.

5. The Council shall be compelled to cover with masonry or brick-work every drain carried by them through private lands, and to keep the same in thorough repair, as well as to give compensation for any losses or injuries that may be sustained by the falling or disrepair of any such drain.

Council may enter on private land for certain purposes.

6. The Council shall by its surveyor, workmen, contractors and servants, have power, from time to time and at all reasonable hours during the day-time, to enter on any private land within the town of Durban, through which it may be necessary to carry any of the before mentioned works, for the purpose of surveying, making, cleansing, keeping in repair,

(A) See Law 19, 1872, s. 2, tit. “MUNICIPAL CORPORATIONS.”

amending, upholding, or inspecting the same: Provided that twenty-four hours' notice shall first have been given to the occupier of such land, except in cases of special emergency.

Private Law,  
1863.

7. The Council shall cause its surveyor to prepare proper plans of any works that may have to be carried out under clauses 1 and 2 of this Law, and shall, fourteen days at the least before such works are to be proceeded with, give public notice of its intention to carry out such works, and of the time when it will be prepared to hear objections to the said works being carried out; and the said plans shall be deposited in the Town Clerk's office and be open for inspection during the said period of fourteen days.

Plans of drains, &c., to be prepared and 14 days' notice to be given of intention to carry out works.

8. The Council, or a committee of the Council to be appointed for this purpose by resolution in the ordinary way, shall meet at the time and place mentioned in the said notice to consider in the presence of the surveyor any objections made against such intended work, and all persons interested therein or likely to be aggrieved thereby shall be entitled to be heard at such meeting.

Council to hear objections against any such works.

9. Any person who may feel aggrieved by any final order of the Council relating to the works aforesaid may, at any time within seven days after the making of such order, give notice in writing to the Council that he intends to appeal against such order to the Court of the Resident Magistrate (of the borough) within a period not more than ten days from the date of such notice, and if the party enter into a recognisance before any Justice of the Peace, with one sufficient surety, binding himself to prosecute such appeal, the work so appealed against shall not be begun until after the judgment of the court upon such appeal; and such court, upon due proof of such notice and of such recognisance having been given and entered into, shall hear and determine the matter of appeal and shall make such order thereon, either confirming, quashing, or varying the same, and shall award such costs to either of the parties as the court in its discretion thinks fit.

Appeal against any final order of the Council, how to be proceeded with.

10. Should any dispute arise between the Council and any person interested in private land through which any drain or water-pipe may pass, in respect to compensation for injuries or damage sustained in consequence of such work, such dispute shall be referred to the arbitration of two persons severally appointed by either party, and should these arbitrators not agree in their decision, the dispute shall be referred to the decision of an umpire to be chosen by such arbitrators, and the decision of such umpire shall be final.

Disputes in respect to compensation to be settled by arbitration.

11. This Law shall be deemed and taken to be a public Law, and shall commence and take effect on and after the publication thereof in the "GOVERNMENT GAZETTE" (A)

Law to be a public Law; Commencement

Private Law, 1863.

"To extend the Powers of the Council of the Borough of Durban, in the raising of Funds for the Prosecution of Public Works and other Public Purposes."

[30th July, 1863.]

WHEREAS it is expedient by reason of promissory notes and bills of exchange being given in payment of land sales, and for the carrying on extensive works within the Borough, that the Council of the Borough of Durban shall have the power to negotiate such bills of exchange and promissory notes: and whereas doubts have arisen as to the powers of the Council in this respect:

(A) Aug. 4, 1863.

**Private Law,  
1863.**

Council may  
authorise Mayor  
to negotiate  
bills of ex-  
change, &c.

Form of nego-  
tiation.

Councillors ex-  
empted from  
liability; cor-  
porate property  
alone liable.

Register to be  
kept of bills,  
&c., negotiated.

Law to be a  
public Law.

Commencement

BE IT ENACTED by the Lieutenant-Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows :

1. The Council of the Borough of Durban may authorise the Mayor thereof for the time being to negotiate all such bills of exchange and promissory notes received as aforesaid, and being the property of the Corporation.

2. Such negotiation shall be in the form following :—

“ Pay to the order of \_\_\_\_\_ for value received. By order of the Council. Dated \_\_\_\_\_  
Countersigned.

C D, Town Clerk. \_\_\_\_\_ A B, Mayor.”

3. No liability, personally, shall attach to any councillor for authorising the negotiation of such a document, nor shall the Mayor or Town Clerk be liable, personally, on such. The funds, property and effects of the body corporate shall be alone liable to be attached or taken in execution in satisfaction of any judgment which may be obtained thereon.

4. The Mayor and Council shall keep a book of register of all bills of exchange and promissory notes negotiated by them, which shall be open to the inspection of the burgesses at all reasonable times.

5. This Law shall be deemed and taken to be a Public Law, and shall be judicially recognised as such in all Courts of Law.

6. This Law shall commence and take effect on and after the publication thereof in the “ GOVERNMENT GAZETTE ” (A).

**Private Law, 1864.**

“ To authorise the Council of the Borough of Durban to grant Leases, without submitting the same to public competition, in lieu of and in exchange for other Leases granted by the Council, of land now claimed by Her Majesty’s War Department : And also to enable the Council to take on lease for public purposes any lands or houses situate within the Borough.”

[16th September, 1864.]

WHEREAS under the Ordinance No. 1, 1854, and the Laws No. 21, 1861, and No. 21, 1862, Municipal Corporations in the Colony of Natal were authorised to lease Corporate Lands provided such Leases were sold by public competition :

AND WHEREAS several plots of land have from time to time been so granted and disposed of by the Council of the Borough of Durban, and the Officer in charge of Her Majesty’s War Department in this Colony has claimed such, or a portion of such plots of land, as property belonging to or set aside for the use of Her Majesty’s War Department in Natal ; and the tenants or occupiers have been served with notice to remove from such land, and it is desirable that the Council of the said Borough should be authorised to make compensation by the granting of leases of other lands in lieu of the plots, or portions of plots, so claimed as aforesaid, where and in such cases as the tenants, sub-tenants or occupiers may be willing to accept such as compensation :

AND WHEREAS in some cases it may be necessary to lease such plots, or portions of plots, so claimed by Her Majesty’s War Department, from the said department : And further, that the Council of the said Borough should, for public purposes, be empowered to take leases of lands or houses situate within the Borough :

(A) Aug. 11, 1863.

BE IT ENACTED by the Lieutenant-Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows : Private Law,  
1884.

1. It shall and may be lawful for the Council of the Borough of Durban, anything in Law No. 21, 1862, Section 70, contained to the contrary notwithstanding (A), to grant to any lessee of any plot or plots of land or portions thereof, which shall or may be found to overlay any land belonging to Her Majesty's War Department or to the Colonial Government, held under any existing lease or leases from the said Council, and which shall have been, or which may hereafter be claimed by Her Majesty's War Department or by the Colonial Government, and for such lessee to contract for and to receive from the said Council a new lease or leases of other plots of Corporation land, for all the rest, residue, and remainder of the unexpired term of said lease or leases, and in such other situations or parts of the Town Lands of the said Borough, as may be determined and agreed upon by and between the said Council and such lessee, and without submitting the same to public competition : Provided, that previous to the granting such new lease, the circumstances of each particular case shall be submitted to the Lieutenant-Governor, and his approval of a fresh grant or new lease shall have been obtained by the Council.
 

Council may grant leases of Corporation lands to certain lessees whose leasehold land is liable to be recalled by the Imperial or Colonial Government, in lieu of their former leases, without public competition.

Approval of Governor necessary.
2. Such new lease shall, when executed, stand for and in place of the original lease, which shall thereon as far as regards any such said land, the property of Her Majesty's War Department or of the Colonial Government, become, ipso facto, void.
 

Such lease to stand for the former lease.
3. The rent payable by the lessee to the Corporation for such new lease or leases shall be such as may be fixed and agreed upon by and between the contracting parties.
 

Rent to be agreed upon.
4. The Council of the said Borough (three-fourths thereof being present at a meeting specially convened for that purpose) may, and are hereby authorised to contract for, take, and hold on lease such aforesaid portions of land, the property of Her Majesty's War Department or of the Colonial Government, and again to grant a lease or leases, or sub-leases of the same. And the said Council may likewise contract for, take, and hold on lease any lands, houses, or buildings situate within the limits of the Borough, provided the same be leased, taken, and held for the public purposes of the Borough.
 

Council may lease land of Imperial or Colonial Government and sub-lease the same.
5. The Council of the said Borough may from the Corporate Funds of the said Borough from time to time pay such sum or sums of money for any of the aforesaid purposes by way of compensation to any such lessee or lessees for any loss or damage which shall or may be shown to have been sustained by them, or any of them, as shall or may be deemed necessary by the Council.
 

Council may compensate lessees for losses.
6. The said Council may sub-lease any buildings or lands held on lease by them, or may grant to any water or gas company which may be hereafter established for the supply of the Town of Durban with water or gas, the free use of such aforesaid leasehold land if they shall think fit. Provided always, that the power hereby granted shall not be at variance with or contrary to any condition contained in the lease under which the said Council hold any such said buildings and lands ; and further, should any of the said lands or buildings be the property of Her Majesty's War Department or of the Colonial Government, it shall not be competent for the Council to sub-lease the same without the consent and authority of Her Majesty's War Department or the Colonial Government, as the case may be, being first obtained thereto.
 

Council may sub-lease or grant in use to any water or gas company lands they themselves hold on lease.

(A) See Law 19, 1872, s. 2, tit. "MUNICIPAL CORPORATIONS."



Private Law,  
1864.

A public Law;  
Commencement

7. This Law shall be deemed a Public Law, and recognised as such in all Courts of Law in this Colony, and shall take effect from and after the publication thereof in the "GOVERNMENT GAZETTE" (A).

Private Law, 1864.

"To enable the Council of the Borough of Durban to Fence Erven or subdivisions of Erven situate within the Borough along the line of streets, at the cost of the respective proprietors thereof: And to enable the Council of the said Borough to recover the expenses incurred by it in so doing."

[16th September, 1864.]

WHEREAS from the nature of the soil on which the Town of Durban is situated great difficulty is experienced in controlling the drift sand within due limits, and keeping the Foot-paths clear of such drifts: And for improving the Town in this respect it is necessary to compel the owners or occupiers of erven, or subdivisions of erven, situate on the line of streets within the Borough, to fence in the same along such line, in order to preserve the Foot-paths, and to control the drift of sand:

AND WHEREAS there is no Law or Bye-Law by which the Council of the Borough may or can effect the improvement contemplated, or by which the occupiers or owners of the several plots of land may be compelled to fence in the same, and it is expedient and necessary for the health and comfort of the inhabitants of the said Borough, and the improvement of the Town, that the Council thereof shall have and be invested with sufficient power and authority to call on and require all owners or occupiers of such before-mentioned plots of land to fence in the same along the line of the several respective streets; and, in the case of proprietors and others who neglect or fail to comply with the request of the Council in this respect, that the Council should also be invested with authority to apply such portion of the "Borough Fund" as may be necessary to and for the purpose of erecting such sufficient fences for the purposes aforesaid, and that they shall be empowered to recover the cost of making and constructing or repairing the same from the proprietors or occupiers along the line of whose plots such fences shall or may be erected:

BE IT ENACTED, by the Lieutenant-Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows, that is to say:—

Council may  
order owners  
and occupiers of  
erven to fence  
the same.

1. It shall and may be lawful for the Council of the Borough of Durban, on the passing of this Law, to require all owners or occupiers of erven or sub-divisions of erven situate within the Town of Durban and along the line of any street where Foot-paths have been constructed, or shall at any time be in course of construction, who shall or may not have a good and sufficient fence, to erect, and maintain along such line, a good and sufficient fence, to enable the Council to control the drifting of sand, and to preserve the Foot-paths from destruction along the line of such plots of land.

Council shall fix  
a time within  
which fences to  
be completed.

2. The Council shall, from time to time, as the same shall be deemed necessary, fix a time within which such fences shall be erected and completed, and within which all dilapidated fences shall be repaired, and shall give public notice thereof, specifying the particular plots of land, which require such fence and repairs, in the "GOVERNMENT GAZETTE" and one local newspaper, once a week during one month, at least, prior thereto.

(A) Oct. 4, 1864.

3. If within two months after the expiration of such time as shall be fixed by the Council as aforesaid, such notice be not complied with, the Council shall and may publish in the "GOVERNMENT GAZETTE," and one other local newspaper, the names of the proprietors and occupiers, or either, of the said plots, and the number and description of the same, stating the lengths of the line of fences required, and shall in such notice call for tenders to be delivered on a day the Council shall, by such notice, fix, from parties willing to tender for the erection of such good and sufficient fences and repairs to dilapidated fences as the Council shall require: Such fences to be erected, and such dilapidated fences to be repaired within six weeks from the acceptance of such tender.

4. After the acceptance of any such tender by the Council, it shall not be lawful for any person, affected by such notice or tender, to avoid the same, or the consequences thereof by himself erecting any fence, or by repairing any dilapidated fence without the consent of the Council in writing first obtained.

5. The Council shall and may authorise such contractor and his servants, or persons in his employ, to enter upon any lands for the purpose of erecting or repairing such fences.

6. If any person shall wilfully obstruct or prevent the erection of such fence or fences, or shall wilfully injure or destroy the same, by any act whatsoever, he shall be liable to a penalty not exceeding the sum of £5, which shall be recoverable in the same manner as any other penalty may be recoverable under any law or bye-law now in force within the Borough—such penalty to be paid to and for the benefit of the "Borough Fund."

7. On the completion of such work, and after final settlement with the contractor or contractors for such erections or repairs, the Council shall apportion all the expenses attendant thereon, including the costs of advertisements in proportion to the length of each fence and the nature of such repairs, and such sum so apportioned shall be in the nature of an assessment on the property on which such expenditure has been made. And the same shall be published by the Council in the "GOVERNMENT GAZETTE" at least one month before payment of such apportionment shall be enforced: Provided, however, that if the said fence should require repairs or renewal within three years of its erection, the Council shall not have power to compel the occupier or owner to pay for such repairs or renewal, but the Council shall repair or renew such fence at the expense of the Borough.

8. Such charges or apportionment shall be paid by the occupier of the property, or, in case there shall be no occupier, then by the owner thereof, and until paid shall be a charge against the property in every respect as if the same were a Borough rate.

9. It shall be lawful for any owner or occupier, or his responsible agent, affected by this Law, on any day during office hours to demand from the Town Clerk the inspection of the details of any charges or apportionment against the property of any such owner or occupier, and such owner, occupier or agent shall also be entitled to make copies thereof without fees.

10. In all cases of appeal against such apportionment, and for the collection and enforcing payment of the same, the Council are hereby empowered and authorised to proceed against the owners and occupiers of erven for claims accruing to them under this Law, in the same manner as is provided by the 106th, 107th, 108th, 109th, 110th, 111th, 112th, and 113th Sections of the Law No. 21, 1862 (A), made and enacted in the

**Private Law,  
1864.**

Council may call for tenders for erection and repair of fences.

After acceptance of tender, person affected by notice cannot erect or repair without consent of Council.

Council may authorise contractor to enter lands.

Penalty of £5 for obstructing the erection of or destroying fences.

Council may apportion the expenses of erecting or repairing fences.

Apportionment to be paid by owner or occupier.

Owner or occupier may demand inspection of details.

Application of provisions of Municipal Corporations Law.

(A) See Law 19, 1872, s. 2, tit. "MUNICIPAL CORPORATIONS."

Private Law, 1864. case of appeal against and for the collection of rates, and in as full and ample a manner as if the same clauses were herein again enacted for the enforcement of the payment of claims arising under this Law.

Interpretation of the word "fence."

11. In this Law the word "fence" shall be taken to mean a rough post and rail, or other fence. When such fence shall be erected by the Council on behalf of, or at the expense of owners or occupiers, then the charge for such fence to be recovered by the Council shall not exceed five shillings per running yard.

Not to apply to land belonging to or in the occupation of Imperial or Colonial Government.

12. Nothing this Law contains shall be taken to apply to or include any land being the property of Her Majesty's War Department or of the Colonial Government, nor to any land in the occupation of Her Majesty's Government or the Colonial Government.

A public Law; Commencement

13. This Law shall be taken to be a Public Law, and shall be recognised as such in all Judicial Courts in this Colony, and shall be in force on and after the date of the publication thereof in the "GOVERNMENT GAZETTE" (A).

#### Law No. 28, 1863.

"To legalise certain acts of the Corporation of the Boroughs of Pietermaritzburg and Durban" (B).

[5th August, 1863.]

Legalising transmission of requisition to Mayor of Durban instead of to Resident Magistrate.

5. The transmission of any requisition to become a candidate for the next election as Councillor for any ward, and the candidate's acceptance thereof, to the Mayor of the Borough of Durban, shall in no way invalidate or impair the election of any Councillor for the Borough of Durban, but his election, and all proceedings thereon shall be as valid and effectual as if the same had been conducted as directed by Law No. 21, 1862, concerning the first election of Councillors for any Borough, and the Council so elected for the Borough of Durban shall have, exercise, and possess and enjoy, all the powers, rights, and authorities vested in them under Law No. 21, 1862, as fully and effectually as if the said Council were duly and regularly elected under that Law.

#### Law No. 22, 1865.

"To enable the Town Council of the Borough of Durban to sell or to lease lands to the Colonial Government of Natal without putting up the same to public competition."

[24th August, 1865.]

WHEREAS by the sixty-ninth and seventieth sections of the Law No. 21, of 1862, entitled, "Law amending and consolidating the laws in regard to Municipal Corporations" (c), power is given to the Council of any Borough, with the consent of the Lieutenant-Governor in writing, to sell land by public competition, and to lease land, provided such intended lease shall be duly notified, and offered for sale by public competition :

(A) Oct, 4, 1864.

(c) See Law 19, 1872, s. 2, tit. "MUNICIPAL CORPORATIONS."

(B) See this Law at length, tit. "PIETERMARITZBURG CORPORATION."

AND WHEREAS it is expedient to amend the aforesaid Law No. 21, of 1862, and to extend the powers of the Council of the Borough of Durban in regard to the sale or lease of lands to the Colonial Government of Natal: Law 22, 1865.

BE IT THEREFORE ENACTED, by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows:

1. From and after the passing of this Law it shall and may be lawful for the Town Council of the Borough of Durban, with the consent in writing of the Lieutenant-Governor, to sell or to lease to the Colonial Government of Natal any portion of the lands of the Corporation without previous publication, and without submitting the same to public competition, and upon such terms, and for such period and at such rates as may be agreed upon between the said Town Council and the said Colonial Government: Provided always that any lands so required to be leased or sold shall be used by the Colonial Government for a line of railway only. Town Council of Durban may sell or lease lands to Government.

2. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A). Government to use such lands for railway.  
Commencement

#### Private Law, 1865.

"To legalise certain arrangements made by the Corporation of the Borough of Durban for granting new leases to certain holders of leases granted before the passing of the Law No. 21, 1862, and to enable the said Town Council to grant such new leases, and to authorise and empower the said Town Council to carry into effect such arrangements on payment, by the present or future tenants, of a bonus."

[24th August, 1865.]

WHEREAS very many leases of the town lands of the said Borough were granted by the Mayors, Councillors, and Burgesses to various persons prior to the passing of the Law No. 21, 1862, for a term of fifty years:

AND WHEREAS by the 70th section of the said Law No. 21, 1862, entitled "Law for amending and consolidating the Laws in regard to Corporations," it is enacted that the Council may, with the consent of the Lieutenant Governor, "lease any portion of the lands belonging to the Corporation for any period not exceeding fifty years," with or without an undertaking to renew such lease, as provided in the clauses succeeding:

AND WHEREAS by the 71st section of the said Law No. 21, 1862, it is enacted "the Council may from time to time renew any such lease, or any lease now subsisting, for any period not exceeding fifty years, provided there shall be buildings on the ground of the then value of £500, in any case in which the lessee shall two months previously to the expiration of such lease give notice of his intention so to renew such lease:"

AND WHEREAS the said Town Council of the said Borough of Durban, considering that the last mentioned section conferred power upon them to enter into an agreement with the lessees of the town lands whose leases were granted before the passing of the said Law No. 21, 1862, for the renewal of such leases at the expiration of the term thereby granted, caused notice to be given to such respective lessees of the willingness of such Town Council to enter into such covenant, and to grant a new lease embracing such covenant for renewal, on payment by such lessees of a

(A) Aug. 29, 1865.

Private Law,  
1865.

bonus, which proposition was accepted by some of the lessees, and who have in consequence in some instances dealt with their property, relying on the said Town Council entering into such covenant :

AND WHEREAS the said Town Council have not power under the said Law No. 21, 1862, to enter into the agreement hereinbefore mentioned, and it is desirable to indemnify the said Council in such matter, and to authorise and empower the said Council to carry into effect the proposition so made by them as aforesaid :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

Agreement by  
Council to be  
valid.

1. That the proposition or agreement so made by the said Town Council of the Borough of Durban shall, and the same is hereby declared to be valid and effectual.

Council may  
carry it into  
effect.

2. That the said Town Council shall be, and it is hereby authorised and empowered to carry into effect such proposition or agreement with the said several lessees whose leases were granted before the passing of the said Law No. 21, 1862.

Council may  
cancel leases  
and execute  
others.

3. That it shall and may be lawful for the said Town Council to cancel the said leases, and to execute fresh leases of the lands thereby leased for the term and at the rents thereby reserved, as near as may be, to the form of lease now used by the said Council in the Schedule hereunto annexed.

Public Law ;  
Commencement

4. This Law shall be taken as a Public Law, and shall be in force on and after the publication thereof in the " GOVERNMENT GAZETTE " (A).

SCHEDULE.

*Borough of Durban.*

LEASE.

(a) This lease, made the \_\_\_\_\_ day of \_\_\_\_\_ in the Year of Our Lord One Thousand Eight Hundred and Sixty between the Mayor, Councillors, and Burgesses of the Borough of Durban of the one part, and \_\_\_\_\_ of the other part.

(b) Whereas under and by virtue of the Ordinance No. 1, 1854, leases for building purposes for a term of Fifty Years of certain portions or allotments of the lands belonging to the said Corporation commonly called Town Lands were, by and with the consent of the Lieutenant Governor of Natal, put up to public competition on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and at such sale \_\_\_\_\_ became the purchaser of one such lease, being a lease of the allotment laid off, marked, and numbered \_\_\_\_\_, in Block \_\_\_\_\_, on the enlarged general plan of the said Town Lands (which general plan under the Corporate seal of the Borough is deposited in the public office of the Town Clerk of the Borough of Durban) at or for the annual rent or sum of \_\_\_\_\_ per acre, upon, under, and subject to the provisions of the said Ordinance No. 1, 1854, and the several clauses, conditions, covenants and agreements contained in the lease thereof granted to the said \_\_\_\_\_, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, which said lease hath by cession thereof become and now is duly and legally vested in the said \_\_\_\_\_ party hereto of the second part.

And whereas the Town Council of the said Borough of Durban caused notice to be given to the respective lessees of the said Town Lands whose

(A) Aug. 29, 1865.

leases were granted before the passing of the Law No. 21, 1862, entitled "Law for amending and consolidating the laws in regard to Corporations," expressing the willingness of the said Town Council, on payment by such lessees of a bonus, to grant a new lease embracing a covenant for renewal, which covenant the said Town Council had no power to enter into; and whereas by a law passed by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, at a sitting of the same Council held in 1865, entitled "A Law to legalise certain arrangements made by the Corporation of the Borough of Durban for granting new leases to certain holders of leases granted before the passing of the Law No. 21, 1862, and to enable the said Town Council to grant such new leases, and to authorise and empower the said Town Council to carry into effect such arrangements on payment by the present or future tenants of a bonus;" power was given to the said Town Council of Durban to cancel leases granted before the passing of the said Law No. 21, 1862, and to issue other leases containing a covenant for renewal.

Private Law,  
1865.

(c) And whereas the said Lease, dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, has been this day duly cancelled:

Now these presents witness, that for and in consideration of the cancellation of the said Lease, and of the payment of the sum of \_\_\_\_\_ and in consideration of the said yearly rent, hereby reserved, and of the covenants, conditions, and agreements hereinafter contained, and on the part of the said Lessee, his heirs, executors, administrators, and assigns, to be observed and performed, the said Mayor, Councillors, and Burgesses, under and by virtue of the powers conferred on them by said Law No. 21, 1862, and of the said Private Law of 1865, Have demised and leased, and by these presents Do demise and lease unto the said Lessee, his heirs, executors administrators, and assigns, a certain piece of Land, in extent

or thereabouts, marked and numbered \_\_\_\_\_ on the said herein-before mentioned plan of the said Town Lands, and bounded

as will more fully appear by the Diagram framed by the Town Surveyor, hereunto annexed; subject nevertheless to the express reservation of the right of the said Body Corporate of making any roads, drains, or water-courses through the said Piece of Land, for the public convenience or good; To have and to hold the said Piece of Land hereby demised, or intended so to be, with the appurtenances (except as before excepted) to the said Lessee, his heirs, executors, administrators, and assigns from the said \_\_\_\_\_ day of \_\_\_\_\_, One Thousand Eight Hundred and Sixty-\_\_\_\_, for and during and unto the full end and term of Fifty Years from thence next ensuing, and fully to be complete and ended, with liberty, nevertheless, to the said Lessee, his heirs, executors, or assigns to apply for a renewal of this Lease for a further term not exceeding fifty years, upon the terms and in manner mentioned and set forth in the said Law.

(d) Yielding and Paying therefore yearly, and every year during the said term of fifty years hereby granted, unto the said Mayor, Councillors, and Burgesses, and their Successors, at or in the office of the Town Clerk of the said Borough, for the time being, or to their assigns, the yearly rent or sum of \_\_\_\_\_

of lawful money, without any deduction whatsoever, on account of present or future taxes, or otherwise howsoever, by equal half-yearly instalments, on the \_\_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_ in every year, the first payment thereof to be made on the \_\_\_\_\_ day of \_\_\_\_\_ next, 186\_\_\_\_.

(e) And the said

Private Law,  
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doth hereby for himself, his heirs, executors, administrators, and assigns, covenant and agree with the said Mayor, Councillors, and Burgesses of the said Borough of Durban, their Successors, or their Assigns, that he said

his heirs, executors, administrators, or assigns, shall and will, during the said term hereby granted, well and truly pay, or cause to be paid, unto the said Mayor, Councillors, and Burgesses, their Successors or Assigns the annual rent hereby reserved and made payable at the place, and on the days, and in manner hereinbefore appointed for payment thereof, and that without demand being made for the same. And also that he the said Lessee, his heirs, executors, administrators, or assigns, shall and will, from time to time during the continuance of the said term hereby granted, pay and discharge all and all manner of rates, taxes, charges, and assessments which are now, or at any time hereafter, shall or may be charged, assessed or levied upon the said piece or parcel of Land, or any Dwelling Houses, Buildings and Premises, that shall or may be hereafter erected thereon, or any part thereof, or on the said Corporation in respect thereof, by the authority of Government, or by the said Body Corporate, or otherwise howsoever.

(f) And further, that he the said Lessee, his heirs, executors, administrators or assigns, shall and will on or before the \_\_\_\_\_ day of \_\_\_\_\_ at his or their own cost and charges, erect, build and put up, and completely finish, fit for habitation and use, a Dwelling House of the value of \_\_\_\_\_

sterling, on the said piece of land hereby demised ; and shall and will, from time to time, and at all times during the continuance of the said term hereby granted, although no notice shall be given to him or them for that purpose, at his or their own costs and charges, uphold and keep the said Building or Buildings in good tenantable repair ; and shall and will, in like manner, also support and preserve the beacons of the said piece of Land, erect and make fences or walls around the said Land, and well and sufficiently repair, support, cleanse, amply amend, maintain, and keep all fences, walls, and all drains and privies belonging to the said Piece of Land, Dwelling Houses, Buildings, and Premises, or any of them, when and as often as occasion shall require.

(g) And that at the expiration or other sooner determination of this Lease, he and they shall and will peaceably and quietly leave, surrender, and yield up the same unto the said Body Corporate or their assigns, the piece of land hereby demised, together with all Dwelling Houses and Buildings erected thereon, and all fixtures fastened to the Freehold which shall be in and upon the said demised Land and Premises, without being entitled to compensation therefor. Subject, nevertheless, to the covenant for renewal hereinafter contained.

(h) And also that he the said Lessee, his heirs, executors, administrators, and assigns shall not, nor will carry on, on any part of the said demised Land and Premises, any offensive trade, business or occupation. And also shall not nor will cede, assign or transfer this lease, or the land and premises thereby leased to any person or persons whomsoever without the consent in writing of the said Lessors for that purpose first had and obtained. And further, that whenever the said Lessee, his heirs, executors, administrators and assigns shall, during the said term, execute any assignment or underlease, or agreement for assignment or underlease of the whole or any part of the Premises hereby leased for the whole of the term hereby granted, or for any part thereof exceeding one year, the person or persons to whom the said Premises, or any part thereof, shall be so assigned or underlet, or agreed so to be, shall sign a notice, duly witnessed, of his or their having become Tenant or Tenants of the whole or part of the Premises

(describing such part), and shall within one month from his or their taking possession of the Premises so assigned or underlet, or agreed so to be, deliver or cause to be delivered at the office of the Town Clerk of the said Borough such notice so signed by him or them.

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1865.

(i) And lastly, that the said Lessee, his heirs, executors, administrators and assigns shall and will, from time to time, and at all times during the term hereby granted, and also during the continuance of any renewed term granted in pursuance of the Covenant in that behalf hereinbefore contained, designate and appoint a domicilium citandi et executandi in the said Borough of Durban, for the purposes of this Lease, and of all legal proceedings in connection therewith. And of such designation and appointment shall give notice in writing, under his or their hand or hands, to the said Mayor, Councillors, and Burgesses. And that until another such domicilium shall have been designated and appointed by him and them in manner aforesaid, it shall be lawful for the said Mayor, Councillors and Burgesses to treat and consider the domicilium last designated and appointed by any of them the said Lessee, his heirs, executors, administrators and assigns as being the domicilium of the Lessee or Lessees of the said Premises for the time being, though he or they shall not have personally designated and appointed such domicilium. And until further notice, in manner aforesaid, the said hereby designates and appoints

to be the domicilium citandi et executandi for the purposes of this Lease.

(k) Provided always, and these presents are on the condition that if the said yearly rent or sum of

of such lawful money as aforesaid hereinbefore reserved, or any part thereof, shall be in arrear and unpaid for the space of thirty days next after any of the days appointed for the payment thereof, or if, in case the Lessee, his heirs, executors, administrators, assigns, or underlessees shall assign or underlet the said premises in any of the ways aforesaid, such assignee or underlessee shall neglect or fail to sign and deliver such notice in manner aforesaid; or if the said Lessee, his heirs, executors, administrators or assigns shall neglect or fail to perform, or be guilty of any breach, non-performance, or non-observance of any of the other covenants, clauses, provisoes, and agreements by him or them to be observed, kept and performed according to the true intent and meaning of the same respectively; then, in every or any such cases it shall be lawful for the said Body Corporate, their successors or assigns, into and upon the said piece of land to re-enter, and the same to have again possess and enjoy as of their former Estate, together with all Dwelling Houses, Buildings, Fixtures and improvements whatsoever in and upon the same. And this Lease, save as to past breaches thereof, shall be and become null and void to all intents and purposes whatsoever: And that whether the same shall have been underlet or assigned in subdivisions or otherwise howsoever.

(l) And the said Mayor, Councillors, and Burgesses for themselves, their successors and assigns, do hereby covenant, undertake, and agree with and to the said Lessee, his heirs, executors, administrators, and assigns, that in case the person or persons entitled to the said Premises, or any part thereof, not exceeding six months, and not less than two months before the expiration of the term hereby granted therein, shall be minded and desirous of taking a renewed Lease of the said premises, or of such part thereof as any such person or persons shall then be entitled to; and such person or persons shall give to the Lessors previous notice as before mentioned of his or their wish or intention to renew the Lease: Then and in any such case the Mayor, Councillors, and Burgesses for the time being shall, and will, at the expense of the Applicant or Applicants in all things, make, grant, and execute to the person or persons so entitled to the same,



Private Law, 1865. a lease of the whole or part of the said Premises hereby leased, for a term of Fifty Years from the expiration of this Lease, reserving such rent or rents as may be then estimated and fixed in manner appointed in and by the 72nd section of the said Law No. 21, 1862, endorsed hereon. And any such Lease shall contain Covenants and Provisoes similar to those contained in this Lease, with the exception of this covenant for renewal Provided that no such renewed Lease shall be granted unless there shall be buildings on the ground thereby to be leased of the then value of five hundred pounds (£500) sterling.

(m) And the said Mayor, Councillors, and Burgesses for themselves, their successors or assigns, do hereby further covenant and agree with the said Lessee, his heirs, executors, administrators and assigns that he and they paying the rent hereby reserved, and observing and performing the several and respective covenants, clauses, provisos and agreements herein contained, and which by and on the part or behalf of the said Lessee, his heirs, executors, administrators or assigns, are, or ought to be performed, fulfilled, and kept, shall and lawfully may peaceably and quietly hold, use, occupy, possess, and enjoy the same piece of Land hereby demised, with all Buildings and Premises which may be erected thereon, for and during the said term of Fifty Years hereby granted, without any let or hindrance whatever.

In witness whereof the said Mayor, Councillors, and Burgesses have hereunto affixed their Common Seal, and the said \_\_\_\_\_ has hereunto set his hand and seal the day and year first before written in the presence of me \_\_\_\_\_, Notary Public, and the Witnesses.

The Common Seal of the Mayor, Councillors, and Burgesses of the Borough of Durban was affixed to this Deed at a Meeting of the Council of the said Borough, held on the \_\_\_\_\_ day of \_\_\_\_\_, by the Worshipful \_\_\_\_\_ the Mayor, by order of the Council, in the presence of me, the Notary, and the \_\_\_\_\_ subscribing Witnesses.

As WITNESSES :—

Quod Attestor.  
Notary Public.

Signed, sealed and delivered  
by the within named  
on the \_\_\_\_\_  
in the presence of me the Nctary, and the subscribing Witnesses.

As Witnesses

Quod Attestor.  
Notary Public.

**Private Law, 1866.**

“To repeal, and re-enact with amendments, the Law passed in the year 1865, called or known as the ‘Durban Corporation Loan Law, 1865,’ and to confer additional powers on the Council of the Corporation of the Borough of Durban.”

[12th December, 1866.]

WHEREAS by the above mentioned law, the Corporate Council of the borough of Durban were authorised and empowered to take up on loans at interest, by public competition, upon debentures or other instruments, the sum of £50,000 sterling, in one or more sums of money, on the security

*See also  
Act 37/06.*

of the town lands of the said borough, or on such portion thereof as should be sufficient for the purpose, in order to defray the expenses of certain public works of the said borough, and for the payment of certain debts incurred in respect thereof, including among such works, the supply of water, the macadamising, paving, or otherwise hardening the streets and footpaths, and the constructing a thorough system of main and other drains and sluices, and the erecting public buildings, and making other improvements, in such borough, and also to pledge the annual rents derivable from said lands, and if necessary, the rates annually assessed and levied within the said borough, and the general revenues of the said borough, for the due and punctual payment of the principal moneys, and annual interest thereof :

Private Law,  
1866.

AND WHEREAS the Council of the said borough of Durban have not hitherto raised any of the said moneys upon any such securities, but have carried on certain of such works, and in particular certain public improvements, known as the Berea Road Improvements, and have therefor had to borrow moneys on loan, to the amount of £36,000, to enable the said Council to defray the expense of such works :

AND WHEREAS for the better enabling the said Town Council to attain the aforesaid objects, it hath become expedient to repeal such law, and to re-enact the same in an amended form, and thereby specially to confer upon the said Council additional and extended powers :

AND WHEREAS by the 69th section of the Law No. 21, 1862 (A), entitled, "Law amending and consolidating the laws in regard to Municipal Corporations," the Councils of Municipal Corporations are empowered, among other things, with the consent of the Lieutenant Governor, in writing, to raise any sum of money necessary to carry on any public works, by mortgage of their rates and revenues, but no provision is by such law made for mortgaging their lands for any such purpose, or for the payment of the debts due by such Council in respect thereof ; and it is desirable and expedient to enlarge such provisions and powers :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :

1. The Law, dated 24th August, 1865, known as the "Durban Corporation Loan Law, 1865," entitled, "Law to enable, authorise, and empower the Council of the Borough of Durban, to negotiate, contract for, and raise by loan or otherwise, either in England or this Colony, or elsewhere, moneys not exceeding the sum of £50,000 sterling, and also, if necessary, to enable the said Town Council, with the sanction of the Lieutenant Governor, to sell any of the town lands yet remaining unsold or unlet, to the extent of five-eighth parts of such lands, as well as those already leased either in freehold or by annual quit-rent with bonus, or under any other manner of holding as the said Town Council shall deem most expedient," be, and the same is hereby, repealed, but without prejudice to any matters or things which may have been done thereunder.

Durban Corporation Loan Law, 1865, repealed.

2. It shall be lawful for the Council of the borough of Durban, at any time, and from time to time, during the period of forty years from the time at which this Law shall take effect, to raise and take up, by public competition, or otherwise, as the Council may deem most advisable, either in England, in this Colony, or elsewhere, any and all sum and sums of money, as shall not at any one time exceed in the whole the sum of fifty thousand pounds sterling, as may be required by the said Council from time to time, for any of the purposes hereinbefore mentioned and set forth.

Council empowered to borrow £50,000 for certain purposes.

(A) See Law 19, 1872, s. 2, tit. "MUNICIPAL CORPORATIONS."

**Private Law,  
1866.**

Council may issue debentures or other securities.

Such debentures to be styled "Durban Loan Securities," and be redeemable within forty years.

How such debentures may be executed.

Coupons, how to be signed.

Debentures, and re-issues, and cancellations, &c., to be registered.

Registration fee thereon.

Sums borrowed by such debentures charged upon specified three-eighths of town lands, and on general revenue of borough.

Debentures to be concurrent in preference.

Such three-eighths of town lands to be laid off on ground plan, and diagrams filed.

Council not to borrow sums amounting to more than £50,000 at any one time.

3. Any such sum or sums of money as aforesaid may be raised upon or by way of debentures, or mortgage bonds, or other securities, as may, from time to time, by the said Council, be deemed expedient for any of the purposes set forth in the preamble of this Law, and shall, if the Council shall so think fit, be at any time, and from time to time, for any of the purposes aforesaid, re-issuable, and re-issued, or should the Council so think fit, at any time cancelled, and others issued in lieu thereof, or in substitution for the same, for the like or any other amount.

4. Every such debenture bond, or other security as aforesaid, shall be designated under the title of "Durban Loan Securities," and be payable within forty years from the time at which this Law shall take effect, and may be in such form as the said Council may, from time to time, deem most suitable for the aforesaid purposes.

5. All such instruments shall be deemed to be validly executed upon being signed, upon the execution thereof either by the Mayor of the said borough, or any one of the councillors thereof for the time being, and upon being countersigned by the Town Clerk and Treasurer, and sealed with the common seal of such Corporation.

6. It shall not be necessary, in case of any coupons being issued thereunder, for any such coupons to be signed otherwise than by the Town Clerk and Treasurer.

7. Every such debenture, mortgage bond, or other security and cancellation thereof, and other security in substitution thereof, shall be duly registered with the Registrar of Deeds of this Colony, either before or immediately upon their being issued, or re-issued, or cancelled, or substituted, as the case may be.

8. For every such registration there shall be payable to the said Registrar, for the use of the Colonial Government, a fee of three shillings sterling, and no more.

9. All sums of money which shall become due or payable upon, or by virtue of, any such debentures, mortgage bonds, or other securities, together with all interest thereon, shall be, and the same are hereby, charged upon such three-eighth parts or portions of the town lands of the said borough, as shall be particularly described and set forth in such debentures, bonds, or other instruments, and shall be payable out of such portion of the rents, rates, and general revenue of the said Corporation, as may be required to fully cover and discharge any sum or sums of money, due or accruing under this Law, in preference to all other payments which hereafter may be charged upon the aforesaid three-eighth parts or portions of the town lands, or the rents, rates, and general revenue of the said borough.

10. The several debentures, mortgage bonds, and other securities under this Law, shall be concurrent one with another as respects their preference over the said lands, rents, rates, and revenues.

11. The three-eighth parts or portions of the lands so chargeable in security as aforesaid, and described or referred to in such debentures, mortgage bonds, or other securities, shall, previously to the granting of any such debentures, mortgage bonds, or other securities, be laid down or marked off upon the general plan of the town lands of the said borough and a duly certified diagram thereof be filed in the respective offices of the Surveyor General and Registrar of Deeds of this Colony, and another such copy be filed in the Town Clerk's office of the said Borough, but it shall not be necessary to annex to any such debenture, mortgage bond, or other security, any such diagram, or a duplicate or a copy thereof.

12. It shall not be lawful for such Council, either by means of the issuing, or re-issuing, or substitution, or pledging, of any such debentures, mortgage bonds, or other securities, or by any other means to increase or extend the amount of the loan so hereinbefore authorised to be cou-

tracted or raised, beyond the aforesaid limit or sum of fifty thousand pounds sterling, at any one time.

**Private Law  
1886.**

13. The Council may, for any of the purposes aforesaid, grant and issue or re-issue, and may also pledge any such debentures, mortgage bonds, or other securities, without any special consent therefor from the Lieutenant Governor.

Council may re-issue and pledge debentures.

14. Any debenture, mortgage bond, or other security, granted under this Law, may bear any rate of interest not exceeding nine pounds per centum per annum for every one hundred pounds payable thereunder, and such interest shall be payable at par, half yearly, at such times and places, either in England, Natal, or elsewhere, as may be in any such debenture, mortgage bond, or other security, covenanted and agreed to.

Debentures to bear interest not exceeding 9 per cent.

Interest payable half-yearly.

15. The Council of the said borough shall regularly in each year set apart, and half yearly in each year pay out of the annual rents, rates, and general revenue of the Corporation, or by a special rate which said Council are hereby authorised to levy, demand, receive, and collect, for such purpose, or out of the proceeds of the sale of such town lands as the Council for the time being shall think fit, not being any part or portion of the said three-eighth parts or portions of the said town lands, the interest on all or any of the moneys so raised as aforesaid, not exceeding the rate of nine pounds per centum per annum on the sums so from time to time borrowed and made payable.

Council to set apart 9 per cent. yearly for payment of interest from borough revenues.

May make special rates or apply proceeds of sale of town lands in payment.

16. It shall be lawful for the said Town Council from time to time, and at all times, during the said period of forty years, to buy up, purchase, or redeem any of such debentures, mortgage bonds, or other securities, for such sum and sums of money, or upon such other terms or consideration as the said Council may at any time deem expedient or desirable.

Council may buy up such debentures during the forty years.

17. It shall be lawful, in case the said Council shall deem it expedient, for such Council to pledge any of such aforesaid debentures, mortgage bonds, or other securities, as collateral or other security, for any moneys now or at any time hereafter owing by, or lent, or to be lent or advanced to such Council for any of the aforesaid purposes.

Council may pledge debentures, &c.

18. Every such pledge shall be in writing, and be by contract or other memorandum setting forth the terms and conditions thereof, and shall be duly signed by the Mayor for the time being, and countersigned by the Town Clerk and Treasurer of the said borough, and sealed with the common seal of the said Corporation, and be also signed by or on behalf of any company or other persons or person in whose favour the pledge shall be granted or made.

Special pledge to be in writing and sealed.

19. Every contract of pledge or memorandum of any and every such pledge shall, upon its being so signed be registered in the said Registrar of Deeds' Office.

Pledge to be registered.

20. Such Council may empower any company or other persons or person with whom any such debentures, mortgage bonds, or other securities aforesaid shall at any time be pledged, to negotiate and issue any such debenture, mortgage bond, and other security in England, or in this Colony, or elsewhere, at not less than such minimum rate as shall be fixed and determined upon at a special meeting of the Council convened for the consideration of such business, and at which not less than three-fourths of the entire Council shall be present and consenting thereto: and it is hereby expressly declared that any such negotiation and issue of such instruments under such sanction of the Council granted upon any such pledge thereof, shall be as valid as if effected by such Council in ordinary course of competition, or by other ordinary arrangements. Provided nevertheless that no such debentures, mortgage bonds, or other securities aforesaid shall be issued at a lower rate than par without the sanction of the Lieutenant Governor first obtained.

Council may authorise pledgee to negotiate debentures pledged.

**Private Law,  
1866.**

Council to keep register and accounts of moneys borrowed and of debentures granted, redeemed, or renewed.

21. The Council shall, during the said period of forty years, keep a correct register, and separate accounts and statement of all moneys raised or borrowed, or paid off, or liquidated, under the aforesaid provisions of this Law, and of all debentures, mortgage bonds, and other securities granted or redeemed under such aforesaid provisions of this Law, and of any renewals or substitutes therefor; and shall in the month of January in each year during such period of forty years, transmit to the Colonial Secretary a copy of such register and account, or other detailed statement, of all such accounts and transactions, in such form as the Lieutenant Governor may from time to time require.

Register to be open to inspection.

22. The aforesaid register or book in which such statement or account is kept by such Corporation shall, during office hours, be open to search and inspection upon payment of a fee of one shilling for every such search and inspection.

All moneys borrowed to be applied to aforesaid purposes.

23. All and every the sums and sum of money which shall at any time be raised, received, or taken under the aforesaid provisions of this Law, shall be applied to and for the purposes hereinbefore set forth or referred to, and to and for no other purposes whatsoever.

Sinking fund established.

24. Out of all moneys so borrowed as aforesaid, the said Council shall from time to time as and when so borrowed, set aside a sum and sums computed at not less than two per centum upon the sum so borrowed, as a sinking fund, and shall thereupon forthwith invest, or cause the same to be invested, in the re-purchase of their own debentures, mortgage bonds, or other securities, or in the public funds of Great Britain and its dependencies; and also shall and will from time to time forthwith invest, or cause to be invested, on like securities, all dividends, interest, or annual proceeds arising from all and any such investments, to the intent that the same may accumulate by way of compound interest thereon.

Council may lease the three-eighths of land charged with debentures without consent of holders.

25. The Council of the said Borough shall and may use, exercise, and enjoy all powers of leasing the aforesaid three-eighth parts or portions of such town lands competent to the said Council to use, exercise, and enjoy, in respect of any other portions of the said town lands under the Laws in force for the time being in that behalf, notwithstanding the same may be charged with any such debentures, mortgage bonds, or other securities under the aforesaid provisions of this Law, and without the consent of the mortgagees or holders of any such securities. Provided always, that on every such lease, or renewal thereof, there shall be paid the best yearly rent that can be had for the same, without receiving any fine, premium, or gift for granting the same, or any renewal thereof.

Council may sell the remaining five-eighths of town lands not charged with debentures, with sanction of Governor.

26. The Council shall have full power to sell all lands not charged with any such debenture, mortgage bond, or other security, under the aforesaid provisions of this Law, whether leased or not, to the extent of five-eighth parts of such town lands, either by freehold or by annual quit-rent, with bonus, or under any other manner of holding, and subject to such conditions as the Council of said borough may see fit to adopt as eligible, such sales being either by public sale or private bargain, and the sanction of the Lieutenant-Governor being always previously obtained thereto, and to the conditions under which the same shall from time to time be offered for sale.

Council may mortgage town lands not charged with debentures for any purposes mentioned in sec. 69 of Law 21, 1862, and sec. 2, Law 19, 1872.

27. The Council may also, from time to time, upon written consent of the Lieutenant-Governor first had and obtained, borrow, upon the security of their other corporate lands, or of any portion thereof, not specially chargeable under any such debentures, mortgage bonds, or other securities, any further sum and sums of money, that may, at any time or times, be needed and requisite for any of the purposes mentioned or referred to in the 69th section of the Law No. 21, 1862 (A), entitled,

(A) See Law 19, 1872, s. 2, tit. "MUNICIPAL CORPORATIONS."

“Law amending and consolidating the Laws in regard to Municipal Corporations,” as well as upon the security of other the rates, rents, and revenue, mentioned and referred to in this Law.

Private Law,  
1866.

28. This Law shall be deemed to be a Public Law, and may be cited for all purposes as the “Durban Corporation Loan Law, 1866;” and shall take effect from and after the publication thereof in the “GOVERNMENT GAZETTE” (A).

A public Law.  
Short title.  
Commencement

§ Law No. 27, 1874 (B).

“To empower the Town Council of the Borough of Durban to convey to the Trustees of the Durban Mechanics’ Institution a certain portion of the Market Square of the Town of Durban, and to make provision for regulating the holding of such property by the said Institution upon such conveyance.”

act. 14/191  
O. 10/53. s.3

[24th November, 1874.]

WHEREAS in or about the year 1853, a certain Association, known as the “Durban Mechanics’ Institution,” was formed and established in the Town of Durban, in this Colony, for mutual improvement, and for literary and educational and other kindred purposes, and from thence hitherto hath been and still is in existence in the said Town of Durban :

AND WHEREAS, in consideration of the public utility and beneficial tendency of said Association or Institution, the Town Council of the Borough of Durban did, at a meeting of said Council duly convened and held at Durban aforesaid, on the 18th day of January, 1860, duly resolve and agree to convey to the said “Durban Mechanics’ Institution,” a certain piece of land in form of a rectangle, measuring one hundred and fifty feet in length by ninety-two feet in breadth, being portion of the land set apart for the Market Square of the Town of Durban, bounded on the North by Church Land, on the South by West Street, on the East by Corporation Land, and on the West by Church Street; subject to its being used for the general purposes of a Mechanics’ and Literary Institution; that it be inalienable, and that in case it should fail to be used bona fide for such purposes it shall revert to the Corporation :

AND WHEREAS, the 132nd Section of “The Municipal Corporations Law, 1872,” provides, inter alia, for the endowment, maintenance, or erection of public institutions within said Borough, and empowers said Council to alienate from time to time, with the consent in writing of the Lieutenant Governor, such portion of the Town Lands as the Borough Corporation may deem necessary for such purposes :

AND WHEREAS, the powers contained in said recited Law do not enable the said Council to convey to the “Durban Mechanics’ Institution” the land described in the said resolution of Council dated 18th January, 1860 (c) :

AND WHEREAS, the said “Durban Mechanics’ Institution” has been for many years past in occupation and possession of said described piece of land on sufferance :

(A) Dec. 18, 1866.

(B) See Act 41, 1898, post, partially repealing this Law.

(C) See the recitals of this Law discussed in *Beningfield & Son v. Durban*

*Corporation* (18 N.L.R. 202), where the principle is laid down that a recital in an Act is not conclusive either in law or in fact.

Law 27, 1874.

AND WHEREAS, it is expedient to empower the Town Council of the Borough of Durban to convey the said piece of land to certain trustees on behalf of the said "Durban Mechanics' Institution," and to make provision for regulating the holding of such property by the said Institution upon such conveyance:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Town Council empowered to convey to Trustees a certain piece of land to and on behalf of the "Durban Mechanics' Institution."

1. The Town Council of the Borough of Durban shall be, and they are hereby empowered and authorised to grant, cede, transfer, and convey unto three trustees of the "Durban Mechanics' Institution," to be appointed and elected as hereinafter provided, upon and subject to such conditions as may be agreed upon by and between the said Council and the said Institution, and without any charge or payment of transfer duty, all that and those the piece or parcel of land hereinafter mentioned and described, with its appurtenances, in trust for and on behalf of the said "Durban Mechanics' Institution," and for the objects and purposes thereof according to the Rules and Bye-laws of said Institution.

Trustees, their number, and how appointed.

2. The said trustees shall consist of the Mayor of Durban for the time being, and of two trustees who shall from time to time be elected and appointed by the majority of the members of the "Durban Mechanics' Institution" present at any general meeting convened for such purpose; such meeting to be convened within six months from the promulgation of this Law, or in case of the death, resignation, non-residence, or insolvency of any such trustee, any subsequent election shall take place within three months from the date thereof; and it shall be lawful for such Institution, through the Secretary thereof for the time being, or other officer or officers appointed for the purpose, in case of the change of any trustee or trustees of such property, to cause such change to be registered in the office of the Registrar of Deeds of this Colony without payment of transfer duty, and without any formal transfer to the new trustee or trustees, upon payment of a fee of five shillings for every new name desired to be registered.

Subsequent elections.

Changes to be registered.

3. Before the Registrar of Deeds shall register any change in the name or names of the holder or holders of said property of said Institution, he shall require and receive proof to his satisfaction that the person or persons whose name or names is or are sought to be registered, is or are duly entitled to be registered according to the conditions in the deed of transfer from the said Town Council to the said Institution, and according to the bye-laws, rules, and constitution of the Institution, or otherwise according to law.

Registrar of Deeds to require proof of certain things before registration.

Disputes between the Registrar and persons claiming to be registered to be determined by the Court or Judge in Chambers.

4. In case any question shall arise between the Registrar of Deeds and any person claiming to be entitled to be registered as a trustee or trustees as aforesaid, it shall be lawful for the Supreme or Circuit Court, or any Judge thereof sitting in Chambers to hear the said Registrar of Deeds, and the party or parties applying for such registration, or any person or persons representing such respectively, as to the matter in question, and to examine the proofs which shall have been offered in support of the claim to be registered, and to call for such further proof as may be necessary, and in a summary manner to make such order in the premises as shall to justice appertain, which order shall be binding and conclusive: Provided that a Judge sitting in Chambers may direct any such question as aforesaid coming before him in Chambers to be brought by way of motion before the Supreme or Circuit Court, in order that the same may be heard and determined by such Court, whose decision shall be binding and conclusive.

Registered trustees alone recognised as owners.

5. The person or persons who may for the time being be registered in the said Deeds' Registry, as the trustee or trustees for the said property of the "Durban Mechanics' Institution," shall alone be recognised

as the owner or owners thereof, unless and until any new registration shall be effected of any such change of trustee or trustees according to law.

Law 27, 1874.

6. That before any building is erected the plans must be submitted to the said Town Council for its approval, and that the said Council shall have the power to give the face lines of such building, and that if no such building is erected within ten years from the date of such approval, then that the land will, by such failure, absolutely revert to the Corporation.

Plans of buildings to be submitted to Town Council, and the building to be erected within ten years.

7. Nothing in this Law contained shall prevent the said Association from altering its name, provided that every such alteration shall be registered in the Registrar of Deeds' Office, and publicly notified in the "GOVERNMENT GAZETTE": and provided further that no such alteration shall prejudice or affect any right which previously to such alteration has accrued to anyone against such Association, and that no such alteration shall abate or render defective any legal proceedings pending at the time when such alteration is made.

The Association may alter its name, which must be registered and publicly notified.

8. This Law shall be taken as a Public Law, and may be cited for all purposes as the "Durban Mechanics' Institution Law, 1874."

Short title.

9. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE," after the passing thereof (A).

Commencement

Law No. 13, 1880.

*See Act - 22/01.*

"To authorise and empower the Mayor and Councillors of the Borough of Durban, hereinafter called the 'Town Council,' to borrow Twenty-five Thousand Pounds, to be spent in repairing the Main Road from the Berea Toll to the Point, and in hardening the Roads to Umgeni and Umbilo, and in the erection and construction of toll-bars or toll-houses, to levy tolls within the Borough of Durban, to issue licences to persons resident or carrying on the business of carriers within the Borough of Durban, and to charge for such licences, and to charge the moneys received from such tolls and licences with the said sum of Twenty-five Thousand Pounds and interest."

[25th March, 1880.]

WHEREAS, by Section 127 of Law 19 of 1872, it is enacted that Main Trunk Roads running through the Boroughs of Pietermaritzburg and Durban, except as to the portion thereof commonly known and described as the streets of the Borough, shall as from the first day of January, 1873, be made and maintained by and be under the management and control of the Colonial Government:

AND WHEREAS the Colonial Government do not admit their liability to make or repair the Roads from the Town of Durban to the Umbilo, the Umgeni, or the Point:

AND WHEREAS the Town Council of Durban are willing at the expense of the Borough to harden and improve the said roads and the Road from Durban to the Borough Boundary near the site of the present Toll-gate, and to take the management and control thereof, if allowed to charge for tolls and licences, and if authorised to borrow the sum necessary therefore.

AND WHEREAS it is expedient to assist the Mayor and Councillors of the Borough of Durban to improve, repair, and maintain in repair, these Roads on terms aforesaid, and for that purpose to authorise the Town

(A) Dec. 1, 1874.



Law 18, 1880. Council of the Borough of Durban to borrow the sum of £25,000 to be expended for the purposes aforesaid, and in order to provide for the repayment of the same and the interest payable thereon, and the necessary expenses in carrying out this Law, to authorise and empower the said Town Council to levy tolls on vehicles and carriages using or passing over the said roads, and to issue annually licences to persons carrying on the business of carriers within the limits of the Borough of Durban, and to charge for the same and to issue licences annually to persons resident within the Borough keeping carriages and other vehicles, and using the same in the said borough :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of the Colony of Natal, by and with the advice and consent of the Legislative Council thereof, as follows :

Repeal.

1. That the Law 18 of 1872 (" The Berea Toll Law of 1872 ") shall be, and the same is hereby repealed.

Section 127,  
Law 19, 1872,  
partly repealed.

2. So much of the Clause 127 of Law 19, 1872, as is applicable to the Borough of Durban, and is affected by this Law, shall be, and the same is hereby repealed.

Town Council  
empowered to  
borrow sums  
not exceeding  
£25,000 for re-  
pairs of road,  
etc.

3. The Town Council of the Borough of Durban are hereby authorised to borrow, from time to time, sums not exceeding £25,000 sterling, for the purpose of repairing, from time to time, hardening, and improving the said Roads, and for the erecting and construction of toll-houses and toll-bars.

Town Council  
empowered to  
issue " Durban  
Toll Deben-  
tures," up to  
£25,000.

4. The Town Council of the Borough of Durban shall have full power and authority to issue, under the conditions hereinafter stated, in Great Britain, or elsewhere, debentures to be called " Durban Toll Debentures," representing a sum not exceeding £25,000.

Value of Deben-  
tures, how to be  
paid off, and  
rate of interest.

5. Each debenture shall be for a sum not less than One Hundred Pounds, to be paid off at par as soon as may be from moneys received under this Law, but not later than the expiration of 20 years from the date of the promulgation thereof, and shall bear interest at the rate of not more than six per cent. per annum, payable half-yearly, and shall not be issued at a greater discount than three per cent.

Toll Debentures  
to be preferent  
charge on all  
moneys re-  
ceived under  
this Law. Cost  
of collection.

6. All toll debentures issued under and by virtue of this Law, and the principal moneys and interest respectively secured thereby, shall be a preferent charge on, and be payable out of all moneys received under this Law, after payment out of such moneys of the cost of collecting such tolls, which shall not exceed £600 sterling per annum, and after payment of the expense of repairing and maintaining the said roads in good order and condition.

Toll Debentures  
to be a general  
charge on rates  
and revenues.

7. The Durban toll debentures and the principal moneys and interest secured thereby shall be a general charge on the rates and revenues of the said Borough of Durban.

Special rates  
may be directed  
by the Supreme  
Court to meet  
arrears payable  
on debentures.

8. In case the principal or interest payable in terms of a Durban toll debenture shall be in arrear, and unpaid for thirty days after the time appointed for payment thereof respectively, it shall and may be lawful for the Supreme Court of the Colony of Natal to direct a special rate to be levied upon the immoveable property situate within the Borough, which is now or may hereafter be liable to be rated for Municipal purposes, to the intent that the default by the said Town Council, as regards the principal or interest of such debentures, may be met and liquidated by such special rate.

Application of  
money raised  
under this Law.

9. All and every the sums of money that shall be raised under and by virtue of this Law shall be applied to and for the purposes mentioned in this Law, and for those alone.

Town Council  
empowered to  
levy tolls.

10. The said Town Council may, and it is hereby authorised and empowered to, levy tolls according to, but not exceeding, the rates mentioned in the Schedule A hereunto annexed, on the Berea Road forthwith, and on each of the roads to the Umbilo and Umgeni, as soon as each of the said roads shall be hardened and made fit for traffic.

11. The Town Council shall be, and it is hereby authorised and empowered to erect, establish, and appoint at such place or places of and upon the said roads and streets as many toll-houses, toll-bars, or gates, or side bars as they shall consider requisite, and to demand, levy, and receive thereat the tolls and rates mentioned and set forth in the said Schedule (A). **Law 18, 1880.**  
Town Council empowered to erect toll-bars.
12. The Town Council shall affix, or cause to be affixed or exhibited in a conspicuous place at the toll-house near every toll-gate, or toll-bar, or side bar whereat any toll shall be payable, a table or schedule of the tolls and rates to be taken thereat, plainly and legibly painted or printed in the English and Dutch languages, under a penalty not exceeding Five Pounds (£5) sterling, to be sued for by any person whatsoever in any competent Court for his own use. Schedule of tolls to be exhibited at every toll-house, etc.  
Penalty for default.
13. A copy of this Law shall be kept at each toll-house, or toll-bar, or side bar at which any toll shall be demanded or taken, and shall be open to the inspection of the public whenever called for or required. Copy of this Law to be kept at toll-house.
14. The Christian and Surname of every toll-collector for the time being shall be painted on a board in black letters on a white ground, or white letters on a black ground, each of the letters of such name to be at least two inches in length and of a proportionate width, such board to be affixed to or placed within twenty feet of the toll-house, or toll-gate, or side bar where such toll shall be payable, demanded, or taken, at a height of about five feet from the ground, and shall remain there during the whole time that such toll-collector shall be on duty; and on change of any toll-collector, the names of the succeeding toll-collector shall in like manner be affixed to or placed within twenty feet of the toll-house, or toll-gate or side-bar as aforesaid, and if any such toll-collector shall not place and keep the same there during such time as he shall be on duty, or shall demand or take a greater or less toll than he shall hereby be authorised to do, or shall knowingly demand or take toll from any person exempted from payment, and who shall claim exemption, or shall refuse to permit any person to read such board or table of tolls and rates, or shall refuse to tell his or her Christian and Surname to any person who shall demand it after payment of the toll, or shall give a false name, or shall refuse or neglect to give a ticket denoting the payment of the toll, if demanded, or shall, upon the legal toll being paid or tendered, wilfully obstruct any passenger or person using the said road from passing through any toll-gate or bar, or side-bar, or shall neglect or refuse to produce a copy of this Law for the inspection of the public when called upon or required so to do, or shall make use of any scurrilous or abusive language to any passenger or person using the said road, every such toll-collector or person in any respect offending against the provisions of this Section of this Law, shall forfeit and pay a sum not less than Forty Shillings, and not exceeding Five Pounds for every offence, or be liable, in default of payment thereof, to imprisonment, with or without hard labour, for a period not exceeding Three Months. Name of toll collector to be exhibited.  
Offences by toll collector.
15. No toll shall be demandable or payable for, or in respect of, any wagon or other vehicle, or any animal or animals merely crossing any of the said roads in the direct line of any roads or streets which are now or may hereafter be laid down by the said Town Council. Vehicles crossing road exempted.
16. If any person other than the duly-appointed toll-collector shall give, or if any person shall receive from any person other than the said duly appointed toll-collector or toll-collectors, or shall forge, counterfeit, or alter any ticket directed to be given as aforesaid, with intent to evade payment of the toll payable under or by virtue of this Law, each and every such person shall, for every such offence, forfeit and pay any sum not less than Forty Shillings, and not exceeding Five Pounds. Penalty for giving or receiving ticket with intent to evade toll.

(A) See Law 7, 1887, post, authorising the erection of other side bars.

**Law 18, 1880.**

Offences relating to roads, &amp;c.

17. If any person shall ride upon any footpath or causeway made or set apart for the use of foot-passengers, or shall ride, lead, or drive any horse, mule, ass, ox, sheep, swine, or other animal, or any bicycle or carriage of any description, or any wheelbarrow, truck, or other vehicle of any description, or any single wheel of any wagon, cart, or carriage whatsoever, apart from such wagon, cart, or other carriage upon any such footpath or causeway, or shall haul or draw, or caused to be hauled or drawn, upon any of the said roads or any part thereof, any timber, stone, or other thing otherwise than upon wheeled carriages, or permit or suffer any timber, stone, or other thing so carried to drag or trail upon any such road to the prejudice or damage thereof, or shall use or permit, or suffer to be used, any shoe, chain, drag, break, skid, or other instrument, for the purpose of retarding the descent of any coach, chaise, wagon, carriage, cart, or other vehicle, in such manner as shall wholly prevent the rotating of any of the wheels of any such vehicle, or which shall in any way tend to destroy, injure, or disturb the surface of the roads or any of them, or shall place any timber, packages, or other articles, matters, or things, save as to machinery hereinafter specially provided for, on any coach, chaise, wagon, carriage, cart, or other vehicle, so that the same shall project more than eighteen inches from the side of such coach, chaise, wagon, carriage, cart, or other vehicle, or so as in any way or manner to obstruct or impede the passage of any person or of any other coach, chaise, wagon, carriage, cart, or other vehicle travelling along the said roads or either of them, or shall leave any coach, chaise, wagon, carriage, cart, or other vehicle, upon either of the said roads without any proper person in the custody or care thereof, or shall drive, or permit, or suffer to be driven, in and upon either of the said roads, any oxen drawing any wagon, or cart, or other vehicle without a leader, or in cases of accident shall leave any coach, chaise, wagon, carriage, cart, or other vehicle, or any packages, articles, matters, or things, being conveyed thereby in or upon either of the said roads, for a longer time than is reasonably necessary to remove the same, or shall, except in cases of accident, put, place, lay, or deposit any timber, stone, packages, or any other articles, matters, or things whatsoever, on either of the said roads, or the footway or causeway adjoining the same, or shall stop at any place or places on the said roads, or either of them, for any unreasonable space of time, for any purpose whatsoever, to the prejudice, annoyance, interruption, or personal danger of any person or persons travelling thereon, or to the obstruction, hindrance, or interruption of any coach, chaise, wagon, carriage, cart, or other vehicle, travelling in and upon the said roads, or either of them, each and every person offending, or if he or they be only a servant or servants, or other than the owner, then the owner of every such coach, chaise, wagon, cart, carriage, or other vehicle, horse, ass, mule, ox, sheep, or other animal, shall, in each and every of such cases, forfeit and pay for each and every such offence, any sum not less than Forty Shillings, and not exceeding Five Pounds.

Penalty.

Machinery may project beyond vehicle.

18. Provided always that it shall and may be lawful for any person to place on any wagon, cart, or other vehicle, any boiler, sugar pans, or other extensive machinery, which shall or may project more than eighteen inches from the side of such wagon, cart, or other vehicle, and to convey the same over either of the said roads without being liable to the penalty in the last clause mentioned, provided always that the said Town Council shall be, and they are hereby empowered, to impose from time to time such restrictions upon the conveyance of the said above-mentioned articles, as they shall deem necessary for the safety of other vehicles and passengers over the said roads.

Offences relating to toll house, &amp;c.

19. If any person or persons shall pull down, remove, deface, or otherwise injure any schedule or table of tolls, or the board whereon the name of the toll-collector shall be painted, written, or set forth, hereby directed

to be affixed at the toll-house, toll-gate, or side-bar, in manner hereinbefore mentioned, or any board to which the same shall be affixed, or shall do any damage or injury to any toll-house, or any matter or thing connected therewith, or to any toll-bar, or gate, or side-bar, already or hereafter to be erected by the said Town Council, or shall pull down, damage, injure, or destroy any lamp or lamps, lamp-post, or fencing, put up, erected, or placed in or near the said toll-house, in or upon any of the said roads, or extinguish the light of any such lamp or lamps, or shall in any way mutilate, damage, or destroy the copy of this Law hereinbefore required to be kept and produced at each toll-house, toll-bar, or side-bar, as aforesaid, each and every person wilfully offending in any or either of such cases shall, for each and every such offence, forfeit and pay a sum not less than Five Pounds, and not exceeding Ten Pounds, over and above any damages which may have been sustained thereby.

Law 18, 1880

Penalty.

20. In any action or suit which shall be brought for recovery of any penalty or sum of money to become due or payable by virtue of this Law, save as in the 12th section of this Law is excepted, or in any action, suit, or other proceeding whatsoever hereunder, it shall be lawful for the said Town Council to sue and be sued by the style and description of "The Mayor and Councillors of the Borough of Durban," and the penalties may be sued for by the Town Clerk of the said Borough in their behalf, or by any person specially appointed by and on behalf of the Corporation: Provided always that the said Mayor and Councillors shall always be reimbursed and paid out of the Corporation Funds all such costs, charges, and expenses as they shall be put to and become chargeable with, by reason of bringing or defending any such action, suit, or other proceeding as aforesaid, and shall not be personally answerable or liable for the payment of the same or any part thereof, unless such action, suit, or other proceeding as aforesaid shall arise or have arisen in consequence of their own wilful neglect or default.

How Town Council may sue and be sued.

Mayor and Councillors to be reimbursed expenses, unless suit, &amp;c., has arisen through their own neglect.

21. The said Town Council shall be, and they are hereby authorised and empowered to grant and issue licences upon such terms as to the said Town Council shall appear proper, to all persons resident, or carrying on business, in the Borough of Durban, who shall, within the limits of the Borough, use or employ vehicles of any kind, drawn by animal power, whether for hire or for private convenience, and to charge for such licenses for each period of twelve months the several sums mentioned and set forth in Schedule B annexed: Provided that the word "resident" in this clause and in the next succeeding clause shall be construed to mean a person who has had his or her usual place of abode in the Borough of Durban for a period of four months.

Town Council may issue licenses to residents, &amp;c.

Proviso.

22. Any person being a resident, or carrying on a business in the Borough of Durban, who shall after the expiry of one month from the promulgation of this Law hire out, use, or employ, within the limits of the Borough, any unlicensed vehicle, his property or under his control, or who shall commit any breach of any condition of the licence relating to such vehicle, shall be liable to a penalty not exceeding Five Pounds, to be recoverable, with costs, in the Court of the Resident Magistrate for the District of Durban.

Penalty on resident, &amp;c., for breach of condition of licence.

23. In case a person resident in the Borough, or within half-a-mile of the Borough Boundary, may have to pass a toll in order to reach his home, the Town Council may waive, or compound, the tolls or licences demandable from such person.

Town Council may waive or compound certain tolls or licences.

24. The Town Council, subject to the regulations relating to bye-laws contained in the Law 19 of 1872, shall be, and they are hereby authorised and empowered to make in terms of said Law all necessary bye-laws for regulating traffic on the roads of the said Borough, and such bye-laws as may be deemed necessary for the collection and management of such tolls,

Town Council may make bye-laws and impose penalties, &amp;c.

- Law 18, 1880.** and for the imposition and collection of licences, and generally for carrying out the objects of this Law, and to impose such fine, not exceeding Ten Pounds, for the infringement or contravention of any such bye-law.
- Penalties to be sued for within three months. 25. All penalties imposed by this Law, except the fine or fee mentioned in Clause 12 of this Law, shall be sued for within three calendar months after the same shall have become payable, or after breach of this Law, or the commission of any offence against the same, by summary proceeding before the Resident Magistrate for the District of Durban, notwithstanding the defendant or party against whom any complaint may be made shall reside or have his habitation or dwelling out of the Borough of Durban, any Law to the contrary notwithstanding; and service of any summons issued out of the Court of the said Resident Magistrate, such service being made in accordance with the rules of the said Court, shall be deemed and held to be good service, and the judgment pronounced by the said Resident Magistrate shall be binding and effectual upon the said defendant or party so summoned as aforesaid.
- To be recovered before Magistrate of Durban. 26. In case any fine, penalty, or payment, ordered by any such Resident Magistrate to be paid or made according to the provisions of this Law, and according to the intent and meaning of any bye-law made thereunder, shall not be duly paid or made, it shall and may be lawful for the said Resident Magistrate to levy the same by distress and sale of the goods and chattels of the party ordered to pay the same, but if there be no goods on which to make such distress and sale, then it shall and may be lawful for the said Resident Magistrate to commit such offender to the common Gaol of the Borough of Durban, for any period not exceeding one month, unless such fine, penalty, or payment, and costs, be sooner paid or made.
- Provision as to service of process. 27. An account of all moneys raised or received under this Law shall be furnished quarterly by the Town Council to the Colonial Secretary.
- How fines to be levied. 28. Whenever the net sums received by the said Town Council from or in respect of such tolls, licences, and otherwise under this Law shall amount to a sum equal to the costs and expenses incurred by said Town Council up to such time in the construction, maintenance, and repair of such roads and the interest payable by them in respect thereof, then the tolls and licences hereby authorised to be demanded, levied, and received hereunder shall thenceforth cease, and this Law thenceforth be and become null and void, anything herein contained to the contrary thereof notwithstanding, and the Lieutenant Governor is hereby authorised to proclaim the same abolished accordingly: Provided that in no case shall this Law remain in force and effect for a longer period than twenty-one years from the date of its promulgation.
- Imprisonment in default. 29. A person paying toll at any gate in respect of any vehicle or animal shall be entitled on demand, to a ticket freeing such animal or vehicle at any other but not at the same gate for a period of twenty-four hours from the time marked on such ticket.
- Quarterly account to be sent to Colonial Secretary. 30. All moneys to be levied and received under the provisions of this Law shall, after deduction of the expenses of collection, making and repair of roads, payment of interest, and all other necessary outgoings, be applied to the purchase and cancellation or payment of Durban Toll Debentures or may be temporarily invested in good securities in the name of the Mayor of the Borough and of any two Town Councillors nominated year by year by the Town Council for that purpose, as Trustees for the holders of Durban Toll Debentures.
- Law to cease when entire expense of making road, interest, &c., shall be paid by toll. 31. This Law may be cited as "The Durban Tolls Law of 1880."
- Law not to remain in force longer than twenty-one years. 32. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A).
- Ticket demandable by person paying toll.
- Application of moneys received under this law.
- Short title.
- Commencement

(A) March 30, 1880.

SCHEDULE A.

Law 18, 1880.

	s.	d.
For every coach, chaise, carriage, cart, or other vehicle drawn by six or more horses, mules, or asses, or eight oxen, or upwards	1	6
Ditto if drawn by four horses, mules, or asses, or six oxen ... ..	1	0
Ditto if drawn by two horses, mules, or asses, or four oxen... ..	0	9
Ditto if drawn by one horse, mule, or ass, or one or two oxen ...	0	6
For every wagon not exceeding 15 feet in length of bedplank, drawn by eight or more horses, mules, asses, or twelve oxen or upwards ... ..	1	6
For every wagon exceeding 15 feet in length of bedplank, drawn by eight or more horses, mules, or asses, or twelve oxen or upwards	2	6
For every horse, mule, or ass ... ..	0	3
For every head of cattle ... ..	0	1
Sheep, goats, or pigs, per score or part of score ... ..	0	3
For every steam engine drawn or propelled by other than animal power ... ..	10	0
For each cart, truck, or other vehicle attached to the before mentioned engine ... ..	2	0

SCHEDULE B.

*Vehicles used for purpose of Hire or Trade.*

	£	s.	d.
Omnibus or Tram Car, Yearly License ... ..	5	0	0
Trolley, do. ... ..	5	0	0
Wagon, do. ... ..	5	0	0
Cart, do. ... ..	2	10	0
Any other vehicle on two wheels, Yearly License ... ..	2	10	0
Do. four wheels, do. ... ..	4	0	0

*vide act 27/1*

*Vehicles used for Private Conveyance or otherwise.*

Carriages or vehicles, four wheels, Yearly License ... ..	1	10	0
Do. two wheels, do. ... ..	1	0	0

SCHEDULE OF EXEMPTIONS.

1. Empty wagons or carts returning through any toll-bar within 24 hours of the time when toll shall have been paid at such toll-bar, in respect of such wagons or carts, shall be free from a second toll.
2. Any empty wagon or cart, in respect of which a toll shall have been paid at any toll-bar, shall be free of toll at the same bar for a period of 24 hours from the time of such payment, even though such wagon or cart shall return loaded.
3. Carriages, wagons, carts, and other vehicles, horses, mules, asses, or oxen belonging to Her Majesty and Her Military Officers, or employed in the service of Her Majesty, under the provisions of the Mutiny Acts in force for the time being, and when conveying any such persons as aforesaid, or their baggage, or returning empty from conveying the same, shall be free from toll.
4. All Volunteers, duly recognised in the Colony, and when on duty, shall be free from toll.
5. Any two-wheeled carts drawn by not more than six horses, oxen, mules, or asses, conveying exclusively vegetables, sugar cane for planting, fruits, milk, butter, cheese, poultry, eggs, and other like garden or dairy produce, for sale in the Borough of Durban, shall be free from toll.
6. All vehicles or animals belonging to the Colonial Government, or employed in the service of the Colonial Government, shall be free from toll.

Law 18, 1880.

7. Any vehicle registered in the Town Office as a vehicle substituted for a licensed vehicle shall, during the period of such substitution, be free from the license duty in Schedule B referred to, on payment of a registration fee of 1s., and subject to such reasonable conditions as the Town Council may impose.

Law No. 19, 1880.

*Repealed Act 57/105 see 1*

“To authorise and empower the Durban Tramways Company, Limited, to construct Tramways along the Berea Road, West Street, the Point Road, and other principal streets of Durban, and to work the same with cars and animal power for the conveyance of passengers and parcels, and to contract with the Town Council of Durban for the use of the Streets and Roads of the Borough.”

[25th March, 1880.]

WHEREAS, the facilities for passenger and parcel traffic in the Borough of Durban are insufficient and unsuitable for public requirements, and the Durban Tramways Company, Limited, are willing to increase and improve the present facilities, and it is expedient to assist the objects of the said Company, and to authorise the construction and working by them of Tramways in Durban :

BE IT THEREFORE ENACTED by the Lieutenant Governor of the Colony of Natal, by and with the advice and consent of the Legislative Council thereof, as follows :

Short title.

1. This Law may be cited as the “Durban Tramways’ Law” (A).

Interpretation.

2. For the purposes of this Law, the terms hereinafter mentioned shall have the meanings hereinafter assigned to them, that is to say :

“The Town Council” shall mean the Town Council of the Borough of Durban.

The term “the Company” shall mean the Durban Tramways’ Company, Limited.

“Borough” shall mean the Borough of Durban.

Company and Town Council authorised to make contracts.

3. The Company and the town Council are hereby authorised to make contracts relating to the use by the Company of the Streets of the Borough, subject to the approval of the Lieutenant Governor in Council.

Company authorised to make and use tramways.

4. The Company (subject to the consent of the Town Council) is hereby authorised to make and use Tramways, upon a safe and reasonable gauge, not exceeding four feet eight-and-a-half inches, and in manner hereinafter described :

Description of first section of tramway.

The first section of the said Tramway shall be from the neighbourhood of the Western Railway crossing in West Street to the neighbourhood of the Railway Terminus at the Point.

In case the Company shall wish to lay a Tramway or Tramways in other parts of the Borough, it shall be lawful for them to do so, having first obtained the consent in writing of the Town Council.

Tramways to be in the middle of the road.

5. Such Tramways shall be constructed and maintained as nearly as may be in the middle of the road.

Limitation of traffic.

6. The traffic upon such Tramways shall be confined to passengers and parcels (B).

(A) See Act 12, 1899, post, authorising purchase from the Company by the Town Council.

(B) Amended by Act 12, 1899, post, which gives Town Council power to convey goods, &c.

7. The tolls and charges to be levied by the Company shall not exceed for passengers threepence a mile or fraction of a mile, and for parcels the rates specified in the Schedule to this Law annexed, without the sanction of the Lieutenant Governor in Council.

Law 19, 1880.  
Tolls and charges to be levied.

8. The provisions of the Lands' Clauses Consolidation Law, No. 16 of 1872, shall be incorporated with this Law, except as to the following provisions :

Law 16, 1872, incorporated with this Law.

(a) With respect to the purchase and taking of lands otherwise than by agreement.

Exceptions.

(b) With respect to the entry upon lands by the Company.

9. For the purposes of such incorporation, this statute shall be deemed the Special Law contemplated by the Lands' Clauses Law.

This to be deemed the special Law contemplated by Law 16, 1872.

Cesser of powers at expiration of prescribed time.

10. If the Company do not, within thirty months from the date hereof, complete a Tramway from Durban to the Point, and open it for public traffic, or, if within one year from the date hereof the works are not substantially commenced, or, if the works, having been commenced, are suspended without a reason sufficient, in the opinion of the Lieutenant Governor in Council, to warrant such suspension, then the powers hereby given to the Company for constructing Tramways, executing such works, or otherwise in relation thereto, shall cease to be exercised, unless the time is prolonged by the special direction of the Lieutenant Governor in Council, and thereupon so much of the said Tramway as is then completed shall be dealt with, at the expense of the Company, in the manner provided in Section 19 of this Law, and as if the Tramway had been opened.

11. The Tramways hereby authorised shall be laid and maintained in such manner that the uppermost surface of the rails shall be on a level with the surface of the road, and shall not be opened for public traffic until the same have been inspected and certified to be fit for such traffic by an engineer appointed by the Lieutenant Governor in Council.

Rails to be level with surface of road.

Certificate required.

12. The Company may, from time to time, for the purposes of making, forming, laying down, maintaining, and renewing the proposed Tramways or any part thereof respectively, open and break up any road, subject to the following regulations :—

Power to break up roads.

- (a) They shall give to the Town Council notice of their intention, specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up ; such notice to be given seven days, at least, before the commencement of the work.
- (b) They shall not open or break up or alter the level of any road, except under the superintendence and to the reasonable satisfaction of the Town Council, unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work.
- (c) They shall pay all reasonable expenses to which the Town Council is put on account of such superintendence.
- (d) They shall not, without the consent of the Town Council, open or break up at any one time a greater length than one hundred yards of any road which does not exceed a quarter of a mile in length, and in the case of any road exceeding a quarter of a mile in length, they shall leave an interval of at least a quarter of a mile between any two places at which they may open or break up the road, and they shall not open or break up at any such place a greater length than one hundred yards.



Law 19, 1880.

- (e) Where the carriage-way in or upon which any portion of the Tramway is proposed to be formed or laid down is crossed by any railway or tramway on the level, any work which the Company may be empowered to construct, and which affects or in anywise interferes with such railway or tramway, or the traffic thereon, shall be constructed and maintained under the superintendence (at the cost of the Company) and to the reasonable satisfaction of the Government, Person, Corporation, or Company owning such railway or tramway, unless in the case of the original construction of the tramway, after notice to be given by the Company seven days at least before the commencement of such work, such superintendence is refused or withheld.
- (f) In case any Tramway hereby authorised shall be so laid as not to leave a width of hardened road sufficient for public traffic on either side of the Tramway, then the Town Council may call upon the Company to widen the hardened parts of the road to the satisfaction of the Town Council to a distance not exceeding fifteen feet on either side of the Tramway; and, if the Company shall neglect to comply with such request, then the said Town Council may increase the width of the hardened road up to such distance of fifteen feet, and recover the cost thereof from the Company.

Completion of works and re-instatement of road.

13. When the Company have opened or broken up any portion of any road, they shall be under the following further obligations, viz. :—

- (a) They shall, with all convenient speed, and in all cases within four weeks at the most (unless the Town Council otherwise consents in writing), complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the Tramway) fill in the ground and make good the surface, and to the satisfaction of the Town Council restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby.
- (b) They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night.
- (c) They shall bear or pay all reasonable expenses of the repair of the road for six months after the same is restored as far as those expenses are increased by the opening or breaking up.

If the Company fail to comply in any respect with the provisions of the present Section, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Law, or to any other remedy against them) be liable to a penalty not exceeding Twenty Pounds, and to a further penalty not exceeding Five Pounds for each day during which any such failure continues after the first day on which such penalty is incurred.

Repair of part of road where tramway is laid.

14. The Company shall, at their own expense, at all times, maintain and keep in good condition and repair, with such materials and in such manner as the Town Council shall direct, and to their satisfaction, so much of any road whereon any Tramway belonging to them is laid as lies between the rails of the Tramway, and where two Tramways are laid in any road at a distance of not more than four feet from each other, the portion of the road between the Tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such Tramway. If the Company abandon their undertaking

or any part of the same, and take up any Tramway or any part of any Tramway belonging to them, they shall with all convenient speed, and in all cases within six weeks at the most (unless the Town Council otherwise consent in writing) fill up the ground and make good the surface, and to the satisfaction of the Town Council restore the portion of the road upon which such Tramway was laid, to as good a condition as that in which it was before such Tramway was laid thereon, and clear away all surplus paving or metalling material or rubbish occasioned by such work. And they shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night. Provided always that if the Company fail to comply with the provisions of this Section, the Town Council, if they think fit, may themselves at any time after seven days' notice to the Company, open and break up the road, and do the works necessary for the repair and maintenance or restoration of the road to the extent in this Section above mentioned, and the expense incurred by the Town Council in so doing shall be repaid to them by the Company.

Law 19, 1880.

15. The Town Council, on the one hand, and the Company, on the other hand, may from time to time enter into and carry into effect, and from time to time alter, renew, or vary contracts, agreements, or arrangements with respect to the making and keeping in repair of the whole or any portion of the roadway of any road on which the Company shall lay any Tramway, and the proportion to be paid by either of them of the expense of such making and keeping in repair.

Town Council and Company may contract for repairing roads on which tramways are laid.

16. Nothing in this Law shall take away or abridge any power to open or break up any road along or across which any Tramway is laid, or any other power vested in the Town Council, or any other local body or authority, for any of the purposes for which such authority is respectively constituted, or in any company, body, or person for the purpose of laying down, repairing, altering, or removing any pipe for the supply of gas or water, or any tubes, wires, or apparatus for telegraphic or other purposes, but in the exercise of such power the Town Council, Company, body, or person shall be subject to the following restrictions, that is to say:—

Rights of authorities and companies, &c., to open roads.

- (a) They shall cause as little detriment or inconvenience to the Company as circumstances admit.
- (b) Before they commence any work whereby the traffic on the Tramway will be interrupted, they shall (except in cases of emergency, in which cases no notice shall be necessary) give to the Company notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work.
- (c) They shall not be liable to pay to the Company any compensation for injury done to the Tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid.
- (d) Whenever for the purpose of enabling them to execute such work, the Town Council, Company, body, or person as aforesaid shall so require, the Company shall either stop traffic on the Tramway to which the notice shall refer, where it would otherwise interfere with such work, or shore up and secure the same at their own risk and cost during the execution of the work there: Provided that such work shall always be completed by the Town Council, Company, body, or person, with all reasonable expedition.

Law 19, 1880.

(e) Any Company, body, or person shall not execute such work so far as it immediately affects the Tramway, except under the superintendence of the Company, unless they refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work, or discontinue the same during the progress of the work and they shall execute such work at their own expense, and to the reasonable satisfaction of the Company: Provided that any additional expense imposed upon them by reason of the existence of the Tramway in any road or place where any such mains, pipes, tubes, wires, or apparatus shall have been laid before the construction of such Tramway, shall be borne by the Company.

Difference between Company and Town Council, &c., how to be settled.

17. If any difference arises between the Company on the one hand, and the Town Council, or any gas or water Company, or any Company, body, or person, to whom any sewer, drain, tube, wires or apparatus for telegraphic or other purposes may belong, or any other Company, on the other hand, with respect to any interference or control exercised or claimed to be exercised by them or him, or on their or his behalf, or by the Company by virtue of this Law, in relation to any Tramway or work, or in relation to any work or proceeding of the Town Council, body, Company, or person, or with respect to the propriety or the mode of execution of any work relating to any Tramway, or with respect to the amount of any compensation to be made by or to the Company, or on the question whether any work is such as ought reasonably to satisfy the Town Council, body, Company, or person, concerned, or with respect to any other subject or thing regulated by or comprised in this Law, the matter in difference shall (unless otherwise specially provided by this Law), be settled by an Engineer or other fit person nominated as referee by the Lieutenant Governor in Council on the application of either party, and the expenses of the reference shall be borne and paid as the referee directs.

18. [Repealed by Law No. 16, 1892 (A)].

Tramways to be removed in certain cases.

19. If at any time after the opening of the said Tramways or any part thereof, the Company discontinues the working of the same for the space of one calendar month (such discontinuation not being occasioned by circumstances beyond the control of the Company, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control), and such discontinuation is proved to the satisfaction of the Lieutenant Governor in Council, the said Lieutenant Governor in Council, if he thinks fit, may by order declare that the powers of the Company in respect of such Tramways, or the part thereof so discontinued, shall from the date of such order be at an end, and thereupon the said powers of the said Company shall cease and determine, unless the same are purchased by the Town Council in the manner by this Law provided. When any such order has been made, the Town Council may, at any time after the expiration of one month from the date of such order, under the authority of a certificate to that effect by the Colonial Secretary, remove the Tramway or part of the Tramway so discontinued, and the Company shall pay to the Town Council the cost of such removal, and of the making good of the road by the Town Council, such cost to be certified by the Clerk for the time being of the Town Council, whose certificates shall be final and conclusive, and if the Company fail to pay the amount so certified within one calendar month after delivery to them of such certificate, or a copy thereof, the Town Council may, without any previous notice to the Company (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of

(A) See post.

the materials of the Tramway, or part of Tramway, so removed, either by Public Auction or Private Contract, and for such sum or sums, and to such person or persons as the Town Council may think fit, and may out of the proceeds of such sale pay and reimburse themselves the amount of the cost certified as aforesaid, and of the cost of sale, and the balance, if any, of the proceeds of the sale shall, subject to any other lien thereon, be paid over by the Town Council to the Company. Law 19, 1830.

20. When any tramway hereby authorised has been opened for traffic for a period of six months, the Company may, with the consent of the Lieutenant Governor in Council and of the Town Council, sell their undertaking to any person, persons, Corporation, or Company, or with the consent of the Lieutenant Governor in Council, to the Town Council, and when any such sale has been made, all the rights, powers, authorities, obligations, and liabilities of such Company, under this Law, in respect of the undertaking sold, shall be transferred to, vested in, and may be exercised by, and shall attach to the person, persons, Corporation, or Company to whom the same shall have been sold, in like manner as if such Tramway was constructed by such person, persons, Corporation, or Company, under the powers hereby conferred, and in reference to the same they shall be deemed to be the Company. Provided that the Town Council shall not make any such purchase, except pursuant to resolution carried by three fourths of the members at a meeting of the Town Council, specially convened on one month's notice, published in a local newspaper to consider such purchase. Power of sale.

21. The Company may demand and take in respect of such Tramways tolls and charges not exceeding the sums mentioned in Section 7 of this Law, or in such schedule as the Lieutenant Governor in Council may hereafter substitute therefor, at the request of the Company, and a list of all tolls and charges authorised to be taken shall be exhibited in a conspicuous place inside and outside each of the carriages used on the Tramway. Tolls, etc.

22. The Town Council may make bye-laws as to the following matters: By-laws by  
Town Council.

- (a) The rate of speed to be observed in travelling upon the Tramway.
- (b) The distances at which carriages shall be allowed to follow one after the other.
- (c) The stopping of carriages using the Tramway.
- (d) The traffic on the road on which the Tramway is laid.
- (e) The precautions to be adopted by the Company as regards brake power and warnings.

The Company may make regulations for preventing the commission of any nuisance in or upon any carriage or in or against any premises belonging to them and for regulating the travelling in or upon any carriage belonging to them: and for better enforcing the observance of all or any of such regulations it shall be lawful for such Town Council and Company, respectively, to make bye-laws for all or any of the aforesaid purposes, and from time to time repeal or alter such bye-laws and make new bye-laws, provided that such bye-laws be not repugnant to the Laws of the Colony, and that when made by the Town Council the enabling Law of that authority be duly complied with. Notice of the making by the Company of any bye-law, under the provisions of this Law, shall be published by advertisement inserted once at least in each of two successive weeks in some one and the same newspaper published in Durban, and once at least in the "GOVERNMENT GAZETTE" of the Colony. A true copy of each bye-law of the Company shall be sent to the Colonial Secretary and the Town Council at least one month before such bye-law shall come into operation, and no such bye-law shall have any force or effect if dis- Company may  
make certain  
regulations.

**Law 19, 1880.** allowed by the Lieutenant Governor in Council within one month after such projected bye-law shall be laid before the Lieutenant Governor in Council. Bye-laws of the Town Council shall be capable of enforcement in the same way as any other bye-law duly passed by that authority. Any bye-law made by the Company may impose reasonable penalties for offences against the same, not exceeding forty shillings for each offence, with or without further penalties for continuing offences not exceeding for any continuing offence ten shillings for every day during which the offence continues, and such penalties shall be recoverable at the suit of the Company with costs in cases where the contravention is proved.

Power to Town Council to license drivers, conductors, &c.

23. The Town Council shall have the like power of making and enforcing rules and regulations, and of granting licenses with respect to all carriages using the Tramway, and to all drivers and conductors, and other persons having charge of or using the same, and to the standings for the same, as they are or may be for the time being entitled to make, enforce, and grant in respect of vehicles not propelled on a Tramway.

Penalty for obstruction of Company in laying out tramway.

24. If any person wilfully obstructs any person acting under the authority of the Company in the lawful exercise of their powers in setting out or making, forming, laying down, repairing or renewing a Tramway, or defaces or destroys any mark made for the purpose of setting out the line of the Tramway, or damages or destroys any property of the Company, he shall for every such offence be liable to a penalty not exceeding Five Pounds.

Penalties for wilful injury or obstruction to tramways, etc.

25. If any person, without lawful excuse (the proof whereof shall lie on him) wilfully does any of the following things, namely:—Interferes with, removes, or alters any part of a Tramway, or of the works connected therewith, places or throws any stones, dirt, wood, refuse, or other material on any part of a Tramway, does, or causes to be done, anything in such manner as to obstruct any carriage using a Tramway, or to endanger the lives of persons therein or thereon, or knowingly aids or assists in the doing of any such thing, he shall for every such offence be liable (in addition to any proceedings by way of indictment or otherwise to which he may be subject) to a penalty not exceeding Five Pounds.

Penalties on passengers practising frauds on Company.

26. If any person travelling or having travelled in any carriage on any Tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every person shall for every such offence be liable to a penalty not exceeding Forty Shillings.

Right to detain offenders.

27. It shall be lawful for any officer or servant of the Company, and all persons called by him to his assistance, to seize and detain any person discovered either in or after committing or attempting to commit any such offence as in the next preceding section is mentioned, and whose name or residence is unknown to such officer or servant, until such person can be conveniently taken before a Magistrate, or until he be otherwise discharged by due course of law.

Penalty for bringing dangerous goods on the tramway.

28. No person shall be entitled to carry or to require to be carried on any Tramway any goods which may be of a dangerous nature; and if any person send by any Tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the company with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding Twenty Pounds for every such offence; and it shall be lawful for the Company to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

29. If any person use the Tramway, or any part thereof, with carriages having flange wheels or other wheels suitable only to run on the rails of such tramway, such person shall, for every such offence, be liable to a penalty not exceeding Twenty Pounds.

**Law 19, 1880**  
Penalty for using tramways with carriages with flange wheels, &c.

30. The Company shall be answerable for all accidents, damages, and injuries happening through their act or default, or through the act or default of any person in their employment, by reason or in consequence of any of their works or carriages, and shall save harmless all road and other authorities, companies, or bodies, collectively and individually, and their officers and servants from all damages and costs in respect of such accidents, damages, and injuries.

Company responsible for all damages.

31. All tolls, penalties, and charges under this Law, or under any Bye-law made in pursuance of this Law, may be proceeded for in the case of the Town Council in the same manner as is applicable to contraventions of ordinary municipal bye-laws, and in the case of the Company by suit in the Magistrate's Court, at the instance of the Company.

Recovery of tolls, penalties, &c.

32. Notwithstanding anything in this Law contained, the Company shall not acquire, or be deemed to acquire any right other than that of user of any road along or across which they lay any tramway, nor shall anything contained in this Law exempt them from the payment of tolls levied on vehicles using any turnpike road over which the Company's Tramway may be laid.

Right of user only.

33. Nothing in this Law shall take away or affect any power which the Town Council, or the owner, commissioners, undertakers, or lessees of any railway or tramway may have by law to widen, alter, divert, or improve any road, railway, or tramway.

Reserving powers of Town Council, &c., to widen, &c., roads.

34. Nothing in this Law shall limit the powers of the Town Council or Police in any district to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such authority or Police may exercise their authority as well on as off the Tramway, and with respect as well to the traffic of the Company as to the traffic of other persons.

Power for Town Council or police to regulate traffic in roads.

35. Nothing in this Law, or in any bye-law made under this Law, shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which any tramway is laid, whether on or off the Tramway, with carriages not having flange wheels, or wheels suitable only to run on the rails of the Tramway.

Reservation of right of public to use roads.

36. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A).

Commencement

SCHEDULE.

(a) Any one parcel not exceeding 14 lbs. in weight, carried by any passenger, shall be free of charge.

(b) On all other parcels not exceeding 14 lbs. in weight, the Company shall be entitled to charge sixpence for each parcel.

(c) Provided that the Company shall not be competent or compellable to carry, for hire, any parcel of greater weight than 14 lbs.

**Law No. 3, 1883.**

"To enable the Town Council of the Borough of Durban to increase the Borough Debt."

[15th October, 1883.]

WHEREAS it is expedient to increase the borrowing powers of the Town Council of the Borough of Durban :

(A) March 30, 1880.

**Law 3. 1883.**

AND WHEREAS the present statutory debt of the Borough is £82,200, and a further sum of £110,000 is required for public works within the Borough, and other public purposes of the Borough, and for paying off moneys borrowed in anticipation of this Law :

AND WHEREAS it is expedient to authorise the borrowing by the said Town Council of the said sum of £110,000, upon condition that the said sum of £110,000, and any future loan or loans which may be authorised by law, shall rank concurrently after the existing debt of £82,200 :

BE IT THEREFORE ENACTED by the Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows :—

Town Council authorised to borrow £110,000 for public purposes.

1. The Town Council of the Borough of Durban are hereby authorised to borrow from time to time the moneys required for public works within the Borough, and other public purposes of the Borough, and for paying off moneys borrowed in anticipation of this Law, to an amount of £110,000.

Application of moneys.

2. The moneys borrowed under this Law shall be applied to the objects mentioned in the last preceding section, and to no other purpose.

Loan to be charged on rates, rents, and revenues, and how to rank.

3. The sums authorised to be borrowed under this Law, and the interest payable thereon shall be a charge upon the rates, rents, and revenues of the Borough, ranking after the present Borough Debt of £82,200, and ranking concurrently with any future loans or loan which may be hereafter authorised by the Legislature of Natal.

In case interest in arrear, Supreme Court can cause special rates to be levied for payment thereof.

4. In case the interest payable on any moneys borrowed under this Law shall be in arrears and unpaid for thirty days after the time appointed for the payment thereof, and after demand made, it shall be lawful for the Supreme Court of the Colony of Natal, as often as such default shall occur, at the instance of any person whose interest shall be in arrear, to cause a special rate to be levied upon the real or immovable property situate within the Borough, which is now, or may hereafter be, liable to be rated for Municipal purposes under Law 19 of 1872, to the intent that all arrear interest may be paid out of the proceeds of such special rate.

Loan repayable within 50 years.

5. The moneys borrowed under this Law shall be repayable within fifty years from the date of borrowing.

If moneys not repaid at date fixed, Supreme Court can order sale of Town Lands, and if proceeds insufficient can order special rate for payment of deficiency.

6. In case any moneys borrowed under this Law shall not be repaid upon demand at or after the day fixed for the payment thereof, it shall be lawful for the said Supreme Court, as often as such default shall occur, and at the instance of any person whose claim shall be unsatisfied, to cause a sale or sales to be made of so much of the Town Lands of the Borough as may be necessary for the purpose of raising and paying the moneys due and payable in terms of this Law, and in case the moneys received by such land sales shall be insufficient to pay and satisfy all moneys due and payable, then the deficiency shall be made good by a special rate or special rates to be levied in the manner hereinbefore provided with respect to the payment of arrear interest.

One-fifth of net proceeds of sales of lands to be used for purchase and cancellation of Stock or of debentures of existing debt.

7. Nothing in this Law contained shall prevent the sale of Town Lands of the Borough, with the consent of the Governor, and in terms of Law 19 of 1872 ; but in case of sales of land after the passing of this Law, one-fifth of the net proceeds of each sale shall be used for the purchase and cancellation of Stock authorised by this Law, or of debentures now outstanding in connection with the said existing debt of £82,200.

Moneys under this Law to be raised on Stock.

8. The moneys hereby authorised to be borrowed shall be raised upon Stock to be called "The Durban Corporation Stock," hereinafter referred to by the word Stock.

Mode of issuing Stock.

9. Such Stock shall be issued by crediting the purchaser thereof, for such sum thereof as he shall purchase, in a set of books to be kept for that purpose by the Treasurer of the Borough in the Town of Durban.

10. Such Stock shall bear interest at a rate not exceeding six per centum per annum, payable out of the rents, rates, and general revenues of the Borough, or out of the proceeds of sales of land, on the Thirtieth day of June, and the Thirty-first day of December, or as soon thereafter as demand shall be made therefor by the lawful holder of such Stock to said lawful holder, or his duly authorised attorney, and such payment shall be made by the said Treasurer.

**Law 3, 1833.**

Interest not to exceed 6 per cent., payable out of rents, rates, &c., or out of proceeds of land sales.

11. Said Stock shall be transferable by transfer in the books in which the same shall be entered, and every person to whom any such credit as aforesaid shall have been given in the said books in the first instance, or to whom any such transfer shall thereafter have been made in the said books, shall be entitled to require and demand of the said Treasurer and the said Treasurer shall in each case issue a receipt or certificate stating the amount of such Stock outstanding to the credit of said person in the said books.

Stock under this Law transferable.

12. Said Stock shall be disposed of for the best terms which can be obtained (not below a reserved price to be from time to time fixed by resolution of the Town Council of the Borough).

Reserved price to be fixed for Stock.

13. The Mayor of the Borough, when thereto authorised by resolution of the Town Council, may from time to time give to the Treasurer of the Borough such instructions as to the Mayor may seem fit, providing for all or any of the following things:—

The Mayor, authorised by resolution, to instruct Treasurer as to issue and registration of Stock, &c.

1. For registering Stock in the books to be kept for that purpose by the said Treasurer.
2. For managing the creation, registration, issue and transfer of Stock.
3. For paying interest on Stock.
4. For issuing Stock certificates.

14. This Law may be cited as the "Durban Loan Law of 1883," and shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A).

Short title and commencement.

### Law No. 27, 1884.

"To increase the powers of the Town Council of the Borough of Durban, as regards the sale and leasing of the Town Lands of the Borough of Durban."

[8th November, 1884.]

WHEREAS it is expedient to increase the powers of the Town Council of the Borough of Durban, as regards the sale and leasing and management of the Town Lands of the Borough and to authorise the Town Council to acquire land by sale or lease:

BE IT THEREFORE ENACTED by the Governor of Natal, by and with the consent of the Legislative Council thereof, as follows:—

1. The Town Council of the Borough of Durban may enter into an agreement with any lessee holding under them land within the Borough, and whose lease does not contain a covenant for renewal for the addition to the lease held by such lessee of a covenant giving to the lessee a right of renewal as authorised by and subject to the provisions contained in sections 78, 79, and 80, of Law 19 of 1872, and each such lessee may demand as a right the addition of such a covenant on payment of a bonus to be mutually agreed or to be fixed by arbitration in the same way as the rent for a renewal period may be determined under sections 79 and 80,

Renewal of Leases.

Lessee may demand renewal on payment of bonus.

(A) Oct. 16, 1883.



Law 27, 1884. of Law 19 of 1872, provided however that this clause shall not apply in  
 Proviso. the case of the  $\frac{3}{8}$ ths. portion of the Town Lands of the Borough of Durban which is specially charged by Law dated the 12th December, 1866, with the £50,000 borrowed upon "Durban Loan Securities."

Renewal clause grants tenant right in perpetuity to renew every 21 years.

renewed by ord.  
 9/19/12 - sec. 2

2. Any lease granted by the Town Council of the Borough of Durban now containing or hereafter, by virtue of Section 1 of this Law, to contain a renewal clause, shall be deemed to grant to the tenant a right in perpetuity to renew the lease from term to term after the first renewal period, at intervals of 21 years, at a rental to be determined on the occasion of each renewal in manner contemplated by section 79, of Law 19 of 1872.

Transfer of freehold to lessees under "Durban Corporation Loan Law, 1866."

3. Subject to the provisos hereinafter contained, the Town Council of the Borough of Durban may at any time agree with any present or future lessee of any portion of the  $\frac{3}{8}$ ths of the Town Lands of the Borough of Durban specially charged by Law dated the 12th December, 1866, with the £50,000 borrowed upon "Durban Loan Securities" for the eventual transfer (A) to such lessee of the freehold of the land leased to such lessee upon such terms as may be mutually agreed to, provided that no such transfer shall be effected whilst any portion of the said sum of £50,000 shall be unpaid, and provided that no such agreement shall in any way prejudice the rights as a mortgagee of any person who may hold any of the debentures of the Borough of Durban known as the "Durban Loan Securities" and provided that each such agreement shall be in writing and shall not be valid unless it recites this clause at full length.

Proviso.

Bonus and principal to be invested in debentures or stock.

4. Any bonus which may be received by the Town Council of the Borough under this Law, and any moneys in the nature of principal, as distinguished from interest, which may be received under clause 3 of this Law, and any moneys which may be received by the Town Council of the Borough of Durban from the sales of leased lands, and not otherwise specially appropriated by Law 3 of 1883, or otherwise, shall be invested by the said Town Council in the purchase of the Debentures or Stock of the Durban Corporation, or in the Public Debt of the Imperial Government of Great Britain, or of the Government of any Colony or Dependency of Great Britain, or in the Debentures of any Municipal Corporation in British South Africa.

Surrender of leased lands.

5. The Town Council of the Borough of Durban may agree with any lessee for the surrender of any leased lands, or of portion of any leased lands provided that this power shall not extend to the  $\frac{3}{8}$ ths portion of the Town Lands of the Borough of Durban which is referred to in the first clause of this Law until the sum of £50,000 sterling, also referred to in the said first clause shall be fully paid, and provided that no agreement shall be made under this clause without the consent of mortgagees in cases where the interest of the lessee shall be subject to mortgage.

Consent of mortgagees to be obtained.

Council may acquire land for Corporation purposes.

6. The Town Council of the Borough of Durban, with the consent of the Governor, may acquire land for the purposes of the Corporation either in freehold or on lease.

Short title.

7. This Law may be cited as the "Durban Borough Land Law of 1884."

Commencement

8. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (B).

(A) Transfer duty is payable on the value of the freehold, although actual freehold title cannot be given until the year 1906 (*In re Harvey*, 12 N.L.R. 224).  
 (B) Nov. 11, 1884.

## Law No. 33, 1884.

“To enable the Town Council of the Borough of Durban to increase the Borough Debt, for the purpose of introducing Water into the Borough.”

[8th November, 1884.]

WHEREAS it is expedient to increase the borrowing powers of the Town Council of the Borough of Durban :

AND WHEREAS the present statutory debt of the Borough consists of a sum of £82,200 borrowed prior to the Law 3 of 1883, and of £110,000 borrowed under Law 3 of 1883, and a further sum of £50,000 is required for water works and other public works within the Borough, and other public purposes of the Borough :

AND WHEREAS it is expedient to authorise the borrowing by the said Town Council of the said sum of £50,000, upon condition that the said sum of £50,000 and any future loan or loans which may be authorised by Law, shall rank concurrently after the debt of £82,200 which was contracted prior to Law 3 of 1883 :

BE IT THEREFORE ENACTED by the Governor of Natal, by and with the advice of the Legislative Council thereof, as follows :—

1. The Town Council of the Borough of Durban are hereby authorised to borrow, from time to time, the moneys required for water works and other public works within the Borough, and other public purposes of the Borough, to an amount of £50,000.

Council authorised to borrow £50,000 for waterworks and other public works.

2. The moneys borrowed under this Law shall be applied to the objects mentioned in the last preceding Section, and to no other purpose.

Application of moneys.

3. The sums authorised to be borrowed under this Law, and the interest payable thereon, shall be a charge upon the rates and rents and revenues of the Borough, ranking after the Borough Debt of £82,200 contracted prior to Law 3 of 1883, and ranking concurrently with any loan raised under Law 3, 1883, and with any future loans or loan which may be hereafter authorised by the Legislature of Natal.

Loan to be charge upon rates, rents, and revenues of Borough, and how to rank.

4. In case the interest payable on any moneys borrowed under this Law shall be in arrears and unpaid for thirty days after the time appointed for the payment thereof and after demand made, it shall be lawful for the Supreme Court of the Colony of Natal as often as such default shall occur, at the instance of any person whose interest shall be in arrear, to cause a special rate to be levied upon the real or immovable property situate within the Borough, which is now or may hereafter be liable to be rated for Municipal purposes under Law 19 of 1872, to the intent that all arrear interest may be paid out of the proceeds of such special rate.

In case interest in arrear Supreme Court may cause special rate to be levied on immovable property.

5. The moneys borrowed under this Law shall be repayable within fifty years from the date of borrowing.

Loan repayable within fifty years.

6. In case any moneys borrowed under this Law shall not be repaid upon demand at or after the day fixed for the payment thereof, it shall be lawful for the Supreme Court, as often as such default shall occur, and at the instance of any person whose claim shall be unsatisfied, to cause a sale or sales to be made of so much of the Town Lands of the Borough as may be necessary for the purpose of raising and paying the moneys due and payable in terms of this Law, and in case the moneys received by such land sales shall be insufficient to pay and satisfy all moneys due and payable, then the deficiency shall be made good by a special rate or special rates to be levied in the manner hereinbefore provided with respect to the payment of arrear interest.

In default of repayment, Supreme Court may direct sale of Town Lands, and if insufficient may also cause special rate to be levied.

Law 33, 1884.

One-fifth of net proceeds of all land sales to be applied to purchase and cancellation of stock.

Moneys borrowed to be raised upon stock.

Mode of issuing stock.

Interest not to exceed six per cent. per annum, and out of what sources payable.

Mode of transferring stock.

Reserved price to be fixed for stock.

Instructions to Treasurer regarding stock, how given.

Commencement

7. Nothing in this Law shall prevent the sale of Town Lands of the Borough with the consent of the Governor, and in terms of Law 19 of 1872 ; but in case of sales of land after the passing of this Law, one fifth of the net proceeds of each sale shall be used for the purchase and cancellation of stock authorised by this Law or by Law 3 of 1883 or of debentures now outstanding in connection with the said debt of £82,200 contracted prior to Law 3 of 1883.

8. The moneys hereby authorised to be borrowed shall be raised upon stock to be called " The Durban Corporation Stock " hereinafter referred to by the word " Stock."

9. Such stock shall be issued by crediting the purchaser thereof for such sum thereof as he shall purchase, in a set of books to be kept for that purpose by the Treasurer of the Borough in the Town of Durban.

10. Such stock shall bear interest at a rate not exceeding six per centum per annum payable out of the rents, rates, and general revenues of the Borough, or out of the proceeds of sales of land, on the Thirtieth day of June and the Thirty-first day of December, or as soon thereafter as demand shall be made therefor by the lawful holder of such stock, to said lawful holder or his duly authorised attorney, and such payment shall be made by the said Treasurer.

11. Such stock shall be transferable by transfer in the books in which the same shall be entered, and every person to whom any such credit as aforesaid shall have been given in the said books in the first instance or to whom any such transfer shall thereafter have been made in said books, shall be entitled to require and demand of the said Treasurer and the said Treasurer shall in each case issue a receipt or certificate stating the amount of such stock outstanding to the credit of the said person in the said books.

12. Such stock shall be disposed of for the best terms which can be obtained (not below a reserved price to be from time to time fixed by resolution of the Town Council of the Borough).

13. The Mayor of the Borough, when thereto authorised by resolution of the Town Council, may from time to time give to the Treasurer of the Borough such instructions as to the Mayor may seem fit providing for all or any of the following things :—

- (1) For registering stock in the books to be kept for that purpose by the said Treasurer.
- (2) For managing the creation, registration, issue, and transfer of stock.
- (3) For paying interest on stock.
- (4) For issuing stock certificates.

14. This Law may be cited as the " Durban Loan Law of 1884," and shall commence and take effect from and after the promulgation thereof in the " NATAL GOVERNMENT GAZETTE " (A).

*Act 25, 1902 £501,000*  
*31, 1914 £500,000*  
Law No. 42, 1884.

" To enable the Town Council of the Borough of Durban to supply the Borough of Durban with Water from the Umbilo River, and to levy a Water Rate, and to prevent the pollution of Water."

[8th November, 1884.]

WHEREAS it is expedient to enable the Town Council of the Borough of Durban to supply the Borough of Durban with Water from the Umbilo River, and to levy a Water Rate, and to prevent the pollution of the Water of the said River at or above or after being led from the point of diversion, and to exercise all powers necessary for the purposes aforesaid :

(A) Nov. 11, 1884.

*repealed by A 24/21 S1*

BE IT THEREFORE ENACTED by the Governor of Natal, by and with the consent of the Legislative Council thereof, as follows:—

Law 42, 1884.

1. This Law may be cited as the "Durban Corporation Waterworks Law of 1884."

Short title.

2. The Lands Clauses Consolidation Law, 1872 (Law 16 of 1872) and all the clauses and provisions thereof (save in so far as they shall be expressly varied or excepted by this Law) shall be incorporated with this Law.

Law 16, 1872, incorporated with this Law.

3. The Town Council of the Borough of Durban may purchase or take the lands required for the purposes of the works and undertakings authorised by this Law.

Council may purchase or take lands required.

4. The Town Council of the Borough of Durban are authorised to construct all works and do all things necessary for damming up the Umbilo River, immediately above the Umbilo Falls, and for making reservoirs and filter-beds and service-tanks, and for laying water-pipes from the said falls through the farms "Sarnia," "Roosfontein," and "Cato Manor," and through the Borough of Durban, and for leading water through such pipes, and for storing part of such water in or near to the Town Lands of the Borough of Durban, and for distributing such water through such portions of the Borough as the Town Council may from time to time determine to bring within the water system, and to do and perform all such further and other acts, deeds, matters, and things, as shall be necessary to carry out the objects of this Law.

Town Council authorised to construct water-works.

5. The route of the water-pipes shall follow as near as may be the line laid down in a map or chart filed with the Clerk of the Legislative Council and in the Town Office in Durban.

Route of water-pipes.

6. If the taking, impounding, diversion, appropriation or conveyance of water under the authority of this Law shall deprive any person of any water, or right of water which he may at the time of such taking, impounding, diversion, appropriation, or conveyance of water, possess, or be entitled to possess, and shall thereby cause damage to such person, or to his property, such person shall be entitled to recompense or compensation, to be settled, in case of difference, as if the diversion of water constituted a damage to the land within the meaning of the 65th Section of the Lands Clauses Consolidation Law.

Persons entitled to compensation for diversion of water.

7. The Town Council of the Borough of Durban may in the year 1885, and in each succeeding year, levy a water rate not exceeding one halfpenny in the Pound Sterling upon any portion of the immovable property situate within the Borough which is liable to be rated under Law 19 of 1872, and which portion shall be brought within 220 yards of the water service (A).

Council may levy water rate on property within 220 yards of water service.

8. For the purposes of the water rates authorised by this Law, chapter 12 (consisting of 20 clauses, numbered from 106 to 125 inclusive) of Law 19 of 1872, shall be construed conjointly with this Law.

Chapter 12 of Law 19, 1872, to be construed with this Law.

9. The powers to make Bye-laws given to Town Councils, under Law 19 of 1872, are extended to the Town Council of the Borough of Durban for all the purposes of this Law.

Power to make Bye-laws for purposes of this Law.

10. The Town Council of the Borough of Durban may regulate and control the mode of supplying water on to private property, and may frame a tariff of special charges for any special consumption of water other than for domestic or household use, and may contract with the Natal Government and the Natal Harbour Board for the supply of water for the use of the Government and for the use of shipping, and may contract for the supply of water to persons residing outside the Borough boundaries: Provided that no such contract shall be entered into by and with the Natal Government for the supply to departments other than the Natal Government Railways, unless a special water rate, as provided for by Clause 7 of this Law, shall have been levied and enforced.

Council may regulate mode of water supply, frame special tariff for other than domestic use, and contract for supply to Government, and to persons outside Borough.

(A) See Law 21, 1890, s. 8, post.

**Law 42, 1884.**

Penalty for polluting water, damaging waterworks, or obstructing officers.

11. If any person shall pollute the waters of the Umbilo River above the dam authorised by this Law, or any water led from the said river under the authority of this Law, or shall obstruct any person in discharge of his duty in connection with the waterworks hereby authorised, or shall mischievously do any damage to property connected with the waterworks, such person on conviction thereof before the Resident Magistrate having jurisdiction, shall be liable to a penalty for each offence not exceeding £10, to be paid to the Borough Fund, or in default of payment to imprisonment, with or without hard labour, for a period not exceeding one month, and any person charged with contravening this Law may be prosecuted by any officer appointed on that behalf by the Town Council of the Borough of Durban.

Officers to have access to private property within certain hours for inspecting purposes.

12. The Town Council by its proper officers shall have the right of access into private houses or on to private lands for the purpose of inspecting pipes, meters, and cisterns, provided no such right shall be exercised against the wish of a householder, except between the hours of 9 o'clock in the forenoon and 1 o'clock in the afternoon, and then only in pursuance of written or printed notice, given not less than twenty-four nor more than forty-eight hours before the inspection.

Commencement

13. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A).

*Suburban Tramway Law 23/15 Dec. 1*

**Law No. 18, 1885.**

"To authorise and empower the Suburban Tramways Company, Limited, to construct Tramways along the Berea Road, Musgrave Road, and Musgrave Road Extension, Sydenham Road, Umbilo Road, and other roads and streets within the Town and Suburbs of Durban; and to work such Tramways with cars or carriages, drawn by animal power, or driven by steam or other motive power, for the conveyance of passengers and parcels.—To contract with the Town Council of the Borough of Durban for the use of the above streets and roads, and with the Durban Tramways Company, Limited, for the right of running cars or carriages over the lines of the said Durban Tramways Company, Limited."

[19th October, 1885.]

WHEREAS the facilities for passenger and parcels traffic between the Town of Durban and the Suburbs thereof are insufficient and unsuitable for public requirements, and the Suburban Tramways Company, Limited, are willing to increase and improve the present facilities, and it is expedient to assist the objects of the said Company, and to authorise the construction and working, by the said Company, of Tramways within the Town of Durban and the Suburbs thereof:

BE IT THEREFORE ENACTED by the Governor of the Colony of Natal, by and with the advice of the Legislative Council thereof, as follows:—

Short title.

1. This Law may be cited as the "Suburban Tramways Law."

Interpretation.

2. For the purposes of this Law the terms hereinafter mentioned shall have the meanings hereinafter assigned to them, that is to say:—

"The Town Council" shall mean the Town Council of the Borough of Durban.

The term "Company" shall mean the Suburban Tramways Company, Limited.

"Borough" shall mean the Borough of Durban.

(A) Nov. 11, 1884.

“ Roadway,” “ Street,” “ Road,” shall mean the whole space reserved as such road, street, or roadway, and not only the hardened or formed portion of such “ road,” “ street,” or “ roadway.” Law 18, 1885.

3. The Company and the Town Council are hereby authorised to make contracts with each other, relating to the use by the Company of the streets and roads hereinafter mentioned, subject to the approval of the Governor in Council. Company and Town Council may make mutual contracts.

4. The Company and the Durban Tramways Company, Limited, are hereby authorised to make contracts relating to the use by the Company of the lines of the said Durban Tramways Company, Limited. Company and Durban Tramways Company may make contracts.

5. The Company are hereby authorised to purchase, hire, or otherwise legally acquire, all such lands and buildings as may from time to time be found necessary for the purposes of the Company. Company authorised to acquire land, &c.

6. The Company, subject to the consent of the Town Council, are hereby authorised to make and use Tramways upon a safe and reasonable gauge, not exceeding four feet eight-and-a-half inches, and in manner hereinafter described. To make and use Tramways.

7. The first section of the said Tramways shall be as follows:— From the terminus of the lines of the Durban Tramways Company, Limited, in the neighbourhood of the West-end Railway Crossing, along the Berea Road as far as the junction of the Musgrave and Berea Roads, and thence along the Musgrave Road as far as the junction thereof with the Sydenham Road. First section defined.

8. The Company may, should they hereafter desire to do so, from time to time, lay down and work Tramways along the following other roads and streets, or portions thereof, that is to say:— Other roads and streets along which Company may lay down and work tramways.

- (a) From the junction of the Berea and Musgrave Roads along the Berea Road as far as the Berea Toll Bar.
- (b) From the junction of the Musgrave and Sydenham Roads, along the Musgrave Road and Musgrave Road Extension.
- (c) From the junction of the Berea and Umbilo Roads, along the Umbilo Road.
- (d) From the junction of the Musgrave Road and Sydenham Road, along the Sydenham Road.

Provided always that in every case the consent in writing of the Town Council shall be first obtained. And in the special case of the streets and roads mentioned in Sub-section (c), the consent in writing of the said Durban Tramways Company, Limited, shall also be first had and obtained: Provided always, that the consent of the said Company shall not be withheld unless the said Company shall themselves be prepared within a reasonable period to lay down the tramways upon such streets and roads: Provided also, that in the event of the Company not having commenced to construct Tramways upon any one of the routes above-mentioned within a period of three years from the date of the promulgation of this Law, the Town Council may, by notice duly served, call upon the Company to construct such Tramways, and should the Company not commence to construct such Tramways within a period of one month from the date of the service of such notice, the Town Council shall be free to grant permission to any other person or Company having obtained the requisite authority to construct and work Tramways upon such route, or themselves to construct and work such Tramways. Proviso.

9. Such tramways shall be laid down upon such part or side of the roadway as may be approved of by the Town Council. Side of road on which tramways to be laid.

10. The traffic upon such Tramways shall be confined to passengers and parcels (A). Limitation of traffic.

(A) Amended by Act 1, 1899, s. 4, post.

**Law 18, 1885.**

Tolls and charges to be levied.

11. The tolls and charges to be levied by the Company shall not exceed, for passengers, threepence a mile or fraction of a mile, and for parcels the rates specified in the Schedule to this Law annexed, without the sanction of the Governor in Council.

Cesser of powers at expiration of prescribed period.

12. If the Company do not, within thirty months from the date hereof, complete the first section of the said Tramways, and open it for public traffic; or, if within twelve months from the date hereof the works are not commenced; or, if the works having been commenced, are suspended without a reason sufficient, in the opinion of the Governor in Council, to warrant such suspension, then the powers hereby given to the Company for constructing Tramways, executing such works, or otherwise in relation thereto, shall cease to be exercised unless the time is prolonged by the special direction of the Governor in Council, and thereupon so much of the said Tramway as is then completed shall be dealt with, at the expense of the Company, in the manner provided in Section 21 of this Law, and as if the Tramway had been opened.

Rails to be level with surface of road.

13. Wheresoever the Tramways shall be laid down, across, or along, the portion of any street or road actually used for traffic, the uppermost surface of the rails shall be on a level with the surface of the road; and the Tramways shall not be opened for public traffic until the same shall have been inspected, and certified to be fit for such traffic by an Engineer appointed by the Governor in Council.

Certificate required.

Power to break up road.

14. The Company may, from time to time, for the purposes of making, forming, laying down, maintaining, and renewing the proposed Tramways or any part thereof respectively, open and break up any road, subject to the following regulations:—

- (a) They shall give to the Town Council notice of their intention, specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up; such notice to be given seven days, at least, before the commencement of the work.
- (b) They shall not open or break up or alter the level of any road, except under the superintendence and to the reasonable satisfaction of the Town Council, unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work.
- (c) They shall pay all reasonable expenses to which the Town Council is put on account of such superintendence.
- (d) Where the carriage-way in or upon which any portion of the tramway is proposed to be formed or laid down is crossed by any railway or tramway on the level, any work which the Company may be empowered to construct, and which affects or in anywise interferes with such railway or tramway, or the traffic thereon, shall be constructed and maintained under the superintendence (at the cost of the Company) and to the reasonable satisfaction of the Government, person, Corporation, or Company owning such railway or tramway, unless in the case of the original construction of the Tramway, after notice to be given by the Company seven days at least before the commencement of such work, such superintendence is refused or withheld.

Completion of works and re-instatement of road.

15. When the Company have opened or broken up any portion of any road, they shall be under the following further obligations, viz.:

- (a) They shall, with all convenient speed, complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the

Tramway) fill in the ground and make good the surface, and to the satisfaction of the Town Council restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby. Law 18, 1885.

- (b) They shall in the meantime cause the place where the road is opened or broken up to be fenced, and to be properly lighted at night.
- (c) They shall bear or pay all reasonable expenses of the repair of the road for six months after the same is restored, as far as those expenses are increased by the opening or breaking up.

If the Company fail to comply in any respect with the provisions of the present Section, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Law, or to any other remedy against them) be liable to a penalty not exceeding Ten Pounds sterling; and to a further penalty, not exceeding Five Pounds sterling, for each day during which any such failure continues after the first day on which such penalty is incurred.

16. The Company shall, at their own expense at all times, maintain and keep in good condition and repair, with such materials and in such manner as the Town Council shall direct, and to their satisfaction, so much of any road whereon any Tramway belonging to them is laid as lies between the rails of the Tramway, and where two Tramways are laid in any road at a distance of not more than four feet from each other, the portion of the road between the Tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such Tramway. If the Company abandon their undertaking or any part of the same, and take up any Tramway or any part of any Tramway belonging to them, they shall with all convenient speed, and in all cases within six weeks at the most (unless the Town Council otherwise consent in writing) fill up the ground and make good the surface, and to the satisfaction of the Town Council restore the portion of the road upon which such Tramway was laid, to as good a condition as that in which it was before such Tramway was laid thereon, and clear away all surplus paving or metalling material or rubbish occasioned by such work. And they shall in the meantime cause the place where the road is opened or broken up to be fenced, and to be properly lighted at night: Provided always that if the Company fail to comply with the provisions of this section, the Town Council, if they think fit, may themselves at any time after seven days' notice to the Company, open and break up the road, and do the works necessary for the repair and maintenance or restoration of the road to the extent in this section above mentioned, and the expense incurred by the Town Council in so doing shall be repaid to them by the Company.

Repair of part of road where tramway is laid

17. The Town Council, on the one hand, and the Company, on the other hand, may from time to time enter into and carry into effect, and from time to time alter, renew, or vary contracts, agreements, or arrangements with respect to the making and keeping in repair of the whole or any portion of any roadway of any road on which the Company shall lay any Tramway, and the proportion to be paid by either of them of the expense of such making and keeping in repair.

Town Council and Company may contract for repair of roads on which tramways are laid.

18. Nothing in this Law shall take away or abridge any power to open or break up any road along or across which any Tramway is laid, or any other power vested in the Town Council, or any other local body or authority, for any of the purposes for which such authority is respectively constituted, or in any Company, body, or person, for the

Rights of authorities and companies, &c., to open roads.



Law 18, 1885. purpose of laying down, repairing, altering, or removing any pipe for the supply of gas or water, or any tubes, wires, or apparatus for telegraphic or other purposes, but in the exercise of such power the Town Council, Company, body, or person shall be subject to the following restrictions, that is to say:

- (a) They shall cause as little detriment or inconvenience to the Company as circumstances admit.
- (b) Before they commence any work whereby the traffic on the Tramway will be interrupted, they shall (except in cases of emergency, in which cases no notice shall be necessary) give to the Company notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given thirty-six hours at least before the commencement of the work.
- (c) They shall not be liable to pay to the Company any compensation for injury done to the Tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid.
- (d) Whenever for the purpose of enabling them to execute such work, the Town Council, Company, body, or person as aforesaid shall so require, the Company shall either stop traffic on the Tramway to which the notice shall refer, where it would otherwise interfere with such work, or shore up and secure the same at their own risk and cost during the execution of the work there: Provided that such work shall always be completed by the Town Council, Company, body, or person, with all reasonable expedition.
- (e) Any Company, body, or person shall not execute such work so far as it immediately affects the Tramway, except under the superintendence of the Company, unless they refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work, or discontinue the same during the progress of the work, and they shall execute such work at their own expense, and to the reasonable satisfaction of the Company: Provided that any additional expense imposed upon them by reason of the existence of the Tramway in any road or place where any such mains, pipes, tubes, wires, or apparatus shall have been laid before the construction of such Tramway, shall be borne by the Company.

19. If any difference arises between the Company, on the one hand, and the Town Council, or any gas or water company, or any Company, body, or person, to whom any sewer, drain, tube, wires, or apparatus for telegraphic or other purposes may belong, or any other Company, on the other hand, with respect to any interference or control exercised or claimed to be exercised by them or him, or on their or his behalf, or by the Company by virtue of this Law in relation to any Tramway or work or in relation to any work or proceeding of the Town Council, body, Company, or person, or with respect to the propriety or the mode of execution of any work relating to any Tramway, or with respect to the amount of any compensation to be made by or to the Company, or on the question whether any work is such as ought reasonably to satisfy the Town Council, body, Company, or person concerned, or with respect to any other subject or thing regulated by or comprised in this Law, the matter in difference shall (unless otherwise specially provided by this Law), be settled by an Engineer or other fit person nominated as referee by the Governor in Council on the application

Reference of  
difference be-  
tween Company  
and Town  
Council, &c.

of either party, and the expenses of the reference shall be borne and paid as the referee directs: Provided always, that this section shall not affect the right of the Town Council to withhold consent to the occupation or use by the Company of any street or road or portion thereof. Law 18, 1885.

20. [Repealed by Law No. 16, 1892.]

21. If at any time after the opening of the said Tramways, or any portion thereof, the Company discontinue the working of the same for the space of one calendar month (such discontinuation not being occasioned by circumstances beyond the control of the Company, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control), and such discontinuation is proved to the satisfaction of the Governor in Council, the said Governor in Council, if he thinks fit, may by order declare that the powers of the Company in respect of such Tramways, or the part thereof so discontinued, shall from the date of such order be at an end, and thereupon the said powers of the said Company shall cease and determine, unless the same are purchased by the Town Council in the manner by this Law provided. When any such order has been made, the Town Council may, at any time after the expiration of one month from the date of such order, under the authority of a certificate to that effect by the Colonial Secretary, remove the Tramway or part of the tramway so discontinued, and the Company shall pay to the Town Council the cost of such removal, and of the making good of the road by the Town Council, such cost to be certified by the Clerk for the time being of the Town Council, whose certificate shall be final and conclusive, and if the Company fail to pay the amount so certified within one calendar month after the delivery to them of such certificate, or a copy thereof, the Town Council may, without any previous notice to the Company (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of the materials of the Tramway, or part of tramway, so removed, either by Public Auction or Private Contract, and for such sum or sums, and to such person or persons as the Town Council may think fit, and may out of the proceeds of such sale pay and reimburse themselves the amount of the cost certified as aforesaid, and of the cost of sale, and the balance, if any, of the proceeds of the sale shall, subject to any other lien thereon, be paid over by the Town Council to the Company.

Tramways to be removed in certain cases.

22. When any tramway hereby authorised has been opened for traffic for a period of six months, the Company may, with the consent of the Governor in Council and Town Council, sell, or lease, their undertaking to any person, persons, Corporation, or Company, or with the consent of the Governor in Council, to the Town Council, and when any such sale has been made, all the rights, powers, authorities, obligations, and liabilities of such Company, under this Law in respect of the undertaking sold, shall be transferred to, vested in, and may be exercised by, and shall attach to the person, persons, Corporation, or Company to whom the same shall have been sold, in like manner as if such Tramway was constructed by such person, persons, Corporation, or Company, under the powers hereby conferred, and in reference to the same they shall be deemed to be the Company: Provided, that the Town Council shall not make any such purchase, except pursuant to resolution carried by three-fourths of the members at a meeting of the Town Council, specially convened on one month's notice, published in a local newspaper to consider such purchase (A).

Power of sale or lease.

(A) See Act 12, 1899, post, which purchase the tramways opened for traffic under this Law.

Law 18, 1885.  
Tolls, &c.

23. The Company may demand and take in respect of such Tramways, tolls, and charges, not exceeding the sums mentioned in Section 11 of this Law, or in such schedule as the Governor in Council may hereafter substitute therefor, at the request of the Company, and a list of all tolls and charges authorised to be taken shall be exhibited in a conspicuous place inside and outside each of the carriages used on the Tramway.

By-laws of  
Town Council.

24. The Town Council may make by-laws as to the following matters :

- (a) The rate of speed to be observed in travelling upon the Tramway.
- (b) The distances at which carriages shall be allowed to follow one after the other.
- (c) The stopping of carriages using the tramway.
- (d) The traffic on the road on which the Tramway is laid.
- (e) The precautions to be adopted by the Company as regards brake power and warnings.

Company may  
make regulations for certain  
purposes.

The Company may make regulations for preventing the commission of any nuisance in or upon any carriage or in or against any premises belonging to them, and for regulating the travelling in or upon any carriage belonging to them: and for better enforcing the observance of all or any of such regulations, it shall be lawful for such Town Council and Company, respectively, to make by-laws for all or any of the aforesaid purposes, and from time to time repeal or alter such by-laws and make new by-laws, provided that such by-laws be not repugnant to the Laws of the Colony, and that when made by the Town Council the enabling Law of that authority be duly complied with. Notice of the making by the Company of any by-law, under the provisions of this Law, shall be published by advertisement inserted once at least in each of two successive weeks in some one and the same newspaper published in Durban, and once at least in the "GOVERNMENT GAZETTE" of the Colony. A true copy of each by-law of the Company shall be sent to the Colonial Secretary and the Town Council respectively at least one month before such by-law shall come into operation, and no such by-law shall have any force or effect if disallowed by the Governor in Council within one month after such projected by-law shall be laid before the Governor in Council. By-laws of the Town Council shall be capable of enforcement in the same way as any other by-law duly passed by that authority. Any by-law made by the Company may impose reasonable penalties for offences against the same, not exceeding forty shillings for each offence, with or without further penalties for continuing offences, not exceeding for any continuing offence ten shillings for every day during which the offence continues, and such penalties shall be recoverable at the suit of the Company with costs in cases where the contravention is proved.

Power to Town  
Council to  
license drivers,  
conductors, &c.

25. The Town Council shall have the like power of making and enforcing rules and regulations, and of granting licenses with respect to all carriages using the tramway, and to all drivers and conductors, and other persons having charge of or using the same, and to the standings for same, as they are or may be for the time being entitled to make, enforce, and grant in respect of vehicles not propelled on a Tramway. No person shall be entitled to carry, or require to be carried, on any Tramway any goods which may be of a dangerous nature; and if any person send by any tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the Secretary or other servant of the Company with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding Twenty

Penalty for  
bringing dan-  
gerous goods on  
the tramway.

Pounds sterling for every such offence; and it shall be lawful for the Company to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

Law 13, 1885.

26. If any person not connected with the Company uses the Tramway, or any part thereof, with carriages having flange wheels or other wheels suitable only to run on the rails of such Tramway, such person shall, for every such offence, be liable to a penalty not exceeding Twenty Pounds sterling.

Penalty for using tramways with carriages with flange wheels, &c.

27. The Company shall be answerable for all accidents, damages, and injuries happening through their act or default, or through the act or default of any person in their employment, by reason or in consequence of any of their works or carriages, and shall save harmless all road and other authorities, companies, or bodies, collectively and individually, and their officers and servants from all damages and costs in respect of such accidents, damages, and injuries.

Company responsible for all damages.

28. All tolls, penalties, and charges under this Law, or under any by-law made in pursuance of this Law, may be proceeded for in the case of the Town Council in the same manner as is applicable to contraventions of ordinary municipal by-laws, and in the case of the Company by suit in the Magistrate's Court, at the instance of the Company.

Recovery of tolls, penalties, &c.

29. Notwithstanding anything in this Law contained, the Company shall not acquire, or be deemed to acquire, any right other than that of user of any road along or across which they lay any Tramway, nor shall anything contained in this Law exempt them from the payment of tolls levied on vehicles using any turnpike road over which the Company's Tramway may be laid.

Right of user only.

30. Nothing in this Law shall take away or affect any power which the Town Council, or the owner, commissioners, undertakers, or lessees of any railway or tramway may have by Law to widen, alter, divert, or improve any road, railway, or tramway.

Reserving powers of Town Council, owners, &c.

31. Nothing in this Law shall limit the powers of the Town Council or Police in any district to regulate the passage of any traffic along or across any road along or across which any Tramways are laid down, and such authority or Police may exercise their authority as well on as off the Tramway, and with respect as well to the traffic of the Company as to the traffic of other persons.

Power of Town Council or Police to regulate traffic on roads.

32. Nothing in this Law, or in any by-law made under this Law, shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which any Tramway is laid, whether on or off the Tramway with carriages not having flange wheels, or wheels suitable only to run on the rails of the tramway.

Reservation of right of public to use roads.

33. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A).

Commencement

SCHEDULE.

- (a) Any one parcel not exceeding 14 lbs. in weight, carried by any passenger, shall be free of charge.
- (b) On all other parcels not exceeding 14 lbs. in weight, the Company shall be entitled to charge sixpence for each parcel.
- (c) Provided that the Company shall not be compelled to carry, for hire, any parcel of greater weight than 14 lbs.

Law No. 7, 1887.

“To authorise the Town Council of the Borough of Durban to erect Side-bars at certain places.”

[13th January, 1887.]

WHEREAS by Law No. 18 of 1880, the Town Council of the Borough of Durban is authorised and empowered to levy certain Tolls and to erect Toll-bars and Side-bars upon certain named roads and streets :

AND WHEREAS the authorised Tolls are in certain cases evaded, and will continue to be evaded, unless Side-bars are set up at places elsewhere than on the roads and streets referred to in the said Law :

AND WHEREAS it is expedient to authorise the said Town Council to put up Side-bars to prevent the evasion of the said Tolls :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

Authorisation of Overport Toll.

1. The said Town Council shall be, and it is hereby, authorised to erect Side-bars within the Borough and within one hundred feet of the Borough boundary near Overport, for the purpose of preventing evasions of the Tolls authorised by the said Law, as soon as the road extending from the Borough boundary, near the Overport Lodge, to the junction of the Essenwood Road with the Sydenham Road, shall be hardened and made fit for traffic ; and such Side-bars when so erected shall be considered and deemed Side-bars erected and constructed under and subject to the provisions of Law No. 18, 1880.

Commencement

2. This Law shall be read and construed together with the said Law No. 18, 1880, as one Law, and shall commence and take effect from and after the promulgation thereof in the “NATAL GOVERNMENT GAZETTE ” (A).

Law No. 29, 1888. (B)

“To provide for the creation of Borough of Durban Consolidated Stock.”

[12th November, 1888.]

WHEREAS it is expedient to provide for the creation of Borough of Durban Consolidated Stock, and to increase the borrowing powers of the Town Council :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

Short title.

1. The short title of this Law shall be the “Durban Consolidated Stock Law, 1888.”

Powers granted to Town Council.

2. The Town Council of Durban shall have, and may exercise for the purposes of this Law, the following powers or authorities, or any of them :—

- (a) They may from time to time declare by resolution all or any of the Borough of Durban Loans, whether existing in the form of stock or debentures or other securities, to be convertible, with the consent of the holders of such stock, debentures, or other securities, into Consolidated Stock, with such interest not exceeding five per centum per annum, and upon such conditions as may from time to time be determined on.

*See also Act 25/101.  
x Ord. 14/30/83  
Act. 31/98  
11/99.*

- (b) They may create and sell any such Consolidated Stock for the purpose of raising money for redeeming any such outstanding securities held for such loans as may be necessary. Law 29, 1888.
- (c) They may create and issue such an amount of Consolidated Stock in exchange for the securities held for such loans as may be necessary, and for paying any expenses in the creation of Consolidated Stock and otherwise carrying out the provisions of this Law on such conditions as may be determined.

3. Any such conversion may be effected either by arrangement with the holders of existing securities, or by purchase thereof out of moneys raised by a sale of new Consolidated Stock, or partly in one way and partly in the other. How conversion may be effected.

4. Any powers by this Law conferred on the Town Council may be exercised from time to time, and they may alter any conditions as often as occasion may require, but so that no contract or engagement entered into before the exercise of any such power or the making of any such alterations shall be prejudiced or affected thereby. Exercise of authority by Town Council.

5. Nothing in this Law contained shall authorise an increase of the capital or of the annual charge of any Loan, except that where any such securities exchanged for new Consolidated Stock bear a higher rate of interest than the new Consolidated Stock, an additional amount of new Consolidated Stock may be created and issued to make up the difference in saleable value between the aforesaid securities and the new Consolidated Stock. Increase of capital or of annual charge of loan in certain cases.

6. All existing loans converted under the provisions of this Law into such Consolidated Stock and interest thereon, and all charges and expenses incurred in carrying out the provisions of this Law or any agreements made in pursuance thereof, shall be chargeable upon and payable out of the rents, rates, and general revenue of the Borough. Converted loans, interest and expenses charged upon rates and general revenue.

7. All moneys raised upon the security of such Consolidated Stock, and all Consolidated Stock into which other Borough loans may be converted, shall be payable within fifty years from the date of borrowing or the date of conversion as the case may be. Principal payable within 50 years.

8. In case the interest payable on any such Consolidated Stock shall be in arrear and unpaid for thirty days after the time appointed for the payment thereof, and after demand made, it shall be lawful for the Supreme Court of the Colony of Natal, as often as such default shall occur, at the instance of any person whose interest shall be in arrear, to cause a special rate to be levied upon the real or immovable property situate within the Borough which is now or may hereafter be liable to be rated for Municipal purposes under Law 19 of 1872, to the intent that all arrear interest may be paid out of the proceeds of such special rate. Arrear interest may be made up out of special rate.

9. In case the principal money payable in respect of such Consolidated Stock shall not be repaid upon demand at or after the day fixed for the payment thereof, it shall be lawful for the said Supreme Court as often as such default shall occur, and at the instance of any person whose claim shall be unsatisfied, to cause a sale or sales to be made of so much of the Town Lands of the Borough as may be necessary for the purpose of raising and paying such principal money, and in case the proceeds of such land sales shall be insufficient to pay and satisfy all moneys due and payable, then the deficiency shall be made good by a special rate or special rates to be levied in the manner hereinbefore provided with respect to the payment of arrear interest. In case of default in payment of principal Town Lands, may be sold and special rate levied.

10. Such Consolidated Stock shall be issued by crediting the purchaser or in cases of conversions the allottee for such sum thereof as he Consolidated Stock, how issued.

Law 29, 1888. shall purchase or be entitled to in a register to be kept in duplicate for that purpose by the Treasurer of the Borough in the Town of Durban and by the agents of the Town Council in London.

Transfer of Stock.

11. Such Consolidated Stock shall be transferable by transfer registered by the Agents of the Town Council in London or by the said Treasurer in Durban, and every person who shall be so credited as aforesaid in the said register in the first instance or to whom any transfer shall thereafter have been made shall be entitled to require and demand of the said Agents or Treasurer, and the said Agents or Treasurer shall in each case issue a receipt or certificate stating the amount of Consolidated Stock standing to the credit of said person in said register.

Delivery of receipt or certificate upon transfer of Stock.

12. In all cases of transfer of Consolidated Stock, the transferor's receipt or certificate relating to stock to be transferred shall be given up to the Agents or Treasurer, and in case the stock to be transferred is less in value than the stock represented by the receipt or certificate, a new receipt or certificate shall be issued to the transferor for the balance of stock not to be transferred.

Payment of interest.

13. The interest on Consolidated Stock shall be payable half-yearly, on the 30th day of June and the 31st day of December, or as soon thereafter as demand shall be made therefor by the lawful holder of such stock, to such lawful holder, or his duly authorised attorney, and such payment shall be made at the Town Office in Durban, or at the Bank or place of business of the London Agents of the Town Council, or such other place as may be provided for in the receipt or certificate representing such Consolidated Stock.

Town Council may enter into certain agreements with their London agents.

14. The Town Council may from time to time enter into such agreements with their Agents in London as to the Town Council may seem fit to provide for all or any of the following things :—

- (1) For the registration of the Consolidated Stock in London and Durban.
- (2) For managing the creation, registration, 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-registering Consolidated Stock, and re-issuing Consolidated Stock Certificates.
- (6) Generally for conducting all business connected with stock or loans.
- (7) And for the remuneration of such Agents in respect of such agreements.

Cancellation of existing securities.

15. The debentures or other form of securities issued under any of the Laws enumerated in the Schedule to this Law annexed, and exchanged or otherwise converted into new Consolidated Stock under this Law, shall be forthwith cancelled, and the persons who now are, or hereafter shall be, trustees of sinking funds created in terms of any of said Laws shall determine what amount of the Sinking Fund held by them and created for the repayments of such debentures or other form of securities shall be released, and in the determination of such question the Trustees shall take into consideration the value of the whole investment held by them on account of such Sinking Funds, the amount of debt remaining due, and such other matters as the Trustees may think fit to take into account: Provided that the Town Council of Durban may appoint Trustees for the purposes of determining on the release of Sinking Funds invested under the said Laws.

Release of Sinking Funds.

16. So much of the Sinking Funds accumulated under any of the Laws in the Schedule to this Law mentioned as may be set free by conversion into or exchange for new Consolidated Stock, or by purchase of any debentures, or other form of securities issued under said Laws with new Consolidated Stock under this Law, shall be converted into money and paid into the Borough Fund for the general purposes of the Borough.

**Law 29, 1888.**  
Released Sinking Funds to be paid into Borough Fund.

17. Nothing in this Law and nothing done under the provisions of this Law, except by agreement, shall take away, abridge, or prejudicially affect any right or interest by way of priority or otherwise of any person in or to the rates, rents, or general revenues of the Borough, or in any Sinking Fund, or any remedy which any person would have had or might have exercised in respect of any such right or interest in case this Law had not been passed, or any right which the Town Council may have to pay off any portion of its debt.

Existing rights preserved.

18. The Town Council of Durban are authorised to borrow and to issue new Consolidated Stock under this Law for Twenty-five Thousand Pounds Sterling (£25,000), to be used in paying for certain Public Works and Improvements, and for Thirty Thousand Pounds Sterling (£30,000), to be used in acquiring from the War Department and improving certain Lands, in extent about two hundred and eighty-five (285) acres, situate within the Borough.

Authorisation of loan of £25,000 Consolidated Stock.

## SCHEDULE.

No. or Date of Law.	Amount of Loan.	Name of Securities.
12th Dec., 1866	£50,000 due 1906	Durban Loan Securities.
No. 18 ... 1880	£25,000 due 1895-1900	Durban Toll Debentures.
No. 3 ... 1883	£110,000 due 1933	Durban Corporation Stock.
No. 33 ... 1884	£50,000 due 1937	Durban Corporation Stock.

**Law No. 42, 1888.**

“To enable the Government of Natal and the Town Council of the Borough of Durban to enter into an agreement for the transfer to the said Town Council upon certain conditions of the rights of the Government in and to a certain strip of land situate within the said Borough and abutting on the Bay of Natal, bounded on the Eastward by Addington and Westward by the Umbilo River, and known as the Government Reserve, or as the Admiralty Reserve, and hereafter referred to as the Reserve.”

[10th December, 1888.]

WHEREAS by deed of grant or of transfer, dated the 27th day of July, 1855, the lands thereby granted or transferred to the Mayor, Councillors, and Burgesses of the Borough of Durban are expressed to be bounded in one direction by the Harbour of Natal, and by the same deed it is provided: “Servitudes allowed herewith of right of way and of drainage over and through the Government Reserve facing the Bay”:



Law 42, 1888.

AND WHEREAS the said Reserve abuts on the Harbour of Natal :

AND WHEREAS doubts have arisen whether the legal title of the said Reserve vests in the Government of Natal or in the Mayor, Councillors, and Burgesses of the Borough of Durban, or in both :

AND WHEREAS certain of the registered proprietors of freehold lots abutting on the Reserve, assert certain claims in and to portions of the Reserve in front of their respective lots, and said claims are not admitted by the Government or by the Mayor, Councillors, and Burgesses of the Borough of Durban :

AND WHEREAS by reason of such disputed claims, and of the doubts as to the several rights of the Government and of the Mayor, Councillors, and Burgesses of the Borough of Durban and of the said proprietors, in and to the Reserve, the said piece of land is uncared for and neglected :

AND WHEREAS the present Bay boundary of the said Reserve is the fluctuating line of high-water mark :

AND WHEREAS it is expedient to enable the Government to enter into a contract with the Town Council of Durban for the acquisition by the Mayor, Councillors, and Burgesses of the Borough of Durban of all the rights of the Government in and to the said Reserve, subject to any such claims by the said registered proprietors of freehold lots as may be established, and also to provide for a fixed boundary on the Bay side of the said piece of land :

BE IT THEREFORE ENACTED by the Governor of Natal, by and with the the advice and consent of the Legislative Council thereof, as follows :—

Government may agree with Town Council for transfer of their rights in Reserve.

Private claims not affected.

Government to be indemnified out of Borough Fund against claims.

Bayside boundary of Reserve to be fixed.

Commencement

1. The Government of Natal may agree with the Town Council of the Borough of Durban for the transfer to the Mayor, Councillors, and Burgesses of the Borough of Durban of all the rights of the Natal Government in the said Reserve.

2. Such transfer as is referred to in Clause 1 shall in no way prejudice or injuriously affect nor admit any claim by any person to the exclusive use of any portion of the Reserve.

3. In case of such transfer as is in Clause 1 mentioned the Government of Natal shall be held harmless and indemnified out of the Borough Fund of the Borough of Durban in respect of any, and all costs, charges, and expenses, which the Natal Government may incur, sustain, or be put to by any action directed against the Natal Government by any person, or persons, who may establish claim, or claims, against the Government to the exclusive use of any portion of the Reserve.

4. Prior to any such agreement between the Government and the Town Council, a fixed boundary on the Bay side of the Reserve shall be agreed to by the Town Council and the Natal Harbour Board, and failing such last-mentioned agreement, such fixed boundary may be determined by the Colonial Engineer, and laid down by the Surveyor-General in the plans of the Borough of Durban and of the Bay of Natal.

5. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A).

### Law No. 21, 1890.

"To enable the Town Council of the Borough of Durban to supply the Borough of Durban with water from the Rivers Umlazi and Umhlatuzana."

[30th July, 1890.]

WHEREAS it is expedient to enable the Town Council of the Borough of Durban to supply the Borough of Durban with water from the Rivers Umlazi and Umhlatuzana :

(A) Dec. 18, 1888.

*repealed by  
24/21 S1*

BE IT THEREFORE ENACTED by the Governor of Natal, by and with the consent of the Legislative Council thereof, as follows:— **Law 21, 1890.**

1. This Law may be cited as the “Durban Corporation Waterworks Law” of 1890. **Short title.**

2. The Lands Clauses Consolidation Law, 1872 (Law 16 of 1872), and all the clauses and provisions thereof (save in so far as they shall be expressly varied or excepted by this Law) shall be incorporated with this Law. **Incorporation of Law 16, 1872.**

3. The Town Council of the Borough of Durban may purchase or take the lands or user of lands required for the purposes of the works and undertakings authorised by this Law. **Powers to take lands, &c.**

4. If the taking, impounding, diversion, appropriation, or conveyance of water under the authority of this Law shall deprive any person of any water or right of water which he may at the time of such taking, impounding, diversion, appropriation, or conveyance of water possess, or be entitled to possess, and shall thereby cause damage to such person or to his property, such person shall be entitled to recompense or compensation to be settled in case of difference as if the diversion of water constituted a damage to the land within the meaning of the 65th Section of the Lands Clauses Consolidation Law. **Compensation for deprivation of water and water rights.**

5. The Town Council of the Borough of Durban are authorised to draw water for the Borough of Durban from the Umlazi River at any and all the point and points of intake shewn on the plan filed with the Clerk of the Council, and to lead such water through pipes and conduits, and to lay such pipes and conduits along the pipe-routes shewn in the said plan and to make all necessary dams, reservoirs, and filter-beds and service-tanks and other works, and with wagons, carts, and vehicles to have access to the pipe-route, dams, reservoirs, filter-beds, tanks, and other works for purposes of construction, examination or repair, or other purposes of the works, and to distribute such water in Durban, and to do such further and other acts, matters, and things, and to exercise such further powers as shall be necessary to carry out the objects of this Law. **Authority to draw water from Umlazi and construct works, &c.**

6. If any person shall pollute the waters of the Umlazi River above any intake authorised by this Law, or any water led from the said river under the authority of this Law, or shall obstruct any person in discharge of his duty in connection with the waterworks hereby authorised, or shall mischievously do any damage to property connected with the waterworks, such person on conviction thereof before the Resident Magistrate having jurisdiction, shall be liable to a penalty for each offence not exceeding £10 to be paid to the Borough Fund, or in default of payment to imprisonment with or without hard labour for a period not exceeding one month, and any person charged with contravening this Law may be prosecuted by any officer appointed on that behalf by the Town Council of the Borough of Durban. **Pollution of water, obstruction and damage.**

**Penalty.**

7. The Town Council of the Borough of Durban may, as a temporary measure pump water from the River Umhlatuzana into the Umbilo River in aid of the water authorised to be taken under Law 42 of 1884, at a point on the Zeekoegat Farm, near the mouth of the Sterk Spruit, and may lay pipes or a conduit across that farm and the farm Salt River, and may have access to the pipe-route and pipe-line, and may erect the necessary machinery and works: Provided that the powers given by this Section shall cease and determine as soon as water from the Umlazi River shall be brought into Durban.. **Temporary power to pump water from Umhlatuzana into Umbilo.**

8. No person shall be entitled to dispute the water rate or any act of the Town Council, or its officers, authorised by Law No. 42 of 1884, on the mere ground that the water in respect of which such rate shall be made shall in fact be brought elsewhere than from the Umbilo River, or otherwise than under said Law No. 42 of 1884. **Provision in respect of water rate.**

Law 21, 1890. 9. The powers to make By-laws given to the Town Councils under  
By-laws. Law No. 19 of 1872 are extended to the Town Council of the Borough  
of Durban for all the purposes of this Law.

Commencement 10. This Law shall commence and take effect from and after the pro-  
mulgation thereof in the " NATAL GOVERNMENT GAZETTE " (A).

*u Law. 21 7/92.*

#### Law No. 22, 1890.

" To increase the Borrowing Powers of the Town Council of the Borough  
of Durban for the purpose of enabling the Town Council to supply  
the Borough with Water from the Umlazi River."

[30th July, 1890.]

WHEREAS it is expedient to increase the borrowing powers of the  
Borough of Durban for the purpose of enabling the Town Council to  
supply the Borough with water from the Umlazi River:

BE IT THEREFORE ENACTED by the Governor of Natal, with the  
advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. The short title of this Law shall be, " Durban Consolidated Stock  
Law, 1890."

Authorisation  
of Loan.

2. The Town Council of Durban are authorised to borrow <sup>£ 110,000</sup> £80,000 <sup>7/92</sup>  
(B) to be used in completing the works authorised by the Durban  
Corporation Waterworks Law of 1890, for supplying the Borough of  
Durban with water from the Umlazi River.

Issue of Consoli-  
dated Stock.

3. The Town Council are authorised to issue in the manner provided  
by Law 29 of 1888, new Consolidated Stock for the moneys borrowed  
under this Law and the Stock issued under this Law shall be deemed  
to be Consolidated Stock within the meaning of said Law 29 of 1888,  
and shall be a charge upon, and shall with the interest thereon be pay-  
able out of the rents, rates, and general revenue of the Borough, in the  
same way as if the Stock issued under this Law had been issued under  
the said Law 29 of 1888.

Saving of rights  
and interest.

4. Nothing in this Law and nothing done under the provisions of  
this Law shall take away, abridge, or prejudicially affect any right or  
interest by way of priority or otherwise of any person in or to the rates,  
rents, or general revenue of the Borough.

Commencement

5. This Law shall commence and take effect from and after the  
promulgation thereof in the " NATAL GOVERNMENT GAZETTE " (C).

#### Law No. 9, 1891.

" To enable the Trustees of the Durban General Public Cemetery to  
transfer the said Cemetery to the Town Council."

[16th July, 1891.]

WHEREAS by Deed of Transfer, dated the Eleventh day of July,  
1864, the Mayor and Council of the Borough of Durban granted in  
full and free property to John Sanderson, of Durban, Merchant, and  
James Brickhill, of Durban, Bank Manager, their successors, heirs,  
executors, and administrators, in their capacities as Trustees of the  
Durban Cemetery, and for and on behalf thereof, a certain piece

(A) Aug. 5, 1890.

(B) The figures " £110,000 " are substituted for " £80,000 " by Law 7, 1892, post.

(C) Aug. 5, 1890.

of land in extent ten acres two roods and thirty-four perches, being portion of the Town Lands of the Borough of Durban, on the condition that the said Trustees should hold, possess, and keep the same for use as a general public cemetery henceforth and for ever : Law 9, 1891.

AND WHEREAS both the said Trustees have departed this life, and their executors or other legal representatives are desirous of resigning the trust in so far as may be necessary, and of transferring the land so held in trust to the Town Council of the Borough of Durban :

AND WHEREAS the Town Council have expressed their willingness to accept the trust on behalf of the inhabitants of Durban, and all others interested in the said cemetery :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. It shall be lawful for the executors, or other legal representatives of the said Trustees of the Durban General Public Cemetery to resign and transfer the trust created by the deed of grant and transfer of 11th July, 1864, to and in favour of the Town Council of the Borough of Durban, and the said executors or other legal representatives of the said John Sanderson and James Brickhill are hereby authorised and empowered to transfer to the Town Council of the Borough of Durban, without receiving any payment therefor, that piece of land transferred to the aforesaid Trustees, and described in the deed of grant and transfer thereof of 11th July, 1864, as all that piece of ground being in extent ten acres two roods and thirty-four perches, portion of the Town Lands of the Borough of Durban, Colony of Natal, situate at the West End of the town, and bounded north-west and south by Town Lands, and east and centre by adjoining cemeteries as shewn on the general plan of the Town Lands deposited in the Town Clerk's Office, as will fully appear by the diagram of said piece of land annexed to the said deed of grant and transfer : granted to the said Trustees, on the condition that they shall hold, possess, and keep the same for use as a general public cemetery henceforth and for ever, and shall always keep the same decently enclosed and used only as a public cemetery.

Authorisation of transfer to the Durban Town Council of the trust of the Durban General Public Cemetery, and of the land.

2. No transfer dues, fees of office, stamps, or any other fees or charges whatsoever, shall be payable to or claimable by the Registrar of Deeds, in respect of or in connection with the Transfer by this Law authorised.

Exemption from charges payable to Registrar of Deeds. Town Council empowered to make rules and levy fees.

3. The Town Council of the Borough of Durban are hereby empowered to make such rules and regulations and to levy such fees on burials in the cemetery as will the better enable them to carry out the objects of the trust, and to meet the costs and expenses incident thereto.

#### Law No. 20, 1891.

“To authorise the Town Council of the Borough of Durban to provide a Main Sewerage Scheme for the Borough.”

*See also*

*Act-48  
" 28/*

[19th August, 1891.]

WHEREAS it is expedient to authorise the Town Council of the Borough of Durban to provide a Main Sewerage Scheme for the Borough :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. The Town Council of the Borough of Durban is hereby authorised and empowered to carry out a Main Sewerage Scheme for the said Borough, and for that purpose to adopt the system of sewerage known as Shone's Hydro-pneumatic system.

Authorisation of Main Sewerage Scheme on Shone's system.

## Law 20, 1891.

Works authorised.

Hours of discharge from North Pier.

Use of private roads, streets, &amp;c.

Connection with system compulsory on landlords within the drainage area.

On failure by landlord to construct or agree for construction, the Town Council to do the work and recover cost.

Contribution by proprietors to cost of common sewer.

Compensation to Harbour Board in respect of works.

Taking or user of land for purpose of sewerage system.

By-laws.

2. The works hereby authorised shall or may include the construction of an outfall sewer along the side of the North Pier, with an outfall near the end of the pier (A); an air compressing station and refuse destructor on western side of the cemetery; storage and screening tanks with a refuse destructor at Bamboo Square; all necessary gravitation outfall sewers and intercepting outfall sewers, and subsidiary sewers; ejectors and chambers, and inspection chambers. The discharge of the sewage from the end of the North Pier shall take place only within the first four hours after high tide.

3. In cases where it may be necessary to use for the drainage system private roads, streets, or thoroughfares within the Borough, the same may be so used without compensation.

4. The Town Council may enforce the construction by every landlord within the drainage area of house drainage and connections with the public sewers, and may agree with any landlord to do the work at his expense and to distribute the cost over a term of years, and in case of such agreement the cost and interest shall be a preferent charge over and ranking in priority before any mortgage upon the landed property of such landlord benefited by such connection.

5. In case any landlord shall neglect or refuse to construct house drainage and connections with the public sewers, or to agree with the Town Council as in Section 4 of this Law provided, it shall be lawful for the Town Council to do the work and to recover the cost thereof from the landlord: Provided no such work shall be begun until after the expiry of one month from the date of the service on the premises of a notice addressed to the landlord requiring him to do the work: And provided also, that the property of the landlord benefited by such work shall be charged, as in Section 4 is mentioned, with the cost of such work.

6. In any and every case where a sewer common to properties on either side of a private street, road, or thoroughfare shall be constructed by the Town Council, the cost of such sewer shall be borne by the proprietors in proportion to their frontages to the said private street, road, or thoroughfare: Provided that no such sewer shall be constructed by the Town Council in any case where the proprietors when called on shall express their willingness to construct such sewer to the satisfaction of the Council and shall commence the work within one month's notice to do so. *the Town Council.*

7. In case the Natal Harbour Board and the Town Council shall be unable to agree as to the compensation to be paid to the Board in respect of the works hereby authorised, such compensation shall be determined by arbitration.

8. In any and every case where the Town Council may find it necessary to take lands or the user of land for the purpose of the sewerage system hereby authorised, such land or user may be taken under the provisions of "The Lands Clauses Consolidation Law, 1872," which for the purposes of this Section is incorporated with this Law.

9. The Town Council is authorised and empowered to make By-laws in the same way as By-laws are authorised by Law No. 19 of 1872 (B) for the purpose of regulating the general sewerage system and all house drainage, and of enforcing the use of closets and urinals, and for rendering effectual and complete the system of sewerage hereby authorised, and the contravention of any By-law passed under this Law shall carry like penalties and punishments to those imposed by said Law No. 19 of 1872.

(A) See Act 28, 1898, post.

(B) See tit. "MUNICIPAL CORPORATIONS."

Law No. 23, 1891. *repealed Act 37/95 sec. 1*

“To authorise and empower the Mayor and Councillors of the Borough of Durban to construct and work Tramways within the Town of Durban and the Suburbs thereof, and to sublet the said Tramway, or any section thereof, and to enter into agreements with the Durban Borough Tramways Company, Limited, for running powers over their respective lines.”

[19th August, 1891.]

WHEREAS the facilities for passenger and parcels traffic between the town of Durban and the Suburbs thereof, are insufficient and unsuitable for public requirements, and it is expedient to authorise and empower the Town Council of the Borough of Durban to construct and work Tramways within the town of Durban and the Suburbs thereof in order to increase and improve the present facilities, and to convey passengers and parcels thereon and to charge fares, to sublet the said Tramways or any section thereof, and to enter into agreements with the Durban Borough Tramways Company, Limited, for running powers over their respective lines :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. For the purposes of this Law the terms hereinafter mentioned shall have the meaning hereinafter assigned to them, that is to say :—

Interpretation of terms.

The “Town Council” shall mean the Town Council of the Borough of Durban.

The term “Company” shall mean the Durban Borough Tramways Company, Limited.

“Borough” shall mean the Borough of Durban.

“Roadway,” “Street,” “Road” shall mean the whole space reserved as such roadway, street, or road, and not only the hardened or formed portion of such roadway, street, or road.

2. The Town Council are hereby authorised to make and use Tramways upon a safe and reasonable gauge not exceeding four feet eight-and-a-half inches, and in manner hereinafter described :—

Town Council authorised to make and use certain tramways.

The first section of the said Tramways shall be from the corner of West and Gardiner Streets to the junction of the Musgrave and Springfield Roads, along Gardiner Street, Pine Street, Field Street, Railway Street, Umgeni Road, Epsom Road, First Avenue, Montpelier, Florida, and Innes Roads to the junction of Springfield Road, with any and all necessary deviations thereof.

In case the Town Council shall hereafter deem it necessary for the public convenience to lay a Tramway or Tramways in other parts of the Borough it shall be lawful for them to do so : Provided that no such Tramway or Tramways as last hereinbefore mentioned shall be laid down in competition with lines of Tramways then already constructed and worked by any Company or Companies.

3. The Town Council and the Company are hereby authorised to enter into agreements for running powers over their respective lines.

Agreements for running powers.

4. The Town Council may and they are hereby empowered to sublet the Tramways authorised under this Law or any section thereof to any Company, person, or persons, for a period not exceeding seven years ; but with a right to give renewal, on terms to be agreed upon, within

Town Council may sublet tramways.

**Law 23, 1891.** the last six months of each period of seven years, and in case of any such subletting all the rights, powers, authorities, obligations, and liabilities of the Town Council under this Law in respect of working of such Tramways and enforcement of the regulations made in connection therewith shall be transferred to, vested in, and may be exercised by any such Company, person, or persons, subject, however, to any special agreement to be entered into between the parties.

Acquisition of land and buildings.

5. The Town Council are hereby authorised to purchase, hire or otherwise legally acquire all such land and buildings as may from time to time be found necessary for the purposes of the undertaking.

Limitation of traffic.

6. The traffic upon such Tramways shall be confined to passengers and parcels (A).

Tolls and charges for conveyance.

7. The Town Council may levy tolls and charges for the conveyance of passengers and parcels on such Tramways, but such tolls and charges shall not exceed for passengers threepence a mile or fraction of a mile, and for parcels the rates specified in the Schedule to this Law annexed, without the sanction of the Governor in Council: Provided, that if the route be laid off in stages, then the fare for a stage may be computed at a penny if the stage is under one-third of a mile; at twopence if the stage is over one-third, but under two-thirds of a mile; and at threepence if the stage is over two-thirds of a mile, and not exceeding one mile.

Law 16, 1872, incorporated with this Law except as to certain provisions.

8. The provisions of the Lands Clauses Consolidation Law No. 16 of 1872 shall be incorporated with this Law, except as to the following provisions:—

(a) With respect to the purchase and taking of lands otherwise than by agreement.

(b) With respect to the entry upon lands by the Town Council.

Special Law contemplated by Law 16, 1872.

9. For the purposes of such incorporation this statute shall be deemed the special Law contemplated by the Lands Clauses Consolidation Law of 1872.

Laying of rails and inspection by Engineer.

10. The Tramways hereby authorised shall be laid and maintained in such manner that the uppermost surface of the rails shall be on a level with the surface of the road, and shall not be open for public traffic until the same have been inspected and certified to be fit for such traffic by an Engineer appointed by the Governor in Council.

Construction of level crossings over other lines.

11. Where the carriage-way in or upon which any portion of the Tramway is proposed to be formed or laid down is crossed by any railway or tramway on the level, any work which the Town Council may be empowered to construct, and which affects or in anywise interferes with such railway or tramway, or the traffic thereon, shall be constructed and maintained under the superintendence (at the cost of the Town Council) and to the reasonable satisfaction of the Government, person, Corporation, or Company, owning such railway or tramway, unless in the case of the original construction of the tramway after notice to be given by the Town Council seven days at least before the commencement of such work, such superintendence is refused or withheld.

Reservation of powers of local bodies, &c., to break up roads.

12. Nothing in this Law shall take away or abridge any power to open or break up any road along or across which any Tramway is laid, or any other power vested in any other local body or authority for any of the purposes for which such authority is respectively constituted, or in any Company, body, or person for the purpose of laying down, repairing, altering, or removing any pipe for the supply of water or gas, or any tubes, wires, or apparatus for telegraphic or other purposes, but

(A) Amended by Act 12, 1899, s. 4, post.

in the exercise of such power the Company, body, or person shall be subject to the following restrictions, that is to say:— Law 23, 1891.

- (a) They shall cause as little detriment or inconvenience to the Town Council as circumstances admit. Restrictions on exercise of such powers.
- (b) Before they commence any work whereby the traffic on the Tramway will be interrupted, they shall (except in cases of emergency, in which cases no notice shall be necessary) give to the Town Council notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work.
- (c) They shall not be liable to pay the Town Council any compensation for injury done to the Tramway by the execution of such work, or for loss of traffic occasioned thereby or for the reasonable exercise of the powers so vested in them as aforesaid.
- (d) Whenever for the purpose of enabling them to execute such work, the Company, body, or person as aforesaid shall so require, the Town Council shall either stop traffic on the Tramway to which the notice shall refer, where it would otherwise interfere with such work, or shore up and secure the same at their own risk and cost during the execution of the work there: Provided, that such work shall always be completed by the Company, body, or person with all reasonable expedition.
- (e) Any Company, body, or person shall not execute such work so far as it immediately affects the Tramway except under the superintendence of the Town Council, unless the Town Council refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work, or discontinue the same during the progress of the work, and such Company, body, or person, shall execute such work at their own expense and to the reasonable satisfaction of the Town Council: Provided, that any additional expense imposed upon such Company, body, or person, by reason of the existence of the Tramway in any road or place where any such mains, pipes, tubes, wires, or apparatus shall have been laid before the construction of such Tramway shall be borne by the Town Council.

13. If any difference arises between the Town Council on the one hand and any Gas or Water Company, or any Company, body, or person to whom any sewer, drain, tube, wires, or apparatus for telegraphic or other purposes may belong, or any other Company, on the other hand, with respect to any interference or control exercised or claimed to be exercised by them or him, or on their or his behalf, or by the Town Council by virtue of this Law in relation to any Tramway or work, or in relation to any work or proceeding of any body, Company, or person, or with respect to the propriety of the mode of execution of any work relating to any Tramway, or with respect to the amount of any compensation to be made by or to the Town Council, or on the question whether any work is such as ought reasonably to satisfy the body, Company, or person concerned, or with respect to any other subject or thing, regulated by or comprised in this Law, the matter in difference shall (unless otherwise specially provided by this Law) be settled by an Engineer or other fit person nominated as referee by the Governor in Council on the application of either party, and the expenses of the reference shall be borne and paid as the referee directs.

Settlement of differences arising between Council and other Companies or persons in respect to control, works, compensation, &c.



**Law 23, 1891.**

Use of flange wheels.

Motive power.

Construction of carriages.

Power of Council to sell the undertaking.

Tolls and charges.

Regulations.

By-laws.

Recovery of tolls, penalties, and charges.

Penalty for willfully obstructing authorised person or damaging property.

14. The Town Council may use on their Tramways, carriages with flange wheels, or wheels suitable only to run on the prescribed rails, and subject to the provisions of this Law, the Town Council shall have the exclusive use of their Tramways for carriages with flange wheels, or other wheels suitable only to run on the prescribed rails. The carriages used on the Tramways may be drawn by horses or other animals or driven by steam or other motive power: Provided always, that the carriages of the Town Council running over the lines of the Durban Borough Tramways Company, Limited, shall not, without the consent of the said Company, be drawn or propelled by any other than animal power. No carriage used on the Tramway shall extend beyond the outer edges of the wheels of such carriage more than twenty inches on each side.

15. When any Tramway hereby authorised has been opened for traffic for a period of six months, the Town Council may, with the consent of the Governor in Council, sell their undertaking to any person, persons, Corporation, or Company, and when any such sale has been made, all the rights, powers, authorities, obligations, and liabilities of such Town Council under this Law, in respect of the undertaking sold, shall be transferred to, vested in, and may be exercised by, and shall attach to the person, persons, Corporation, or Company, to whom the same shall have been sold, in like manner as if such Tramway was constructed by such person, persons, Corporation, or Company, under the powers hereby conferred, and in reference to the same they shall be deemed to be the Town Council.

16. The Town Council may demand and take in respect of such Tramways tolls and charges, not exceeding the sums mentioned in Section 7 of this Law, or in such Schedule as the Governor in Council may hereafter substitute therefor at the request of the Town Council, and a list of all tolls and charges authorised to be taken shall be exhibited in a conspicuous place inside and outside each of the carriages used on the Tramway.

17. The Town Council may make regulations for preventing the commission of any nuisance in or upon any carriage or in or against any premises belonging to them, and for regulating the travelling in or upon any carriage belonging to them; and for better enforcing the observance of all or any of such regulations it shall be lawful for such Town Council to make by-laws for all or any of the aforesaid purposes, and from time to time repeal or alter such by-laws and make new by-laws, provided that such by-laws be not repugnant to the Laws of the Colony, and such by-laws shall be passed and promulgated in the same manner as is provided for by-laws under Law 19 of 1872 (A), and shall be capable of enforcement in the same way as any other by-law duly passed by that authority. Any such by-law made by the Town Council may impose reasonable penalties for offences against the same not exceeding Forty Shillings for each offence, with or without further penalties for continuing offences not exceeding for any continuing offence Ten Shillings for every day during which the offence continues. All tolls, penalties, and charges under this Law or under any by-law made in pursuance of this Law, may be proceeded for in the case of the Town Council in the same manner as is applicable to contraventions of ordinary Municipal by-laws.

18. If any person willfully obstructs any person acting under the authority of the Town Council in the lawful exercise of their powers in setting out or making, forming, laying down, repairing, or renewing a Tramway, or defaces or destroys any mark made for the purpose of setting out the line of the Tramway, or damages or destroys any property of the Town Council, he shall for every such offence be liable to a penalty not exceeding Five Pounds.

(A) See tit. "MUNICIPAL CORPORATIONS."

19. If any person without lawful excuse (the proof whereof shall lie on him) wilfully does any of the following things, namely:—Interferes with, removes or alters any part of a Tramway or of the works connected therewith, places or throws any stones, dirt, wood, refuse, or other material on any part of a Tramway, does, or causes to be done, anything in such manner as to obstruct any carriage using a Tramway, or to endanger the lives of persons therein or thereon, or knowingly aids or assists in the doing of any such thing, he shall for every such offence be liable (in addition to any proceedings by way of indictment or otherwise to which he may be subject) to a penalty not exceeding Five Pounds.

Law 23, 1891.

Penalties for wilful acts, obstructing carriage or endangering lives of persons therein.

20. If any person travelling or having travelled in any carriage on any Tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every person shall for every such offence be liable to a penalty not exceeding Forty Shillings.

Penalty for frauds in respect of fare by passengers.

21. It shall be lawful for any officer or servant of the Town Council, and all persons called by him to his assistance, to seize and detain any person discovered either in or after committing or attempting to commit any such offence as in the next preceding section is mentioned, and whose name or residence is unknown to such officer or servant, until such person can be conveniently taken before a Magistrate, or until he be otherwise discharged by due course of law.

Officer of Council may detain, in certain cases, person offending as in sec. 20.

22. No person shall be entitled to carry or to require to be carried on any Tramway any goods which may be of a dangerous nature; and if any person send by any Tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the bookkeeper or other servant of the Town Council with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding Twenty Pounds for every such offence; and it shall be lawful for the Town Council to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

Dangerous goods.

23. If any person use the Tramway or any part thereof with carriages having flange wheels or other wheels suitable only to run on the rails of such Tramway, such person shall for every such offence be liable to a penalty not exceeding Twenty Pounds.

Penalty for using tramway with carriages having flange wheels.

24. Nothing in this Law shall take away or affect any power which the owner, commissioners, undertakers, or lessees of any railway or tramway may have by Law to widen, alter, divert, or improve any road, railway, or tramway.

Reservation of powers to widen, &c., roads, railways, or tramways.

25. Nothing in this Law or in any by-law made under this Law shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which any tramway is laid, whether on or off the Tramway, with carriages not having flange wheels, or wheels suitable only to run on the rails of the Tramway.

Reservation of public right to use of roads.

26. This Law may be cited as the "Town Council Tramways Law."

Short title.

#### SCHEDULE.

- (a) Any one parcel not exceeding 14 lbs. in weight, carried by any passenger, shall be free of charge.
- (b) On all other parcels not exceeding 14 lbs. in weight, the Town Council shall be entitled to charge sixpence for each parcel.

*Reg. by Act 37/1905 Sec. 1*

Law 23, 1891.

- (c) Provided that the Town Council shall not be competent or compellable to carry for hire any parcel of greater weight than 14 lbs. (A).

### Law No. 27, 1891.

“To increase the Borrowing Powers of the Town Council of the Borough of Durban for the purpose of enabling the Town Council thereof to provide a Main Sewerage Scheme for the Borough.”

[3rd September, 1891.]

WHEREAS it is expedient to increase the Borrowing Powers of the Borough of Durban for the purpose of enabling the Town Council thereof to provide a Main Sewerage Scheme for the Borough :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :--

Short title.

1. The short title of this Law shall be “The Durban Consolidated Stock Law, 1891.”

Authorisation of loan.

2. The Town Council of Durban are authorised to borrow sums up to but not exceeding a total sum of One Hundred and Fifty (b) Thousand Pounds Sterling, to be used for the purposes of the works authorised by the Durban Main Sewerage Law of 1891, which said Law enables the Town Council to provide a Main Sewerage Scheme for the Borough of Durban.

Issue of Consolidated Stock.

3. The Town Council are authorised to issue in the manner provided by Law No. 29 of 1888, New Consolidated Stock for the moneys borrowed under this Law, and the Stock issued under this Law shall be deemed to be Consolidated Stock within the meaning of the said Law No. 29 of 1888, and shall be a charge upon and shall, with the interest thereon, be payable out of the rents, rates, and general revenue of the Borough, in the same way as if the Stock issued under this Law had been issued under the said Law No. 29 of 1888.

Saving of rights and interests.

4. Nothing in this Law, and nothing done under the provisions of this Law shall take away, abridge, or prejudicially affect any right or interest, by way of priority, or otherwise, of any person in or to the rates, rents, or general revenue of the Borough.

Commencement

5. This Law shall commence and take effect from and after the promulgation thereof in the “NATAL GOVERNMENT GAZETTE” (c).

### Law No. 7, 1892.

“To amend Laws No. 22 of 1890, and No. 27 of 1891, in respect of the Loans authorised thereunder for Water and Main Sewerage Schemes for the Borough of Durban.”

[29th June, 1892.]

WHEREAS under the “Durban Consolidated Stock Law, 1890” (No. 22 of 1890), the Town Council of the Borough of Durban are authorised to borrow Eighty Thousand Pounds (£80,000) Sterling, to be used in completing the works authorised by the Durban Corporation Waterworks Law of 1890, for supplying the Borough of Durban with water from the Umlazi River :

(A) Amended by Act 12, 1899, post.

(B) “Twenty” is substituted for “Fifty” by Law 7, 1892, post.

(C) Sept. 8, 1891.

AND WHEREAS under "The Durban Consolidated Stock Law, 1891" Law 7, 1892. (No 27 of 1891), the said Town Council are authorised to borrow sums up to but not exceeding a total sum of One Hundred and Fifty Thousand Pounds (£150,000) Sterling, to be used for the purposes of the works authorised by the Durban Main Sewerage Law of 1891 :

AND WHEREAS it is found that the said sum of One Hundred and Fifty Thousand Pounds (£150,000) Sterling is in excess of present or immediate future requirements for the said Main Sewerage Scheme, while the sum of Eighty Thousand Pounds (£80,000) Sterling is inadequate for the Waterworks in consequence of the necessity of providing for an extension of the water supply under the original scheme to meet the increasing requirements of the town :

AND WHEREAS in order to avoid increasing the borrowing powers of the Borough beyond the present or immediate future requirements, it is desirable to transfer Thirty Thousand Pounds (£30,000) Sterling from the loan for the Main Sewerage Scheme to the loan for the Waterworks :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. The amount of the total sum of One Hundred and Fifty Thousand Pounds (£150,000) Sterling, which the Town Council of Durban are authorised to borrow under "The Durban Consolidated Stock Law, 1891," for the purposes of the Works authorised by the "Durban Main Sewerage Law of 1891" shall be and the same is hereby reduced to One Hundred and Twenty Thousand Pounds (£120,000) Sterling, and from and after the passing hereof the words "One Hundred and Twenty Thousand Pounds Sterling" shall be deemed to be substituted for the words "One Hundred and Fifty Thousand Pounds Sterling," occurring in Section 2 of "The Durban Consolidated Stock Law, 1891,"

Loan authorised by Law 27, 1891, reduced.

2. The amount of Eighty Thousand Pounds (£80,000) Sterling which the Town Council of Durban are authorised to borrow under the "Durban Consolidated Stock Law, 1890," for supplying the Borough of Durban with water from the Umlazi River, shall be and the same is hereby increased to One Hundred and Ten Thousand Pounds (£110,000) Sterling, and from and after the passing hereof, the figures "£110,000" shall be deemed to be substituted for the figures "£80,000" occurring in Section 2 of the said "Durban Consolidated Stock Law, 1890."

Loan authorised by Law 22, 1890, increased.

3. This Law, the "Durban Consolidated Stock Law, 1890" (No. 22 of 1890), and the "Durban Consolidated Stock Law, 1891" (No. 27 of 1891) shall be read and construed together as one Law.

This Law and Laws 22, 1890, and 27, 1891, to be read as one Law.

Law No. 16, 1892 (A). *Amended Act 39/1892*

"To amend the 'Durban Tramways Law' and the 'Suburban Tramways Law.'"

[16th September, 1892.]

WHEREAS the Durban Borough Tramways Company, Limited, which is a Company duly registered under the "Joint Stock Companies Limited Liability Law, 1864," has acquired the undertaking of the Durban Tramways Company, Limited, in terms of Section 20 of the "Durban Tramways Law" (No. 19 of 1880), and also the undertaking of the Suburban Tramways Company, Limited, in terms of Section 22 of the "Suburban Tramways Law" (No. 18 of 1885) and the Durban Borough Tramways Company, Limited, is now working the two undertakings as one enterprise :

(A) See Act 12, 1899, post.

Law 16, 1892.

AND WHEREAS there are variances between certain provisions in the above-mentioned Laws as regards the motive power by which the carriages are to be propelled, and as to the width of carriages which may be used on the said Tramways, and it is desirable to assimilate the said provisions, and to make the said provisions accord with corresponding provisions in the "Town Council Tramways Law" (No. 23 of 1891), which authorises the Town Council and the Durban Borough Tramways Company, Limited, to enter into agreements for running powers over their respective lines :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

Sec. 18 of Law 19, 1880, repealed.

1. Section 18 of the "Durban Tramways Law" shall be, and the same is hereby repealed, and the following section shall be and is substituted therefor :—

Tram carriages.

"The Company may use on their Tramways carriages with flange wheels, or wheels suitable only to run on the prescribed rails, and subject to the provisions of this Law, the Company shall have the exclusive use of their Tramways for carriages with flange wheels or other wheels suitable only to run on the prescribed rails. The carriages used on the Tramways may be drawn by horses or other animals, or driven or propelled by steam or other motive power : Provided always, that the carriages of the Durban Borough Tramways Company, Limited, running over the lines of the Town Council of the Borough of Durban under the "Town Council Tramways Law" or over the lines originally laid by the Durban Tramways Company, Limited, shall not, without the consent of the said Town Council, be drawn or propelled by any other than animal power. No carriage used on the Tramways shall extend beyond the outer edges of the wheels of such carriage more than twenty inches on each side."

Motive power.

Width of carriages.

Sec. 20 of Law 18, 1885, repealed.

2. Section 20, of the "Suburban Tramways Law," shall be and the same is hereby repealed, and the following section shall be and is substituted therefor :—

Tram carriages.

"The Company may use on their Tramways carriages with flange wheels, or wheels suitable only to run on the prescribed rails, and subject to the provisions of this Law, the Company shall have the exclusive use of their Tramways for carriages with flange wheels or other wheels suitable only to run on the prescribed rails. The carriages used on the Tramways may be drawn by horses or other animals, or driven or propelled by steam or other motive power : Provided always, that the carriages of the Durban Borough Tramways Company, Limited, running over the lines of the Town Council of the Borough of Durban under the "Town Council Tramways Law," or over the lines originally laid by the Durban Tramways Company, Limited, shall not, without the consent of the said Town Council, be drawn or propelled by any other than animal power. No carriage used on the Tramways shall extend beyond the outer edges of the wheels of such carriage more than twenty inches on each side."

Motive power.

Width of carriages.

Title.

3. This Law may be cited as the "Durban Borough Tramways Amendment Law of 1892."

## Act No. 30, 1894.

“To enable the Town Council of the Borough of Durban to dedicate certain lands in perpetuity for Public Purposes.”

[30th July, 1894.]

WHEREAS by a Deed of Lease entered into on the 23rd day of January, 1863, between the Mayor, Councillors, and Burgesses of the Borough of Durban, of the one part, and the Natal Railway Company, of the other part, the said Mayor, Councillors, and Burgesses of the Borough of Durban demised and leased for railway purposes to the said Natal Railway Company and their Successors, certain pieces of the Town Lands of the Borough of Durban, in extent 2 acres 2 roods 2 perches and 239 feet or thereabouts, bounded on the north by Commercial Road, south by Pine Terrace, east by Ordnance Board boundary line, and west by Corporation Lands, and laid off and marked on the enlarged General Plan of the said Town Lands of the Borough of Durban, “Natal Railway.”

AND WHEREAS by Deed, dated 6th day of January, 1877, the said Mayor, Councillors, and Burgesses consented to the cession and transfer of the said Lease of the Natal Railway Company to the Colonial Government of Natal, subject to the several covenants and stipulations in the said lease contained :

AND WHEREAS, from the date of taking over such lease, the said Colonial Government of Natal used the land, the subject of the said lease, for railway purposes, until the 19th day of February, 1893, from which date or thereabouts the said Colonial Government ceased to use the said lands for railway purposes, and such lands have reverted to the said Borough :

AND WHEREAS other lands used by the Colonial Government for railway purposes, and hereinafter more fully indicated, have also reverted to the Borough of Durban, and are intended to be utilised for the public good :

AND WHEREAS it is desirable to provide that the portion of the land so reverting to the said Borough, between Pine Street and Commercial Road, having a width of 40 feet, and extending from the existing Central Railway Station to Grey Street, shall not be sold, but shall be dedicated to public use, for Markets, Auction Sales, Promenades, and other Public purposes, and to carry out such object it is necessary that the width of the said land be increased by 20 feet, to be contributed as to 10 feet by Commercial Road, and as to 10 feet by Pine Street, thus leaving each of the said streets 90 feet wide, and increasing the land between to 60 feet :

AND WHEREAS it is also necessary, in the interests of the public, to empower the Town Council to deal with certain portions of the land reverting to the said Borough, situate beyond Grey Street, and land abutting thereon, in the following manner :—

- (a) To agree with the Trustees of the Young Ladies' Collegiate Institution to adjust with them a boundary between their property and the site of the West End Railway Station, and to transfer to them a piece of land to the westward of their property, and to widen an existing road which is on the eastern side of Block EE, from 30 feet to 60 feet :
- (b) To substitute a roadway of 40 feet in place of two roadways, each of 30 feet, and which are now separated by the Railway track, lying between Smith Street and St. George's

Act 30, 1894.

Street, and to transfer on such terms as may be agreed upon to proprietors of properties in Block FF abutting on the original roadways the lands intervening between the said properties and the new roadway :

AND WHEREAS it is desirable to give the said Town Council power and authority to carry out the said undertakings :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

Incorporation of Law 16, 1872.

1. "The Lands Clauses Consolidation Law, 1872," is, except when expressly varied by this Law, incorporated with and forms part of this Law.

Reduction of width of Commercial Road and Pine Street.

2. It shall be lawful for the Town Council of the Borough of Durban to reduce the width of those portions of the two roads known as Commercial Road and Pine Street, situate between a spot near the Central Railway Station at one end and Grey Street at the other end, and hereinafter more particularly defined, by taking 10 feet from each of the said roads and adding the same to the width of the piece of land between those points hitherto used by the Colonial Government of Natal as a Railway track, and thereby increasing the width of the said land to 60 feet, and reducing the width of Commercial Road and Pine Street to 90 feet each.

Dedication of certain specific land to public purposes.

3. The land between the said points, hitherto used as a railway track as aforesaid, and in extent 1 acre 3 roods and 12 perches, or thereabouts, shall, together with the aforesaid two strips of land, each 10 feet in width, and in extent 3 roods and 26 perches, or thereabouts, be, and the same is hereby set apart and dedicated in perpetuity to the use of the public for markets, auction sales, promenades, and other like purposes, and shall not be sold or alienated by the Town Council for any other purpose, but subject, nevertheless, to the existing communications across the said land in respect to Field Street and in continuation of Albert Street. The said land so set apart and dedicated is bounded on the north side by an imaginary line commencing at a point in the east side of Grey Street, and 90 feet from the north side of Commercial Road, and running a distance of 1,989.25 feet in an easterly direction parallel with Commercial Road to a point 90 feet from the corner of Railway Street and Commercial Road in a direction at right angles to Commercial Road; on the south by an imaginary line commencing at a point in the east side of Grey Street, and 90 feet from the south side of Pine Street, and running a distance of 1,989.25 feet in an easterly direction, parallel with Pine Street to a point 90 feet from the south side of Pine Street in a direction at right angles to Pine Street; on the east by an imaginary line, commencing at a point 90 feet from the corner of Commercial Road and Railway Street in a direction at right angles to Commercial Road, and running a distance of 60 feet in a southerly direction to a point 90 feet from the south side of Pine Street, and 151 feet 9 inches from the east side of Gardiner Street at its junction with Pine Street; and on the west by Grey Street, commencing at a point 90 feet from the south side of Pine Street at its junction with Grey Street, and running a distance of 60 feet in a northerly direction to a point in the east side of Grey Street at its junction with Commercial Road, 90 feet from the north side of Commercial Road.

Boundaries.

Portions may be set aside for certain purposes.

4. The Town Council may set apart such portions of the said land as they may deem desirable for any of the purposes to which the same is dedicated, and may from time to time alter and re-arrange such apportionments; and the Town Council is also empowered to let by public competition, any portions of the said lands so reserved for auction stands,

market stalls, and other like purposes, on such terms as to them may seem fit. **Act 30, 1894.**

5. The powers to make and amend Bye-laws given to Councils under Law No. 19 of 1872, are extended to the Town Council of the Borough of Durban, for the purpose of regulating the use of the dedicated land. **By-laws.**

6. The Town Council are empowered to agree with the Trustees of the Young Ladies' Collegiate Institution to adjust with them a boundary between their property and the site of the West End Railway Station, and to transfer to them a piece of land to the westward of their property, and to widen an existing road which is on the eastern side of Block EE from 30 feet to 60 feet. **Adjustment of boundaries of Collegiate Institution Lands.**

7. The Town Council are further empowered to substitute a roadway of 40 feet in place of two roadways, each of 30 feet, and which are now separated by the railway track, lying between Smith Street and St. George's Street, and to transfer on such terms as may be agreed upon to proprietors of properties of Block FF abutting on the original roadways, the lands intervening between the said properties and the new roadway. **Roadway between Smith Street and St. George's Street.**

**Act No. 26, 1895.***Amended by Act*

“To provide for the Embankment of a certain portion of the Bay of Natal.”

[24th August, 1895.]

WHEREAS pursuant to Law 42 of 1888, and pursuant to a contract entered into on the Twenty-eighth day of January, 1895, between the Government of Natal and the Town Council of the Borough of Durban, in terms of Section 1 of said Law, the said Government of Natal, by deed bearing date the Nineteenth day of February, 1895, granted and transferred in freehold unto the Worshipful the Mayor, Councillors, and Burgesses of the Borough of Durban, all that piece of land containing (exclusive of the land as shown on the diagram annexed to the said deed appropriated for Railway purposes) three hundred and nine-six acres and twelve decimal sixty-two perches, more or less, and bounded on the southward and eastward by the Bay of Natal, and northward and westward by the Borough and Borough Lands of Durban :

AND WHEREAS the land so transferred is hereinafter referred to as “Bay Embankment” :

AND WHEREAS it is expedient to provide for the Embankment of the Bay of Natal from Addington to the Umbilo River, and to offer to the Mayor, Councillors, and Burgesses of the Borough of Durban certain inducements to assist in deepening the Bay of Natal and carrying out other works :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. The Lands Clauses Consolidation Law, 1872, save as hereby expressly varied or excepted, shall be, and the same is incorporated with this Act. **Incorporation of Law 16, 1872.**

2. The Town Council of the Borough of Durban is empowered :—

- (a) To make a wall to the height of not less than two feet above the level of high water within the new Bay Boundary Line as fixed by the Town Council and the Natal Harbour Board in terms of Law 42, 1888 (A).

**Powers of Town Council for construction of embankment.**

(A) See ante.



Act 26, 1895.

- (b) To fill up the area on the landward side of the wall with spoil removed from the Bay of Natal, such filling up to be concurrent as near as may be with the construction of the said wall.
- (c) To remove spoil from the Bay of Natal for the purpose of filling up any other low-lying areas within the Borough of Durban.
- (d) To continue from Addington the canal now in course of construction by the Natal Government.

Wharfs.

3. The Town Council may construct a wharf at any point or points within the Boundary Line: Provided that no such wharf shall be constructed between the southern boundary of Albert Park and Cato's Creek.

By-laws.

4. The Town Council may, by Bye-laws passed in the manner provided by Law 19 of 1872, regulate the use of the Bay Embankment, and charge dues on goods landed thereon and shipped therefrom.

Acquisition and sale of lands.

5. The Town Council may acquire, at a price to be agreed or to be fixed by arbitration, any freehold or leasehold property abutting on the Bay Embankment, and may re-sell such property: Provided that this Clause shall not operate in case a proprietor elects to take a lease of any portion of the Bay Embankment in pursuance of the provisions of Clause 6 hereof.

Leases may be taken by adjoining landholders.

6. Any person whose freehold land abuts on the Bay Embankment may, within six months after the promulgation of this Act (A), claim from the Town Council, at a yearly rental of three per cent. on the freehold value to be fixed by the Town Council or in case of dispute to be decided by arbitration (B), a perpetual lease of that portion of the Bay Embankment which is immediately in front of his freehold property, and which will be bounded southerly by the roadway to be constructed along the Embankment by the Town Council, easterly and westerly by the prolongation in the same straight line of his easterly and westerly freehold boundary lines as far as the proposed roadway, and northerly by the existing southern boundary of his freehold property, the rental under such lease to commence in every case from the First day of January, 1896: Provided that the valuation shall be made as for land levelled up to the proposed Embankment, but without regard to future increase in value to result from the works hereby authorised: [Provided, further, that the basis of valuation shall be on the value of the whole erf from street up to the northern boundary of the Reserve in actual proportion (C):] and provided, further, that no such lease shall reduce the width of Embankment open to the public inside the wall to less than 100 feet.

Valuation.

Removal of buildings, &amp;c.

7. In the event of any person not claiming such lease, the Town Council may remove all buildings and obstructions from that portion of the Bay Embankment in front of his freehold property, and sell or otherwise dispose of the land: Provided that any such person shall be entitled to be paid the value of any buildings so removed: Provided, however, that if in any case, for any cause considered sufficient by the Town Council, any such person shall fail to claim any such lease within the prescribed period for claiming any such lease, then the Town Council may in its discretion extend the period for claiming any such lease for a further period not exceeding six months.

Extension of time for lease.

(A) See Act 28, 1896, s. 4, post, which extends the period.

(B) See the right to go to arbitration under this section discussed fully in

*Poynton v. Mayor and Councillors of Durban*, 18 N.L.R. 71.

(C) Words in brackets expunged and others substituted by Act 28, 1896, post.

8. Any such lessee as aforesaid shall have the right at any time to convert the said leased land into freehold on the basis of the rental capitalised at four per cent. per annum, and on this basis only, and no other law or scheme for the conversion of leasehold into freehold in the Borough of Durban shall apply to leaseholds under this Act. Act 26, 1895.  
Conversion of lease into freehold.

9. In case any person whose freehold land abuts on the Bay Embankment shall be desirous of acquiring directly in freehold the portion of land immediately in front of his freehold property, he shall be entitled to do so, provided he elects to take such freehold title within the same period as is stipulated in Clause 6 hereof with respect to a perpetual lease, and that the freehold value be assessed in the same manner as therein provided (A). Acquisition of freehold in first instance.

10. Nothing in this Act contained, or in any agreement of lease or freehold title deed, as the case may be, to be hereafter issued to any person as aforesaid, shall be deemed to entitle him or his successors in title to erect any buildings on any portion of the said land, nor shall he be thereby deemed to be prohibited from erecting such buildings, but any such buildings shall be erected at his own risk as regards neighbours' rights of view or servitudes, if any. Rights of view and servitudes.

11. In cases of compensation under this Act, values shall be assessed without regard to future increase in value to result from the works hereby authorised. Assessment of value for compensation.

12. So much of the Bay Embankment as is westward of the Albert Park may (subject to leases granted by the Government) be dealt with by sale or lease as the Town Council may from time to time determine, except that a breadth of at least 100 feet from the Bay Boundary Line shall be reserved for public purposes. Sale or lease of Embankment west of Albert Park.

13. Any owner or lessee of land abutting on the Bay Embankment who may set up any claim to the exclusive use of any portion of the Bay Embankment, shall be bound to make such claim within twelve months from the coming into effect of this Act, and thereafter prosecute the same with all due speed. Prescription of claims.

14. Dues upon the registration of any lease granted under this Act shall be calculated for a period not exceeding 30 years. Dues on leases.

15. The works hereby authorised may be constructed in sections with such moneys as may be authorised to be borrowed for that purpose, and the interest on the cost of each section may for the period of construction of such section be paid out of the loan. Payment of cost of works and interest.

16. The proceeds of sales of lands forming part of the Bay Embankment shall be applied to the payment of the Loan raised for the purpose of the works. Appropriation of proceeds of sales.

17. The short title of this Act shall be "The Durban Bay Embankment Act of 1895." Short title.

Act No. 29, 1895. (B) see Act 36/04 & 11/06

"To increase the Borrowing Powers of the Town Council of the Borough of Durban."

[24th August, 1895.]

WHEREAS under the "Durban Bay Embankment Act of 1895," the Town Council of the Borough of Durban are authorised to provide for the embankment of a certain portion of the Bay of Natal, for which work a sum of Sixty Thousand Pounds Sterling is required :

(A) As to price to be paid for land to be acquired under this sec. see Act 28, 1896, s. 3, post.

Act 29, 1895.

AND WHEREAS under "The Municipal Corporations Lighting Law, 1891," the said Town Council have power to make, do, execute, and perform all the works or any of them by said Law authorised :

AND WHEREAS the said Town Council have resolved to provide a scheme for lighting the Borough of Durban by electricity for which a sum of Twenty-five Thousand Pounds Sterling is required :

AND WHEREAS a further sum of Twenty-five Thousand Pounds Sterling is required for the purpose of completing the works authorised by the "Durban Corporation Waterworks Law of 1890," for supplying the Borough of Durban with water from the Umlazi River :

AND WHEREAS it is expedient to increase the borrowing powers of the Borough of Durban to enable the Town Council thereof to carry out the proposed undertakings and works :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

Short title.

1. The short title of this Act shall be "The Durban Consolidated Stock Act, 1895."

Authorisation of loan.

2. The Town Council of Durban are authorised to borrow up to, but not exceeding, a total sum of One Hundred and Ten Thousand Pounds Sterling to be used as follows :—

- (a) Sixty Thousand Pounds Sterling for the embankment of a certain portion of the Bay of Natal as authorised by "The Durban Bay Embankment Act of 1895."
- (b) Twenty-five Thousand Pounds Sterling for the purpose of lighting the Borough of Durban with electricity as authorised by "The Municipal Corporations Lighting Law, 1891."
- (c) Twenty-five Thousand Pounds Sterling for the purpose of completing the works authorised by the Durban Corporation Waterworks Law of 1890, for supplying the Borough of Durban with water from the Umlazi River.

Consolidated Stock.

3. The said Town Council are authorised to issue in the manner provided by Law No. 29 of 1888, new Consolidated Stock for the moneys borrowed under this Act, and the Stock issued under this Act shall be deemed to be Consolidated Stock within the meaning of the said Law No. 29 of 1888, and shall be a charge upon and shall, with the interest thereon, be payable out of the rents, rates, and general revenue of the Borough in the same way as if the Stock issued under this Act had been issued under the said Law No. 29 of 1888.

Priority of claims upon rates, &amp;c.

4. Nothing in this Act, and nothing done under the provisions of this Act shall take away, abridge, or prejudicially affect any right or interest by way of priority or otherwise of any person in or to the rates, rents, or general revenue of the Borough.

### Act No. 28, 1896.

"To amend 'The Durban Bay Embankment Act of 1895.'"

[6th July, 1896.]

WHEREAS by "The Durban Bay Embankment Act of 1895" it is provided in Section 6 thereof that the basis of valuation of the land therein referred to shall be on the value of the whole erf from street up to the northern boundary of the Reserve in actual proportion :

AND WHEREAS the aforesaid basis of valuation bears inequitably upon the owners of land abutting on the Bay Embankment, and if adhered to will have the effect of preventing many of such owners from taking advantage of the provisions of the Act as intended : Act 28, 1896.

AND WHEREAS in the interests of the Borough of Durban, in order to ensure the successful carrying out of the Durban Bay Embankment scheme, as well as to deal equitably with the Bayside property owners, it is desirable to substitute another basis of valuation for that laid down in said Section 6 of "The Durban Bay Embankment Act of 1895" :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. The words : " Provided further that the basis of valuation shall be on the value of the whole erf from street up to the northern boundary of the Reserve in actual proportion," occurring in Section 6 of "The Durban Bay Embankment Act of 1895," are hereby expunged, and the following words substituted therefor, namely : " Provided further that the basis of valuation shall be on the value of the Bayside half of the erf measured from the northern boundary of the Reserve up to the centre of the erf." Alteration of basis of valuation.

2. In case any person whose freehold land abuts on the Bay Embankment shall not be willing to take in leasehold or freehold that portion of the Bay Embankment which he is entitled to acquire under "The Durban Bay Embankment Act of 1895," it shall be obligatory on the Town Council to take over the property of such abutting proprietor, in terms of the Lands Clauses Consolidation Law, 1872, and the Act No. 26 of 1895. Obligation upon Town Council to take over land in certain cases.

3. The price to be paid for land acquired under Section 9 of the said "Durban Bay Embankment Act of 1895" shall not exceed the sum which the abutting proprietor would have to pay if he first leased the land and then converted the leasehold tenure into freehold. Price of land acquired.

4. The period mentioned in Sections 6 and 9 of "The Durban Bay Embankment Act of 1895," within which the persons entitled are bound to claim leasehold or freehold title, shall be and it is hereby extended for six months, from the Twenty-fourth day of February, 1896 ; and the rental in cases of perpetual leases referred to in the said Section 6 shall commence from the First day of January, 1897, instead of from the First day of January, 1896, as provided in the said Section. Extension of period for claiming lease or purchase.

5. "The Durban Bay Embankment Act of 1895" is hereby amended in terms of this Act, and this Act and the said Durban Bay Embankment Act shall be read and construed together as one Act. Construction of Acts.

*Durban Bay Land Act 31/97*

Act No. 31, 1897. (a)

*See Act*

"To give certain powers to the Natal Telephone Company, Limited, and the Town Council of the Borough of Durban."

*x "*

[29th May, 1897.]

WHEREAS it is desirable and necessary that powers should be given to the Town Council of the Borough of Durban to contract with the Natal Telephone Company, Limited, of Durban, and with any person, corporation, or company, for the use by the said Company, and by such person, corporation, or company, of the streets and roads of the said Borough, and that power should be given to the said Company, and to any such person, corporation, or company, to carry wires over or under

**Act 31, 1897** the surface of private roads or rights-of-way within the said Borough, with power to make bye-laws governing the conduct of the business of the said Company, and of such person, corporation, or company, and with power to the said Town Council or the Government to acquire the undertaking of the said Company, and of any such person, corporation, or company :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of the Colony of Natal, as follows :—

Short title.

1. This Act may be cited as "The Durban Telephone Act."

Interpretation.

2. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereinafter assigned to them, that is to say :—

"The Town Council" shall mean the Town Council of the Borough of Durban.

"The Company" shall mean the Natal Telephone Company, Limited, or any other person, corporation, or company with whom the Town Council may contract under the powers conferred by this Act.

"Borough" shall mean the Borough of Durban.

"Roadway, Street, Road," shall mean the road space reserved as such roadway, street, or road.

Town Council and Company authorised to make contracts.

3. The Town Council and the Company are hereby authorised to make contracts with each other for the purpose of letting, hiring, or granting to the Company, upon such terms as may be mutually agreed, the right of erecting telephone posts, standards, or supports for wires or cables on and in the streets and roads of the Borough of Durban, and of carrying the Company's telephone wires along and upon such posts, standards, or supports, and also across any such street or road, or under the surface thereof, as the case may be, and of generally carrying on a telephonic system and business with all adequate and necessary appurtenances along, over, under, or across the streets and roads of the Borough.

Such contracts may be varied, altered or renewed.

4. The Town Council and the Company may also, from time to time, vary, alter, or renew any contracts entered into in terms of Section 3, and further enter into new contracts relating to the use by the Company of the streets and roads of the Borough.

Company and land-owners may make contracts.

5. The Company and any owners of land or buildings in the Borough may contract with each other for the letting, hiring, or granting to the Company of the right of erecting the Company's posts, standards, or supports, on any such private lands, and carrying telephone wires upon or along any such posts, standards, or supports, or to erect posts, standards, or supports upon any buildings on such lands, and of carrying the Company's wires upon or over any such posts or standards, or through or under any such buildings, or of crossing any such lands or buildings by overhead wires.

Company authorised to carry wires across roads.

6. The Company are hereby empowered and authorised to carry their wires overhead across any private roads or rights-of-way within the said Borough.

Incorporation of Lands Clauses Law.

7. In so far as applicable to the circumstances of entry by the Company upon any such private roads or rights-of-way, the Lands Clauses Consolidation Law of 1872 shall be incorporated with this Law.

Wires, &c., must be at least 16 feet from ground.

8. Every wire or attachment of any telephone line which shall be carried across any private road or right-of-way in the Borough shall be placed at least sixteen feet from the ground ; provided also that the free use or enjoyment of any private right-of-way or road across which any such line of communication shall be carried shall not be hindered or obstructed.

9. In all cases, all posts, standards, or supports for telephone wire shall be so erected and maintained as not to cause any danger to persons using the streets or roads of the Borough.

Act 31, 1897.

Posts, standards, &c., must be so erected as not to cause danger.

10. Nothing in this Act shall take away or abridge any power to open or break up any road along or across which any telephone posts, standards, or wires may be erected, or any other power vested in the Town Council, or any other Local Board or Authority, for any of the purposes for which the said Local Board or Authority is respectively constituted, or of any company, body, or person for the purpose of laying down, repairing, altering, or removing any pipe for the supply of gas or water, or any tubes, wires, or apparatus for telegraphic or other purposes; but in the exercise of such power the Town Council, company, body, or person shall be subject to the following restrictions, that is to say:—

Powers of Town Councils and Local Boards reserved.

(a) They shall cause as little detriment or inconvenience to the Company as circumstances admit.

(b) Before they commence any work whereby telephonic communication will be interrupted, they shall (except in cases of emergency, in which cases no notice shall be necessary) give to the Company notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given twenty-four hours at least before the commencement of the work.

11. If any difference arises between the Company on the one hand, and the Town Council or any gas or water company, or any company, body, or person to whom any sewer, drain, tubes, wires, or apparatus for telegraphic or other purposes may belong, or any other company, on the other hand, with respect to any interference or control existing or claimed to be existing by them or him or on their behalf, or by the Company in virtue of this Act in relation to any telephone connections, plant, construction, or work, or in relation to any work or proceeding of the Town Council, body, company, or person, or with respect to the propriety or the mode of execution of any work relating to the Company, or on the question whether any work is such as ought reasonably to be performed by the Town Council, body, company, or person concerned, or with respect to any subject or thing regulated by or comprised in this Act, the matter in difference shall, unless otherwise specially provided by this Act, be settled by an Engineer or other fit person nominated as referee by the Colonial Secretary on the application of either party, and the expense of the reference shall be borne and paid as the referee directs.

Disputes between the Company and Town Council or other Companies or persons to be settled by an Engineer or other person nominated by Colonial Secretary on application of either party.

12. If at any time the Company discontinues the working of its telephonic system within the Borough for the space of seven days, such discontinuance not being occasioned by circumstances beyond the control of the Company (for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control), and such discontinuance shall be proved to the satisfaction of the Colonial Secretary, the said Colonial Secretary, if he thinks fit, may by order declare that the powers of the Company in respect of any such telephonic system shall from the date of such order be at an end, and thereupon the said powers of the Company shall cease and determine unless the same are purchased by the Town Council.

If working of system is discontinued for seven days, Colonial Secretary may declare powers of the Company to be at an end.

13. The Agreement set forth in Schedule A to this Act, made and entered into between the Town Council of the Borough of Durban and the Natal Telephone Company, Limited, and to which the Borough Seal was affixed by a resolution of the Town Council on the 4th day of June, 1896, shall be and the same is hereby confirmed and validated.

Confirmation of Agreement set forth in Schedule A.

**Act 31, 1867.**

Government and Town Council entitled to three months' notice to purchase all the undertaking, plant, and business of the Company on certain conditions.

14. The Government of Natal and the Town Council of the Borough of Durban respectively shall be entitled at any time, on three months' notice in writing, to acquire by purchase from the Company all the undertaking, plant, and business of the Company as a going concern, and the Company shall be bound to sell to such Government or Town Council, as the case may be, its undertaking, plant, business, and rights as aforesaid as a going concern, and thereupon the said Government or Town Council, as the case may be, shall become possessed of all the rights and privileges of the Company: Provided, however, that under no circumstances shall any of the cash or moneys of the Company be deemed to be included under any such purchase, but in the absence of special agreement between the parties, the price or consideration to be paid by the Government or the Town Council, as the case may be, to the Company shall be fixed and assessed by the award of two valuers, one valuer to be appointed by the Government or the Town Council, as the case may be, and the other by the Company. The valuers shall, before proceeding to their valuation, appoint an umpire to whom any point of difference or dispute shall be referred. The decision of the valuers or their umpire, as the case may be, shall be final and binding on both parties. In any such valuation or assessment the valuers shall take into account and assess the value of the unexpired period of any agreements in existence between any such Company and the Town Council of Durban, and all rights which the Company may have from the Town Council of Durban from any source whatever: Provided that as between the Town Council of the Borough of Durban and the Natal Telephone Company, Limited, the right to and terms of expropriation in this section contained and set out shall only apply in case of the Town Council desiring to anticipate the right of purchase given to them in terms of the Agreement set out in Schedule A, and the provisions of this section shall not be deemed to in any way prejudice the rights of the said Town Council to acquire the Company's plant in the manner set out by the said Agreement.

Penalties for wilful obstruction or injury to telephonic wires or works.

15. Any person who shall wilfully or in any way injure, disturb, obstruct, or interrupt the free use or working of any telephone lines erected by the Company under the powers conferred by this Act, or any works incidental thereto or connected therewith, or shall wilfully attach any string, wire, or any conductor or other thing to any line of communication or any part thereof, or shall obstruct, hinder, or prevent the forming, constructing, completing, or maintaining of any such line of communication or any part thereof, shall, upon conviction, forfeit a sum not exceeding Ten Pounds Sterling or be imprisoned with hard labour for any period not exceeding three calendar months. The offender may be prosecuted in the Court of any Magistrate within whose jurisdiction the offence shall have taken place.

Company may make Bye-laws.

16. The Company may, from time to time, make bye-laws to prevent damage to and the committing of any nuisance in connection with their telephones, wires, instruments, or property, and the working thereof, and to regulate the use of the telephone system, and every part thereof, by customers and others, provided such bye-laws be not repugnant to the laws of the Colony. Notice of the making, by the Company, of any bye-law shall be published by advertisement inserted once at least in each of two successive weeks in some one and the same newspaper published in Durban, and once at least in the "NATAL GOVERNMENT GAZETTE." A true copy of each bye-law shall be sent to the Colonial Secretary and the Town Council respectively at least one month before such bye-law shall come into operation, and no such bye-law shall have force or effect

if disallowed by the Governor in Council. Any bye-law made by the Company may impose reasonable penalties for offences against the same, not exceeding forty shillings for each offence, with or without further penalties, for any continuing offence not exceeding, for any continuing offence, ten shillings for every day during which the offence continues, and such penalties shall be recoverable at the suit of the Company in the Court of any Magistrate having jurisdiction, with costs, when any contravention is proved. Act 31, 1897.

17. Notwithstanding anything in this Act contained, the Company shall not acquire, or be deemed to acquire, any right other than that of user in any road along or across which they may erect any posts, standards, or supports, or carry their wires, or under which they may lay any wires, nor shall anything in this Act contained take away or affect any power which the Town Council or the owners, commissioners, undertakers, or lessees of any railway or tramway may have by law to widen, alter, divert, or improve any such railway or tramway. Company not to acquire any right other than that of user in any road.

18. The Company shall be entitled to charge and demand of and from Company authorised to make charges as

⊙ 1. Section 19 of Act 31 of 1897 is hereby amended— Company authorised to make charges as

(a) By the deletion therefrom of any reference to Schedule B; and 2 of ac

(b) By the addition thereto of the following words, namely:— 1  
 "The terms and conditions of the said contract other than the period thereof shall be as prescribed by the City Council from time to time by way of by-law."

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1.1.

of not less than two years, and who shall give reasonable security by way of sureties or deposit for the due payment of any moneys to become due by him to the Company in respect of his contract as a subscriber to the Company. wiring or sign'd contract.

20. Should the Company neglect or refuse to connect with the Telephone System within the Borough any person as aforesaid who shall have duly applied, as provided for in the preceding section, the said Company shall be liable to a penalty not exceeding Twenty-five Pounds Sterling for any such act of refusal or neglect, and such penalty shall be recoverable by the party aggrieved, by suit, in the Court of any Magistrate having jurisdiction: Provided always, the Company shall not be liable for any such penalty if they can prove to the satisfaction of the Magistrate that such refusal or neglect arose from or was occasioned by some acts beyond the control of the Company. Company liable to penalty for refusing or neglecting to connect applicant.

21. Nothing in this Act contained shall prejudice or affect the rights of the Company, or of subscribers, as the case may be, in any contracts entered into between the Company and subscribers, or others, prior to the date of the promulgation of this Act. Act not to prejudice rights of Company or subscribers in contracts made prior to its promulgation.

22. This Act shall commence and take effect from and after the promulgation thereof in the " NATAL GOVERNMENT GAZETTE " (A). Commencement

SCHEDULE A.

*Agreement.*

It is agreed between the Mayor and Councillors of the Borough of Durban, of the one part, and the Natal Telephone Company, Limited, of the other part, as follows:—

In consideration of the said Telephone Company foregoing, as it does hereby forego, any right which it might otherwise be entitled now



besluit, gepubliseerd in een plaatselike koerant, het weiden van die beperken tot omheinde kampen, die daarvoor afgezonderd voor het gebruik van zodanige kampen kunnen kosten geheven overeenkomstig tarieven uitgevaardigd bij verordeningen."



29. Die Raad kan verordeninge uitvaardig betreffende die verbod, pp  
reëling, beheer, inspeksie, toesig hou oor en lisensiëring van die warr  
of ambag van ontsmetting of fumigasie met cyanide of ander midde  
len

if disallowed by the Governor in Council. Any bye-law made by the Company may impose reasonable penalties for offences against the same, not exceeding forty shillings for each offence, with or without further penalties, for any continuing offence not exceeding, for any continuing offence, ten shillings for every day during which the offence continues, and such penalties shall be recoverable at the suit of the Company in the Court of any Magistrate having jurisdiction, with costs, when any contravention is proved.

Act 31, 1897.

17. Notwithstanding anything in this Act contained, the Company shall not acquire, or be deemed to acquire, any right other than that of user in any road along or across which they may erect any posts, standards, or supports, or carry their wires, or under which they may lay any wires, nor shall anything in this Act contained take away or affect any power which the Town Council or the owners, commissioners, undertakers, or lessees of any railway or tramway may have by law to widen, alter, divert, or improve any such railway or tramway.

Company not to acquire any right other than that of user in any road.

18. The Company shall be entitled to charge and demand of and from any persons becoming subscribers to the Company after the date of the promulgation of this Act, rentals or charges for the use of the telephones belonging to the Company, not exceeding the rates mentioned and set forth in Schedule B of this Act.

Company authorised to make charges as per Schedule B.

*Rep. by Sec. 2 of 19/1909*

19. The Company shall be bound to connect with their Telephone System within the Borough of Durban, at rates not exceeding the rates applicable according to ~~Schedule B~~ aforesaid, any person resident or carrying on business in the said Borough who shall be willing to sign a contract agreeing to become a subscriber to the Company for a period of not less than two years, and who shall give reasonable security by way of sureties or deposit for the due payment of any moneys to become due by him to the Company in respect of his contract as a subscriber to the Company. *AO*

Company bound to connect with their system any person resident or carrying on business in the borough who is willing to sign a contract.

20. Should the Company neglect or refuse to connect with the Telephone System within the Borough any person as aforesaid who shall have duly applied, as provided for in the preceding section, the said Company shall be liable to a penalty not exceeding Twenty-five Pounds Sterling for any such act of refusal or neglect, and such penalty shall be recoverable by the party aggrieved, by suit, in the Court of any Magistrate having jurisdiction: Provided always, the Company shall not be liable for any such penalty if they can prove to the satisfaction of the Magistrate that such refusal or neglect arose from or was occasioned by some acts beyond the control of the Company.

Company liable to penalty for refusing or neglecting to connect applicant.

21. Nothing in this Act contained shall prejudice or affect the rights of the Company, or of subscribers, as the case may be, in any contracts entered into between the Company and subscribers, or others, prior to the date of the promulgation of this Act.

Act not to prejudice rights of Company or subscribers in contracts made prior to its promulgation.

22. This Act shall commence and take effect from and after the promulgation thereof in the " NATAL GOVERNMENT GAZETTE " (A).

Commencement

#### SCHEDULE A.

#### *Agreement.*

It is agreed between the Mayor and Councillors of the Borough of Durban, of the one part, and the Natal Telephone Company, Limited, of the other part, as follows:—

In consideration of the said Telephone Company foregoing, as it does hereby forego, any right which it might otherwise be entitled now

(A) June 1, 1897.

Act 31, 1897. or at any time hereafter to claim compensation under Section 7 of the Municipal Corporations Lighting Law, 1891, and agreeing, as it does hereby agree, to supply the Corporation Telephone connections at a reduction of 20 (twenty) per cent. on the ordinary minimum tariff of charges to subscribers as at present existing or any subsequent reductions thereon, the Mayor and Councillors of the Borough of Durban grant permission to the said Company to use the streets of the Borough for the purpose of erecting posts and wires for the business of the Company upon and subject to the undermentioned terms and conditions, that is to say:

1. The permission hereby granted shall subsist for a period of ten years commencing from the 1st day of January, 1896, without any right of renewal.

2. The Company shall pay a rent of £25 sterling per annum to the Town Council.

3. All posts, standards, and wires to be erected or laid by the Company shall be subject to the approval of the Town Council, both as regards style and position of same.

4. No street or road shall be broken up or opened except after one day's notice in writing, given to the Borough Engineer; and in any case where any street is opened it shall be forthwith closed on completion of the work, to the satisfaction of the Borough Engineer.

5. No tree growing on the streets or roads or other Corporation lands shall be cut down or lopped without the written consent of the Borough Engineer.

6. The Company shall take all responsibility for accidents, danger, and damages resulting from the laying or use of their wires or otherwise.

7. The Council reserves the right to grant the same privilege to any other person, company, or companies: Provided, however, that in the event of a like privilege to this being granted to any other company or person, the Council undertakes to impose a condition therein that the company or person to whom such privilege may be granted shall not interfere with the wires or posts of the Natal Telephone Company, who on their part hereby agree in like manner that they will not interfere with the wires and posts of such new company or person: Provided further, however, that this undertaking on the part of the Council shall in no wise be construed to render the said Council responsible for any damages resulting to any such company or person from any interference by any other company or person, nor to impose any liability upon it to protect the interests of either party by an action at law.

8. It is further agreed that the Council shall have the option of taking over the Company's plant on the termination of the said period of ten years, at a sum to be arrived at by valuation in the usual manner, without reference to goodwill: Provided, however, the Council shall be bound to give twelve months' notice of its intention to take over the Company's plant as aforesaid, but no such notice shall be given before the expiration of the ninth year: Provided further, however, that in the event of this agreement being terminated from any cause whatever before the expiration of the term of ten years hereby granted, the Town Council shall be entitled, at their option, to take over the Company's plant on the valuation aforesaid, without being bound to give any notice to the Company.

9. It is also further agreed that the foregoing agreement does not apply to the fire alarm system, which shall be dealt with on its own merits.

10. In the event of a breach of any of the covenants contained herein the Council shall have the right to terminate this agreement.

In witness whereof these presents are signed by the Mayor on behalf of the Council, and the Borough Seal affixed hereto, in pursuance of a resolution of Council passed on the fourth day of June, 1896, and signed and sealed on behalf of the Natal Telephone Company, Limited, by Robert Noble Acutt as Chairman thereof, this 27th day of May, 1896. Act 31, 1897.



R. JAMESON,  
Mayor.

Witness to the Mayor's signature :

WM. COOLEY, Town Clerk,

R. NOBLE ACUTT, Chairman,  
Natal Telephone Company, Limited.

Witness : WM. CHAMPION.

SCHEDULE B.

Maximum Tariff—Night and Day Service.

*Five Years' Contract.*

- Within and including one mile radius from the Central Telephone Exchange, £12 12s. per annum per connection.
- Over one mile and within and including two miles from the Central Telephone Exchange, £14 14s. per annum per connection.
- Over two miles from the Central Telephone Exchange, and within the limits of the Borough, £15 15s. per annum per connection.

*Contract under Five Years and not less than Two Years.*

- Within and including one mile radius from the Central Telephone Exchange, £14 14s. per annum per connection.
- Over one mile and within and including two miles from the Central Telephone Exchange, £17 17s. per annum per connection.
- Over two miles from the Central Telephone Exchange, and within the limits of the Borough, £18 18s. per annum per connection.

**Act No. 28, 1898.**

“To legalise certain acts of the Town Council of the Borough of Durban in connection with Main Sewerage Scheme for the Borough, and to amend in certain respects the Durban Main Sewerage Law No. 20 of 1891.”

[15th August, 1898.]

WHEREAS by Law No. 20 of 1891 the Town Council of the Borough of Durban is authorised and empowered to carry out a Main Sewerage Scheme for the said Borough, and amongst the works authorised is the construction of an outfall sewer along the side of the North Pier :

AND WHEREAS at the time of the construction of the said outfall sewer it was impossible, in consequence of the obstructions existing on the portion of the North Pier then in course of construction, to continue the construction of the outfall sewer to the end of the pier, and arrangements were made by which the outfall sewer was carried along the north

*Rep. by act 191  
sec. 2*

Act 28, 1898. side of the pier for a certain distance, and then through the pier at a right angle at a point distant about 540 feet from the commencement of the Innes or concrete work of the pier, whence a 24-inch steel pipe was carried for a distance of 80 feet into the channel as a temporary measure, the sewerage being discharged during the night time only :

AND WHEREAS, pending the extension of the outfall sewer to near the end of the North Pier, in terms of Law No. 20 of 1891, it is necessary to legalise the action of the Town Council in placing the temporary outfall in the entrance channel to the harbour as aforesaid :

AND WHEREAS it is also necessary that power should be obtained for the eventual construction of the outfall sewer on either side of the pier, as may hereafter be found expedient :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

Legalisation of temporary diversion of outfall sewer at North Pier.

1. The diversion as a temporary measure of the outfall sewer referred to in Section 2 of Law No. 20 of 1891, by carrying the same across the North Pier at a right angle, at a point distant about 540 feet from the commencement of the Innes or concrete work of the pier, and thence by means of a 24-inch steel pipe for a distance of 80 feet into the entrance channel of the harbour, is hereby legalised, but such legalisation shall not be taken as in any way releasing the Town Council of the Borough of Durban from its obligation to construct the outfall sewer in terms of the provisions of Section 2 of Law No. 20, 1891, and of this Act.

Construction of Law 20, 1891, and this Act in regard to outfall sewer.

2. The authorisation in said section and Law of the construction of an outfall sewer along the side of the North Pier, with an outfall near the end of the pier, shall be construed to mean construction on either side of the pier, and that the outfall shall be at any point near the end of the pier, to be approved by the Colonial Government: Provided always, that the outfall from such outfall sewer shall be on the south side of the North Pier, and that the Town Council of Durban shall lay such outfall sewer to the point approved by the Colonial Government whenever called upon by the Government so to do.

Joint construction of Laws.

3. This Act and Law No. 20 of 1891 shall be read and construed together as one Act.

*no. 34/99.*  
**Act No. 31, 1898.**

“To increase the Borrowing Powers of the Town Council of the Borough of Durban.”

[15th August, 1898.]

WHEREAS it is expedient to increase the borrowing powers of the Borough of Durban for the purpose of enabling the Town Council thereof to purchase certain lands for public purposes, and to carry out public works and improvements within the Borough :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

Short title.

1. The short title of this Act shall be “The Durban Consolidated Stock Act, 1898.”

Loan of £300,000 authorised.

2. The Town Council of Durban are authorised to borrow sums up to, but not exceeding, a total sum of Three Hundred Thousand Pounds (£300,000) Sterling, to be used for the purposes and in the proportions set forth in the Schedule to this Act annexed.

3. The said Town Council are authorised to issue, in the manner provided by Law No. 29 of 1888, new Consolidated Stock for the moneys borrowed under this Act, and the stock issued under this Act shall be deemed to be Consolidated Stock within the meaning of the said Law No. 29 of 1888, and shall be a charge upon and shall, with the interest thereon, be payable out of the rents, rates, and general revenue of the Borough, in the same way as if the stock issued under this Act had been issued under the said Law No. 29 of 1888.

Act 31, 1898.  
Issue of Consolidated Stock as under Law 29, 1888.

4. Nothing in this Act, and nothing done under the provisions of this Act, shall take away, abridge, or prejudicially affect any right or interest by way of priority or otherwise of any person in or to the rates, rents, or general revenue of the Borough.

Saving of rights.

SCHEDULE.

	£
Addington Lands, purchase of and improvements to ... ..	100,000
Electric Light Extension ... ..	50,000
Improvements to lands formerly known as Ordnance or War Department Lands, lately acquired by the Borough, and construction of bridge providing access thereto ... ..	25,000
Water Reservoir and Pipe Extensions ... ..	50,000
Sewerage Scheme for Greyville ... ..	30,000
New Police Station ... ..	20,000
New Market House ... ..	25,000
	£300,000

Act No. 36, 1898.

*Proc. 34/9*

“To authorise the Town Council of the Borough of Durban to transfer to the Colonial Government of Natal certain portions of the Town Lands of the Borough of Durban.”

[15th August, 1898.]

WHEREAS it has been agreed between the Town Council of the Borough of Durban and the Colonial Government of Natal that the lands hereinafter described shall be transferred by the Town Council of the Borough of Durban to the Colonial Government as a part of the consideration to be given for the transfer to the said Town Council of certain lands of the Crown at Addington :

AND WHEREAS diagrams of the said portions of the Town Lands of Durban have been deposited with the Clerk of the Legislative Council and the Clerk of the Legislative Assembly :

BE IT THEREFORE ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. It shall be lawful for the Mayor of the Borough of Durban, upon being thereto authorised by resolution of the Mayor and Councillors of Durban, to transfer and convey to the Colonial Secretary of Natal, as representing the Colonial Government of Natal, the two pieces of land being portions of the Town Lands of the Borough of Durban which are described in the Schedule of this Act and shown in the plans deposited with the Clerk of the Legislative Council and the Clerk of the Legislative Assembly.

Legalisation of transfer when authorised by resolution.

## SCHEDULE.

Act 36, 1898. 1. Sub-division N.G.R. 1, of Durban Corporation Lands, in extent 1 rood 3 perches, more or less, bounded on the north-east by Town Lands, on the south-east by N.G.R., on the south-west by Town Lands, and on the north-west by the Umgeni Road.

2. Sub-division N.G.R. 2, of Durban Corporation Lands, in extent 20 acres 0 roods 0 perches 262 square feet, more or less, bounded on the north-west by N.G.R., and on the east, south-east, and south-west by Town Lands.

## Act No. 41, 1898. (B)

153. 5.5  
 "To authorise and empower the Trustees and Committee of the Durban Public Library and Reading Room (formerly known as the 'Durban Mechanics' Institution') to contract with the Town Council of the Borough of Durban for the exchange of land and buildings at present held by the Trustees aforesaid in the Town of Durban in exchange for accommodation to be provided by and at the expense of the said Town Council in buildings in a central situation in the Town of Durban; and to authorise and empower the said Town Council to afford financial support for the upkeep and maintenance, and for the making of rules, and for other matters relating to the welfare of the said Durban Library and Reading Room."

[23rd August, 1898.]

See Act 14/10  
 WHEREAS by and under the terms and provisions of Law No. 27 of 1874 (A), a certain piece of land, measuring 150 feet in length by 92 feet in breadth, forming part of the land set apart for the Market Square, Durban, and bounded north by church land, and on the south by West Street, on the east by Corporation land, and on the west by Church Street, was transferred to the Trustees of the "Durban Mechanics' Institution" to be held for the purposes, and upon the trusts, set out in the Law; and whereas the title of the said "Durban Mechanics' Institution" was subsequently, in terms of the powers conferred by the said Law, altered to that of the "Durban Public Library and Reading Room;" and whereas buildings have been erected on said land, and whereas the Trustees and Committee of the said Durban Public Library and Reading Room, being duly authorised thereto by the subscribers of the said Institution, have been negotiating with the Town Council of the Borough of Durban for the obtaining of increased accommodation for the requirements of the Institution, and for the obtaining of better financial support to the said Institution; and whereas it is desirable to give powers to the Trustees and Committee of the said Durban Public Library and Reading Room and to the Town Council of the Borough of Durban to contract with each other, and to conclude agreements relative to the handing over by the said Institution of the said land and the buildings now thereon to the Town Council of the Borough of Durban in exchange for increased and more suitable accommodation in buildings to be erected by and at the expense of the Town Council of the Borough of Durban on such centrally situated land in the Town of Durban to be provided by and at the cost of the said Town Council as may be mutually agreed upon between the said Town Council and the Trustees and Committee of the Durban Public Library and Reading Room in consideration of increased financial support to be provided by the said Town Council

(A) See ante.

for the upkeep and conduct of the said Library; and whereas for the effecting of the above objects it is desirable to repeal Law No. 27 of 1874 in so far as the same may be in conflict with the objects hereinbefore specified: Act 41, 1898.

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of the Colony of Natal, as follows:—

1. Law No. 27 of 1874, in so far as the same may be in conflict with this Act, shall be and the same is hereby repealed. Part repeal.

2. The Trustees and Committee of the Durban Public Library and Reading Room and the Town Council of the Borough of Durban are hereby authorised to contract with each other for the exchange of the land and buildings at present held by the Trustees of the said Durban Public Library and Reading Room, under the provisions of Law No. 27 of 1874, in consideration of the Town Council providing suitable accommodation for the Durban Public Library and Reading Room free of all charge, in a building or buildings to be erected and maintained by and at the expense of the Town Council aforesaid on such centrally situated land in the Town of Durban to be provided by and at the cost of the said Town Council, as may be mutually agreed upon by the said Town Council and the Trustees and Committee of the Durban Public Library and Reading Room, and any such land so transferred to the Mayor, Councillors, and Burgesses of the Borough of Durban, by the Trustees of the Durban Public Library and Reading Room, shall be transferred absolutely free of any Trust which may have been created by Law No. 27 of 1874. Exchange authorised between Trustees and Committee and Town Council.

3. The Town Council of the Borough of Durban are hereby authorised to set aside, dedicate, or alienate to Trustees any such portion of Borough land in the Town of Durban as may be mutually agreed upon for the site of the new Library building as contemplated in the last preceding section of this Act. Town Council authorised to set aside land for new Library.

4. Any agreement entered into between the parties shall specially provide inter alia:— Conditions to be included in any agreement.

- (a) Any new buildings so to be erected by the Town Council for the accommodation of the Durban Public Library and Reading Room shall be maintained in thorough repair, and be properly lighted at night by and at the expense of the Mayor, Councillors, and Burgesses of the Borough of Durban.
- (b) The management and control of the Library shall be vested in a Committee, one-half in number of whom shall be elected out of and by the subscribers of the Library and the remaining one-half in number shall be nominated or elected by the said Town Council. The said Committee shall elect their own President, who shall have an additional or casting vote in case of an equality of votes.
- (c) The Town Council of the Borough of Durban shall provide such annual sum of money in addition to subscriptions or Government grants, as may be necessary for the proper upkeep, maintenance, and conduct of the Library. All such sums of money shall be paid over to, and administered by the Committee aforesaid for the purposes of the Library.
- (d) All persons who at the date of the promulgation of this Act shall be subscribers to the Library shall be entitled to continue subscribers upon the same terms and conditions as shall be in force at the date of such promulgation.



Act 41, 1898.

- (e) The Committee shall have power of engaging or dismissing librarians, assistant librarians, or servants for the purposes of the Library, and of fixing their remuneration.
- (f) The power of fixing the tariff of charges from time to time to be in force for persons being or becoming subscribers to the Library shall be vested in the Committee; provided that nothing herein contained shall affect the privileges of subscribers existing at the date of the promulgation of this Act as provided in Sub-section (d) of this clause.

Bye-laws and regulations.

5. The Committee, subject to the approval of the Governor in Council, shall have power from time to time to make bye-laws and regulations:—

- (a) For the conduct and management of the Library and with special relation to subscribers to the Library.
- (b) The proceedings of the Committee itself.
- (c) The discipline to be observed by the librarian, assistant librarians, and servants of the Institution.
- (d) The penalties to be imposed on any person for breach of the bye-laws or regulations.
- (e) As to any other matter or thing having relation to the Library and to the conduct of its affairs.

Signatories to agreements or deeds of transfer.

6. The Trustees and Committee of the Durban Public Library and Reading Room (or a majority in number of both bodies respectively) of the one part, and the Town Council of the Borough of Durban of the other part, are hereby authorised to sign all such agreements or deeds of transfer or exchange or dedication and trust as may be necessary for the carrying out of the objects and intentions of this Act, provided that no agreement executed between the parties shall be of force and effect until the same shall have been approved of by the Governor in Council.

Commencement

7. This Act shall come into force immediately after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A).

## Act No. 11, 1899. (B)

v. 12/99 "To increase the Borrowing Powers of the Town Council of the Borough of Durban."

[27th July, 1899.]

WHEREAS it is expedient to increase the Borrowing Powers of the Borough of Durban for the purpose of enabling the Town Council thereof to purchase the undertaking of the Durban Borough Tramways Company Limited, and to equip the tramways connected with such undertaking, as well as the tramways under "The Town Council Tramways Law," and any extensions of tramways within the Borough, with electric traction, and to provide electricity for working the same and for other purposes:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

Short title.

1. The short title of this Act shall be "The Durban Consolidated Stock Act, 1899."

Authorisation of loan.

2. The Town Council of Durban are authorised to borrow a sum not exceeding Two Hundred and Fifty Thousand Pounds (£250,000)

(A) Aug. 30, 1898.

sterling, to be used in the purchase of the undertaking of the said Durban Borough Tramways Company Limited, and to provide for the works connected therewith in accordance with the amount approximately estimated in the Schedule annexed to this Act. Act 11, 1899.

3. The said Town Council are hereby authorised to issue in the manner provided by Law No. 29 of 1888, new Consolidated Stock for the moneys borrowed under this Act, and the Stock issued under this Act shall be deemed to be Consolidated Stock within the meaning of the said Law No. 29 of 1888, and shall be a charge upon and shall, with the interest thereon, be payable out of the rents, rates, and general revenue of the Borough, in the same way as if the Stock issued under this Act had been issued under the said Law No. 29 of 1888. Stock may be issued.

4. Nothing in this Act, and nothing done under the provisions of this Act, shall take away, abridge, or prejudicially affect any right or interest, by way of priority or otherwise, of any person in or to the rates, rents, or general revenue of the Borough. Saving of prior rights.

SCHEDULE.

Purchase price to be paid to the Durban Borough Tramways Company Limited	...	...	£114,000	0	0
Estimated cost of Electrical Equipment complete, relaying old tracks and new lines, future extensions and contingencies	...	...	136,000	0	0
			£250,000	0	0

Act No. 12, 1899. *Repealed Act 39/99 sec. 1*

“To authorise the Town Council of the Borough of Durban to purchase the undertaking of the Durban Borough Tramways Company, Limited, to equip the Tramways connected with such undertaking as well as the Tramways under ‘The Town Council Tramways Law,’ and any extensions of Tramways within the Borough with electric traction, and to provide electricity for working the same, and for other purposes; to amend in certain respects Law No. 19 of 1880, Law No. 18 of 1885, and Law No. 23 of 1891, and to grant extended powers for the utilisation of such Tramways.”

[27th July, 1899.]

WHEREAS, under Laws Nos. 19 of 1880 and 18 of 1885, as amended by Law No. 16 of 1892, the Durban Borough Tramways Company, Limited, is the holder of certain rights to construct and work lines of Tramways within the Borough of Durban, and under and by virtue of the powers in said Laws mentioned the said Company has constructed certain lines of such Tramways, and worked the same by means of animal power :

AND WHEREAS by Section 20 of Law No. 19 of 1880, and Section 22 of Law No. 18 of 1885 (A), it is provided as follows :—

“When any Tramway hereby authorised has been opened for traffic for a period of six months, the Company may, with the consent of the Lieutenant Governor in Council, and of the Town Council, sell their undertaking to any person or persons, Corporation or Company, or with the consent

(A) See ante.

Act 12, 1899.

of the Lieutenant Governor in Council, to the Town Council, and when any such sale has been made, all the rights, powers, authorities, obligations, and liabilities of such Company, under this Law, in respect of the undertaking sold, shall be transferred to, vested in, and may be exercised by, and shall attach to the person, persons, Corporation, or Company to whom the same shall have been sold, in like manner as if the Tramway was constructed by such person, persons, Corporation, or Company, under the powers hereby conferred, and in reference to the same they shall be deemed to be the Company: Provided that the Town Council shall not make any such purchase, except pursuant to Resolution carried by three-fourths of the members at the meeting of the Town Council, specially convened on one month's notice published in a local newspaper, to consider such purchase”:

AND WHEREAS the said Company is willing to sell its undertaking to the Town Council of the Borough of Durban, and it is desirable in the interests of the public to authorise the said Town Council to purchase the said undertaking:

AND WHEREAS by the said Law No. 16 of 1892, it is provided that the carriages used on the Tramways authorised under Laws Nos. 19 of 1880 and 18 of 1885, may be driven or propelled by steam or other motive power, and the same provision is also made in Section 14 of Law No. 23, 1891, as regards Tramways authorised under that Law (“The Town Council Tramways Law”):

AND WHEREAS it is desirable to authorise the said Town Council to provide for the equipment of existing lines of Tramway in the Borough and future extensions thereof with Electric traction, and for the generation and supply of electricity for working such tramways, and as a motive power for other purposes:

AND WHEREAS by Section 6 of Law No. 19 of 1880 and Law No. 23 of 1891, and Section 10 of Law No. 18 of 1885, it is provided that the traffic on the Tramways authorised under said Laws shall be confined to passengers and parcels, and it is expedient to give power to the Town Council, as common carriers, to convey goods and other materials over the Tramways in the Borough, and to utilise the Tramways for purposes of street watering and transporting refuse:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. The Town Council of the Borough of Durban are hereby authorised and empowered to enter into an agreement with the Durban Borough Tramways Company, Limited, for the purchase of the latter's undertaking at and for the price of One Hundred and Fourteen Thousand Pounds Sterling;

2. The powers conferred by this Act shall be exercisable subject to the proviso to Section 20 of Law No. 19 of 1880 and Section 22 of Law No. 18 of 1885, even though the notice required by such proviso shall have been given prior to the promulgation of this Act.

3. The said Town Council are also authorised and empowered to construct the necessary works and provide the requisite plant and appliances for the equipment with Electric traction of existing lines of Tramways in the Borough of Durban, including that constructed and worked by the Town Council under Law No. 23 of 1891, and future extensions of such lines, and also for the generation and supply of electricity for working such Tramways, and as a motive power for other purposes, subject to such regulations as may be made by the Governor in Council, as hereinafter provided:

Agreement for purchase authorised.

One month's notice of meeting to consider purchase.

Council authorised to construct works, &c., for electric traction.

4. Section 6 of Law No. 19 of 1880, and Law No. 23 of 1891, and Section 10 of Law No. 18 of 1885, providing that the traffic on the Tramways authorised under the said Laws shall be confined to passengers and parcels, are hereby amended by the granting of the additional power to the Town Council, as common carriers, to convey goods and other materials over the said Tramways.

Act 12, 1899.  
Traffic not confined to passengers and parcels.

5. Power is also given to the Town Council to utilise the Tram lines for the working of electric motor vans or other similar apparatus for the purposes of street watering, and also for the transporting of house, stable, and street refuse from any part of the Borough: Provided that the transporting of such refuse shall be confined to the hours between 11 p.m. and 5 a.m.

Power to utilise lines for street watering, &c.

6. The Town Council are further empowered to use the rails of the Tramways as a return for the electric current used for propelling the cars, subject to the regulations hereinafter provided for.

Power to use rails as a return for electric current.

7. The Governor in Council may from time to time make such regulations, in accordance with the regulations for the time being of the Board of Trade of the United Kingdom applicable to Local Authorities or Municipalities, subject to such modifications as he may think expedient, but in no case more stringent, for securing the safety of the public from personal injury, or from fire or otherwise, and for minimising, as far as may be reasonable, any interference with the electric wires, lines, and apparatus of the Government, or any other authority, company, or person, and may from time to time rescind, alter, or repeal such regulations. Any regulations so made or amended by the Governor in Council in pursuance of this Section shall have the like effect in every respect as if they had been included in this Act. Notice in writing shall be given by the Governor to the Town Council of Durban of any such regulations or of any repeal or alteration thereof at least a month before the regulation, repeal, or alteration is made by the Governor in Council.

Governor may make regulations for securing safety of public and for minimising interference with other electric wires, &c.

8. The Town Council shall take all reasonable precautions in constructing, laying down and placing their electric lines and other works of all descriptions, and in working their undertakings so as not injuriously to affect, whether by induction or otherwise, the working of any wire or line from time to time used for the purpose of telegraphic, telephonic, or electric signalling communication, or any other purpose, or the currents in such wire or line, and before commencing to lay down such a line, or to do any other work for the supply of electricity, whereby any electric or other line of the Government, or any authority, company, or person may be injuriously affected, shall give such reasonable written notice to the General Manager of Telegraphs, or such authority, company, or person, as the case may be, as may be prescribed by regulations framed under the provisions of Section 7 of this Act, and such notice shall specify the course and nature of the work, and be accompanied by such maps and plans as may be necessary. The Town Council and their agents shall also conform with such reasonable requirements, either general or special, as may from time to time be made by the General Manager of Telegraphs for the purpose of preventing any electric lines of the Natal Government being injuriously affected by the said work, and if the Town Council or their agents fail to give the appointed notice, or to comply with the reasonable requirements, either general or special, of the General Manager of Telegraphs, they shall be liable to a penalty not exceeding £20 if the telegraphic communication is interrupted, and not exceeding £5 for every day such failure continues.

Precautions to be observed in laying lines so as not to affect other lines.

Council to conform to requirements of General Manager of Telegraphs.

9. In the event of it being necessary in connection with the construction of any line, or the execution of any work by the Town Council, to make an alteration in any telegraph, or other electric line of the Natal Government, it shall be lawful for the General Manager of Telegraphs,

Alterations may be made if necessary in Government telegraph lines.

Act 12, 1899. by himself or his agents, to make such alteration, or to consent to the work being performed by the Town Council, under the supervision and to the satisfaction of himself or his agents, and the Town Council shall, at the discretion of the Minister in charge of the Telegraph Department, be called upon to pay the whole or any portion of the expenses incurred in connection therewith, or incidental thereto.

Injuries to Government electric lines caused by those of Town Council to be remedied at expense of Council.

10. If any telegraph, telephone, or other line of electrical communication, owned by the Government of Natal, is in any way injuriously affected by the construction by the Town Council of their electric lines and works, or by the working of the undertaking of the Town Council, the Town Council shall pay the expenses of all such alterations in, or additions to, such line or lines, as may be necessary to remedy such injurious affection. For the purpose of this section a telegraph, telephone, or other line of electrical communication owned by the Natal Government shall be deemed to be injuriously affected by an act or work if telegraphic communication by means of such line is, whether through induction or otherwise, in any manner affected by such act or work, or by any use made of such work.

Injuries to ocean cable subsidised by Government to be made good at expense of Town Council.

11. If any ocean cable on the sea-side of the boundary of the Borough of Durban subsidised by the Government of Natal is at any time in any way injuriously affected by the construction by the Town Council of their electric lines and works, or by the working of the undertaking of the Town Council, the Town Council shall pay the expenses of all such alterations in or additions to such cable as may be necessary to remedy such injurious affection. For the purpose of this section a cable subsidised by the Natal Government shall be deemed to be injuriously affected by an act or work if telegraphic communication by means of such cable is, whether through induction or otherwise, in any manner affected by such act or work or by any use made of such work.

Liability of Council for injuries.

12. The Town Council shall be answerable for all accidents, damages, and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works.

Compensation for damage caused by leakage.

13. The Town Council shall undertake that, in the event of any electric leakage taking place and any damage being thereby caused at any time by electrolysis or otherwise, it will reimburse and make good to the owner or owners of any property so damaged all costs, damages, and expenses to which such owner or owners may be put by reason thereof.

Requirements of General Manager of Telegraphs.

14. Any difference which may arise between the General Manager of Telegraphs and the Town Council, or their agents, with respect to any requirements so made, shall be determined by arbitration.

Saving of rights.

15. Nothing in this Act shall take away or lessen any right or remedy of the Colonial Government or of the General Manager of Telegraphs, and all provisions contained in this Act in favour of the General Manager of Telegraphs shall be construed to be in addition to, and not in modification of, or substitution for, any such rights and remedies.

Construction.

16. This Act and Laws No. 19 of 1880, No. 18 of 1885, and No. 23 of 1891, as hereby amended, and Law No. 16 of 1892, shall be read and construed together as one Act.

*Durban Tram Act 1900. Act 11. 1900  
repealed by Act 22. 1907.*

DURBAN MECHANICS' INSTITUTION.

[See "DURBAN CORPORATION."]

*Telephone Sect. 17/06*

*dington & Point*

*Freehold 33/06*

*Munic. Corp. last amendment 24/06*

*Little under Loan Law 1866 34/06*

*an Sewerage 48/06*

*Stock Act 20/08.*

*Durban Tram 500 000 Act 25. 1907.*

DURBAN TRAMWAYS.

[See "DURBAN CORPORATION."]

*Durban Council Tram. Act 20. 1907 + Act 24. 03*

*Durban Tram Stock Act 1903. Act 15. 1907. [100,000 Telephone*

*Private Streets Act 26  
Cons. Stock Act 09  
Act 43*

## DUTCH REFORMED CHURCH.

## Ordinance No. 11, 1856.

“To indemnify the Consistory of the Dutch Reformed Church from all Claims made, or that shall be made, since 1st June, 1856, upon the residue of certain Funds, administered by the said Consistory to the surviving Heirs of Dutch Emigrants, killed by the Zulu Army, in 1838.”

[30th October, 1856.]

WHEREAS the Consistory of the Dutch Reformed Church has received a sum of money, raised by the late Volksraad of this District, to be applied in relieving the distresses of surviving heirs of persons killed by the Zulu army in 1838, and which has been so applied up to the 1st day of June, 1856, leaving a present balance of £818 5s. 4d. in the hands of the said Consistory. And the Acting Lieutenant Governor has, by Proclamation duly made and published on the 12th day of November, 1855, given notice that all persons having any claims upon, or in regard to, the said funds, should establish such claims before the said Consistory, on or before the said 1st of June, 1856, or they would otherwise be debarred from making the same by legislative enactment:

BE IT THEREFORE ENACTED by the Lieutenant Governor, by and with the advice of the Legislative Council, as follows:—

1. The said Consistory, and the members thereof respectively, shall be, and are hereby, fully indemnified and exonerated from, and in respect to, all claims and demands made, or which shall be made upon them, in reference to the said funds, since the first day of June, 1856, and shall not be answerable in any action or suit that may be brought in respect to the same.

Indemnification of Consistory.

2. Pursuant to the instructions conveyed to the said Consistory by Government letter dated 10th January, 1850, it shall be, and is hereby declared, lawful for the said Consistory to expend the residue of the above funds, now amounting to £818 5s. 4d. sterling, for general Ecclesiastical and Educational purposes; and in pursuance of the same it shall be lawful for the said Consistory, and the members thereof, to have and hold, in trust, the said fund, and to duly expend the same for such objects.

Funds in trust —how to be expended.

3. This Ordinance shall commence and take effect from and after the publication thereof in the “GOVERNMENT GAZETTE” (A).

Date of effect of Ordinance.

## Law No. 13, 1872. (63)

“For declaring certain Civil Rights to be possessed by the Dutch Reformed Church of Natal.”

[3rd December, 1872.]

WHEREAS a certain community of Christians, residing in the Colony of Natal, up to the 26th day of November, 1862, were considered to belong to, and to form a part of, a certain Christian community in the

See also  
Act 36/84.

**Law 13, 1872.** Colony of the Cape of Good Hope, and to be entitled to participate in the provisions of an Ordinance No. 7, 1843, passed by the Legislature of said Colony, thereby investing the Dutch Reformed Church in South Africa with the power of regulating its own internal affairs :

AND WHEREAS by the judgment of the Supreme Court of the said Colony given on the aforesaid 26th day of November, 1862, in a suit of Messrs. H. H. Loedolf and H. H. Smuts versus Rev. A. A. Louw, it was ruled that the above Ordinance could only have effect in, and apply to the Dutch Reformed Church within the boundaries of that Colony :

AND WHEREAS, in consequence of that decision, it has become necessary that the members of said Church, residing in the Colony of Natal, should form themselves into a separate Church or community, and frame and adopt for themselves certain laws and regulations regulating their own internal affairs ; and whereas the said members of the said Church have framed and adopted such laws and regulations, which were approved of and published in and by the General Assembly of the Dutch Reformed Church of Natal, held at Pietermaritzburg on the 19th day of October, 1864, and following days :

AND WHEREAS the said community of Christians called the Dutch Reformed Church of Natal is in possession of houses, lands, and other property, obtained by grants from Her Majesty, or by purchase or gift, and transferred to and in the name of the Consistory for the time being of the Dutch Reformed Church of Pietermaritzburg, or other such place as is named in such grant, and title, and deed of transfer :

AND WHEREAS it is possible that questions or disputes may arise with regard to such properties, and other matters in which the said Church may be interested, and it is requisite that provision be made by law in what manner the said Church shall be legally represented in the Courts of Law in this Colony : or by whom any act or deed having reference to any landed property may be legally executed and passed :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

General Assembly of Dutch Reformed Church may sue and defend through the Praeses and Scriba.

1. In any civil suit or action instituted by and on behalf of, or against the General Assembly of the Dutch Reformed Church of Natal in any Court of Law within this Colony, that body shall be legally represented either to sue or defend by the Praeses and Scriba at the time in function or acting as such.

How the Consistory of any locality may sue and defend.

2. In any civil suit or action instituted as above by and on behalf, or against the Consistory (Kerkeraad) of the Dutch Reformed Church of Natal of any particular locality or Parochie (Gemeente) in Natal, the officiating Minister or Consulent, and one or more Elders acting as such at the time, shall legally represent such local Consistory or "Kerkeraad" either to sue or defend.

How General Assembly and Consistories may execute transfer, mortgage, or deeds of security.

3. Any deed of transfer of any fixed property, or any mortgage bond or deed of security, if such property shall be owned by the General Assembly (Algemeene Kerkvergadering), shall and may be made and effected by the Praeses and Scriba of such Assembly, under the special instructions from the General Assembly legally assembled ; and if owned by or held in the name of the Consistory (Kerkeraad) of the Dutch Reformed Church of Pietermaritzburg, or Consistory (Kerkeraad) of any particular Parochie (Gemeente), or division of such Church, it shall and may be made and effected by the Officiating Minister or Consulent, and one or more Elders acting as such at the time, and under special instructions from the Consistory (Kerkeraad) of such Parochie (Gemeente)

legally assembled: Provided nothing in this Clause contained shall be held to affect either the piece of land granted to the Consistory of the Dutch Reformed Church at Pietermaritzburg as a Public Burial Ground, or the legal right of individuals in and to said piece of land.

4. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" of this Colony (A).

**Law 13, 1872.**  
 Proviso—ex-  
 cepting Pieter-  
 maritzburg  
 Public Burial  
 Ground.  
 Commencement

### DYNAMITE.

[See "EXPLOSIVES."]

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(A) Dec. 10, 1872.



**EARMARKS.**

[See "BRANDS."]

**Law No. 13, 1889.**

"To prevent the practice of cutting the ears of certain animals for the purpose of making or obliterating distinguishing earmarks."

[23rd July, 1889.]

BE IT ENACTED by the Administrator of the Government of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

Unlawful marking.

1. It shall not be lawful for any person to cut off or remove the ear of any sheep, goat, horse, donkey, mule, or any animal, for the purpose of a private mark. Any person contravening this section shall be liable to a penalty not exceeding Five Pounds.

Penalty.

Mutilation of ear of animal for purpose of removing private mark.

2. Any person who shall cut off or remove the ear, or any portion thereof, or shall pierce or stump the ear of any sheep, goat, horse, donkey, mule, or any animal belonging to the class of horned cattle, being the property of any other person, with the intention of obliterating or removing any private mark, or in such a way as would obliterate the private mark thereon, shall be liable to a penalty of any sum not exceeding £50, or to imprisonment with or without hard labour, not exceeding one year, or to both fine and imprisonment.

Penalty.

Contraventions where cognizable.

3. All contraventions of this Law shall be cognisable in any Court of any Resident Magistrate, of any Division in which the offender shall be found, or where the offence shall have been committed.

added by Act 31 of 1917  
112

Onus probandi on person found in possession of mutilated animal.

4. When any animal, such as is in this Law referred to, shall be found to have had its ears cut, slit, stumped, or otherwise marked in contravention of this Law, the owner, or the person in whose possession such animal may be, shall be deemed to be the person who has so contravened this Law, unless he shall prove to the satisfaction of the Court that such cutting, slitting, stumping, or marking has been done without his privity or consent.

Law not retrospective.

5. Nothing in this Law contained shall be deemed to apply to or in respect of any act done before this Law shall have come into operation.

*East Coast- Fever. Loan 53/06.*

ECCLESIASTICAL GRANTS.

Law No. 7, 1869.

“To abolish Ecclesiastical Grants from the Public Revenue within the Colony of Natal.”

[22nd September, 1869.]

WHEREAS the Legislative Council of this Colony did, on the 4th day of July, 1866, pass the following resolution, viz. :—

“That it is the opinion of this House that all Annual Grants of Money now made by Government to Ecclesiastical Bodies, or all forms of State Aid to Religion, should cease.”

AND WHEREAS it is expedient to give permanent legal force to aforesaid resolution, and that perfect religious equality should be secured within the Colony, and for that purpose that the payment of all Ecclesiastical Grants from the Public Revenue should cease and determine :

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows :—

1. That from and after the passing of this Law, no further annual grant of money shall be made by the Government to any person holding any ecclesiastical appointment, nor shall any kind of State aid be given to any ecclesiastical body or person as such, in any form or manner whatsoever, either in land or otherwise.

No further Ecclesiastical Grants to be made by Government.

2. That all and every grant or grants of money at present annually voted by the Legislative Council of this Colony under the head of Ecclesiastical Grants, and borne on the Annual Estimate or Appropriation Bill, shall, except in such cases as may now be waiting the decision of the Government, lapse and determine in respect of the office for which the same has hitherto been accustomed to be voted and paid, on the death, resignation, dismissal, or completion of term of engagement of the present recipients of such governmental stipends.

Certain annual grants to lapse.

3. That this Law shall take effect from and after the publication thereof in the “GOVERNMENT GAZETTE” (A).

Commencement

---

(A) Sept. 28, 1869.

EDUCATION.

Primary School Fees Recovery Ordinance, 1914  
(Book 61 d 6-10)

EDUCATION.

[See Act 25, 1898, tit. "CIVIL SERVICE."]

repealed Secs 1-5 inc  
8, 13, 18, 20

by act. 5/94.

Law No. 15, 1877.

"To make better provision for Primary or Elementary Education in the Colony of Natal."

[17th August, 1877.]

repealed by  
act. 23/42 sec. 69.

WHEREAS it is expedient to make better provision for Primary or Elementary Education in the Colony of Natal :

AND WHEREAS, for this purpose, it is expedient to provide for the establishment of a Board or Council of Education in the said Colony, and for the establishment and maintenance of certain schools as Model Primary Schools, and for the establishment, maintenance, support, and aid of other schools affording elementary or primary education, and otherwise for the promotion of primary and elementary education in the Colony of Natal :

BE IT THEREFORE ENACTED by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows, namely :—

1 )  
2 )  
3 ) [Repealed by Act No. 5, 1894 (A).]  
4 )  
5 )

Lieutenant-Governor to appoint Inspector of Schools.

6. The Lieutenant Governor shall appoint an Inspector of Schools for the Colony, who shall receive such salary as may be appointed and provided for the purpose, and who shall be the superintending Inspector of all Schools established, maintained, or assisted by the Government, or in any way coming under the provisions of this Law ; and the Lieutenant Governor shall further have power, if need be, to appoint any other person or persons to be Assistant Inspector or Inspectors of the said Schools, who shall receive such salary or salaries as shall be, from time to time, appointed and provided for that purpose (B).

Duties of Inspector.

7. The Inspector or Inspectors of Schools shall enforce the regulations and instructions of the Council of Education, and shall visit and inspect and report as to any locality where it may be desired to establish a school, and shall visit and inspect every school established, maintained, and assisted under this Law, at such times and in such manner as shall be directed by the Council ; and the Superintendent Inspector shall furnish an annual report, showing the number and condition of the schools, and the state of education throughout the Colony ; which report, together with a statement of all moneys received and disbursed under this Law, shall be laid before the Legislative Council in the next Session following the date of the report.

Primary Schools.

8. [Repealed by Act No. 5, 1894.]

(A) See post.  
(B) See Act 25, 1898, s. 3, tit. "CIVIL SERVICE," which alters the title of the Inspector and Assistant Inspectors of Schools.

9. There shall be established and maintained out of the public funds (as provided in Section 4), a Primary Model School for boys, and a Primary Model School for girls, in each of the towns of Pietermaritzburg and Durban; and the Council of Education constituted under this Law shall have power to establish and maintain a Primary Infant School in each of the two towns, and shall also have power, if need be, to establish and maintain other primary schools in the two towns, and also at any central places in the country districts; and all schools so established and maintained as above shall be known as Government Primary Schools (A).

Law 15, 1877.

Establishment of Government Primary Schools.

10. For the purpose of providing sufficient school accommodation for the schools known as Government Primary Schools, the Council of Education may provide by building, or otherwise, out of funds specially voted for the purpose by the Legislative Council, school-houses, and enlarge and fit up any school-house so provided by them, and supply school apparatus and everything necessary for the efficiency of the schools so provided by them, and purchase or take on lease any land, and any right over land; and further, if need be, provide by building, or otherwise, house accommodation for the teachers of such schools, and boarding accommodation for the pupils attending such schools.

Council of Education authorised to provide school accommodation and requisites.

11. The Council of Education shall have power to give aid out of the public funds (as provided in Section 4) to any primary schools established by private persons, or by local boards, or committees on the following conditions: which conditions shall, so far as they may apply, be observed as rules in all primary schools established and maintained by the Government, namely:—

On what conditions Council may grant aid to certain Primary Schools.

- (1) That the principal teacher in any such school shall be declared to be duly qualified to teach by the Inspector of Schools;
- (2) That the school be at all times open to inspection;
- (3) That the rules and books of secular instruction be subject to the approval of the Council of Education;
- (4) That the school be conducted as a public elementary school (B);
- (5) That the school premises be sufficiently commodious, well lighted, drained, ventilated, and properly furnished;
- (6) That registers of admission, and withdrawal, daily attendance, and progress, and accounts of income and expenditure, be accurately kept and duly audited;
- (7) That no child receive any religious instruction objected to by the parent or guardian of such child, or be present whilst such instruction is given.

12. The aid to which assisted schools shall be entitled from the public funds of the Colony shall consist of grants of money in contribution towards the remuneration of the teachers of such schools, and of school books and apparatus of such schools, or of money grants towards the providing of the same (c).

Character of aid to assisted schools.

13. [Repealed by Act No. 5, 1894.]

14. For the training of future teachers for the primary schools of the Colony there shall be attached to each Government Model Primary School a number of pupil teachers (such number to be from time to time determined by the Council of Education) who shall be selected and admitted after examination, and who may learn the exercise of their profession, and who for the assistance they give to the teachers of the school

Training of pupil teachers.

(A) See definition of "Primary School" in Law 4, 1880, post.

(B) See definition in Law 4, 1880, post.

(c) See Law 35, 1884, post, which adds to this section.

Law 15, 1877. to which they are attached shall receive such remuneration as the Council of Education may determine: and who shall also receive such special instruction in such manner, and at such times as the Council of Education may direct: Provided always that no such pupil teacher shall be less than fourteen years of age.

Remuneration  
of teachers of  
Primary  
Schools.

15. The remuneration of the teachers of schools of primary instruction, whether Government Schools or Assisted Schools, may consist:—

- (1) Of a salary.
- (2) Of a capitation grant in proportion to the attendance in respect of numbers and regularity of pupils at the schools.
- (3) Of a capitation grant in proportion to the educational results.

Salaries.

16. ~~The salary of a principal teacher of a Government Model Primary School shall not be less than £250 a year, nor exceed £350 a year, in addition to house or house rent; and the salary of a principal teacher of a Government Primary School, not being one of the Model Schools, shall not be less than £200 a year, nor exceed £300 a year in addition to house or house rent.~~ The salaries payable to the assistant teachers and pupil teachers in any Government Primary School, and grants to Aided Schools shall be such as may be determined by the Council of Education, and shall be payable to local School Committees where such exist.

17. The sum payable to any school as a capitation grant in proportion to the attendance of pupils and to the educational results (as hereinafter set forth) shall be determined by the Council of Education and shall be divided among the principal teachers, assistant teachers, and pupil teachers in such proportions as the Council may direct.

18. [Repealed by Act No. 5, 1894.]

19. In all Primary Schools established and maintained by the Government, the following conditions shall be observed:—

The Bible shall be read, and the principles of religion and morality therein inculcated shall be explained to the children in language adapted to their capacities; provided always that no religious catechism or formulary distinctive of any particular religious denomination be taught, and that no attempt be made to attach the children to any particular religious denomination.

20. [Repealed by Act No. 5, 1894.]

21. Every instance of corporal punishment in primary schools maintained, or assisted by Government, shall be formally recorded by the principal teacher in a book kept for the purpose, and ~~such punishment shall not be inflicted except by the principal teacher, who shall be held responsible for all corporal punishment inflicted in the school.~~

22. This Law shall commence and take effect from and after the First day of January, 1878, after publication thereof in the "GOVERNMENT GAZETTE" (A).

*by ord.*  
*3/1911 - sec. 1*  
*Nada*

Capitation  
Grants.

Character of  
religious in-  
struction in  
Primary  
Schools.

Record to be  
kept of all  
corporal punish-  
ment.

By whom to be  
inflicted. By  
9. 1914  
Commencement

(A) Dec. 4, 1877.

EDUCATION.

*University Act 1877*

Law No. 16, 1877.

“To provide for the promotion of Higher Education in the Colony of Natal, and for the establishment, maintenance, and direction of High Schools in the towns of Pietermaritzburg and Durban.”

*Repealed  
Ord. 23/42*

[17th August, 1877.]

WHEREAS certain schools for boys, known as the High Schools of Pietermaritzburg and Durban have been established, in which the education given does not consist, or is not intended to consist, chiefly of instruction in reading, writing, and arithmetic, and other elementary studies, but of Latin, French, mathematics, science and history :

AND WHEREAS it is advisable to make better provision for the promotion of Higher Education in this Colony, and for instruction in Latin, modern languages, mathematics, natural science, and generally in the higher branches of knowledge ; and for this purpose to reconstitute and establish by Law the said High Schools and to provide for their maintenance, government, and proper management accordingly :

AND WHEREAS it is expedient to make provision for the future establishment, if need be, and maintenance of schools of the same class for girls in the said towns :

BE IT THEREFORE ENACTED by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. The schools now existing in the towns of Pietermaritzburg and Durban for the education of boys, and known as the High Schools in those towns, shall be established as, and shall be deemed to be, higher class public schools, and shall be managed by the Council of Education hereinafter referred to, with a view to promote the higher education of the country.

High Schools, Pietermaritzburg and Durban to be made higher class public schools.

- 2. )
- 3. )
- 4. ) [Repealed by Act No. 5, 1894.]
- 5. )
- 6. )

7. The funds required for the establishment, support, and maintenance of such schools shall consist of all sums specially appropriated for the purpose by a vote of the Legislative Council.

Funds, of what they consist.

8. [Repealed by Law No. 36, 1884.]

9. The instruction to be given in the Higher Public Schools aforementioned shall include higher English subjects, Latin, French, Mathematics, and Natural and Physical Science (A).

Instruction.

10. It shall be lawful for the Council of Education, at any time they may judge necessary, to establish a school in each of the towns of Pietermaritzburg and Durban for the education of girls, in which the education given shall not consist chiefly of instruction in reading, writing, and arithmetic, and other elementary studies ; but of instruction in modern languages, natural science, music, drawing, domestic economy, and generally in the higher branches of knowledge, which schools shall be deemed to be Higher Class Public Schools for Girls, and shall be managed by the Council of Education accordingly, subject to the provisions of this Law ; and it shall be lawful for the Council of Education from time to time to

Establishment of higher class public schools for girls.

(A) This section has been amended by Law 36, 1884, which was itself repealed by Act 5, 1894.

Law 16, 1877. fix a standard of the qualifications of all or any of the teachers to be appointed to the said schools, and to appoint teachers to the same; and no teachers shall be appointed unless possessed of the qualifications required.

Character of religious instruction in schools established under this Law.

11. In the schools established under this Law, the reading of the Bible and an explanation of the fundamental principles of religion and morality inculcated therein shall form a recognised part of the school-work: Provided always that no Sectarian Catechism or Formulary be used, and that no attempt be made to attach any pupil to any particular religious denomination, and that attendance at such religious instruction shall not be compulsory on those children whose parents or guardians may object to the same.

Council of Education authorised to provide school accommodation and requisites.

12. For the purpose of providing sufficient school accommodation for the schools established under this Law, the Council of Education may provide, by building or otherwise, out of funds specially voted for the purpose by the Legislative Council, school houses, and enlarge and fit up any school house so provided by them, and supply school apparatus and everything necessary for the efficiency of any school so provided by them; and purchase and take on lease any land, and any right over land; and further, if need be, provide by building or otherwise, house accommodation for the teachers of such schools, and boarding accommodation for the pupils attending such schools, subject to such regulations as may be determined by the Council.

13. [Repealed by Act No. 5, 1894.]

Grants in aid of secondary schools other than those established under this Law.

14. The Council of Education shall have power to assist by grants in aid, Secondary Schools other than those established under this Law: Provided that the standard of education given in such schools shall be the same as that established by this Law [and further, that such grants in aid shall not exceed £100 per annum for each such school] and provided further, that such grants in aid shall only be given on condition that such schools conform to the conditions of inspection established by this Law.

*repealed Law 6-1903 Sec. 1*

Record to be kept of all corporal punishment.

15. Every instance of corporal punishment in schools established under this Law, maintained, or assisted by Government, shall be formally recorded by the principal teacher in a book kept for the purpose, and such punishment shall not be inflicted except by the principal teacher, who shall be held responsible for all corporal punishment inflicted in the school.

By whom to be inflicted. *4 subst. 9-1914*

16. [Repealed by Law No. 8, 1880.]

Commencement

17. This Law shall commence and take effect from and after the first day of January, 1878, after publication thereof in the "GOVERNMENT GAZETTE" (A)

*u act. 3/94*

Law No. 4, 1880.

"To define the meaning of the term 'Primary School' wherever used in the Education Acts of 1877."

*repealed by 23/1942 sec. 69.*

[20th March, 1880.]

WHEREAS there is no accurate definition of the term "Primary School," where it occurs in the Law No. 15 of 1877, entitled a Law "To make better provision for Primary or Elementary Education in the Colony of Natal"; and in the Law No. 16 of 1877, entitled a Law "To provide for the promotion of Higher Education in the Colony of Natal, and for the establishment, maintenance, and direction of High Schools in the Towns of Pietermaritzburg and Durban":

(A) Dec. 4, 1877.

AND WHEREAS it is desirable to define the meaning of the said term "Primary School": Law 4, 1880.

BE IT THEREFORE ENACTED, by the Lieutenant Governor of the Colony of Natal, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. The term "Primary School," wherever it may occur or be used in the Laws Nos. 15 and 16 of 1877 shall mean, and be taken to mean, a School, or Department of a School, in which Elementary Education is the principal part of the education there given, and in which the course of instruction is that prescribed in Section 18 of Law 15 of 1877 (A). Definition of term "Primary School."

2. The term "Public Elementary School," wherever it may occur or be used in the Laws Nos. 15 and 16 of 1877 shall mean, and shall be taken to mean, any Primary or Elementary School which, in matters of inspection and religious instruction, complies with the provisions of sub-sections 2 and 7 of the 11th Section of Law No. 15 of 1877. Definition of term "Public Elementary School."

3. This Law shall be read and construed, together with the Laws Nos. 15 and 16 of 1877, as one Law, and shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (B). This Law to be read with Laws 15 and 16, 1877. Commencement

**Law No. 1, 1884.**

"For the promotion of Elementary Education among the Children of the Native Population."

[19th April, 1884.]

*Repealed by  
W. 23/42 S. 69*

WHEREAS it is expedient to make provision by Law for promoting the Education of the Native Population of the Colony, and for the establishment and maintenance of Schools for this purpose:

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. It shall be the duty of the Council of Education to take such measures as may be most advisable, subject always to the approval of the Governor, for the establishment and maintenance of schools for the education of the children of the Native Population of either sex or both sexes in the Native Location Lands, and in other parts of the Colony; and to frame Rules and Regulations for the above purpose, and for the government and discipline of the schools so established, and for the holding of inspections and examinations, and for the awarding of prizes, for the encouragement of children, and in respect of all matters coming within the intent of this Law, but not otherwise specially provided for under this Law, and from time to time as occasion may require to repeal, alter, or amend all Rules and Regulations so made, and all Rules and Regulations, and all repeals, alterations, and amendments as aforesaid, when approved, shall have the same force as if embodied in this Law. Council of Education with Governor's approval to establish and maintain schools for education of Native children, and to make rules and regulations.

2. {  
3. { [Repealed by Act No. 5, 1894.]  
4. {  
5. }

6. In all schools established and maintained by the Government under the provisions of this Law, instruction shall be given in the principles of morality, inculcated and explained to the children in a manner Instruction to be given in the principles of morality.

(A) The section referred to is repealed by Act 5, 1894.  
(B) March 23, 1880.



**Law 1, 1884.** adapted to their capacities, subject always to such Rules as may be laid down by the Council of Education.

7. [Repealed by Act No. 5, 1894.]

Council of Education may aid by money grants Mission Schools.

8. It shall be lawful for the Council of Education to aid and assist out of the funds placed at its disposal any schools established, maintained, and conducted by the several Missionary Churches and Societies in the Colony or by private persons, for the education of the Native Population: Provided always that the schools so assisted or maintained shall conform in their course of instruction and their management to such Rules and Regulations as the Council of Education may, under the provisions of this Law, lay down as necessary to be observed in such schools.

Sources from which funds are to be derived for Native Education.

9. The funds at the disposal of the Council of Education for administration under the provisions of this Law shall consist of such portions of the amount [of £5,000 (A)] reserved annually [under the Charter] for Native purposes as shall be placed at its disposal by the Governor, and of such further sums of money as may be voted by the Legislature of the Colony from time to time, or may be otherwise acquired by the Council of Education for the purposes of Native Education.

Native Trust may grant sites for schools out of Location Land.

10. It shall be lawful for the Natal Native Trust to alienate and grant to the Council of Education, for the purposes of Native Education, such portions of Native Location Lands as may from time to time be required as sites for schools and school purposes.

Governor to appoint an Inspector of Native Education.

11. It shall be lawful for the Governor to appoint an officer, who shall be called the "Inspector of Native Education," whose duty it shall be to aid and assist the Council of Education in establishing schools for the education of native children, and to take such active part, in the name of the Council of Education and under its control, as may be deemed necessary, in directing and superintending the establishment of such schools, their management when established, and the course of instruction and education to be given in them. It shall be the duty also of the Inspector to visit and inspect such schools and all schools for the education of the Native population as shall under the provisions of this Law be aided or assisted by the Government, and to report upon the same, and generally to carry out the directions of the Council of Education in all such matters as may pertain to the establishment and maintenance of such schools and to the course and conduct of the education given in them.

Duties of Inspector defined.

Inspector to inspect schools and furnish annual report to Governor.

12. It shall be the duty of the Inspector of Native Education to inspect once at least in every year every school established and maintained or assisted under this Law, and to furnish an annual report in writing to the Governor upon the number of schools so established and maintained or assisted under this Law, upon the nature of the instruction given in these schools, the attainments and progress of the Natives receiving education in them, upon the state of the school buildings and premises, and generally upon the discipline, management, and efficiency of the several schools.

Inspector to be acquainted with Zulu language. Salary and terms of appointment.

13. The Inspector of Native Education shall be acquainted with the Zulu language, ~~and he shall receive a salary not exceeding Four Hundred Pounds a year, subject to six months' notice, and without claim to pension~~ [together with travelling expenses at the rate of Twenty Shillings a day for every day that he is engaged in his duties of inspection (B)].

Copies of annual report and statement of accounts.

14. Copies of the Annual Report, together with a statement of all accounts of the receipt and expenditure under the provisions of this Law,

(A) Words "of £5,000" and "under the Charter" are deleted by Act 5, 1894, post.

(B) Words in brackets are repealed by Act 20, 1898, post, which substitutes other words.

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shall be laid before the Executive Council and the Legislative Council Law 1, 1884.  
as soon as possible after the termination of each year.

15. This Law shall be styled, and may be cited as "The Native Short title.  
Primary Education Law of 1883."

16. This Law shall commence and take effect from and after the pro- Commencement  
mulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A).

**Law No. 35, 1884.**

*Sec. Act. 5/94.*

"To amend Law No. 15, 1877."

[8th November, 1884.]

*Repealed by  
D. 23/1942 E. 6*

WHEREAS it is expedient to amend certain Sections of Law 15, 1877,  
entitled "Law to make better provision for Primary or Elementary  
Education in the Colony of Natal":

BE IT THEREFORE ENACTED by the Governor of Natal, with the  
advice and consent of the Legislative Council thereof, as follows:—

1. [Repealed by Act No. 5, 1894.]

2. From and after the coming into operation of this Law the follow-  
ing words shall be deemed and taken to be added to the Twelfth Section  
of Law 15, 1877:—"And the Council of Education shall also have power  
to give aid out of the said Public Funds towards the building of Assisted  
Schools."

Sec. 12, Law 15,  
1877, amended.

3. This Law shall commence and take effect from and after the  
promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (B).

Commencement

**Act No. 5, 1894.**

"To amend the Laws relating to Education.

[30th June, 1894.]

*Repealed by  
D. 23/42 E. 69*

WHEREAS it is expedient to amend the Laws relating to Education:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty,  
by and with the advice and consent of the Legislative Council and  
Legislative Assembly of Natal, as follows:—

1. The Ordinance and Laws enumerated in the First Schedule of  
this Act shall be repealed to the extent set forth in the third column of  
the said Schedule.

Repeal.

2. Save so far as may be contrary to this Act, or to any regulation  
thereunder, such repeal as aforesaid shall not affect

Matters not  
affected by  
repeal.

(a) Any School established, maintained, regulated, or aided, under  
any of the repealed Laws;

(b) Any Grant for the support of, or in aid of, any such School;

(c) Any office or appointment created or held before the commence-  
ment of this Act;

and notwithstanding such repeal as aforesaid, all existing regulations,  
save so far as may be contrary to this Act, and all provisions of the  
repealed Laws in regard to

(d) Qualification and selection of Teachers;

(e) Classification of Schools;

(f) Course of Studies;

(A) April 22, 1884.

(B) Nov. 11, 1884.

Act 5, 1894.

- (g) School Fees ; and
- (h) Bursaries

shall continue in full force and effect until other provision be made by regulations under this Act.

Short title.

Construction of Act with specified Laws.

3. This Act may be cited as the "Education Act, 1894." This Act and the Laws specified in the Second Schedule, hereinafter jointly referred to as the "Education Acts," may be cited as the "Education Acts, 1877 to 1894," and shall be construed together as one Act.

Powers of Council of Education vested in Governor.

4. Save as may in this Act be otherwise expressed or implied, all the powers and authority vested in the Council of Education by the Laws enumerated in the Second Schedule of this Act shall vest in and be exercised by the Governor of Natal, and, save as aforesaid, wherever in the said Laws the Council of Education is mentioned or referred to, the Governor of Natal shall be deemed to be referred to, and any reference to the approval of the action of the Council of Education by the Governor, or the Governor in Council, shall be deemed to be omitted.

5. [Repealed by Act No. 5, 1897.]

Lands and property.

6. The Lands and Property of the Council of Education shall vest in the Minister of Education, who may sue and be sued on behalf of the Government of Natal.

Pietermaritzburg and Durban Collegiate Institutions.

7. The Trusts created for the Pietermaritzburg and Durban Collegiate Institutions by the Laws No. 18, 1861 ; No. 19, 1861 ; No. 45, 1884 ; and No. 12, 1891, shall vest in, and be exercised by, the Governor in Council, who shall stand seized, and be possessed of, and be entitled to, the High Schools established at Pietermaritzburg and Durban, and all the land and property, movable and immovable, belonging to the said Trusts, and the said High Schools shall for all purposes whatever be deemed to be schools established for the higher education of boys under the Education Acts, and the income and profits of the said respective Trusts shall be used and employed in the erection, establishment, and maintenance of High Schools in Pietermaritzburg and Durban respectively (A).

8. Any and all debts due by the Council of Education shall be a charge against the General Revenue, and all moneys due and payable to the Council of Education shall be recoverable by the Minister of Education.

Regulations.

9. The Governor in Council may, from time to time, make, alter, and repeal regulations for any of the following purposes in connection with Schools established, maintained, aided, or regulated under the Education Acts :—

*Handwritten:* N. 201. 09  
 (f) 442. 06  
 654. 06  
 (f) 33. 08 (f) 535. 09  
 64. 07 (f) 599. 09  
 (f) 332. 10  
 535. 05  
 615. 06  
 100. 07  
 (f) 87. 08 *And. 742/05*  
 (f) 223. 08 " *744/05*  
 (f) 248. 08 " "  
 720. 08  
 56. 09  
 143. 09  
 191. 10  
 544. 09

- (a) Classification of Schools.
- (b) Qualifications and mode of selection of Masters and Teachers of every kind ; the appointment, pay, and promotion of Assistant Teachers whose salaries do not exceed £150 per annum, and of Pupil Teachers, and of all Teachers of Native and Indian Schools.
- (c) Age and Qualification of Children for admission to any Schools.
- (d) Discipline and Management of Schools.
- (e) Course of Studies, Examinations, Prizes, Bursaries.
- (f) School Fees.
- (g) Any matters necessary for the better carrying out of the Education Acts for which no provision is otherwise made.

10. The Governor may, from time to time, appoint and remove Masters, Mistresses, Inspectors, and Teachers of Schools, and all officers required for the purposes of the Education Acts.

(A) See "DURBAN COLLEGIATE INSTITUTION" and "PIETERMARITZBURG COLLEGIATE INSTITUTION."

EDUCATION.

11. The Indian Schools created and maintained under the repealed Law No. 20 of 1878, shall be deemed to be Schools created and maintained under the Education Acts. Act 5, 1894. Indian Schools.

12. The Governor may, from time to time, borrow and take up at interest such sum or sums as may be required for the building and equipment of any Schools established under this Act: Provided that the whole sum borrowed shall at no time exceed the sum of Ten Thousand Pounds.] (a) Borrowing powers. limit of 10,000 Act-41/03

FIRST SCHEDULE.

No. of Law.	Title of Law.	Extent of Repeal.
Ord. 2, 1856	Ordinance for Promoting the Education of Coloured Youth in the District of Natal.	The whole Ordinance.
15 of 1877	To make better provision for Primary or Elementary Education in the Colony of Natal.	Sections 1, 2, 3, 4, 5, 8, 13, 18, 20.
16 of 1877	To provide for the Promotion of Higher Education in the Colony of Natal, and for the Establishment, Maintenance, and Direction of High Schools in the towns of Pietermaritzburg and Durban.	Sections 2, 3, 4, 5, 6, 13.
20 of 1878	To provide for the Promotion of Education among the Children of the Indian Immigrant Population in the Colony of Natal.	The whole Law.
1 of 1884	For the Promotion of Elementary Education among the Children of the Native Population.	Sections 2, 3, 4, 5, 7. The words "of £5,000," in line 3, and the words "under the Charter," in line 4 of Sec 9.
35 of 1884	To Amend Law No. 15, 1877.	Section 1.
36 of 1884	To Amend Law No. 16, 1877.	The whole Law.
13 of 1885	To further Amend the Native Primary Education Law of 1883.	The whole Law.
2 of 1886	To Empower the Council of Education to Mortgage certain Lands vested in that Body.	The whole Law.
3 of 1886	To Repeal and Re-enact with Amendments the Law No. 20, 1881, entitled, a Law "To Repeal and Re-enact with Amendments the Law No. 8 of 1880, entitled, a Law 'To Amend the Law No. 16, 1877, so far as regards the Election to Bursaries in the High Schools of Pietermaritzburg and Durban.'"	The whole Law.
38 of 1888	To Amend Law No. 1 of 1884.	The whole Law.
2 of 1889	To Amend Laws Nos. 15, 1877, and 36, 1884.	The whole Law.

Act 5, 1894.

## SECOND SCHEDULE.

No of Law.	Title of Law.
15 of 1877	To make Better Provision for Primary or Elementary Education in the Colony of Natal.
16 of 1877	To Provide for the Promotion of Higher Education in the Colony of Natal, and for the Establishment, Maintenance, and Direction of High Schools in the Towns of Pietermaritzburg and Durban.
4 of 1880	To Define the Meaning of the Term "Primary School," wherever used in the Education Acts of 1877.
1 of 1884	For the Promotion of Elementary Education among the Children of the Native Population.
17 of 1884	To Alter and Amend in certain respects Law No. 1, 1884.
35 of 1884	To Amend Law No. 15, 1877.

## Act No. 5, 1897.

"To amend the Education Act, 1894."

[22nd May, 1897.]

WHEREAS it is expedient to amend the Education Act, 1894 :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

Repeal.

1. Section 5 of the Education Act, 1894, is hereby repealed.

Office of  
Minister of  
Education.

2. The Education Act shall be construed as if the following words had been enacted in place of the Section now repealed:—"One of the Ministers appointed under Section 8 of the Constitution Act of 1893 (A) shall fill the office of Minister of Education in addition to his office designated by the Governor under that Section."

## Act No. 20, 1898.

"To amend Section 13 of Law No. 1, 1884."

[25th July, 1898.]

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

1. The following words occurring in Section 13 of Law No. 1, 1884,

(A) See tit. "PARLIAMENT."

entitled Law "For the promotion of Elementary Education among the children of the Native Population," are hereby repealed, that is to say— Act 20, 1898.

"together with travelling expenses at the rate of Twenty Shillings a day for every day that he is engaged in his duties of inspection"

and the following words shall be inserted in lieu thereof, that is to say—  
 "together with travelling expenses at the rate fixed by the Tariff of Travelling Allowances of Public Officers in force for the time being."

*Effingham Sidiny Act-34/06*  
*Advisory School Committees Act-5/10.*  
*Compulsory Attendance at Schools Act-6/10.*  
 ELECTIONS.

[See "PARLIAMENT."]

#### ELECTRIC TELEGRAPH.

[See "TELEGRAPH."]

#### EMIGRANTS.

[See "IMMIGRATION."]

Repealed by Act 25, 1914, sect. 42  
but accidents before commencement  
not affected

## EMPLOYERS' LIABILITY.

## Act No. 12, 1896.

"To regulate the Liability of Employers to make Compensation for personal injuries suffered by Workmen in their Service."

[1st June, 1896.]

WHEREAS it is expedient to regulate the liability of employers to make compensation for personal injuries suffered by workmen in their service :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

Short title.

1. This Act may be cited as the "Employers' Liability Act, 1896 (A)."

In what cases workman is entitled to compensation for injury.

2. Whenever, after the taking effect of this Act, personal injury is caused to a workman.

(1) By reason of any defect (B) in the condition of the ways (C), works (D), machinery (E), or plant (F) connected with or used in the business of the employer (G) ; or,

(2) By reason of the negligence of the employer (H), or any person (I) in the service of the employer, who has any superintendence entrusted to him, whilst in the exercise of such superintendence (K) ; or,

(3) By reason of the negligence of the employer (L), or any person in the service of the employer, to whose orders or directions the workman at the time of the injury was bound to conform (M) and did conform, when such injury resulted from his having so conformed ; or,

(A) Cf. 43 & 44 Vic. c. 42 ("The Employers' Liability Act, 1880") which was passed to remedy the "mischief" arising from the common law doctrine of "common employment." As to the meaning and application of this term see *Priestly v. Fowler*, 3 M. & W. 1; *Morgan v. Vale of Neath Rail. Co.*, L.R., 1 Q.B. 149, Ex. Ch. In England the Act may be "contracted out of" (*Griffiths v. Earl of Dudley*, 9 Q.B.D. 357; 51 L.J., Q.B. 543; 47 L.T., 10).

(B) Showing negligence in the employer or his superintendent (*Walsh v. Whitely*, 21 Q.B.D. 371; 52 L.J., Q.B. 586—C.A.).

(C) See *Willetts v. Watt* [1892] 2 Q.B., 92—C.A.

(D) Including a plot of ground being cleared of old buildings (*Brannigan v. Robinson*, [1892] 1 Q.B. 344); but not uncompleted works (*Howe v. Finch*, 17 Q.B.D. 187).

(E) Including unsuitable machinery (*Heske v. Samuelson*, 12 Q.B.D. 30).

(F) Including a vicious horse (*Yarmouth v. France*, 19 Q.B.D. 647; 57 L.J., Q.B. 7).

(G) As to application of maxim, *volenti non fit injuria*, see *Smith v. Baker*, [1891] A.C. 325; *Thomas v. Quartermaine*, 18 Q.B.D. 685—C.A.; and *Yarmouth v. France*, 19 Q.B.D. 647. In *Smith v. Baker* the maxim was held not to apply.

The maxim does not apply to cases where the injury arises from breach of statutory duty on the part of the employer (*Baddley v. Earl Granville*, 19 Q.B.D. 423).

For liability for unfit, though sound, ladder, see *Cripps v. Judge*, 13 Q.B.D. 583—C.A.; *Webbin v. Ballard*, 17 Q.B.D. 122.

(H) The words "the employer" do not occur in the English Act.

(I) Though voluntarily assisting in manual labour (*Osborne v. Jackson*, 11 Q.B.D. 619).

(K) See s. 7; *Shaffers v. Gen. Steam Nav. Co.*, 10 Q.B.D. 356; *Kellard v. Rook*, 21 Q.B.D. 367—C.A.

(L) See note (H).

(M) See *Wild v. Waygood*, [1892] 1 Q.B. 783; *Millward v. Midland Rail. Co.*, 14 Q.B.D. 68; *Bunker v. Midland Rail. Co.*, 47 L.T. 476; *Howard v. Bennett*, 58 L.J., Q.B. 129.

- (4) By reason of the act or omission of the employer, or any person in the service of the employer, done or made in obedience to the rules or by-laws of the employer (A), or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or,
- (5) By reason of the negligence of the employer, or any person in the service of the employer who has the charge or control (B) of any signal, points, locomotive engine (c), train upon a railway (D), or any machinery or hauling gear (E),

Act 12, 1896.

the workman, or in case the injury results in death, the legal personal representatives of the workman, and any person entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

3. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases, that is to say:—

Cases where there is no right of compensation.

- (1) Under Sub-section (1) of Section 2 of this Act unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.
- (2) Under Sub-section (4) of Section 2 of this Act, unless the injury resulted from some impropriety or defect in the rules, by-laws or instructions therein mentioned: Provided always, that in case any such rule or by-law shall have been submitted to the Governor, and approved of by him by notification in the "NATAL GOVERNMENT GAZETTE," or in case such rule or by-law shall be made under the provisions of any Law, it shall not be deemed for the purposes of this Act to be an improper or defective rule or by-law.
- (3) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer, unless he was aware that the employer, or such superior already knew of the said defect or negligence (F).

4. The amount of compensation (G) under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment, and in the district in which the workman is employed at the time of the injury.

Limit of compensation.

(A) See *Whatley v. Holloway*, 62 L.T. 639.

(B) Not including a workman employed to clean, oil, and adjust points worked by other men from a signal-box (*Gibbs v. G.W.R. Co.*, 12 Q.B.D. 208—C.A.); see also *Snowden v. Baynes*, 25 Q.B.D. 193—C.A.

(c) Not including a steam crane fixed on a trolley and propelled by steam along rails (*Murphy v. Wilson*, 52 L.J., Q.B. 524).

(D) Including a temporary railway

laid down by a railway contractor for the purpose of constructing the railway works (*Doughty v. Firbank*, 10 Q.B.D. 358).

(E) The words "or any machinery or hauling gear" are omitted from the corresponding section of the English statute.

(F) See *Smith v. Baker*, [1891] A.C. 325.

(G) The word "recoverable" occurs in the English Act.



## EMPLOYERS' LIABILITY.

Act 12, 1896.

No compensation in addition to that granted by this Act.

Limitation of action.

Interpretation.

5. No workman or representative of a workman shall be entitled to recover compensation for any injury done to him under any other existing Law in addition to the compensation to which he may be entitled under this Act (A).

6. All actions under this Act shall be commenced within six months after the occurrence of the injury for which compensation is sought.

7. For the purposes of this Act, unless the context otherwise requires The expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour.

The expression "employer" includes a body of persons corporate or unincorporate.

The expression "workman" means a railway servant and any person actually engaged in manual labour as miner, labourer, servant in husbandry, journeyman, artificer, handicraftsman or other manual work, whether under the age of twenty-one years or above that age, under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour, but does not include a domestic or menial servant.

(A) See a reference to this section in Act 29, 1897, sec. 13, tit. "PUBLIC EMPLOYEES."

*Also Act 18/06*

*Epizootic Lymphangitis*  
*Act 46/06.*

ESCHEATS.

*See Law. 6/69.*

Law No. 11, 1868.

“To provide for the appropriation of the Casual Revenue of the Crown arising from Escheated Estates.”

[16th September, 1868.]

WHEREAS, by an Act passed by the Imperial Parliament in the Session holden in the Fifteenth and Sixteenth years of Her Majesty's reign, provision is made for the appropriation by, or with the consent of the Crown, of any casual revenues arising within the colonies or foreign possessions (other than droits of the Crown and droits of Admiralty) for or towards any public purposes within the colonies or possessions in which the same respectively may have arisen; and it is expedient to provide for the appropriation of such casual revenue, including the revenue to arise from sale of the estates and effects of persons who have died intestate, and without heirs or next of kin:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. All casual revenue of the Crown (other than droits of the Crown and droits of the Admiralty) which shall hereafter be paid by order of the Crown into the public Treasury of this Colony, shall be disposed of from time to time in such manner and for such public purposes as the Legislature of the Colony shall direct.

Casual revenue of the Crown, how to be disposed of.

2. The Lieutenant Governor shall, from time to time, as occasion shall require, repay or make good to any person preferring and duly proving his claim to the same, after such appropriation as is hereinbefore provided, all such sums of money so appropriated, and all moneys in the Treasury forming part of, or arising from, the general revenue of the Colony, shall be applicable for so repaying or making good the same.

Governor may repay appropriated moneys to persons proving their claims.

3. If any person preferring a claim to any moneys to be hereafter appropriated pursuant to the provisions of this Law, shall fail to prove his claim to the same, it shall nevertheless be lawful for him to present his summary petition to the Supreme Court of the Colony against Her Majesty's Attorney-General, as respondent thereto, and if he shall verify his claim by evidence to the satisfaction of the said Supreme Court, it shall be the duty of the said Court to make such order in the premises, including any award of costs as justice shall require; and upon the application of such person, or any other claimants or person, or of the said Attorney-General, to vary such order from time to time as may be deemed expedient, and to certify the same to the Lieutenant Governor to the intent that the claimant may have relief in the premises.

Persons failing to prove their claims to moneys, may petition the Supreme Court.

Court shall make order therein and may award costs.

4. This Law may for all purposes be cited as “The Escheat Law, 1868.”

Short title.

5. This Law shall commence and take effect from and after the promulgation thereof in the “GOVERNMENT GAZETTE” of the Colony (A).

Commencement

## Law No. 6, 1869.

“To declare the Law and Practice in cases of Escheats.”

[22nd September, 1869.]

WHEREAS by the Law No. 11, 1868, known as “The Escheat Law, 1868,” provision was made as to the disposal of certain revenue of the Crown arising from cases of escheat in this Colony; and whereas it is expedient to declare the law and practice in such cases of escheat:

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. In all cases of escheat to the Crown an inquest shall be taken before the Supreme or a Circuit Court, or a Commissioner or Commissioners thereof, on the information of Her Majesty’s Attorney-General of the Colony.

2. Notice of every inquest to be held under this Law shall be published in the “GOVERNMENT GAZETTE” three months at the least before the holding of such inquest.

3. It shall be lawful for any person claiming title to any property respecting which an inquest may be held under this Law to appear and give evidence in support of such claim at such inquest.

4. If the finding on any inquisition under this Law shall be against the Crown, it shall nevertheless be lawful for the Attorney-General, with the leave of the Supreme Court, within six months to file a requisition for a second inquiry.

5. If the finding on any inquisition be for the Crown, it shall nevertheless be lawful for any person claiming title to any property, respecting which such finding shall have been made, at any time within twelve calendar months after the taking of such inquest, to traverse such finding; and such claimant shall cause a copy of such traverse to be served on Her Majesty’s Attorney-General within the said term of twelve calendar months.

6. All Laws, Ordinances, and rules in force as to pleading, and the means of procuring and taking evidence, and the practice and course of procedure of the Court in reference to personal actions between subject and subject, shall be applicable and extend to such traverse.

7. After the taking of any inquest in favour of the Crown if no traverse shall be filed and notice thereof served on the Attorney-General within twelve calendar months after the taking of such inquest, or if on any traverse the finding or decision shall be for the Crown, the property escheated may, if the Lieutenant Governor shall so direct, be retained for the public uses of the Colony or shall be sold by public auction; and the moneys to arise from any such sale, after payment of all costs and expenses attending such inquisition or any traverse thereof shall be paid into the Colonial Treasury, and shall thereafter be liable to be disposed of, as in the first section of “The Escheat Law, 1868,” mentioned or referred to.

8. In any case in which any person may have, or assume to have, any “moral” claim to any escheated property, it shall be lawful for the Lieutenant Governor, by and with the advice of his Executive Council, to consider and decide upon such claim, and to deal therewith in such manner as the facts and circumstances of the case shall appear to merit, anything in this Law contained to the contrary thereof notwithstanding.

In all cases of escheat an inquest shall be taken.

Notice of inquest to be given in *Gazette*.

Claimant may appear and support his claim.

Attorney-General may apply for second enquiry, if finding is adverse to Crown.

If finding be for the Crown, claimant may traverse such finding.

Rules as to procedure, &c., applicable to such traverse.

Disposal of escheated property if no traverse filed within 12 months, or the finding thereon be for the Crown.

Governor may deal with *moral* claim to escheated property.

9. The Supreme Court may from time to time make such rules, orders, and regulations as may be deemed necessary to carry this Law into effect: Provided always that no such rules, orders, and regulations shall be repugnant to this Law; and the said Court may from time to time amend, alter, vary, or annul any of such rules, orders, or regulations in like manner.

Law 6, 1869.  
Supreme Court may make rules, &c., to carry Law into effect.

10. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE"; and may for all purposes be cited as "The Escheat Law, 1869" (A).

Commencement  
Short title.

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(A) Sept. 28, 1869.

*Escheat - Grant of Land*  
*Act - 26*  
*08.*

EVIDENCE AND WITNESSES.

[See "CONTRACTS"; "CRIMINAL LAW (PROCEDURE)"; "DOGS"; "OATHS," &c.]

Law No. 9, 1859.

"For declaring the Number of Witnesses necessary to attest Acts or Deeds."

[21st June, 1859.]

WHEREAS doubts have arisen as to the number of witnesses necessary for the due attestation of the signature to certain acts and deeds of parties, which by law it is required should be passed, signed, or executed in the presence of witnesses, and it is expedient to remove such doubts, and to declare the Law in this respect :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

One witness to acts or deeds.

1. Any act or deed which the law or custom of this Colony requires to be passed, signed, or executed in the presence of witnesses, may be so passed, signed, or executed in the presence of one witness, who, as such, shall subscribe his name to such act or deed.

In the absence of witnesses signature may be proved.

2. No act or deed which, by the Law or custom of this Colony, is required to be passed, signed, or executed in the presence of witnesses shall be held invalid by reason of its having been passed, signed, or executed in the absence of any witnesses, or in the presence of any illiterate person unable to subscribe his name: Provided, an affidavit of one or more persons, duly sworn in verification of the signature to such act or deed be attached thereto (A).

Perjury.

3. Any person who shall wilfully falsely swear to any such affidavit as aforesaid, and any person who shall suborn any other person so to do, knowing the same to be false, shall be deemed guilty of wilful and corrupt perjury or subornation of perjury ; and on conviction thereof be liable to the pains and penalties by Law provided for perjury and subornation of perjury.

Repeal.

4. Any Law now in force in this Colony repugnant to the provisions of this Law shall be and the same is hereby repealed.

Notarial acts excepted.

5. This Law shall not extend to any act or deed passed, signed, or executed before any Notary Public.

Commencement

6. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (B).

Law No. 17, 1859.

"To regulate the Law of Evidence in the Colony of Natal."

[21st June, 1859.]

WHEREAS it has been the practice in the Courts of this Colony to follow the English rules of evidence: and whereas it is desirable to declare the rules of evidence for this Colony more definitely :

(A) Certain instruments are required, by Laws passed subsequently to this Law, to be attested by two witnesses; see Law 2, 1868, tit. "WILLS," and as

to ante-nuptial and post-nuptial contracts see "COMMUNITY OF GOODS." (B) July 12, 1859.

*In so far as it relates to acts & deeds reported in a deeds register by A B / D S.*

*amended by Act 31 of 1917, Sect. 391 which relates to or affects deeds of witnesses in criminal proceedings*

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, that : Law 17, 1859.

1. The known general rules, and the exceptions to such rules, recognised in the English Law of evidence, whether under common law, or by statute (A) now in force in England, shall be in like manner respectively recognised in the law of evidence of this Colony, on the following points, that is to say :

English law of evidence recognised, on certain points.

- (a) The privilege of communications between any person and his professional legal advisers.
- (b) The admission, in criminal cases, of proof of a confession of the person indicted, or any accomplice.
- (c) The number of witnesses in any case, civil or criminal, requisite or sufficient for a verdict.
- (d) Inadmissibility of matter irrelevant to the issue.
- (e) Evidence as to character of any party to any case, or of any prosecutor, or of any person, injury to whom is a ground of any prosecution.
- (f) The effect of admissions, whether on or extrinsic to the record or pleadings.
- (g) The best evidence, and its being required.
- (h) Admissibility and proof of state documents, and documents of a public nature (B), and judicial proceedings and legal documents, deposited in foreign or otherwise external courts (c).
- (i) Admissibility in civil cases of evidence of a person then deceased or absent, given in another case.
- (k) Admissibility in criminal cases of depositions taken in a preliminary examination.
- (l) Inadmissibility of hearsay evidence.
- (m) Evidence of common reputation or tradition.
- (n) Admissibility of statements commonly known as dying declarations.
- (o) As to option of witnesses answering what may in any way affect themselves or their wives or husbands criminally, and subsequent using of the evidence if given, unless either case be specially provided for in this Law.
- (p) Inadmissibility of or right to withhold evidence on principle of the requirements of public policy.
- (q) Impeaching character or credibility, or testing memory of witnesses.
- (r) Allowing in evidence, or to be used in Court, memoranda, entries, books of account, histories, genealogies, maps, or the like.
- (s) Evidence in trials for treason or misprision of treason.
- (t) Registry of vessels, and certificates and declarations in respect thereof.
- (u) The respective provinces of the Court and jury relative to evidence.
- (v) The respective provinces of direct, cross, and re-examination.
- (w) Extrinsic evidence explanatory of, supplemental to, or at variance with, any document.

(A) Sections from some English Acts relating to evidence are set out for convenience in the Schedule.

(B) See Law 6, 1884, post, and as to

Letters of Administration see Act 19, 1894, s. 12, tit. "PROBATE, &c."

(c) See 8 and 9 Vic. c. 113; 31 & 32 Vic. c. 37, and 45 & 46 Vic. c. 9.

Law 17, 1859.

- (x) Presumptions, and presumptive and circumstantial evidence.
- (y) Mercantile usage or custom of trade.
- (z) Any matter connected with the law of evidence, and not by this Law specially provided for (A).

All persons bound to give evidence.

2. Every person shall, in any proceeding in any Court of Justice, be competent and compellable to give evidence, subject to the foregoing rules of evidence, and to the following exceptions, that is to say :—

Exceptions.

- (a) No person shall be competent (B) or compellable to give evidence for or against himself or herself, in any criminal proceeding in which he or she is charged with the commission of any indictable offence, or any offence punishable on summary conviction; but this exception is not to exclude any confession otherwise admissible.
- (b) In no criminal proceeding shall the husband of a woman charged therein or thereby, be competent to give evidence for or against her; and so, in like manner, as to the wife of a man charged in or by any criminal proceeding (c), unless, in either case, the offence charged be an injury to the person of the husband or wife of the party charged.
- (c) [Repealed by Law No. 5, 1870.]
- (d) No person who shall clearly appear, or shall, to the satisfaction of the Court, be proved to be then afflicted with idiocy, lunacy, or other insanity, or labouring under imbecility of mind arising from habitual or then actual intoxication, or otherwise whereby he is deprived of the proper use of reason, shall, while under the influence of any such malady or disability, be competent to give evidence in any proceeding.
- (e) No child who by reason of tender years is ignorant of the obligation of an oath shall be competent to give evidence in any proceeding (D).

Evidence to be given on oath.

3. All persons, save as hereinafter excepted, who give evidence shall do so upon oath, that is to say—the form in which they are sworn shall contain an appeal to Almighty God, in these words—“ So help me God !” or “ So help you God !” or equivalent words; but the action in taking the oath, whether holding and kissing the Bible, or the Old or New Testament, or holding up the hand or otherwise, may be according to the use and option of the person to be sworn, and such shall be sufficient action in taking the oath (E).

4. [Repealed by Law No. 5, 1870.]

5. [Repealed by Law No. 13, 1862.]

Accomplice giving exact evidence becomes exempt from prosecution.

6. If on the trial for any offence any accomplice in respect of such offence shall be examined as a witness on the part of the prosecution, and shall answer to the satisfaction of the Court the questions put to him while under examination, such accomplice shall not be liable to be thereafter prosecuted or tried for such offence; and an entry of such accomplice having been so examined and having so answered may be made by order

(A) See 46 Geo. III. c. 37, which enacts that a witness cannot lawfully refuse to answer a question on the ground that it may subject him to a suit for debt or damages.

(B) This sub-s. is virtually repealed by Law 5, 1870, s. 7, post, so far as relates to the competency of a witness to

give evidence on his own behalf. See also Law 37, 1888, post.

(C) This sub-s. is virtually repealed by Law 37, 1888, post, so far as relates to the competency of husband and wife as witnesses for or against each other.

(D) But see Law 5, 1870, s. 4, post.

(E) See Law 13, 1862, tit. “OATHS,” and Law 5, 1870, s. 4, post.

of the Court on the record in the case wherein there was such examination, and such entry, purporting to be by order of the Court, and to be signed by an officer of the Court, shall be evidence of the matters therein stated. Such entry may be in this form :—

Law 17, 1859.

By order of the Court, entry is here made that  
was, on the \_\_\_\_\_, examined on the trial of this case,  
and answered to the satisfaction of the Court the questions put to him  
while under such examination.

(Signature and office of signer.)

7. If any such accomplice, on being so examined, shall not so answer to the satisfaction of the Court, and shall therefore be liable to prosecution or trial for the offence, still no evidence which shall have been given by him when so examined shall be given in evidence against him on such his trial.

Evidence of accomplice not admitted against himself.

8. Whenever any record, indictment, pleading, affidavit, judgment, decree, order, conviction, or other document, deposited in any Court of Justice in this Colony, shall be required in evidence in the same or any other Court of Justice in this Colony, any document certified to be the original or a true copy or true extract, and such certificate, purporting to be signed by the Registrar or Clerk, or other officer or person having the custody of the original in the Court where the same shall be deposited, shall be evidence of such original, or of the alleged extracted part thereof.

Copy of documentary evidence admissible.

9. Whenever any seal, stamp, signature, or certificate does or shall render admissible in evidence any certificate as to any matter occurring in this Colony, or any official or public document in or of this Colony, or document or proceeding of any Corporation, or Joint Stock or other Company, in or of this Colony, or any copy made in this Colony of any document, bye-law, entry in any register or other book, or of any other proceeding, the fact of there being impressed or written on the document, proceeding, or copy produced, or some part thereof, what purports to be the requisite seal, stamp, signature, or certificate shall, unless the contrary be shown, be deemed proof of what shall be so impressed or written being what is so purported by it.

Attestation of document by seal, stamp, &c.

10. Whenever any book (A) or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, any copy thereof or extract therefrom respectively shall be admissible in evidence, provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer or person to whose custody the original is entrusted ; and which officer or person is hereby required to furnish such certified copy or extract at a reasonable interval to any person applying at proper time for the same, upon payment of the sum usual for the like ; or if there shall not be any sum usual in respect thereof, then on payment of a sum not exceeding fourpence for every folio of ninety words, or fractional part of such folio.

Certified extracts from book or document of a public nature.

11. If any officer or other person, authorised or required by this Law to furnish any certified originals, copies, or extracts, shall wilfully certify any document as being an original, or a true copy or extract, knowing that the same is not the original or a true copy or extract as the case may be, he shall be guilty of a criminal offence and be liable, on conviction, to imprisonment for a period not exceeding eighteen months.

Punishment for false certificate.

(A) See Law 6, 1884, post. See also Act 22, 1894, s. 49, tit. "MUNICIPAL CORPORATIONS," providing for proof of

by-laws by production of book purporting to contain them.



Law 17, 1859.  
Saving of exist-  
ing Laws as to  
documentary  
evidence.

Examination by  
order of Court,  
&c.

Authority to  
administer  
oaths, &c.

Crime of  
fraudulently  
sealing, stamp-  
ing, &c.

Document  
falsely sealed,  
&c., may be  
impounded.

Proof of docu-  
ment.

Disputed writ-  
ings examined.

Repeal.

Commencement

Foreign and  
Colonial Acts of  
State, judg-  
ments, &c.,  
provable by cer-  
tified copies,  
without proof  
of seal or signa-  
ture, or judicial  
character of  
person signing  
the same.

12. Nothing herein expressed shall affect any Law now in force in this Colony whereby documents or copies of documents, or extracts therefrom, certified, attested, or verified in any form or manner are admissible in evidence.

13. Nothing herein contained shall affect the admissibility of any examination under a commission issued by order of any Court or Judge having jurisdiction for such purpose, or taken under any Ordinance or Law passed in or for this Colony and now in force, or taken before or by the order of any Court or Judge having jurisdiction for such purpose, and in order that the same may be used in evidence.

14. Whenever and wherever there shall be by Law or consent of parties authority to hear, receive, or examine evidence, there shall also be such authority to administer an oath, affirmation, or declaration to the witnesses appearing to give evidence as there would be if the case were pending in any superior Court; and such oath, affirmation, or declaration shall be subject to the like liabilities as if taken or made in a case pending in any superior Court.

15. Whenever any seal, stamp, or signature shall if affixed to any document render the same or be a material element towards rendering the same admissible in evidence, then, if any person shall forge or fraudulently affix such seal, stamp, or signature for the purpose of rendering any such document admissible in evidence, or shall fraudulently tender in evidence any such document with a false or counterfeit or fraudulently affixed seal, stamp, or signature thereto, knowing the same to be so false or counterfeit or fraudulently affixed, such person shall be guilty of the crime of forgery or falsity. And whenever any such document, having such a false or counterfeit or fraudulently affixed seal, stamp, or signature, shall have been tendered in evidence, the Court or person before whom such document shall have been so tendered, may of his own authority, or at the request of any party against whom the same was so tendered, direct that the same shall be impounded and kept in the custody of some officer of the Court or other proper person, for such period and purpose, and subject to such conditions, as to the said Court or other person so directing shall seem meet.

16. Any instrument to the validity of which attestation is not requisite may, though attested, be proved as it might be if there were no attesting witness thereto.

17. Comparison of a disputed writing with any writing proved to the satisfaction of the Court to be genuine shall be permitted to be made by witnesses; and such writings and the evidence of witnesses respecting the same may be submitted to the Court and Jury (if any) as evidence of the genuineness or otherwise of the writings in dispute.

18. The Ordinance No. 19, 1845, and the Ordinance No. 14, 1846, are hereby repealed.

19. This Law shall commence and take effect from and after the date of the promulgation thereof in the "GOVERNMENT GAZETTE" (A).

#### SCHEDULE.

*Certain enactments of English Acts of Parliament bearing upon parts of the first section of this Law, and set out here for convenience of reference.*

14 and 15 Vic., c. 99, ss. 7 and 11.

7. All proclamations, treaties, and other Acts of State, of any foreign State or of any British colony, and all judgments, decrees, orders, and other judicial proceedings of any Court of Justice in any foreign State, or in any British colony, and all affidavits, pleadings, and other

(A) July 12, 1859.

legal documents filed or deposited in any such Court, may be proved in any Court of Justice, or before any person having by law, or by consent of parties, authority to hear, receive, and examine evidence, either by examined copies, or by copies authenticated as hereinafter mentioned, that is to say :—If the document sought to be proved be a proclamation, treaty, or other Act of State, the authenticated copy, to be admissible in evidence, must purport to be sealed with the seal of the foreign State or British colony to which the original document belongs ; and if the document sought to be proved be a judgment, decree, order, or other judicial proceeding of any foreign or colonial Court, or an affidavit, pleading, or other legal document filed or deposited in any such Court, the authenticated copy, to be admissible in evidence, must purport either to be sealed with the seal of the foreign or colonial Court to which the original document belongs, or, in the event of such Court having no seal, to be signed by the Judge, or, if there be more than one Judge, by any one of the Judges of the said Court, and such Judge shall attach to his signature a statement in writing on the said copy that the Court, whereof he is Judge, has no seal ; but if any of the aforesaid authenticated copies shall purport to be sealed or signed as hereinbefore respectively directed, the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence without any proof of the seal, where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement.

Law 17, 1859.  
Schedule.

11. Every document which by any Law now in force or hereafter to be in force is or shall be admissible in evidence of any particular in any Court of Justice in England or Wales or Ireland without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence to the same extent and for the same purposes in any Court of Justice in any of the British colonies, or before any person having in any of such colonies by law or by consent of parties authority to hear, receive, and examine evidence, without proof of the seal or stamp or signature authenticating the same or of the judicial or official character of the person appearing to have signed the same.

Documents admissible without proof of seal, &c., equally admissible in the Colonies.

#### MERCHANT SHIPPING ACT, 1854.

(17 and 18 Vic., c. 104) ss. 107 and 526 (A).

107. Every register or declaration made in pursuance of the second part of this Act in respect of any British Ship may be proved in any Court of Justice, or before any person having by law or by consent of parties authority to receive evidence, either by the production of the original or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the Registrar or other person having the charge of the original ; which certified copies he is hereby required to furnish to any person applying at a reasonable time for the same upon payment of one shilling for each such certified copy ; and every such register or copy of a register and also every certificate of registry of any British ship, purporting to be signed by the Registrar or other proper officer, shall be received in evidence in any Court of Justice, or before

Proof of register or declaration.

(A) This Act is now repealed by 57 & 58 Vic. c. 60, as to which see Act 5, 1893, tit. "SHIPPING." The above sec., 107,

is reproduced by sec. 64, sub-s. (2), of 57 & 58 Vic. c. 60.

**Law 17, 1859.** any person having by law or consent of parties authority to receive evidence as prima facie proof of all the matters contained or recited in such register when the register or such copy is produced, and of all the matters contained in or endorsed on such certificate of registry, and purporting to be authenticated by the signature of a Registrar, when such certificate is produced.

Proof of document required to be executed in presence of witness.

526. Any document required by this Act to be executed in the presence of or to be attested by any witness or witnesses (A) may be proved by the evidence of any person who is able to bear witness to the requisite facts without calling the attesting witness or witnesses or any of them (B).

Common Law Procedure Act, 1854 (17 and 18 Vic., c. 125),  
ss. 22, 23, 24, and 25.

How far a party may discredit his own witness.

22. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but he may, in case the witness shall in the opinion of the Judge prove adverse (C), contradict him by other evidence; or, by leave of the Judge, prove that he has made at other times a statement inconsistent (D) with his present testimony; but before such last mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Proof of contradictory statement of adverse witness.

23. If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Cross-examination as to previous statements in writing.

24. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: Provided always, that it shall be competent for the Judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit.

Proof of previous conviction of a witness may be given.

25. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanour, and, upon being so questioned, if he either denies the fact or refuses to answer, it shall be lawful for the opposite party to prove such conviction; and a certificate, containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the Clerk of the Court, or other officer having the custody of the records of the

(A) For a list of such documents see the Index to Pulling's Shipping Code, heading "Documents."

(B) This section of the repealed Act is reproduced by sec. 694 of 57 & 58 Vic. c. 60.

(C) "Adverse" in this sec. means "hostile" (*Greenough v. Eccles*, 28 L.J.,

C.P. 160); and the discretion of the Judge as to whether the witness is to be contradicted or not is absolute (*Rice v. Howard*, 16 Q.B.D. 681).

(D) See *Jackson v. Thomason*, 31 L.J., Q.B. 11; *Buckley v. Cooke*, 24 L.J., Ch. 24.

Court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of five shillings and no more shall be demanded or taken) shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.

Law 17, 1859.  
Schedule.

Law No. 5, 1870.

“To amend the Law of Evidence.”

[14th September, 1870.]

*Amended by Act 3 of 1917, Sect 391, so much relates to of or off evidence or witnesses in criminal proceed*

WHEREAS by the second section of the Law No. 17, 1859, it is among other things enacted that “in no proceeding instituted in consequence of adultery alleged to have been committed by any person shall the husband or wife of such person be competent to give evidence.”

AND WHEREAS it is expedient to repeal such enactment, and, in other respects, to amend the Law of Evidence :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. The said recited enactment is hereby repealed, and the said second section of the Law No. 17, 1859, shall, in reference to all trials or other proceedings to be tried or heard after this Law shall have come into operation, be read and construed as if such enactment were not contained in the said section. Provided always that nothing in this section, or in the third section hereof, shall be deemed to render admissible, for the purpose of bastardizing issue, any evidence which before the passing of this Law should have been rejected on the ground of its tending thereto.

Repeal.

2. In any action for damages for the breach of any promise to marry, instituted after this Law shall have come into operation, the plaintiff shall not be entitled to succeed unless his or her testimony as to such promise shall be corroborated by some other evidence material to show such promise.

Corroborative evidence required in actions for breach of promise.

3. Save as hereafter in this section otherwise provided, no witness, whether a party or not in any proceeding instituted in any Court of Justice after this Law shall have come into operation, shall be liable, against his or her wish, to be asked or bound to answer any question tending to show that he or she has been guilty of or has committed adultery or other “stuprum.” Provided always that the foregoing part of this section shall not apply to any person who, in such proceedings, shall be complaining of or charging the fact of carnal knowledge having been had or attempted with, or of an indecent assault upon such person, nor to any woman who shall be seeking to affiliate an illegitimate child of hers, nor to any witness who shall have already given evidence in any such proceeding in disproof of any adultery or “stuprum” on his or her part. Provided also that no evidence given in any such proceeding by any witness as to his or her adultery or “stuprum” shall be admissible in evidence against him or her in any criminal proceeding other than for perjury in respect of such evidence.

Witness not liable to be asked, or bound to answer, questions tending to show that he or she has committed adultery or stuprum; except in certain cases.

Protection of witness in respect of evidence given in any such proceeding.

4. If any person about to give evidence in any Court of Justice, whether in a civil or a criminal proceeding, shall object to take an oath or shall be objected to as incompetent to take an oath, and shall so appear to the presiding judge or magistrate, or if such judge or magistrate shall be satisfied, from the person's answers or apparent childhood, ignorance or barbarism, that the taking of an oath would have no sufficient binding

In certain cases a witness may make a promise and declaration in lieu of an oath.

**Law 5, 1870.** effect on his conscience, or that there would be an appearance of irreverence in the administration of an oath to him, such person may be required to make a promise and declaration to the effect following, that is to say:

**Form thereof.** —“ I do sincerely promise and declare that the evidence that I shall give in this case shall be the truth, the whole truth, and nothing but the truth.” And such promise and declaration having been made by any person in any such proceeding, shall for all purposes of or in respect of a prosecution for perjury, falsity, or the like, be deemed an oath. Provided always that nothing in the said second section of the said Law No. 17, 1859, shall hereafter be deemed to prevent any child from being admitted to give evidence. Provided also that in the case of any child, or ignorant or barbarous person aforesaid, appearing to require any explanation of the meaning of the aforesaid declaration, such Judge or Magistrate shall cause such explanation to be then given.

To have same effect as an oath.

Judge or Magistrate shall, where necessary, explain meaning of declaration.

Sec. 4, Law 17, 1859, repealed.

Reference in Law 13, 1862, or in other enactments to the said sec., shall in future matters apply to sec. 4 of this Law.

Where sec. 3, Law 13, 1862, and the 4th sec. of this Law are each applicable, the Court shall decide which shall be adopted.

Certain words in sec. 3, how to be read.

In certain criminal proceedings, the accused may give evidence.

And shall not object to answer a criminal question: but answers not admissible against him in other criminal proceedings.

To what extent the evidence of accused given at a preparatory examination shall be admissible at the trial on behalf of the prosecution.

5. The fourth section of the said Law No. 17, 1859, is hereby repealed, without prejudice to any proceedings in respect of any matter which shall have taken place under the said enactment before this Law shall have come into operation, or for one month thereafter. Provided always that the reference in the Law No. 13, 1862 (A), or in any other enactment now in force, to the said hereby repealed section, shall as to matters occurring after such repeal be deemed to apply to the fourth section of this Law in addition to or instead of the said repealed section.

6. Nothing in this Law contained shall be deemed to repeal the third section of the said Law No. 13, 1862, and where it and the fourth section of this Law shall appear to be each applicable, it shall be in the discretion of the presiding judge or magistrate which shall be applied. Provided always that in construing that part of the said third section of Law No. 13, 1862, which relates to prosecutions for perjury, these words therein, namely, “ the last foregoing section,” shall be deemed to refer to the said third section of the said Law of 1862, and to the fourth section of this Law respectively, and as the occasion shall require.

7. In any proceeding deemed of a criminal nature because of its being in respect of an act or omission prohibited or the like at the time being by or by virtue of any legislative enactment under a fine or other pecuniary penalty, and without liability to imprisonment, save on failure in payment of the fine or penalty, the person accused may be a witness in the case for the defence in like manner in all respects as if the proceeding were a civil action for money: Provided always that any such person so a witness shall not be entitled to object to answer any question merely from its tendency to criminate in respect of the matter in question or of any other matter of the same nature. Provided also that any answer by him to any such question in respect of any such other matter as aforesaid shall not be given in evidence against him in any other proceeding of a criminal nature except in respect of a prosecution for perjury in reference to such evidence.

8. In any case in which the party accused shall be a witness under the foregoing provisions, in section 7 hereof, in a preliminary or preparatory examination before a magistrate, the direct evidence so given by such accused person shall be admissible at the trial on behalf of the prosecution, as would have been the evidence of any other witness then examined, who should have died before the trial: Provided always, that in such direct evidence shall not, for the purposes hereof, be included any evidence of the accused, but such as shall have been given by him in answer to his own counsel or the like, or on his own examination or the like,

(A) See tit. “OATHS.”

of himself, and shall not include evidence then given by him on cross-examination, or in answer to any question put by the Magistrate. Provided also that in cases within this section, the second section of the Law No. 14, 1864, shall not be applicable (A).

Law 5, 1870.

9. This Law shall be in operation from the promulgation thereof in the "GOVERNMENT GAZETTE," after the passing thereof (B).

Commencement

**Law No. 6, 1884.**

"To provide for the production in evidence of Copies, instead of Originals, of Public Documents."

[20th August, 1884.]

WHEREAS much inconvenience is experienced by the practice of summoning public officers to produce in evidence books, documents, and maps, or diagrams in their custody :

*Amended by Act of 1917, so much relates to or affects evidence or witnesses in criminal case*

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. Whenever it shall be necessary for any person to adduce proof in any Court of Justice, or before any person now or hereafter having, by Law or consent of parties, authority to hear, receive, and examine evidence of the contents of any book, document, map or diagram, in any public office or in charge of any public officer, he shall only produce a copy or extract therefrom, signed and certified (c) by the officer to whose custody the original is entrusted, and such copy or extract shall be admissible in evidence in such Court, or before such person, in place of the original : Provided that it shall be lawful for the Judge, or person presiding in such Court, or such other person as aforesaid, to require (upon his being satisfied that in any particular cause or enquiry such production is necessary for the ends of justice) that the original of such book, document, map, or diagram, shall be produced in addition to the copy as aforesaid.

Certified copies or extracts from documents admissible in a Court of Justice in place of originals.

Judge may require production of originals.

2. Public officers to whose custody the originals of such books, documents, maps, or diagrams, are entrusted are hereby required to furnish certified copies or extracts therefrom on payment, by the party applying therefor, of a fee in accordance with the tariff of fees for the time being in force relating to the office from which any such certified copy or extract is required.

Public Officers having custody of original documents to furnish certified copies or extracts.

3. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (D).

Commencement

**Law No. 37, 1888.**

"To amend the Law of Evidence in Criminal Cases."

[10th December, 1888.]

WHEREAS it is expedient to provide for more general admission of the evidence of persons accused of crime and of the spouses of such persons than exists at present :

*Repealed by Act 31 of 1917, Sect. 391*

(A) See tit. "CRIMINAL LAW (PROCEDURE)."

(B) Sept. 20, 1870.

(C) Where tracings of plans in the Surveyor-General's office, signed but not certified by the S.G., were attempted to be put in, held that they were inadmissible (*Beningfield & Son v. Durban Corporation*, 18 N.L.R., 31). See also

*Welch's Executors v. Welch*, 7 N.L.R., 175, where it was held that a certificate from the Registrar of Deeds as to extracts from the books of his office ought not to contain words to the effect that no bonds had been passed over property during a certain period.

(D) Aug. 26, 1884.

Law 37, 1888.

Accused and husband or wife of accused are competent but not compellable witnesses.

Rights and liabilities of witnesses.

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. In any proceeding against any person for any crime or offence such person, and the wife, or husband, of the person so proceeded against, shall be competent, but not compellable, witnesses on every hearing of, at every stage of such charge or proceeding.

2. Any accused person, or the spouse of such person, giving evidence under this or any other Law shall be subject and entitled to all rules, liabilities, and rights of, or connected with, the Law of Evidence for the time being, save that the tendency of a question to crimination of the accused person in respect of the charge then on investigation or trial shall not be deemed an excuse for such accused person refusing to answer such question (A).

Act No. 8, 1898.

See also Act 17/106.

“To repeal, and re-enact with amendments, Law No. 13, 1888, entitled ‘Law to regulate the Allowances to be paid to Witnesses in Criminal Cases.’”

[27th June, 1898.]

WHEREAS it is expedient to amend the Law No. 13, 1888, entitled Law “To regulate the Allowances to be paid to Witnesses in Criminal Cases”:

AND WHEREAS this can be most conveniently done by repealing the said Law and passing an Act in lieu thereof:

BE IT THEREFORE ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

Short title.

1. This Act may be cited as the “Witnesses’ Expenses Act, 1898,” and shall come into force on the 1st day of July, 1898.

Repeal.

2. Law No. 13, 1888, entitled Law “To regulate the Allowances to be paid to Witnesses in Criminal Cases” is hereby repealed.

Expenses allowed to witnesses summoned at public instance for prosecution in certain Courts at criminal trials.

3. From and after the commencement of this Act, expenses shall be allowed to all witnesses summoned at the public instance, for and on behalf of the prosecution, who shall have duly appeared in compliance with a summons at any criminal trial holden before the following Courts, viz:—

- (a) The Supreme Court of the Colony of Natal.
- (b) The Native High Court.
- (c) The Courts of the Magistrates in the several Divisions.
- (d) Any Court or Tribunal for inquiry into charges of incompetency or misconduct of masters, or mates, or engineers of ships, and for inquiry into casualties affecting ships.
- (e) Or any other Court established for the trial of criminal cases, whether upon indictment, or summons, or by summary trial, or at any preparatory examination taken before any Magistrate or Justice of the Peace:

(A) It is advisable, but not necessary, to warn the accused before he gives his evidence (Per Galloway, C.J., in *Ventredy v. Reg.*, 19 N.L.R., 154.)

The effect of this section is discussed

generally in *Reg. v. Umtanti and others*, 20 N.L.R. 56, where it was held that the evidence of two prisoners out of four tried together was admissible as against the remaining two.

Unless such Court shall in its discretion disallow the expenses of any such witness. Act 8, 1898.

This section shall not be deemed to require that a summons shall, in order to entitle a witness to payment, be in writing.

4. Expenses shall also in like manner be allowed to all necessary witnesses summoned at the instance of the prisoner or party accused, and who have duly appeared, but only by order of any of the said Courts in the foregoing section mentioned, to be granted upon an application made at the time of any such criminal trial as aforesaid by or on behalf of such prisoner or party accused, or of the witnesses so summoned and appearing: And provided always, that the Judge or other presiding officer of the said Courts shall be satisfied either by "viva voce" evidence on oath, or affidavit, or otherwise, and shall certify under his hand or that of the Registrar of the Court that the said prisoner or accused party is unable from poverty to pay such expenses, or that by reason of his full acquittal such expenses ought to be allowed, and also that the witnesses summoned and appearing for the said prisoner or party accused were or might have been necessary for the defence of the prisoner or party accused.

Expenses allowed to witnesses for defence by order of the Court.

5. The expenses to be allowed to witnesses as a personal allowance to compensate them for trouble and loss of time, and for their reasonable expenses incurred in and about, going to, remaining at, and returning from, the Court or other place to which they shall be summoned as aforesaid, shall be regulated by, but in no case shall they exceed the scale or allowances of such witnesses' expenses set forth in the Schedule A to this Act annexed; and the decision of the Clerk of the Peace or Magistrate, as the case may be, as to classification, shall be final.

Scale of allowances to be as in Schedule A.

6. The Clerks of the Peace for the several divisions within or for which they are or shall be appointed to act, or other officers authorised by the Attorney-General to act in that behalf, shall, as soon as may be (consistently with their other duties) after all criminal trials at the public instance (save and except criminal trials and preparatory examinations in the Courts of the Magistrates or before any Justice of the Peace) on application, pay to any witness entitled thereto the allowances and expenses by this Act provided; and for such purpose shall make out, sign, and deliver to such witness a cheque or draft in the form of Schedule B to this Act annexed, if such witness shall have been summoned at the public instance, and in the form of Schedule C hereunto annexed, if such witness shall have been summoned for the defence at any such trial as aforesaid, for the amount due to each and every such witness, and the proper officer shall make payment of the amount of every such cheque or draft drawn on him, to the said witness, or to his written order, and the acquittance of the said party by his endorsement on the cheque or draft shall be the discharge of the said officer.

Method of payment by cheque or draft as per Schedules B and C.

7. All witnesses' expenses which shall become payable under this Act in respect of proceedings which may be conducted in the Courts of the Magistrates, or before any Justice of the Peace in criminal trials and preparatory examinations and other proceedings in criminal cases, shall be paid by the Magistrates in accordance with the Schedules to this Act annexed.

Mode of payment by Magistrates.

8. No witness shall be entitled to demand, receive, or obtain any cheque, draft, or other mode of payment of his or her expenses as aforesaid from any Clerk of the Peace or other officer after the lapse or expiration of two clear calendar months from the day upon which any trial or preparatory examination or other proceedings in connection with which the said expenses are claimed and payable, shall have been finally completed and concluded.

Witnesses not entitled to payment after two months.



Act 8, 1898.  
This Act only applies to prosecutions at the public instance.

9. The provisions of this Act shall not apply to prosecutions instituted at the instance of any Municipal Corporation, Local Board of any Township, or other public body, nor to private prosecutions, but only to prosecutions at the public instance.

## SCHEDULE A.

*Scale of Maximum Allowances to Witnesses.*

	Resident in the town in which the case is tried or ten miles or less distant.	Resident at a greater distance than ten miles from the place of trial.
Professional men (including District Surgeons when out of their own districts) when summoned to give strictly professional evidence ... ..	1 1 0	1 11 6
Professional men (in other cases), Master Mariners, Chemists, Auctioneers, Bank Managers, Superintendents of Police, Accountants, Farmers, Shopkeepers, Teachers, Estate Managers, Hotel-keepers, and the like ... ..	0 10 0	0 15 0
Clerks, Master Craftsmen, and witnesses of any similar corresponding station in life ... ..	0 7 6	0 12 6
Artisans, Labourers, Sailors, Journeymen, European Constables, Barmen, Coloured Storekeepers, and skilled coloured workmen and the like... ..	0 5 0	0 10 0
Asiatics, not being skilled workmen or storekeepers ... ..	0 1 0	0 1 6
Natives, Hottentots, Griquas, not being skilled workmen or storekeepers ... ..	0 1 0	0 1 6
European women, not being servants within the meaning of Ordinance No. 2, 1850, or any similar Law ... ..	0 7 6	0 12 6
European women, being such servants as aforesaid ... ..	0 5 0	0 10 0

Members of the Natal Police, or of any police force, heads of departments, and clerks of any class in the Civil Service of the Colony, or any other witnesses, civil or military, who in consideration of a salary from the Colonial Government are required to give up the whole of their time to such Government, shall not be paid any personal allowance, but shall only be refunded the actual hotel and road expenses expended by them: Provided, however, that any such refund shall not exceed the rates allowed to ordinary witnesses.

Subsistence money, to be regulated by the paying officer, not exceeding in any case the maximum rate specified in the above scale, may be allowed to witnesses who are detained for the purpose of giving evidence.

In addition to the above scale of allowances, an allowance may be made, in the discretion of the paying officer, for road expenses of wit-

nesses according to the sums bona fide and actually paid; but in no case shall they exceed 3d. per mile: Provided that in the event of any such witness travelling by public conveyance and proving to the satisfaction of the paying officer that the amount disbursed exceeded 3d. per mile, then the amount actually so disbursed will be allowed. In the case of Native or Hottentot witnesses (not being skilled workmen or store-keepers) travelling from a distance of five miles or more, such allowance shall be a fixed sum of 1d. for every mile to and fro.

Act 8, 1898.  
Schedule A.

Such allowance to be made for one journey only to and from the Court and the witness' residence.

If either the Clerk of the Peace, or any other officer whose duty it may be to make payments under this Act, shall deem it necessary, he may, before making payment to any witness, demand that such witness do satisfy him upon oath as to either of the following points:—

- (a) The distance travelled and mode of travelling;
- (b) The actual sums expended by such witness as road expenses.

SCHEDULE B.

Schedule B.

Colony of Natal.  
In the

Court.

*Prosecution.*

To the Accounting Officer, Attorney-General's Department  
(or other Proper Officer).

Please pay to the order of witness in the case Regina v. with the offence of Sterling, being his allowance, as per subjoined particulars, for expenses and attendance at the said Court on the trial of the case

Dated at	day of	189 .
		Clerk of the Peace.

Actual road expenses for distance (outward and inward) travelled	miles ... ..	£
Number of days allowed at	per diem ... ..	£
		£

I hereby certify that the above-named witness was necessarily brought forward on the prosecution of this case, holden at on the 189 , and that the distance and time charged are correct.

Clerk of the Peace.

SCHEDULE C.

Schedule C

Colony of Natal.  
In the

Court.

*Defence.*

To the Accounting Officer, Attorney-General's Department  
(or other Proper Officer).

Please pay to the order of witness in the case Regina v. with the offence of Sterling, being his allowance, as per subjoined particulars, for expenses and attendance at the said Court on the trial of the case

Dated the	day of	, 189 .
		Clerk of the Peace.



4. If at any time provisions shall be made by law in any Colony, British Possession, or State for taking, by means of interrogatories, the evidence of witnesses who shall reside or be in such Colony, British Possession, or State, and whose evidence shall be required in any civil case pending in any Magistrate's Court in this Colony, such evidence, certified as correct by the officer proper for the purpose, shall be received as evidence in such case (subject to all lawful exceptions).

Act 29, 1899.

Evidence taken by interrogatories in neighbouring State to be received in Magistrate's Court.

5. This Act shall take effect so far as concerns any such Colony, British Possession, or State, as soon as the Governor shall, by Proclamation, declare that such Colony, British Possession, or State has made due provision for taking, by interrogatories, the evidence of witnesses who reside or are in such Colony, British Possession, or State, and whose evidence is required in civil cases in the Courts of Magistrates in this Colony, and for the transmission of such evidence to such Magistrates.

Operation of Act dependent upon reciprocal provisions by other colonies. &c.

*Procl. 33/1907*

*Swaziland*  
*Proc. 13/06 Transvaal*  
Title.

6. This Act may be cited for all purposes as the "Neighbouring Colonies and States Witnesses Interrogatories Act, 1899."

### EXCISE.

[See "REVENUE."]

### EXECUTION.

[See "PLEADING, PRACTICE, PROCESS, &C."]

### EXECUTORS.

[See "INTESTATE ESTATES"; "PROBATE, &C."]

x see act of 1906

EXPLOSIVES.

[See " ARMS, AMMUNITION, &C." ; " EXPORTATION (PROHIBITED)."]

Law, No. 7, 1877. X

Act-32/07.

" To regulate the importation, landing, storage, and carrying of dynamite and other explosive substances."

[17th August, 1877.]

by act 8/1911

WHEREAS the importation, landing, storing, and conveyance through this Colony of dynamite and other explosive substances are calculated to become a source of danger to the property and lives of Her Majesty's subjects in this Colony, unless placed under precautionary restrictions and regulations :

AND WHEREAS the Laws now in force in this Colony make no sufficient provisions in this behalf :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

see Act 10. 1903

Importation.

Provisions as to importation of explosives.

1. With respect to the importation from any place out of the Colony of Natal of any explosive (A), the following provisions shall have effect, that is to say :—

License to import necessary.

(a) The owner and master of any ship having on board any explosive shall not permit the same to be unloaded and delivered to any person who does not hold a licence in writing to import the same (hereinafter called an importation licence) from the Board established under Law No. 6, 1876 (B), and any transhipment shall for the purpose of this section be deemed to be delivery.

Contr. of laws act 2706

Who may grant license and on what terms.

(b) The said Board may grant an importation licence for any explosive, and may annex thereto any prohibitions and restrictions with respect to the composition and quality of the explosive, and the unloading, landing, delivery, and conveyance thereof, and such further provisions and restrictions as the Board may think fit for the protection of the public from danger.

Duration of license.

(c) The licence shall be of such duration as the Board may fix, and shall be available only for the person named therein.

Penalty.

(d) In the event of any breach by any act or default of the provisions of this section, or of any importation licence, all or any part of the explosive with respect to which such breach is committed, or being in any ship or boat in connexion with which such breach is committed, may be forfeited, and the owner and master of such ship or boat, and the licensee or person to whom the explosive is delivered, shall each be liable to a penalty not exceeding £20 and to a further penalty not exceeding 40s. for every pound of such explosive.

(A) See definition of "explosive" in Section 27. (B) Title, " ARMS, AMMUNITION, &C."

- (e) The Collector of Customs and his 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 placed 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.

Law 7, 1877.  
Powers of  
Customs Offi-  
cers.

2. The Harbour Board shall, with the sanction of the Lieutenant Governor, make bye-laws for regulating the conveyance, loading, and unloading of explosives within the jurisdiction of the said Board, and in particular for declaring or regulating all or any of the following matters within the jurisdiction of the said Board, namely:—

Harbour Board  
empowered to  
make bye-laws.

- (a) Determining the notice to be given by ships and boats conveying, loading, or unloading explosives as merchandise within the said jurisdiction.
- (b) Regulating the navigation and place of mooring of such ships and boats.
- (c) Prohibiting or subjecting to conditions or restrictions the conveyance of explosives with any articles or substances, or in passenger ships, boats, trains, or carriages.
- (d) 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.
- (e) 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.
- (f) 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 said Board is to be on board them.
- (g) Providing for the publication and supply of copies of the bye-laws.
- (h) Enforcing the observance of this Law both by their own servants and agents, and also by other persons when within the said jurisdiction.
- (i) Generally for protecting, whether by means similar to those above mentioned or not, persons and property from danger.

3. Bye-laws made under the last preceding section shall have force and effect when confirmed by the Lieutenant Governor, and from and after the publication of such confirmation in the "GOVERNMENT GAZETTE."

Confirmation of  
bye-laws.

4. 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 £10 for each offence, and £2 for each day during which the offence continues, and for forfeiture of all or any part of the explosives in respect of which, or found in the ship or boat or carriage in respect of which, the breach of bye-law has taken place.

Penalties for  
breach of bye-  
laws.

**Law 7, 1877.**

Harbour Master empowered to carry out bye-laws.

Penalty for obstructing such officer.

Regulations for conveyance through Colony, and loading and unloading of gunpowder and other explosives may be made by Lieut-Governor in Council.

Penalty for breach of bye-laws.

Explosives only to be kept in a licensed magazine or store.

Provisoes.

Penalties where explosives kept in unauthorised place.

5. In the event of any breach of a bye-law made under this Law in the case of any ship, boat, carriage, or explosive, 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 Board, 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 Law, 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.

6. The Lieutenant Governor in Council may from time to time make, and when made rescind, alter, or add to such regulations as he shall think fit for the conveyance through the Colony, loading or unloading, of gunpowder and of other explosives in any case in which bye-laws made under any other provision of this Law do not apply, and in particular for regulating all or any of the following matters, namely:—

- (a) Regulating the description and construction of wagons or other vehicles used in the conveyance of gunpowder or other explosives as merchandise.
- (b) Fixing the places and times at which gunpowder or other explosives are to be loaded, and the quantity to be loaded or unloaded or conveyed at any one time, or in any one carriage.
- (c) Determining the precautions to be observed in conveying gunpowder or other explosives, and in loading or unloading the wagon or vehicle used in such conveyance.
- (d) Generally for protecting, whether by means similar to those mentioned or not, persons or property from danger possible to occur from the conveyance, removal, unloading, or loading of gunpowder or other explosives.

7. The penalties to be annexed to any breach or attempt to commit a breach of any such bye-law, may be all or any of the following penalties, that is to say, a pecuniary penalty not exceeding ten pounds for each offence, or imprisonment for a period not exceeding three months, or both.

### *Storage.*

8. Explosives<sup>(A)</sup> shall not be kept at any place except as follows, that is to say, except in a magazine or store for explosives licensed under this Law for keeping explosives: Provided that this section shall not apply—

- (a) To a person keeping for his private use and not for sale explosives to an amount not exceeding on the same premises five pounds (B).
- (b) 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 Law.

9. Any explosive kept in any place other than as above in the last preceding section mentioned, shall be deemed to be kept in an unauthorised place.

- (a) All or any part of the explosives found in such place may be forfeited.

(A) This does not include Gunpowder, see Sec. 27.

(B) See proviso added to this sec. by Law 41, 1887, post.

- (b) The occupier of such place, and also the owner of, or other person guilty of keeping in such place the explosives, shall each be liable to a penalty not exceeding five pounds for every pound of explosives so kept. Law 7, 1877.

10. A magazine or store for explosives shall not be established except on the site and in the manner specified in a licence for the same granted under this Law. Magazine or store how erected.

11. An applicant for such a licence shall submit to the Mayor and Councillors of a Borough (A) if the store or magazine be situated in a Borough (B), or to the Resident Magistrate if the magazine or store be not situated in a Borough (C), a draft of a licence accompanied by a plan (drawn to scale) of the proposed magazine or store and the site thereof, which plan shall be deemed to form part of, and to be in this Law included in the expression "the licence." Applicants for licenses how to proceed.

12. The draft licence shall contain the terms which the applicant proposes to have inserted in the licence, and shall specify such of the following matters as are applicable, namely:—

- (a) The boundaries of the land forming the site of the magazine or store, 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 magazine or any part thereof and other buildings.
- (b) The situation, character, and construction of all buildings connected with the magazine or store.
- (c) The amount of explosives to be allowed at the same time in any building, having regard to the nature and construction of such building, and to the distance thereof from any other building.
- (d) Any special terms which the applicant may propose by reason of any special circumstances arising from the locality, the situation, or construction of any buildings or otherwise.

13. The Mayor and Councillors of any Borough (D), or the Resident Magistrate, as the case may be, after the examination of the proposal, may reject the application altogether, or may approve of the draft licence, with or without modifications or additions, and grant to the applicant permission to apply to the [local authority for their assent (E)] to the establishment of a magazine or store on the proposed site. Mayor and Councillors of any borough, or Magistrate, may reject or approve licence.

14. [The Mayor and Councillors of any Borough, or the Resident Magistrate, as the case may be (F)] upon the hearing of the application or any adjournment thereof, may dissent altogether from the establishment of such magazine or store on the proposed site or assent thereto, either absolutely, or on any conditions requiring additional restrictions or precautions; notice of his application shall be published by the applicant in the "GOVERNMENT GAZETTE," not less than one month before the hearing. May dissent altogether from establishment of such magazine or store.

(A) See Act 23, 1898, s. 1, post.

(B) Act 23, 1898, s. 1, adds "or statutory township."

(C) If the magazine or store be situate partly in and partly out of a borough it would apparently be necessary to obtain a license from both authorities; see preceding note.

(D) Act 23, 1898, s. 2, adds "or Local Board of a Township."

(E) Words in brackets are expunged by Act 23, 1898, s. 3, and the words "the Controller of Arms for his assent" are substituted therefor.

(F) Words in brackets are expunged by Act 23, 1898, s. 3, and the words "The Controller of Arms" are substituted therefor.

*See Act*

Terms of draft  
license and  
particulars  
thereof.

*32*

*07.*



**Law 7, 1877.**

Penalty for breach of general magazine or store rules.

15. In the event of any breach (by any act or default) of the general rules in any magazine or store:—

- (a) All or any part of the explosives in respect to which or being in any building in respect to which the offence is committed may be forfeited.
- (b) The occupier shall be liable to a penalty not exceeding twenty pounds, and in addition (in the case of a second offence) five pounds for every day during which such breach continues.

Powers of search by certain officers;

16. It shall and may be lawful for the Collector of Customs, or any officer of Her Majesty's Customs, or any Resident Magistrate, or Justice of the Peace, Field Cornet, or Constable (A) to enter into and search any house, place, ship, boat, wagon, or other vehicle in which there may be reason to suspect that any explosives are kept contrary to this Law, and also to stop and to search (B) any person, wagon, vehicle or animal by whom or upon which there may be reason to suspect that any explosives are being conveyed contrary to the provisions of this Law.

by other persons with warrant.

17. Any Resident Magistrate or Justice of the Peace may grant his warrant, addressed to any other person, to make such search as aforesaid.

Limitation of action against officers.

18. No civil action shall be maintainable against any Magistrate or other officer for any act or proceeding under this Law, unless the summons shall be issued by or at the suit of the party complaining against such Magistrate or other officer within three months from the date of the act or proceeding complained of.

Plea to such civil action.

19. Any Magistrate or other officer may, in answer to any such civil action, plead the general issue, and under such plea may give any special matter of defence in evidence at the trial.

Disposal of fines;

20. All fines imposed by this Law shall be paid to Her Majesty, her heirs and successors, and unless remitted shall be applied to the use of the Government of this Colony; provided that the Court may in any case award and direct to be paid to any person or persons who shall have given such information as may have led to the conviction of the offender, any portion thereof not exceeding one-half.

proportion to informer.

Magistrates' jurisdiction.

21. The Resident Magistrate of any Division in which the offender may be found, shall respectively have jurisdiction over all offences, acts, and things, made punishable under this Law, or any bye-law made under the provisions thereof, when the penalty or fine made payable for such offence does not exceed the sum of ten pounds, or the imprisonment, with or without hard labour, does not exceed a period of three months, although such Resident Magistrate may otherwise have no jurisdiction in the place where the offence was committed, or the act or thing done.

Prosecution before Supreme and Circuit Courts.

22. All offences under this Law other than those cognisable by Resident Magistrates shall be prosecuted by indictment by the Attorney-General, at the suit of the Queen, in the usual manner before the Supreme Court or any Circuit Court; and in the latter case it shall not be necessary for the prosecutor to show, nor shall it be material whether the contravention charged was committed within the jurisdiction of such Circuit Court; provided, however, that it appear that such contravention occurred within the Colony.

Contravention.

23. Any contravention of any bye-laws or regulations made in pursuance of this Law shall be deemed to be a contravention of this Law.

(A) Or other person, if holding a warrant, see s. 17.

(B) It is noticeable that this sec. does not specifically authorise the officer to take samples of any suspected material, or require the person in charge of the

house, vehicle, &c., to furnish information; nor does it make an obstruction of the officer a special offence. Cf. Law 6, 1876, s. 4, tit. "ARMS, AMMUNITION, &c."

24. Any explosive or ingredient may be sold, destroyed, or otherwise disposed of in such manner as the Court declaring the forfeiture, or the Colonial Secretary, may direct, and the proceeds of any such sale or disposal shall be paid, applied, and accounted for in like manner as penalties under this Law.

Law 7, 1877.  
Disposal of forfeited explosives,

25. The receptacle containing any such explosive or ingredient may be forfeited, sold, destroyed, or otherwise disposed of, in like manner as the contents thereof.

and receptacle thereof.

26. This Law shall apply to explosives as defined by Section 27.

Application of Law.

27. The term "explosive" in this Law means dynamite, nitro-glycerine, gun-cotton, fulminate of mercury, or of other metals, and every other substance, except gunpowder, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion, and includes every adaptation or preparation of an explosive as above defined (A).

Definition of explosive.

28. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (B).

Commencement

Law No. 15, 1883. (C)

"To amend the Law relating to Explosive Substances."

[12th November, 1883.]

*See Act-32/07.*

WHEREAS it is necessary to make provision for regulating the sale of Dynamite and other Explosive Substances, and for that purpose to amend and extend the provisions of Law No. 7 of 1877, entitled "Law to regulate the Importation, Landing, Storage, and Carrying of Dynamite and other Explosive Substances":

*Rep. by Act-8/1911*

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. No person shall sell by way of trade in this Colony any explosives or detonators without a licence to do, signed by the Controller of Arms and Ammunition, who may grant to all licensed importers of explosives and detonators licences to sell the same in this Colony; and the Controller of Arms and Ammunition is hereby authorised in every case before granting such a licence as aforesaid to require the person applying for the same to enter into a recognisance with one or more good and sufficient surety or sureties, liable as principal debtor or debtors.

No person may sell explosives without license.

Person applying for license to enter into recognisance.

2. Any Resident Magistrate may, at his discretion, grant to any person whom he may think fit and proper, residing in his County or Division, a permit or permits, enabling and entitling him to obtain from the person duly licensed to sell dynamite and other explosive substances, the quantity of explosives and detonators in such permits mentioned: Provided that the said Resident Magistrate may, in deciding on the question of granting such permit, either wholly refuse the same or grant the same for a less quantity of explosives and detonators than that applied for: Provided also that it shall not be lawful for any Resident Magistrate to grant a permit to any person of the Native Tribes of South Africa, or to any Hottentot, or to any Indian, or to any person of the Bastard Tribes of South Africa.

Magistrate may grant permits to purchase explosives.

Permits not to be granted to Natives or Indians.

(A) But not including empty cartridge cases, being for sporting purposes only, fitted with percussion caps; see Law 40, 1888, s. 3, tit. "ARMS, AMMUNITION, &c."

Compare this interpretation of the term "explosive" with that given in Act 23, 1899, s. 2, post.

(B) Oct. 30, 1877.

*Rep. by act 32/1911*

Law 15, 1883.

No dealer to dispose of explosives except in accordance with permit.  
Magistrates to register permits and furnish monthly returns.

Dealers to enter in book all sales by permit, and furnish monthly account to Controller of Arms.

Controller of Arms to keep register of permits.

Penalty for contraventions of this Law.

Prosecution of offences.

Rules.

Definition "Explosive."

Law 7, 1877, and this Law to be construed together.

3. No person licensed to sell explosives in this Colony shall sell, give, or barter to any person any explosive or detonators, except in strict accordance with such permit as aforesaid, and to the person named therein.

4. The Resident Magistrates respectively shall register all permits granted under this Law enabling the holder or holders to obtain explosives and detonators, and shall furnish a monthly return to the Controller of Arms of all permits issued by them during the month.

5. Every dealer in explosives in this Colony shall keep a book, in which he shall enter or cause to be entered an account of all sales duly made by permit as hereinbefore provided, and the name and residence of the person to whom, and the respective times at which the same was sold, and shall every month return a copy of such account to the Controller of Arms and Ammunition, together with the permits of the Resident Magistrates in support of the account of sales made during the same period.

6. The Controller of Arms shall keep a Register of all Permits issued by the several Resident Magistrates, and of the quantities of Explosives sold by the Licensed Dealers.

7. Any person contravening this Law, or any regulation made hereunder, shall be liable to a penalty not exceeding Fifty Pounds for each offence, or to imprisonment not exceeding Twelve Months, or both, and any explosive dealt with in contravention of this Law shall be ipso facto forfeited.

8. All offences under this Law shall be prosecuted in the same manner and before the same Courts as provided for offences under the Law 7 of 1877, and the like powers and jurisdiction are hereby conferred upon the said Courts for the trial of offences under this Law as are exercised by them under the aforesaid Law No. 7 of 1877. All officers invested with authority under the said Law shall also have and exercise the like authority under this Law.

9. The Governor in Council may from time to time frame rules for the better carrying out of this Law, which rules shall have the same effect as if embodied in this Law.

10. The term "Explosive" in this Law shall bear the same meaning as is defined in Law 7 of 1877, Section 27.

11. This Law shall be read and construed together with Law No. 7 of 1877 as one Law, and shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A).

Law No. 41, 1887. (B)

*Act-32/07*  
*by 8/1911*

To amend Law No. 7 of 1877, entitled 'Law to regulate the Importation, Landing, Storage, and Carrying of Dynamite and other Explosive Substances.'

[31st August, 1887.]

WHEREAS it is expedient to amend Law No. 7 of 1877, entitled "Law to regulate the Importation, Storage, and Carrying of Dynamite and other Explosive Substances":

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. Section 8, paragraph (a), of the said Explosive Substances Law, No. 7 of 1877, is hereby amended by the addition of the following words:— "Provided that the Controller of Arms is empowered to grant permission, by writing under his hand, for any fit and proper person to keep as

Amendment of sec. 8, par. (a) of Law 7, 1877.

(A) Nov. 13, 1883.

*Read with act 32/07*

above an amount not exceeding Two Hundred Pounds,” and the said section shall now be read as if the proviso hereby made had been inserted in the said paragraph.

Law 41, 1887.

2. This Law shall, so far as consistent with the tenour thereof, be read and construed as one with the Explosive Substances Laws No. 7 of 1877 and No. 15 of 1883.

Law to be read as one with Laws, 7, 1877, and 15, 1883.

3. This Law shall commence and take effect from and after the promulgation thereof in the “NATAL GOVERNMENT GAZETTE” (A).

Commencement

Act No. 23, 1898. (D)

*See Act 32/07.*

“To amend Law No. 7, 1877, entitled Law ‘To regulate the importation, landing, storage, and carrying of Dynamite and other explosive substances.’”

[9th August, 1898.]

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. Section 11 of Law No. 7, 1877, shall be amended by inserting therein after the words “Mayor and Councillors of a Borough” the words “or Local Board of a township established under the provisions of Law No. 11, 1881, or any Law amending the same;” and after the word “borough,” occurring in the third and fourth lines, the words “or statutory township.”

Amendment of sec. 11, Law 7, 1877.

2. Section 13 of Law No. 7, 1877, shall be amended as follows :

Amendment of sec. 13, Law 7, 1877.

After the word “borough,” occurring in the first line, there shall be inserted the words  
 “or Local Board of a township.”  
 The words “local authority for their assent” shall be expunged, and in their place there shall be inserted the words  
 “the Controller of Arms for his assent.”

3. Section 14 of Law No. 7, 1877, shall be amended by expunging therefrom the words

Amendment of sec. 14, Law 7, 1877.

“The Mayor and Councillors of any Borough, or the Resident Magistrate, as the case may be,”  
 and by inserting therein the words “The Controller of Arms.”

Act No. 23, 1899 (B) (C)

*Rep. by act 8/1901*

“To make provision for the manufacture of Explosive Substances.”

[28th August, 1899.]

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. This Act may be cited as the “Explosives Act, 1899.”

Short title.  
 Interpretation.

2. In this Act, unless the context otherwise requires—  
 “Explosive”

(a) Means gunpowder, nitro-glycerine, dynamite, gun-cotton, fulminate of any metal, coloured fires, and every other substance, whether similar to those

(A) Sept. 6, 1887.

(B) Compare with this Act the Statute of the Cape of Good Hope, No. 4, 1887.

(C) See also act 32/1901

Rep. by act-87/1911  
sec. 1

Act 23, 1899.

above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect ; and

- (b) Includes fog signals, fireworks, fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined.

“ Factory ” means a factory for the manufacture of any explosive.

“ Occupier ” means any person carrying on or purporting to carry on the manufacture of any explosive.

Explosives only to be manufactured at factory licensed under this Act.

3. The manufacture of explosives shall not, nor shall any process of such manufacture, be carried on, except at a factory for explosives licensed under this Act : Provided that nothing in this section shall apply to the making of a small quantity of explosives for the purposes of invention or for the purpose of a chemical experiment, and not for practical use or for sale.

What persons subject to the provisions of this Act.

4. 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 remaking, altering, or repairing any explosive, shall be subject to the provisions of this Act, as if he manufactured an explosive, and the expression “ manufactured ” shall be construed accordingly.

Punishment for manufacturing explosives otherwise than at licensed factory.

5. Where explosives are manufactured otherwise than at a duly licensed factory :—

- (a) All or any part of the explosives or of 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 Act, may be forfeited ; and
- (b) The person so manufacturing shall be liable to a penalty not exceeding One Hundred Pounds Sterling a day for every day during which he so manufactures.

Governor may make, alter, or repeal regulations.

6. The Governor in Council may from time to time make, alter, or repeal regulations for any or all of the undermentioned purposes :—

- (a) Licensing factories for the manufacture of explosives.
- (b) The discretion to grant or refuse licenses.
- (c) Prescribing the conditions upon which licenses may be issued and the fees payable.
- (d) Regulating the position, character, and construction of the buildings comprising a factory, and of the mounds or works connected therewith, and their respective distances from each other.
- (e) Regulating the boundaries of the factory, the amount of ground to be kept clear round the same, and the distances to be maintained from any neighbouring works or buildings.
- (f) Prescribing the rules to be observed by the owner, occupier, and persons employed at the factory.
- (g) Prescribing the process of manufacture of any particular explosive.
- (h) Prescribing the mode of construction, and the purposes for which such factory or any particular part thereof may be used.
- (i) Regulating the attaching of lightning conductors to the factory.
- (j) Defining the part of the factory in which any particular explosive or ingredient shall be kept, the quantity that may be so kept, and the mode in which it shall be packed.
- (k) Defining the amount of explosives and of ingredients thereof wholly or partly mixed to be allowed at the same time in any factory or any particular portion thereof.

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- (l) Regulating the use or retention in the factory of charcoal, oiled cotton, and every article liable to spontaneous ignition, the cleaning of the building, the quantity of any explosives or ingredients that may be allowed in the factory or any part thereof at any one time, and prescribing the material of which tools used may be made. Act 23, 1899.
- (m) Regulating in the factory or any part thereof the mixing, sifting, and carriage of any explosives, or the ingredients thereof, persons smoking, and the introduction of fire, lucifer matches, or any substance or article likely to cause explosion by fire, or any iron, steel, or grit.
- (n) Regulating the employment in the factory of any Indian or Native, or of any persons under the age of sixteen years.
- (o) Prescribing the period for which licenses may be issued, and the effect (if any) of change of owners or occupiers of the factory.
- (p) Regulating the inspection of explosives, and the making of cases to contain the same, by a Government Inspector, before the removal of such explosives from the factory.
- (q) Generally for regulating any matters which public safety or convenience may require.

7. In the event of any breach by act or default of any regulation in a factory :

Punishment for breach of regulations in a factory.

- (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 Sterling, and in addition (in the case of a continuing offence) to a penalty not exceeding Ten Pounds Sterling for every day during which such breach continues.

8. Every occupier of a factory shall, with the sanction of the Controller of Arms and Ammunition, make special rules for the regulation of the persons managing or employed in or about such factory, with a view to secure the observance of this Act therein, and the safety and proper discipline of the said persons, and the safety of the public. There may be annexed to any breach of special rules made in pursuance of this section, such penalties not exceeding forty shillings for each offence as may be deemed just, and such penalties may be sued for either at the instance of the Clerk of the Peace or of the person in charge of the factory. The occupier may, and if required by the Controller of Arms shall, with the sanction of the said Controller, repeal, alter, or add to any special rules made in pursuance of this section. If an occupier is required by the Controller of Arms to make, repeal, or alter or add to any rules under this section, and shall fail within three months after such requisition to comply therewith to the satisfaction of the said Controller, the Controller may make, repeal, alter, or add to the special rules, and anything done by the Controller of Arms shall have effect as if done by the occupier with the sanction of the said Controller. The making, repealing, alteration of, or addition to the rules under this Section shall, in all cases, be subject to the approval of the Governor.

Occupier of factory to make special rules for regulation of persons employed therein.

9. The occupier of every factory and every person employed in and 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 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

Occupier and persons employed in factory to take precaution to prevent accidents.

Act 23, 1899. factory. Any breach (by any act or default) of this section in any factory shall be deemed to be an offence.

All premises described in one license to be deemed the same factory.

Controller of Arms empowered to make enquiry to ascertain whether this Act is complied with.

10. For the purposes of the provisions of this Act with respect to the manufacture and keeping of explosives, all premises described in one license and the buildings thereon shall be deemed to be the same factory.

11. The Controller of Arms and Ammunition 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 enquiries as to 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, or the licensee of any licensed premises to which he is entitled to enter, or a person employed therein by any occupier or licensee respectively, 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.

Occupier or licensee to furnish means for inspection, &c.

Every such occupier or licensee as aforesaid, his agents and servants, shall furnish the means required for every such entry, inspection, examination, and enquiry. Any person who fails or refuses to permit the Controller of Arms and Ammunition, or any officer authorised by him to enter, inspect, examine, or make enquiries in pursuance of this section, or who in any manner obstructs the Controller of Arms and Ammunition, or any officer authorised by him in the execution of his duties under this Act shall be liable to a penalty not exceeding One Hundred Pounds Sterling for each offence.

Notice to be given to the Controller of Arms of accident connected with explosives.

12. Whenever there occurs any accident by explosion or by fire in or about or in connection with any factory or licensed premises, or any accident by explosion or by fire, causing loss of life or personal injury in or about or in connection with any other premises occupied with any such factory or licensed premises, the occupier or licensed person respectively shall forthwith send, or cause to be sent to the Controller of Arms and Ammunition, notice of such accident, and of the loss of life or personal injury (if any) occasioned thereby. Every such occupier or licensed person as aforesaid who fails to comply with this section, shall be liable to a penalty not exceeding Twenty Pounds Sterling.

Penalty for trespass upon factory.

13. Any person who enters without permission, or otherwise trespasses upon any factory or magazine, whether licensed or not, or the land immediately adjoining thereto which is occupied in connection with such magazine, or by the occupier of such factory, shall, for every such offence, if not otherwise punishable, be liable to a penalty not exceeding Five Pounds Sterling, or to imprisonment, with or without hard labour, for any period not exceeding three months, and may be forthwith removed from such factory, magazine, or land by any constable, or by the occupier or keeper of such factory or magazine, or any servant, agent or any other person authorised by such occupier or keeper.

14. Notwithstanding anything in this Act, the Governor in Council may from time to time by order prohibit, either absolutely, or subject to conditions or restriction, the manufacture, keeping, importation from any place out of Natal, conveyance and sale, or any of them, of any explosive which is of such a character that in the judgment of the Governor in Council it is expedient for the public safety to make such order. Any explosive manufactured in contravention of any such order shall be deemed to be manufactured in an unauthorised place. If any explosive is conveyed, imported, or sold or kept in contravention of any such order—

**Act 23, 1899.**

Governor may from time to time prohibit manufacture, &c., of explosive, for public safety.

- (1) All or any part of such explosive may be forfeited; and
- (2) The person so conveying such explosive or causing it to be so conveyed shall be liable to a penalty not exceeding Twenty Pounds Sterling, and to a further penalty not exceeding Forty Shillings for every pound of such explosive, or to imprisonment, with or without hard labour, for any period not exceeding three months, and
- (3) The person to whom it was delivered and the person selling or keeping the same, shall be liable to a penalty not exceeding Twenty Pounds Sterling, and to a further penalty not exceeding Forty Shillings for every pound of such explosives delivered, or sold, kept, or found in his possession, or to imprisonment, with or without hard labour, for any period not exceeding three months.

15. Nothing in this Act or in the regulations thereunder shall be construed to authorise the storage of any article or explosive in any township or borough, contrary to the provisions of any By-law made by the Local Board or Town Council of such Township or Borough.

Saving of provisions of Municipal By-laws.

16. This Act shall not apply to any factory belonging to the Imperial or Colonial Government.

Government factories.

17. The contravention, infringement, or wilful disregard of any obligation or prohibition imposed by this Act or by the regulations thereunder shall be deemed an offence.

What to be deemed an offence.

18. The enforcement of the penalties and forfeitures imposed by this Act, or by any regulations thereunder, shall, save where otherwise specially provided, be by criminal prosecution in any competent Court, or any such penalties or forfeitures may be sued for by a civil action at the instance of the Controller of Arms, without prejudice however to the exercise of any powers of seizure or forfeiture competent to him under this Act.

Enforcement of penalties and forfeitures.

19. If any penalty be not paid on conviction the Judge or Magistrate may forthwith commit the offender to prison, there to be imprisoned, with or without hard labour, for such term as such Judge or Magistrate shall see fit to order, and as may be in the competency of the Court, unless the penalty be sooner paid.

In default of payment offender may be committed to prison.

20. All offences for which no punishment or penalty is specially provided by the provisions of this Act, or by the regulations thereunder, and all offences for which no greater penalty than One Hundred Pounds Sterling is appointed, may be cognisable in the Courts of Magistrates.

Offences, how cognisable.



## EXPORTATION (PROHIBITED).

## EXPORTATION (PROHIBITED).

## Law No. 3, 1888.

"To prevent the exportation and the carriage Coast-wise of Arms, Ammunition and Gunpowder, Military and Naval Stores, and other articles."

[11th April, 1888.]

WHEREAS it is expedient in certain cases to prohibit Arms, Ammunition, and Gunpowder, Military and Naval Stores, and other articles, to be exported or carried Coast-wise:

BE IT THEREFORE ENACTED by the Governor of Natal, by and with the consent of the Legislative Council thereof, as follows:—

Repeal of Law 8,  
1862.

1. The Law No. 8, 1862, entitled Law "To prevent the exportation of Arms, Ammunition, Gunpowder, Military and Naval Stores, and other articles," shall be and the same is hereby repealed.

Governor in  
Council may  
prohibit certain  
goods from  
being exported  
or carried coast-  
wise.

2. The Governor of Natal, with the advice of the Executive Council, may order by Proclamation that the following goods be prohibited either to be exported or carried Coast-wise:—Arms, Ammunition, and Gunpowder, Military and Naval Stores, and all Coals and such other articles as the Governor shall judge capable of being converted into, or made useful in increasing the quantity of Military or Naval Stores, provisions, or any sort of victual which may be used as food for man (A); and if any goods so prohibited shall be exported or brought to any quay or other place to be shipped for exportation from the Colony of Natal, or carried Coast-wise, or be water-borne to be so exported or carried, they shall be forfeited, and the exporter, or his agent, or the shipper of any such goods, shall be liable to a penalty of One Hundred Pounds.

Penalties.

Prosecutions.

3. All contraventions of this Law shall be prosecuted by indictment at the suit of the Queen, by Her Majesty's Attorney-General for Natal, before the Supreme or any Circuit Court.

Commencement

4. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (B).

## Law No. 8, 1888.

"To amend Law No. 3, 1888."

[25th August, 1888.]

BE IT ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Provisions of  
sec. 2, Law 3,  
1888, extended  
to articles speci-  
fied in Schedule.

1. The provisions of the Section No. 2 of Law 3, 1888, shall be deemed to apply to and in respect of the warlike articles enumerated in the Schedule to this Law, in like manner as if the said warlike articles were in the said section expressly inserted and included.

Law to be con-  
strued with Law  
3, 1888.

2. This Law shall be read and construed together with the Law 3, 1888, as one Law.

## SCHEDULE.

Explosives.

Ingredients used in the manufacture of Explosives.

Marine Engines.

(A) See further articles enumerated in Law 8, 1888, post.

(B) April 17, 1888.

EXPORTATION (PROHIBITED).

2

Screw Propellers.

Paddle Wheels.

Cylinders.

Cranks.

Shafts

Boilers.

Tubes for Boilers.

Boiler Plates.

Fire Bars.

Every article or any other component part of an Engine and Boiler, or any article whatsoever which is, can, or may be applicable for the manufacture of Marine Machinery.

Torpedoes.

Torpedo Boats.

Boats filled with apparatus to be used for Torpedoes.

All apparatus for projecting inflammable materials or firing Torpedoes.

Pumps or other machinery intended to be used for projecting Inflammable Materials.

Machinery intended to be used in the construction of Torpedoes or Torpedo Boats.

Law 8, 1888.  
Schedule.

## EXTRADITION (A).

*See also Act 13/06.* Law No. 6, 1877.

“To provide for the more convenient administration of the Extradition Acts 1870 and 1873 of the Imperial Parliament.”

[17th August, 1877.]

WHEREAS by the Act of the Imperial Parliament known as “The Extradition Act, 1870,” it is, amongst other things, enacted that the said Act, when applied by Order in Council, shall, unless it is otherwise provided by such Order, extend to every British Colony, but with certain modifications :

AND WHEREAS it is expedient to provide for the more convenient administration within this Colony of “The Extradition Acts, 1870 and 1873” (B), by conferring on the Resident Magistrates of the Colony the like powers and authorities in relation to the surrender of fugitive criminals as are by the said Acts vested in Police Magistrates and Justices of the Peace in the United Kingdom :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :

Short title.  
Powers of  
Magistrates.

1. This Law may be cited as “The Extradition Law, Natal, 1877.”  
2. All powers vested in and acts authorised or required to be done by a Police Magistrate or any Justice of the Peace in relation to the surrender of fugitive criminals in the United Kingdom under “The Extradition Acts, 1870 and 1873,” are hereby vested in and may in this Colony be exercised by any Resident Magistrate, in relation to the surrender of fugitive criminals under the said Acts.

Law not to come  
into operation,  
except by virtue  
of Order in  
Council.

3. This Law shall not come into operation until Her Majesty shall, by Order in Council, direct that this Law shall have effect within this Colony as if it were part of “The Extradition Act, 1870,” but this Law shall thereafter come into operation as soon as such Order in Council shall have been duly published in the “GOVERNMENT GAZETTE” of this Colony (c).

## Law No. 13, 1882 (D).

“To Amend the Law relating to the Extradition of Criminals.”

[4th September, 1882.]

WHEREAS it is expedient to amend the Law relating to the apprehension and surrender to the Transvaal State and the Orange Free State of persons accused or convicted of the commission of certain crimes within the jurisdiction of the said States :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Law shall apply to the offences specified in the first schedule hereto.

2. Where a person accused of having committed an offence (to which this Law applies) in the Transvaal State or the Orange Free State has

Offences to  
which Law  
applies.

Fugitive crimi-  
nals appre-  
hended in  
Natal.

(A) See Clarke's Treatise on the Law of Extradition, 3rd ed., and as to the comity of nations see Hall's International Law, 3rd ed.

Vic. c. 52, and 36 & 37 Vic. c. 60.

(C) See Proclamation confirming this Law in *Government Gazette* of 23rd April, 1878.

(B) These are cited as 33 & 34

(D) See Law 6, 1892, s. 10, post.

left such State, such person (in this Law referred to as a fugitive criminal) if found in this Colony, shall be liable to be apprehended and returned to the State from which he is a fugitive in manner provided by this Law.

Law 13, 1882.

3. A requisition for the surrender of a fugitive criminal for whose apprehension a warrant has been issued in either of the said States, and who is in or is suspected of being in the Colony, shall be made on behalf of the Government of the State seeking extradition of such criminal to the Colonial Secretary of this Colony. Upon receipt of such requisition the said Colonial Secretary may by order under his hand signify to any Resident Magistrate or Justice of the Peace that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

Requisition for surrender to be made to Colonial Secretary who shall order issue of warrant.

4. A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, may be issued

Issue of warrant by Magistrate or Justice of the Peace.

- (1) By a Resident Magistrate or Justice of the Peace on receipt, or upon the publication in the "GOVERNMENT GAZETTE," of the said order of the Colonial Secretary, and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed, or the criminal convicted in this Colony; and
- (2) By a Resident Magistrate or any Justice of the Peace on such information or complaint and such evidence or after such proceeding as would in the opinion of the person issuing the warrant justify the issue of a warrant if a crime had been committed or the criminal convicted in this Colony (A).

Any person issuing a warrant under this section without an order from the Colonial Secretary, shall forthwith send to the latter a report of the fact of such issue, together with the information or complaint, or certified copies thereof; and the Colonial Secretary may, if he think fit, order the warrant to be cancelled, and the person who has been apprehended to be discharged.

5. Every warrant for the apprehension of any fugitive criminal shall command that he be brought before some Resident Magistrate. Where the warrant has been issued without the order of the Colonial Secretary, the Resident Magistrate shall order the discharge of the fugitive criminal unless, within such time as having reference to the circumstances of the case he may consider reasonable, the said Resident Magistrate receives from the Colonial Secretary the order mentioned in the fourth section of this Law.

Prisoner to be brought before Magistrate.

6. When a fugitive criminal is brought before the Resident Magistrate, the said Magistrate shall hear the case in the same manner and have the same jurisdiction and powers as near as may be as if the prisoner were brought before him charged with an indictable offence committed in the Colony.

Hearing of the case.

7. In the case of a fugitive criminal accused of the commission of any crime or offence to which this Law applies, if the warrant of the State making the requisition is duly authenticated, and such evidence is produced as (subject to the provisions of this Law) would according to the Law of the Colony justify the committal for trial of the prisoner if the crime of which he is accused had been committed in the Colony, the Resident Magistrate shall commit him to prison, but otherwise shall order him to be discharged. In the case of a fugitive criminal alleged to have been convicted of the commission of any such crime or offence, if such evidence

Committal or discharge of prisoner.

(A) See *In re Nel*, 12 N.L.R. 208, where an arrested person was released on the ground that there were not such

facts disclosed in the deposition against him as would justify a committal for trial in the Colony.

**Law 13, 1882.** is produced as (subject to the provisions of this Law) would according to the Law of the Colony prove that the prisoner was convicted of such crime, the Resident Magistrate shall commit him to prison, but otherwise shall order him to be discharged.

Gaol.

8. If the fugitive criminal is committed to prison he shall be committed to the principal gaol of the district, there to await the warrant of the Governor for his surrender. The Resident Magistrate shall forthwith send a certificate of the committal to the Governor, with such report thereon as he may think fit.

Surrender of fugitive to requisitioning State by warrant of Governor.

9. Upon production of the certificate of committal it shall be lawful for the Governor, by warrant under his hand and the public seal of the Colony, to order the fugitive criminal to be surrendered to such person as may in his opinion be duly authorised by the State from which the requisition for the surrender proceeded, to receive the fugitive criminal, and such fugitive criminal shall be surrendered accordingly. It shall be lawful for the person to whom such warrant is directed to receive, hold in custody, and convey the criminal mentioned in the warrant within the jurisdiction of the State to which he has been surrendered. The gaoler, or other chief officer of any gaol, on request of any person having the custody of a fugitive criminal under such warrant, and on payment or tender of a reasonable amount for expenses, shall receive such fugitive criminal and detain him for such reasonable time as may be requested by the said person for the purpose of the proper execution of the warrant. If the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the Laws of the Colony may be retaken.

Discharge of persons apprehended if not conveyed out of the Colony within two months.

10. Where any person who shall have been committed under this Law to remain until delivered up pursuant to requisition, shall not be delivered up pursuant thereto within one month after such committal, it shall in every case be lawful for the Supreme Court of this Colony, upon application by or on behalf of any person so committed, and after notice of the intention to make such application has been given to the Attorney-General, to order the person so committed to be discharged out of custody unless sufficient cause is shown to the contrary.

Depositions to be evidence.

11. Depositions or statements on oath taken in either of the afore-said States, whether taken in the presence of the fugitive criminal or not, and copies of such original depositions or statements, and certificates of or judicial documents stating the fact of conviction may, if duly authenticated, be received in evidence in proceedings under this Law.

Authentication of depositions and warrants.

12. Warrants of the said States and depositions or statements on oath and copies thereof shall be deemed duly authenticated for the purposes of this Law, if authenticated in manner provided for the time being by law, or if authenticated as follows :—

- (1) If the warrant purports to be signed by a Judge, Magistrate, or other officer of the State where the same was issued, authorised by law to issue warrants ;
- (2) If the depositions or statements on oath, or the copies thereof, purport to be certified under the hand of a Judge, Magistrate, or officer of the State where the same were taken, to be the original depositions and statements, or to be true copies thereof, as the case may be ;
- (3) If the certificate of or judicial document stating the fact of conviction purports to be certified by a Judge, Magistrate, or officer of the State, where the conviction took place ; and

if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the

oath of some witness or by being sealed with the official seal of some officer of the Government of the State from which the requisition for surrender proceeded; and all courts of justice and Magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof (A). Law 13, 1882.

13. The forms set forth in the second schedule to this Law, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and when used shall be deemed to be valid and sufficient in law. As to use of second schedule.

14. This Law shall take effect so far as concerns the surrender of fugitive criminals to the Transvaal State and the Orange Free State respectively, so soon as the Governor shall by proclamation in the "GOVERNMENT GAZETTE" of the Colony declare and make known that the said States have respectively made due provision for the surrender of fugitive criminals who have escaped to either of the said States from this Colony (B); and from and after the date of each such proclamation the Laws mentioned in the third schedule hereto shall, as to the State named herein, be and the same are hereby respectively repealed: Provided that such repeal shall not affect any warrant duly granted or issued, or anything done or suffered, or any legal proceeding or remedy in respect of any such warrant, or in respect of any liability or penalty incurred previously to such repeal; and any such warrant may be executed, and any such legal proceeding or remedy may be carried out, as if this Law had not been passed. Commencement

15. In the interpretation of this Law, the term "Transvaal State" shall mean the territory otherwise known as the "South African Republic," by whatever name the said territory shall now or hereafter be designated. Repeal of Laws in third schedule. Proviso.

16. This Law may be cited for all purposes as the "Extradition Law, 1882." Definition of term "Transvaal State."

## FIRST SCHEDULE.

Short title. First Schedule.

Abduction.  
 Abortion.  
 Arson.  
 Indecent assault on the person of a girl under the age of twelve years.  
 Assault with intent to do grievous bodily harm.  
 Bigamy.  
 Child stealing.  
 Culpable homicide.  
 Coining, or uttering counterfeit or altered coin.  
 Deserting from any defensive force.  
 Falsity. Forgery or uttering a forged document.  
 Fraud.  
 Offences under any law relating to the dealing in Gunpowder or Firearms.  
 Housebreaking (including the breaking into any office, store, or hut), with intent to commit any crime.  
 Incest.  
 Fraudulent insolvency.  
 Malicious injury to property.  
 Murder, or attempt to commit murder.  
 Perjury or subornation of perjury.

(A) See *In re Jacobs*, 5 N.L.R. 47.

(B) This Law only applies to the Orange Free State. See Proclamation in terms of this section in *Government*

*Gazette* of 30th August, 1883. As to extradition with the South African Republic see Law 6, 1892, post.

## EXTRADITION.

Law 13, 1882.  
First Schedule.

Rape and assault with intent to commit rape.  
Any act done with intent to do injury to person or property on any Railway.  
Robbery.  
Theft, including theft by means of false pretences, and theft by means of embezzlement.

## SECOND SCHEDULE.

*Form of Order for Issue of Warrant of Apprehension.*

Second  
Schedule.

To the Resident Magistrate [or Esquire, Justice of the Peace] for the district of

Whereas a requisition has been made to the Government of the Colony of Natal by the Government of the State, for the surrender of , late of , accused [or convicted] of the commission of the crime of within the jurisdiction of the said State: Now I hereby, by this my order, signify to you that such requisition has been made, and require you to issue your warrant for the apprehension of the said , provided that the conditions of the "Extradition Law, 1882," relating to the issue of such warrant, are in your judgment complied with.

Given under my hand at Pietermaritzburg, this day of 18 .

[Colonial Secretary.]

*Form of Warrant of Apprehension by order of the Colonial Secretary.*

To the Field-cornets, Constables, Police Officers, and other Officers of the Law proper to the execution of Criminal Warrants.

Whereas the Honourable the [Colonial Secretary] by order under his hand has signified to me [or has notified] that requisition has been duly made for the surrender of , late of accused [or convicted] of the commission of the crime of within the jurisdiction of the State: And whereas I have satisfied myself that the conditions of the Extradition Law, 1882, relating to the issue of this warrant, have been duly complied with: This is, therefore, to command you in Her Majesty's name, forthwith to apprehend the said pursuant to "The Extradition Law, 1882," wherever he may be found within the limits of the Colony of Natal, and bring him, or cause him to be brought, before the Resident Magistrate for the district of ! , to show cause why he should not be surrendered in pursuance of the said Extradition Law: for which this shall be your warrant.

Given under my hand at this day of 18 .

Resident Magistrate  
[or Justice of the Peace] for the District of

*Form of Warrant of Apprehension without order of the Colonial Secretary.*

To the Field-cornets, Constables, Police Officers, and other Officers of the Law proper to the execution of Criminal Warrants.

Whereas it has been shown to the undersigned Resident Magistrate [or Justice of the Peace] for the district of that , late of , is accused [or convicted] of the

commission of the crime of \_\_\_\_\_ within the jurisdiction of \_\_\_\_\_ **Law 13, 1882.**  
 : This is, therefore, to command you, in Her Majesty's **Second**  
 name, forthwith to apprehend the said \_\_\_\_\_, and to bring him, **Schedule**  
 or cause him to be brought before the Resident Magistrate for the  
 district of \_\_\_\_\_, to be further dealt with according to law :  
 for which this shall be your warrant.

Given under my hand at \_\_\_\_\_ this \_\_\_\_\_ day of  
 18 \_\_\_\_\_ .

Resident Magistrate  
 [or Justice of the Peace] for the District of \_\_\_\_\_

*Form of Warrant of Committal.*

To the Gaoler of the \_\_\_\_\_ Gaol :  
 Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_ 188 \_\_\_\_\_ ,  
 late of \_\_\_\_\_, is brought before me \_\_\_\_\_, Resident  
 Magistrate for the district of \_\_\_\_\_, to show cause why he should  
 not be surrendered in pursuance of The Extradition Law, 1882, on the  
 ground of his being accused [or convicted] of the commission of the crime  
 of \_\_\_\_\_ within the jurisdiction of \_\_\_\_\_ and  
 forasmuch as no such sufficient cause has been shown to me why he should  
 not be surrendered in pursuance of the said Law :

This is therefore to command you the said Gaoler, to receive the  
 said \_\_\_\_\_ into your custody, and him there safely to keep  
 until he is thence delivered pursuant to the provisions of the said  
 Extradition Law, for which this shall be your warrant.

Given under my hand at \_\_\_\_\_ this \_\_\_\_\_ day of  
 18 \_\_\_\_\_ .

Resident Magistrate  
 for the District of \_\_\_\_\_

*Form of Warrant of the Governor for Surrender of Fugitive Criminal.*

Warrant.

By His Excellency, &c.

To the Superintendent [or keeper] of the \_\_\_\_\_ Gaol  
 and to \_\_\_\_\_ (a).

Whereas \_\_\_\_\_, late of \_\_\_\_\_, accused (a) *Insert*  
 [or convicted] of the commission of the crime of \_\_\_\_\_, State, was *name of person*  
 within the jurisdiction of the \_\_\_\_\_ State, was *authorised by*  
 delivered into the custody of you (b) the *the Foreign*  
 said Superintendent [or keeper] by warrant dated (c) *State to receive*  
 pursuant to the "Extradition Law, 1882" : *the criminal.*

Now, therefore, I the Governor aforesaid do hereby, *(b) Insert*  
 in pursuance of the said Law, order you, the said Superin- *name of gaoler.*  
 tendent [or keeper], to deliver the body of the said \_\_\_\_\_, and I *(c) Date of*  
 into the custody of the said (a) \_\_\_\_\_, and I *warrant of com-*  
 command you, the said (a) \_\_\_\_\_ to receive the *mittal.*  
 said \_\_\_\_\_ into your custody, and to carry him  
 within the jurisdiction of the said State, and there place  
 him in the custody of any person or persons appointed by  
 the said State to receive him : for which this shall be your  
 warrant.

Given under my hand and the Public Seal of the  
 Colony of Natal, at \_\_\_\_\_ this \_\_\_\_\_ day  
 of \_\_\_\_\_ 18 \_\_\_\_\_ .

Governor.

By command of His Excellency the Governor,  
 [Colonial Secretary.]

DD 2



Law 13, 1882.  
Third Schedule.

## THIRD SCHEDULE.

*Laws Repealed.*

- Law No. 6, 1871, "Law for facilitating the Apprehension of certain Offenders escaping to this Colony from any place within the Territories or Dominions of the Republic of the Orange Free State."
- Law No. 7, 1871, "Law for facilitating the Apprehension of certain Offenders escaping to this Colony from any place within the Territories or Dominions of the South African Republic."
- Law No. 14, 1881, "Law to amend and extend the provisions of Law No. 6, 1871, entitled 'Law for facilitating the Apprehension of certain Offenders escaping to this Colony from any place within the Territories or Dominions of the Orange Free State.'"

**Law No. 6, 1892.**

"To consolidate and amend the Laws relating to the Extradition of Criminals."

[29th June, 1892.]

WHEREAS it is expedient to consolidate and amend the Laws relating to the apprehension and surrender to the Orange Free State and the South African Republic of persons accused or convicted of the commission of certain crimes within the jurisdiction of the said States :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

Repeal of Laws.

## 1. The Laws—

- (a) No. 7, 1871, entitled "Law for facilitating the apprehension of certain Offenders escaping to this Colony from any place within the Territories or Dominions of the South African Republic," and
- (b) No. 3, 1890, entitled "Law to amend the Law relating to the Extradition of Criminals" shall be and the same are hereby repealed.

Short title.

## 2. This Law may be cited as "The Extradition Law, 1892."

Interpretation.

## 3. In this Law—

The term "extradition crime" (A) means a crime which, if committed in Natal or within the jurisdiction of any Court of Law in Natal, would be one of the crimes specified in the First Schedule of this Law.

The term "fugitive criminal" means any person accused or convicted of an extradition crime committed within the jurisdiction of the Orange Free State or the South African Republic who is in, or is suspected of being in, Natal.

Accessories.

4. Every person who is accused or convicted of having counselled, procured, commanded, aided, or abetted the commission of any extradition crime, or of being accessory before or after the fact to any extradition crime, shall be deemed for the purposes of this Law to be accused or convicted of having committed such crime, and shall be liable to be apprehended and surrendered accordingly.

(A) Although breaking out of prison is not an extraditable offence under this Act, extradition will not be refused for extraditable offences committed in the breaking out (*Regina v. Thompson*, 19 N.L.R. 2).

5. The Governor in Council may enter into an agreement or arrangement with the Government of the Orange Free State and with the Government of the South African Republic, or with either of the said Governments, with respect to the surrender to the respective States of fugitive criminals who are in, or suspected of being in, the Colony of Natal. Such agreement or arrangement shall provide for the surrender to the Colony of Natal of fugitive criminals who are in, or suspected of being in, the Orange Free State or the South African Republic, as the case may be. Such agreement or arrangement shall be in conformity with the provisions of this Law, and in particular with the restrictions on the surrender of fugitive criminals contained in this Law. Such arrangement shall provide for the determination of it by either party to it after the expiration of a notice not exceeding one year (A).

Law 6, 1892.

Agreement with Orange Free State or South African Republic for mutual surrender of fugitive criminals.

6. Any such agreement or arrangement shall be published in the "GOVERNMENT GAZETTE," and a copy thereof shall be laid before the Legislative Council of the Colony within six weeks after it is made, or if the Legislative Council be not then sitting, within six weeks of the then next meeting of the Legislative Council.

Publication, &c., of agreement.

7. The following restrictions shall be observed with respect to the surrender of fugitive criminals:—

Restrictions to be observed on surrender.

(1) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of a Magistrate, or the Court before whom he is brought, or to the Colonial Secretary, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

Political offences.

(2) A fugitive criminal shall not be surrendered unless provision is made in the agreement or arrangement provided for under this Law that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Natal or to some other part of Her Majesty's dominions, be detained or tried in the Orange Free State or the South African Republic, as the case may be, for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded.

Trial for offence other than extradition crime.

(3) A fugitive criminal who has been accused of some offence within the jurisdiction of any Court of Law in Natal, not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in Natal, shall not be surrendered (B) until after he has been discharged, whether by acquittal or on expiration of his sentence, or otherwise.

Fugitive criminals accused or convicted of crime committed in Natal.

(4) A fugitive criminal shall not, except on an application made by him or on his behalf, be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

Fifteen days to be allowed after committal.

8. Where in pursuance of any agreement or arrangement entered into under the provisions of this Law, any person accused or convicted of

Fugitive surrendered to Natal, how dealt with in regard to other than the extradition crime.

(A) See the Agreement with the South African Republic under this Law, published in the *Government Gazette* of 20th November, 1897.

(B) On an application for discharge of a prisoner charged with theft in this

Colony, the Court declined to impose a condition on the Attorney-General to withdraw such charge before the prisoner was surrendered (*Reg. v. Right*, 19 N.L.R. 21).

**Law 6, 1892.** any crime which, if committed in Natal, would be one of the crimes described in the First Schedule of this Law, is surrendered by the Orange Free State or the South African Republic, such person shall not, until he has been restored or had an opportunity of returning to such State, be triable or tried for any offence committed prior to the surrender in any place within the jurisdiction of any Court of Law in Natal other than such of the said crimes as may be proved by the facts on which the surrender is grounded.

Colonial Secretary may cause evidence to be taken for purposes of criminal causes pending in O.F.S. or S.A.R.

9. The Colonial Secretary may, by order under his hand and seal, require a Magistrate to take evidence for the purposes of any criminal matter pending in any court or tribunal in the Orange Free State or the South African Republic, and the Magistrate, upon the receipt of such order, shall take the evidence of every witness appearing before him for the purpose, in like manner, as if such witness appeared on a charge against some defendant for an indictable offence, and shall certify at the foot of the depositions so taken that such evidence was taken before him, and shall transmit the same to the Colonial Secretary; such evidence may be taken in the presence or absence of the person charged, if any, and the fact of such presence or absence shall be stated in such deposition. Any person may, after payment or tender to him of a reasonable sum for his costs and expenses in this behalf, be compelled, for the purposes of this section, to attend and give evidence and answer questions and produce documents, in like manner and subject to the like conditions as he may in the case of a charge preferred for an indictable offence. Every person who wilfully gives false evidence before a Magistrate under this section shall be guilty of perjury: Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

Date of taking effect of this Law as regards the various States.

10. The provisions of this Law shall take effect as regards the Orange Free State from the date of the publication as provided in Section 5 of an agreement or arrangement with the Government of the Orange Free State, and as regards the South African Republic, from the date of such publication of an agreement or arrangement with the Government of the South African Republic. From and after the date of the publication of any such agreement, but not until then, the Law No. 13, 1882, entitled "Law to amend the Law relating to the Extradition of Criminals," shall, as to the State to which the agreement or arrangement relates, be repealed.

Liability to surrender not affected by date of crime or by concurrent jurisdiction of Natal Courts.

11. Every fugitive criminal of the Orange Free State or the South African Republic who is in or suspected of being in Natal, shall be liable to be apprehended and surrendered in manner provided by this Law, whether the crime in respect of which the surrender is sought was committed before or after the date of the taking effect of this Law, and whether there is or is not any concurrent jurisdiction in any Court in Natal over that crime.

Requisition for surrender.

12. A requisition for the surrender of a fugitive criminal for whose apprehension a warrant has been issued in either of the said States, and who is in or is suspected of being in the Colony, shall be made on behalf of the Government of the State seeking extradition of such criminal to the Colonial Secretary of this Colony. Upon receipt of such requisition the said Colonial Secretary may by order under his hand signify to any Magistrate or Justice of the Peace that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal. If the Colonial Secretary is of opinion that the offence is one of a political character, he may, if he think fit, refuse to send any such order, and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody.

Warrant for apprehension on Colonial Secretary's order.

13. A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in or suspected of being in Natal, may be issued— **Law 6, 1892.**  
By whom warrant may be issued.

- (1) By a Magistrate or Justice of the Peace on receipt, or upon the publication in the "GOVERNMENT GAZETTE," of the said order of the Colonial Secretary, and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed, or the criminal convicted in this Colony; and
- (2) By a Magistrate or any Justice of the Peace on such information or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if a crime had been committed or the criminal convicted in this Colony.

Any person issuing a warrant under this section without an order from the Colonial Secretary, shall forthwith send to the latter a report of the fact of such issue, together with the evidence and information or complaint, or certified copies thereof; and the Colonial Secretary may, if he think fit, order the warrant to be cancelled, and the person who has been apprehended on the warrant to be discharged. **Report of apprehension without Colonial Secretary's order.**

14. Every warrant for the apprehension of any fugitive criminal shall command that he be brought before some Magistrate. Where the warrant has been issued without the order of the Colonial Secretary, the Magistrate shall order the discharge of the fugitive criminal unless, within such time as, having reference to the circumstances of the case, he may consider reasonable, the said Magistrate receives from the Colonial Secretary an order signifying that a requisition has been made for the surrender of such criminal. **Fugitive to be brought before a Magistrate.**  
**Discharge in default of Colonial Secretary's order.**

15. When a fugitive criminal is brought before the Magistrate, the said Magistrate shall hear the case in the same manner and have the same jurisdiction and powers as near as may be as if the prisoner were brought before him charged with an indictable offence committed in the Colony (A). The Magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character, or is not an extradition crime. **Proceedings before Magistrate.**

16. In the case of a fugitive criminal accused of the commission of an extradition crime, if the warrant of the State making the requisition is duly authenticated, and such evidence is produced as (subject to the provisions of this Law) would according to the Law of the Colony justify the committal for trial of the prisoner if the crime of which he is accused had been committed in the Colony, the Magistrate shall commit him to prison, but otherwise shall order him to be discharged. In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this Law) would according to the Law of the Colony prove that the prisoner was convicted of such crime, the Magistrate shall commit him to prison, but otherwise shall order him to be discharged. **Committal by Magistrate.**

17. If the fugitive criminal is committed to prison he shall be committed to the principal gaol of the Division, there to await the warrant of the Governor for his surrender. The Magistrate shall forthwith send a certificate of the committal to the Governor, with such report thereon as he may think fit. **Where to await surrender.**

(A) The non-production in open Court of documents alleged to have been forged, held not to be sufficient for an order for prisoner's discharge (*Reg. v. Cullen*, 19 N.L.R. 23).

Law 6, 1892.  
Magistrate to inform prisoner of his rights.

18. If the Magistrate commits a fugitive criminal to prison he shall inform such criminal that he will not, except on application made by him or on his behalf, be surrendered until after the expiration of fifteen days, and that he has a right to apply to the Supreme Court for an order directing his discharge (A). Upon the expiration of the said fifteen days, or after the decision of the Supreme Court upon any such application for the discharge of such fugitive criminal as the case may be, and upon production of the certificate of committal it shall be lawful for the Governor, by warrant under his hand and the public seal of the Colony, to order the fugitive criminal to be surrendered to such person as may in his opinion be duly authorised by the State from which the requisition for the surrender proceeded, to receive the fugitive criminal, and such fugitive criminal shall be surrendered accordingly. It shall be lawful for any person to whom such warrant is directed to receive, hold in custody, and convey the criminal mentioned in the warrant within the jurisdiction of the State to which he has been surrendered. The gaoler, or other chief officer of any gaol, on request of any person having the custody of a fugitive criminal under such warrant, and on payment or tender of a reasonable amount for expenses, shall receive such fugitive criminal and detain him for such reasonable time as may be requested by the said person for the purpose of the proper execution of the warrant. If the criminal escapes out of any custody to which he may be delivered on, or in pursuance of, such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the Laws of the Colony may be retaken upon an escape.

Governor's warrant for surrender.

Detention of prisoner in gaol for purposes of execution of warrant.

Escape.

Discharge on non-delivery within two months of committal.

19. Where any person who shall have been committed under this Law to remain until delivered up pursuant to requisition, shall not be delivered up pursuant thereto within two months after such committal, it shall in every case be lawful for the Supreme Court of this Colony, upon application by or on behalf of any person so committed, and after notice of the intention to make such application has been given to the Attorney-General, to order the person so committed to be discharged out of custody unless sufficient cause is shown to the contrary.

Admissibility of documents in evidence.

20. Depositions or statements on oath taken in either of the aforesaid States, whether taken in the presence of the fugitive criminal or not, and copies of such original depositions or statements, and certificates of or judicial documents stating the fact of conviction may, if duly authenticated, be received in evidence in proceedings under this Law.

Authentication of documents.

21. Warrants of the said States and depositions or statements on oath or affirmation, and copies thereof, and certificates of or judicial documents stating the fact of a conviction shall be deemed duly authenticated for the purposes of this Law, if authenticated in manner provided for the time being by law, or if authenticated as follows :—

- (1) If the warrant purports to be signed by a Judge, Magistrate, or other officer of the State where the same was issued, authorised by law to issue warrants ;
- (2) If the depositions or statements on oath or affirmation or the copies thereof, purport to be certified under the hand of a Judge, Magistrate, or officer of the State where the same were taken, to be the original depositions and statements, or to be true copies thereof, as the case may be ;

(A) An application under this sec. is permissible on the ground that the Magistrate had not sufficient evidence before him to warrant the committal (*Reg. v. Thompson*, 19 N.L.R. 2). As to

right of appeal from decision of the Court to the Privy Council, see *Reg. v. Right*, 19 N.L.R. 47, where leave was refused.

- (3) If the certificate of or judicial document stating the fact of conviction purports to be certified by a Judge, Magistrate, or officer of the State where the conviction took place ; and

Law 6, 1892.

if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of some officer of the Government of the State from which the requisition for surrender proceeded ; and all Courts of Justice and Magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

22. The forms set forth in the Second Schedule to this Law, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and when used shall be deemed to be valid and sufficient in law.

Forms.

## FIRST SCHEDULE.

First schedule.

Abduction.

Abortion.

Arson.

Indecent assault on the person of a girl under the age of twelve years.

Assault with intent to do grievous bodily harm.

Bigamy.

Child stealing.

Culpable homicide.

Coining, or uttering counterfeit or altered coin.

Desertion from Her Majesty's Forces, or from any military, volunteer, or police force.

Falsity. Forgery or uttering a forged document.

Fraud.

Offences under any Law relating to the dealing in Gunpowder or Firearms.

Housebreaking (including the breaking into any office, store, or hut), with intent to commit any crime.

Incest.

Fraudulent insolvency. Crimes by insolvents against the Insolvency Laws.

Malicious injury to property.

Murder, including assassination, parricide, infanticide, and poisoning.

Attempt to murder. Conspiracy to murder.

Perjury or subornation of perjury.

Public violence.

Rape and assault with intent to commit rape.

Any act done with intent to do injury to person or property on any Railway.

Robbery.

Theft, including theft by means of false pretences, and theft by means of embezzlement.

## SECOND SCHEDULE.

Second schedule.

*Form of Order for Issue of Warrant of Apprehension.*

To the Magistrate [or \_\_\_\_\_, Esquire, Justice of the Peace] for the Division of \_\_\_\_\_

Whereas a requisition has been made to the Government of the Colony of Natal by the Government of the \_\_\_\_\_ for the surrender of \_\_\_\_\_, late of \_\_\_\_\_, accused [or convicted] of the commission of the crime of \_\_\_\_\_ within the jurisdiction of the said \_\_\_\_\_ : Now I hereby, by this my order, signify to you that



forasmuch as no such sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Law :

Law 6, 1892.  
Second  
schedule.

This is therefore to command you the said Gaoler, to receive the said \_\_\_\_\_ into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Extradition Law, for which this shall be your warrant.

Given under my hand at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 189 \_\_\_\_\_.

Magistrate for the Division of \_\_\_\_\_

*Form of Warrant of the Governor for Surrender of Fugitive Criminal.*

Warrant.

By His Excellency, &c.

To the Gaoler of the \_\_\_\_\_ Gaol and to \_\_\_\_\_ (a) *(a) Insert name of person authorised by the Foreign State to receive the criminal.*  
Whereas \_\_\_\_\_, late of \_\_\_\_\_, accused \_\_\_\_\_, was \_\_\_\_\_ the \_\_\_\_\_  
[or convicted] of the commission of the crime of \_\_\_\_\_, was \_\_\_\_\_ the \_\_\_\_\_  
delivered into the custody of you (b) \_\_\_\_\_ pursuant \_\_\_\_\_  
said Gaoler by warrant dated (c) \_\_\_\_\_ *(b) Insert name of gaoler.*  
to the "Extradition Law, 1892" : *(c) Date of warrant of committal.*

Now, therefore, I the Governor aforesaid do hereby, in pursuance of the said Law, order you, the said Gaoler, to deliver the body of the said \_\_\_\_\_ into the custody of the said (a) \_\_\_\_\_, and I command you, the said (a) \_\_\_\_\_ to receive the said \_\_\_\_\_ into your custody, and to carry him within the jurisdiction of the said \_\_\_\_\_, and there place him in the custody of any person or persons appointed by the said \_\_\_\_\_ to receive him : for which this shall be your warrant.

Given under my hand and the Public Seal of the Colony of Natal, at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 189 \_\_\_\_\_.

Governor.

By command of His Excellency the Governor,

Colonial Secretary.

**Act No. 3, 1895.**

"To authorise in certain cases the temporary detention in and conveyance through Natal of Criminals surrendered by one Foreign State to another."

[1st July, 1895.]

WHEREAS it is expedient to authorise in certain cases the temporary detention in and conveyance through this Colony of persons accused or convicted of an extradition crime committed within the jurisdiction of a Foreign State, and who may be surrendered or about to be surrendered by one Foreign State to another :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. This Act may be cited as the Extradition Act, 1895.

Short title.



**Act 3, 1895.**

Application of  
Laws.

2. This Act shall apply only to such criminals and crimes as are extraditable under any Extradition Treaty in force for the time being between Great Britain and Germany.

Application for  
permission for  
transfer of a  
criminal  
through Natal.

3. A requisition for the Governor's permission for the transfer through and from this Colony of any criminal, whether accused or convicted of any crime to which this Act applies, and for whose extradition a warrant has been issued in a Colony, State, or Territory in South Africa, shall be made on behalf of the Government of such Colony, State, or Territory to the Colonial Secretary of this Colony; and the Governor may, on production of an order or other judicial document showing that the extradition sought is for a crime to which this Act applies, and that such extradition has been granted by or applied for to the Colony, State, or Territory from whence such criminal is to be taken, grant such permission under the hand of the said Colonial Secretary: Provided that no such permission shall take effect until such extradition has been actually granted by the Government of such last mentioned Colony, State or Territory.

Custody and  
conveyance of  
a criminal  
whose transfer  
is authorised.

4. It shall be lawful for the person charged with the custody of any criminal, whose transfer through and from this Colony is authorised under this Act, to hold in custody and convey such criminal through and from this Colony pursuant to the Governor's permission as hereinbefore provided; and the gaoler or other chief officer of any gaol in this Colony, on request of any person having the custody of a criminal so being transferred through this Colony, and on payment or tender of a reasonable amount for expenses, shall receive such criminal and detain him for such reasonable time as may be requested by the said person for the purpose of the transfer of such criminal through and from this Colony under the provisions of this Act.

Escaping criminal  
may be re-  
taken.

5. If a criminal, whilst being transferred from one State to another through this Colony, pursuant to the provisions of this Act, escapes out of any custody to which he may be delivered, it shall be lawful to retake him in the same manner as any person accused of any crime against the Laws of the Colony may be retaken.

Orders and  
rules.

6. The Governor in Council may make orders, rules, and regulations for the purposes of this Act, and revoke or vary any order, rule or regulation so made, and every order, rule, and regulation so made shall, while in force, have the same effect as if enacted in this Act.

Publication, &c.,  
of orders and  
rules.

7. All orders, rules, and regulations made under the foregoing section shall be published in the "NATAL GOVERNMENT GAZETTE," and shall be laid before the Legislative Council and Legislative Assembly as soon as may be after they are made.

Act may in cer-  
tain cases be  
applied to  
other countries.

8. Whenever the Governor shall, by Proclamation in the "NATAL GOVERNMENT GAZETTE," declare that a treaty exists between Great Britain and any foreign country for the mutual extradition of fugitive criminals [and that such treaty contains reciprocal provisions similar to the provisions of this Act (A)], this Act shall apply in respect of such foreign country as if such foreign country were named in the second section of this Act as Germany is therein named.

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(A) Words in brackets are deleted by Act 4, 1896, post, which substitutes others.

**Act No. 4, 1896.**

“To amend the Extradition Act, 1895.”

[23rd May, 1896.]

WHEREAS it is expedient to amend the Extradition Act, 1895 :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. Section 8 of the “Extradition Act, 1895,” is hereby amended by deleting the following words, that is to say:—

Amendment of  
sec. 8, Act, 3,  
1895.

“And that such treaty contains reciprocal provisions similar to the provisions of this Act,”

and by substituting, in place thereof, the words following, that is to say:—

“And that it is intended to apply this Act in the case of such foreign country.”

## FACTION FIGHTING.

[See "NATIVES."]

## FAKU (TERRITORY OF).

## Law No. 14, 1865.

"To declare that the Laws of Natal shall take effect in the newly annexed Territory ceded by Faku."

[24th August, 1865.]

WHEREAS by certain Letters Patent, bearing date the Ninth day of December, One Thousand Eight Hundred and Sixty-three, it was declared that from and after a day to be named by the officer administering the Government of the Colony of Natal, in any proclamation to be by him issued within the said Colony, the territories bounded as follows, that is to say:—

Boundaries of Faku's territory annexed to Colony.

On the north-east by the Umzimkulu River, from the mouth of the said river to its junction with the Ibisi.

On the north and north-west by a line drawn from the said junction to the nearest point of the ridge, or watershed, dividing the waters of the Ibisi from those of the Umzimkulwana, thence along the said ridge to the Ingele Range, thence along the Ingele Range, keeping the watershed, to a large beacon (recently erected by the Surveyor-General of the said Colony of Natal, and Sir Walter Currie), at the western extremity of the said range, and thence straight to the nearest source of the Umtafuna.

On the south-west by the Umtafuna River, from the said source thereof, to the Sea; and on the south-east by the Sea, from the mouth of the Umtafuna to that of the Umzimkulu River, should, for all purposes whatever be annexed to, and form part of, the Colony of Natal:

AND WHEREAS it is expedient that, on the annexation of the said Territories to the Colony of Natal, the Laws of the said Colony should take effect and be in force therein:

BE IT ENACTED by the Lieutenant-Governor of the Colony of Natal, by and with the advice and consent of the Legislative Council thereof, as follows:—

Laws of Colony to take effect in territory.

1. All Laws which shall be deemed in force in this Colony on the day on which the aforesaid territory shall be annexed thereto, shall immediately, upon such annexation, take effect and be in force in the said territory.

Commencement

2. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A).

## FALCIDIAN PORTION.

[See "WILLS."]

(A) Aug. 29, 1865.

*Rep. by act-14/1912 sec. 1*

FENCES.

Law No. 30, 1887. (A) *Act-53/06.*  
*Act 53/1902*

"To Regulate the Erection and Maintenance of Dividing Fences."

[14th March, 1887.]

WHEREAS it is expedient that the erection and maintenance of Dividing Fences between adjoining properties should be regulated :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Law may be cited as "The Fencing Law, 1887," and shall come into force from and on the day of the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A)

Short title and commencement.

2. The provisions of this Law shall be in operation in such Magisterial Divisions as the Governor shall by Proclamation prescribe

Operation of Law.

3. In case any fifteen owners of land, each holding different farms, resident in any Magisterial Division, shall request the Resident Magistrate of the Magisterial Division to convene a public meeting of the owners of land in the said Magisterial Division to be held at the seat of Magistracy, and at a time and place stated in such request, such Resident Magistrate shall convene such meeting to decide whether such Magisterial Division shall be brought under the provisions of this Law.

On request of fifteen land-owners, Magistrate shall convene meeting to decide whether Division shall be brought under this Law.

4. The notice convening such meeting shall be published by the Resident Magistrate for a period of at least fourteen days in the "GOVERNMENT GAZETTE," and in one local newspaper, and on the Notice Board at the seat of Magistracy, and a copy of such notice shall be posted by the Resident Magistrate addressed to every person on the Electoral Roll in respect of any holding of land situated in the same Magisterial Division.

Notice convening meeting.

*Repealed*

5. The Resident Magistrate shall preside at such meeting.

Magistrate presides.

6. No person shall be allowed to vote at such meeting unless he is upon the electoral roll for that Magisterial Division proclaimed and defined under Ordinance No. 4, 1852 (B), and in respect of some holding of land situated in the said Magisterial Division. If at such meeting there shall be twenty such electors present and entitled to vote thereat, and a majority consisting of two-thirds of such electors shall sign a resolution in favour of bringing such Magisterial Division under the operation of this Law, the Governor may in his discretion prescribe that the provisions of this Law shall be in operation in such Magisterial Division: Provided always, that at any such meeting as aforesaid a resolution for bringing such Magisterial Division under the operation of this Law shall not be carried, it shall not be lawful for the Resident Magistrate of that Division to convene a meeting to bring this Law into operation until twelve months after the date of such refusal as aforesaid.

Qualification to vote.

Quorum and requisite majority.

Subsequent meetings.

7. In this Law, if not inconsistent with the context, "To repair" includes to trim, keep, and maintain any fence or ditch, or part thereof; "Alienate" and "Alienation," respectively, include a limited disposal by lease or licence, as well as an absolute disposal by sale or otherwise; "Owner" includes a registered proprietor, or a lessee for any term, or a trustee holding a property in trust (c); "Occupier" includes any person who is in the actual occupation of or entitled as owner to occupy any

Interpretation.

(A) March 15, 1887.

(c) The meaning of "owner" is extended by Act 29, 1894, s. 3, post.

(B) See tit. "COUNTIES (DIVISION OF)."

Law 30, 1887. land alienated from the Crown, and all persons being selectors of lands on deferred payments (A); "Dividing Fence" means a fence separating the lands of different occupiers; "Crown Lands" includes all lands of whatever description not alienated by the Crown under grant, lease, or by conditional purchase; "Native Location" means all lands conveyed to or vested in any Corporation or person or persons in public trust for natives; "Notice" means a notice in writing or in print, or partly in writing and partly in print, and may be served upon any person either personally or by leaving the same with some adult inmate at his usual residence or place of business, or if such person or occupier shall be absent from the Colony, then by delivering the same to or leaving the same at the residence of his known agent in the same manner. If there shall be no such agent resident in the Colony, or if such first mentioned person is not known or cannot be found, or any land is unoccupied, then it shall be sufficient to insert such notice at least three times during three months in some newspaper circulating in the district.

What is a sufficient fence within meaning of this Law.

8. It shall be lawful for any owner or occupier of land to erect a fence of any of the kinds mentioned and described in Schedule A of this Law, and any such fence shall be deemed a sufficient fence within the meaning of this Law.

Owner who has erected fence prior to passing of Law may recover half value thereof from adjoining owner.

9. It shall be lawful for the owner of any land who shall before the passing of this Law have erected a fence dividing such land from land adjoining thereto, his heirs and assigns, to demand and recover of and from the owner or occupier of such adjoining land half the then value of such dividing fence: Provided always, that such fence in all other respects shall have been erected as near as may be according to the provisions of this Law.

Occupiers of adjoining lands liable to join in equal proportions in construction of dividing fence.

10. The occupiers of adjoining lands not divided by a sufficient fence shall be liable to join in or contribute to the construction of a dividing fence between such lands in equal proportions, and notwithstanding that such dividing fence shall not extend along the whole boundary line; but no occupier shall be liable to contribute to any fence which is not, as far as practicable, continuous throughout its length.

Person desiring to compel contribution must give notice.

11. Any person desiring to compel any other person to contribute to the construction of a dividing fence under the provisions of this Law may serve on such person a notice to fence, which shall be in the form laid down in Schedule B hereto annexed, and shall specify the boundary to be fenced, and shall contain a proposal for fencing the same, and shall specify the kind of fence proposed to be constructed. If any person shall erect any fence without giving notice as aforesaid, the occupier or the owner, as the case may be, of such adjoining land shall not be liable to pay any portion of the value of such fence.

Objections to proposed fence, how determined.

12. If any person upon whom a notice to fence is served shall object to the kind of fence specified in such notice, and shall desire to erect a sufficient fence of a different kind, he may, if resident in the Colony, within 28 days, and if absent from the Colony, within three months, of receiving such notice, signify such objection and desire in writing to the giver thereof; and thereupon (unless the parties can agree upon the kind of fence which shall be erected) the question of the description of fence which shall be erected and the cost thereof shall be determined by a Resident Magistrate in the manner provided by Section Thirty-four of this Law.

Provision in case of occupiers serving each other with notice to erect different kinds of fence.

13. If the occupiers of adjoining lands shall have served each other with notices to fence, and in such notices the descriptions of the kind of fence which the respective givers thereof desire to be erected shall vary,

(A) See also sec. 46, post.

then (unless the parties can agree upon the kind of fence to be erected) the question of the kind of fence which shall be erected and the cost thereof shall be determined by a Resident Magistrate in the manner provided by the Thirty-fourth Section of this Law.

Law 30, 1887.

14. If within four months when the land to be fenced is open land, and within six months when the land is covered with standing bush, after the service of a notice to fence, the giver and receiver thereof do not enter into an agreement as to the nature of the fence to be made and the cost thereof, and the mode and time of making the same, and if the receiver thereof shall not serve on the giver thereof an objection in manner provided by Section Seven of this Law to the kind of fence specified, then the person giving notice to fence may proceed to erect a fence sufficient within the meaning of this Law.

If within certain time giver and receiver of notice cannot agree, the giver may proceed to erect fence.

15. If either party shall neglect or fail for the space of four months to perform his part of any such agreement which may be so made, the other party may thereupon, or at any time within six months thereafter, make a fence of the kind or description so agreed upon, and may immediately thereupon, or at any time thereafter, recover from the defaulting party one-half of the actual costs of making such fence.

If either party fail for four months to perform his part of the agreement the other may within certain time erect fence and recover half cost.

16. The occupier of the adjoining land to whom a notice to fence shall have been given, or when such half cost has not been previously paid, any person who during the continuance of a dividing fence shall go into occupation of such adjoining land, shall be liable for and shall pay to the person who constructed the fence, or his assigns, one-half of the original value of such dividing fence within one month after a demand made upon him for the purpose by due notice.

Receiver of notice or incoming occupier liable for one-half the value of fence, within one month after demand.

17. If any person shall desire to put up a dividing fence of a description different from any fence mentioned in Schedule A, he shall give the required notice as hereinbefore provided to the parties whom he wishes to join in the making of such fence; and if the said parties shall not within two months of the delivery of the aforesaid notice object in writing to the erection of such fence, then such person first mentioned may proceed to erect such fence accordingly, and such fence shall be deemed to be a sufficient fence under this Law. Such person shall be entitled to recover from the occupiers of the adjoining lands a contribution towards the cost of erecting such fence, not exceeding in amount the maximum price allowed by this Law as the half cost of erecting a sufficient fence hereunder.

Provision in case of person desiring to erect a fence different from that mentioned in Sched. A.

18. The maximum price to be paid in respect of one-half of the actual cost of erecting any sufficient fence shall not exceed twelve (A) shillings per chain, except in cases of special agreement, exclusive of any extra cost for clearing bush along the line of such fence: Provided always, that no greater sum shall be charged for the erection of any fence than the absolute half of the cost of such fence.

Maximum price of half cost of fence in absence of agreement.

Saving.

19. Where any fence is required to be erected on land covered with standing bush, and the required notices as hereinbefore provided have been given, the person erecting such fence shall be entitled to clear the bush for a width not exceeding six feet on each side along the entire length of such fence, and may fell any tree standing in the immediate line of any such fence; and the cost of such clearing shall be added to the cost of the erection of such fence and be apportioned accordingly.

Clearing bush.

20. When a river, creek, natural watercourse, or rocky or impracticable land forms the boundary of contiguous lands, the occupiers of such contiguous lands may agree upon a line of fence on either side of such river, creek, or natural watercourse, and in the event of their not making

When a river or creek, &c., forms the boundary, a line of fence may be agreed upon on either side thereof, dispute to be settled by Magistrate.

(A) The word "six" is substituted for "twelve" by Law 36, 1887, post.

**Law 30, 1887.** any such agreement, either party may apply to the Resident Magistrate of the district, who may appoint one or more persons to inspect the proposed line of fencing, and who shall determine whether any fence is necessary, and decide the line of fence to be erected, and whether any and what compensation in the shape of annual payment shall be paid to either of the parties occupying such contiguous lands in consideration of loss of occupation of land. 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 Law.

Ditch-and-bank fences, how to be made.

21. The occupier of any land may, in making a ditch-and-bank fence dividing his land from the land thereto adjoining, make a ditch in such adjoining land (Crown Lands inclusive) and use the soil taken therefrom towards the making of a bank, or he may make the ditch on his own land, and place the bank on such adjoining land; but no ditch or bank shall be made upon any such adjoining land in any case where a hedge of roses, Mauritius thorn, or other live hedge may have been planted and kept in good thriving condition thereon, so as to disturb or injure such hedge, without the consent of the occupier of such land first obtained. Where a dividing fence is made of posts and rails, or wire, or of stone, the posts or stones of such fence shall, as near as may be, be placed on the boundary line.

Other fences.

Person availing himself of fence erected along a road, liable to certain contributions in respect thereof.

22. If the occupier of any land bounded by a road shall have erected a fence on the common boundary of his land and such road, 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, such person shall be liable to pay to the person who erected such fence, or to the occupier of the land whereon such fence is erected, interest on half the then value of such fence at the rate of five per centum per annum for so long as he shall continue to avail himself of such fence, and shall also, as long as aforesaid, be further liable for half the cost of the repairs of such fence.

No roses or Mauritius thorn to be planted alongside boundary line or fence, without consent of adjoining occupiers.

23. No person shall plant any roses, or any Mauritius thorn, upon or alongside any boundary line or dividing fence without the consent of the occupiers of the adjoining lands; and every person who shall contravene this section shall be liable, for every such offence, to a penalty not exceeding Twenty Pounds, and the occupier of the adjoining land as aforesaid shall be entitled to take up and destroy such roses or Mauritius thorn, and to recover in any Court of competent jurisdiction the cost of such work from the person who shall have so contravened the provisions of this section.

Occupier desiring to plant live fence along a road may, with consent of Government, erect a temporary fence.

24. If the occupier of any land bounded by a road desire to plant a live fence on the common boundary of his land and such road; and for that purpose to construct a fence upon such road until such live fence shall have grown up, he may at any time, with the consent of the Government, on conditions to be prescribed by it, proceed to construct a fence on such road so that no part of such fence be more than five feet distant from the nearest point on the boundary of his land; and if such occupier forthwith after the construction of such fence proceed to plant a live fence on the boundary of his land and such road, constantly with all proper diligence, keeping, maintaining, and protecting from injury such live fence, he may maintain on such road the fence so constructed for such time not exceeding six years, or such longer time as the Government may in writing allow, until such live fence becomes a sufficient fence within the meaning of this Law.

Repairs of dividing fences.

25. When any dividing fence or part thereof 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.

26. 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 or part thereof, and if such occupier shall refuse or neglect for the space of one week after the service of such notice to assist in repairing such fence, such first-mentioned occupier may repair such fence, and demand and recover of and from such other occupier half the cost of repairing the same.

**Law 30, 1887.**  
Rights of occupier as against adjoining occupier with regard to cost of repairs.

27. If any dividing fence or any portion thereof is destroyed by accident, the occupier of land on either side may immediately repair the same without any notice, and shall be entitled to recover half the expense of so doing from the occupier of the adjoining land.

Repairs after accidents.

28. In case any dividing fence is destroyed by fire, or by the falling of any tree or trees, or damaged by any cattle, the occupier through whose neglect (if any) such fire shall have originated or have caused injury to the fence, or such tree or trees shall have fallen, or by whose stock such fence shall have been damaged, shall be the party bound to repair the entire of the fence so damaged as aforesaid.

Liability in case of damage by fire, falling trees, or cattle.

29. Nothing herein contained 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.

Damage by negligent use of fire.

30. In any case where a person shall elect or be liable to pay interest on the half cost of a dividing fence, the person entitled to such interest shall have the same remedy for the recovery thereof as he would have for the recovery of the half-cost of such fence.

Remedy for recovery of interest on half cost of fence.

31. The owner of land who shall have made, or who shall hereafter make, a fence dividing such land from adjoining unalienated land of the Crown, may demand and recover from the owner or occupier of such Crown Land when alienated, within a period of six months after such alienation, half the then value of the said dividing fence.

Provision in case of fence dividing land from Crown Land.

32. All moneys recoverable under this Law 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 from any person who may come in and defend under the provisions of this Law any proceedings consequent on such notice, or the service of such order or award. And all such moneys recoverable under this Law by any person served with any notice to fence or repair, may be recovered from the person serving the same or from any person liable to contribute to the construction or repair of such fence (A).

Recovery of monies under this Law.

33. Any proceedings before any Resident Magistrate upon or in respect of any of the matters in the last preceding section, or of any combination or modification thereof, shall and may be taken and conducted, and any order may be enforced and acted upon, in like manner as the proceedings and orders of such Courts are taken, conducted, and enforced by such Court under the rules and Laws for the time being in force in the Colony relating to such Courts.

Proceedings in Court.

34. Any Resident Magistrate may hear and determine all matters or questions arising between owners or occupiers of property liable to the provisions of this Law, notwithstanding that the decision of any such

Special jurisdiction granted to Magistrates.

(A) Judgment cannot be given declaring defendant's land executable;

execution must proceed in the usual course (*Marwick v. Babbs*, 17 N.L.R. 162).



Law 30, 1887. matter or question shall be beyond the ordinary jurisdiction of such Resident Magistrate, in so far as relates to—

- (a) Hearing and taking evidence, and making any order as to the erection or repair or removal of dividing fences if not erected on the proper boundary between adjoining lands :
- (b) Deciding upon the description or kind of fence to be erected or maintained, or that in the opinion of the Court ought to be erected or maintained, in accordance with this Law :
- (c) Determining the date, time, and manner in which such fence should be erected, and by whom it should be erected or repaired :
- (d) Determining the expense of erecting or repairing any such fence, and the proportion of such expense to be borne and paid by any person :
- (e) Awarding that the costs incident to such hearing and determination shall be borne by the party against whom the decision shall be given, or shall be divided between the parties.

Special agreements relative to fencing not affected.

35. Nothing in this Law 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, or between any other persons whomsoever.

Right of entry upon land for purposes of fencing.

36. Any person constructing or repairing a fence under this Law, his agents and servants may, if there be no available access thereto over their own land, with or without horses, cattle, wagons, carts, or carriages, at all reasonable times during such construction or repairing, enter upon any portion of the contiguous land and do thereon such acts, matters, and things as are necessary or reasonably required to carry into effect the construction or repairing of such fence : Provided always that nothing herein contained shall authorise the entry, for the purpose aforesaid, upon any land in crop or upon any garden, orchard, plantation, shrubbery, or pleasure ground without the consent of the owner thereof, or shall authorise any person to cut down, lop, or injure any fruit, exotic, or other tree or shrub without the special sanction of the aforesaid owner, save as is otherwise provided for in this Law.

Reservations.

Compensation for wilful contravention of provisions of sec. 36.

37. Every owner or occupier of any land who shall incur or suffer any loss or damage by any act or thing done by any person wilfully acting contrary to the provisions of the last foregoing section shall be entitled to compensation for the same.

Procedure for recovery of compensation.

38. Upon the application of any person claiming such compensation as aforesaid, any Resident Magistrate may summon the person complained of to appear before him, at a time and place to be named in the summons, and upon the appearance of the parties, or in the absence of either of them upon proof of the service of the summons, the said Resident Magistrate shall hear the question and determine the amount of compensation, if any, and for that purpose may examine the said parties or either of them and their witnesses upon oath ; and the costs of every such enquiry shall be at the discretion of the said Resident Magistrate, and he shall settle the amount thereof. Every sum awarded by way of compensation or of costs shall be recoverable in the usual manner.

Monies due under this Law to be a first charge on land.

39. All moneys due to any person for erecting a dividing fence under the provisions of this Law shall be, and are hereby declared to be, a first charge on the land in respect of which the same shall be payable, and all such moneys shall be a first charge and shall take priority of all charges and incumbrances whatsoever and whensoever made upon and over the immovable property in respect of which such moneys are payable.

40. Any person may come in and defend any proceeding under this Law 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.

Law 30, 1887.  
Intervention in suits.

41. This Law shall not apply to any unalienated Crown Lands or to any Native Locations, nor shall the Crown, the Governor, nor the Natal Native Trust (A), nor the administration, management, or control of the Crown Lands be liable under the authority of this Law to make any contribution towards the construction or repairing of any dividing fence between the land of any occupier and any Crown Lands or Native Location (B). Municipal Corporations shall not be liable to contribute to the cost of any dividing fence which may be erected within the boundaries of the Corporation Lands.

Lands to which this Law is not to apply.

42. The provisions of this Law shall apply to all persons being selectors of land on deferred payments, as if such persons held the land so selected under grants, and the said persons shall be liable in respect of the fencing of such land in the same manner as owners of lands under grants from the Crown.

Selectors of land on deferred payments.

43. If any person shall be called upon under this Law to join in or contribute to the construction of any dividing fence, and such person shall be unable or unwilling (C), 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 be 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 the interest thereon, at the rate of five (D) 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 paid off in a period of fifteen years from the date when he shall have given such notice as aforesaid, as more particularly shown in Schedule C hereto (E): Provided that, notwithstanding such notice, and the payment of any instalment as aforesaid it shall be lawful for 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 Schedule D (F).

Payment of amount of contribution may, on certain conditions, be made by instalments.

44. No person shall be allowed to erect any fence over any public or main road: Provided, however, that nothing herein contained shall prevent any owner or occupier from availing himself of the powers of fencing in manner and form as provided for in Clause 17 of Law No. 17, 1883 (G).

Public roads.  
*Repealed*  
*Act 9, 1902 Sec. 1*

45. Nothing in this Law contained shall in any way interfere with, abrogate, or diminish the servitude of outspan imposed by Law or reservation or otherwise upon grants of lands in Natal.

Outspan.

46. The word occupier shall not include tenants occupying under a grazing or agricultural lease directly from the Crown, nor tenants holding from year to year, nor Native tenants.

Certain persons not included in term "occupier."

47. In every case where the occupier is tenant under a written lease the owner shall be primarily liable for a moiety of the cost of the construction of a fence under the provisions and in terms of this Law, and the

Apportionment of cost of fence as between landlord and tenant.

(A) References in this sec. to the Natal Native Trust or to Native Locations are to be deemed to be omitted (Act 29, 1894, s. 1, post).

(B) See Act 12, 1897, post.

(C) The words "or unwilling" are expunged by Law 23, 1889, s. 1, post.

(D) The word "eight" is substituted for "five" by Law 23, 1889, s. 2, post.

(E) See Law 23, 1889, s. 3, post.

(F) See note (E), supra.

(G) Repealed by Law 36, 1888, tit. "ROAD BOARDS."

Law 30, 1887. tenant shall be liable during every year he may occupy his farm under the said lease to pay the said owner a fourth part of the annual instalment payable in respect of the construction of any such fence.

## SCHEDULE A.

*Description of Sufficient Fence*

Schedule A.

1. A substantial wire fence, having not less than six wires tightly stretched, with posts of durable wood or iron, well and substantially erected, the posts or standards to be not more than ten feet apart, top wire not to be less than three feet nine inches from the surface of the ground; and the wires not to be lighter than No. 8 in iron or No. 10 in steel. The space between each of the two bottom wires, or the bottom wire and the ground, not to exceed six inches.

2. A substantial wire fence, having not less than six wires, tightly stretched, with posts of durable wood or iron, well and substantially erected, the posts or standards not to be more than sixty feet apart, top wire not to be less than three feet nine inches from the ground, with two or more barbed wires and four plain wires, not to be lighter than No. 10 in steel or No. 8 in iron, and with lacings of wire (not lighter than No. 12), such lacings not to be more than six feet apart.

3. A stone wall not less than three feet six inches in height, exclusive of the coping, and not less than two feet six inches in width at base.

4. A bank or wall of substantial materials, at the least four feet six inches in height, of which the slope is not more than one foot from the perpendicular.

5. A close and sufficient live fence, at least four feet in height, proof against cattle; such fence to be kept properly trimmed.

6. A combination of the above kind of fences, at least four feet in height.

7. Any other description of fence mutually agreed upon by the persons interested.

8. A fence made in any other way equal in efficiency to any of the above-mentioned fences.

## SCHEDULE B.

*Notice to make Fence.*

Schedule B.

To \_\_\_\_\_, occupier [or owner, or lessee, or agent, as the case may be], of \_\_\_\_\_ [describing adjoining land].

Take notice that I desire that a boundary or dividing fence between [describing the lands] be made immediately (on or before the day of \_\_\_\_\_, 18\_\_\_\_), and that such fence shall be a [describe the fence].

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
A. B.,

Occupier [or owner, or lessee, or agent], of, &c.

## SCHEDULE C.

[Repealed by Law 23, 1889.]

## SCHEDULE D.

[Repealed by Law 23, 1889.]

**Law No. 36, 1887,**

“To amend the Fencing Law, 1887.”

[1st August, 1887.]

WHEREAS it is expedient to amend the provisions of Section 18 of the Law No. 30, 1887, entitled Law “To regulate the Erection and Maintenance of Dividing Fences”:

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. In reading and construing Section 18 of “The Fencing Law, 1887,” the words “Six Shillings” shall be substituted for the words “Twelve Shillings,” now printed therein, and the said Section 18 shall be and the same is amended accordingly.

Amendment of sec. 18, Law 30, 1887.

**Law No. 23, 1889.**

“To amend the Fencing Law, 1887.”

[14th August, 1889.]

WHEREAS it is expedient to limit the operation of the 43rd Section of Law No. 30, 1887, to persons unable to pay immediately a moiety of the expense of erecting dividing fences:

BE IT THEREFORE ENACTED by the Administrator of the Government of Natal, with the advice and consent of the Legislative Council thereof as follows:—

1. The words “or unwilling,” occurring in the 43rd Section of the Fencing Law, 1887, shall be, and the same are hereby expunged.

2. The words “five per centum,” occurring in said Section of said Law, shall be, and the same are hereby expunged, and the words “eight per centum” inserted and substituted in lieu thereof.

3. The Schedules C and D annexed to the said Fencing Law shall be, and the same are hereby repealed, and in lieu thereof there shall be substituted and enacted the Schedules C and D to this Law annexed.

Amendment of sec. 43, Law 30, 1887.

Further amendment.

Schedules C and D of Law 30, 1887, repealed.

SCHEDULE C.

Schedule C.

Table of Equal Instalments payable at the end of each year for Fifteen Years, corresponding to amounts payable under Section 3 of this Law:—

Amounts payable.

Equal Instalments Payable at the end of each year for 15 years.

£	s.	d.
1	0	2 4
2	0	4 8
3	0	7 0
4	0	9 4
5	0	11 8
6	0	14 0
7	0	16 4
8	0	18 8
9	1	1 0
10	1	3 4
20	2	6 9
30	3	10 1
40	4	13 6

*Repealed by act 17/1912 sec. 1*

Law 23, 1889.  
Schedule C.

Amounts payable.

Equal instalments  
payable at the end of  
each year for 15 years.

£						£	s.	d.
50	...	...	...	...	...	5	16	10
60	...	...	...	...	...	7	0	2
70	...	...	...	...	...	8	3	7
80	...	...	...	...	...	9	6	11
90	...	...	...	...	...	10	10	3
100	...	...	...	...	...	11	13	8
200	...	...	...	...	...	23	7	4
300	...	...	...	...	...	35	1	0
400	...	...	...	...	...	46	14	8
500	...	...	...	...	...	58	8	4
600	...	...	...	...	...	70	2	0
700	...	...	...	...	...	81	15	8
800	...	...	...	...	...	93	9	4
900	...	...	...	...	...	105	3	0
1,000	...	...	...	...	...	116	16	8
2,000	...	...	...	...	...	233	13	4
3,000	...	...	...	...	...	350	10	0
4,000	...	...	...	...	...	467	6	8
5,000	...	...	...	...	...	584	3	4

NOTE.—Yearly instalments for any sum not mentioned in these columns, such as £2,345 may be obtained as follows:—

	£	s.	d.
£2,000 gives	233	13	4
300 „	35	1	0
40 „	4	13	6
5 „	0	11	8
Therefore £2,345 gives	£273	19	6

Schedule D.

SCHEDULE D.

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 of £100 each.	Aggregate Value.
	£ s. d.
1	100 0 0
2	192 11 10
3	278 6 6
4	357 14 2
5	431 4 3
6	499 5 5
7	562 5 9
8	620 12 9
9	674 13 3
10	724 13 9
11	771 0 2
12	813 17 11
13	853 12 2
14	890 17 6
15	924 8 5

*Rep. by act 17/1912*  
*sec. 1*

Law No. 26, 1890.

“To amend Law No. 30, 1887, entitled ‘Law to regulate the Erection and Maintenance of Dividing Fences.’”

[31st July, 1890.]

BE IT ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. A sum not to exceed Two Thousand and Five Hundred Pounds Sterling shall, in each and every financial year, be chargeable upon and payable out of the public revenues of the Colony for fencing purposes, and the Governor in Council may entertain any application, from the owner of land who, with the consent of the Colonial Engineer of the Colony of Natal, has fenced on both sides thereof any public or main road passing through his land, for a contribution out of such fund not exceeding one-half of the total cost as determined and ascertained by the Fencing Law, 1887,” and the several Laws amending the same, towards the expense of erecting such fencing,

Annual charge upon public revenues for fencing purposes.  
Contributions towards expenses of fences erected on both sides of a public road.

2. The said sum of Two Thousand and Five Hundred Pounds Sterling shall be allocated in equal shares among the several Counties and Divisions in which the Law 30, 1887, and the Laws amending the same, are in force.

Allocation of annual sum.

3. The applicant in each County or Division, being the owner of land, who applies for a contribution from the public revenue towards the expense of erecting fencing on both sides of any public or main road passing through his land, must show to the satisfaction of the Governor in Council that the said road and its use are a source of damage to, and depreciate the value of the property of such owner, and that the fencing towards the construction of which the contribution is asked, was constructed during the financial year in which the application is made, and to the satisfaction of the Colonial Engineer.

Applicant for contribution must show certain facts.

4. The expenditure in any financial year for such fencing of public or main roads passing through private lands, shall not exceed the amount allocated to each County or Division, and in no case shall the total sum of Two Thousand and Five Hundred Pounds Sterling be exceeded. Each application shall be considered and dealt with in the order and priority in which it is received, provided that no such application shall be forwarded until the fencing to which it relates has been completed.

Limitation of annual expenditure.  
Priority of application.

5. Nothing in this Law contained shall apply to any fence erected on the sides of any main or public road, within the boundaries of any Municipal Corporation, or of any Local Township constituted under the provisions of Law No. 11 of 1881, and the Laws amending the same.

Fences to which this Law does not apply.

6. This Law, and the Laws No. 30, 1887, No. 36, 1887, and No. 23, 1889, shall be read and construed together as one Law.

This Law and Laws 30, 1887; 36, 1887, and 23, 1889, to be read as one.

Act No. 29, 1894.

*Rep. by act 17/1912*  
*sec. 1*

“To amend the Fencing Law, 1887.”

[30th July, 1894.]

WHEREAS it is expedient to bring the Lands of the Natal Native Trust and all Lands held in public trust for Natives within the operation of Law No. 30, 1887:

BE IT THEREFORE ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

Act 29, 1894.

Sec. 41, Law 30, 1887, amended.

Native Locations and other lands in public trust for Natives to be within Law 30, 1887.

Meaning of "owner."

1. Any reference in Section 41 of Law No. 30, 1887, to the Natal Native Trust or to Native Locations shall be deemed to be omitted.

2. All Native Locations and all Lands administered by the Natal Native Trust, and all Lands conveyed to or vested in any Corporation or person or persons in public trust for Natives, shall be subject to the operation of Law No. 30, 1887, in all respects as Lands held by private owners.

3. The word "Owner," wherever used in Law No. 30, 1887, shall include the Natal Native Trust, and any and all Corporations, person, or persons in whom Lands may vest in public trust for Natives.

Act No. 12, 1897. a)

To extend the operation of the 'Fencing Law of 1887' in respect of Native Locations."

[22nd May, 1897.]

WHEREAS Law No. 30 of 1887 is expressed to apply to such Magisterial Divisions as the Governor shall by Proclamation prescribe :

AND WHEREAS, by Act No. 29 of 1894, Native Locations are made subject to the operation of the Fencing Law :

AND WHEREAS the fencing of Locations is being carried out throughout the Colony, and it is expedient that the Fencing Law should apply in respect of such Locations wherever situate :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. For all purposes relating to boundary fences dividing Native Locations from the adjoining lands, the Fencing Law No. 30 of 1887 shall extend to the whole Colony, notwithstanding anything to the contrary contained in Section 41 of that Law.

*Fencing (East Coast River) Act-6/07.*

FIELD CORNETS.

[See "POLICE."]

FIRE ARMS.

[See "ARMS, AMMUNITION, &C."]

FIRE INQUESTS.

[See "INQUESTS."]

*Fire - Rating Enquiry Act-3/01*

*Fire Registration of 35/06.*

see also sec 4 of act 31/1906

FISH.

Rep<sup>d</sup> by Ord: 11. 1916

FISH.

Law No. 21, 1884. *System - 20 Oct - 17. 1902*

“To repeal and re-enact, with certain amendments, Laws No. 8, 1868, and No. 13, 1880.”

[7th November, 1884.]

WHEREAS it is expedient to make better provision for regulating the capture of fish in the Bay or Harbour of Natal, and in all the rivers and bays of the Colony, and for that purpose to repeal and re-enact, with certain amendments, Law No. 8, 1868, entitled “Law for regulating the capture of Fish within the Bay or Harbour of Port Natal,” and Law No. 13, 1880, entitled Law “To amend and extend the provisions of Law No. 8, 1868, entitled ‘Law for regulating the capture of Fish within the Bay or Harbour of Port Natal:’”

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. The said Laws No. 8, 1868, and No. 13, 1880, are hereby repealed, without prejudice however to anything done or suffered under said Laws hereby repealed, or any right, power, duty, or liability imposed, acquired, or incurred under said Laws hereby repealed, or any penalty or punishment incurred in respect of any offence against any of the said Laws hereby repealed, any legal proceeding in respect of any such right, power, duty, liability, penalty or punishment, and any such legal proceeding may be carried on as if this Law had not passed.

Repeal.

2. The provisions of this Law shall extend to all waters in which fish may be found in the Colony of Natal.

Application of Law.

3. It shall not be lawful for any person to erect, or cause to be erected, any fish kraal, or other similar erection for the capture of fish, or to capture or cause to be captured, or endeavour to capture any fish thereby, or by means thereof, or by any drag or stake net within the bay or harbour of Port Natal, or in any river, bay, pool, lake, or other water in this Colony, without having for any and every such purpose, first obtained a license as hereinafter mentioned; or to continue any such kraal, or other aforesaid erection, or the use of any such stake or drag net in any such water as aforesaid, after the said license shall have in any manner determined.

Not lawful to erect fish kraal or fish with drag or stake nets without license.

4. For the purposes of this Law, the Harbour Board (A) constituted under “The Natal Harbour Regulations Law” shall be deemed to have jurisdiction over all matters affecting fishing in the bay or harbour, on the beach, and also over the rivers Umgeni, Umbilo, Umhlatuzana, and all creeks running into the bay, as far as the tide flows up such rivers or creeks. Such Harbour Board is hereby empowered to frame By-laws for regulating the various matters relating to fishing within its jurisdiction under this Law, subject to the confirmation of the Governor, and provided such rules and regulations shall not be inconsistent with the provisions of this Law.

Jurisdiction of Harbour Board.

May make By-laws.

5. Every license for the erection and continued use of a fish kraal, or for the capture of fish with nets under this Law (B), shall be obtained from the Harbour Board as regards the waters within the jurisdiction of that body under this Law, and from the Resident Magistrate of the County

Licenses, how obtainable.

(A) See Act 3, 1894. s. 7, tit. “PORTS AND HARBOURS.”

(B) See Law 27, 1890, s. 1 limiting the granting of such licenses to certain waters.



**Law 21, 1884.** or Division as regards other waters within such County or Division for which any license may be applied for, on application in writing therefor. Every application for the use of a net shall state the size of such net and the manner in which it is proposed to be used. And every application for license to erect a fish kraal shall set forth the size and locality of the kraal, and be accompanied by a rough sketch showing the proposed site thereof and the adjoining kraals; and the applicant shall undertake that such fish kraal shall not be of such construction, or on such site as may obstruct the free ingress and egress of the tide, or obstruct navigable channels, or cause accumulations of sand and drift; and if such undertaking is not complied with, such license may be cancelled by the Harbour Board or the Resident Magistrate, as the case may be.

What particulars application must contain.

License may be cancelled on non-compliance with undertaking.

Enquiry may be instituted before granting license, but it shall not be refused if this Law complied with.

License to endure for twelve months.

License for fish kraal to be subject to conditions.

Not lawful to use drag or stake net unless approved of, and description thereof mentioned in license.

Penalty for maliciously destroying fish kraals or removing fish.

Offenders may be apprehended by any person.

Governor may make rules.

Prohibition of use of poisonous or explosive substances in the capture of fish.

6. [Repealed by Law No. 18, 1887 (A).]

7. The said Harbour Board or Resident Magistrate may institute any enquiry regarding the granting of such license, and at discretion may grant or refuse the same: Provided that the said Harbour Board or the Resident Magistrate, as the case may be, shall not be entitled to refuse to grant or renew a license solely on the grounds of objections to any net or fish kraal in respect of which the provisions of this Law have been and shall be complied with.

8. Every such license shall endure for a period of twelve months, and shall commence from the date thereof.

9. Every license for the erection of a fish kraal shall be subject to such conditions as to dimensions, situation, and extent, as to the said Harbour Board or Resident Magistrate may seem fit, and be therein specified and mentioned.

10. It shall not be lawful for any person to use in any part of the bay or harbour of Natal, or in any river or other water in the Colony, whether upon, or about, or in connection with, any fish kraal or otherwise howsoever, for the purpose of capturing any fish, any drag or stake net, or other implement of a similar nature, of whatsoever materials the same may be composed, unless the nature and description of the same shall be approved of and mentioned in any license issued by the Resident Magistrate or the Harbour Board as aforesaid, for the capture of fish as above named.

11. If any person shall unlawfully and maliciously destroy or injure any fish kraal or any nets within such bay or harbour, or in any river or other water in the Colony, in respect of which a license has been obtained, or shall unlawfully and maliciously remove any fish therefrom, he shall be liable to a penalty not exceeding Five Pounds, or in default of payment to imprisonment, with or without hard labour, for any period not exceeding one month.

12. Any person found committing any offence against the provisions of this Law, or the regulations framed hereunder, may be apprehended by any person so finding such offender, and delivered into the custody of the nearest police constable to be dealt with according to law.

13. The Governor may, from time to time, proclaim such rules and regulations as may to him appear necessary for carrying out the objects of this Law, so far as regards any waters not included by this Law in the jurisdiction of the Harbour Board (B).

14. It shall be unlawful for any person or persons to take, kill, or destroy any fish by means of poison, poisonous roots, stupefying substances, gunpowder, dynamite, nitro-glycerine, or any other explosive substance or substances of a like nature, in any public fisheries, bay, harbour,

(A) See s. 1 of Law 18, 1887, post, which provides a substituted section.

(B) See Act 3, 1894, s. 1, tit. "PORTS AND HARBOURS."

river, tributary stream, pool, or lake, or on the coast; and any such person or persons who shall be convicted of a breach of this section shall, for each offence, be subject to a penalty not exceeding Five Pounds, or to imprisonment not exceeding one month, with or without hard labour.

**Law 21, 1884.**  
Penalty.

15. Any person using sacks, canvas, and other like material for the capture of fish, and any person found in possession of fish-fry under five inches long shall be deemed guilty of a contravention of this Law and be punished accordingly.

Persons using sacks, &c., or having fish-fry under five inches guilty of contravention.

16. It shall not be lawful for any person, from the fifteenth day of August to the fifteenth day of October (A) in every year, both inclusive, to capture or destroy, or attempt or aid in capturing or destroying, by nets or night lines, any scale fish in any river, tributary stream, or other water in this Colony above the reach of the tide; and any person contravening the provisions hereof, or having in his possession (B) any scale fish during the period above stated, shall be liable to a fine of not less than Forty Shillings and not exceeding Ten Pounds, or in default of payment thereof to imprisonment, with or without hard labour, for any term not exceeding three months.

Close season for scale fish.

Penalty for contravention.

17. The Harbour Board (c) or the Resident Magistrate, as the case may be, shall have power to grant leases of waters within their respective jurisdictions to persons for the purpose of propagating oysters for such period, and under such other conditions, as to extent, or area of the bed, and rent to be paid therefor, as may be defined in the rules and regulations framed under this Law: Provided that it shall be incumbent on the person applying for any such lease to show to the satisfaction of the authority empowered to grant such lease that he has the means to properly conduct the industry: And provided further that the Government shall have power at any time to resume occupation of the waters or beds so leased, which may be required for public purposes, in which case the lessee shall be entitled to compensation to be decided by arbitration in the usual manner.

Harbour Board and Magistrate may grant leases of waters for propagation of oysters.

Proviso.

Government may resume occupation of waters so leased.

18. Any person found trespassing on any area of water, duly leased under this Law for the purpose of propagating oysters, by walking over or anchoring any boat on any oyster bed, shall be deemed guilty of contravening this Law or the rules and regulations framed hereunder: Provided that nothing in this section shall be taken to apply to persons lawfully passing over such beds in boats.

Person trespassing on oyster bed, guilty of contravening this Law.

Proviso.

19. It shall not be lawful for any person, from the first day of October to the thirty-first day of December in every year, both inclusive, to capture, take, destroy, or disturb, in any manner whatsoever, any oysters in the bay or harbour, or in any river or other water within this Colony; and any person contravening the provisions hereof, or having oysters in his or her possession (D) during the period above stated, shall be liable to a fine of not less than Forty Shillings, and not exceeding Ten Pounds, or in default of payment thereof to imprisonment, with or without hard labour, for any term not exceeding three months.

Close season for oysters.

Penalty for contravention.

20. The Governor may from time to time, by proclamation, change or alter the periods of the close season for scale fish and oysters mentioned in this Law.

Governor may alter close seasons.

(A) See s. 20, post, giving Governor power to change close seasons.

(B) This means in possession of fish taken with nets or night lines, see *Reg. v. Farrer*, 19, N.L.R., 193.

(c) See note to s. 13.

(D) The principle of *Reg. v. Farrer*,

cited in note to s. 16, ante, would seem to be applicable to this sec., in which case it is conceived that the possession of oysters during close season would not be a contravention if proved that they were taken in the open season. Cf. *Law 16, 1891, s. 5, tit. "GAME."*

**Law 21, 1884.**

Rents and revenue paid to General Revenue.

Penalty for contraventions for which no special provision made.

Half of fines to be paid to informer.

Proviso as to contraventions committed within Borough or Township.

Contraventions triable in Courts of Magistrates.

Artificial waters exempted from operation of this Law.

Commencement

21. All rents and revenue accruing from leases and licenses under this Law shall be paid into the General Revenue of the Colony.

22. Any person contravening any of the provisions of this Law, for which special provision is not made, or any of the conditions, rules, or regulations sanctioned by the Governor, shall be liable to immediate forfeiture of his license, if then existing; also to forfeiture of such nets or other implements as are by this Law declared illegal, and of all fish illegally captured thereby, and shall be further liable to a penalty not exceeding Five Pounds (A) for each and every such offence.

23. Half of all fines recovered in consequence of contraventions of this Law shall be paid to the informer, and the other half to the Colonial Treasury, and, unless remitted, the said half fines shall be applied to the general uses of the Government of the Colony: Provided always, that all the penalties recovered for any contraventions of this Law committed within any Borough or Township duly established under the Law in force for the time being, shall be paid into and form part of the revenue of such Borough or Township.

24. All contraventions of this Law, or of any of the rules and regulations framed hereunder, shall be tried in the Court of the Resident Magistrate of the County or Division in which such offence has been committed.

25. Nothing in this Law shall apply to the owner of any artificial watercourse, stream or dam, fishing for or capturing within the same, any fish; or to any person angling on such artificial watercourse, stream or dam, with the leave of the owner.

26. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (B).

**Law No. 18, 1887.**

"To Amend Law No. 21 of 1884."

[11th February, 1887.]

WHEREAS it is expedient to amend Law No. 21 of 1884, entitled "Law to repeal and re-enact with certain amendments Laws No. 8, 1868, and No. 13, 1880":

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. Section 6 of Law No. 21 of 1884 is hereby repealed, and the following Section substituted therefor, and to be numbered 6:—"For every such license there shall be charged a sum of ten shillings for every net not exceeding ten yards in length, and twenty shillings for every net exceeding ten yards in length, and there shall be attached to every net for which a license as above has been obtained a distinguishing badge and number, to be provided by the officer issuing the license."

2. This Law shall be read and construed with Law No. 21 of 1884 as one Law, and shall come into operation from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE."

Repeal of sec. 6, Law 21, 1884.

Law to be read as one with Law 21, 1884.

(A) Altered to "ten pounds" by Law 27, 1890, s. 8, post. (B) Nov. 11, 1884.

Rep'd by Ord: 11. 1916. Law No. 27, 1890.

“To make Better Provision for Regulating the Capture of Fish in Inland Waters, and for the Protection of Salmon and Trout Fisheries.”

[31st July, 1890.]

WHEREAS it is desirable to make better provision for preventing the improper destruction of Freshwater Fish, and for protecting the development of Salmon and Trout Fisheries in Inland Waters, and for that purpose to amend Law No. 21, 1884 :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. No such license as by the Fifth Section of Law No. 21, 1884, entitled “Law to repeal and re-enact with certain amendments Laws No. 8, 1868, and No. 13, 1880,” is provided for, shall be granted in respect of the capture of fish in any waters other than the sea, or than a bay, or inlet of the sea, or river mouth, so far as the highest tidal waters of the sea extend.

License provided for by Law 21, 1884, not to be granted in respect of inland waters.

2. No person shall fish for, catch, or attempt to catch, or kill, any fish before the First day of July, One Thousand Eight Hundred and Ninety-two in any of the rivers hereinafter named at any part thereof above the space specified, that is to say—

Temporary prohibition of fishing in certain waters.

The Bushman's River, above the Public Bridge at Estcourt.

The Mooi River, above the Public Bridge at Weston.

The Umgeni River, above the Falls, situate within the farm “Chestnuts,” known as “McArthur's Falls.”

3. The Governor shall be empowered by Proclamation to continue the operation of the last preceding section for one year after the day therein specified.

Power to continue prohibition.

4. Whenever a supply of Trout or Salmon shall be introduced into any river it shall be lawful for the Governor by Proclamation to prohibit the fishing for, or capture, or killing of any fish in such river, or in such part thereof as shall be specified in the Proclamation, for any period not exceeding two years from the time of the placing of the Salmon or Trout in such river.

Provision for protection of trout or salmon newly introduced.

5. No person shall fish for any Salmon or Trout in a river to any part of which the operation of Section Two or of Section Four of this Law shall for the time being extend, and if while fishing in such river he shall catch any Salmon or Trout he shall forthwith release it, if possible alive, in the river.

Prohibition of fishing for salmon or trout in certain rivers.

6. The Governor may from time to time by Proclamation appoint or alter annual close seasons for Salmon and Trout fishing. During such close seasons it shall not be lawful for any person to disturb, take, catch, or kill any Salmon or Trout whatever.

Close seasons for salmon and trout fishing.

7. Every person who—

Offences.

(a) Has in his possession any Salmon or Trout during a close season,

(b) Takes, or destroys, or injures, or obstructs the passage of the young of Salmon or Trout, or disturbs any spawning bed, or any bank, or shallow whereon the spawn of Salmon or Trout may be deposited, save and except a person lawfully having the care and charge of such spawn or young Salmon or Trout,

(c) Uses any Salmon-roe or Trout-roe for the purpose of fishing, shall be guilty of a contravention of this Law.

Law 27, 1890.  
Amendment of  
sec. 22, Law 21,  
1884.

Joint construc-  
tion.

8. Section Twenty-two of Law 21, 1884, shall be amended by the substitution of Ten Pounds for the Five Pounds therein specified as penalty.

9. This Law shall be read and construed together with Law No. 21, 1884, as one Law.

*Act 4, 1902*

### FOOD AND DRUGS (ADULTERATION).

[See "MUNICIPAL CORPORATIONS."]

### FOREIGN DESERTERS.

[See "SHIPPING."]

### FOREIGN JURISDICTION ACTS.

[See "CRIMINAL LAW (PROCEDURE)."]

*Foreign Jurisdiction Act 50/03*

## FOREIGN RECRUITING.

## Law No. 21, 1875.

“To Control Recruiting in this Colony for the Service of Foreign States.”

[17th December, 1875.]

WHEREAS it is expedient that the Lieutenant Governor should exercise full control over Recruiting in this Colony for the Service of Foreign States :

BE IT THEREFORE ENACTED by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof as follows :—

1. This Law may for all purposes be cited as the “Foreign Recruiting Law, 1875.” Short title.

2. If any person is, within the limits of this Colony, obtaining or attempting to obtain recruits for the service of any Foreign State in any capacity, the Lieutenant Governor may, by an order signed by the Colonial Secretary, either prohibit such person from so doing, or permit him to do so subject to any conditions which he thinks fit to impose. Governor may prohibit or regulate recruiting for a Foreign State;

3. The Lieutenant Governor may from time to time, by notice in the “GOVERNMENT GAZETTE,” either prohibit recruiting, or impose upon such recruiting any conditions which he thinks fit, or may rescind or vary any order made under this Law in such manner as he thinks fit. and may issue notice in Gazette for such purpose.

4. Whoever in violation of the prohibition of the Lieutenant Governor, or of any condition subject to which permission to recruit may have been accorded, induces or attempts to induce any person to accept or agree, or to proceed to any place with a view of obtaining any commission or employment in the service of any Foreign State, or knowingly aids in the engagement of any person so induced, by forwarding or conveying him or by advancing money or in any other way whatever, shall be liable to imprisonment for a term which may extend to seven years, or to fine to such amount as the Court thinks fit, or to both. Punishment for violating Governor's orders.

5. The term “Foreign State” includes any person or persons exercising or assuming to exercise the powers of Government in or over any country, colony, province, or people beyond the limits of this Colony. Interpretation.

6. Any offence against this Act may be prosecuted by the Attorney-General, or by some person appointed by him to act in that behalf, before the Supreme or any other Circuit Court within this Colony. Prosecutions, how instituted.

7. This Law shall come into force on the publishing thereof in the “NATAL GOVERNMENT GAZETTE” after the passing thereof (A). Commencement

## FRANCHISE.

[See “PARLIAMENT.”]

## FRAUDULENT MARKS.

[See “BRANDS”; “TRADE MARKS (COUNTERFEITING).”]

## FRAUDULENT PASSES.

[See “CRIMINAL LAW.”]

(A) March 7, 1876.

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## FRIENDLY SOCIETIES.

## Law No. 20, 1862.

“For the Encouragement and Relief of Friendly Societies.”

[13th August, 1862.]

WHEREAS the protection and encouragement of Friendly Societies in this Colony, for raising, by voluntary subscriptions of the members thereof, with or without the aid of public assistance, donations and funds for the mutual relief and maintenance of the said members, and of their wives and children, in sickness, old age, and infirmity, and for the funeral and other expenses of the same, is likely to be attended with very beneficial effects, by promoting the happiness of individuals, and at the same time diminishing the public burthens :

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. That it shall and may be lawful for any number of persons to form and establish a friendly society under the provisions of this Law, for the purpose of raising, by the voluntary subscriptions of the members thereof, with or without the aid of donations, a fund for any of the following objects :—

- (1) For 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 wife or child of a member (A).
- (2) For the relief and maintenance of the members, their husbands, wives, children, brothers or sisters, nephews or nieces, in old age, sickness, or widowhood, or the endowment of members, or nominees of members, at any age.
- (3) For any purpose which shall be authorised by the Lieutenant Governor of Natal, as a purpose to which the powers and facilities of this Law ought to be extended.

Limit of payments.

Provided that no member shall contract for an annuity exceeding Thirty Pounds per annum, or a sum payable on death, or any other contingency, exceeding Two Hundred Pounds.

Society to be deemed established when rules are certified by the Master of the Court.

2. And if such persons so intending to form and establish such society shall transmit rules for the government, guidance, and regulations of the same to the Master of the Supreme Court, and shall obtain his certificate that the same are in conformity with the law as hereinafter mentioned, then the said society shall be deemed to be fully formed and established from the date of said certificate.

Trustees to be appointed.

3. Every friendly society established under this Law shall, at some meeting of its members, and by a resolution of a majority of the members then present, nominate and appoint one or more person or persons to be a trustee or trustees for the said society, and the like do in any case of vacancy in said office. And a copy of the resolution so appointing such person or persons to the office of trustee, and signed by such trustee or trustees, and by the secretary of the said society, shall be sent to the Registrar of the Supreme Court, to be deposited by him with the rules of said society in his custody.

Resolution to be forwarded to Registrar of Court.

Property to be vested in trustees.

4. All property whatsoever, movable and immovable, belonging to any society established under this Law, shall be vested in such trustee or trustees for the time being, for the use and benefit of such society and the

(A) See *Corlett v. Oddfellows*, 6 N.L.R. 186.

members thereof; and the movable or immovable property of any branch of a 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.

Law 20, 1862.

In case of vacancy, to succeeding trustee without transfer.

5. 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, 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.

Trustee to bring or defend actions and suits.

6. 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 monies which shall be actually received by him or them on account of such society.

Liability of trustees.

7. The treasurer of every such society, 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 sufficient security, in a bond as near as may be to the form set forth in the schedule to this Law, 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.

Treasurer to give security.

Bond to be registered by Trustee.

8. 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, within seven days after such requisition, shall render to the trustee or trustees of the society, or to 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 monies 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, if 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 hands or custody; and if he fail to do so,

Treasurer to render accounts when called upon.

Accounts to be audited.



Law 20, 1862. 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 monies received by him on account of said society and not paid over, and for the securities and effects, books, papers, and properties in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of said society. And in such action, the trustee or trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client.

Preferent claim of society on property of insolvent employee.

9. If any person appointed or employed in any office in any friendly society established under this Law, whether such employment or appointment was before or after the legal establishment of such society, and having in his hands or possession, by virtue of his office, any monies or property whatsoever of such society, or any deeds or securities belonging to such society, shall die, or become or be declared an insolvent, or have any execution or attachment, or other process, issued against any part of his property, movable or immovable, or shall make any assignment or other disposition of his property in favour of his creditors, the heirs, executors, administrators, or assigns of every such officer, and any other person having or claiming right to the property of such officer, and the sheriff or other person executing any such process of law, shall, upon demand in writing made by the treasurer, or by the trustee, or any two of the trustees of such society, or any person appointed at some meeting to make such demand, deliver and pay over all such monies, properties, deeds, and securities belonging to such society to such person as such treasurer or such trustee shall appoint; and shall pay out of the estate, assets, or effects, movable or immovable, of such officer, all sums of money due which such officer shall have received, before any of his debts are paid, and before any claims upon him shall be satisfied, and before any money directed to be levied under any process of law is paid over. Nothing herein contained shall, however, be construed to mean that such society as aforesaid shall have the right to claim any preference over any immovable property specially mortgaged for any just and legal debt, until such debt shall have been first paid, or otherwise liquidated.

Mortgages on immovable property expected.

Members or others obtaining possession of securities, monies, &c., by false representation may be sued in the Magistrate's Court.

10. If any officer, member, or other person being or representing himself to be a member of such society, 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 monies, 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, it shall be lawful for the Attorney-General, upon sworn complaint made by any member on behalf of such society, to direct the Clerk of the Peace to prosecute the person so complained of before the Resident Magistrate's Court, or any other court that may be established, having jurisdiction over the locality where the offence may have been committed: and if the Resident Magistrate, or other person presiding or acting as Resident Magistrate in any other court as aforesaid, shall determine the said complaint proved against such person, he shall order such person to deliver up all such monies, 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 costs not exceeding forty shillings: 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 Attorney-General

Powers of Magistrate.

Proviso.

from proceeding by indictment against said party. 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 Law.

Law 20, 1832.

11. Before any friendly society shall be established under this Law, the persons intending to establish the same shall agree upon and frame a set of rules for the regulation, government, and 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 Law to the members of friendly societies formed or established under or by virtue of the same; and such rules shall set forth:

Rules to be framed before society is established.

- (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; 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 an annual or periodical audit of accounts.
- (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 monies 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 or sisters, nephews or nieces, for which a separate table of contributions payable shall have been adopted, shall be entered in a separate account, distinct from the monies 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 a separate account shall be kept of such contributions and expenses.

12. Two printed or written copies of such rules, signed by three of the intended members and secretary, or other officer, shall be transmitted to the Master of the Supreme Court; and the said Master of the Supreme Court shall advise with the secretary or other officer, if required, for the purpose of ascertaining whether the said rules are calculated to carry into effect the intentions and objects of the persons who desire to form such society; and if the said Master of the Supreme Court shall find that such rules are in conformity with law and the provisions of this Law, he shall give a certificate in the form set forth in the schedule to this Law; and shall return one of the said copies to the said society, and shall transmit the other to the Registrar of the Supreme Court, to be by him filed in his, the Registrar of the Supreme Court's office: and for such certificate there shall be payable to the Master of the Supreme Court granting such certificate a sum of two guineas for his own use.

Rules to be transmitted to the Master of the Supreme Court,

who is to certify them, if in conformity with Law.

Fee payable to Master.

13. After the rules of a friendly society shall have been so certified by the Master of the Supreme Court as aforesaid, it shall be lawful for such society, by a resolution at a meeting specially called for that purpose, to alter, amend, or rescind the same, or any of them, or make new rules;

Rules may be altered or amended.

Law 20, 1862.

To be certified and dealt with in the same manner.

Persons circulating untrue copies of certified rules to be deemed guilty of fraud.

Admissibility in evidence of documents purporting to be signed by Master.

Funds, how to be invested.

Trustees may subscribe to any hospital, &c.

Disputes to be decided according to the rules.

and if the said Master of the Supreme Court shall find that such alterations, amendments, or new rules are in conformity with law, he shall give to the society a certificate in the form set forth in the schedule annexed to this Law, and return one of the copies to the society, and shall transmit the other to the Registrar of the Supreme Court, to be filed in his office ; and as against any such member or person such certificate shall be conclusive of the validity thereof : and rules, alterations, and amendments, when so certified as aforesaid, shall be binding on the several members of the said society, and all persons claiming on account of a member, or on account of the said rules.

14. If any person shall give to any member of a friendly society established under this Law, or to any person intending or applying to become a member of such society, a copy of any rules, or of any alterations or amendments of the same, other than those certified by the Master of the Supreme Court, with a copy of his certificate appended thereto, under colour that the same are binding upon the members of such society, or shall make any alterations or additions to any of the rules of such society, after they shall have been certified by the Master of the Supreme Court, and shall circulate the same, purporting that they have been duly certified under this Law, when they shall not have been so certified, every person so offending shall be guilty of the crime of fraud.

15. All rules of any society established under this Law, and all copies thereof, or extracts therefrom, and all writings and documents relating to a friendly society, and purporting to be signed by the Master of the Supreme Court, shall, in the absence of any evidence to the contrary, be received in all courts without proof of the signature thereto.

16. The trustee or trustees of every friendly society established under this Law, 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 current receipts, or in the purchase of the shares of any bank, of any fire or life assurance company, or in any company established by charter, or in railway bonds or shares, or in mortgage upon immovable property, or on such security as the rules of such society may direct, and not being the purchase of immovable property (save and except the purchase of some house or buildings wherein to hold the meetings or transact the business of such society, and save and except the purchase of land for the purpose of erecting such houses or buildings), and not being personal security, except in the case of a member of one full year's standing at least, and in respect of a sum not exceeding one-half the amount of his assurance on his life ; such member providing the bond of himself and two satisfactory sureties for repayment ; and in case of such member's death before repayment, the amount of such advance, with interest, may be deducted from the sum so assured, without prejudice, in the meantime, to the operation of such security.

17. The trustees of any friendly society 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.

18. Every dispute between any member or members of any society established under this Law, 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; and the decision so made shall be binding and conclusive on all parties, without appeal.

19. In all friendly societies established under this Law, all applications for the removal of any trustee, or for any other relief, order, or direction, or for the settlement of disputes that may arise, or 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 decision of any arbitrators, or to hear or determine any dispute, if no arbitrator shall have been appointed, or if no decision shall be 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 Supreme or Circuit Court, or to the Resident Magistrate's Court of the county or district within which the usual or principal place of business of the society shall be situated; and such Supreme or Circuit Court, or Resident Magistrate's Court shall, upon the application of any person interested in the matter, entertain such application; and the said Supreme Court, and Circuit Court, and Resident Magistrate's Court, may give such relief, and make such order and directions in relation to the matter of such application as may be necessary, and the circumstances of the case may require.

20. The trustees of friendly societies established under this Law, or the officer thereof appointed to prepare returns, shall, once in every year, in the month of January, transmit to the Master of the Supreme Court a general statement of the funds and effects of such society during the past twelve months, and a copy of the last annual report of such society.

21. A person under the age of twenty-one may be elected and admitted a member of any society established under this Law, 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 director, trustee, treasurer, or manager of such society.

22. 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 payable 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 ten 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 conviction thereof before the Resident Magistrate of the county or division in which such death shall have taken place.

23. It shall be lawful for the members of any society established under this Law, at some meeting of said society, to be specially called in that behalf, to dissolve and determine said society by consent. Provided that no society established under this Law shall be dissolved or determined, without obtaining the votes of consent of five-sixths in value of the then existing members thereof, including the honorary members: and, for the purpose of ascertaining the votes of five-sixths in value of the numbers 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

Law 20, 1862.

Application for the removal of Trustees, &c., may be made to Courts of Law.

Trustees to transmit yearly statements to the Master.

Minors may be admitted members.

Funeral expenses of children under ten years of age, when payable.

Not to exceed £10.

Society, how to be dissolved.

Law 20, 1862. is duly satisfied, 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 duly, as aforesaid, accompanied with a declaration by one of the trustees, that the provisions of the Law have been complied with, shall be transmitted to the Master of the Supreme Court, to be by him filed with the rules in the Registrar of the Supreme Court's office: 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, treasurer, 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 purposes 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 Supreme Court or Circuit Court, upon motion for relief or other order, and the said Supreme or Circuit Court shall make such order or direction in relation thereto as the nature of the case may require.

Commencement 24. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A).

#### SCHEDULES.

##### *Form of Certificate to Rules of Friendly Societies.*

Schedules.

I hereby certify that the foregoing Rules (or the alterations or amendment of the Rules) of the \_\_\_\_\_ Society \_\_\_\_\_ at the County of \_\_\_\_\_ are in conformity with Law, and that the Society is duly established from its present date, and is subject to the provisions and entitled to the privileges of the Laws relating to Friendly Societies.

##### *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 County of \_\_\_\_\_, and C.D., of \_\_\_\_\_ (as surety on behalf of the said A.B.), are jointly and severally held and firmly bound to A.B., of \_\_\_\_\_, C.D., of \_\_\_\_\_, and E.F., of \_\_\_\_\_, the Trustees of the said Society, in the Sum of \_\_\_\_\_, to be paid to the said A.B., C.D., and E.F., as such Trustees, or their successors, Trustees for the time being, or their certain attorney, for which payment, well and truly to be made, we, jointly and severally, bind ourselves, and each of us, our Heirs, Executors, and Administrators, firmly by these presents. Sealed with our Seals.

Dated at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_

Whereas the above bounden A.B., hath been duly appointed Treasurer ( \_\_\_\_\_ ) of the \_\_\_\_\_ Society established as aforesaid, and he, together with the above bounden C.D. as his surety, 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 ( \_\_\_\_\_ ) of the said Society, established as aforesaid, and

(A) Aug. 19, 1862.

shall and do render a just and true account of all monies received and paid by him, and shall and do pay over all the monies 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 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 to the said Society, according to the rules thereof; then the above written Bond shall be void and of no effect; otherwise shall be, and remain in full force and virtue.

Law 20, 1862.  
Schedule.

**Act No. 7, 1897.**

“To provide for the further encouragement and relief of Friendly Societies.”

[22nd May, 1897.]

WHEREAS it is expedient to provide for the further encouragement and relief of Friendly Societies:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. A member of a Friendly Society, not being under the age of eighteen years, may, by writing under his hand delivered or sent to the registered office of the Society, nominate any person, not being an officer or servant of the Society, unless such officer or servant is the husband wife, father, mother, child, brother, sister, nephew, or niece of the nominator, to whom any moneys payable by the Society on the death of such member, not exceeding One Hundred Pounds, shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of a nominator, the Society shall pay to the nominee the amount due to the deceased member, not exceeding the sum aforesaid, and the receipt of a nominee over eighteen years of age for any amount so paid shall be valid, but the marriage of a member of a Friendly Society shall operate as a revocation of any nomination theretofore made by that member under this Section: Provided that where a Friendly Society pays money to a nominee in ignorance of a marriage subsequent to the nomination, the receipt of the nominee shall be a valid discharge to the Society.

Nomination by members of persons to receive moneys becoming due at death.

2. If any member of a Friendly Society, entitled from the Funds thereof to a sum not exceeding One Hundred Pounds, dies intestate and without having made any unrevoked nomination under this Act, such sum shall be payable, without letters of administration, to the person who appears to a majority of the trustees, upon such evidence as they may deem satisfactory, to be entitled to receive the same.

Distribution of funds of intestate member.

3. Whenever a Friendly Society, after the decease of any member, pays any sum of money to the person who at the time appears to the trustees to be entitled under this section, the payment is valid and effectual against any demand made upon the trustees or the Society by any other person.

Validity of payments under sec. 2.

4. The term “Friendly Society” or “Society,” where used in this Act, shall mean any Friendly Society formed and established under Law No. 20, 1862.

Interpretation.

5. This Act shall commence and take effect from and after the promulgation thereof in the “NATAL GOVERNMENT GAZETTE” (A).

Commencement

(A) May 25, 1897.

See Act-3/1902

GAMBLING.

GAMBLING.

Law No. 25, 1878.

Lotteries Act-3, 1902

“To provide for the Discouragement of Gambling.”

[9th September, 1878.]

WHEREAS great mischief has been found to result from the existence of the practice of Gambling :

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows :—

1/27 s/ Certain lotteries, games, &c., declared illegal.

1. All lotteries, commonly termed selling lotteries, lotteries for goods, all games of chance, such as “rouge et noir” and “roulette,” and all betting stands or betting booths, shall be deemed and are hereby declared to be common nuisances and against law (A).

Person conducting lottery, &c., guilty of offence.

2. Any person who shall set up, carry on, or keep, or shall cause or procure to be set up, carried on, or kept, or shall in any way be knowingly concerned in the setting up, carrying on, or keeping any such lottery or lotteries, games of chance, betting stands or betting booths, or shall keep or use, publicly or privately, any office or place for the purposes of any such lottery, lotteries, or undertakings (B), shall be guilty of an offence, and be liable on conviction thereof to a fine not exceeding Fifty Pounds.

Penalty.

Person taking part or share in lottery, &c., guilty of offence.

3. If any person shall draw or shall cause to be drawn any ticket, lot, chance, share, number, or figure in any such lottery, lotteries, or undertakings, or shall by playing, throwing dice, or in any other way whatsoever, endeavour to win or obtain any prize in, or to derive any benefit for himself or for any other person from any such lottery, lotteries, or undertakings, or from betting at any such stand or booth, every such person shall be guilty of an offence, and be liable, on conviction thereof, to a fine not exceeding Five Pounds.

Penalty.

Right of entry upon suspected premises.

4. It shall be lawful for any person holding a warrant in that behalf under the hand of any Resident Magistrate, who is hereby empowered to grant the same upon complaint or information on oath of the commission of any offence specified in this Law, or for any Superintendent of Police, upon reasonable grounds of suspicion that any such lottery, lotteries, or undertakings is or are set up, kept, or carried on in any house, premises, or place, or that anything has lately been done, or is then in the course of being done, in any house, premises, or place, in furtherance of any such lottery or undertaking, to break open, or otherwise forcibly enter any such house, premises, or place, after having given sufficient intimation of his object, and not having obtained admission, and to seize all papers, instruments, and things employed in or about such lottery, lotteries, or undertakings ; and every person obstructing, opposing, molesting, or hindering, and every person aiding in, or inciting to the obstructing, opposing, molesting, or hindering any such Superintendent of Police, or any person acting under the authority of such warrant as aforesaid, in the due entering into any such house or premises or place, or in the seizing, detaining, or conveying any such papers, instruments, or things, shall be guilty of an offence, and be liable on conviction thereof, to a fine not exceeding Ten Pounds.

(A) See Grant v. Collett, 4 N.L.R. 32. “Chit” (Naicker v. Padayachee, 15 N.L.R. 354).  
(B) This does not include the transaction between Indians known as a

5. Any prosecution under this Law shall be conducted by the Clerk of the Peace or by any other person before the Court of the Resident Magistrate within whose jurisdiction the offence may be committed or the offender be found. Law 25, 1878.  
Prosecutions.

6. All pecuniary penalties which may be recovered under the provisions of this Law shall be paid and distributed in the following manner : —One moiety to Her Majesty, Her Heirs and Successors, which unless remitted shall be paid to the uses of the Government of this Colony ; the other moiety may at the discretion of the Resident Magistrate be paid to any private person who shall complain and prosecute : Provided always, that in case any such offence be committed within the limits of any Borough duly incorporated under the provisions of any Law, it shall and may be competent for the Superintendent of Police of any such Borough to prosecute such offence in the Court of the Resident Magistrate of such Borough, and any fine inflicted for any such offence committed within the limits of the Borough shall be paid over to the corporate funds of said Borough. Appropriation  
of penalties.  
  
Proviso as to  
duly incorpor-  
ated boroughs.

7. This Law shall take effect from and after the date of the promulgation thereof in the "GOVERNMENT GAZETTE" (A). Commencement

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(A) Dec. 17, 1878.



*Repealed by Act 87 of 1896.*  
GAME.

Law No. 16, 1891.

“To make provision for the better Preservation of Game in the Colony of Natal.”

[17th July 1891.]

BE IT ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Repeal of Law 28, 1890.

1. Law No. 28, 1890, entitled “Law to make provision for the better Preservation of Game in the Colony of Natal,” is hereby repealed.

Prohibition of use or possession of nets, &c., for destroying animals or birds specified in schedules.

2. No person shall at any time kill, catch, capture, or destroy by means of nets, springes, gins, traps, snares, or sticks; any of the animals or birds specified in the Schedules of this Law; or have in his possession, or set any such net, springe, gin, trap, or snare, for the purpose of killing, catching, or destroying, any of the said animals or birds: Provided that nothing in this section shall be deemed to apply to the destruction of the birds specified in Schedule A by means of sticks within a Native Location at any time out of the close season appointed in Section 3 of this Law.

Close season for animals and birds in Schedules A and B.

*36th 4/10/91*

3. No person shall within the Colony of Natal during the close season (that is to say, from the Sixteenth day of August to the Thirtieth day of April, both inclusive), kill, catch, capture, shoot at, pursue, or wilfully disturb any of the birds or animals specified in Schedules A and B of this Law.

Prohibition of killing, catching, &c., animals in Schedule C.

4. No person shall at any time kill, catch, destroy, shoot at, or attempt to kill, catch, destroy, or aid in killing, catching, shooting at, or destroying by any means whatever, or chase, pursue, or otherwise wilfully disturb any of the animals specified in Schedule C of this Law, except by express permission of the Governor (A). Every permission so granted shall specify the time for which the same shall endure, and in what division or divisions, and on what lands it shall have effect: Provided that no such permission shall be granted before the expiration of three years after the commencement of this Law; and no such permission shall be given except on the application of owners or occupiers of the land over which such permission extends.

Permits, how granted.

Offence of possessing, selling, &c., during close season.

5. Any person who between the Sixteenth day of August and the Thirtieth day of April, both inclusive, shall possess, carry, sell, or offer for sale, any of the animals or birds, dead or alive, specified in Schedules A and B of this Law respectively, shall be guilty of a contravention of this Law unless such person shall prove that the animal or bird was either killed, or taken, or bought, or received during the period in which such animal or bird could be legally killed, or has been imported by sea.

Special permits for destroying game doing damage.

6. Notwithstanding the provisions of any of the preceding sections of this Law it shall be lawful for any Magistrate on the application of the owner or occupier of any land who shall satisfy such Magistrate that duiker, hares, or guinea fowl, are causing loss and damage by destroying trees, plants, or standing crops, to grant a special permit to the person applying to destroy, in whatever manner he may please such duiker, hares, or guinea fowl, upon such land only, during a time to be specified in the permit.

(A) This does not extend to Eland and Springbuck, see Act 24, 1894, s. 1; and see sec. 2 of the same Act, which restricts the permission to a certain season.

7. Where one or more persons, at any period of the year, shall unlawfully trespass on lands belonging to any private person without the consent of the owner or occupier thereof, or on Crown Lands without the consent of the Governor or the Resident Magistrate of the Division within which such lands are situated, with the intent to capture, destroy, or to aid in capturing or destroying, by nets, springes, gins, traps, snares, or sticks, or by any other means, or to shoot or hunt, with dogs or otherwise, or in any other manner to kill, chase, pursue, or otherwise wilfully disturb any of the animals or birds specified in the Schedules A, B, and C of this Law, each and every such person shall be liable to the punishments provided for contraventions of this Law.

Law 16, 1891.  
Trespassing for purpose of destroying game.

8. Any person found trespassing on any private or Crown Lands in pursuit or in search of any of the animals or birds mentioned in Schedules A, B, and C of this Law, with or without dogs, may be lawfully required by the owner or occupier, of such private lands, or any servant or other person empowered by such owner or occupier, or in the case of Crown Lands, such trespasser may be required by any Magistrate, Field-cornet, or Constable, forthwith to quit such private or Crown Lands, and also to state his real name and place of abode; and any person who shall refuse or wilfully delay to quit such lands on being required so to do, or to state his true name or place of abode, shall be liable to the punishments provided for contraventions of this Law.

Trespasser in pursuit of game may be ordered to quit and give name and place of abode.

9. No person shall at any time kill, catch, pursue, hunt, or destroy any of the animals or birds specified in Schedules A, B, and C of this Law, on any lands belonging to any corporate body or local board, or belonging to or occupied by any company or private person, or be upon any such land for such purpose, without the consent of the corporation, local board, company, or private person.

Prohibition of pursuit of game on certain lands without permission of owner.

10. Any person contravening any of the provisions of this Law shall upon conviction forfeit any sum not less than Two Pounds sterling and not exceeding Twenty Pounds sterling, and in default of payment thereof shall be imprisoned with or without hard labour for any period not exceeding three months.

Punishments for contraventions.

11. All contraventions of this Law may be prosecuted by any person before the Court of the Magistrate of the Division in which the contravention of the Law took place or at any Branch Court in such Division.

Prosecution.

12. All fines and penalties levied under the provisions of this Law shall belong to Her Majesty, Her heirs and successors, and shall be applied to the uses of the Government of this Colony: Provided, it shall be lawful for the Magistrate to award any sum not exceeding one-half of any such fine or penalty to any informer by whose information any person shall be convicted of contravening any of the provisions of this Law.

Appropriation of fines.  
Award to informer.

13. The word "occupier" wherever used in this Law shall be held to mean and include any person who is the lessee under a written agreement of shooting rights in and over lands other than Crown Lands, and such lessee may exercise over the lands so leased by him the rights of an occupier under this Law.

Meaning of "occupier."

SCHEDULE A.

All varieties of the birds undermentioned, and termed or known in this Colony as the partridge, pheasant, dikkop, and wild guinea-fowl (A).

(A) Act 24, 1894, s. 3, adds "Wild Duck and Wild Geese."

Law 16, 1891.  
Schedules.

## SCHEDULE B.

Hares, and all varieties of the antelope genus, generally termed or known in this Colony as the impala, rheebock, [steenbok (A),] boschbok, bluebok, klipspringer, and duiker (B).

## SCHEDULE C.

The hippopotamus, commonly called sea-cow, eland, hartebeest, koodoo, reitbok, springbok, blesbok, ouribi, rooi reibok, [female boschbok, commonly called imbabala (C)], red boschbok, commonly called inkumbi, paauw, korhan, crane, ostrich, secretary-bird, and turkey-buzzard, known as the insingisi (D).

*Repealed by Act 8 of 1894.*  
Act No. 24, 1894.

“To Amend the Game Law, 1891,”

[16th July, 1894.]

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

Restriction on  
Governor's  
permit.

1. The permission which the Governor of Natal is empowered to grant for the shooting of Royal Game under Clause 4 of the Law No. 16, 1891, entitled “Law to make provision for the better preservation of Game in the Colony of Natal,” shall not extend to Eland and Springbuck.

Close season for  
animals and  
birds in Sched-  
ule C.

2. No permission shall be given by the Governor to shoot any of the animals or birds included in Schedule C (E), except between the first day of May and the 15th day of August, both inclusive, notwithstanding anything contained in Section 4 of Law No. 16, 1891.

Wild duck and  
geese.

3. The following birds shall be added to the Schedule A:—“Wild Duck and Wild Geese.”

Steenbok.

4. The term “Steenbok,” in Schedule B, shall be and the same is hereby expunged, and from the passing of this Act shall be deemed to be included in Schedule C of the aforesaid Law.

Turkey Buz-  
zard.

5. The “Turkey Buzzard,” commonly called the “Insingisi,” shall be excluded from Schedule C.

Imbabala.

6. The female bushbuck, commonly called “Imbabala,” shall be expunged from Schedule C and included in Schedule B.

(A) Expunged from this Schedule and added to Schedule C by Act 24, 1894, post.

(B) “Imbabala” included in this Schedule by Act 24, 1894, s. 6, post.

(C) Expunged from this Schedule by Act 24, 1894, s. 6, post.

(D) Expunged from this Schedule, but “Steenbok” added to the Schedule by Act 24, 1894, post.

(E) References to Schedules must be taken to mean the Schedules in Law 16, 1891, ante.

*Repealed by Act 13/1911  
sect. 1 - Union*

## GAOLS.

[As to Gaol delivery in Pietermaritzburg and Durban, see Law 27, 1888, tit. "CRIMINAL LAW (PROCEDURE)."]

## Law No. 6, 1880.

"To declare the Practice in regard to the carrying out of Capital Punishment."

[20th March, 1880.]

WHEREAS it is expedient to declare the practice in regard to the carrying out of Capital Punishments in this Colony:

BE IT THEREFORE ENACTED by the Lieutenant Governor of the Colony of Natal, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. This Law may be cited for all purposes as "The Capital Punishment Law, 1879."

Short title.

2. Judgment of death to be executed on any prisoner sentenced after the passing of this Law on any indictment, shall be carried into effect by the Sheriff of the Colony of Natal, or his lawful deputy, within the walls of the prison in which the offender is confined at the time of execution.

Judgment of death to be executed within walls of prison where offender is confined.

3. The Sheriff charged with the execution, and the Superintendent of the Gaol or Keeper of the Prison, as the case may be, and the District Surgeon, and such other officers of the prison as the Sheriff requires, shall be present at the execution. Any Justice of the Peace, and such relatives of the prisoner or other persons as it seems to the Sheriff, or the Resident Magistrate within whose division the gaol is situated, proper to admit within the prison for the purpose, may also be present at the execution.

Who to be present.

4. As soon as may be after judgment of death has been executed on the offender, the District Surgeon shall examine the body of the offender, and shall ascertain the fact of death, and shall sign a certificate thereof and deliver the same to the Sheriff. The Sheriff and the Superintendent of the Gaol, or Keeper of the Prison, as the case may be, and such Justices of the Peace and other persons present, if any, as the Sheriff requires or allows, shall also sign a declaration to the effect that judgment of death has been executed on the offender.

District Surgeon to certify death; and declaration to be signed by Sheriff, &c.

5. If any person knowingly and wilfully signs any false certificate or declaration required by this Law, he shall be guilty of an offence, and on conviction thereof shall be liable, at the discretion of the Supreme or any Circuit Court, to imprisonment for any term not exceeding two years, with or without hard labour.

Penalty for signing false certificate, &c.

6. The Resident Magistrate of the Division in which the prison wherein judgment of death is executed on any offender is situated shall, within twenty-four hours after the execution, hold an inquiry on the body of the offender, and shall inquire into and ascertain the identity of the body, and whether judgment of death was duly executed on the offender.

Resident Magistrate's enquiry on body.

7. The Lieutenant Governor of Natal in Council shall, from time to time, make such rules and regulations to be observed on the execution of judgment of death in every prison as he may from time to time deem expedient, for the purpose as well of guarding against any abuse in such execution, as also of giving greater solemnity to the same, and of making known without the prison walls the fact that such execution is taking

Power to Lieut. Governor in Council to make rules, &c., to be observed on execution of judgment of death.

*Rep. by Act 13/1911 sect. 1*

**Law 6, 1880.**

Such rules to be laid before Legislative Council, and published in *Government Gazette*.

Magistrate to send certified copy of proceedings to Col. Secretary. Original minutes to be filed in Attorney-General's office. Forms in Schedule.

Saving clause as to legality of execution.

General saving.

Commencement

place. All such rules and regulations shall be laid upon the table of the Legislative Council within six weeks after the making thereof; or, if the Legislative Council be not then sitting, within fourteen days after the next meeting (A). All such rules and regulations shall forthwith be published in the "NATAL GOVERNMENT GAZETTE."

8. A certified copy of the proceedings at the inquiry shall in each case be sent by the Resident Magistrate holding such inquiry, with all convenient speed, to the Colonial Secretary, for the information of the Lieutenant Governor. The original minutes of the proceedings shall thereafter be forwarded to the Attorney-General, and shall be filed in his office.

9. The forms given in the Schedule to this Law, with such variations or additions as circumstances require, shall be used for the respective purposes in that Schedule indicated, and according to the directions therein contained.

10. The omission to comply with any provision of this Law shall not make the execution of judgment of death illegal in any case where such execution would otherwise have been legal.

11. Except in so far as is hereby otherwise provided, judgment of death shall be carried into effect in the same manner as if this Law had not passed.

12. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (B).

SCHEDULE

*Certificate of Surgeon.*

I, A.B., the District Surgeon for the Division of \_\_\_\_\_, hereby certify that I this day examined the body of C.D., on whom judgment of death was this day executed in the [describe the prison], and that on that examination I found that the said C.D. was dead.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

*Declaration of Sheriff.*

We, the undersigned, hereby declare that judgment of death was this day executed on C.D. in the [describe prison], in our presence.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

E.F., Sheriff.  
G.H., Supt. or Keeper of the Gaol.  
J.K.,  
L.M., &c., &c.

*Sealed by Act. 43/20.*

**Law No. 20, 1880.**

"To Provide for the Custody of Certain Prisoners."

[25th March, 1880.]

WHEREAS it is desirable to provide for the safe custody of certain Prisoners in the Colony of Natal who may be detained therein, or who may be conveyed, under and by virtue of any warrant or order, through the Colony of Natal:

(A) See sec. 41 of Law 14, 1893, tit. "PARLIAMENT."  
(B) March 23, 1880.

BE IT THEREFORE ENACTED by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof as follows:—

Law 20, 1880

1. It shall and may be lawful for any Police Constable or other Officer or person to detain in custody and convey through any part of the Colony of Natal any person or persons convicted of any crime, or being deported to some British possession out of Natal with the object of being brought to trial, or being prisoners of war, or otherwise legally deported, who may have been handed over to him by the Civil Authorities of any Territory forming a part of the British dominions, for detention in custody, for imprisonment in Natal, or for conveyance through the Colony of Natal to some other Colony or place: Provided that the warrant or order authorising and directing the detention in custody in and conveyance through this Colony of any such person or persons shall be signed or countersigned by the Officer Administering the Government of any such Territory or District in which the person or persons aforesaid shall have been handed over, as aforesaid, for detention or imprisonment in, or conveyance through Natal (A).

Police Constable, &c., may detain and convey any convict, prisoner of war, &c., handed over to him by Civil Authorities of any British territory for detention in, or conveyance through, Natal. Proviso.

2. It shall be the duty of all Resident Magistrates, Justices of the Peace, Police Constables and Officers, and all other Her Majesty's subjects to be aiding and assisting any such Police Constable, or other Officer or person, as is in the preceding section mentioned, in all matters connected with the detention in safe custody, the imprisonment in and the conveyance through the Colony of Natal, or any part thereof, of any such person or persons as may be Prisoner or Prisoners within the meaning and intent of the preceding section; and all Superintendents and Keepers of Gaols throughout the Colony of Natal are required and hereby directed to receive into their Gaols and to detain therein any such person or persons as aforesaid, as if the warrant for his or their detention therein were issued or countersigned by the Chief Justice, or one of the Puisne Judges, of the Supreme Court of this Colony, or by any Resident Magistrate or Justice of the Peace, residing and being within the said Colony of Natal.

Magistrates, Justices of the Peace, &c., to aid and assist Police Constable, as in preceding section mentioned.

Gaolers to receive and detain prisoners.

3. It shall not be lawful for the Supreme Court of the Colony of Natal, nor any Circuit Court thereof, nor any Judge thereof, nor for any Resident Magistrate nor Justice of the Peace within the said Colony, to inquire into the circumstances under which any such person or persons, while being conveyed in charge of such Police Constable, or other officer or person as aforesaid, is or are detained in this Colony in custody, or has or have been apprehended, or is or are being detained in custody in, or conveyed through the Colony; nor to grant or issue any order in connection therewith or in relation thereto, or to institute any preparatory examinations in relation to any matter or charge in reference to such person or persons so detained as aforesaid, or to inquire into the sufficiency, or otherwise, of the warrant, order, or authority under which such person or persons is or are being conveyed through the Colony, or detained in custody therein.

Colonial Courts not competent to enquire into circumstances under which any such persons are detained in, or conveyed through, the Colony.

4. From and after the arrival in this Colony of any such person or persons detained in custody under any warrant or order signed or countersigned as in the first section mentioned, by the Officer Administering the Government of any such Territory or District, such person or persons shall and may respectively be imprisoned and detained for any period not exceeding one month, unless further detained by unavoidable circumstances, and may be treated in every respect and shall be deemed and taken to be within this Colony in precisely the same plight and condition as Prisoners confined or imprisoned in respect of some crime or offence alleged to have been committed within the jurisdiction of the Colonial Courts.

Period during which such persons may be detained in the Colony.

(A) See *In re Dimwulu*, 9 N.L.R. 257.

Law 20, 1880.  
Government of  
district for-  
warding pri-  
soner under this  
Law to defray  
expenses.  
Commencement

5. All expenses incurred by the Colonial Government of Natal in and about the detention or conveyance of any Prisoner under this Law shall be defrayed by the Government of the Territory or District forwarding any such Prisoner.

6. This Law shall commence and take effect from and after the publication thereof in the "NATAL GOVERNMENT GAZETTE" (A).

*See also  
Act 32/  
ob.*  
*Act 13/1911*

Law No. 39, 1887.

"To Consolidate and Amend the Laws relating to Gaols in the Colony of Natal."

[31st August, 1887.]

WHEREAS it is expedient to consolidate and amend the Laws relating to Gaols, Prisons, and other places of confinement in the Colony of Natal :

BE IT THEREFORE ENACTED by the Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

Repeal of Law

1. Laws No. 14 of 1862 ; 6 of 1870 ; 3 of 1876 ; 8 of 1876 ; 1 of 1880 ; 16 of 1882, and 18 of 1884 are hereby repealed from and after the commencement of this Law ; provided that the repeal enacted by this Section shall not affect—

- (1) Anything done or suffered, or any right, obligation, or liberty acquired or incurred under any Laws hereby repealed.
- (2) Any penalty, forfeiture, or punishment incurred in respect of any Law hereby repealed.
- (3) Any investigation, legal proceeding, or remedy in respect of any such right, obligation, liability, penalty, forfeiture, or punishment as aforesaid ; and any such investigation, legal proceeding, or remedy may be carried on as if this Law had not been passed, or
- (4) The execution after the commencement of this Law of any of the Laws repealed by this section so far as necessary to give effect to this Law.

Interpretation  
of terms.

2. Wherever in this Law, or in the Rules and Regulations made thereunder, the terms "Keeper of the Gaol" or "Gaoler" are used, these terms shall be deemed and construed to mean, in the case of the Gaols of Pietermaritzburg and Durban respectively, the term "Superintendent of the Gaol," and, in the case of all other gaols, prisons, or other places of confinement, the term "Keeper of the Prison," and such terms shall be the respective designations of the principal officer in charge of the said respective gaols and prisons.

Governor in  
Council may  
make rules and  
regulations for  
maintenance of  
order and dis-  
cipline among  
prisoners.

3. The Governor in Council may from time to time make, and, when made, repeal, alter, or add to such Rules and Regulations as may be necessary for the maintenance of good order and discipline among the persons confined as prisoners in any goal, prison, or other place of confinement within this Colony ; and by such Rules and Regulations may impose any punishment by solitary confinement not exceeding ten days, or by whipping not exceeding 25 lashes for any infringement thereof : Provided that no person imprisoned in any such gaol, prison, or other place of confinement under any civil process, and no female, and no child under twelve years of age, shall be liable to the infliction of any punishment by way of whipping.

(A) March 30, 1880.

4. The Governor in Council may from time to time make, and when made, repeal, alter, or add to rules defining the duties of all the officers attached to such gaol, prison, or other place of confinement; and regulations relating to the classification, treatment, religious instruction, and safe custody of the prisoners; the mode of communicating by and with prisoners; the mode in which prisoners may be visited; the rations to be allowed to prisoners; the collection and conversion of all property within the gaol, prison, or other place of confinement belonging to persons dying in such gaol, prison, or other place of confinement; the dress to be worn by and the cleanliness of the prisoners; the care and maintenance of paupers or destitute persons placed in any gaol, prison, or other place of confinement; and generally all such other rules and regulations as may be necessary for the maintenance of good order and discipline in any such gaol, prison, or other place of confinement.

**Law 39, 1887.**

Governor in Council may make rules defining duties of officers, and relating to custody and treatment of prisoners, and certain other matters.

5. The Governor in Council may from time to time make, and when made, repeal, alter, or add to such rules and regulations as may be necessary for defining the duties of all the officers attached to any public gaol, prison, or other place of confinement within the Colony, as well as the duties of warders, guards, or other persons whatsoever in charge of any convict gang, prisoner, or prisoners whatsoever employed outside the gaol, prison, or other place of confinement, or going to or returning from any such employment; and to fix a fine not exceeding Five Pounds, or any term of imprisonment not exceeding one month, with or without hard labour, for any contravention of any such rules and regulations.

Rules defining duties of officers, warders, guards, and others in charge of prisoners employed outside gaol.

6. The Governor in Council may from time to time make, and when made, repeal, alter, or add to the same rules and regulations applicable to all, or to one or more, of the gaols, prisons, or other places of confinement within the Colony, and may apply other regulations to any one or more of such gaols, prisons, or other places of confinement, or different regulations applicable to each gaol, prison, or other places of confinement respectively in the Colony: Provided that no such regulation shall be inconsistent with the provisions of this Law.

Governor in Council may make rules applicable to all or to particular gaols.

7. The Governor in Council may also, in any such rules and regulations, determine the amount payable for the maintenance of any person imprisoned in any gaol, prison, or other place of confinement under any civil process for debt at the suit of a private person.

Determination of amount payable for maintenance of person imprisoned for debt.

8. This Law shall not apply to any Borough or Township Gaol established under any Law now or hereafter in force in this Colony, save and except as by such Law may be provided.

Borough or township gaols.

9. The Rules and Regulations issued under Proclamations dated 6th February, 1881; 10th December, 1881; 4th June, 1883; 27th March, 1884, and 27th November, 1884, and made under the Laws repealed by Section 1 of this Law, shall continue to be in force until revoked, altered, or amended under this Law, and, save and so far as they are not in conflict with any of the provisions of this Law, or amended under this Law, shall be deemed to be Rules and Regulations under this Law: Provided that the duties to be performed, and regulations to be observed, by and in respect of the "Gaol Board," or any member or members thereof, as therein or elsewhere set forth, shall, *mutatis mutandis*, be deemed to be duties devolving upon and regulations applying to the Gaol Board or any member or members thereof or any Inspector of Prisons when appointed under this Law.

Certain existing rules to remain in force until revoked or altered.

10. All Rules and Regulations made under this Law, and all repeals or alterations of, or additions to, such Rules and Regulations shall come into operation from the date of their publication in the "NATAL GOVERNMENT GAZETTE."

Commencement of operation of rules and regulations.



**Law 39, 1887.**

Transmission of copies of rules to Registrar of Supreme Court.

Evidence.

Appointment and duties of officers to inspect gaols.

Appointment, constitution and powers of Gaol Boards.

Punishment for wilfully obstructing Inspector of Prisons or member of Gaol Board in execution of his powers.

Summons for appearance of person charged with offence.

Classification of hard labour.

Meaning of terms.

11. Copies of all such alterations, amendments, or new Rules and Regulations signed by His Excellency the Governor, and authenticated under the Public Seal of the Colony, shall from time to time be transmitted to the Registrar of the Supreme Court of the Colony of Natal.

12. Copies of all such Rules and Regulations promulgated in the "NATAL GOVERNMENT GAZETTE" shall be received in evidence.

13. Subject to the necessary money vote or votes by the Legislative Council, the Governor may appoint such officer or officers as may from time to time appear to be needed, and who shall visit and inspect all gaols, prisons, and other places of confinement within the Division or Divisions over which they are appointed, and who shall examine into the state of the buildings, so as to form a judgment as to repairs required, and shall also have authority to examine any person holding any office, receiving any salary or emolument, or employed in any gaol, prison, or other place of confinement; and to call for and inspect all books and papers relating thereto, and to enquire into all matters touching such gaol, prison, or other place of confinement; and any person so appointed shall once a quarter make a separate and distinct report in writing to His Excellency the Governor of the state of every gaol, prison, or other place of confinement visited by him.

14. The Governor may, pending the appointment of such officer or officers, from time to time appoint a Gaol Board in every Division or County, to consist of such civil officers and other residents as he may deem expedient, and may, as he sees fit, from time to time dissolve any such Board or Boards by notification in the "GOVERNMENT GAZETTE." The Gaol Board shall have and exercise all the powers conferred on an Inspector of Prisons in the Division or County for which they may be appointed.

15. Any person who shall knowingly and wilfully obstruct any member of such Gaol Board or any Inspector of Prisons who may be appointed under the provisions of this Law in the execution of any of the powers entrusted to him by this Law, shall on conviction before the Resident Magistrate of the Division or District in which the alleged offence has been committed, forfeit and pay for each and every such offence any sum not exceeding Twenty Pounds, and in default of payment of any penalty so adjudged immediately or within such time as the said Magistrate shall appoint, shall be committed to prison for any period not exceeding one calendar month or until the penalty be paid.

16. The Resident Magistrate of the Division in which the alleged offence is committed may, on any complaint made to him against any person for any such offence, issue his summons for the appearance of such person.

17. When any prisoner has been or shall be sentenced to hard labour, such hard labour shall be of two classes: first, of work at the treadwheel, shot-drill, crank, capstan, stone-breaking, or such other description of hard bodily labour as may be appointed by the Governor with the advice of the Executive Council, which work shall be deemed hard labour of the first-class; secondly, of such other description of bodily labour as may be appointed by the Governor with the advice of the Executive Council, which work shall be deemed hard labour of the second class: Provided that the Governor, with the advice as aforesaid, may direct that employment in the necessary services of the gaol, prison, or other place of confinement may, in the case of a limited number of prisoners to be selected by the Resident Magistrate as a reward for industry and good behaviour, be deemed to be hard labour of the second class.

18. The words "work at the treadwheel," "shot-drill," "crank," "capstan," "stone-breaking," or such description of hard labour as may be appointed by the Governor with the advice of the Executive Council, which

work shall be deemed hard labour as set forth in the preceding section, shall be taken to mean and include any description or class of labour which the Governor in Council may deem expedient to define by any rule or regulation: Provided that the description or class of labour so substituted shall not exceed in severity "work at the treadmill," "shot-drill," "crank," "capstan," or "stone-breaking" above mentioned. Law 39, 1887.

19. Criminal prisoners before trial may, if they desire it, wear a prison dress, and they shall be required to do so if their own clothes are insufficient or unfit for use, or necessary to be produced for the purposes of justice. The prison dress of prisoners before trial shall be of a different colour from that of convicted prisoners. Clothing of prisoners before trial.

20. Every person who shall aid any prisoner in escaping or attempting to escape from any gaol, prison, or other place of confinement, or from the custody of any constable, gaoler, guard, or other officer in whose custody such prisoner may be when employed outside the gaol, prison or other place of confinement, or when going to or returning from any such place of employment, or who, with intent to facilitate the escape of any prisoner, shall convey, or cause to be conveyed into any gaol, prison, or other place of confinement, or who shall secrete or leave upon, or about any road, public work, or other place where any such prisoner is usually employed or confined, for the purpose of being found or received by any such prisoner, any mask, dress, or other disguise, or any letter, or any other article or thing in contravention of this Law, shall be guilty of a crime and, on conviction, be sentenced to imprisonment with hard labour for a term not exceeding two years. Penalty for aiding a prisoner to escape, or attempt to escape.

21. Any person who holds, or attempts to hold any communication with any prisoner under escort going to or returning from any employment outside the gaol, prison, or other place of confinement, or who shall wilfully ride, drive, or lead any animal or vehicle of any kind through a convict gang under escort going to or returning from any such employment as aforesaid, or in any manner wilfully interfere with any such prisoner or convict gang as aforesaid, shall be liable on conviction to a penalty not exceeding Five Pounds, or to a term of imprisonment, with or without hard labour, not exceeding one month, or to both, in the discretion of the Court. Penalty for improperly communicating with prisoners, or interfering with convict gangs.

22. Every person who holds or attempts to hold any communication with any prisoner employed on work outside of the gaol, prison, or other place of confinement, or who, contrary to the regulations thereof, shall bring or attempt, by any means whatever, to introduce into any such gaol, prison, or other place of confinement, or, in any manner whatsoever, shall endeavour or attempt to deliver, or cause to be delivered, to any prisoner when and wherever employed without the precincts of the gaol, prison, or other place of confinement, or when going to, or returning from, any such places of employment, any description of spirituous or fermented liquor or tobacco, and every officer of any gaol, prison, or other place of confinement who shall suffer any description of spirituous or fermented liquor or tobacco to be sold or used in any gaol, prison, or other place of confinement contrary to the prison regulations, on conviction shall be sentenced to imprisonment for a term not exceeding three months, or to a penalty not exceeding Ten Pounds, or both in the discretion of the Court; and every officer of any gaol, prison, or other place of confinement convicted under this Section shall, in addition to any other punishment, forfeit his office and all arrears of salary due to him. Penalty for introducing into gaol or delivering to prisoners certain articles.

23. Every person who shall convey or attempt to convey any letter or other document or any article whatever not allowed by prison regulations into or out of any gaol, prison, or other place of confinement, or who, in any other manner, shall convey or cause to be conveyed to any prisoner Penalty for conveying letter or forbidden article to prisoner.

*Extended by act 9/1901*

*Repealed by act 13/1911 - sec 1*

Law 39, 1887. When employed beyond the precincts of such gaol, prison, or other place of confinement, or when going to or returning from any such place of employment, any letter or other document or any article whatever not allowed by Prison regulations, shall, on conviction, incur a penalty not exceeding Ten Pounds, or of imprisonment not exceeding two months; or, if an officer of any gaol, prison, or other place of confinement, shall, in addition to any other punishment, forfeit his office and all arrears of salary due to him.

Placing convicted prisoner in irons.

24. It shall and may be lawful for any Resident Magistrate, and in his absence the Superintendent or Keeper of the Gaol, subject to the subsequent confirmation of the Resident Magistrate, as a measure of precaution to prevent escape, or to restrain from violence, to cause any convicted criminal prisoner who may be confined in any gaol, prison, or other place of confinement under his jurisdiction, to be placed in irons for such period as he may deem necessary: Provided that every such case be reported to the Colonial Secretary, and that no prisoner be kept in irons for a longer period than thirty days without the special sanction of the Colonial Secretary: and provided further that it shall and may be lawful for any Resident Magistrate, or in his absence the Superintendent or Keeper of the Gaol, subject to the subsequent confirmation of the Resident Magistrate, in case any convicted criminal prisoner undergoing a sentence of imprisonment shall have at any time during the period of his sentence escaped or attempted to escape from custody, to cause such prisoner to be placed and kept in irons; provided that the irons placed on such prisoners shall be of a pattern approved by the Colonial Secretary.

Restriction on period of keeping in irons.

Pattern of irons.

Contraventions, where triable.

25. All contraventions of the provisions of this Law or the rules and regulations thereunder shall, except in such cases where provision is otherwise specially made, be triable in the Court of the Resident Magistrate of the Division or District in which such offence has been committed.

Short title.

26. This Law may be cited as the "Gaol Law of 1887."

Commencement

27. This Law shall commence and take effect from and after the publication thereof in the "GOVERNMENT GAZETTE" (A).

**Law No. 6, 1889. (13)**

"To amend the Law No. 39, 1887, entitled Law 'To consolidate and amend the Laws relating to Gaols in the Colony of Natal.'"

[26th June, 1889.]

BE IT ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. It shall be lawful for the Governor to confer upon the Superintendents of the Central Gaols of Pietermaritzburg and Durban the power to have and exercise a summary jurisdiction in trying and punishing, as hereinafter provided, offences committed by prisoners, or by warders, guards, or other officers or servants attached to either of the said gaols, against any of the existing rules and regulations for gaols, or any rules and regulations hereafter to be lawfully made under the provisions of Law No. 39, 1887, and of this Law. The Governor may at any time withdraw from either of such Superintendents as aforesaid the power conferred by virtue of this section.

*11-9-1901  
Rep. by act 13/1911 sec. 1 - 11 mon*

Governor may confer certain powers on Superintendents of Central Gaols.

2. No punishment to be inflicted under the provisions of the preceding section by either of the Superintendents therein named shall be of any other kind or exceed in severity the punishments hereinafter recited, that is to say:

(a) In the case of prisoners:

Extra labour for two hours per diem for one, two, or three consecutive days:

Solitary confinement with half or full rations for one, two, or three days:

Half rations for one, two, or three consecutive days:

Performance of any of the kinds of work or impositions awarded in gaols as punishment, as shot-drill, treadmill work, and anything of a like nature, for one or two hours per diem for one, two, or three consecutive days.

(b) In the case of Warders, Guards, and other Officers and Servants:

Fine or fines not exceeding twenty shillings in any one month in the case of a European, or ten shillings in any one month in the case of a Native: such fines to be recoverable by deduction from the salary or wages of the offender.

3. The Governor in Council may from time to time make, alter, and repeal rules for regulating the punishments which may be imposed upon prisoners, or upon warders, guards, or other officers and servants attached to the aforesaid gaols for offences against prison discipline and the rules and regulations now in force or to be made under the provisions of Law No. 39, 1887, and may also by such rules, subject to the provisions of the foregoing section, define the offences which may be tried and the sentences which may be imposed therefor by the Superintendents of the aforesaid Gaols upon whom such powers shall have been conferred in terms of the first section of this Law: Provided that no such rules made under the authority of this section shall provide for the trial or punishment by the Superintendents of the aforesaid Gaols of any cases of drunkenness or assault, or any contravention by warders, guards, or other officers or servants (A) of the Law No. 39, 1887, not provided for under the rules and regulations existing or to be made under the provisions of that Law.

Governor in Council may make Rules and Regulations for maintenance of order and discipline among prisoners.

4. This Law shall be read and construed together with Law No. 39, 1887, as one Law.

Joint construction of Laws.

**Act No. 1, 1894. (B)**

“To provide for the Consolidation and Regulation of the Police Forces of the Colony.”

[26th June, 1894.]

22. The Chief Commissioner shall furnish and supply from the Police Force hereby constituted, all warders, gaolers, turnkeys, and convict guards requisite for the custody and control of prisoners in public gaols, or set to labour outside gaols, and such warders, gaolers, turnkeys, and convict guards shall be subject to the Gaol Regulations as well as to Regulations passed under this Act.

Gaol officials to be furnished by Chief Commissioner of Police.

**GLANDERS.** ↗

[See “HORSES.”]

*Repealed.  
Act. 13/1911*

(A) A comma should probably occur here.

(B) See this Act in full, tit. “POLICE.”

## GOLD DISCOVERIES.

[See "MINES AND COLLIERIES."]

## GOVERNOR.

[See "CIVIL SERVICE"; "PARLIAMENT," &amp;c., &amp;c.]

## Law No. 10, 1874.

"To make certain Regulations with regard to the Salary and Office of Governor, and to the Maintenance of Government House."

[12th January, 1874.]

WHEREAS it is expedient to establish certain definite rules as to the proportions in which the salary provided for the Governor should be divided, on the occasion of a change in that office, between the Officer temporarily administering the Government and a newly-appointed Governor, and with regard to the maintenance, repairs, and furniture of Government House :

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Appointed Governor to receive half salary from embarkation ;

1. An Officer appointed to be Governor of Natal shall receive half salary from the date at which he embarks to assume the Government, whether the port of embarkation be in England, or in another Colony or elsewhere.

Unless the former Governor continues in office ;

2. If, however, a Governor continues in the tenure of his office until the arrival of his successor, the latter Officer shall not be entitled to any portion of the salary until he has assumed the duties of his office.

In which event payment dates from vacation of office.

3. If the office of Governor is vacated after the incoming Governor has embarked to assume the Government, he shall receive half salary from the date of such vacancy.

Half salary during absence or incapacity.

4. If the Governor be absent from the Colony, or incapacitated from performing the duties of his office, and another Officer be sworn to administer the Government, the Governor shall receive half salary during the administration of such Officer.

Remuneration of provisional Administrator.

5. An Officer provisionally administering the Government of Natal during the absence or incapacity of the Governor, or during a vacancy of the office, shall receive one half the salary of Governor, and if he be the holder of any other office, one half the salary of such office.

Administrator may appoint staff at full salaries.

6. An Officer so administering the Government may appoint the same staff as a Governor, and the persons so appointed shall receive the full salary of their respective offices.

Administrator entitled to Governor's allowances.

7. An Officer so administering the Government shall be entitled to the full allowances of a Governor if there is money available, but he shall only receive so much of the vote as is proportioned to the time he is in office.

Rules as to Government House.

8. The following rules shall be observed in regard to Government House :—

Government House, together with its stables, outbuildings, fences, and other appurtenances, shall be kept in substantial repair throughout, at the cost of the Colony.

The rooms shall be painted, papered (when necessary), and furnished at the public expense. Law 10, 1874.

The Governor shall pay at the rate of six pounds per centum per annum on the estimated value (according to a valuation to be made by such person or persons as may be appointed for that purpose by the Executive Council on the Governor's assumption of the Government) of the furniture in the bedrooms, kitchens, and other rooms not used for the public reception of company ; but shall be subject to no charge on account of the furniture of the reception rooms, or of the offices used by himself, or by his Private Secretary or Aide-de-Camp.

An Officer provisionally administering the Government, and occupying Government House during the whole or any part of his administration, shall pay one-half the foregoing charge for the use of furniture.

Contribution by  
Administrator.

9. This Law shall come into force on the first day of January, 1874, and may be cited for all purposes as "The Governor's Salary Law of 1873."

Commencement  
Short title.

(The pages have been incorrectly bound)

GRASS FIRES.

See Act-3/05.  
by sec. 1.  
13/1941

GRASS FIRES.<sup>(a)</sup>

Law No. 21, 1865.

“To Prevent the Indiscriminate Burning of Grass.”

[24th August, 1865.]

WHEREAS the indiscriminate burning of grass on pasture or other lands is a public evil, and frequently attended with great injury to property, and it is desirable that grass-burning be regulated by law :

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows :—

Penalty for wilful or negligent burning causing damage.

1. Any person who shall wilfully or carelessly burn grass on lands of which he is the owner or occupier, or which may be otherwise placed under his charge or supervision, and which fire shall extend beyond the boundaries of such property and cause damage to property of any other person shall be liable to a fine not exceeding ten pounds sterling (A).

Penalty for burning grass on other people's land.

2. Any person who shall wilfully or negligently burn grass on public lands (B) or property not belonging to him or not being in his occupation or under his superintendence shall be subject to a fine not exceeding twenty-five pounds sterling or to imprisonment with or without hard labour for a period not exceeding six months.

Penalty for burning grass on Corporation lands without permission.

3. Any person burning grass on the commonage of any Corporation subject to the provisions of Law No. 21, 1862 (c), without permission in writing previously obtained thereto from the Town Clerk or other officer of such Corporation duly authorised thereto by the Mayor and Council, or any person burning grass on private land so carelessly that the fire extends to and causes damage to private property of any other person within such Corporation, shall be liable to a fine not exceeding twenty-five pounds sterling, or in default of payment of such fine to imprisonment with or without hard labour for a period not exceeding six months.

Contraventions, where cognizable.  
By Act 32  
sect. 112

4. All contraventions of this Law shall be cognizable in any Court of the Resident Magistrate in any County or Division within which the offence shall have been committed, and may be prosecuted either at the instance of the Public Prosecutor or on complaint of any other person in his private capacity (D).

Disposal of fines.

Award to informer.

5. All fines imposed by this Law shall be paid to Her Majesty, Her heirs, and successors, and unless remitted shall be applied to the uses of the Government of this Colony : Provided that the Resident Magistrate may in any case award and direct any portion, not exceeding one half thereof, to any person or persons who shall have given such information as may have led to the conviction of any offender.

Person found firing grass may be apprehended.

6. Any person found in the act of setting fire to grass not being within land his property or in his occupancy or charge (E) may be apprehended by any field-cornet, police constable, or land-owner, and forthwith brought before a Resident Magistrate or Justice of the Peace to be dealt with according to law.

(A) Sections 1 and 2 of this Law are superseded by Act 31, 1895, post, so far as regards Divisions brought under that Act, see sec. 1.

(B) Outspan places are within the meaning of these words, see Law 9, 1870, s. 14, tit. “OUTSPAN.” See also note (A), supra.

(C) See Law 19, 1872, s. 2, tit. “MUNICIPAL CORPORATIONS.”

(D) Where the offence is committed on the boundary of a division, sec. 20 of Act 22, 1896, tit. “COURTS (MAGISTRATES),” will apply (*Umvelangange v. Clerk of the Peace, Inanda*, 5 N.L.R. 67).

(E) See note (B), supra.

GRASS FIRES.

(D). Extended by Act - 1875

7. Nothing in this Law contained shall have the effect to prevent any person who shall be injured in consequence of the burning of grass to recover damages by a civil action from the offender.

Law 21, 1865. This Law not to affect action for damages.

8. This Law shall have effect from and after the date of promulgation thereof in the "GOVERNMENT GAZETTE" (A).

Commencement

Act No. 31, 1895. (D)

"For the Better Regulation of Grass Burning."

*Ratified by Act 1875*

[24th August, 1895.]

See also Act-3/6 Repealed by Act 13/1941

WHEREAS it is expedient to make provision for the better regulation of Grass Burning :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. This Act may be cited as the "Grass Burning Act, 1895."

Short title.

2. This Act shall extend to and be in operation in such Magisterial Divisions of the Colony (including Native Locations in such Divisions) as shall in manner hereinafter provided be by proclamation of the Governor brought under this Act, and when any Division of the Colony shall be so brought under this Act, then Sections 1 and 2 of Law No. 21, 1865, and Section 1 of Law No. 21, 1874 (B), shall, so far as regards such Divisions, be deemed to be superseded by the provisions of this Act.

Operation of Act.

3. In case any fifteen owners of land (erven holders excepted) resident in any Magisterial Division, and holding different farms, shall request the Magistrate of such Division to convene a public meeting of the owners of land in the said Division to be held at the seat of Magistracy, and at a time and place to be stated in such requisition, such Magistrate shall convene a meeting to decide whether such Magisterial Division shall be brought under the provisions of this Act.

Requisition for extension of Act to a Magisterial Division.

4. The notice convening such meeting shall be published by the Magistrate for a period of at least one month in the "NATAL GOVERNMENT GAZETTE," and in one local newspaper, and also on the public notice board at the seat of Magistracy.

Notice to convene meeting.

5. The Magistrate shall preside at such meeting.

Magistrate to preside.

6. If at such meeting there shall be at least twenty electors, being owners of farms in the Division, and a majority of two-thirds of such electors shall sign a resolution in favour of bringing such Division under this Act, the Governor may, in his discretion, proclaim that the provisions of this Act shall extend and apply to such Division: Provided that if at any such meeting no such resolution shall be carried, it shall not be lawful for the Magistrate of that Division to convene another meeting in such Division for the purpose aforesaid until twelve months shall have elapsed from the date of such meeting.

Resolution.

7. The owner or occupier of any farm in any Division of the Colony to which this Act shall apply setting fire to the grass on his farm shall be bound to take care that no damage results therefrom to the property of any other person, and if he shall neglect to take such care, and such fire shall extend beyond the boundaries of such farm, and shall cause any damage to the property of any other person, such owner or occupier so setting fire to grass and thereby causing such damage, shall be liable to a penalty not exceeding Ten Pounds Sterling, or imprisonment with or without hard labour for any term not exceeding six months for each offence.

Penalty on owner or occupier for negligent burning.

(A) Aug. 29, 1865.

(B) Repealed by Act 49, 1898, tit. "COURTS (NATIVE)."



## Act 31, 1895.

Punishment for burning on another's land.

8. Any person who shall, in any Division to which this Act shall apply, wilfully or negligently burn or ignite, or cause to be burnt or ignited, any grass on public lands or on land of which he is not the owner or occupier, without authority, shall forfeit and pay for every such offence any sum of money not exceeding Twenty-five Pounds Sterling, or be imprisoned in any gaol, with or without hard labour, for any period not exceeding twelve months.

Firebreaks.

Notice to neighbours.

9. In every Division of the Colony to which this Act shall apply, the owner or occupier of a farm may, between the 30th day of April and the 15th day of August, make a firebreak as hereinafter defined on any boundary of his farm. Before making such firebreak such owner or occupier shall send to his neighbour, whose land abuts on the site of the proposed firebreak, at least seven days' notice in terms of the schedule annexed, and should such neighbour fail, neglect, or refuse after due notice as aforesaid to join in making any firebreak at the time appointed, then the owner or occupier who has in the first instance delivered such notice may, without being answerable or chargeable with any act of trespass, enter upon his neighbour's land on the day named, and from day to day by himself and his servants, and make or cause to be made or continued a boundary firebreak in terms of this Act, and for every firebreak made by him along his defaulting neighbour's boundary, the person making such firebreak shall be entitled to claim and recover in any competent Court in the Colony recompense for his labour at the rate of Thirty Shillings per mile, to be paid by the owner of the farm.

Recompense may be claimed from defaulting neighbour.

Definition of firebreaks.

10. The firebreaks provided for by this Act may be made on either side or on both sides of the boundaries of the lands affected, and shall not be more than 100 yards and shall not be less than 15 yards in width, and shall be deemed to mean the burning or ploughing of a strip of grass land, and the term neighbour shall embrace all persons being owners or occupiers of lands adjoining the farm of or in the occupation of the person giving notice of firebreak-burning or ploughing.

Saving of rights at common law.

11. Nothing in this Act contained shall take away or interfere, or be construed to take away or interfere, with the right of any person to sue for and recover at common law, or otherwise, compensation for or in respect of any damage or injury occasioned by the reckless or negligent use of fire; and 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.

Punishments otherwise than under this Act.

12. Nothing in this Act shall prevent any person from being liable to any punishment to which he would otherwise be liable, provided that he be not punished twice for the same offence.

Interpretation.

13. In construing this Act, the term "Native" shall mean a Native as defined in Law No. 14, 1888 (A); "owner" includes a registered proprietor, or a lessee for any term, or a trustee holding a property in trust; "occupier" includes any person who is in the actual occupation of, or entitled as owner to occupy any land alienated from the Crown and all persons being selectors of land on deferred payments; "elector" means a person whose name is on the Voters' List for the Electoral District.

Natal Native Trust and N.G.R.

14. The Natal Native Trust and the Department of the Natal Government Railways may each be deemed to be an owner of a farm within the meaning of this Act.

Trial of offences.

15. All contraventions of this Act shall be cognisable in the Courts of the Magistrates.

*Repealed by Act 22 of 1917, Sect 112*

(A) See tit. "STATUTES."

GRASS FIRES.

4

SCHEDULE A.

Act 31, 1895.  
Schedule A.

*Form of Notice.*

To A.B.  
the case may be], of the farm

[owner or occupier, as

Please take notice that in terms of the Section of the  
Grass Burning Act, 1895, I intend to commence burning (or ploughing—  
as the case may be) a boundary firebreak along our joint boundary at  
[state day, hour and place].

*Grey's Hospital, 12,000, Act 24, 1877*

*d. 9/19 22 Sec. 2 repealed.*

GREY'S HOSPITAL.

Law No. 4, 1877.

“To provide for the Management of Grey’s Hospital.”

[17th August, 1877.]

WHEREAS by an Indenture entered into between the Colonial Government and the Town Council of Pietermaritzburg on the 27th day of July, 1863, the said Town Council of Pietermaritzburg became Trustees of the institution known as Grey’s Hospital, and of the endowments thereof, and have since acted as such Trustees :

AND WHEREAS, in pursuance of the provisions of the said Indenture, the Town Council of Pietermaritzburg have now declined and refused further to execute the trust thereby imposed, or any material part thereof :

AND WHEREAS, in consequence of such refusal to continue such trust, the site of Grey’s Hospital, and the buildings erected thereon, and all other property movable and immovable to the said Hospital belonging or appertaining, have become vested in and become the property of the said Colonial Government :

AND WHEREAS it is expedient to make provision for the continued management and control of Grey’s Hospital by Trustees for that purpose appointed :

BE IT THEREFORE ENACTED by the Lieutenant Governor of the Colony of Natal, by and with the advice and consent of the Legislative Council thereof, as follows :—

Appointment of Board of Trustees;

1. There shall be appointed under and by virtue of the provisions of this Law a Board of Trustees for the control and management of Grey’s Hospital, and the lands, funds, property, and revenue belonging to the said Hospital, and now vested in the Colonial Government of Natal.

Constitution of Board.

2. The said Board shall consist of six persons as follows, that is to say, of the Colonial Secretary for the time being, and two members who shall be annually appointed by the Lieutenant Governor, and of the Mayor of Pietermaritzburg for the time being, and two members of the Town Council who shall be annually appointed by that body.

Hospital property vested in Trustees.

3. The lands, funds, debts, property, and revenue belonging to the said Grey’s Hospital shall be vested in and administered by the said Board of Trustees, who shall superintend and conduct the affairs of the said Hospital, subject to the limitations and provisions hereinafter contained, and in manner hereinafter provided.

Board of Trustees to stand seized of all hospital property.

4. The said Board of Trustees shall stand seized, and be possessed of and be entitled to all the land and other property, movable and immovable, and all moneys, donations, fees, and other dues already conveyed, granted, or given, or which hereafter may be conveyed, granted, or given to or on behalf of the said Grey’s Hospital in trust for the said Hospital.

Sums payable to Board out of general revenue for hospital purposes.

5. There shall be payable to the said Board of Trustees, out of general revenue, such sum or sums of money per annum as may from time to time be appropriated out of the public revenue of the Colony, which sum or sums shall be applied towards the endowment, maintenance, and repairs, and other necessary expenditure in and about Grey’s Hospital.

All money received by Board to be appropriated for hospital purposes.

6. All sums of money from time to time received and taken over by the said Board of Trustees under and by virtue of the provisions of this Law, and all rents and profits arising from the landed property hereby vested in the said Board, shall be applied in such sums as may be necessary towards and for the maintenance, endowment, and other necessary expenses of the said Hospital.

7. The Board of Trustees shall be bound, and they are hereby authorised to keep and maintain the building and premises known as Grey's Hospital as a hospital for the residence and treatment of all persons afflicted with bodily diseases or injuries, and for their residence therein until their recovery, and to and for no other use, intent, or purpose whatsoever, except as hereinafter provided; and to make such repairs as may be necessary from time to time, and the said Board is also hereby authorised to enlarge and otherwise to increase and improve the accommodation of the said Hospital should the same to them appear necessary.

**Law 4, 1877**  
Duty of Board to maintain Grey's Hospital building for certain purposes specified.

And power to increase accommodation.

Aged, infirm, and destitute persons may be admitted into hospital.

8. It shall be competent for the said Board of Trustees to admit into and maintain in the said Grey's Hospital (when and if they shall deem it expedient so to do) a limited number of aged and infirm and destitute persons: Provided always that no such admission shall be granted to any person whose friends or relations may be willing, or can by law be compelled to maintain such person, except in cases in which the Trustees may be willing to maintain such person in the Hospital on payment of the necessary fees by such person's friends or relations; and provided further that such admissions shall not be granted to an extent which shall interfere with the admission of injured or diseased persons, as detailed in Clause 7, the admission of such sick and diseased persons being within the more primary and particular purposes of the Trust, and being at all times entitled to precedence and the first consideration; and provided further that any person not coming within the meaning of Clause 7 may at any time be discharged from the Hospital by order of the Trustees.

Power of Board to receive paying patients.

9. The Board of Trustees are hereby authorised to receive into the Hospital such person or persons as are able and willing to pay such fees as may be fixed in regard to the admission of such person or persons, and to make and enforce such other terms and conditions as may be mutually agreed upon between the said Board of Trustees, and the person or persons so admitted.

10. [Repealed by Law No. 15, 1882.]

11. The said Board are hereby authorised to appoint and dismiss such surgeons, managers, matrons, nurses, attendants, and all other officers and servants as may be necessary for the proper and efficient control, management, and supervision of Grey's Hospital; to determine, regulate, and fix, and pay the salaries to the same respectively, and from time to time, and at all times, to diminish, increase, or alter the same.

Board authorised to appoint necessary officers, dismiss same, and fix salaries.

12. The said Board are hereby authorised to make such Rules, Bye-laws, and Regulations for the due and efficient management and control of the said Hospital, and to make, alter, or rescind any Rules and Regulations for the more fully carrying out the purposes and objects for which the Board has been constituted under this Law, and the better to carry out and give effect to the provisions of this Law.

Board empowered to make bye-laws, &c., for management of hospital.

13. All rules, Bye-laws, and Regulations framed by the said Board of Trustees under the provisions of this Law, shall be subject to the approval and sanction of the Lieutenant Governor, and when so approved and sanctioned shall be published in the "GOVERNMENT GAZETTE."

Approval and publication of bye-laws.

14. The said Board of Trustees shall cause true and correct records to be kept of all its proceedings, and true and correct accounts of all moneys received and expended on behalf and account of the said Grey's Hospital, and shall transmit, for the information of the Lieutenant Governor and the Legislative Council, a statement of the Receipts and Expenditure during each and every year, together with a general report of the state and affairs of the said Grey's Hospital.

Records of proceedings of Board and of receipts and expenditure to be kept.

15. The said Board of Trustees shall hold Monthly Meetings on the first Wednesday in every month, and at such other time or times as may be found necessary.

Monthly and other meetings of Board.

**Law 4, 1877.**

Responsibility of Trustee after ceasing to be such.

16. Any Trustee who shall resign or be removed, shall nevertheless remain responsible or liable for any act performed by him as such Trustee, or done under preface of his office as Trustee, for a period of five years from the time he may, from any cause whatever, cease to be a Trustee.

Trustees to elect Chairman;

17. The Trustees shall from time to time elect from among themselves a Chairman, who, when present, shall preside at meetings of said Trustees. When such Chairman shall be absent from any such meeting, the said Trustees shall elect one of themselves to act as Chairman of such meeting, and in case the said Trustees shall, at any time be equally divided, the Chairman or Trustee acting as Chairman, shall have a casting vote in addition to his own vote.

His casting vote

Quorum of Trustees.

18. Three Trustees shall form a quorum, and shall be competent to perform all matters and things which may be done by the Trustees under the provisions of this Law.

Legal proceedings to be in name of Chairman of Trustees

19. All actions or other proceedings at Law to be instituted by or against the Trustees of the said Grey's Hospital, shall be so instituted for, by, or against the Chairman of the Trustees for the time being.

Commencement

20. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A).

*See Act 42/03.*

*Ord. 9/1922 Sec. 2 repeals*

**Law No. 15, 1882.**

"To amend and extend the provisions of the Law No. 4, 1877, entitled 'Law to provide for the Management of Grey's Hospital.'"

[4th September, 1882.]

WHEREAS certain powers have been conferred by Law upon the Board of Trustees of Grey's Hospital relative to the leasing of lands vested in the said Trustees :

AND WHEREAS it is expedient to extend the powers so conferred, and further to enable the said Board of Trustees, subject to certain conditions, to alienate and dispose of the lands vested in them, and for these purposes to amend and extend the provisions of the Law No. 4, 1877, entitled "Law to provide for the Management of Grey's Hospital" :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

Repeal.

1. Section 10 of the Law No. 4, 1877, entitled "Law to provide for the Management of Grey's Hospital," shall be and the same is hereby repealed.

Leasing powers of Board of Trustees of Grey's Hospital.

2. The Board of Trustees appointed under and by virtue of the Law No. 4, 1877, entitled "Law to provide for the Management of Grey's Hospital," are hereby empowered to lease any lands now, or which at any time hereafter may be vested in the said Trustees, and to apply the rents and profits thence accruing for any of the purposes authorised by the said Law No. 4, 1877 : Provided that the said Board shall not demise or lease the said lands, or any part or parts thereof, unto any person or persons for any term or number of years exceeding fifty years ; and provided also that all such leases shall be disposed of by public auction after being advertised in three issues of a local newspaper.

Duration of leases.

Board authorised to sell lands.

Investment of proceeds of sale.

3. The said Board are hereby authorised to alienate and dispose of by sale by public auction, any lands now or which at any time hereafter may be vested in the said Trustees : Provided that all moneys accruing from

(A) Oct. 23, 1877.

## GREY'S HOSPITAL.

4

*in Act 42/03*  
such sale shall be invested in first mortgage on immovable property in Natal, or in the public funds of Great Britain or its Dependencies, or in the debentures of any Colonial Municipal Corporation; and provided also that the Trustees shall have power from time to time to alter or vary the securities, and that the interest received from such investment shall be applied to a fund for the maintenance, repairs, and other necessary expenditure in and about Grey's Hospital: Provided further that no such lands shall be alienated and no moneys shall be invested as aforesaid, and no change of investment shall be made without the consent of the Governor in writing to such sale and investment.

Law 15, 1882.

Governor's consent necessary.

4. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE," and may be cited for all purposes as the "Grey's Hospital Lands Law, 1882" (A).

Commencement

*Greytown Loan. 24/06.*

## GUARANTEE.

[See "CIVIL SERVICE"; "CONTRACTS"; "CONTRIBUTION AND INDEMNITY."]

## GUARDIANS.

[See "INTESTATE ESTATES"; "MINORS"; "PROBATE AND ADMINISTRATION."]

## GUNPOWDER.

[See "ARMS, AMMUNITION, &C."]

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(A) Sept. 5, 1882.

## HOLIDAYS.

## HARBOURS.

[See "PORTS AND HARBOURS."]

## HEALTH.

[See "PUBLIC HEALTH."]

## HIGH SCHOOLS.

[See "EDUCATION."]

## HIGHWAYS.

[See "OUTSPAN"; "ROADS."]

*Mobane Railway 5-5/106.*

## HOLIDAYS.

Law No. 15, 1862.

"To declare Public Holidays, and the Law in relation to Bills of Exchange and Promissory Notes becoming payable upon Holidays."

[13th August, 1862.]

WHEREAS it is expedient to declare what days, not being Sundays, shall be considered as public holidays, for the purpose of applying to such holidays respectively, the rule or principle of law applicable to bills of exchange or promissory notes payable upon Sundays, which are deemed, for the purposes of presentation for payment, to become due upon the Monday following:

BE IT ENACTED by the Lieutenant-Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. The following days shall, and are hereby declared to be public holidays, viz., New Year's Day, Good Friday, Easter Monday, Whit Monday, the Queen's Birthday, Michaelmas Day, the 29th September, All Saints' Day, the 1st November, Christmas Day, and any day appointed by proclamation of the Lieutenant Governor as solemn fast or day of thanksgiving (A).

2. Any bill or promissory note becoming payable upon any of such holidays, shall be deemed and taken to become due and payable upon the day next succeeding such holiday, and not sooner, unless such succeeding day shall be a Sunday; in which case such bill or note shall be deemed and taken to become due upon the following Monday: Provided, that

(A) As to the days on which Indian Immigrants are exempt from work, see Law 25, 1891, s. 24, tit. "IMMIGRATION (INDIAN)."

What days are public holidays.

*Act 15, 1862*

Bills, &c., falling due on a holiday.

whenever New Year's Day, the Queen's Birthday, Michaelmas Day, All Saints' Day, or Christmas Day shall fall upon a Sunday, the Monday following shall be deemed and taken to be the holiday. Law 15, 1862.

3. As often as any bill of exchange or promissory note shall become due and payable upon the day next preceding any of the holidays aforesaid, it shall not be necessary or competent for the holder of such bill or note to give notice of the dishonour thereof until the day next succeeding such holiday. Bills, &c., falling due on a day next preceding a holiday.

4. As often as any such holiday as aforesaid shall fall on a Monday, or, under the provisions of Clause 2, falling on Sunday, shall be held to fall on the Monday succeeding, all bills and notes which become due and payable upon the next preceding Sunday, shall be deemed and taken to become due and payable upon the next succeeding Tuesday, and not sooner; and in regard to all bills and notes which become due upon the Saturday next preceding any such holidays which fall on a Monday, it shall not be necessary or competent for the holder of any such bill or note to give notice of the dishonour thereof until the next succeeding Tuesday. Bills, &c., falling due on a Sunday, the next day being a holiday.

5. This Bill shall commence and take effect from and after the publication thereof in the "GOVERNMENT GAZETTE" (A). Commencement

## HOMICIDE.

[See "CRIMINAL LAW."]

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(A) Aug. 19, 1862.



1 Rep. by act 14/1911 HORSES—GLANDERS.  
sec. 1 - Union

(a) See also act 46/06

HORSES.

Act No. 27, 1898.(a)

“ To make better provision for Preventing the Spread of the Disease called Glanders.”

[15th August, 1898.]

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

Repeal of Law 14, 1887.

1. Law No. 14, 1887, entitled Law “ To make better provision for Preventing the Spread of the Horse Diseases called Glanders and Farcy,” shall be and the same is hereby repealed, without prejudice to anything done or any right acquired or any liability incurred thereunder.

Interpretation.

2. In this Act the word “ animal ” includes all animals of the following classes : horse, mule, donkey. “ Veterinary Surgeon ” or “ Stock Inspector,” unless the context shows a different meaning, means a Veterinary Surgeon or Stock Inspector employed in the Department of the Principal Veterinary Surgeon.

Report of disease to be made by owner.

3. It shall be the duty of every person being the owner, or having the charge or custody of an animal suspected of being infected with, or showing symptoms of, the disease known as glanders, to isolate the said animal, and within forty-eight hours of such disease manifesting itself to give information to his immediate neighbour or neighbours, and to the Magistrate, Stock Inspector, or Veterinary Surgeon of his District. Such Magistrate or Inspector of Stock shall at once inform the Veterinary Surgeon of the District, who shall immediately proceed, on receipt of such information, to inspect and examine the case.

Inspection by Veterinary Surgeon.

Diseased animal not to be moved.

4. It shall not be lawful for any person to ride, lead, drive, or otherwise conduct any animal infected or suspected of being infected with glanders, or about to be examined or treated for the said disease ; but the examination and treatment of any such diseased animal shall take place at or near to the place in which the disease shall have been first discovered, and in which place the animal shall have been isolated.

Offence of sending diseased or suspected animal by rail.

5. Any person who shall send, or attempt to send, by railway any animal infected, or which he has reason to suppose is infected, with the disease called glanders, shall be liable to a fine not exceeding Ten Pounds Sterling, or in default of payment to imprisonment, with or without hard labour, for a period not exceeding one month.

Such animal not to be sent to Pound, but isolated.

6. In no case shall any animal infected, or suspected of being infected, with the disease called glanders be sent to any public pound, but it shall be isolated, together with any or all the other animals until such time as they have been examined by a Veterinary Surgeon on the premises of the owner or person in whose custody they are. Any person, not being an owner, in whose custody and on whose premises the said animals may be so isolated, shall be reimbursed by the owner, and, failing the owner, by the Government, for all necessary expenses he may be put to for feeding, securing, and taking charge of the said animals.

Expenses of person on whose premises another’s animal is isolated.

Offence of offering diseased or suspected animal for sale.

7. Any person offering for sale, either publicly or privately, any animal infected, or which he has reason to believe may be infected, with glanders, shall on conviction be liable to a fine not exceeding Fifty Pounds Sterling, and in default of payment to imprisonment for a period not exceeding three months.

8. Any unauthorised person, whether the owner or not of any animal infected with glanders, who shall ride, lead, or drive, or otherwise conduct any such animal upon or along any public road, street, or thoroughfare, or into any common pasture land or any outspan place, shall incur, and become liable to, a penalty not exceeding Ten Pounds Sterling, and not less than Five Pounds Sterling, and in default of payment thereof to imprisonment for any period not exceeding one month, unless he shall prove to the satisfaction of the Court before which the case shall be prosecuted that the said animal was, at the time and place charged, in the act of being conducted to some particular adjacent place for the purpose of being destroyed

Act 27, 1898.  
Office of taking infected animal on roads, outspans, &c.

9. It shall be lawful for any person who shall find any animal infected, or suspected of being infected, with glanders, in or upon any public or private road, street, or thoroughfare, or on common pasture land or outspan place, or running loose upon the place or ground of any person, and not in the charge of any person, to secure such animal on the spot, if practicable, otherwise in some other place deemed more suitable by such person, until it can be examined, as provided in the third section of this Act.

Stray animal may be secured for purpose of inspection.

10. It shall be lawful for any person who shall have secured any animal, as provided in the last preceding section, to report the same to the Magistrate, or to a Stock Inspector, who will at once inform the Veterinary Surgeon. The said animal shall be kept isolated and fed until the decision of the Veterinary Surgeon shall be known regarding the disposal of such animal.

Report, isolation, and inspection.

11. A Veterinary Surgeon or Stock Inspector shall have full power and authority to enter into any stable, or other building or place in which any animal infected, or suspected of being infected with glanders, is or has been, for the purpose of inspecting any such animal, and if he think proper he may direct any animal to be isolated, with any precautions he may consider necessary. *But See Act 46/06.*

Powers of Veterinary Surgeon or Stock Inspector to enter, inspect, and isolate.

*not to be uncertain the Act 46/06*  
12. If, upon inspection of any animal, a Veterinary Surgeon is of opinion that it is infected with glanders, he shall be empowered to apply a test for the purpose of ascertaining whether it be so infected or not, and he may order such animal to be isolated, and to be submitted for further examination, as he may think proper.

Powers of Veterinary Surgeon to apply tests and compel isolation.

13. If, upon any examination, a Veterinary Surgeon finds that an animal is infected with glanders, he shall have full authority to order its destruction, and to enforce the execution of such order.

Destruction of infected animal.

14. In the event of any animal being destroyed by order of a Veterinary Surgeon as being infected with glanders, the owner may claim to have the carcase opened and examined in presence of the Veterinary Surgeon and two or more disinterested persons. If the animal is found to have been infected with glanders, and the disease had openly manifested itself, at the time of the inspection by the Veterinary Surgeon, then no compensation shall be claimable for the destruction of such animal. If the animal was so infected, but the disease did not become manifest until shown by a test applied by the Veterinary Surgeon, then compensation shall be paid out of the general revenue to the extent of two-thirds of the value of such animal: Provided that such compensation shall in no case exceed Twenty Pounds Sterling. If the animal be proved not to have been infected with glanders, then the compensation shall be the value of the animal immediately before it was slaughtered, but shall in no case exceed Thirty Pounds Sterling. The value of the animal so destroyed for which it is intended to claim compensation, shall be decided by two disinterested persons, one of whom shall be appointed by the Veterinary Surgeon, and one by the owner (A).

Examination of carcase.

Compensation from revenue in certain cases.

*See Sec 4  
Act 46/06.*

(A) See proviso added to this section by Act 16, 1899, post.

Act 27, 1898.

Isolation of  
"in contact"  
animals.

15. The Principal Veterinary Surgeon or other Veterinary Surgeon is hereby empowered to direct the isolation at such places as he may approve of any animals which he shall be satisfied have been in contact with an animal infected with glanders for such period and under such restrictions as he may deem necessary.

Burning or  
burial of  
carcasses,

16. All animals which have died of glanders, or have been destroyed either by the owner or otherwise, as being infected with glanders, shall be immediately burned or buried and well covered up by or at the expense of the owner, and at such place or places as may be most convenient: Provided it be not within fifty yards of any dwelling house, or within fifty yards of any stream: Provided further, that all animals which have died or have been destroyed within the boundaries of any borough or township shall be buried at such place or places as may be fixed by the Corporation of such Borough or the Local Board of such Township; and any person whose duty it shall be to bury such dead animal, and who shall refuse or neglect to do so, shall be liable, upon conviction, to a fine not exceeding Ten Pounds Sterling, and to have the said animal buried at his expense by order of the Magistrate.

In boroughs or  
townships.

Offences of  
neglect to bury.

Liabilities of  
hotelkeepers  
for stabling in-  
fected animals  
or neglecting  
precautions.

17. Any accommodation-house or hotel-keeper who shall knowingly stable, or permit the stabling on his premises of any horse, mule, or other animal which shall be infected with glanders, or be suspected of being so infected, or who shall, after having stabled such animal, discover that it was so infected, neglect properly to clean and purify such stable and manger therein according to any rules which may be made in terms of this Act, or who shall stable a horse or other animal of any visitor with any animal infected with glanders in the same stable or building, or without previously purifying and disinfecting, to the satisfaction of the Veterinary Surgeon, such stable and manger, as aforesaid, shall, upon conviction before the Magistrate, be liable to a penalty not exceeding Five Pounds Sterling.

Destruction  
of infected arti-  
cles.

18. All clothing and utensils which, in the opinion of a Veterinary Surgeon, are likely to disseminate the disease known as glanders shall be destroyed or otherwise dealt with as directed by the said Veterinary Surgeon.

Purification of  
stables and  
premises.

19. All stables and other places in which animals infected with glanders have been stabled or kept shall be dealt with by the Veterinary Department in such a manner as to ensure their subsequent freedom from the disease.

Duty of persons  
keeping animals  
to allow inspec-  
tion, &c., and to  
obey orders of  
Inspector or  
Veterinary  
Surgeon.

20. It shall be the duty of all persons having the charge or custody of animals to allow and facilitate in every way the inspection, testing, and examination of all such animals, and to obey all lawful orders of a Stock Inspector or Veterinary Surgeon, and when so ordered, to destroy any animal, and to bury it promptly and with proper precautions. Any person who shall neglect or refuse to perform his duties under this section shall be guilty of a contravention of this Act, and shall, in addition to any other penalty, be liable to pay all expenses incurred through his neglect or disobedience in carrying out such orders.

Offence of  
knowingly  
allowing an  
infected or sus-  
pected animal  
to stray.

21. If the owner of any animal infected with, or showing the usual symptoms of glanders, and which shall be found at large and unsecured, as described in Section 9 of this Act, shall be proved to have known or to have been informed that such animal was infected with glanders, or suspected to be so, and shall have refused or neglected to isolate the said animal, or to act as required by this Act, he shall be guilty of a contravention of this Act.

Duty of private  
Veterinary Sur-  
geon to report  
suspicious cases.

22. It shall be incumbent upon all private Veterinary Surgeons to report to the Principal Veterinary Surgeon of the Colony, or to the nearest Magistrate, Government Veterinary Surgeon, Stock Inspector, or Police Inspector, any case coming under their notice which they may deem to be

suspicious, in order that such case may be dealt with by the Veterinary Department without delay, and any such case so reported to a Magistrate or other officer shall be at once brought under the notice of the Principal Veterinary Surgeon.

Act 27, 1898.

23. The Governor in Council may from time to time make such rules as may be required for the better execution and carrying out of the purposes of this Act, and may define and fix such fees and all other expenditure as may be required for carrying out the objects and purposes of this Act, and allow the same to be paid from the General Revenue of the Colony. Such rules shall be published in the "NATAL GOVERNMENT GAZETTE," and copies shall be laid before both Houses of Parliament, if then in session; otherwise within one week of the beginning of the next session.

Rules.

*L.H. 254/1900*

24. Any person contravening any of the provisions of this Act or any of the rules framed thereunder for which no special penalty is provided, shall be liable to a penalty or fine not exceeding Ten Pounds Sterling, or in default of payment to imprisonment, with or without hard labour, for a term not exceeding one month.

Punishment of contraventions.

25. All fines imposed under this Act shall be paid into the Colonial Treasury and applied to the uses of the Government of this Colony: Provided, that in any case the Court may direct and award any portion not exceeding one-half of the said fine to any person or persons who may have given such information as may have led to the conviction of any offender.

Disposal of fines.

26. All contraventions of this Act shall be cognizable in the Court of the Magistrate of any Division in which the offender shall be found, or where the offence shall have been committed.

Offences cognizable by Magistrate.

Act No. 16, 1899. *Repealed by act 14/1900 sec. 1 Unno*

"To amend Act No. 27, 1898, entitled Act 'To make better provision for Preventing the Spread of the Disease called Glanders.'"

[15th August, 1899.]

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

1. Section 14 of Act No. 27, 1898, entitled Act "To make better provision for Preventing the spread of the Disease called Glanders," shall be amended by the addition thereto of the following words:—

Amendment of sec. 14, Act 27, 1898.

Provided also that no compensation shall be claimable by the owner of any animal which has been introduced into this Colony from the neighbouring States or Colonies, or by sea within a period of six months prior to the application of the test as above provided for, and that, if called upon to do so, it shall lie with the person claiming compensation to prove to the satisfaction of the Minister of Agriculture that the animal was introduced prior to the said period of six months.

## HOSPITALS.

[See "GREY'S HOSPITAL."]

## HOWICK VILLAGE.

Act No. 32, 1899.

“To authorise the Construction of Electric Tramways and other works for the benefit of the inhabitants of the Village of Howick (including the Village of New Howick) and others.”

[4th September, 1899.]

WHEREAS it is expedient to authorise the construction of a tramway from the Howick Railway Station on the Natal Government Railways to the village of Howick (including the village of New Howick), to be worked by means of electricity, or other motive power, and the erection of works for the supply of electricity for private or public purposes within the village of Howick (including the village of New Howick) and its neighbourhood for the purpose of lighting and other purposes :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

Short title.

1. This Act may be cited for all purposes as “The Howick Tramway and Lighting Act, 1899.”

Interpretation.

2. The word “person,” wherever appearing in this Act shall include companies and corporations.

The word “company” means any body corporate or incorporate.

The word “contractor” means any company or person who shall contract with the Trustees or be authorised by them to construct and maintain all or any of the works authorised under this Act.

The word “works” means and includes electric lines, tramways, buildings, machinery, engines, works, matters or things of whatever description required to supply electricity and to carry into effect the objects of this Act.

Trustees,  
appointment.

3. The Governor in Council shall be empowered from time to time to appoint five Trustees for the purposes of this Act.

Trustees em-  
powered to  
contract for  
construction of  
works.

4. The Trustees shall be, and they are hereby empowered, subject to the provision of Section 24 of this Act, to contract with any contractor for the construction of works necessary for the purpose of carrying out the provisions of this Act for the benefit of the inhabitants of the village of Howick (including the village of New Howick) and neighbourhood within a radius of five miles from the Umgeni Falls, upon such terms and conditions as the Governor in Council may from time to time approve.

Provisions to  
be contained in  
contract.

5. Any contract entered into as aforesaid shall contain provision with regard to the following matters :—

The securing a regular and efficient tramway service ;

The securing the safety of the public from injury to person or property ;

The completion of the works within a defined period ;

The enforcement of the due performance of the obligations to be undertaken by the contractor, by the imposition of penalties or otherwise ;

The inspection of the tramways or works, from time to time, by some person duly appointed by the Trustees ;

An indemnity to the Trustees against loss or damage ;

The limits within and the conditions under which a supply of electricity is to be compulsory or permissive ;

The securing of a regular and efficient supply of electricity ;

The limitation of the prices to be charged in respect of the supply of electricity :

The return to the river above the Falls of all water not required by the contractor ; Act 32, 1890.

Due provision and arrangement whereby the quantity of water at the intake to the contractor's works shall be mechanically and automatically restricted in terms of the provision contained in Section 7 of this Act ; and

The expropriation of the works in terms of this Act.

6. In case the works hereby authorised or the exercise of the powers hereby conferred shall occasion injury to any person, compensation shall be made by the contractor to such person for all damage sustained by him by reason or in consequence of the exercise of such powers, and if any telegraph, telephone, or other line of electrical communication owned by the Colonial Government is in any way injuriously affected by the construction of the lines or works, the contractor shall pay the expenses of any such alterations in, or additions to, such line or lines as may be necessary to remedy such injurious affection.

Contractor to make compensation for damage caused by works, &c.

7. The contractor shall be and is hereby empowered to draw water from the Umgeni River at any time and at any and all the point and points of intake shown on the plans filed with the Clerks of the Legislative Council and Legislative Assembly, and to lead such water through pipes and conduits, and to lay such pipes and conduits along the pipe routes shown in the said plan, provided, however, that the water so taken shall never, except between the hours of 9 p.m. and 6 a.m., exceed one-eighth of the quantity at any time flowing in the river. The said contractor is further authorised to make all necessary dams, reservoirs, excavations, and other works, and with wagons, carts, and vehicles to have access to the pipe route, excavations, and other works for the purposes of construction, examination or repair, or other purposes of the works, and to do such other acts, matters, and things, and to exercise such further powers as shall be necessary to carry out the objects of this Act.

Contractor authorised to draw water from Umgeni River, to make necessary dams, &c.

8. The contractor shall be empowered to construct, work, and maintain a tramway from the Howick Railway Station on the Natal Government Railways across the remaining portion of the Subdivision A of the farm "Waterfall," in the County of Pietermaritzburg, in the Colony of Natal, to a point in the village of Howick (including the village of New Howick), to be approved of by the Governor in Council, and from time to time to repair, alter, or renew the same ; and to erect all buildings, sidings, crossings, and other works, and to open and break up any roads, streets, drains, or the like ; and to purchase, hire, or otherwise legally acquire by agreement all such lands and buildings as may from time to time be found necessary for any of the aforesaid purposes.

Contractor authorised to construct and work tramway.

9. The contractor may make and maintain in the lines according to the deposited plans, or in such of the lines and with such deviations from the deposited plans as the Governor in Council shall approve, the tramway hereby authorised, with all proper approaches, passing places, works, and conveniences connected therewith respectively, and may so make and maintain the same upon such of the lands shown in the deposited plans, or upon such other lands as may be required for the purpose ; and may enter upon, take and use permanently or temporarily all such lands as aforesaid as may be so required.

Contractor may take and use lands.

10. The tramway hereby authorised shall be made upon a safe and reasonable gauge, and shall be laid and maintained in such a manner wheresoever it runs across or along the portion of any road or street actually used for traffic, that the uppermost surface of the rails shall be on a level with the surface of the street or road, and shall not be opened for public traffic until the same shall have been certified to be fit for such traffic by an engineer appointed by the Governor in Council.

Gauge.

**Act 32, 1899.**  
How work to be executed.

11. All buildings, diggings, and work of every kind, as well as any alterations thereof, shall be executed according to the directions and under the supervision and control of the engineer, to be appointed as aforesaid, and no work shall be passed unless approved by him nor shall any completed work be put to use unless and until he shall have given to the contractor his certificate that the same has been executed to his satisfaction, and that it is ready and fit for use.

Remuneration of engineer.

12. The remuneration of such engineer shall be fixed by the Governor in Council, and shall be paid by the contractor.

Tariff of charges to be approved by Governor.

13. The contractor may levy tolls and make charges for the conveyance of passengers and others upon such tramway. Any tariff of tolls and charges shall be subject to approval by the Governor in Council.

Carriages with flanged wheels may be used.

14. The contractor may use on the tramway authorised by this Act cars or carriages with flanged wheels or other wheels suitable only to run on the prescribed rails, and subject to the provisions of this Act the contractor shall have the exclusive use of the said tramway for cars or carriages with flanged wheels or other wheels suitable only to run on the prescribed rails.

Motive power.

15. The cars and carriages used on the tramway may be propelled by electricity or other motive power.

Contractor may supply electricity and may erect the necessary works.

16. The contractor is hereby empowered to supply electricity for public and private purposes within the limits prescribed by this Act, and shall have power to execute and maintain any works needed for the purposes of such supply; and to lay down and place any lines, pipes, wires, meters and accumulators and erect all such buildings, and perform and execute all such works within the limits prescribed by this Act, as may be necessary for such purposes.

Authorisation of by-laws, subject to approval of Governor.

17. The contractor may, subject to the approval of the Governor in Council, make by-laws with respect to:—

The fares chargeable to passengers using the tramway authorised to be constructed under this Act;

Frauds by passengers attempting to avoid payment of their fares;

The interference with or obstruction of any of the works authorised under this Act by any person;

The arrest and detention of offenders against any such by-laws;

The prohibiting of any person carrying or requiring to be carried on the said tramways any goods which may be of a dangerous nature;

The prohibiting of any person using the tramway or any portion thereof with cars or carriages having flanged wheels or other wheels suitable for running on the said tramway;

and to impose penalties for the breach of any such by-laws, provided that no penalty shall exceed a fine of £5 sterling, or in default of payment of any such fine, imprisonment with or without hard labour for a period not exceeding one month.

Prosecution.

18. The contractor shall be empowered to prosecute by any person whom he may appoint any offenders against such by-laws before the Magistrate of the Division in which such offence is committed.

Incorporation of Law 16, 1872.

19. The Lands Clauses Consolidation Law, No. 16 of 1872, is, except when expressly varied by this Act, incorporated with and forms part of this Act.

Equal terms for electricity supplied for private purposes.

20. When a supply of electricity is provided within the limits prescribed by this Act for private purposes, then every company or person within such limits shall, on application, be entitled to a supply on the same terms on which any other company or person in the same locality or neighbourhood is entitled under similar circumstances to a corresponding supply.

21. The contractor shall, upon being required so to do by the owner or occupier of any premises situated within seventy-five yards from any main, give and continue to give a supply of electricity for such premises for lighting purposes.

**Act 32, 1899.**  
Right to continuous supply of electricity.

22. If any company or person neglects to pay any charge for electricity or any other sum due from them to the contractor in respect of the supply of electricity to such company or person, the contractor may cut off such supply, and for that purpose cut or disconnect any line, pipe, or other work through which electricity may be supplied, and may, until such charge or other sum, together with any expense incurred by the contractor in cutting off such supply as aforesaid are fully paid, but no longer, discontinue the supply of electricity to such company or person.

On default in payment of charge for electricity contractor may cut off supply.

23. Where any electric lines, pipes, wires, meters, accumulators, fittings, works or apparatus belonging to the contractor are placed in or upon any premises not being in the possession of the contractor, for the purpose of supplying electricity under this Act, such electric lines, wires, pipes, meters, accumulators, fittings, works or apparatus shall not be subject to the landlord's remedy for rent of the premises where the same may be, nor to be taken in execution under any process of a Court of Law, or any proceedings in insolvency against the person in whose possession the same may be.

Exemption of electrical plant, &c., from seizure under process of the Court.

24. The powers conferred under Clauses 4, 13, and 17 of this Act shall not be exercised until the sanction of the Governor in Council has been obtained thereto.

Governor's sanction.

25. In the event of the village of Howick (including the village of New Howick) being brought within the provisions of the Municipal Corporations Law, 1872, or the Townships Law No. 11 of 1881, or of any like Act, the Town Council, or Local Board, as the case may be, shall be substituted for the Trustees appointed as aforesaid, with the like powers as are conferred by this Act.

Town Council or Local Board to take place of Trustees in certain eventualities.

26. The Governor in Council shall be empowered at any time, after giving not less than six months' notice, to purchase and take the whole of the works authorised by this Act, and the Trustees and any contractor shall be required to sell, transfer, and hand over to the Colonial Government the works so purchased, and the purchase price shall be paid to the persons entitled thereto according to their respective interests.

Governor empowered on six months' notice to purchase works.

27. Any such purchase shall be effected according to the provisions of Law No. 16, 1872: Provided

Purchase, how to be effected.

- (a) That the purchase price shall be determined according to the value of the works at the time of purchase without any addition in respect of compulsory purchase, statutory rights, goodwill, or profits, save as provided in Sub-section (b) ;
- (b) That there shall be added to the value ascertained as aforesaid an amount as interest equal to five per centum per annum on the capital expended if the works be purchased before completion, or within five years after completion, and if purchased at any time thereafter, an amount equal to ten per centum on the value ascertained as aforesaid.

28. In the event of the village of Howick (including the village of New Howick) being brought within the provisions of any Municipal Corporation or Township Law, or the like, the Town Council or Local Board, as the case may be, shall have the same powers for purchasing and taking the works either from the contractor or from the Government as are given by the foregoing Sections to the Governor in Council.

Town Council or Local Board to have same powers of purchasing.

29. The Governor in Council may, from time to time, make such regulations as may be expedient for securing the safety of the public from injury to person or property, and for minimising, as far as may be

Regulations.



- Act 32, 1899.** reasonable, any interference with the electric wires, lines and apparatus of the Colonial Government, and may from time to time rescind, alter, or repeal such regulations, and may impose penalties for the breach of any such regulations: Provided that no such penalty shall exceed a fine of £5 sterling, or in default of payment of any such fine, imprisonment with or without hard labour for a period not exceeding one month.
- Penalty.**
- Trustees to be reimbursed and indemnified.** 30. The Trustees shall be reimbursed all costs and charges incurred and be indemnified in respect of all damages sustained by reason of the exercise by them of the powers conferred by this Act, and the same shall be paid by the contractor.

### HUSBAND AND WIFE.

[As to liability of Husband to support his Wife, see Act No. 10, 1896, tit. "DESTITUTE PERSONS." See also "BONDS (RENUNCIATIONS)"; "COMMUNITY OF GOODS"; "DIVORCE"; "EVIDENCE AND WITNESSES"; &c., &c.]

# HYPOTHECS.

## HYPOTHECS.

### Law No. 20, 1866.

“Law to abolish and amend the Law relating to Tacit and other Hypothecations arising from Implication of Law on Immovable Property.”

[12th December, 1866.]

WHEREAS the various tacit and other hypothecations which exist or are supposed to subsist by implication of law in this Colony upon or with respect to immovable property are prejudicial to the free commerce of such property, by creating doubts as to the validity of titles by conveyance, and it is therefore expedient to alter and amend the law in such respect :

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :

1. [Repealed by Law No. 13, 1887.]
2. [Repealed by Law No. 13, 1887.]

3. It shall be incumbent on all executors dative, guardians, curators, and tutors of any minor, insane person, or interdicted prodigal acting under any appointment other than by or in virtue of any last will or other testamentary disposition or special deed of appointment or trust, immediately upon their being so appointed, to enter into a bond, in such sum as shall appear fitting to the Master of the Supreme Court, for the faithful administration of their respective offices (A).

Executors dative, guardians, &c., appointed otherwise than by will or deed, to give bond for due administration.

4. Whenever any immovable property belonging to any minor, or insane or interdicted person, shall be sold by any such guardian, or curator of such minor, or insane or interdicted person, in virtue of an order of the Supreme Court, and where any such property, belonging to or claimable by any minor, or insane or interdicted person, shall have been sold by any testamentary executor or trustee, in virtue of any special power in that behalf so enabling them, or by any testamentary or other deed, and the purchase price thereof shall have been paid to any such guardian, curator, executor, or trustee, or other person legally entitled to receive the same for the behalf of such minor, or insane or interdicted person, and such immovable property shall have been duly and legally transferred to the purchaser thereof, without collusion thereon, such sale and transfer shall be valid and effectual, as against all persons, and shall not be subject to rescission, on the ground that the purchase price of such immovable property shall not have been expended beneficially, or properly invested for the benefit of such minor, or insane or interdicted person. Provided, nevertheless, if it shall in any case be proved that any fraud or collusion existed between any such guardian, curator, executor, or trustee so selling, and the person purchasing any such property, and such property shall not have been re-sold to another person also purchasing the same in good faith, nothing herein contained shall be held to deprive such minor, or insane or interdicted person, or his heirs, of his right to rescind such sale and transfer, on the ground of minority and lesion or otherwise, or of suing such first purchaser, or his heirs, executors, or administrators, for damages, where such property shall have been re-sold to a third party purchasing the same in good faith.

Sale of estates of minors, insane persons, and prodigals, not subject to rescission, on ground that price not duly expended or invested;

except in cases of fraud or collusion.

5. [Repealed by Law No. 13, 1887.]
6. [Repealed by Law No. 13, 1887.]

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(A) So much of this sec. as refers to Executors Dative is repealed by Act 38, 1899, tit. “INTESTATE ESTATES.”

**Law 20, 1866.**

Not to confer any hypothecary rights nor to affect debts concurrent.

7. Nothing in this Law contained shall be construed so as to give to any person whomsoever any greater or other hypothecation than he would by law have possessed in case this Law had not been passed, nor to impair or affect the validity of any debt considered as a concurrent debt which may be due to any person who shall by virtue of this Law have ceased to possess a tacit or other hypothecation by implication of law in security for such debt.

Not to affect subsisting hypothecations, if claimed within two years.

8. Nothing in this Law contained shall extend to or affect any right of hypothecation in security of any debt or claim already, at the time of the taking effect of this Law, due by any person or estate, which shall be demanded within two years next after the taking effect of this Law from any person or estate; which right shall be judged of in all respects as if this Law had not been passed.

Short title.

Commencement

9. This Law may be cited for all purposes as the "Tacit Hypothecation Amendment Law, 1866," and shall take effect from the promulgation thereof in the "GOVERNMENT GAZETTE" (A).

**Law No. 13, 1887.**

"To amend the Law in respect of Tacit Hypothecs."

[1st February, 1887.]

WHEREAS there are certain difficulties connected with the construction of parts of the Law No. 20, 1866, and it is expedient to make better provision in that behalf:

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Repeal of secs. 1, 2, 5 and 6, Law-20, 1866.

1. The first, second, fifth, and sixth sections of the said Law No. 20, 1866, are hereby repealed, without prejudice to any matter or thing heretofore affected, occasioned, or resulting by or from such sections respectively.

Arrears of Rent.

2. Any tacit hypothec in respect of arrears of rent shall not exist at any time for more arrears than those of one year then next preceding, and of the then current gale (B).

Hypothec in respect of immovable property available for Crown, how restricted.

3. Any tacit hypothec in respect of immovable property available for the Crown or Government shall not extend beyond the particular property in respect of which the sum or claim, the subject matter of the hypothec, shall be payable or demandable, and any movables for the time being thereon.

Limitation of tacit hypothec for persons under guardianship, &c., in respect of property not accounted for.

4. Any tacit hypothec for persons being, or having been, under guardianship, curatorship, or the like, or their representatives, in respect of property not duly accounted for, or other defaults of the guardian or other persons aforesaid, shall not exist beyond two years next after such pupillary state shall have ceased, unless and save so far as proceedings to enforce such hypothec shall have been in law effectually commenced before the expiration of such two years; and no such hypothec shall exist at any time as against any property which shall have been duly sold by any person liable to or in respect of such hypothec before proceedings shall have been commenced in law to enforce the same: Provided always that the foregoing provisions of this section shall be deemed to apply in

(A) Dec. 18, 1866.

(B) See *Baker v. Hirst*, 2 N.L.R. 55, and the cases therein referred to. See also *In re Assigned Estate of McEwan*,

5 N.L.R. 34, where an interdict was granted against removal of goods even for more than a year's rent, but without preference.

respect of any tacit hypothec for any claim of persons or their representatives as against property of any such persons' parents or step-parents in like manner as if such last named persons had also been guardians of such other persons aforesaid respectively.

Law 13, 1887.

5. Any tacit hypothec not hereinbefore specially provided for is hereby abolished.

Abolition of tacit hypothecs.

6. Any tacit hypothec existing when this Law shall come into operation, not equally affected by the said Law No. 20, 1866, as by this Law, shall, so far, be enforceable by proceedings commenced within a period not exceeding two years after this Law shall have come into operation in like manner as it might have been if this Law had not been passed.

Provision in respect of existing tacit hypothecs not equally affected by Law 20, 1866.

7. Nothing in this Law contained shall be deemed to occasion or to increase in effect any tacit hypothec where it would not, or beyond what it would have been, if neither this Law nor the said Law No. 20, 1866, had been passed.

Effect of tacit hypothec not increased by this Law or Law No. 20, 1866.

8. This Law shall not affect any claim of the Crown or Government otherwise than as is provided for by the third section hereof (A).

Crown and Government claims.

9. Nothing in this Law shall be deemed to affect, otherwise than in respect of tacit hypothec, any right, claim, or demand of any person or persons.

Claims not affected otherwise than in respect of tacit hypothec.

10. Where any officer of Government has had or shall have to become in his official capacity a guardian, curator, or the like, nothing in the second or third sections of the said Law No. 20, 1866, or in the fourth or sixth sections of this Law shall be deemed to have applied or to apply to the case.

Officer of Government becoming in his official capacity guardian, &c., not affected by certain provisions.

11. The following terms shall, in and for the purposes of this Law, be respectively deemed to include or mean as follows :—

Interpretation of terms.

“ Tacit hypothec ” to mean a legal as distinguished from a conventional claim or right of or to a hypothec pledge, lien, or the like, not being a claim for, of, or to retention, nor relating to maritime law in respect of any ship employed otherwise than chiefly for the purposes of any port of this Colony, or the precincts thereof, or for navigation in any river of this Colony, nor being in respect of wages, material, necessaries, or the like, connected with such first herein mentioned ship :

“ Gale ” to mean the interval between any two next consecutive days for payment of rent :

“ Rent ” to include any periodical charge or render in money or kind.

12. This Law shall be in operation on and after the day next following that of its promulgation in the “ NATAL GOVERNMENT GAZETTE ” (B).

Commencement

(A) See the leading case of *In re Mawson*, 14 N.L.R. 224 ; see also *In re Egner*, 14 N.L.R. 270.

(B) Feb. 8, 1887.

## IMMIGRATION (EUROPEAN).

[See "IMMIGRATION (RESTRICTED)"; "IMMIGRATION (SPECIAL)."]

## Ordinance No. 5, 1849.

"Ordinance for facilitating the Transfer of Small Allotments of Land to Emigrants from the United Kingdom" (A).

[29th October, 1849.]

WHEREAS it is expedient to facilitate the transfer of land within the District of Natal to emigrants from the United Kingdom, by persons making certain deposits of money in England, and thereafter purchasing lands from the Crown, in order to convey the same to such emigrants, in quantities agreed upon by the parties, and stipulated with Her Majesty's Commissioners for Colonial Lands and Emigration, under the sanction of Her Majesty's Government:

AND WHEREAS, it is enacted by Ordinance No. 2, 1846, entitled "Ordinance for creating a Deeds' Registry Office for the District of Natal," that certain fees shall be payable upon the preparation of every deed of transfer; by Ordinance No. 3, 1846, entitled "Ordinance for regulating the payment of transfer duties in the District of Natal," that a duty of four per cent. (B) upon the value, shall be payable upon every sale or change of ownership of immovable property, in this District; and by Ordinance No. 10, 1847, entitled "Ordinance for levying certain dues upon licenses, and in lieu of stamps, within the District of Natal" (C), that certain duties shall be payable, in lieu of stamp duty, upon every transfer of landed property in this District; and whereas the total amount of the said fees and other charges would, relatively to the extent and original price of their respective allotments, be unduly burthensome upon such emigrants:

First transfer

1. Be it therefore enacted by the Administrator of the Government of the District of Natal, with the advice and consent of the Legislative Council thereof, that from and after the promulgation of this Ordinance the said Ordinances Nos. 2 and 3, 1846, and No. 10, 1847, shall, in so far only as may concern the first transfer and registration of transfer to emigrants from the United Kingdom of the quantities of land which the intending purchasers may have stipulated, with the sanction of the said commissioners, to deliver to such emigrants, be repealed, and the same are hereby in so far and no further repealed accordingly (D).

Title deed to be made in favour of purchaser.

2. And be it enacted, that from and after the promulgation of this Ordinance, the title deed of every piece of land thereafter purchased from the Crown shall, after full payment of the purchase money and expenses of survey, be issued in the name of the purchaser; and in the case of such previous deposit having been made, in the name of the person certified by the said commissioners to have made such deposits; and shall be delivered to him or to his duly constituted agent at the office of the Surveyor-General, upon payment of a fee of twenty shillings sterling and no more, and every such grant shall, previous to its delivery, be enrolled in the District Court, upon payment to the Registrar of such Court, by the grantee, of a fee of five shillings sterling and no more.

(A) See the origin of this Ordinance and of Ord. 2, 1851, discussed in judgment of Connor, J., in *Colonial Government v. Howells and Lampport*, N.L.R. 1869, 1872 and 1878.

(B) Reduced to two per cent., see under tit. "REGISTRATION (DEEDS)."

(C) See now the License and Stamp Act, 1898, tit. "REVENUE."

(D) Ords. 3, 1846, and 10, 1847, are now wholly repealed.

3. And be it enacted, that whenever any such purchaser of Crown land shall have obtained his legal title, in manner aforesaid, and shall have caused to be correctly surveyed the several allotments of the land therein comprised, which he has stipulated to deliver to such emigrants respectively, and shall have lodged in the office of the Registrar of Deeds triplicate diagrams of any such allotments, certified by a duly authorised surveyor, and shall have executed in favour of the parties entitled to such allotments, a legal and valid transfer of the lands to which they were entitled respectively, the Registrar of Deeds shall publish in the "GOVERNMENT GAZETTE" a list of the said transfers, with a notification to the transferees, by name respectively, that the titles of their several allotments are ready for delivery, upon proof that they have respectively fulfilled the conditions, whether in respect of the surveying expenses or otherwise, upon which it had been agreed that the said allotments were to be delivered, and the transfers of the said allotments of land shall, if applied for within three months from the date of the notification, be delivered to the transferees, or their duly appointed agents, without any fee or charge whatsoever; anything in any of the said Ordinances Nos. 2 and 3, 1846, and No. 10, 1847, to the contrary notwithstanding.

Ord. 5, 1849.  
What delivery  
of allotments.

4. And be it enacted, that upon the publication of any such notification as aforesaid, the said purchaser or his agent as the case may be shall be held in law to have in so far fulfilled his said obligation as to have delivered to the parties mentioned in such notification the extent of land specified in such deed of transfer and notification, and shall become entitled to receive such certificate as may be necessary in order to entitle him to the repayment, from any deposit made by him for that purpose, of such sum as the said commissioners may have agreed to repay to him, upon proof of delivery of any such allotments of land to the respective parties.

When purchaser shall be deemed to have fulfilled obligation.

5. And be it enacted, that every such emigrant as aforesaid who shall not appear in person, or by his duly appointed agent at the office of the Registrar of Deeds, and upon due proof that he has fulfilled his part of the contract as aforesaid, take out the transfer of his stipulated allotment of land within three calendar months from and after the publication of such notification as aforesaid, shall be held to have deprived himself of the facilities and advantages afforded him by the provisions of this Ordinance in respect of such transfer and shall not thereafter be permitted to take out the said transfer, except upon the payment of the same amount of transfer duty, fines for non-payment of the same within six months (to be reckoned from the date of the said notification), registration fees, and stamp duties, or duties in lieu of stamps, as are provided in the case of all other transfers of immovable property by the said Ordinances Nos. 2 and 3, 1846, and No. 10, 1847 (A).

Emigrants failing to take out transfers.

6. And be it enacted, that any such emigrant who shall fail to pay such expenses as may have accrued in manner aforesaid upon any such transfer, and may suffer the same to be unclaimed for twelve months from and after the date of such notification as aforesaid, shall be held to have forfeited all right and title to the land so transferred, and any such transfer shall be, ipso facto, cancelled by the said lapse of twelve months; and in every case in which the certificate mentioned in the 4th section of this Ordinance, entitling the purchaser to the re-payment of deposit, shall have been issued, such land shall be held to have reverted to the absolute disposal of the Crown, and neither any original purchaser of such land, who may have received such certificate as aforesaid in respect of such land or the emigrant to whom delivery had, under the provisions of this Ordinance,

When lands forfeited.

(A) See footnotes to Preamble and sec. 1, ante.

Ord. 5, 1849. nance, been duly made by such original purchaser, shall have any claim, right, or title thereto, or to any compensation for the same, but shall be treated in every respect as if no such sale by the Crown, or no such delivery to the emigrant under the provisions of this Ordinance had ever taken place: Provided always, that in any case in which it shall appear that the original purchaser has not received such certificate as aforesaid, or that previously to the enactment of this Ordinance, he would have been entitled to a direct and substantial interest in any such forfeited allotment, the same shall revert to the original purchaser and not to the Crown; and provided also, that notwithstanding any such forfeiture as aforesaid, the original purchaser shall be entitled to re-payment of the amount of such sum for surveying expenses as may be due and owing in respect of such land, and as, under his original agreement, he would have been entitled to demand from the party in whose favour delivery had been effected in the manner provided in the 4th section of this Ordinance.

Special agree-  
ments not  
affected.

7. Provided nevertheless, and be it hereby enacted, that nothing in this Ordinance contained shall be held to affect any special agreement which may have been entered into by the parties as to the purchase by private contract of additional land, or as to the situation or quality of the land to be transferred; and that the provisions of this Ordinance shall not extend to any subsequent change of ownership, or to any alienation of immovable property within this District other than the first or original transfer to emigrants from the United Kingdom of the quantities of land to which they may be respectively entitled, by virtue of any agreement, between them and intending purchasers of Crown land, which agreement has been duly sanctioned by Her Majesty's Government as aforesaid.

Commencement

8. And be it further enacted, that this Ordinance shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A).

#### Ordinance No. 2, 1851 (B).

"Ordinance for facilitating the Transfer of Lands to certain Immigrants into the District of Natal, from the United Kingdom of Great Britain and Ireland."

[26th March, 1851.]

1. WHEREAS it is expedient and necessary to make immediate provision for giving transfer of their lands to certain immigrants, who have come into this District, from the United Kingdom of Great Britain and Ireland, under certain contracts entered into with, or who have made purchases of land, while in England, from Joseph Charles Byrne, or from the person or persons, who styled themselves Joseph Charles Byrne and Company: Be it therefore enacted, by the Lieutenant Governor of the District of Natal, by and with the advice and consent of the Legislative Council thereof, that from and after the promulgation of this Ordinance, the provisions of the Ordinance No. 5, 1849, entitled, "an Ordinance for facilitating the transfer of small allotments of land to immigrants from the United Kingdom of Great Britain and Ireland," in so far as any of them are repugnant to, or inconsistent with this present Ordinance shall be, and the same are hereby repealed accordingly.

Partial repeal  
of Ord. No. 5,  
1849.

(A) Oct. 30, 1849.  
(B) See this Ord. discussed in judgment of Connor, J., in *Colonial Govern-*

*ment v. Howells and Lampport*, N.L.R. 1869—1878.

2. And be it further enacted, that immediately after the promulgation of this Ordinance, it shall be lawful for John Moreland, and he is hereby authorised and required, to call for, and demand from the agent or agents of Joseph Charles Byrne, in this District (who are hereby directed and authorised to deliver the same), a true and correct list, or statement, of the names of all persons who have entered this District, under contract with the said Joseph Charles Byrne, or of the said Joseph Charles Byrne and Co., setting forth the amount and extent of lands which they may respectively have purchased or be entitled to receive from the said Joseph Charles Byrne and from the said Joseph Charles Byrne and Co., either by virtue of certain contracts of sale and purchase concluded in England, or of deposits made by them in the hands of the Commissioners of Emigration, in London, and who have not yet had their lands duly transferred to them; which said list or statement is to set out, in a tabular shape, the extent of lands which the said parties are entitled to receive within this District, by virtue of the said purchases or deposits made in England, and the situation and locality of the said lands, and which statement the said John Moreland shall forthwith publish in the "GOVERNMENT GAZETTE." And the said John Moreland is hereby authorised and directed to cause the deeds of transfer to be forthwith prepared, in the office of the Registrar of Deeds, who is hereby authorised and directed to pass and attest the same, so soon as the said deeds of transfer shall be found to be drawn up in such form and manner as is by law, and the usage of this District, required to pass a valid title to the said parties respectively.

Ord. 2, 1851  
List of emigrants.

Transfers to be prepared.

3. And be it further enacted, that the said John Moreland is hereby authorised and empowered, in all such deeds of transfer, to subscribe the same, in such manner and form as the said Joseph Charles Byrne, or the said Joseph Charles Byrne and Co., if personally present, might have executed and subscribed, and that the effect of such subscription, under and by virtue of the authority conferred upon the said John Moreland, will have the effect, in law, of passing and giving a title to the said lands to the respective transferees, as fully and effectually, in law, as if the same had been passed and subscribed by the said Joseph Charles Byrne, or the said Joseph Charles Byrne and Co., before the insolvency, or bankruptcy, of the said Joseph Charles Byrne, or the said Joseph Charles Byrne and Co.; and so as to give to the said transferees a good and sufficient title, as against all creditors, assignees, or assigns, of the said Joseph Charles Byrne, and the said Joseph Charles Byrne and Co., or either of them.

Powers vested in John Moreland in respect thereof.

4. And be it further enacted, that the said John Moreland is hereby directed to publish in the "NATAL GOVERNMENT GAZETTE," or otherwise, every week, the names of the persons to whom transfers have been made, and which are ready for delivery to them; and the respective parties, whose names are thus proclaimed, as entitled to these deeds of transfer, are hereby ordered and directed, within two months from the date of such notice, published in the "NATAL GOVERNMENT GAZETTE," or otherwise, to apply personally, or by a person duly authorised in writing, on their behalf, to take them out of the office of the Registrar of Deeds, and also to pay, upon taking out the same, such transfer, and other fees of office, as may be legally due by and chargeable to them.

Names of transferees to be published weekly, to whom two months' notice to be given to take out deeds.

5. And be it further enacted, that upon any person, to and in favour of whom any such deed of transfer, as aforesaid, shall have been so duly executed, and publicly notified, failing to take out his deed of transfer out of the office of the Registrar of Deeds, within the said period of two months from the date of such notification, published in the "NATAL GOVERNMENT GAZETTE," or otherwise, the said deed of transfer shall be deemed and taken to have become totally void, and of no effect, as conveying the lands

Penalties for not taking out deeds.



Ord. 2, 1851. so transferred to the parties making default ; and that no person interested in such transfer, or having any claim in respect of the survey, admeasurement, or subdivision of any of the said lands, or any portions thereof, shall, by reason of anything herein contained, or contained in the said Ordinance No. 5, 1849, have, or acquire any claim, legal or otherwise, upon the Crown for payment of such expenses of survey, admeasurement, or subdivision, as the case may be ; and that in any case in which by the provisions of the 6th section of the said Ordinance No. 5, 1849, any such land shall, in consequence of the issue of the certificate, entitling the original purchaser to repayment of the deposit, revert to the Crown, no such original purchaser, nor any other person whatsoever, shall be entitled, legally or otherwise, to repayment from the Crown of any amount as for the expenses of survey, admeasurement, or subdivision of the same ; and that any provision, contained in the said section of the Ordinance No. 5, 1849, whereby the Crown might be liable to any such payment of surveying expenses, or otherwise, is hereby absolutely repealed.

Commencement 6. And be it further enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof in the " GOVERNMENT GAZETTE " (A).

#### Law No. 4, 1872.

" To Remove Doubts as to the Validity of certain Deeds of Transfer of Land to Immigrants, executed by virtue of Ordinances No. 5, 1849, and No. 2, 1851."

[16th August, 1872.]

WHEREAS doubts have arisen as to the validity of certain deeds of Transfer of land executed under the said Ordinances No. 5, 1849, and No. 2, 1851, and it is expedient to remove such doubts and to declare such deeds of transfer, with certain exceptions, to be good and valid cessions, transfers, and conveyances of the respective allotments of lands by such deeds of transfer expressed to have been conveyed thereby to the persons named therein :

AND WHEREAS it is further expedient to make provision, in certain of such cases where such deeds of transfer are lying unclaimed in the office of the Registrar of Deeds, and may not be claimed within a certain time by the transferees, to empower and authorise the Lieutenant Governor to appropriate any such unclaimed allotments of land for certain public purposes, and, in such cases of appropriation, to make provision for fair and reasonable compensation to the owners of such appropriated allotments if they shall apply for such compensation within a certain time :

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. Every deed of transfer passed before the Registrar of Deeds of this Colony, under or in terms of the Ordinance No. 5, 1849, entitled an " Ordinance for facilitating the transfer of small allotments of land to emigrants from the United Kingdom," or under or in terms of the Ordinance No. 2, 1851, entitled an " Ordinance for facilitating the transfer of lands to certain immigrants into the district of Natal from the United Kingdom of Great Britain and Ireland," shall be deemed, and is hereby declared to be a good and valid cession transfer and conveyance, and to have conveyed to the person or persons named therein as transferee or

Deeds of transfer under Ordinances 5, 1849, and 2, 1851, equalised ;

(A) April 1, 1851.

transferees, a good and valid title to the property thereby expressed to be conveyed, free and discharged from any and every claim which the Crown, or the Colonial Government, or the original purchaser of such land from the Crown, might or could have in respect thereof, save only and except any claim in respect of survey fees and other fees chargeable by the Registrar of Deeds for transfer duty, stamp duty, and fees of office, upon such deeds of transfer: Provided always, that nothing in this Clause contained shall be held to apply or extend to the deeds of transfer mentioned or referred to in the Schedule to Law No. 25, 1869, entitled Law "To empower the Lieutenant Governor to resume possession, on behalf of the Crown, of certain lands which have been allotted to certain immigrants, and to give compensation to any such immigrants whose lands may be so resumed."

Law 4, 1872.

Deeds of transfer mentioned in Law 25, 1869, excepted.

2. The Registrar of Deeds shall within one month after the coming into force of this Law, draw up and publish in the "NATAL GOVERNMENT GAZETTE" a list of such of the deeds of transfer legalised by the foregoing clause, as shall then be and remain unclaimed in his office. Such list shall, in each case, specify the name of the transferee, the situation, distinguishing number and extent of the allotment or allotments of land conveyed, and the amount of survey and other fees as aforesaid, chargeable in respect thereof, and to such list there shall be appended a notification that, in terms of this Law, the deeds of transfer therein referred to are ready for delivery to the respective transferees, or to any person claiming for, under, or through such transferees, upon payment of such fees as aforesaid: Provided always, that the said Registrar of Deeds, in computing the amount of such fees, shall not include any fine or additional charge for non-payment of transfer duty, all such fines or additional charges in such cases being hereby remitted, and shall not include any claims or assumed claims by the assignees of the estate of Joseph Charles Byrne.

Registrar of Deeds within one month to prepare and publish in Gazette list of legalised deeds and notification to claimants.

3. After the expiration of one year from the date of such list and notification as aforesaid, the Lieutenant Governor may, if he shall see fit to do so, direct the resumption of any of such lands, the deeds of transfer of which then shall still be and remain unclaimed, for the purpose of settling European immigrants thereon, or for the purpose of granting the same to Coolie immigrants, under the laws or regulations in that behalf in force, or for such other public purposes as he may see fit: Provided always, that in every case in which any of such lands shall be so resumed and appropriated for public purposes, fair and reasonable compensation shall be made for the land so resumed, to the person or persons entitled thereto, in manner hereinafter provided, if application shall be made to the Government for such compensation within seven years from the taking effect of this Law, but not otherwise, or after such period of seven years in any case; and provided further, that at the expiration of seven years from the commencement of this Law any lands then unclaimed shall absolutely revert and become forfeited to the Colonial Government.

After a year from date of Registrar's notification, Governor may direct resumption of unclaimed lands for certain public purposes; Subject to compensation.

4. Such resumption of any of the said unclaimed lands for public purposes shall be made in manner and form following, that is to say: An endorsement shall (upon the order of the Lieutenant Governor) be made upon the Deed of Transfer of the land so resumed, in words or substance as follows:—

Form of resumption.

"Under and by virtue of Law No. , 187 , the lands in this deed mentioned have been, and are hereby resumed for public purposes, and henceforth shall be re-invested in the Lieutenant Governor of Natal as lands belonging to the Crown.

Dated at this day of , 18 .

"By order of the Lieutenant Governor,

"Colonial Secretary."

- Law 4, 1872.** And after such endorsement has been made, the said lands so resumed shall thereupon and thenceforth vest in the Lieutenant Governor as land belonging to the Crown, absolutely discharged from all and every manner of estates, charges, or incumbrances whatsoever, and may be held, used, and dealt with in the same manner as other Crown Lands in this Colony, for the purposes in the third Clause of this Law mentioned.
- Effect of resumption.**
5. Compensation for any lands resumed and appropriated for public purposes, under or by virtue of this Law, shall (unless otherwise mutually agreed upon by and between the Colonial Secretary, as representing the Government, of the one part, and the person entitled to such compensation of the other part) be made in manner following, that is to say :—Within one calendar month from and after the making of any endorsement or endorsements of resumption under the 4th Clause of this Law, a notice shall be inserted in the “**GOVERNMENT GAZETTE**,” subscribed by the Colonial Secretary, specifying the situation, the distinguishing number, and the extent of the land so resumed and appropriated for public purposes, and specifying the name or names of the registered transferee or transferees thereof, and requiring the said transferee or transferees, or any person or persons claiming for, under, or through the said transferee or transferees, within three months from the date of such notice, to communicate with the said Colonial Secretary, respecting the compensation to be made by the Government for the lands so resumed and appropriated for public purposes ; and, if within such period from the date of such notice as aforesaid, any person or persons so entitled to compensation as aforesaid shall not present his or their claim, or if, within six months from the date of such notice, such person or persons shall not agree or arrange with the Colonial Secretary as to the nature and amount of compensation to be made, then, in either of such cases, the Colonial Secretary shall present a petition to the Supreme Court of the Colony of Natal, verified by him, describing the land taken possession of by the Government, with a diagram thereof, and the amount of compensation he is willing to give for such land, and praying that the question of such unsettled or disputed compensation may be settled by the Court.
- Proceedings to determine compensation.**
- Notice in Gazette.**
- Time allowed to claimants.**
- Petition to Supreme Court.**
6. If the person entitled to such compensation be within the jurisdiction of the Court, a copy of such petition, together with a notice of such intended application thereon, shall be served upon him ; and in such case the Court may direct such inquiry as to the Court may seem fit as to the value of the land described in such petition, and as to the person claiming such compensation, and may decide thereon in a summary manner.
- Petition and notice to be served upon claimants in the Colony.**
7. In all cases where such notice and copy of petition as aforesaid cannot be so served, a notice shall be published in the “**GOVERNMENT GAZETTE**,” under the hand of the Registrar of the said Court, setting forth briefly the tenor of the petition, and requiring the person or persons entitled to the compensation therein referred to, to appear on such day or days as the Court shall have fixed, to show cause, if any, against the prayer of such petition ; and at the expiry of such notice, the Court may direct such inquiry as aforesaid, and decide upon the petition accordingly.
- Notice in Gazette to absentees.**
8. The said Court before whom any such petition shall be tried, shall decide in what respects, and by whom, or in what proportions, the costs of any such inquiry are to be paid.
- Costs of proceedings.**
9. Such compensation shall be only for the value of the resumed land (exclusive of any buildings or erections thereon) at the date of the endorsement of resumption, and from the amount of such compensation there shall in every case be deducted the survey and other fees in the second Clause of this Law above mentioned.
- Limit of compensation.**
10. In the case of persons absent from the Colony and not represented therein, the money found to be due to such persons shall be paid into the Colonial Treasury for the use of such persons, there to remain, without any
- Compensation money of absentees to be deposited in Treasury ;**

interest, until claimed by the respective persons entitled thereto : Provided always, that at the expiration of the aforesaid period of seven years from the date of taking effect of this Law any such moneys then remaining in the Treasury unclaimed shall become and be forfeited to Her Majesty, Her heirs and successors, for the uses of the Government of this Colony.

Law 4, 1872.  
And if un-claimed at end of seven years, to be forfeited to the Crown.

11. Nothing in this Law contained shall affect any claim or right which the assignees of the estate of Joseph Charles Byrne, or any other persons or person lawfully claiming under or through the said Joseph Charles Byrne, may have, or assume to have, to the lands in this Law referred to, if such assignees or other persons or person shall, within two years from the commencement of this Law, institute legal proceedings to test the validity of such assumed claim : Provided always, that if at the expiration of such two years such assignees or other persons or person as aforesaid shall not have taken steps by legal process for such purpose, the claims or claim of such assignees or other persons or person, if any, shall be absolutely forfeited.

Rights of Byrne's estate saved, if legal proceedings taken within two years to establish same

Failing which, forfeiture.

12. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A).

Commencement

Act No. 4, 1894. (a)

*See act 24/10.*

"To Amend the Law relating to the Management of European Immigration."

[29th June, 1894.]

WHEREAS it is expedient to amend the Law relating to the management of European Immigration :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. The Laws mentioned in the Schedule to this Act are hereby repealed. Such repeal shall not be construed in any way to prejudice or injure any settlement of Immigrants, or the rights and interests of any Immigrant in any land, commonage, water, roads, or otherwise ; nor to disestablish or lessen the powers of any Committee appointed in any Settlement ; nor to cancel or annul any By-law in force in any settlement.

Repeal.

2. The Governor in Council may make General Rules or Special By-laws for the better regulation of all or any of the following matters :—

Rules or By laws.

- (a) The introduction and reception of Immigrants of European extraction.
- (b) The establishment of Immigrants upon available lands.
- (c) The sale and transfer of lands to Immigrants.
- (d) The control and use of commonages, water, roads, quarries, and rights of way connected with lands appropriated for purposes of Immigration.
- (e) The election and duties of Committees of Management in settlements and villages, and the powers of such Committees to levy and get in rates to be spent for the general good of the settlement or village.
- (f) The duties of officers employed in connection with Immigration in and out of the Colony.

3. All such Rules or By-laws shall be published in the "GOVERNMENT GAZETTE" and shall be laid before Parliament.

Publication.

(A) Aug. 20, 1872.

**Act 4, 1894.**

Penalties.

Existing contracts and debts

How enforceable.

Appropriation of Crown Lands.

Lands not required may be dealt with as Crown Lands.

Officers and servants.

Existing By-laws.

Governor in Council substituted for Board.

Return of appropriated lands.

Short title.

Commencement

4. Such Rules or By-laws may provide for money penalties, not exceeding £10, to be enforced for contraventions of any thereof.

5. All contracts and obligations duly entered into, and all debts due by the Land and Immigration Board, shall be binding on the Colonial Government.

6. All moneys and contracts, which but for the repeal of the scheduled Laws would be recoverable or enforceable by the Land and Immigration Board, shall be payable to, or enforceable by, the Colonial Secretary.

7. The Governor in Council shall have power, by notice in the "GOVERNMENT GAZETTE," to appropriate any Crown Lands, suitable for the purpose, for the objects of Immigration; and the effect of such notice shall be to bring such lands from under the Rules relating to the sale of Crown Lands, and to subject them to the Rules referring to Immigration Lands.

8. Whenever the Governor in Council shall cause it to be notified in the "NATAL GOVERNMENT GAZETTE" that any unalienated lands set apart for the purposes of Immigration, and in or over which no right has been acquired by Immigrants, are not required for that purpose, such lands shall become, and be dealt with as ordinary Crown Lands of the Colony.

9. The Governor may appoint and dismiss any officers and servants employed for the purposes of Immigration.

10. By-laws passed under any of the repealed Laws may be enforced as if they were By-laws passed under this Act.

11. Wherever in any Law the Land and Immigration Board is mentioned the Governor in Council may be deemed to be referred to.

12. In cases where the Governor in Council shall appropriate Crown Lands for Immigration purposes, or shall appropriate as Crown Lands any lands previously set apart for Immigration purposes, a Return thereof shall be placed before Parliament if then in Session; if otherwise, within the first week of its next Session.

13. This Act may be cited as "The Immigration Act of 1894."

14. This Act shall commence and take effect on the first day of July, 1894.

## SCHEDULE.

No. of Law.	Title of Law.
Law No. 21, 1876.	Law to provide for the establishment of a Land and Immigration Board.
Law No. 22, 1876.	Law to provide for the appropriation for public purposes of certain lands reserved as villages or townships.
Law No. 23, 1876.	Law to provide for the appropriation for public purposes of certain lands reserved as commonage for the village of Weenen.
Law No. 13, 1881.	To amend and extend the provisions of Law No. 21, 1876, entitled Law "To provide for the establishment of a Land and Immigration Board."
Law No. 50, 1884.	To amend and extend the provisions of Law No. 21, 1876, entitled Law "To provide for the establishment of a Land and Immigration Board."
Law No. 5, 1885.	To enable the Land and Immigration Board to regulate the flow of water over all lands under their control or custody.
Law No. 41, 1888.	To make provision for the better supervision and management of settlements established by the Land and Immigration Board.

**Act No. 1, 1897.**

“To place Certain Restrictions on Immigration.”

[5th May, 1897.]

[This Act refers to “prohibited Immigrants,” irrespective of nationality, and appears under tit. “IMMIGRATION (RESTRICTED).”]

*Repealed by A. 31/49. S. 2.  
See also Act 42705.*

IMMIGRATION (INDIAN).

[See "IMMIGRATION (RESTRICTED)"; "IMMIGRATION (SPECIAL)."]

Law No. 20, 1874.

"To repeal Law No. 14, 1871, entitled Law 'To repeal Law No. 16, 1864, and to amend Law No. 2, 1870,' and to create an Indian Immigration Trust Board to administer for the purposes of Immigration all funds which may be received by said Trust Board" (A).

[12th January, 1874.]

WHEREAS it is expedient to repeal Law No. 14, 1871, entitled Law "To repeal Law No. 16, 1864, and to amend Law No. 2, 1870," and to create an Indian Immigration Trust Board to administer for the purposes of Indian Immigration all funds which may be received by said Trust Board :

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. Law No. 14, 1871, entitled Law "To repeal Law No. 16, 1864, and to amend Law No. 2, 1870," shall be, and the same is hereby repealed.

2. [Repealed by Law No. 15, 1880.]

3. The said Board shall have a common seal for its use in transacting the business thereof.

4. The said Board shall from time to time appoint its own Secretary, who shall hold office during the pleasure of the Board, and through whom the Board shall communicate with any public department or officer, or other person or persons or body corporate. The salary of the Secretary shall be fixed by the said Board, subject to the approval of the Lieutenant Governor.

5. The said Trust Board shall be the department to undertake the receipt, disbursement, and administration of all moneys for purposes of Indian Immigration.

6. From and after the creation of the said Board, the Immigration Fund heretofore established under the said repealed Laws shall vest in such Board under this Law ; and until the creation of said Board, the said Immigration Fund shall be and continue in the hands and under the control of the Colonial Treasurer.

7. All sums which have been or may be raised under the authority of Law 2, 1870, Law 16, 1871, or Law 12, 1872, or of any Law which may hereafter be passed, for the purpose of Indian Immigration, shall be entrusted to the said Board, to be by them expended in carrying out the Laws relative to such Immigration, and shall be paid into the Treasury and placed to the account of the said Board ; and the said Board shall expend all such sums in defraying and discharging and paying all expenditure connected with or incurred in the introduction of Indian Immigrants, and their return passages, and all expenses departmental or otherwise necessary in and about the reception, management, protection, and return of Indian Immigrants.

(A) See Law 15, 1880, post, which is to be construed as one with this Law.

Repeal of Law 14, 1871.

*1920* Common seal.

Secretary. Tenure of office.

Salary.

Duties of Board.

Immigration Fund to vest in Board.

Moneys to be entrusted to Board ;

*Law 36/94.*

How to be expended.

8. For the purposes of immediate requirements for Indian Immigration, the Lieutenant Governor is empowered to advance from General Revenue, or, if need be, to raise by loan upon security of General Revenue by the issue of debentures, in manner prescribed by "The Consolidated Loan Law, 1871," such sum not exceeding £50,000, as may be required by the said Trust Board, and to pay the same over to the said Trust Board as a loan, bearing interest at the rate of not less than five per centum per annum, upon such terms as to repayment and otherwise as may be agreed upon by and between the Lieutenant Governor in Council and the said Trust Board.

**Law 20, 1874.**

Governor may advance money or raise sum by loan;

Not exceeding £50,000;  
And pay same to Board as a loan on interest.

9 (A). The sum of £20,000, as set apart under the "Consolidated Loan Law, 1871," for the introduction of Indian Immigrants, shall be, and is hereby ordered to be, counted as part of the third of the cost of Indian Immigration to be paid in future from the general revenue; and the Lieutenant Governor is hereby authorised and required to pay to the said Trust Board from general revenue, in addition to, and when the said sum of £20,000 is so expended, from time to time, a contribution equal to one-half of the sum paid as annual payments, indenture fees, or otherwise, by employers of Indian Immigrants: Provided, that when the said sum of £20,000 shall have been so expended, the general revenue shall not contribute for such purpose any sum exceeding £10,000 in any one year, without the consent of the Legislative Council.

Indian Loan, under Law 16, 1871, how counted.

Contribution from general revenue.

*See Law. 3;*

10. The said Trust Board may deposit in the Colonial Treasury any or all of the moneys entrusted to the said Board under this Law, and may from time to time withdraw all or any portion or portions of such deposits by drafts on the Treasury, and the said Board may also, with the consent of the Lieutenant Governor in Council, under his hand, deposit and invest all or any of the said moneys in any securities which may seem proper.

Board may deposit in Treasury;

And issue drafts; and invest with consent of Governor.

Drafts, how made.

11. The payments of the said Board shall be by an order on the Colonial Treasurer, signed by two members of the Board, and countersigned by the Secretary or acting Secretary, and the Colonial Treasurer is hereby required to pay all such orders either in the Colony or elsewhere as the case may be.

12. The said Board shall, on application through the Lieutenant Governor, have power to require from any public department, board or officer, or other person or party bound by law to furnish the same to the Government, any account, return, statement, document, or information which the Board may deem requisite for the due performance of its duties.

Powers of Board of requiring accounts, &c.

13. The said Board shall annually, and from time to time, as and when requested by the Lieutenant Governor, furnish such reports, accounts, vouchers, and documents, relating to any matter entrusted to or performed by the said Board, as the Lieutenant Governor, by letter, under the hand of the Colonial Secretary, addressed to the said Board or to its secretary, shall from time to time require. The said Trust Board shall also prepare and submit to the Legislative Council annually, an estimate of the Immigration expenses for the year, including return passages; and should it be shown that the annual payments under Law No. 2, 1870, indenture fees, and payments which are now or may be hereafter payable by employers of Indian Immigrants, are insufficient to meet the employers' quota of two-thirds of the expenses for which the Trust Fund may become liable under Section 7 of this Law, then the Lieutenant Governor shall be, and he is hereby, empowered to increase such annual or other payments by such sum or sums as may be necessary for such purpose, calculating as

Reports and accounts by Board, how and when to be rendered.

Annual estimates.

Power to Governor to levy increased contributions from employers.

(A) Repealed in so far as in conflict with Act 37, 1894, post.



Law 20, 1874. an estimate the proportion of Indian Immigrants who may claim a return passage, on the average, as shown in the return of Indian Immigrants from other Colonies (A).

Fund to meet cost of return passages.

14. At the end of each and every year, the said Board are required to invest, in some investment to be approved of by the Lieutenant Governor, from the sums received by them under this Law, the sum of ten shillings for each and every indentured Immigrant, as a fund to defray the expenses of return passages (B).

Act 43/20  
36/94.

Reports to be laid before Legislative Council.  
Board may make regulations;

15. The Lieutenant Governor shall submit such reports to the Legislative Council at its first Session after the receipt of the same.

16. It shall be lawful for the said Trust Board, from time to time, to frame and draw up such rules and regulations as they may deem expedient to govern their proceedings and regulate the management of the funds entrusted to them; but all such rules and regulations shall be submitted to, and shall be subject to disallowance by the Lieutenant Governor, and when approved shall be published in the "GOVERNMENT GAZETTE."

Subject to disallowance by Governor.  
Short title.

17. This Law may be cited for all purposes as "The Indian Immigration Trust Board Law, 1874."

Commencement

18. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (C).

Repealed by A. 31/49. S. 2.  
re Law. 10/82  
1/86

Law No. 1, 1876.

44-23-1902  
"To Repeal and Re-enact with Amendments the Law No. 28 of 1874."

[11th November, 1876.]

WHEREAS it is expedient to amend the Law No. 28 of 1874, entitled Law "For authorising the Indian Immigration Trust Board to raise a further sum of £50,000 on Loan," and for such purpose to repeal and re-enact the same with amendments:

BE IT THEREFORE ENACTED by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof as follows:—

Repeal of Law 28 of 1874.

1. The Law No. 28 of 1874, entitled Law "For authorising the Indian Immigration Trust Board to raise a further sum of £50,000 on Loan," shall be, and the same is hereby repealed: Provided, however, that nothing in this Law contained shall be construed to affect any proceedings taken, or acts done, under the provisions of said Law No. 28 of 1874, which shall be as valid and effectual as if the said Law continued to be of full force and effect.

The Governor may advance or raise by loan £50,000, as may be required by the Board.

2. It shall be lawful for the Lieutenant Governor to advance, or if need be to raise by Loan, upon the security of General Revenue, by the issue of debentures, in the manner prescribed by the Law No. 5 of 1875, entitled Law "To raise a Loan for the construction and equipment of certain Railways in the Colony of Natal," or in such other way as may be determined by the Lieutenant Governor in Council, such further sum not exceeding £50,000 as may be required by the Indian Immigration Trust Board as a Loan bearing interest to be paid thereon by such Board at a rate not less than five per centum per annum, and upon such terms, as to repayment and otherwise, as may be agreed upon between the Lieutenant Governor in Council and the said Trust Board, such sum to be used for

(A) See Act 36, 1894, s. 1, and Act 17, 1895, s. 15, post.

(B) See Act 36, 1894, s. 3, post, under

which the contribution may be reduced to five shillings.

(C) Jan. 20, 1874.

similar purposes, and in the same manner as if it were included in the authority given in the Indian Immigration Trust Board Law No. 20 of 1874. Law 1, 1876.

3. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A). Commencement.

Law No. 19, 1876.

*See Law. 10/82  
11/86*

"To authorise the Indian Immigration Trust Board of Natal to raise a Sum of Fifty Thousand Pounds Sterling on Loan."

[11th November, 1876.]

*Repealed by  
A. 31/49 S.*

WHEREAS under the Eighth Section of "The Indian Immigration Trust Board Law, 1874," the Lieutenant Governor was empowered to advance from Colonial Funds, or raise by loan on security of the General Revenue, a sum of Fifty Thousand Pounds Sterling, to be paid over to the Indian Immigration Trust Board, for the purposes in the said Law mentioned :

AND WHEREAS the Lieutenant Governor advanced from Colonial Funds a sum of Fifty Thousand Pounds Sterling to the said Indian Immigration Trust Board to be repaid within five years from date of said advance :

AND WHEREAS the said Trust Board are desirous of repaying said sum so advanced, and any Interest due thereon, and of exercising the power to raise the sum of Fifty Thousand Pounds Sterling by loan, on security of General Revenue, and thereby make available, as originally contemplated, during an extended period, for the purposes of said Loan, the sum advanced from Colonial Funds :

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows :—

1. The Lieutenant Governor of Natal is empowered to raise by loan, upon security of General Revenue, by the issue of debentures, in manner prescribed by the Law No. 5 of 1875, entitled "Law to raise a Loan for the Construction and Equipment of certain Railways in the Colony of Natal," such sum not exceeding Fifty Thousand Pounds Sterling, as may be required by the Indian Immigration Trust Board of Natal, as a loan, bearing interest, to be paid thereon by such Board, at a rate not less than five per centum per annum, and upon such terms as to repayment and otherwise as may be agreed upon between the Lieutenant Governor in Council and the said Indian Immigration Trust Board of Natal. Provided, however, that the said sum of Fifty Thousand Pounds Sterling shall not be raised except for the purpose of repaying to the Colonial Government of Natal such sum of Fifty Thousand Pounds Sterling advanced from General Revenue to the said Indian Immigration Trust Board of Natal, under the provisions of Section 8 of Law No. 20, 1874, entitled "Law to repeal Law No. 14, 1871, entitled 'Law to repeal Law No. 16, 1864, and to amend Law No. 2, 1870,' and to create an Indian Immigration Trust Board to administer, for the purposes of Immigration, all funds which may be received by said Trust Board," and all interest due thereon. Provided, moreover, that the total liability of the General Revenue under Section 8 of Law No. 20 of 1874, and under the provisions of this Law, shall not at any time exceed the sum of Fifty Thousand Pounds Sterling, and the Interest and Sinking Fund payable on the same.

Lieutenant-Governor empowered to raise such sum not exceeding £50,000 as may be required by Board, and on terms to be agreed upon.

(A) Dec. 12, 1876.

Law 19, 1876.  
Commencement

2. This Law shall commence and take effect from the date of the publication in the "GOVERNMENT GAZETTE" of this Colony of Her Majesty's confirmation thereof or assent thereto (A).

*Repealed by A. 31/49. S. 2.* Law No. 15, 1880.

"To alter and amend Law No. 20, 1874, entitled Law 'To repeal Law No. 14, 1871, entitled Law 'To repeal Law No. 16, 1864, and to amend Law No. 2, 1870, and to create an Indian Immigration Trust Board to administer, for the purposes of Immigration, all funds which may be received by the said Trust Board.'"

[20th March, 1880.]

WHEREAS about two-thirds of the funds administered by the Indian Immigration Trust Board of Natal, incorporated by Letters Patent, dated 22nd January, 1874, granted by the Lieutenant Governor of Natal, under and by virtue of the provisions of the said Law No. 20, 1874, are contributed by the employers of Indian Immigrants, and it is expedient that additional members should be added to the said Trust Board, to represent the interests of such employers of Indian Immigrants :

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

Law 20, 1874,  
altered.

1. The said Law No. 20, 1874, is hereby altered and amended, so far as may be requisite to give effect to the provisions of this Law.

Sec. 2 repealed,  
and this section  
substituted  
therefor.

2. Section 2 of "The Indian Immigration Trust Board Law, 1874," is hereby repealed, and there shall be substituted therefor the following clause :— "It shall be lawful for the Lieutenant Governor in Council, by Letters Patent, to be by him for that purpose issued under the Public Seal of this Colony, to incorporate a Board by the name of 'The Indian Immigration Trust Board of Natal,' to consist of the Protector of Indian Immigrants (B) and four other persons, not more than two of whom shall be officers under the Government of Natal, the members of such Board to be appointed by the Lieutenant Governor of Natal, with power to him from time to time to remove any member and appoint as aforesaid persons to fill any vacancies which may occur on such Board ; three of the members of the said Board to form a quorum. The four members appointed under the provisions of this section, exclusive of the Protector of Immigrants, shall from time to time, during the continuance of their appointments, go out of office, in the manner following, that is to say :— The first outgoing member shall retire on the last Wednesday in the month of April in the year 1881, and one of the others on the last Wednesday in April in each succeeding year ; all such retirements shall take place in the order in which the names shall stand on the list of members : Provided that all members shall remain in office until their successors shall have been appointed, and that each member on retirement shall be eligible for re-appointment."

*H 2/19 20.*

Duties of Board.

3. The said Indian Immigration Trust Board shall advise, assist, and co-operate with the Protector of Immigrants in all matters connected with Indian Immigration.

Funds to be  
vested in Board.

4. From and after the promulgation of this Law, all property, funds, moneys, and other effects belonging to the Indian Immigration Trust Board of Natal, incorporated under "The Indian Immigration

(A) Proclamation of Her Majesty's confirmation in *Government Gazette* of 22nd May, 1877.

(B) The Protector is no longer a member of the Board. See Act 36, 1894, s. 6, post.

Trust Board Law, 1874," shall vest in the Board hereby constituted ; and all appointments, rules, regulations, and orders heretofore made shall continue in force, and shall be deemed to be appointments, rules regulations, and orders made by the Board hereby constituted, until revoked, altered, or amended.

Law 15, 1880.

5. This Law may be cited for all purposes as " The Indian Immigration Trust Board Amendment Law, 1880," and shall be construed along with the said Law No. 20, 1874, as one Law.

Short title.  
Construction.

6. This Law shall commence and take effect from and after the promulgation thereof in the " NATAL GOVERNMENT GAZETTE " (A).

Commencement

Law No. 25, 1891.

(B) & (C)

To be read & construed with acts 11/1900 & 2/1907  
" To amend and consolidate the Laws relating to the Introduction of Indian Immigrants into the Colony of Natal, and to the regulation and government of such Indian Immigrants."

[3rd September, 1891.]

WHEREAS it is expedient to amend and consolidate the Laws relating to the introduction of Indian Imigrants into the Colony of Natal, and to the regulation and government of such Indian Immigrants :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

I.—Repeal.

1. The several Laws following shall be and the same are hereby repealed, save and except so far as regards any appointment made under the said Laws or any of the same, and save also and except so far as regards all existing engagements to labour and the payment of any duties now due and owing to Her Majesty or the Indian Immigration Trust Board of Natal incorporated under the provisions of the Law No. 15 of 1880, entitled Law " To alter and amend Law No. 20, 1874, entitled Law ' To repeal Law No. 14, 1871, entitled Law ' To repeal Law No. 16, 1864, and to amend Law No. 2, 1870, and to create an Indian Immigration Trust Board to administer for the purposes of Immigration all funds which may be received by the said Trust Board,' " and all instalments of passage money now due and owing to the said Trust Board, and all interest thereon, and all fines and penalties incurred under the said Laws or any of them, all which engagements to labour may be enforced, and all which duties, instalments of passage money, interest, fines, and penalties shall and may be sued for and recovered under this Law, save also that all entries made in the general register of Indian Immigrants or other registers kept under the said Laws or any of them by the Protector of Indian Immigrants shall be valid, and all engagements to labour assignments of services and certificates heretofore made and granted, and all matters and things done heretofore under or by virtue of any of the said Laws shall be and continue in force in the same manner as if this Law had not been passed, and save that all rules and regulations made under the repealed Laws or any of them shall, on the taking effect of this Law, be deemed to be rules and regulations made under this Law, except where the same may be inconsistent with the provisions of this Law :—

Law No. 2, 1870, entitled Law " To amend and consolidate the Laws relating to the introduction of Coolie Immigrants into this Colony, and to the regulation and government of such Coolie Immigrants."

(A) March 23, 1880.

(B) Entitled  
Provision of  
land, but  
entitled  
substantive  
act of 1891.

See also  
Act-24,  
and Act-  
4 " 3,

Repeal of Laws  
with reserva-  
tion.

Law 25, 1891.

- Law No. 12, 1872, entitled Law "To amend the Coolie Law Consolidation Law, 1869."  
 Law No. 19, 1874, entitled Law "To amend Laws No. 12, 1872, and No. 2, 1870."  
 Law No. 14, 1875, entitled Law "To amend the Laws relating to Indian Immigrants."  
 Law No. 19, 1878, entitled Law "To amend certain provisions of Law No. 2, 1870 (Coolie Laws Consolidation Law, 1869)."  
 Law No. 16, 1881, entitled Law "To relieve the employers of Free Indian Immigrants from certain charges imposed by Law."  
 Law No. 21, 1882, entitled Law "To provide for the visitation and inspection of Indian Immigrants employed in the Upper Districts of the Colony of Natal."

II.—Protector and other Officers.

2. The Governor may from time to time nominate and appoint some fit and proper person to be Protector of Indian Immigrants within this Colony, who shall hold office during pleasure, and such officer shall, as long as he shall hold his office, be entitled to have and receive, and be paid [from and out of the funds (A)] at the disposal [of the Indian Immigration Trust Board of Natal] an annual salary not exceeding Six Hundred Pounds.

3. The Governor may from time to time nominate and appoint some fit and proper person to be Assistant Protector of Indian Immigrants, who shall hold office during pleasure, and who shall as long as he shall hold such office, be entitled to have and receive, and be paid [from and out of the funds of the Indian Immigration Trust Board of Natal (B)] an annual salary not exceeding Four Hundred and Fifty Pounds.

4. The Governor may from time to time nominate and appoint some fit and proper person to be Deputy Protector of Indian Immigrants, who shall hold office during pleasure, and who shall, as long as he shall hold such office, be entitled to have and receive, and be paid [from and out of the funds of the said Indian Immigration Trust Board of Natal (C)] an annual salary not exceeding Four Hundred Pounds.

5. The Protector of Indian Immigrants shall have his office in Durban. The Deputy Protector of Indian Immigrants shall be stationed at such place as may be fixed and appointed from time to time by the Indian Immigration Trust Board, subject to the approval of the Governor in Council, and such Deputy Protector of Indian Immigrants shall have and exercise within the District to which he shall be appointed, such and so many of the authorities, rights, and duties, vested by law in the Protector of Indian Immigrants, as the Governor in Council may from time to time and is hereby empowered to delegate to him.

6. The Deputy Protector shall be under the orders and control of the Protector of Indian Immigrants, or the Assistant Protector when the Protector is absent from his office on duty, and is hereby required to transmit at the end of each month, or whensoever required by the Protector of Indian Immigrants, a return of all complaints made to and of matters investigated by him, and a return of all estates or places and of employers of Indian Immigrant labourers visited by him, for submission to the Indian Immigration Trust Board.

(A) Words in brackets expunged by Act 17, 1895, s. 19, post.

(B) See note (A).  
 (C) See note (A).

by A. 31/59. S. 2.  
 Appointment of  
 Protector of  
 Indian Immi-  
 grants,  
 22-14/01

Assistant  
 Protector.

Deputy  
 Protector.

Place of Pro-  
 tector's office.  
 Deputy Pro-  
 tector, where  
 stationed; his  
 authority and  
 duties.

Deputy Pro-  
 tector to be  
 under Protec-  
 tor's orders, and  
 to furnish cer-  
 tain returns.

7. The Indian Immigration Trust Board may from time to time appoint such Clerks, Interpreters, and other Officers, as may be required to carry out the provisions of this Law, and such Officers shall be paid such salaries as may from time to time be determined by the Board from and out of the funds at its disposal. And the said Board may from time to time remove, suspend, or dismiss such officers, and appoint others in their places.

Law 25, 1891.

Appointment and removal of clerks and other officers.

see act-14/0  
see - 2

8. No officer appointed by the Governor or the Indian Immigration Trust Board, under the provisions of this Law, shall be deemed to belong to the permanent Civil Service of the Colony.

Status of officers.

see act-38/06

III.—*Requisitions.*

9. Requisitions by persons in Natal wishing to introduce or engage Immigrants from India shall be framed in terms of Schedule A hereto annexed. Every requisitionist shall be required to enter into a bond with two approved sureties, or to give other security to the satisfaction of the Indian Immigration Trust Board, for repayment of any loss which may arise or be incurred by reason of his not taking over any Immigrants which may be allotted to him ; such bond shall be in such form as the said Board may require.

Requisitions for introduction of immigrants, how framed and confirmed.

IV.—*Contracts.*

10. Every Indian Immigrant leaving India to come to Natal for hire shall, before leaving India, either be engaged to an employer named in his contract, or shall be taken as bound to serve any employer to whom he shall be allotted by the Protector of Indian Immigrants on his arrival at Natal.

Engagement to be entered into by immigrant in India.

11. Every Indian Immigrant shall in India sign a contract either in the terms and form of Schedule B, or in the form of Schedule C hereto annexed (A), according as it may be necessary for him to enter into a special contract to serve an individual employer therein named, or a contract with the Protector of Indian Immigrants to serve any employer to whom he may be allotted by the Protector of Indian Immigrants at Natal, and in either case the contract so signed shall inter alia bind him to a service of five years.

Terms of contract executed in India.

12. Every such contract executed in India upon any such requisition shall have the same force and effect as if the same had been executed in this Colony, and it shall not be necessary to the validity thereof to execute any further contract in this Colony, and the Protector of Indian Immigrants shall deliver to each employer a return embodying the terms of such contract.

Period of service.

Effect in this Colony of contracts executed in India.

13. The registration of any engagement in India of any Native of India made pursuant to any Act in force in India for the time being, shall be deemed equivalent to, and shall have and shall be deemed to have had, for all purposes whatsoever, the same force and effect as if said registration of engagement were or had been a written and signed contract in India under this Law, whether such registration shall have been made at any time before the passing of this Law, or whether the same shall be made after the passing thereof ; and certified copies of any such registration entries made or signed by the Protector of Indian Immigrants shall be received as evidence in any Court of Justice within this Colony.

Registration of engagement under any Indian Act to be valid as a contract.

14. The Protector of Indian Immigrants shall, as regards free Indian Immigrants, be ex officio an officer to attest and make contracts of service and apprenticeship under Ordinance No. 2, 1850.

Powers of Protector under Ord. 2, 1850.

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(A) See covenant inserted in these Schedules by Act 17, 1895, post.

## Law 25, 1891.

V.—*Duties of Protector on arrival of Immigrants.*

Duties of Protector on arrival of ship with immigrants.

15. The Protector of Indian Immigrants, or in his absence the Assistant Protector, shall board every ship arriving at this Colony with Indian Immigrants, and shall ascertain and report to the Governor and to the Indian Immigration Trust Board, the number of Immigrants, embarked in her, the state of their health, the number of deaths which have occurred on the voyage, and whether the provisions of the charter party under which such Immigrants have been conveyed from India have been performed, and the said Protector of Indian Immigrants shall cause such Immigrants to be landed and conveyed to the Indian quarters on the Bluff (A), and shall thereupon assign the said Immigrants in the manner provided by this Law, and until the time of assignment shall provide them with proper and sufficient food and clothing; and shall as soon as possible after the arrival of the Immigrants at the depot, give notice to the requisitionists of the arrival of the Immigrants, and stating the probable number for such requisitionist.

VI.—*Register of Immigrants.*

Register of immigrants, what entries to be made therein.

16. The Protector of Indian Immigrants shall keep a "register," in which shall be entered the names of all Indian Immigrants who may hereafter be introduced into this Colony at the expense of the Indian Immigration Trust Board of Natal, and shall number each of such Immigrants by a particular number commencing with the number next after the last number now recorded in the register kept under the repealed Laws, and proceeding by numerical progression, and shall distinguish therein, under different heads, the number, name, age and sex of every such Immigrant, and the time when, and the place from which, and the vessel in which, such Immigrant shall have arrived.

VII.—*Assignment of Immigrants.*

Assignment of immigrants to applicants.

17. It shall be lawful for the protector of Indian Immigrants, after the arrival of the Immigrants at the depot, to assign the services of any Indian Immigrants who shall have executed the usual contract in India in terms of Schedule B, attached to this Law, to any applicants who may be entitled to such assignment, at such rate of wages, and on such conditions as to wages and food as may have been stipulated in India by the Agent toward such Immigrant: Provided, however, that the assignment of females and younger persons shall be only for such lighter varieties of labour as such female Immigrants and younger persons are fitted for: And provided always that in any such assignment no Immigrant shall be assigned to any applicant other than the applicant who applied for Indians, prior to the Indian Immigration Trust Board sending for such Indians, until the applicant shall have received the number applied for by him: And provided, also, that in such assignment the wishes of the Immigrant shall as far as possible be ascertained and attended to; and that in no case whatever shall any husband and wife, nor any parent and child, be assigned to different employers; and pending and until such assignment, the Immigrant must work and obey the directions of the Protector of Indian Immigrants, or such person as the Protector of Indian Immigrants may appoint, or the person in charge of the depot.

Restrictions on assignment of females and children.

Families not to be separated.

(A) This duty now devolves on the Indian Immigration Trust Board, see Act 17, 1895, s. 7, post; on whom also, by Act 14, 1897, post, all expenses in-

curring by the Protector in carrying out the provisions of this section are made to fall.

VIII.—*Payment of Passage Money.*

Law 25, 1891.

18. In respect of any male statute adult Indian Immigrant heretofore or to be henceforth brought into this Colony, there shall upon each and every assignment during the term of assignment, be paid to the Indian Immigrant Trust Board by the person to whom the services of any such Indian Immigrant shall be assigned for each and every such Indian so assigned such yearly sum as shall from time to time be fixed by the said Trust Board, subject to the approval of the Governor in Council (A), with power to the said Board to increase or reduce such payments from time to time during the term of assignment as the said Board shall deem necessary, subject to the approval of the Governor in Council, which said annual payments (B) shall be made in advance, that is to say, the first payment shall be made on the date of assignment, and the subsequent payments at the commencement of each following year, reckoning from the date of the assignment, which payments shall be made notwithstanding that such Immigrant may have deserted or have been imprisoned during the term of assignment: Provided always, that no demand for payment shall be made on the person to whom the services of any such Indian Immigrant shall have been assigned, in respect of any such Indian Immigrant who shall have died, or whose services shall have been legally transferred from any such person or employer prior to the date of the next annual payment falling due.

Annual payment by assignee of Indian immigrant to Indian Immigration Trust Board.

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19. Each and every aforesaid annual payment shall be paid on the date of its becoming due without any demand being made therefor, and in case any such payment shall not be made on the date on which the same shall fall due, there shall be payable in addition by the person by whom the said annual payments shall be payable a charge of interest at the rate of eight per centum per annum from the due date of each and every annual payment to the day on which the said payments shall be made.

Annual payments, how and when to be made.

Interest on arrears.

20. All moneys due to the Indian Immigration Trust Board, under the provisions of this Law in respect of such annual payments, interest and medical fees shall be and are hereby declared to be a first charge on the property or estate of the person by whom the same shall be payable, and all such moneys shall be a first charge and shall take priority of all charges and encumbrances whatsoever and whensoever made upon and over the property, movable and immovable, of such person (c); and provided further that such claims so due shall have been demanded and legal proceedings shall have been taken to recover the same within six months from the time that the same fell due, or in the event of the insolvency of the debtor, that the same shall have been duly proved in the estate within a like period or within such period as other debts in the estate can be proved (d).

A. 31/49. S. 2.  
Certain moneys due to Board made a first charge on debtor's estate.

Remedy for recovery to be taken within certain time.

21. It shall be the duty of the Protector of Indian Immigrants (E), and he is hereby directed to prepare and submit for the consideration of the Indian Immigration Trust Board as soon as possible after the 31st March, 30th June, 30th September, and 31st December, in each and every

Quarterly return of persons in arrear with instalments. do.

(A) See Act 36, 1894, s. 1, post.

(B) See Act 17, 1895, ss. 14 and 15, post.

(C) A *Kusting* brief over a person's property does not prevent its becoming the "estate" of the buyer so as to postpone the claim of the Board to the rights of the mortgagee (*Evans' Executors v. Mayer and another*, 6 N.L.R. 130).

The preference for the principal sums

due also extends to the costs incurred in recovering the debt (*In re Acutt & Co.*, 8 N.L.R. 225).

(D) This does not mean that execution must be taken out within six months in order to preserve the preference (*Evans' Executors v. Mayer and another*, supra).

(E) This duty now falls on the Secretary to the Board, see Act 17, 1895, s. 16, post.



**Law 25, 1891.** year, a return setting forth the names of all persons in arrear with their Recovery of instalments, and the date upon which the same became payable, and the arrears. said Board shall take such action thereon as to it shall appear advisable, and whenever any such instalment is in arrear for a period of five months, it shall be the duty of the Protector of Indian Immigrants to take legal proceedings for the recovery of the same with interest thereon as afore said.

IX.—*Removal from Depot.*

Time within which immigrants are to be removed from depot.

22. Every person at whose instance, or on whose requisition any Indian Immigrant shall be brought to this Colony shall receive and remove such Immigrant from the depot on the day fixed for allotment, provided that if such person resides thirty miles or further from Durban, then within seven clear days after such Immigrant shall have been allotted, and in case of any default on the part of any such person or requisitioner to claim and remove such Immigrant within the said period, he, the said person or requisitioner, shall pay to the Indian Immigration Trust Board of Natal one shilling per diem for each Immigrant to cover the cost and maintenance of such Immigrant for every day such Immigrant shall continue in the depot after the expiration of the said period: Provided always, that should any Immigrants be placed in quarantine such Immigrants shall not be allotted until after their release from quarantine, and in any such case the date of their arrival at the depot shall be taken to be the date of their release from quarantine.

Quarantine.

Assignment to other person in case of non-removal by requisitioner.

23. In case any person, at whose instance or on whose requisition any Indian Immigrant shall be brought into this Colony, shall fail to claim and remove such Immigrant as shall be allotted to him within fourteen days from the date of allotment, it shall and may be lawful for the Protector of Indian Immigrants to assign any such Immigrant to any other person willing to accept any such assignment: Provided always, that should the Protector of Indian Immigrants so assign any such Immigrant to any other person, the payment of one shilling per diem, as in the last preceding clause mentioned, for the cost and maintenance of such Immigrant at the depot to the date of such assignment, shall be paid by the said person or requisitioner to whom the said Immigrant was in the first place allotted. And in case any such Immigrant shall be so assigned to any such other person as aforesaid he, the said other person shall remove the said Immigrant forthwith from the depot under a penalty of one shilling and sixpence per diem for each day the said Immigrant shall, by default of the said person, remain in the depot after the date of such assignment.

Cost of maintenance.

Removal by assignees.

Days and hours of labour.

24. Every such Indian Immigrant whose services shall be so assigned or transferred, in the absence of an express agreement to the contrary, between such Indian Immigrant and the person entitled to his services under such assignment or transfer, shall be bound to work for such person to whom his services may have been assigned for nine hours of each day, Sundays, Good Friday, Christmas Day, and New Year's Day only excepted: Provided always, that it shall be lawful for the Governor with the advice of the Executive Council, from time to time to make regulations for allowing to Indian labourers such holidays or days to be observed as religious festivals as to him shall seem fit. The forms of contract to be entered into shall be as near as may be in the form in Schedules J. and K. hereto annexed.

Religious festivals.

Forms of contract.

Immunity of field labourers from work on Sundays or holidays, save in certain matters of necessity.

25. No Indian Immigrant engaged for field labour shall be compelled to perform any work on any Sunday or holiday save only such as shall be of immediate necessity for the care and feeding of animals, the cleanliness of yards, sties, stables, folds, manufactories, and buildings, and other work

indispensable for the preservation of the property of his employer. Such work shall not be of more than two hours' duration nor be continued after the hour of eight in the morning: Provided that in every case in which work shall, at the request of the employer, be willingly performed by any servant beyond the time limited by law as mentioned above on any Sunday or holiday, the remuneration paid for such extra labour shall be specially mentioned in the wages book. Law 25, 1891.

26. Any employer, contravening the provisions of the above section, shall be liable to a penalty not exceeding two pounds on conviction, at the instance of the Protector of Indian Immigrants, by any Magistrate within whose jurisdiction the offence was committed. Any Indian Immigrant, engaged for field labour, refusing or neglecting to perform work which he may be required to perform under the above section, shall be liable to a penalty not exceeding one pound on conviction, at the instance of the Protector of Indian Immigrants or of the employer of such Indian Immigrant, by any Magistrate within whose jurisdiction the offence was committed. Penalty for contravention of sec. 25 by employer.  
Penalty on field labourer for refusing to work.

#### X.—Wages, &c.

27. Every employer of Indian Immigrants, whether indentured or free, such Immigrant not being employed as a domestic servant, shall keep a wages book, the pages whereof shall be ruled and divided in the form of the Schedule D hereto annexed, and such book, if duly and properly kept and regularly entered up shall be admissible as evidence in any Court as prima facie proof of the amount due for wages to any Indian employed on the estate in respect of which such book shall be kept, and such book shall at all times be open to the inspection of the Protector, Assistant Protector, or Deputy Protector of Indian Immigrants. Wages book to be kept by employer.  
Admissibility as proof of amount due for wages.

28. All moneys due to Indian Immigrants (A) for wages shall be a first charge upon, and shall take priority of all charges and encumbrances whatsoever and whensoever made upon and over their employer's property, movable and immovable, in respect of which such Indians were employed, save and except moneys due to the Indian Immigration Trust Board, and made a preferent charge under the provisions of this Law: Provided, however, that such claims for wages shall have been demanded and legal proceedings taken by the Protector, Assistant Protector, or Deputy Protector of Indian Immigrants (B), to recover the same, within six months from the time that the same became due, or in the event of the insolvency of the employer, that the same shall have been duly proved in the estate by the Protector, Assistant Protector, or Deputy Protector of Indian Immigrants, or other person duly appointed by the Protector on behalf of such Indians within a like period, or within such period as other debts in the estate can be proved. Moneys due for wages to be a first charge on employer's property, except moneys due to Board and made a preferent charge.

#### XI.—Deductions from Wages.

29. The person in respect of whom the service of any Indian Immigrant shall be in the first instance assigned or transferred, may deduct by monthly instalments of two shillings from the wages of such Immigrant the amount mentioned in each assignment as having been advanced to such Immigrant previous to his or her embarkation in India. Deduction from wages for repayment of advance.

(A) Held under repealed Law 2, 1870, that Indian servants even after expiration of their indentures are entitled to preference for their wages (*In re Acutt's Estate*, 4 N.L.R. 15).

(B) An Indian immigrant by suing in his own name forfeits his right to preference (*Poonasamy and others v. Hedemann & Son*, 18 N.L.R. 100).

Law 25, 1891.

XII.—*Absence without Leave, &c.*

Immigrant may be arrested if found beyond one mile from employer's residence without leave.

30. It shall be lawful for every person entitled to the services of any Indian Immigrant, or for any servant of such person, or for any constable, to apprehend without a warrant such Immigrant being found at a distance of more than one mile from the residence of the person in respect of whom his services shall be due without a written ticket of leave, signed by the master or by some person duly authorised by him, and to cause such Immigrant to be taken back to such residence. It shall be lawful for such master or employer to deduct the cost of such Immigrant's return from the wages then due, or which may thereafter become due, to the Immigrant: Provided that every Indian Immigrant shall be free from such arrest if, when so found, he shall be on his way to lodge any complaint before the Protector of Indian Immigrants, or the Magistrate of the Division wherein his place of service is situated (A). If the said Magistrate shall be of opinion that the complaint is frivolous or vexatious, or without just cause, the costs of the Immigrant's return from the Court of the Magistrate to the residence of the master or employer shall be paid by such master or employer, who is hereby authorised to deduct the amount of such costs from the wages then due, or which may thereafter become due, to such Immigrant: Provided always, that it shall not be lawful for any master or employer, deducting the costs to which this section refers, to retain in any one month more than one-half of the monthly wages to which the Immigrant is by law entitled.

Exemption from arrest when going to lodge complaint

If complaint frivolous, cost of return may be deducted from wages within certain limits.

Immigrant may be stopped and required to produce certificate of discharge or pass, and on default may be brought before Magistrate and dealt with summarily.

31. It shall be lawful for the protector of Indian Immigrants or any Magistrate or Justice of the Peace or any police constable to stop any Indian Immigrant wherever he may find him, and also for the owner or occupier or the servant of any owner or occupier of any land or house to stop any such Immigrant found upon or about such land or house, and, if such Immigrant being so required shall fail to produce his certificate of discharge, or a written ticket of leave signed by his master or by some person duly authorised by him to whom his services may be due, save in the exceptional circumstances contemplated by the first proviso of the preceding section, to take such Immigrant forthwith before the nearest Magistrate who shall forthwith enquire into the case (B). Unless such Immigrant shall satisfy such Magistrate that he has obtained his discharge, or that he is absent from the estate or residence of the person in respect of whom his services shall be due with the leave, in writing, of his master or the manager or other person in charge of such estate, then and in such case, for a first offence, such Immigrant shall be punishable by the Magistrate aforesaid by a fine not exceeding ten shillings or by imprisonment with hard labour for any term not exceeding seven days, and for a second offence, by imprisonment with hard labour for any term not exceeding fourteen days, and for every subsequent offence by imprisonment with hard labour for any term not exceeding thirty days. It shall be the duty of such Magistrate to communicate to the master or employer of any Immigrant so punished the fact of the imposition of a fine or of the committal to prison, with the date on which such fine was imposed or on

(A) See Act 1, 1900, post, authorising Governor to make Rules, and amending this section with regard to return of immigrant to his employer, and the incidence of costs of return.

(B) See provisions of Act 28, 1897, post, protecting uncovenanted Indians from arrest in mistake for absconding immigrants.

An Indian having come from Camperdown to Durban to lodge a complaint with the Protector, which was dismissed, remained in Durban without leave. Held that the Durban Magistrate had power under this section to punish the Indian (*Protector of Immigrants v. Ramasamy*, 13 N.L.R., 108). But see now Act 1, 1900, post.

which the term of imprisonment was awarded, and after payment of such fine or at the expiration of the term of imprisonment, should such master or employer not claim the Immigrant, the said Magistrate shall forward the Immigrant to his master or employer. The costs of such return shall be paid to the Magistrate by the master or employer, who is hereby authorised to deduct the amount of such costs from the wages then due, or which may thereafter become due, to such Immigrant: Provided that it shall be lawful for the Magistrate, if he be unable to ascertain such master or employer, to forward the Immigrant to the Protector or Deputy Protector of Indian Immigrants for identification, and the total costs incurred in such return shall be paid by the master or employer, who is hereby authorised to deduct the amount from the wages then due, or which may thereafter become due, to such Immigrant (A).

Law 25, 1891.

32. When any Indian Immigrant shall have been thrice convicted for the offence of absence from his master's service without a written ticket of leave as contemplated by the preceding section, and it shall not appear to whom such Immigrant's services are legally due under assignment, it shall be lawful for the Protector of Indian Immigrants to assign the services of such Immigrant to any person who shall be willing to accept and pay the charges of such assignment; and if no person shall accept such assignment within ten days from the release of such Immigrant from prison, the Protector shall assign the services of such Immigrant to the Colonial Government for employment in any public works: Provided always, that on every such case of re-assignment, the Protector of Indian Immigrants shall, when it can be ascertained to whom such Immigrant was originally assigned, pay to such original employer the sums paid by him consequent upon the original assignment of such Immigrant, less the sum of five shillings per month for each month such Immigrant served such original employer, and provided that after such re-assignment the original employer shall not be liable for any instalment of payment accruing after such re-assignment: Provided, further, that, in case the original employer shall elect, he may call upon the Protector of Indian Immigrants to cancel such second assignment and to restore to him the services of such Immigrant, and such Immigrant shall be compelled to render such original employer actual service for the time he was originally assigned, and the person to whom such Immigrant was re-assigned, when such re-assignment shall be cancelled, shall be entitled to have re-paid to him by the Protector of Indian Immigrants such sum as he may have paid on such second assignment, minus the sum of five shillings per month for each month such Immigrant shall have served such second employer.

Re-assignment of immigrant thrice convicted for absence from service, when master cannot be ascertained.

Rights of original employer in respect of immigrant re-assigned.

33. Every Indian Immigrant who shall 'unlawfully absent himself from work shall forfeit, in addition to losing all claim to wages and allowances during such absence, a uniform amount of one shilling per diem if a male, and sixpence per diem if a female for each day's absence, and such sum may be retained by the employer from any wages which may be due by him to such Immigrant previous to such absence: Provided, that in the case of any male Immigrants who are indentured as special servants, and to whom in the terms of the indenture the monthly rate of wages payable shall be thirty shillings or more, the employer shall be entitled to deduct the sum of two shillings per diem in lieu of one shilling, as provided in this section: Provided also, that such forfeiture shall not in any one month exceed the amount of wages for such month due to the Immi-

Penalty for unlawful absence from work.

Limits of forfeiture.

(A) The provisions of this section in regard to costs of returning an immigrant to his employer only apply to convictions under this section and not

to convictions under other sections of this Law (*Lucas v. Nulliah*, 15 N.L.R. 52). See also Act 1, 1900, post.

**Law 25, 1891.** grant upon whom such forfeiture is imposed, and that it shall not be levied in respect of Sundays and the holidays by this Law provided, save as required by the Law providing for the performance, on Sundays and the holidays by this Law provided, of work immediately necessary for the preservation of the employer's property: Provided, further, that in the event of a complaint being made by such Immigrant on account of the non-payment of wages so retained, before a Magistrate of the Division wherein such Immigrant's place of service is situated, the employer shall be bound to justify such retention to the satisfaction of the said Magistrate: Provided, fourthly, that should such unlawful absence exceed twenty-five days in any one year the employer may claim, in lieu of such period of absence or any portion thereof, a prolongation of the contract for a period equivalent to two days for so many several days of such unlawful absence as shall not have subjected such Immigrant to the forfeiture aforesaid: during such prolongation of the contract the Immigrant shall receive wages at the same rate and allowances on the same daily scale as he would have been entitled to during the period of unlawful absence which shall have occasioned such prolongation of the contract.

On complaint employer to justify deduction.

Prolongation of contract if absence exceeds 25 days in any one year.

Justifiable absence.

Employer to supply food, shelter, &c., during absence by reason of sickness or infirmity.

Punishment for absence without leave from roll-call, neglect of work, or disobedience.

Punishment for gross insolence, fraud, or damage to employer's property.

34. No Indian Immigrant shall be deemed to be unlawfully absent from work within the meaning of the foregoing section, if it shall appear by a certificate, signed by a duly qualified medical practitioner, that the absence from work was occasioned by incapacity resulting from sickness, or bodily infirmity, not caused by his or her own act, or if special circumstances, sufficient to justify such absence, shall be shown to the satisfaction of the aforesaid Magistrate: Provided that every Immigrant during absence from work by reason of sickness or bodily infirmity, not caused by his or her own act, shall be supplied by his or her employer with food, shelter, and, except when otherwise provided, with medical attendance and medicine, but shall be liable in respect of such absence from work through sickness or bodily infirmity to a deduction from his or her wages, for every day of such absence, at the rate of fourpence per diem during the first and second years of indenture, and sixpence per diem during the third, fourth, and fifth years of indenture.

35. Any Indian Immigrant who, being in good health and able to work, shall absent himself from muster or roll-call without leave (A), or who shall neglect to perform any work which his employer, or person duly authorised by him, may reasonably order (B) him to perform, or who shall, without just cause, wilfully disobey the orders of his employer, or of any person duly authorised by him, shall be deemed to be guilty of misconduct and shall be punishable in addition to the forfeitures specified in the thirty-third section for unlawful absence from work, by the Magistrate of the division wherein his place of service is situated, by imprisonment, with or without hard labour, for any term not exceeding seven days for the first offence, by imprisonment with hard labour for any term not exceeding fourteen days for the second offence, and for every subsequent offence by imprisonment with hard labour for any term not exceeding thirty days, with spare diet, if the Magistrate shall so adjudge, for any portion not exceeding one-third of such last-mentioned term of imprisonment.

36. Any Indian Immigrant, who shall be grossly insolent to his employer, or who shall practise any fraud or deception in the performance of any work which he is bound to perform, or who shall, by negligence

(A) See *Protector of Immigrants v. Pontré*, 17 N.L.R. 302, where it was held that an Indian Immigrant absent with a pass from the Protector, which the latter had no right to give, should have

been charged with contravening this section and not section 31.

(B) As to what is a "reasonable order," see *Nurbee v. Hawksworth Bros.*, 14 N.L.R. 294.

or other improper conduct, lose, throw away, or damage the property of his employer, shall be punishable by the Magistrate of the division, wherein his place of service is situated, by a fine not exceeding Five Pounds or by imprisonment with hard labour for any term not exceeding thirty days. Law 25, 1891.

37. Any Indian Immigrant who may be found guilty a second time of any offence specified in the foregoing section, or who shall endanger the property of his employer by the careless use of fire, or who shall wilfully maim, wound, or cruelly ill-use any live stock or cattle belonging to his employer, or entrusted to such employer's care, or who by negligence shall suffer any such live stock or cattle to be maimed, wounded, or cruelly ill-used, shall be punished, on conviction before any Magistrate of the division wherein his place of service is situated, or wherein the offence was committed, by imprisonment, with hard labour for any term not exceeding three months, with spare diet, if such Magistrate shall so adjudge, or any portion not exceeding one-third of such term: Provided, that nothing herein contained shall be a bar to the prosecution before the Supreme or Circuit Court under the common law of the Colony, if the Attorney-General so direct, of any Indian Immigrant accused of wilfully maiming, wounding, or cruelly ill-using any live stock or cattle belonging to his employer, or entrusted to such employer's care, or accused of aiding and abetting any wilful maiming, wounding, or cruelly ill-using such live stock or cattle. Punishment for second offence, or for careless use of fire, cruelty to live stock, &c.

38. Any person on whose premises any assigned Indian Immigrant may be found without a pass may send information to that effect to the Protector or the Deputy Protector of Indian Immigrants, or to the nearest Magistrate, who shall, upon receipt of such information, take steps to have such Indian Immigrant brought before the Magistrate having jurisdiction, to be dealt with according to the provisions of this Law. Saving as to prosecution under common law.

### XIII.—*Transfer of Immigrants.*

39. Any requisitioner may, with the leave of the Protector of Indian Immigrants, have any Indian Immigrant whom such requisitioner had applied for, and who shall be under a contract to serve him or to serve any employer to whom he should be allotted, transferred to any other person upon production of an affidavit to the Protector of Indian Immigrants that no consideration or value has passed or been promised for such transfer. Immigrant found on premises without a pass to be brought before Magistrate.

40. If after the date when this Law shall come into operation, the estate or place on which any Indian Immigrant shall be engaged to work, shall be sold, alienated, or transferred to, or succeeded to by another person during the currency of the contract, the Immigrant shall be bound, subject to the approval of the Protector of Indian Immigrants, to perform all the conditions of the contract, to the new proprietor of the estate or place, who, in like manner, shall be held bound to perform the stipulations thereof incumbent upon the employer. Protector may give leave for transfer of immigrant on production of affidavit.

41. Upon any new proprietor being substituted under a contract in terms of the foregoing provisions, the former employer will be entitled to be freed from the obligations incumbent on him by the contract, provided that he shall satisfy the Protector of Indian Immigrants that the Immigrants will not suffer thereby, and provided that all arrears of wages be paid before the former proprietor shall be so liberated. Contracts pass with the estate subject to consent of Protector.

42. No conviction of an Indentured Indian Immigrant of any crime under the ordinary law of the Colony, or of any offence under this or any other Law, and sentence of imprisonment thereupon shall be construed or held to operate as an assignment or transfer of the services of Relief of former employer from obligations under contract.

Conviction not to operate as a transfer or assignment.

Law 25, 1891. such Indentured Indian Immigrant from the person or estate or place entitled to the services of such Immigrant at the time of the committal of such crime or offence.

Cancellation of contract by Protector and re-assignment of immigrant.

43. It shall be lawful for the Protector of Indian Immigrants, subject to such terms and conditions as to instalments and all other money payments as may be approved of by the Indian Immigration Board, on the application of the employer of any Indentured Indian Immigrant, or of such Immigrant, to cancel and determine the contract of service of such Immigrant, and to assign such Immigrant to some other person for the residue of the original term of service of such Immigrant.

XIV.—*Evidence of Execution of Contract, &c.*

Handwriting of Protector or Assistant Protector to be evidence of execution and contents of certain documents.

44. Proof of the handwriting of the Protector of Indian Immigrants or Assistant Protector to any assignment or transfer of the services of any Indian Immigrant, or to any certificate or other document mentioned in this Law, shall be sufficient evidence of the execution of the same and of the facts mentioned in such assignment, transfer certificate, or other documents.

XV.—*Inspection of Estates and Places where Indians are Employed.*

Authorised person to enter on estate, &c., and inspect twice a year and enquire into complaints.

45. It shall be lawful for the Protector of Indian Immigrants or Deputy Protector or any other person duly authorised by the Governor for that purpose, and the protector of Indian Immigrants or deputy Protector or other person duly authorised is hereby required, twice at least in every year, to enter into and upon every estate or place in the Colony of Natal where any Indian Immigrant may be employed, and to inspect the state and condition of all Indian Immigrants whom he may find upon such estate or place and enquire into any complaint which the employer may have against such Immigrant or such Immigrant may have against his employer, and shall ascertain whether such Immigrants are properly treated, and shall report the result to the Governor. Nothing in this Section contained shall apply or be deemed to be applicable to Free Indian Immigrants employed as domestic household servants: Provided also, that the Governor may from time to time require from every employer of Indentured Immigrants such further returns as the Governor may see fit to direct as to the number, state, and condition of such Indentured Immigrants, and every such employer shall be bound to send in such return in manner and time as directed.

Returns from employers.

46. The Governor may, by writing under the hand of the Colonial Secretary, authorise and appoint, from time to time, the Protector, the Assistant Protector, and also the Deputy Protector of Indian Immigrants, to carry out and administer in any estate or place which he may enter into and upon for the purposes of Section 45 of this Law, any and all of the provisions of this Law as to the relations between Master and Servant; and the said Protector, Assistant Protector, and also the Deputy Protector of Indian Immigrants, shall have the same powers and authorities for hearing and determining complaints and enforcing his decision and judgment thereon as a Magistrate has.

Protector may call for record of criminal case tried by Magistrate and appeal to Supreme or Circuit Court.

47. The Protector of Immigrants shall be empowered, in any criminal case in which an Indian Immigrant may be concerned, and in which a Magistrate shall have adjudicated, to call for and obtain from such Magistrate, and such Magistrate shall be required upon such demand to furnish without delay, a copy of the record, proceedings, evidence, and judgment in such case; and the Protector may, if he shall so think fit, give notice of appeal, and prosecute an appeal to the Supreme Court, or the Circuit Court having jurisdiction, against the judgment of the Magis-

trate, without payment of any fees of the Magistrate's Court, or of the Supreme or Circuit Court, and without any cost to such Indian Immigrant; and the Supreme or Circuit Court shall have power to entertain the appeal so instituted by the Protector of Immigrants, and to adjudge thereon. Law 25, 1891.

XVI.—*Medical Care, &c.*

48. Every person in whose employ any Indian Immigrant may be shall be bound to provide proper and sufficient medical care and proper and sufficient medicine and attendance for such Indian Immigrants, and to keep or cause to be kept a "general and medical register book" in such manner and form as the Indian Immigration Trust Board may from time to time direct. Employer to provide medical care for immigrants, and to keep register. A. 3  
S. 2

49. It shall be lawful for the Protector or Deputy Protector of Indian Immigrants from time to time to require from any employer of such Immigrants such returns as either of them may see fit to direct, as to the number, state, and condition of such Immigrants, and such employer shall be bound to send in such return to the officer requiring the same within one calendar month next after he shall have been notified so to do. A return in the form of Schedule E shall be made up by each employer of Indian Immigrants, Free or Indentured, and sent in to the Protector of Indian Immigrants quarterly (A). Returns may be required from employer as to number and state of immigrants.  
Quarterly returns.

50. The Indian Immigration Trust Board of Natal may and is hereby authorised to appoint a duly qualified medical practitioner to attend upon the Indian Immigrants employed upon any estate or elsewhere, and upon any such appointment the proprietor of the estate or the employer of such Immigrants shall be released from his obligation to obtain a duly qualified medical practitioner to attend upon such Immigrants. And every employer of Indian Immigrants, not being free domestic servants, on any estate or place for which estate or place the said Board may have appointed a medical practitioner, as aforesaid, shall pay quarterly on or before the 10th January, 10th April, 10th July, and 10th October in each year to the Protector of Indian Immigrants (B) a sum not exceeding <sup>One</sup> Shilling Sterling per month for every male statute adult Immigrant in the service of such employer, and the Protector of Indian Immigrants shall pay such moneys to the Indian Immigration Trust Board, to be paid by such Board into a special fund, to be called the "Medical Fund," and the Indian Immigration Trust Board shall, out of the said moneys, pay such salaries for medical practitioners as shall from time to time be determined by the said Board, and shall otherwise pay and apply such moneys in such manner and for such purposes connected with the collection and administration thereof, and medical attendance and accommodation for Indian Immigrants as the said Trust Board may deem expedient: Provided, that no employer of less than four hundred of such male adult Immigrants shall pay more than Thirty Pounds per quarter, or One Hundred and Twenty Pounds per annum, under the provisions of this Section, on account of Indians employed on the same estate or on estates situated within the same medical district or circle: And provided that in case the number of such adult male Immigrants employed by the same Appointment of medical practitioners for estates, &c. See l  
Contribution by employer. Amended by A 38/2  
5 L  
Application of moneys.  
Limit of contribution. See Act sec. 1

(A) The returns mentioned in this section are to be sent to the Indian Immigration Trust Board, see Act 17, 1895, s. 9, post.  
(B) The contributions by employers under this section are payable to the Indian Immigration Trust Board, see

Act 17, 1895, s. 10, post. See *Fenwick v. Protector of Immigrants*, 16 N.L.R. 190, as to the competency of the Protector to recover fees from an employer where the latter has failed to furnish the requisite returns.



Law 25, 1891.

*Substituted by  
Act 11/1910.*

Age of adult male for purposes of sec. 50.

Examination of immigrants at depot by Medical Board.

Unfit persons may be returned to India.

*11  
7* Immigrant women exempt from service in certain cases.

Hospital may be required to be erected and maintained on an estate in certain cases.

*9. S. 2.*

Interpretation.

Owners of several estates may agree for a common hospital.

Estates within medical circle.

*11  
7* Treatment of immigrant affected with venereal disease.

employer on the same estate or on estates situated within the same medical district or circle shall be four hundred or more, the amount payable by such employer under this Section shall be Forty Pounds per quarter, or One Hundred and Sixty Pounds per annum.

51. The age of eighteen years and upwards shall be, and is hereby declared to be the age of an Indian Immigrant male adult for the purpose of the foregoing Section.

52. As soon as conveniently may be after the arrival of Indian Immigrants at the Port of Durban, and before their assignment to any employers, the said Indian Immigrants whilst at the depot shall be examined by a Medical Board, consisting of two members duly appointed for that purpose by the Protector of Indian Immigrants (A). Any Indian Immigrant pronounced by the said Medical Board to be unfit for work by reason of physical or mental disability, may be detained at the depot, and thereafter as soon as conveniently may be after such examination, be returned to the Indian port whence he or she embarked. Any expenses incurred in the medical examination, detention, and return of any Indian Immigrants, shall be borne and defrayed by the Indian Immigration Trust Board.

53. Any Indian Immigrant woman shall be exempt from rendering any labour or service to her employer, upon the certificate of the Medical Officer that she is unfit to render such labour or service, or that her duties as a mother require the whole of her time, strength, and attention.

#### XVII.—Hospitals.

54. In every case where a larger number than twenty Indian Immigrants, indentured and free, or indentured or free, are, or shall be, in service on any one Estate, or on adjoining Estates belonging to, or in the occupation of, the same person, the owner or occupier of such Estate or Estates may be required by the Protector of Indian Immigrants, and when so required, shall be bound to have and maintain on such Estate, or on one or other of such Estates as the case may be, a proper and sufficient building, to be approved by the Protector of Indian Immigrants, or by some person appointed by him, as an hospital for such Indians, and to have at all times therein a proper and sufficient supply of medicines and medical comforts: Provided, that for the purposes of this section Estates belonging to, or in the occupation of the same persons, may be deemed to be adjoining Estates if situated within a radius of six miles: And provided, also, that it shall and may be lawful for any two or more owners or occupiers of Estates to arrange together, with the sanction of the Protector of Indian Immigrants, for the establishment and maintenance of a common hospital for such several Estates where circumstances admit of such an arrangement being conveniently carried out: Provided, that as to Estates situated within a medical circle, this section shall only apply where the Medical Officer, with the approval of the Protector of Indian Immigrants, shall see fit to enforce its provisions.

55. Whenever an indentured Indian Immigrant is known to be affected with any venereal disease, the employer of such indentured Indian Immigrant, or the Medical Officer of the Circle in which the Indian is employed, shall, if such indentured Indian Immigrant be willing, cause him to be taken to a Central Hospital, to be received and detained there for medical treatment; and he shall not be discharged therefrom until reported cured; and the order of such employer or medical officer shall be sufficient warrant to the officers of such Central Hospital for receiving and detaining such Indian Immigrant until he be reported cured.

(A) Appointment to be made by Indian Immigration Trust Board, see Act 17, 1895, s. 11, post.

56. If any such indentured Indian Immigrant, known as in the last preceding section mentioned to be affected with any venereal disease, shall not willingly go to any such Central Hospital, he may be arrested and detained in custody, and taken as soon as may be before the Magistrate of the Division, who shall examine into the matter and hear the objection of such indentured Indian Immigrant, and take such evidence as may be brought forward by such employer and Medical Officer of the Circle, and shall thereupon determine the matter, and may make order that such indentured Indian Immigrant shall be taken to the Central Hospital, and be there received and detained until he be reported cured; and such order shall be sufficient warrant to the officers of such hospital for receiving such indentured Indian Immigrant, and detaining him until he shall be reported cured.

Law 25, 1891.  
Procedure in case of such immigrant being unwilling to go to hospital.

57. All costs and expenses connected with and arising out of the removal of such indentured Indian Immigrant to a Central Hospital, and of his detention and treatment therein, may be deducted by the employer from the wages of such indentured Indian Immigrant.

Deduction from wages of expenses.

58. The cost of removal to and from, and the maintenance in, any lunatic asylum of this Colony of any Indian Immigrant, indentured or free, confined therein as an insane person, under the provisions of "The Custody of Lunatics Law, 1868," shall be defrayed by the Indian Immigration Trust Board, the funds of which Board are made chargeable with such cost.

Cost of maintenance, &c., of lunatic.  
\* See Act 42 of Sect. 3.

XVIII.—*Exemption of Immigrants from Imprisonment for Debt, &c.*

59. No Indian Immigrant shall be at any time liable to any action or proceeding at law for the recovery of any debt or liability contracted or incurred by such Immigrant during the term of his or her indenture, and no Indian Immigrant shall be liable whilst under indenture of service in terms of this Law to imprisonment for debt, and it shall not be lawful for any creditor of such Immigrant to attach his or her wages or levy upon his or her goods during the continuance of such indenture, any Law to the contrary notwithstanding (A).

Debts contracted during term of indenture not recoverable.

XIX.—*Administration of Estates of Deceased Immigrants.*

60. It shall be the duty of the Protector of Indian Immigrants, to collect and take possession of the property of any Indian Immigrants who may die intestate in this Colony, and to deliver, with as little delay as possible, all such property to any person in this Colony who shall establish a right thereto to the satisfaction of the said Protector, or, in the absence of such person, to sell the said property and pay the proceeds thereof into the Colonial Treasury. It shall be lawful for the said Protector, at any time within ten years computed from the date of the death of the intestate, to withdraw such proceeds in order to pay the same to any person, resident in this Colony or elsewhere, who may prove his or her right thereto to the satisfaction of the said Protector. In the event of no such withdrawal, the said Protector may, at the expiration of ten years computed as aforesaid, withdraw such money in order that the same may be by him applied to the relief of distressed Indian Immigrants, or of their descendants being in distress, resident in this Colony: Provided that the said Protector may charge against any intestate estate the expenses

See Act 19  
sec 1 & 2.

Duty of Protector in regard to estate of immigrant dying intestate.

A. 15/19 31. d.

(A) Under the corresponding section of the repealed Law, 2 of 1870, it was held that this immunity applied also to

moneys which might not be the proceeds of the immigrant's wages (*Sodager v. Begeman*, 6 N.L.R., 312).

**Law 25, 1891.** reasonably connected with its administration, and, further, that any person, aggrieved by any order made by the said Protector under this section, may appeal to the Supreme Court of this Colony within six months from the date of such order.

*XX.—Registration of Marriages, Births, and Deaths.*

Protector to be Registrar of Births and Deaths of immigrants.

61. The Protector of Indian Immigrants is hereby appointed Registrar of Births and Deaths of Indian Immigrants, and shall without fee or reward enter and register all particulars according to the Schedules F and G hereto annexed in cases of births and deaths respectively, or as near thereto as in the circumstances of each case may be applicable.

Duty of employer on death of immigrant.

62. In case of the death of any Indian Immigrant the employer, if such Immigrant was at the time of death under indenture, or if the Immigrant was a Free Indian then the employer in whose house or estate such Immigrant may die or the occupier of the house or tenement or of the estate in which the death shall have occurred, shall within thirty days transmit to the Protector of Indian Immigrants a notice signed by the employer or his agent in the case of an Indentured Indian, or by the employer or occupier as aforesaid in the case of a Free Indian, containing the particulars required to be registered concerning such death contained in form in Schedule G to this Law, or as near thereto as may be; such notice shall be accompanied by a proper medical certificate in the case of Indentured Indians or by other proof to the satisfaction of the Protector of Indian Immigrants in the case of Free Indians as to the cause of the death.

Notification of birth.

63. In each case of a child born of an Indian Immigrant woman within this Colony the employer of such woman in case either of the parents of the child are under indenture, or in case the parents are Free Indians, then the father or the mother or the person on whose estate or place such child shall be born, shall, within thirty days, transmit to the Protector of Indian Immigrants a notice signed by the employer or his agent in the case of Indentured Indians or by such father, mother, or person in the case of Free Indians, containing the particulars required to be registered concerning such birth contained in the form in Schedule F to this Law.

Punishment for neglect to give notice of birth or death.

64. Every Indian Immigrant or other person who shall refuse or neglect to give notice of any such birth or death as required by the last two sections, or who shall otherwise refuse or neglect to comply with the provisions of said sections, shall forfeit for every such offence a sum not exceeding Five Pounds Sterling, to be recoverable in any competent Court at the instance and on the complaint of the Protector of Indian Immigrants, and in default of payment, may be imprisoned for any term not exceeding one month.

*XXI.—Indian Immigrant Marriages and Divorces.*

Validity of existing registered polygamous marriages

65. All polygamous marriages which have been registered by the Protector of Indian Immigrants in Natal under the 13th or 14th sections of Law No. 12 of 1872, are hereby declared valid, so far as this Colony is concerned, and such registration shall hereafter be accepted by all Courts, civil or criminal, within this Colony, as conclusive evidence of the fact of the marriages to which the same refers.

Future polygamous marriages not to be registered.

66. No polygamous marriage which may hereafter be contracted by Indian Immigrants in this Colony shall be considered valid as far as this Colony is concerned, and no polygamous marriage shall be registered by the Protector of Indian Immigrants or by any Magistrate.

67. All other marriages, which have been registered by the said Protector under the 13th or 14th sections of the said Law, are hereby declared valid, so far as this Colony is concerned, and such registration shall hereafter be accepted by all Courts, civil or criminal, within this Colony, as conclusive evidence of the fact of the marriages to which the same refers.

Law 25, 1891.  
All other marriages lawfully registered to be valid.

68. The Protector of Indian Immigrants, upon the arrival of any ship with emigrants from India, and before the emigrants are assigned, shall demand, from such of them as are described as married in the emigration lists, the certified copies of their marriage registers handed to them by the Protector of Emigrants at Calcutta and at Madras. The Protector of Indian Immigrants shall forthwith register the marriages of the persons to whom such certified copies refer, attaching such copies to such register, and such registration shall be accepted in all Courts, whether civil or criminal, within this Colony, as conclusive evidence of the fact of the marriages to which the same relates: Provided that if such certified copies are not produced when demanded, or have been lost during the voyage, the marriage may be registered from the particulars contained in the general register of the Emigrants.

Protector to demand certified copies of marriage registers on arrival of ship, and to register such marriages.

*See Act-3,  
sec. 647*

Lost certificates.

69. The Protector of Indian Immigrants shall forthwith register the marriages of those Indian Immigrants who, being of the age hereinafter specified, may declare to him, before their departure from the depot in Durban, their desire to be married, and such registration shall be accepted in all Courts, civil or criminal, within this Colony, as conclusive evidence of the fact of the marriages to which the same refers.

Registration of immigrants married at depot.

70. All Indian Immigrants, except those professing the Christian religion, who may desire to marry at any period after their departure from the depot at Durban, shall attend before the Magistrate having jurisdiction in the division wherein either of the contracting parties reside, or before the Protector of Indian Immigrants, and shall declare their desire to marry. Such declaration shall be made by the contracting parties in presence of two witnesses, who shall append their signatures to the declaration in presence of such Magistrate or Protector. Such Magistrate or Protector shall then register the names of the contracting parties, their abodes, their races and religions, in a book kept for such registration, and entitled "Indian Immigrants' Marriage Register." Such Magistrate or Protector shall also record the official numbers of the contracting parties, or if they or either of them are Colonial born then the names and the official numbers, if any, of the parents of such parties, or either of them. Every Magistrate shall forthwith forward to the Protector of Indian Immigrants a certified copy of the register of every marriage so registered by him, and the said Protector shall enter the same in a general register compiled from his own register and from the certified copies forwarded by the said Magistrates. Such registration by a Magistrate or by the Protector shall be accepted in all Courts, civil or criminal, within this Colony, as conclusive evidence of the fact of the marriage to which the same refers (A).

Marriages of immigrants not professing Christianity.

*See Act-*

Marriage register.

71. No ceremony, religious or otherwise, either before or after the registration under the provisions of the last section, shall be necessary, as far as this Colony is concerned, for the validity of any marriage so registered.

Ceremony not necessary to validity of marriage.

72. In every marriage between Indian Immigrants, being Christians, celebrated by any minister of the Christian religion or by marriage officers competent to solemnise marriages under Ordinance No. 17 of

Copy of marriage register to be sent to Protector by person solemnising marriage of Christian immigrants

(A) See Act 7, 1896, post.

**Law 25, 1891.** 1846, the said minister or the said marriage officer shall forthwith forward a certified copy of the marriage register, in which register the official number of the contracting parties or of their parents shall be recorded, required to be kept by the 21st section of Her Majesty's Order in Council of September 7th, 1838, to the Protector of Indian Immigrants, in order that the same may be entered in the general register kept by him: Provided that such minister or marriage officer shall not be relieved hereby from the obligation imposed, by the said section of the said Order, and by the provisions of the Registration Law, 1867, with reference to the transmission of the duplicate original register to the Colonial Secretary and the Registrar-General.

*Age of Contracting Parties.*

Age of majority of male and female.

73. In all marriages between Indian Immigrants, hereafter contracted within this Colony before Magistrates or the Protector of Indian Immigrants, the male contracting party shall not be under the age of 16 years and the females shall not be under the age of 13 years, and those ages are hereby fixed, for the purposes of this Law, as the period of majority for the male and female respectively.

*called by  
7/19 33 S.I.*

Requisite age of immigrants marrying under Christian rites.

74. It shall be lawful for ministers of the Christian religion or marriage officers competent to solemnise marriages between persons professing the Christian religion, under Ordinance No. 17 of 1846 and Her Majesty's Order in Council therewith made applicable to Natal, to solemnise marriages between Indian Immigrants or their descendants, being of the Christian religion, if the male contracting party be not under 16 years of age, and if the female be not under 13 years of age. The Ordinance No. 17 of 1846 is hereby amended in any of its provisions which are repugnant to, or inconsistent with, this enactment as to the age of the Indian Immigrants or their descendants of the Christian religion, who may hereafter desire to marry in accordance with Christian ritual. In all other respects, the provisions of that Ordinance shall apply to the marriages of Indian Immigrants or their descendants, being Christians, hereafter solemnised before the said ministers or marriage officers.

Amendment of Ord. 17, 1846, in certain respects.

*Prohibited Degrees of Marriage.*

When marriage void on ground of consanguinity or affinity.

75. Every marriage, hereafter contracted under the provisions of this Law, shall be void if the parties thereto be, by the religion of either, prohibited from intermarrying on the ground of consanguinity or affinity.

*Divorces.*

Grounds for divorce of non-professing Christians.

76. It shall be competent for either party to any marriage registered or made valid under the provisions of this Law, except those between persons professing the Christian religion, to sue for a dissolution of marriage on the ground that the other party has been guilty of misconduct, as follows:—

1. Adultery.

2. Continuous desertion for a period of one year.

Grounds for divorce of parties married under Christian rites.

77. It shall be competent for either party to any marriage, solemnised in accordance with Christian ritual, under the provisions of this Law, to sue for dissolution of marriage on those grounds which are, or may be, recognised by the Laws of this Colony as grounds upon which a divorce "a vinculo matrimonii" may be granted to suitors of the Christian community of the Colony.

78. All suits for the dissolution of marriages, registered or made valid under the provisions of this Law, inclusive of those marriages between Indians professing the Christian religion, shall be brought in the Court of the Magistrate having jurisdiction in the division wherein the parties or either of them reside. The said Magistrate shall have full jurisdiction to hear and decide the same, such trials being held in open Court.

Law 25, 1891.

All suits for dissolution to be brought in Magistrate's Court.

79. It shall be competent for either party to any such suit to appeal to the Supreme or Circuit Court from any order or judgment, interlocutory or final, pronounced by the Magistrate therein: Provided that such appeal be instituted within three calendar months from the date of the order or judgment from which the appeal is taken.

Appeal.

80. Every Magistrate shall register in a book, entitled "Register of Indian Immigrant Divorces," every decree of dissolution of marriage pronounced by him under the provisions of this Law, and shall forthwith forward a certified copy thereof to the Protector of Immigrants for registration. Such registration by the said Magistrates shall be accepted in all Courts, civil or criminal, within this Colony, as conclusive evidence of the dissolution of the marriage to which the same refers.

Register of Indian Immigrant divorces.

#### *Marriage of Divorced Indian Immigrants.*

81. It shall be lawful for either party to a marriage dissolved under the provisions of this Law, to marry again as if the prior marriage had been dissolved by death—

Re-marriage after divorce.

1. At the expiration of three months after the date of the decree of dissolution of marriage, and if no appeal has been presented against such decree to the Supreme or Circuit Court.
2. Or sooner when any such appeal has been dismissed.

#### *Nullity of Marriage.*

82. It shall be lawful for either party to a marriage, hereafter contracted under the provisions of this Law, to institute in the Court of the Magistrate, having jurisdiction in the district within which either party resides, an action for a decree that his or her marriage may be declared null and void, and such Magistrate shall have full power to deal with the same: Provided that, from any order or sentence pronounced in such suits by any Magistrate, an appeal may be presented to the Supreme or Circuit Court by any person aggrieved thereby, within 20 days from such order or sentence.

Suits for nullity to be brought in Magistrate's Court.

83. Such decree may be made on any of the following grounds:—

- (1) That the respondent was impotent at the time of the marriage and at the time of the institution of the suit.
- (2) That the parties are within those degrees of consanguinity or affinity prohibited by the religion of either of them.
- (3) That either party was a lunatic or idiot at the time of the marriage.
- (4) That the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.
- (5) That the consent of either party to the marriage was obtained by force or fraud.

Grounds for decree of nullity.

84. If any marriage, hereafter contracted under the provisions of this Law, be annulled on the ground that the former husband or wife was living at the time of such marriage, and if it be adjudged that the subsequent marriage was contracted in good faith and with the full belief of

Provision for legalising children begotten before decree of nullity in certain cases.

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Law 25, 1861. the parties that the former husband or wife was dead, or if a marriage be annulled on the ground of insanity, the Magistrate shall specify in the decree those children who were begotten before the decree, and those children shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

*Adultery, Seduction, and Abduction.*

Punishment for adultery, seduction, and abduction.

85. Any Indian Immigrant who shall commit adultery with the wife of any Indian Immigrant, married under the provisions of this Law, or whose marriage has been rendered valid thereby, or who shall cohabit with any unmarried Indian Immigrant girl under 13 years of age, or who shall entice or abduct her from the custody of her parents or lawful guardian, shall upon conviction be liable to a fine not exceeding £10, or in default of immediate payment, to imprisonment at hard labour for any period not exceeding thirty days or, in the discretion of the convicting Magistrate, to such fine and imprisonment. It shall be competent for any Indian Immigrant woman, married under the provisions of this Law, or whose marriage has been rendered valid thereby, upon production to a Magistrate of a certificate from the Protector of Indian Immigrants to the effect that in his opinion there are good grounds for such action, to institute proceedings against her own husband for committing any offence specified in this section.

Proceedings by wife against her husband for above offences.

Magistrate's jurisdiction.

86. All actions for offences specified in the preceding section, shall be heard and decided in open Court by the Magistrate having jurisdiction in the division wherein the aggrieved husband, wife, parent, or guardian resides, or wherein the offender resides.

Punishment for offences by wife or unmarried girl.

87. It shall be lawful for the said Magistrate to order and adjudge a wife so committing adultery, or an unmarried girl under 13 years of age so cohabiting, or eloping without the consent of her parents or lawful guardian, to imprisonment, with or without hard labour, for any period not exceeding 30 days.

Appeal.

88. From all orders and sentences, pronounced by Magistrates in such actions, any person aggrieved thereby may appeal to the Supreme or Circuit Court within 20 days from the date of such order or sentence.

Proof of registration or dissolution of marriage.

89. Whenever it shall be necessary in any Court, civil or criminal, within this Colony, to prove the registration of any marriage or dissolution thereof under the provisions of this Law, it shall be competent for any person to prove the same by the production of copies of the registers kept by the Protector of Indian Immigrants, Magistrates, ministers of the Christian religion or marriage officers, provided that such copies be certified under the hand of the said persons so keeping such registers or of their successors in office.

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*XXII.—License to Depart from the Colony.*

Immigrant not to leave Colony without license.

90. It shall not be lawful for any Indian Immigrant introduced into this Colony at the expense of the Indian Immigration Trust Board to depart from this Colony without a license in writing, signed by the Protector of Indian Immigrants (A).

Residence of ten years necessary except by special order.

91. No license to leave this Colony shall be delivered by the Protector of Indian Immigrants to any such Indian Immigrant until he shall have completed a residence of ten years within this Colony as provided

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(A) These licenses are to be given by the Protector with the previous approval of the Indian Immigration Trust Board see Act 14, 1897, s. 3, post.

in this Law, unless the Protector of Indian Immigrants shall, with the approval of the Indian Immigration Trust Board, make an order in writing under his hand, for the return of any such Indian to the place whence he may have come before the expiration of the said term of ten years.

Law 25, 1891

92. No license to leave the Colony shall be granted to any Indian Immigrant who has not completed ten years' residence in the Colony, unless such Indian Immigrant shall voluntarily abandon his claim to a free return passage to India (A).

Immigrant obtaining license before ten years to abandon claim to return passage.

XXIII.—*Power of Protector to prolong Contract in certain cases.*

93. If it shall appear to the Protector or Deputy Protector of Indian Immigrants on any visit next preceding the termination of the indenture of any Immigrant that any Immigrant has been imprisoned during his existing term of service, the said Protector or Deputy Protector of Indian Immigrants shall renew such indenture for such further term of service as such Immigrant may have been imprisoned, and he may from time to time renew such indenture for any subsequent imprisonment, and such Immigrant shall not be entitled to any certificate of discharge until he shall have faithfully performed such further term of service as aforesaid: Provided always, that no such Immigrant shall have such indenture renewed or be compelled to perform such further service if he shall be acquitted of the offence charged, or if the criminal proceedings under which he was imprisoned shall have been subsequently set aside or discharged, or if his master or employer shall have elected to exact the fine by law, provided in certain cases in lieu of such prolongation of service.

Renewal of indenture for term to cover period of imprisonment.

A. 15/19 31 a

Exceptions.

XXIV.—*Fines, Penalties, &c.*

94. Every employer who shall neglect to retain a duly qualified licensed and registered medical practitioner to attend upon the Immigrants in his employ, or who shall fail or neglect to supply proper medicine or nourishment for any such Immigrant when sick, or who shall neglect to keep such general and medical register book as provided by this Law, or who himself or by any overseer, or sirdar employed by him shall wilfully illtreat any Immigrant in his employ or who shall fail or neglect to supply to any such Immigrant any article of food or to pay any wages to which such Immigrant shall be entitled, shall on conviction thereof before any Court forfeit and pay such sum not exceeding Ten Pounds Sterling for every offence as to the Court shall seem fit, or in default may be adjudged to imprisonment not exceeding thirty days: Provided always, that it shall be at the same time lawful for the Governor, if he shall see fit, to determine the contract of service of such Immigrant and also of any other Immigrants in the employ of the same employer and to assign such Immigrants to some other person for the residue of the original terms of service of such Immigrants respectively.

A. 31/49. S.c  
Punishment for employer's neglect to provide medical aid, or to keep register, or for ill-treatment, or failure to supply food or pay wages.

Governor may determine contract.

95. Every person who shall obstruct the Protector of Indian Immigrants, or other person duly authorised by the Governor for that purpose, in entering upon any Estate where any Indian Immigrant shall be employed, or shall be by such Protector of Indian Immigrants or other person reasonably supposed to be employed, or shall wilfully do any act whereby such Protector of Indian Immigrants or other person may be prevented or obstructed in inspecting the state and condition of any Indian Immigrant whom he may find on such Estate, shall, on conviction before any Court, forfeit and pay a sum not exceeding Ten Pounds Sterling, or in default of payment, shall be liable to imprisonment not exceeding thirty days.

Punishment for obstructing entry by authorised person on estate.

(A) See Act 17, 1895, post, which makes further provision for the return of immigrants to India.



149 Law 25, 1891.

Punishment for failure to send in returns, or making wilful false returns.

96. Every employer of Indian Immigrants, who shall fail to send in to the Protector of Indian Immigrants, or other person duly appointed by the Indian Immigration Trust Board for that purpose, such medical returns as are in this Law provided (A), or shall neglect or refuse to send in such further or other returns within one calendar month, after such person shall have been notified so to do, or shall wilfully make any false return, shall, on conviction thereof before any Court, forfeit and pay such sum not exceeding Ten Pounds Sterling for every such offence as to the Court shall seem fit, or in default, shall be liable to imprisonment not exceeding thirty days.

Punishment for harbouring immigrant in service of another employer.

97. If any person shall harbour (B) or receive into his employment any Indian Immigrant to whose services any other person may be entitled under any assignment or transfer of service then unexpired and in force, every such person on conviction, before any Court, shall forfeit and pay the sum of Ten Pounds Sterling, or be liable to imprisonment for a term not exceeding three months, and shall forfeit and pay to the person entitled to such services under such assignment, the sum of four shillings for each day during which such Immigrant shall be so harboured or employed, unless the person so harbouring or receiving into his employment any such Immigrant as aforesaid shall show to the satisfaction of such Court that such person used proper diligence (C) to ascertain whether such Immigrant was at that time under assignment: Provided, that proper diligence shall not be deemed to have been used unless the person employing an Indian Immigrant shall have demanded to see and have been shown the Certificate of Discharge from service in Section 106 of this Law provided for: And provided also, that in the case of any Indian Immigrant claiming to have been born in the Colony, the person employing him shall have demanded to see and have been shown a certificate to that effect, signed by the Protector or Assistant Protector of Indian Immigrants.

Forfeiture to employer unless proper diligence was used to ascertain facts.

x. See also Act 3/04.

1931 S. 4.

Penalties for harbouring certain other immigrants.

98. Any person who shall harbour or receive into his employment any Indian Immigrant whether male or female whose term of indenture shall not have expired or who may have been assigned or allotted to any other person, or who may be in receipt of or entitled to receive wages from any other person shall be liable to the penalties specified in the last preceding Section unless such Immigrant shall have been duly assigned or allotted to such person by the Protector of Indian Immigrants: Provided that one-half of the penalty of Ten Pounds specified in the said preceding Section may be awarded to the informer through whose information such person shall have been convicted: And provided further that nothing in this clause shall apply to any Indian whether male or female who has a proper pass the period of leave in which is then unexpired.

Reward to informer.

Proviso.

Penalties for master of vessel knowingly receiving immigrant unlicensed to leave the Colony.

99. Any master or other person in charge of any vessel who shall knowingly receive or harbour on board such vessel or agree to receive on board such vessel with the intention of carrying out of the Colony any Indian Immigrant whose name shall appear in the register and who shall not have obtained a license from the Protector of Indian Immigrants (D)

(A) See sec. 49, ante, and footnote thereto.

(B) It seems "harbouring" would apply to a person allowing an immigrant to live on the premises though not employing him; see *Roberts v. Protector of Immigrants*, 6 N.L.R. 37,

decided on the repealed Law, 2 of 1870.

(C) See *Protector of Immigrants v. Porritt and Maby*, 12 N.L.R. 70, upon the question as to what constituted "proper diligence" under the repealed Law 2, 1870.

(D) See Act 14, 1897, sec. 3, post.

to depart from the Colony, shall on conviction thereof before a Magistrate forfeit and pay the sum of Twenty Pounds Sterling for each and every Indian whom he shall have received or harboured, or agreed to receive with such intention as aforesaid, and in default of payment may be imprisoned with or without hard labour for any term not exceeding three months.

Law 25, 1861.

100. Any person who shall send or take out of the Colony or shall endeavour to send or take out of the Colony, or induce to leave the Colony, or who shall harbour or receive, with the intention of taking out of the Colony into or through any of the adjoining States or Territories any Indian Immigrant whose name shall appear in the register, and who shall not have obtained a license from the Protector of Indian Immigrants (A) to depart from the Colony, shall, on conviction thereof before a Magistrate, forfeit and pay the sum of Twenty Pounds Sterling for each and every such Indian whom he shall have sent or taken, or endeavoured to send or take, or induced to leave or harboured or received, with the intention of taking out of the Colony as aforesaid, and in default of payment may be imprisoned with or without hard labour for any term not exceeding three months.

Penalty for sending or taking unlicensed immigrant out of the Colony or inducing him to leave.

101. When all or a large number of the Indian Immigrants employed upon any estate or property shall absent themselves from their employment without leave for the purpose or on the pretence of making any complaint against their employer, such Indians or any number of them shall be liable to be brought before any Court, and, on conviction, to be punished by fine not exceeding Two Pounds Sterling, or by imprisonment for any period not exceeding two months, with or without hard labour, whether such complaint shall or shall not be adjudged to be groundless or frivolous, and notwithstanding that such complaint may be successful.

Punishment for large number of immigrants absenting themselves to make complaints.

A. 15/19 31 -

102. Any Indian Immigrant who shall falsely and fraudulently pretend that he has completed a residence of ten years within the Colony, or who shall wilfully use as his own any certificate of residence or discharge which shall have been granted to any other Indian Immigrant, or who shall lend or pledge his certificate of residence or discharge to any other person, and any Indian Immigrant or other person who shall wilfully counterfeit or alter any such certificate shall, on conviction thereof before any Court, be imprisoned with or without hard labour for such term not exceeding three calendar months as to the said Court shall seem fit.

Punishment for false pretence as to completion of residence; using other's certificate, &c.

103. Any Indian Immigrant who shall keep his dwelling house or premises in such a condition as to be a nuisance and injurious to health, shall on conviction thereof, before any Magistrate, be liable to be fined in any sum not exceeding Five Pounds Sterling, and failing the payment of any such fine to be imprisoned with or without hard labour for any period not exceeding one month.

Punishment for keeping house so as to be a nuisance.

XXV.—*Legal Proceedings and Prosecutions.*

104. All moneys payable on the assignment or transfer of the services of Indian Immigrants, or by way of interest, shall be recoverable in a summary manner before any Court on complaint to be laid, and summons issued, in the name of the Indian Immigration Trust Board of Natal. All prosecutions for harbouring Indian Immigrants shall be made at the instance of the employer entitled to the services of such Immigrant. Any proceedings for contraventions of this Law may be commenced and prosecuted before the Magistrate of the Division in which the

Recovery of certain moneys by Board.

Prosecutions for harbouring, and for other contraventions.

(A) See Act 14, 1897, sec. 3, post.

Law 25, 1891. offence may be alleged to have been committed or into which the party offending may arrive, or before any person at any time appointed by the Governor to carry out the provisions of the Masters and Servants Ordinance in virtue of Law No. 23, 1865, entitled Law "To facilitate the determination of complaints between Masters and Servants," and such Magistrate's Court or person may, if it shall seem fit to do so, and if both parties shall be present, forthwith hear, try, and determine upon such alleged contravention in a summary manner: Provided always that such proceedings shall be subject to the review provided by the Law No. 22, 1889, entitled "Law for the Establishment and Regulation of Inferior Courts of Justice" (A): And provided always that in case of any charge against any Indian Immigrant made by his employer or the manager of the estate, it shall not be necessary for such employer or manager to be present at the hearing of the charge if any overseer from the estate or property be present, unless such employer or manager be a material witness for the Immigrant, in which case the hearing shall be postponed for the attendance and examination as a witness of such employer or manager.

Suspension of execution of judgment for purpose of review.

105. The execution of every judgment so brought in review or appealed from shall be suspended in case the person convicted shall immediately enter into a recognisance before the Magistrate (which such Magistrate is hereby authorised and required to take) himself in a penal sum not exceeding Ten Pounds, with two sufficient sureties in a penal sum not exceeding Ten Pounds Sterling, upon condition to prosecute such review in due course of law, and to abide the final result thereof.

#### XXVI.—*Certificates of Discharge (b).*

Certificates of discharge.

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106. Every Immigrant who may have completed, or who may hereafter complete the term of service under indenture for which he was indentured on leaving India for this Colony, or whose indenture may have been, or may hereafter be duly cancelled, shall be entitled to demand and receive from the Protector of Indian Immigrants, free of charge, a certificate of discharge from service in form of Schedule H hereto, and the possession of such certificate shall be evidence of such Immigrant being released from obligation to perform further service in this Colony under indenture.

#### XXVII.—*Re-indenture of Immigrants entitled to Certificates of Discharge.*

Re-indenture of immigrants entitled to certificates of discharge.

107. Every Immigrant who may possess or be entitled to a Certificate of Discharge may, if such Immigrant think fit to do so, enter into an indenture of service for a further term of one to three years' service, and so from time to time at the expiration of each such further term of service, and every such renewed indenture of service entered into by any minor Immigrant shall be good and valid, and of the same force and effect as the indenture of service of any adult Immigrant. And all the provisions of this Law with respect to Immigrants under indenture shall apply to all such renewed indentures; such renewed indentures shall be signed in the presence of the Protector or Deputy Protector of Indian Immigrants (c), and shall be in the form of Schedule I, hereto attached.

(A) Repealed by Act 22, 1896, tit. "COURTS (MAGISTRATES)."

(B) Secs. 106—111 and sec. 114 do not

apply to Indians introduced under Act 17, 1895, see Act. 14, 1897, s. 5, post.

(C) Or before any Magistrate, see Act 14, 1897, s. 4, post.

12/1905, sec. 1  
also act 14/1897 sec. 4

108. Every such further term of industrial service shall commence and be computed from the day of signing such contract, and there shall be paid to such Immigrant by each such employer such sum by way of bounty or bonus, if any, as may be agreed upon between such Immigrant and such employer, such sum to be paid before the signing of the indenture or contract.

Law 25, 1891.  
Computation of further term of industrial service.

XXVIII.—*When Indian Immigrants come under ordinary Master and Servants' Law.*

A. 15/1931.

109. On the expiration of the first five years after his introduction into this Colony, every Indian Immigrant who shall have served under contract of service as provided in this Law, shall be at liberty to hire or dispose of his services, or to change his residence in the same manner as any other labourer not being an Indian Immigrant (A). And the provisions of Ordinance No. 2, 1850, entitled an Ordinance "For regulating the relative rights and duties of Masters, Servants, and Apprentices," shall extend and apply to such Indians and their employers, in such and the same manner as if the applicable sections thereof had been herein expressly re-enacted, save and except in those cases where any such Indian Immigrant shall elect to be re-indentured in manner provided in this Law.

After five years immigrant at liberty to hire his services or change residence, and provisions of Ord. 2, 1850, to apply

XXIX.—*Return Passages.*

110. Every Indian Immigrant who shall have resided ten years in the Colony, and during the said ten years shall have completed an industrial service of five years under indenture, shall be entitled to a free passage back to India: Provided always, that no such free passage shall be granted unless applied for within twelve months from the time at which it shall have become due (B).

A. 31/49 S. 2  
Applications for return passages to be made within 12 months.

111. When any question shall arise whether any Indian Immigrant has completed a residence of ten years within this Colony, the burden of proof shall lie on the Indian Immigrant or other person alleging that such Indian Immigrant has completed such residence.

Proof of completion of residence.

112. The Protector of Immigrants shall give to each applicant for a return passage at least fourteen days' notice of the period at which such passage will be offered him.

Notice of period when return passage available.

113. The Indian Immigrant Trust Board may provide a return passage for any Indian Immigrant who may have become unfit for labour at any period of his industrial residence.

Immigrants unfit for labour.

114. Every Indian Immigrant for whom, in accordance with his application, a return passage shall have been provided, and who shall fail to go on board and avail himself thereof after receiving due notice so to do, shall thereupon forfeit all further claim to such return passage; and every Immigrant who, during the period of his industrial residence, shall have left the Colony without the permission of the Protector of Indian Immigrants, shall forfeit his claim to a return passage to India. (C).

Forfeiture of claims to return passages.

115. In respect of all ships leaving the Colony with return Immigrants, the Protector of Indian Immigrants shall perform all the duties imposed on Emigration officers in England by the Passengers Act, 1855.

Protector's duties as Emigration Officer under Passengers Act, 1855.

(A) It was held under the repealed Law, 2 of 1870, that an immigrant and his employer cannot, during the first five years, terminate by mutual agreement, without the Protector's consent, the obligations of the employer under

the Law (*Dumat v. Clerk of the Peace, Inanda*, 5 N.L.R. 3).

(B) This sec. and ss. 111 and 114 were repealed by Act 17, 1895, s. 18, but are revived by Act 14, 1897, s. 1.

(C) See note to Chapter XXVI., ante.

Law 25, 1891.

Rules and  
regulations.

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XXX.—*Power to make Rules, &c.*

116. It shall and may be lawful for the Indian Immigration Trust Board, with the approval of the Governor in Council, from time to time and at all times to frame, make, and issue, and to amend, alter, vary, or annul, as occasion may require, such rules and regulations as may be deemed necessary or expedient for the following purposes connected with this Law and not inconsistent with the provisions of the same, that is to say:—

To receive and decide upon applications from persons wishing to introduce or engage Indian Immigrants.

Security to be furnished by requisitionists.

The control, management, and employment of Indian Immigrants during their stay in the depot.

The transfer of Indian Immigrants from requisitionists to other persons.

The establishment, management, control, and supervision of hospitals for Indian Immigrants.

The appointments, rights, duties, and authorities of Medical Officers.

For the guidance of, and if deemed necessary conferring special powers upon, Magistrates, Constables and others in reference to, and in order to facilitate the arrest of absconding Indians or Indians found at a distance from their employer's residence without passes or tickets of leave; regulating the procedure to be observed on the release of Indians from prison, and restoring them in custody; directing notice of such release to be transmitted to the employers of such Indians, and regulating all matters and things connected therewith.

As to the manner and form in which a wages book and a general and medical register book shall be kept by each employer of Indian Immigrants.

As to the return passages to India, and the departure of Indians from the Colony.

Prohibiting the cultivation, smoking, use or possession by and the sale, barter, or gift to any Indians whomsoever of any portion of the hemp plant (*cannabis sativa*) and authorising the destruction thereof if cultivated or found in such use or possession, and imposing penalties upon Indians using, cultivating, or possessing such plant for the purpose of smoking the same.

And generally for all other purposes connected with this Law. And by such rules and regulations any penalty not exceeding Two Pounds Sterling in each case may be imposed by any competent Court for any breach thereof. All such rules and regulations shall be published in the "GOVERNMENT GAZETTE," and when published shall have the same force and effect as if the same were expressly set forth and enacted in this Law.

A copy of such rules and regulations shall be laid before the Legislative Council within fourteen days of the opening of the first Session held after the publication of such rules.

XXXI.—*Definition of Terms.*

117. In the construction of this Law the word "Governor" shall include any person lawfully administering the Government of the Colony. Wherever throughout this Law any officer whose appointment is authorised under this Law is mentioned or referred to, it shall be taken to include the person for the time being lawfully acting in such capacity; the

Interpretation  
of terms.

STET

words "Indian Immigration Trust Board of Natal," "Trust Board," and "Board," or other similar words, wherever occurring in this Law, shall mean the Indian Immigration Trust Board of Natal, incorporated under Law No. 15, of 1880, conjointly with the Law No. 20 of 1874, and the words "any Court" shall mean and include the Courts and Branch Courts of the Magistrate of the Division in which the Immigrant shall reside.

Law 25, 1891.

STET

118. The words "Indian Immigrant" shall mean and include all Indians introduced from India to Natal under the provisions of the Laws regulating such introduction and those descendants of such Indians who may be resident in Natal. From the operation of this Law are excluded those persons who are usually described in this Colony as "Asiatics," "Arabs," or "Arab traders," being persons who have not been introduced into this Colony under the Laws providing for the introduction of emigrants from India to Natal.

What persons included in the operation of this Law.

XXXII.—*Short Title of Law.*

119. This Law may for all purposes be cited as the "Indian Immigration Law, 1891."

Short title.

## SCHEDULE A. (SECTION 9).

*Requisition.*

I, the undersigned requisitioner, request the Indian Immigration Trust Board of Natal to take the steps required by Law for obtaining for me from the Presidency of \_\_\_\_\_ male Immigrants (specially engaged in India) to be employed by me on their arrival at Natal, as \_\_\_\_\_ on the \_\_\_\_\_ estate, owned by me in freehold (or, held by me under lease, as the case may be stating period the lease has to run), being the Lot \_\_\_\_\_ in the County of \_\_\_\_\_, in the Colony of Natal.

Schedule A.

I undertake to give to each Immigrant who shall engage with me in virtue of this requisition the wages and allowances following (or, the wages and allowances fixed by the scale authorised by the Board in force at the time of engagement, as the case may be).

The said wages shall be paid in money, monthly.

Proper lodging and medical care shall also be furnished by me to the said Immigrants.

I appoint A.B. my special agent (or, I appoint no special agent, as the case may be).

Requisitionist.

## SCHEDULE B. (SECTION 11).

*Contract with the Indian Immigration Trust Board of Natal, entered into under requisition from the Indian Immigration Trust Board of Natal (A).*

We, the undersigned, emigrants from \_\_\_\_\_ to Natal, hereby engage to serve the employer to whom we may respectively be allotted by the Protector of Indian Immigrants at Natal during the period of five years from the date of our allotment in Natal; provided that we shall receive monthly, in money, the wages stated hereunder opposite our respective names, and the allowances following:—

Schedule B.

[Set out Scale of Rations and Allowances here.]

(A) See Act 17, 1895, s. 2, post, which adds a further covenant to this contract.

Law 25, 1891.  
Schedule B.

Provided also, that proper lodging and medical care shall be supplied to us during the time of our service.

E T.

And we further agree, that if the estates on which we shall become bound to serve under the aforesaid allotment be sold, alienated, or transferred to other persons, or succeeded to by other persons before the expiration of our service, we shall serve such other persons according to the conditions of our respective contracts and until their expiration, our said new employers being held bound towards us in all the stipulations and obligations incumbent upon the employers to whom we shall previously have been allotted.

No.	Name of Emigrant.	Father's Name.	Age.	Married or Single.	Wages per month.					Emigrant's Signature.	Remarks.
					1st Year.	2nd Year.	3rd Year.	4th Year.	5th Year.		

The above contract was explained in my presence to the said Emigrants, and signed by them before me this                      day of                      , 18                      .

A.B.,  
Natal Emigration Agent.

SCHEDULE C. (SECTION 11).

*Special Contract for Natal, entered into under Requisition No.                      ,  
dated                      18 (A).*

Schedule C.

We, the undersigned, Emigrants from                      hereby engage to serve as                      , on the estate called                      , in the County of                      , in the Colony of Natal, for the period of five years from the date of the registration of this contract by the Protector of Indian Immigrants at Natal: Provided that we shall receive monthly, in money, the wages stated hereunder opposite to our respective names, and the allowances following:—

[Here specify Allowances.]

Provided also, that proper lodging and medical care shall be supplied to us.

And we further agree, that if the above-mentioned estate be sold, alienated, or transferred to another person, or succeeded to by another person before the expiration of our service, we shall serve such other person according to the terms of this contract, such new employer being held bound towards us in all the stipulations and obligations incumbent upon the employer so replaced by him.

(A) See Act 17, 1895, s. 2, post, which adds a further covenant to this contract.

Law 25, 1891.  
Schedule C.

No.	Name of Emigrant.	Father's Name.	Age.	Married or Single.	Wages per month.					Emigrant's Signature.	Remarks.
					1st Year.	2nd Year.	3rd Year.	4th Year.	5th Year.		

On behalf of \_\_\_\_\_, of Natal, I accept the services of the above-mentioned Emigrants on the terms and conditions here stipulated.

A.B.,  
Special Agent.

The above contract was fully explained to the above-mentioned Emigrants and [*when there is a Special Agent*], to A.B., the Special Agent, in my presence, this \_\_\_\_\_; and signed by them before me.

C.D.,  
Natal Emigration Agent.





SCHEDULE E. (SECTION 49).

*Medical.*

(Male Statute Adults/both Indentured and Free to be included.)

*Quarterly Return of Indian Immigrants.*

Law 25, 1891.  
Schedule E.

Name of Employer.	Year.	Months included in Quarter.	Number of Male; Statute Adults employed in each month.			
			Free.	Indentured.		

I certify that the above return is correct.

(Place.)

A.B., Employer.

(Date.)

SCHEDULE F. (SECTION 61).

No.	When born and where.	Name.	Sex.	Parents' Names.	Father's Occupation.	Parent's Residence.	When Registered.	Remarks, Signature of Registrar, &c.

Schedule F.

STET

Law 25, 1891.  
Schedule G.

SCHEDULE G. (SECTION 61).

STET

No.	Where died, and When.	Name and Official Number.	Sex.	Age.	Occupation and Residence.	Cause of Death.	When Reg'ster'd.	Remarks, Signature of Registrar, &c.

SCHEDULE H. (SECTION 106).

*Certificate of Discharge.*

Schedule H.

No. \_\_\_\_\_ Date \_\_\_\_\_

I hereby certify that \_\_\_\_\_, Indian Immigrant No. \_\_\_\_\_, has duly completed his term of indenture of five years in terms of Indian Immigration Law No. \_\_\_\_\_ 18 \_\_\_\_\_, and is released from his obligation to perform further service in this Colony under indenture.

\_\_\_\_\_  
Protector of Indian Immigrants.

SCHEDULE I. (SECTION 107).

*Form of Renewed Indenture by Free Indian.*

[Law No. \_\_\_\_\_, 1891.]

Schedule I.

Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_, A.B. of \_\_\_\_\_, and C.D., Indian Immigrant No. \_\_\_\_\_, appeared before me \_\_\_\_\_, Protector of Immigrants (in terms of Law No. \_\_\_\_\_ 1891, entitled, &c.); and in my presence signed their names (or marks) to the following contract of service:—

The said A.B. agrees to hire the services of the said C.D., and the said C.D. agrees to render to the said A.B. his services in the capacity of \_\_\_\_\_ for \_\_\_\_\_ year (or months, as the case may be), commencing from the day of signing these presents.

And it is further agreed between the said parties that the said C.D. shall be employed in the said capacity for six days in each week, save as in the said Law is mentioned, and that the hours of labour shall not be more than nine hours daily, between sunrise and sunset, with a break of at least one hour for rest.

And it is further agreed between the said parties that the said A.B. shall pay to the said C.D., as such servant as aforesaid, wages at and after the rate of \_\_\_\_\_ sterling per month, for the remuneration of the services of the said C.D., and that such wages shall be paid on the first and fifteenth days of each month. Law 25, 1891.  
Schedule I.

And lastly, the said A.B. doth hereby bind and oblige himself to give, grant, and provide to and for the said C.D., and for such families as may be allotted, good and comfortable lodging, wholesome and suitable food, and proper medical attendance and medicines during the period for which this present contract is made, and otherwise to observe and fulfil all the conditions and obligations of the Indian Immigration Laws of the Colony so far as the same are applicable to this contract and agreement.

A.B.  
C.D.

The preceding agreement was signed by the above-named parties in my presence (in conformity with the provisions of the Law No. 18 ), on the day and year above written, voluntarily ; the same being, so far as I am able to judge, fully understood by them respectively.

Protector of Indian Immigrants.

SCHEDULE J.

*(Man's) Contract of Service with Indian Immigrants.*

Be it remembered, Schedule J.  
That on this \_\_\_\_\_ day of \_\_\_\_\_  
in the Year of Our Lord One Thousand Eight Hundred and Ninety  
of \_\_\_\_\_  
and \_\_\_\_\_ Indian Immigrant  
No. \_\_\_\_\_ appeared before me, \_\_\_\_\_  
Protector of Immigrants,  
and in my presence signed (or made his mark) to the following Contract of Service :—

The said \_\_\_\_\_ agrees to hire the services of the said Indian Immigrant, and the said Indian Immigrant agrees to render the said \_\_\_\_\_ his services in the capacity of General Labourer for Five Years, commencing on the \_\_\_\_\_ day of \_\_\_\_\_, in the Year of Our Lord One Thousand Eight Hundred and Ninety

And it is further agreed between the said Parties that the said Indian Immigrant shall be employed as above for six days in each week, save as in such Law is mentioned, and that the hours of labour shall not be more than nine hours daily, between sunrise and sunset, with a break of at least an hour for rest.

And it is further agreed between the said Parties, that the said \_\_\_\_\_ shall pay to the said Indian Immigrant, as such servant as aforesaid, wages at and after the rate of Ten Shillings for the first year, Eleven Shillings for the second year, Twelve Shillings for the third year, Thirteen Shillings for the fourth year, Fourteen Shillings for the Fifth year, for the remuneration of the services of the said Indian Immigrant, and that such wages shall be paid on the first day of each month.

And lastly, the said \_\_\_\_\_ doth hereby bind and oblige himself to give, grant, and provide, to and for the said Indian Immigrant, and for such family as may be allotted,

Law 25, 1891. good and comfortable lodging, wholesome and suitable food, and proper  
 Schedule J. medical attendance and medicines, during the period for which this  
 present contract is made, and otherwise to observe and fulfil all the  
 conditions and obligations of the Coolie Laws of the Colony so far as the  
 same are applicable to this Contract and Agreement.

His mark.

The preceding Agreement was signed by the above-named Parties  
 in my presence, on the day and year above written, voluntarily, the same  
 being, as far as I am able to judge, fully understood by them respectively.  
 Protector of Immigrants.

SCHEDULE K.

*(Woman's) Contract of Service with Indian Immigrants.*

Schedule K.

Be it remembered,

That on this \_\_\_\_\_ day of \_\_\_\_\_  
 in the Year of Our Lord One Thousand Eight Hundred and Ninety  
 of \_\_\_\_\_  
 and \_\_\_\_\_ Indian Immigrant, No. \_\_\_\_\_

appeared before me, \_\_\_\_\_ Protector of  
 Immigrants, and in my presence signed (or made her mark) to the follow-  
 ing Contract of Service:—

The said \_\_\_\_\_ agrees to hire the  
 services of the said Indian Immigrant, and the said Indian Immigrant  
 agrees to render the said \_\_\_\_\_ her services  
 in the capacity of General Labourer for Five Years, commencing on the  
 day of \_\_\_\_\_, in the Year of Our Lord  
 One Thousand Eight Hundred and Ninety \_\_\_\_\_

And it is further agreed between the said Parties that the said Indian  
 Immigrant shall be employed as above for six days in each week, save as  
 in such Law is mentioned, and that the hours of labour shall not be more  
 than nine hours daily, between sunrise and sunset, with a break of at  
 least an hour for rest.

And it is further agreed between the said Parties, that the said  
 \_\_\_\_\_ shall pay to the said Indian Immi-  
 grant, as such servant as aforesaid, wages at and after the rate of Five  
 Shillings for the first year, Five Shillings and Sixpence for the second  
 year, Six Shillings for the third year, Six Shillings and Sixpence for the  
 fourth year, Seven Shillings for the fifth year, for the remuneration of  
 the services of the said Indian Immigrant, and that such wages shall be  
 paid on the first day of each month.

And lastly, the said  
 \_\_\_\_\_ doth hereby bind and oblige himself to give, grant, and provide, to and  
 for the said Indian Immigrant, and for such family as may be allotted,  
 good and comfortable lodging, wholesome and suitable food, and proper  
 medical attendance and medicines, during the period for which this  
 present contract is made, and otherwise to observe and fulfil all the con-  
 ditions and obligations of the Coolie Laws of the Colony so far as the same  
 are applicable to this Contract and Agreement.

Her mark.

The preceding Agreement was signed by the above-named Parties in  
 my presence, on the day and year above written, voluntarily, the same  
 being, as far as I am able to judge, fully understood by them respectively.  
 Protector of Immigrants.

*Repealed by A. 31/49 S. 2.*  
*Sec'd. to Zul*  
*by Act-870*

Act No. 36, 1894.

“To extend the powers of the Indian Immigration Trust Board.”

[30th July, 1894.]

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

1. The payments which the Indian Immigration Trust Board, hereinafter called the Board, is by the 18th Section of Law No. 25, 1891, empowered to require from the employers of Indian Immigrants shall not be deemed to be limited to two-thirds of the expenses for which the Board may become liable under the seventh section of Law No. 20, 1874, but may extend to the whole of such expenses, anything in the thirteenth Section of the said Law No. 20, 1874, to the contrary notwithstanding.

Payments by employers may extend to whole of expenses under sec. 7, Law 20, 1874.

2. The Board may provide for the registration at the Office of the Board of all Contracts of Service entered into by Indians introduced into the Colony under the Immigration Laws.

Registration of contracts of service.

3. The contribution of Ten Shillings a year for each indentured Indian to the return passage fund which by Section 14 of Law No. 20, 1874, is required to be made by the said Board may be reduced to Five Shillings a year whilst the securities, in which such fund is invested shall exceed in amount the sum of £20,000.

Contribution by Board to return passage fund.  
*act # 3/19 20*

4. The Board may from time to time with the consent of the Governor in Council borrow money for its purposes authorised by law: Provided that the total borrowing under this Act shall in no case exceed at any one time the sum of £25,000, and the moneys so borrowed shall be a charge upon the revenues and property of the Board.

Governor may borrow up to £25,000.

5. The Board may from time to time make Bye-laws for the more conveniently carrying out of the powers of the Board, and in case of contraventions of any such Bye-laws may recover from the offender by summary proceedings before any Magistrate having jurisdiction a penalty not exceeding Forty Shillings, together with the costs of recovering the same: Provided that no such Bye-law shall have effect unless and until the same, and the assent of the Governor thereto, shall have first been promulgated in the “NATAL GOVERNMENT GAZETTE.”

Board may make Bye-laws.

6. The Protector of Indian Immigrants shall cease to be a member of the Indian Immigration Trust Board of Natal as from the date of the promulgation of this Act; and the Governor in Council may appoint a new member of the said Board to fill the seat vacated by the Protector of Immigrants, and the member so appointed shall retire from office in rotation with, and after the four other members appointed under the provisions of Section 2 of Law No. 15, 1880.

Protector ceases to be a member.  
 Appointment to fill vacancy.

*(a) see supra*

Act No. 37, 1894. (A)

“To Amend the Indian Immigration Trust Board Law, 1874.”

[30th July, 1894.]

*Sec'd to Zul*  
*by Act-870*

WHEREAS it is provided by Section 9 of Law No. 20, 1874, that the Governor shall pay to the Indian Immigration Trust Board from the General Revenue a contribution equal to one-half of the instalments paid as annual payments, indenture fees, or otherwise, by employers of Indian Immigrants, but not exceeding Ten Thousand Pounds in any one year without the consent of the Legislative Council:

*Rep. by A. 31/1*  
*S. 2*

Act 37, 1894. AND WHEREAS it is expedient that such contribution shall cease to be paid as regards all Indian Immigrants who may be introduced into Natal on requisitions received by the said Board after the sixteenth day of April, 1894 :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

Contribution by revenue to cost of immigration to cease.

1. The General Revenue of Natal shall not be made to contribute to the cost of the Immigration of Indians introduced by the Indian Immigration Trust Board into Natal in pursuance of requisitions received by the said Board after the sixteenth day of April, 1894, anything contained in Section 9 of Law No. 20, 1874, to the contrary notwithstanding.

Part repeal of sec. 9, Law 20, 1874.

2. In so far as Section 9 of Law 20, 1874, is in conflict with this Act, it shall be, and the same is hereby and to that extent repealed.

by A. 31/49. S. 2  
Sec to 6 Zululand  
by Act-8/01.  
Act 22/1914  
1911/10.

Act No. 17, 1895. (A) (B)

+ Act-48.1901.

“To Amend the Indian Immigration Law, 1891.”

Act-2.1903

[8th August, 1895.]

Act-39.1905 Act-42.1905

WHEREAS it is expedient to amend the Indian Immigration Law, 1891 :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

Short title.

1. This Act may be cited as the “Indian Immigration Amendment Act, 1895,” and shall be read and construed together with the Indian Immigration Law, 1891, as one Act (A).

Covenant to be inserted in indentures under Law 25, 1891.

2. From and after the date when this Act shall take effect, the indentures to be signed by Indian Immigrants as provided by Schedules B and C of the Indian Immigration Law, 1891, referred to in Section 11 of the said Law, shall contain a covenant by the Indian Immigrants in words as follows:—

“And we further agree that, after the expiration or other determination of this contract, we shall either return to India or remain in Natal under indentures to be from time to time entered into: Provided that each term of new indentured service shall be for two years. And provided further, that the rate of wages for each year of indentured service after that provided by this contract shall be 16s. per month for the first year, 17s. per month for the second year, 18s. per month for the third year, 19s. per month for the fourth year, and 20s. per month for the fifth and each succeeding year.

31.8.9

Women 1899  
Act-48.1901.

Child 1899  
Act-2.1903

Free passage to India.

3. Every Indian desiring to return to India on the expiry of the first or any subsequent period of his service under any contract of indenture or re-indenture entered into under the Laws for the time being in force, shall be provided by the Indian Immigration Trust Board with a free passage to India.

By Act 22.1914.  
sect. 5.

(A) Secs. 106—111 and sec. 114 of Law 25, 1891, do not apply to Indians introduced under contracts made in pursuance of this Act, see Act 14, 1897, post.

4. Any Indian Immigrant who may have entered into the covenant set out in Section 2 of this Act shall be at liberty, subject to the approval of the Protector of Indian Immigrants, to choose the employer to whom he shall be indentured after his first term of service and for the purpose of making such choice the Indian Immigrant shall be entitled to a pass for one month, to be issued by his last employer, or should the employer refuse such pass, then by the Magistrate of the District.

Act 17, 1865.  
Choice of employer.

*A. 15/19 31 d.*

5. During all the periods of re-indenture each Indian Immigrant entering into such further indenture shall have all the rights and privileges which he had during his first term of indenture.

Continuance of privileges during re-indenture

6. Every indentured Indian who shall have entered into the covenant set out in Section 2 of this Act and who shall fail, neglect, or refuse to return to India or to become re-indentured in Natal shall take out year by year a pass or license to remain in the Colony to be issued by the Magistrate of his District, and shall pay for such pass or license a yearly sum of Three Pounds Sterling, which may be recovered by summary process by any Clerk of the Peace or other officer appointed to get in such license money.

License to remain in the Colony.  
*Repealed in Act 22, 1911 sect 4*  
*but see*

*220*  
*7.36 Act-2/03*  
*24-35/01*

7. The duty of causing Indian Immigrants on arrival to be landed, conveyed to proper quarters, and provided with proper and sufficient food and clothing in terms of Section 15 of the Indian Immigration Law, 1891, shall devolve upon the Indian Immigration Trust Board, and shall be discharged to the satisfaction of the Protector.

Landing of immigrants to be duty of the Board.  
*act 4 2/19 20*

8. The duties of the Protector of Indian Immigrants and of any Deputy or officer of his Department, additional to the duties imposed by any law and the manner in which such duties are to be discharged, may be defined by the Governor in Council.

Duties of Protector may be defined.

9. The returns mentioned in Sections 49 and 96 of the Indian Immigration Law, 1891, shall be sent to the Indian Immigration Trust Board instead of the Protector of Immigrants, and the said Board shall have all the powers of the Protector for the purpose of enforcing such returns.

Returns to be furnished to Board.

10. The contributions by employers of Indian Immigrants under Section 50 of the Immigration Law, 1891, shall be payable to and recoverable by the Indian Immigration Trust Board.

Recovery of employers' contributions.

11. The appointment of a Medical Board under Section 52 of the Indian Immigration Trust Law, 1891, shall be made by the Indian Immigration Trust Board, anything in the said Section 52 to the contrary notwithstanding.

Medical Board.

12. [Repealed by Act No. 14, 1897.]

13. [Repealed by Act No. 14, 1897.]

*A. 15/19 31 d y*  
*repeals.*

14. The Indian Immigration Trust Board may so adjust the annual payments to be made under Clause 18 of Law No. 25, 1891, by the employers of indentured Indian Immigrants that the successive employers of Indians under original indentures or renewed indentures may be made to contribute to the cost to which the Board may be put in procuring Immigrants from India.

Adjustment by Board of employers' payments.  
*act 7, 4 73*  
*act 4/19 41.*

15. The consent of the Governor shall not be needed to any increase or decrease in the annual payments on indentured Indians decided on by the Board, anything in Clause 13 of Law No. 20, 1874, and Clause 18 of Law No. 25, 1891, to the contrary notwithstanding.

Governor's consent thereto not needed.

16. The duty imposed by Section 21 of Law No. 25, 1891, upon the Protector of Indian Immigrants of preparing and submitting to the Indian Immigration Trust Board returns of arrear instalments shall be discharged by the Secretary to the Board.

Returns of arrear instalments.

17. [Repealed by Act No. 14, 1897.]

18. [Repealed by Act No. 14, 1897.]



" " " 24/07 which adds certain words

IMMIGRATION (INDIAN).

Act 17, 1895. 19. The words "from and out of the funds of the Indian Immigration  
 Amendment. Trust Board of Natal," occurring in Sections 2, 3, and 4 of Law No. 25,  
 1891, shall be expunged.

Commencement 20. This Act shall commence and take effect from and after such  
 date as shall be fixed by Proclamation in the "NATAL GOVERNMENT  
 GAZETTE" (A).

*led by  
at + 3/1920.*

*2 Sec to W Zululand  
by Act-8/01.  
Also Act-24/07.*

Act No. 34, 1895. (a) B)  
*Act 17, 1892 & 2/03.*

"To amend the Indian Immigration Trust Board Law, 1874."  
[24th August, 1895.]

WHEREAS it is expedient to amend the "Indian Immigration Trust Board Law, 1874":

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

Repeal of Laws. 1. So much of the "Indian Immigration Trust Board Law, 1874," as amended by the "Indian Immigration Trust Board Amendment Law, 1880," and the Acts Nos. 36 and 37 of 1894, and so much of any other Law in force in this Colony as may be repugnant to, or inconsistent with, the provisions of this Act, shall be and the same is hereby repealed in so far as shall be necessary to give effect to the provisions of this Act.

Construction and short title. 2. This Act shall be read and construed together with Laws No. 20, 1874, No. 15, 1880, Act No. 36, 1894, and Act No. 37, 1894, as one Act, and all may be cited together as the "Indian Immigration Trust Board Acts, 1874 to 1895."

Board to vacate office at close of 1895. 3. All members of the Corporation and Board styled "The Indian Immigration Trust Board of Natal," as constituted under Law No. 20, 1874, known as the "Indian Immigration Trust Board Law, 1874," as amended by Law No. 15, 1880, known as "The Indian Immigration Trust Board Amendment Law, 1880," Act No. 36, 1894, entitled an Act "To extend the powers of the Indian Immigration Trust Board," and Act No. 37, 1894, entitled "Act to amend the Indian Immigration Trust Board Law, 1874," shall vacate office at the close of the year 1895; and all future members of the said Corporation and Board shall be appointed by the registered employers of Indian Immigrants in manner hereinafter provided.

Continuation of Board. 4. The said Corporation and Board shall continue in existence subject to the provisions of this Act.

Constitution of Board. 5. The said Corporation and Board, as continued by this Act, shall consist of five members, to be elected by four Divisions of the Colony, as follows:—Division No. 1, Victoria County, two members; Division No. 2, the Counties of Durban, Alexandra and Alfred, including the Borough of Durban, one member; Division No. 3, the Divisions of Umgeni, Lion's River and Ixopo, together with the City of Pietermaritzburg, one member; Division No. 4, the Counties of Umvoti, Weenen and Klip River, including the Newcastle Division, one member.

*2-1  
Act 17-1892*

First election. 6. The first election under this Act shall take place in December, 1895, and the persons then elected shall go into office on the first day of January, 1896.

Triennial elections. 7. Every election shall be for three years. X-

(A) Took effect from 18th August, 1896; see Proclamation in *Government Gazette* of 11th August, 1896.

*& the members appointed by the Governor in Council shall be*

8. The vacating of his seat by a member by lapse of time shall not disqualify him from being again elected.

Act 34, 1895.  
Re-election of re-tiring member.

9. An election may be held under this Act as often as a vacancy occurs in the Board, whether by death, resignation, or other incapacity, or from any other cause whatever.

Casual elections. *see Act 17/0220*

10. Voting powers under this Act may be exercised by means of a voting paper signed by any registered employer, and such paper shall set out the number of male statute-adult Indians indentured to such employer, and such signed paper shall be sent to the Secretary of the Board, who shall make a register of the votes so given and a return of the person or persons elected.

Mode of voting.

11. Every registered employer shall have in respect of each member to be elected for his Division one vote for every male statute-adult Indian in the Division indentured to such employer up to one hundred and one vote for every ten of such Indians over and above one hundred.

Distribution of votes.

12. The vote of a company or of a partnership may be given by the senior resident director or partner or by the manager of a company or partnership.

Companies' votes.

13. The mode of nomination and election shall be as follows:—(a) The Board, through its Secretary or other officer, shall by circular give twenty-eight days' notice to each elector of the date when an election for his division is to take place. (b) Such notice shall require the nomination of candidates, signed by five electors and accepted by the candidate, to be lodged with the Secretary at least fourteen days before the election. (c) The Board through its Secretary or other officer shall, at least one week prior to the election, send to each elector a list of candidates and a voting paper, and information as to the number of votes the elector is entitled to. (d) The voting papers, filled up with the name or names of the candidate or candidates whom the elector may vote for and signed by the elector, must be returned to the Board before noon on the day of election. (e) At three o'clock on the day of election the Secretary or other officer shall, in public, count and register the votes and sign the return thereof, and the person or persons so elected shall be member or members of the Board (A). (f) Any person entitled to vote may scrutinise the votes and register of votes and may challenge the return in any competent Court.

*of elected members Act-24/07.*

Nomination and election.

14. The said Board shall elect its own Chairman at its first meeting in 1896, who shall, unless he has ceased to be a member, hold office for twelve months, and thereafter from time to time, whenever the office of Chairman shall become vacant from any cause, the Board shall elect a new Chairman.

Chairman of Board.

15. If any member of the Board shall absent himself from the meetings of the Board for four consecutive sittings, without the leave of the Board, he shall ipso facto vacate office.

Vacation of seat by absence.

Act No. 7, 1896.

*See Act to Zululand by Act-8/01.*

“To Validate certain Indian Marriages.”

[23rd May, 1896.]

WHEREAS the Registration by the Protector of Indian Immigrants in Natal of Indian Marriages referred to in Sections 65 and 67 of the Indian Immigration Law, 1891, was completed on the 15th day of June, 1874; and whereas it is expedient to validate certain marriages registered

(A) See Act 21, 1898, post.

Act 7, 1896. by the said Protector in Natal between the 16th day of June, 1874, and the 14th day of June, 1890, inclusive, and also to validate certain unregistered marriages of Indians who arrived in this Colony between the 15th day of June, 1890, and the 8th day of September, 1891, inclusive :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

Short title. 1. This Act may be cited as the "Indian Immigration Amendment Act, 1896," and shall be read and construed together with the Indian Immigration Law, 1891, and the Indian Immigration Amendment Act, 1895, as one act.

Validation of certain marriages registered by Protector between 16th June, 1874, and 14th June, 1890. 2. All marriages between Indians which have been registered by the Protector of Indian Immigrants in Natal between the 16th day of June, 1874, and the 14th day of June, 1890, inclusive, save and except as to any cases where either of the parties to any such marriage has since re-married in this Colony, and save also and except as to any cases where any such registration has been cancelled during the said period, shall be and the same are hereby declared valid, so far as this Colony is concerned, and such registration shall hereafter be accepted by all Courts, civil or criminal, within this Colony as conclusive evidence of the fact of the marriages to which the same refers.

Validation of certain other marriages. 3. All marriages of Indian Immigrants who arrived in this Colony between the 15th day of June, 1890, and the 8th day of September, 1891, inclusive, and who are described as married in the Emigration Lists for that period, save and except as to any cases where the parties to any such marriage have since re-married, shall be and the same are hereby declared valid, so far as this Colony is concerned, and such Emigration Lists shall hereafter be accepted by all Courts, civil or criminal, within this Colony as conclusive evidence of the fact of the marriages to which the same refer.

*Zululand Act-8/07.*

*Repealed by act 43/1920 Act No. 14, 1897. A-31/49. S-2.*

*By A 21/25 S10*

"To Amend the 'Indian Immigration Amendment Act, 1895.'"

[22nd May, 1897.]

WHEREAS it is expedient to amend the "Indian Immigration Amendment Act, 1895" :

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows :—

1. Sections 12, 13, 17 and 18 of the "Indian Immigration Amendment Act, 1895," are hereby repealed. Sections 110, 111, and 114 of Law No. 25, 1891, which were repealed by the said Section 18 of the Indian Immigration Act, 1895, shall be revived and be of force in like manner as if they had not been repealed, save so far as they are by this Act specially amended.

2. All expenditure incurred by or through the Protector of Immigrants in carrying out the provisions of Section 15 of Law No. 25 of 1891, shall fall on and be paid by the Indian Immigration Trust Board.

3. Licenses to leave the Colony under Sections 90, 91, 99 and 100 of the Indian Immigration Trust Law, 1891, shall be given by the Protector with the previous approval of the Indian Immigration Trust Board.

Repeals, and revival of secs. 110, 111, and 114, Law 25, 1891.

Payment of expenditure incurred by Protector.

Licenses to leave the Colony.

4. A renewed indenture made under the provisions of Section 107 of Law No. 25, 1891, may be signed before the Protector or Deputy Protector of Indian Immigrants or before any Magistrate; but all renewed indentures made under the provisions of Act No. 17, 1895, shall be signed in the presence of the Protector or Deputy Protector of Indian Immigrants, or any other officer specially appointed by the Natal Government.

Act 14, 1897.  
Renewed indentures.

*See Act-42/05*

5. Sections 106, 107, 108, 109, 110, 111, and 114 of Law No. 25, 1891, shall not apply to Indians introduced into Natal under contracts of indenture made in pursuance of Act No. 17 of 1895.

Application of certain secs. of Law 25, 1891, restricted.

*A. 15/1931 d. 7*

*Rev A 31/27 515*

Act No. 28, 1897. (B)

*Zululand*

*Act-8/01.*

“To protect uncovenanted Indians from arrest in mistake for absconding Indentured Indian Servants.”

[29th May, 1897.]

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

1. Any Indian who has not been liable to service under indenture in terms of Law No. 25, 1891, or any Act amending the same, may, on application through the Magistrate of his Division to the Protector of Indian Immigrants, or to the Protector of Indian Immigrants direct, obtain a pass in the form provided in the Schedule to this Act, on satisfying the Magistrate, or the Protector of Indian Immigrants, with the information required for the purposes of such pass, and upon providing a shilling stamp to be affixed to the pass.

Uncovenanted Indians may obtain passes from Magistrate or Protector.

2. The possession and production of a pass under this Act shall be prima facie evidence of the status of the bearer of such pass, and of his exemption from liability to arrest under Section No. 31 of Law No. 25, 1891.

Exemption from arrest on production of pass.

3. No such pass shall be of force after the year in which it was issued, unless in each succeeding year it is endorsed by the Protector of Indian Immigrants, to whom it may be sent for that purpose through the Magistrate.

Duration of passes.

4. If the Protector of Indian Immigrants, or any Magistrate, or Justice of the Peace, or any Police Constable, shall stop or arrest any Indian not carrying a pass granted under this Act (A), the Indian so stopped or arrested shall not be entitled to make any claim for wrongful arrest or detention merely on the ground that he was not an indentured Indian.

No action for damages by Indian arrested without pass.

5. Any person who obtains a pass by false representations, or who allows any fraudulent use to be made of his pass, shall be guilty of an offence against “The Fraudulent Passes Act, 1895” (B).

Offences.

(A) Act 19, 1898, post, inserts the words “under a bona fide belief or suspicion that he is an indentured Indian.”

(B) See tit. “CRIMINAL LAW — V.”

IMMIGRATION (INDIAN).

Act 28, 1897.  
Schedule.

SCHEDULE.

Pass under Act No. 28, 1897.

Counterpart of Pass.	Pass.
Name .....	Magisterial Division of .....
	Name of Indian holding this Pass .....
Sex .....	Sex .....
Native of .....	Native of (County and Village) .....
Father's Name .....	Father's Name .....
Mother's Name .....	Mother's Name .....
Caste .....	Caste .....
Age .....	Age .....
Height .....	Height .....
Complexion .....	Complexion .....
Marks .....	Marks .....
If married, to whom .....	If married, to whom .....
Status .....	Status .....
Residence .....	Residence .....
Employment .....	Employment or means of subsistence .....
Date .....	Dated at ..... this ..... day of ..... 189 ..

Protector of Indian Immigrants.

*Zululani Act 8/01.*

Act No. 19, 1898.

*Repealed by Act 19/1931 S.J.*

"To amend Act No. 28, 1897, entitled Act 'To protect uncovenanted Indians from arrest in mistake for absconding Indentured Indian Servants.'"

[25th July, 1898.]

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

Sec. 4, Act 28, 1897, amended.

1. Section 4 of Act No. 28, 1897, shall be amended by the insertion therein, after the words "under this Act," of the words "under a bona fide belief or suspicion that he is an indentured Indian."

*Repealed by Act 43/20*

Act No. 21, 1898.

*Zululani Act 8/01.*

To amend Act No. 34, 1895, entitled Act 'To amend the Indian Immigration Trust Board Law, 1874.'

[25th July, 1898.]

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

Election of members of Indian Immigration Trust Board.

1. If, at the close of the time appointed for receiving nominations of candidates for election as members of the Indian Immigration Trust Board of Natal, no more candidates shall stand nominated for any Division than there are vacancies to be filled up, the Secretary to the Board shall forthwith declare the candidates who may stand nominated to be elected, and the further procedure required by Sub-sections c, d, and e of Section 13 of Act No. 34, 1895, shall not become necessary, unless the number of candidates nominated for any Division shall exceed the number of vacancies.

Act No. 1, 1900.

“To amend the ‘Indian Immigration Law, 1891.’”

[5th February, 1900.]

*Zulu*  
Act-8/01.  
25/9

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

1. The Governor in Council may from time to time make and alter rules prescribing any conditions to be observed by Indian Immigrants desirous of going to the Protector of Indian Immigrants for the purpose of laying their complaints before him, and any Indian Immigrant failing to comply with such rules shall not be exempt from arrest under Section 30 of Law No. 25, 1891, merely by reason that he is on his way to make such complaint.

Rules to be observed by Indians going to Protector to lay complaint.

2. It shall be lawful for the Protector of Indian Immigrants, or in his absence the Assistant Protector of Indian Immigrants, or any Magistrate, to cause any Indian Immigrant who shall have made his complaint as provided in Section 30 of Law No. 25, 1891, to be taken back to his employer by a messenger, and the cost of such messenger shall in the first instance be paid by the employer, and shall be borne by the employer unless the Protector, Assistant Protector, or Magistrate shall be of opinion that the complaint made was frivolous and unfounded, or otherwise that the Indian Immigrant was not justified in leaving his employer's premises without permission, and shall then so inform the employer, in which case the employer is hereby authorised to deduct from the wages of the Indian Immigrant the cost incurred in providing for his safe return to his employer, as provided in Section 30 of Law No. 25, 1891; and, further, the Indian Immigrant shall be liable in such case to be punished for illegal absence, as provided in Section 35 of the said Law No. 25, 1891.

Protector may cause immigrant who has come to lay complaint to be taken back to his employer.

3. Should any Indian Immigrant decline to return to his employer when so directed, as provided in the preceding section, he shall be deemed guilty of contravening Section 31 of Law No. 25, 1891, and shall be dealt with accordingly, and every subsequent refusal shall render him liable to further punishment under the same section.

Immigrant declining to return, guilty of offence.

4. This Act shall be read and construed together as one Act with the said Law No. 25, 1891, and with any other Law or Act amending the same.

Construction.

*A. 15/1931 by repeal*

Act 1, 1897.  
Bringing insane  
persons into  
Colony.

13. Any person who shall be wilfully instrumental in bringing into Natal an idiot or insane person without a written or printed authority, signed by the Colonial Secretary, shall be deemed to have contravened this Act, and in addition to any other penalty shall be liable for the cost of the maintenance of such idiot or insane person whilst in the Colony.

Powers of  
police to pre-  
vent entry.

14. Any police officer or other officer appointed therefor under this Act, may, subject to the provisions of Section 5, prevent any prohibited immigrant from entering Natal by land or sea.

Officers for  
carrying Act  
into effect.

15. The Governor may from time to time appoint, and at pleasure remove, officers for the purpose of carrying out the provisions of this Act, and may define the duties of such officers, and such officers shall carry out the instructions from time to time given to them by the Ministerial head of their department.

Rules.

16. The Governor in Council may from time to time, make, amend, and repeal rules and regulations for the better carrying out of the provisions of this Act.

Punishments.

17. The penalty for any contravention of this Act, or of any rule or regulation passed thereunder where no higher penalty is expressly imposed, shall not exceed a fine of Fifty Pounds Sterling, or imprisonment, with or without hard labour, until payment of such fine or in addition to such fine, but not exceeding in any case three months.

Jurisdiction of  
Magistrates.

18. All contraventions of this Act or of rules or regulations thereunder and suits for penalties or other moneys not exceeding One Hundred Pounds Sterling shall be cognisable by Magistrates.

SCHEDULE A.

Schedule A.

Colony of Natal.

This is to certify that  
of  
aged  
by trade or calling a  
is a fit and proper person to be received as an Immigrant in Natal.

Dated at \_\_\_\_\_ this  
day of \_\_\_\_\_

(Signature)

SCHEDULE B.

Schedule B.

To the Colonial Secretary,

Sir,

I claim to be exempt from the operation of Act No.

1897.

My full name is

My place of abode for the past twelve months has been

My business or calling is

I was born at

in the year

Yours, &c.,

## IMMIGRATION (SPECIAL).

[See "IMMIGRATION (RESTRICTED)."]

## Law No. 13, 1859.

"To amend and regulate the Laws relating to the introduction and engagement of Immigrants from Territories to the Eastward of the Cape of Good Hope, not within Her Majesty's dominions in India" (A).

[21st June, 1859.]

WHEREAS it is expedient to amend and regulate the Laws relating to the introduction and engagement of immigrants from territories to the eastward of the Cape of Good Hope, not within Her Majesty's dominions in India:

BE IT THEREFORE ENACTED by the Lieutenant Governor of the Colony of Natal, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. From and after the commencement of this Law, the introduction of immigrants from any place or places to the eastward of the Cape of Good Hope, and not within Her Majesty's dominions in India, into this Colony, shall be conducted in manner hereinafter provided; and no immigrants shall be introduced from any adjacent territory, or by sea, except as hereinafter provided; and all immigrants so introduced shall, under the conditions, and in the manner hereinafter specified, be competent to enter into contracts of service for any period not exceeding three years.

Introduction of immigrants from the east.

2. Any person desirous of introducing to the Colony such immigrants by sea, may, previous to the departure of the vessel from the Colony, if such vessel shall be chartered in the Colony, apply to the Governor for a license authorising such introduction, which license the Governor shall have power to grant, as hereinafter mentioned.

Governor to grant license.

3. If any vessel be chartered for the introduction of immigrants into this Colony, at any place out of the Colony, such license may be granted by any British consul, agent, or emigration agent, at or near such place, whom the Governor shall authorise to grant the same; and every such license shall be granted under such conditions as the Governor may direct.

Licenses out of the Colony, how granted.

4. Every person desirous of introducing immigrants overland, shall, previous to his departure, or to the departure of his authorised agent, apply to the Governor for a license, which the Governor shall have power to grant, in manner hereinafter mentioned (B).

Immigration overland.

5. Every license to be granted under the provisions hereof, shall be limited to, and be in force for, a single voyage, or single journey, only; and shall specify the place whence the immigrants are to be procured, and where they are to be brought; and shall state therein the estimated cost of such introduction of each immigrant; and shall include such conditions and regulations as the Governor may deem necessary and proper for the collection and conveyance of immigrants.

Term and conditions, &amp;c., of license.

(A) See Law 15, 1871, sec. 1, tit. "MASTER AND SERVANT," which enacts "That Law No. 13, 1859, shall be, and the same is hereby repealed, as far as

regards the introduction of labourers overland."

(B) This section is practically repealed by Law 15, 1871, s. 1. See note (A).



**Law 13, 1859.**

Bond to be entered into.

6. Provided always, that no such license be issued until the master, owner, or agent of such vessel—or, in cases of introduction of immigrants overland, the party desirous to introduce the same, or his authorised agent—enter into a bond, with two responsible sureties, resident in this Colony, for the due performance of the conditions and regulations in such license contained and specified.

Penalty for introducing immigrants without license.

7. In the event of any immigrants being introduced into this Colony, or being brought into any harbour or roadstead thereof, without a previous license being obtained therefor as aforesaid, or without the conditions being fulfilled under which such license, if obtained, shall have been granted, the master, owner, and agent of the ship, or the person introducing them overland, respectively, shall, for every immigrant introduced or brought as aforesaid, be liable to a fine not exceeding fifty pounds, or be imprisoned for a period not exceeding three months.

Immigrants so introduced may be sent back.

8. In the event specified in the preceding section, it shall moreover be lawful for the Governor to prevent any such immigrants, or intended immigrants, from being landed or introduced in any part of the Colony; and in case any of them should be so landed or introduced, it shall be lawful for him to direct measures to be taken, at the expense of the owner, agent, or master of the ship, or of the party bringing them overland, for having them sent back to the place from which they were taken.

If landed, period of service limited.

9. Provided, that if the Governor shall allow such immigrants to land, or remain in the Colony, they shall not be competent to enter into contracts of service for a longer period than three years.

Protector of Immigrants to certify fulfilment of conditions;

10. On the arrival of any vessel at Natal with immigrants, or intended immigrants, after such vessel shall have received pratique; and on the arrival of immigrants overland, when they shall arrive at the depot, the Protector of Immigrants shall repair on board such vessel, or visit such depot, and ascertain, as far as possible, by personal inspection and examination, whether the provisions of this Law, and of any regulations to be framed in virtue hereof, and the conditions and regulations of the license, where such license shall have been obtained, shall have been duly complied with; and if he shall be satisfied that such is the case, he shall, without delay, grant a certificate to that effect.

Or report to Governor.

11. If he shall not be satisfied thereof, he shall immediately report the matter to the Governor, under whose direction such certificate shall be granted or withheld, as to him may seem fit.

Immigrants to be delivered to Protector of Immigrants.

12. As soon as practicable after the said certificate, if granted, shall be obtained, the master of the vessel shall land such of the immigrants thereon as are intended for introduction into the Colony; and the said master, and the person bringing immigrants overland, shall deliver them to the Protector of Immigrants, together with a sufficient quantity of good and wholesome provisions for their maintenance, during the space of forty-eight hours next after their landing, or delivery at the emigration depot.

Contracts of service.

13. All such immigrants shall, except as hereinafter provided, remain under the charge of the Protector of Immigrants, until they shall have procured employment; and no contract of service shall be entered into with any immigrant arriving in this Colony, until after he shall have been forty-eight hours on shore, and after certificate granted, and until he shall have obtained from the Protector of Immigrants a ticket of registration, as hereinafter provided. Every contract of service made before that time shall be null and void, to all intents and purposes.

Register of immigrants.

14. The Protector of Immigrants shall keep a separate register, in the form of the Schedule A, hereunto annexed, for the immigrants introduced into the Colony under the provisions of this Law. A ticket shall also be given to each of such immigrants, in the form of the Schedule B,

Tickets.

hereunto annexed, in which shall be specified the period for which the said immigrant is competent to engage. **Law 13, 1859.**

15. It shall not be lawful for the said Protector to issue any ticket to such immigrant, unless proof shall have been previously given to him that the person desiring to engage such immigrant has paid or satisfied the master, owner, or agent of the vessel in which the said immigrant was brought, and to the person bringing immigrants overland, for the passage money, and all other expenses, due in respect of such immigrant, as the same shall be paid in manner hereinafter provided; or unless the said master, owner, or agent, or person bringing immigrants overland, or his agent, shall consent to such ticket being issued. But provided that the said Protector shall be entitled, and on application thereupon shall be bound, to issue a ticket authorising an engagement for any period not exceeding three years, to any immigrants who shall have been allowed to land, or remain in the Colony, in terms of the 7th section hereof, or who shall have been under charge of the said Protector as aforesaid, for any longer period than fourteen days, without having been engaged in terms of the preceding sections.

Tickets, how to be issued.

16. In case any person shall have made arrangements with the master, owner, or agent of any vessel, or with any agent, for the introduction of immigrants by sea, or introduce immigrants overland by himself or agent, with a view to their engagement with himself, in terms of this Law, and in case any of the immigrants introduced in consequence of such arrangement, shall be induced to engage with another person, such other person shall, in addition to the passage-money, and all other expenses payable as aforesaid, on account of the immigrants so to be engaged by him, and previous to the issuing of a ticket as aforesaid, pay to the Protector twenty-five per cent. on the amount thereof, which twenty-five per cent. shall be paid by the Protector to the person by whom the aforesaid arrangement for the introduction of immigrants shall have then been made. Provided, that previous to the departure of the vessel from the Colony, for the purpose of bringing such immigrants, if the vessel shall be chartered there, or from any other place where she shall be chartered for the said purpose, and in case of introducing immigrants overland, previous to his own departure, or that of his agent, such person shall have transmitted to the Protector of Immigrants a certificate, signed by himself, and by the master, owner, or agent of the vessel, and in cases of overland introduction of immigrants, a certificate, signed by the party introducing such immigrants, or his agent, as nearly as may be in the form of Schedule C, hereunto annexed; and also provided, that the said Protector shall be satisfied, from entries in the ship's books, or any other evidence, that the immigrants, in respect of whom the twenty-five per cent. shall be claimed, were embarked or collected under the said arrangement, on account of the person claiming the same.

Person introducing immigrants to receive compensation, if they enter into contract with some other person.

17. The passage money and expenses aforesaid shall in no case be a debt recoverable from the immigrant, but shall be paid by the master with whom any such immigrant may first enter into a written contract of service.

Expenses, from whom recoverable.

18. The master of any vessel by which immigrants shall have been brought to Natal, who shall not have furnished to such immigrants during the voyage a sufficient quantity of good and wholesome provisions and water, or who shall in any way have abused or ill-treated any such immigrant while on board his vessel, shall incur a penalty not exceeding £50, and in default of payment shall be imprisoned for a period not exceeding twelve months, which punishment may be inflicted cumulatively, and may be doubled in aggravated cases, as well as on a repetition of the offence.

Penalty for ill-treatment, &c., during the voyage.

**Law 13, 1859.**  
Penalty for ill-treatment, &c., during journey overland.

19. Any person introducing immigrants into this Colony overland, who shall not have furnished to such immigrants during the journey good and wholesome provisions, or who shall have in any way abused or ill-treated any such immigrants, or who shall on such journey, shall incur a penalty not exceeding £50, and in default of payment shall be imprisoned for a period not exceeding twelve months (A).

Penalty for unlawful detention.

20. Any person who shall unlawfully detain any immigrants, one or more, against their will, in any place within the Colony, shall incur a penalty not exceeding £50 for every such immigrant, and another penalty of £5 for each month beyond the first month during which such detention may have been continued, and in default of payment shall be imprisoned for a period not exceeding two years.

Ord. 2, 1850, applicable under this Law.

21. The provisions of Ordinance No. 2, 1850, entitled, an Ordinance "For regulating the relative rights and duties of Masters, Servants, and Apprentices," so far as the same, or any part thereof, may be applicable, and not contradictory hereto, shall extend and apply to masters and immigrants under this Law, in such and the same manner as if the applicable sections thereof had been herein expressly re-enacted.

Governor to pass regulations.

22. The Governor, in Executive Council, shall have power to pass, and publish in the "GOVERNMENT GAZETTE," regulations for carrying out the objects of this Law; which regulations shall have the same force and effect as if verbatim embodied in this Law, and in any license to be granted as hereinbefore provided.

Prosecutions under this Law.

23. All contraventions of the provisions of this Law, for which there is imposed a penalty, shall be prosecuted and tried before the Resident Magistrate of the county or division within which the offence may have been committed, or into which the party offending shall arrive; and all penalties imposed by this Law, and which shall be recovered, shall be paid into the Colonial Treasury. Provided that the Lieutenant Governor may in any case award the whole or any portion of any penalty imposed and recovered, to any person or persons upon whose information the offender was convicted.

Ord. 13, 1852, in part repealed.

24. So much of the Ordinance No. 13, 1852, entitled an Ordinance "For amending the Ordinance No. 2, 1850," as shall be repugnant to, or inconsistent with, any of the provisions of this Law, is hereby repealed.

Protector of Immigrants.

25. In the construction of this Law, the words "Protector of Immigrants" shall mean the Immigration Agent of this Colony, or the Clerk of the Peace of the county or division into which the immigrant shall be introduced or located.

Commencement

26. This Law shall commence and take effect from and after the date of the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (B).

#### SCHEDULE A.

##### *Register of Immigrants.*

Number.	Name of Immigrant.	Name of		Sex.	Age.	Stature.	Marks.	Caste (if any).	Native Country and Village.	Port or Place where embarked.	Name of Vessel, and Captain by which introduced	Whether accompanied by children, and if so, their names, sexes, and ages.	Time during which competent to engage.	Remarks.
		Father.	Mother.											

(A) This section is practically repealed. See note to s. 4, supra.

(B) July 12, 1859.

IMMIGRATION (SPECIAL).

SCHEDULE B.

Law 13, 1859.  
Schedule B.

*Ticket of Immigrant.*

1. Name of Immigrant.
2. Number.
3. Name of { Father.  
                  { Mother.
4. Sex.
5. Age.
6. Stature.
7. Marks.
8. Caste.
9. Native country and village.
10. Name of vessel and captain by which introduced.
11. Whether accompanied by children, and if so, their names, sexes, and ages.
12. Time during which competent to engage.
13. Remarks.

Protector of Immigrants.

SCHEDULE C.

Schedule C.

We, A.B. (designation), and C.D., master (or owner or agent) of the (name of vessel) of (port of registry) certify that an arrangement was, on the            day of            18    , entered into between (mention by whom arrangement made) for the introduction into this Colony, in the said vessel, of (mention number) male, and (mention number) female immigrants, on account of the said A.B.

A.B.  
C.D.

The above certificate deposited in my office, this            day  
of            18    .

E.F.,

Protector of Immigrants.

*Immigration Transit. Let 7/04*

IMMOVEABLE PROPERTY, VALUATION OF.

[See "TAXES."]

IMPORTATION (PROHIBITED).

[See "DOGS"; "PLANTS (DISEASED)"; "PUBLIC HEALTH."]

*Sudaluni Elebe 30/06.*

INDECENT EXPOSURE.

[See "CRIMINAL LAW."]

## INDEMNITY LAWS (A).

## Law No. 14, 1874.

“To indemnify certain Persons in regard to acts done during the existence of Martial Law, and for the suppression of rebellion in certain parts of the Colony of Natal.”

[15th January, 1874.]

WHEREAS the Chief Langalibalele and the Amahlubi Tribe did, in or about the month of October, 1873, set the authority of Her Majesty's Government in this Colony at defiance, and did commit acts amounting to public violence and treason, and did render it necessary for the Lieutenant Governor of this Colony to call to the aid and support of the civil power certain of Her Majesty's Forces and Volunteer Forces; and whereas the said Chief and Tribe did revolt and rebel, and conspire by force to overthrow Her Majesty's Government, and in furtherance of such purpose, with force, and in confederated multitude, did, on the 4th day of November, 1873, and in or near the location of the said Chief, murder, fire upon, stab, and wound an Officer of Her Majesty's Forces, certain members of the Volunteer Force of this Colony, and other liege subjects of Her Majesty, then duly employed in aiding the Civil Power to arrest the said Chief; and whereas the Chief Umbalo had conspired with the said Chief Langalibalele, and had previously aided and counselled and abetted him to rebel as aforesaid, and promised to join with him, and did join with him in such conspiracy; and whereas, upon being informed of such atrocities and such rebellious combinations, His Excellency Sir Benjamin Chilley Campbell Pine, K.C.M.G., the Lieutenant Governor of the Colony, and the Supreme Chief over the Native Population of Natal, with the advice of the Officer commanding Her Majesty's said Forces, did on the Tenth day of November, 1873, and in order to prevent the extension of the rebellious outbreak, proclaim that Martial Law should obtain and prevail throughout the district called the Locations of Langalibalele and Putili, occupied by their Tribes respectively, and throughout that part of the Colony extending to five miles from any part of the boundary of said District or Locations; and whereas His Excellency, by his Proclamation bearing date the Twenty-second day of November, 1873, after reciting that all armed resistance within the District, Locations, and Territory aforesaid had ceased, except such, if any, as could be suppressed in the ordinary manner by the Civil Power, aided by the Military, did proclaim and declare that from and after the promulgation of the said Proclamation, Martial Law should cease to be in force in said District, Locations, and Territory; and whereas military operations have been necessarily carried on from on or about the 30th day of October, 1873, until the present time; and whereas Military, Volunteer, or Civil authorities necessarily employed in the prompt suppression of the atrocities and conspiracies aforesaid may, according to the law of ordinary peace, be responsible in person or purse for acts done in good faith, for the purpose of restoring public peace and quelling the rebellion; and whereas it is expedient that all persons whosoever who in good faith have acted, whether before, after, or during the existence of such Martial Law, for the crushing and suppression of the said rebellious outbreak should be indemnified and kept harmless:

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(A) See Ord. 11, 1856, indemnifying the Consistory of the Dutch Reformed Church, under tit. "DUTCH REFORMED CHURCH."

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :— Law 14, 1874.

1. All actions, indictments, and legal proceedings, civil and criminal, at any time whatsoever, and any place wheresoever, against such authorities or officers, civil, military, or volunteer, or other persons acting as aforesaid for or by reason of any matter or thing commanded, ordered, or directed at any time between the 30th day of October, 1873, aforesaid, and the 8th day of December, 1873, for the suppression of said rebellion, or for the public safety, whether before, during, or after the proclamation of Martial Law aforesaid, whether done in any district, location, or territory within which Martial Law was proclaimed, or in any part of the Colony in which Martial Law was not proclaimed, in furtherance of Martial Law, or suppression of rebellion, at any time during the said period, whether before, after, or during the existence of such Martial Law in order to suppress the rebellion and revolt and insurrection, and to prevent the spread of the rebellion, shall be discharged and become and be made void; and every person by whom such act, matter, or thing shall have been advised, commanded, ordered, directed, or done for the purposes aforesaid during the said period whether before, after, or during the existence of such Martial Law shall be freed, acquitted, discharged, and indemnified against all and every person and persons whomsoever.

Discharge of all civil and criminal proceedings in respect of acts done in suppression of rebellion between 30th October and 8th December, 1873.

2. All officers and other persons who have acted under the authority of Sir Benjamin Chilley Campbell Pine, K.C.M.G., as Lieutenant Governor of the Colony of Natal, or as Supreme Chief over the native population, or have acted bona fide for the purposes and during the time aforesaid, whether such acts were done in any district, county, or division of the Colony in which Martial Law was proclaimed or not, are hereby indemnified in respect of all acts, matters, and things done in order to suppress the rebellion, and prevent the spread thereof; and such acts so done are hereby made and declared to be lawful and are confirmed.

Indemnification of persons acting under authority, or bona fide.

3. The Lieutenant Governor at any time in order to prevent or remove any doubt which might exist or may arise whether any act alleged to have been done under the authority of the Lieutenant Governor, or of the Supreme Chief, or to have been done bona-fide for any of the purposes aforesaid in order to suppress and put an end to the rebellion was so done, may declare such acts to have been done either under such authority or bona fide for the purposes aforesaid, and any such declaration, under the hand of the Lieutenant Governor for the time being, shall in all cases be conclusive evidence that such acts were so done respectively.

Their acts legalised and confirmed.

Governor may declare acts to have been done under authority, or bona fide.

4. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE," after the passing thereof (A).

Governor's declaration to be conclusive.

Commencement

### Law No. 1, 1892. (c)

"To indemnify His Excellency the Governor and certain other persons in regard to an Order made by the Governor in Council on the 29th day of April, 1892, with respect to the forwarding of Imported Goods across the Border of the Orange Free State, and for acts done in obedience to the said Order in Council."

[11th June, 1892.]

WHEREAS it is by the Tenth Section of Law No. 4, 1886, "The Customs Duties and Transit Dues Law, 1886" (B), amongst other things enacted that in the removal and carriage of goods overland under the

(A) Jan. 20, 1874.

(B) Repealed by Act 50, 1898, tit. "REVENUE."

Law 1, 1892. provisions of the said Law No. 4, 1886, upon payment of transit dues to places beyond the boundaries of the Colony, the exporter shall be bound to send such goods as far as the same may be practicable by the open lines of Railway worked and maintained by the Government, and at such rates of carriage, and subject to such regulations as may from time to time be made applicable to such transport of goods :

AND WHEREAS it did appear to His Excellency the Governor in Council, on the Twenty-ninth day of April, One Thousand Eight Hundred and Ninety-two, to be necessary for the protection of the public interests of the Colony, that the said enactment should at once be so far relaxed as to permit of goods intended to be forwarded to the South African Republic on payment of transit dues and under transit regulations being carried by Railway as far as Ladysmith, and being there delivered for carriage to their destination across the border of the Orange Free State ; and His Excellency the Governor in Council did on the date aforesaid so determine and order to be done :

AND WHEREAS doubts may be entertained as to whether the persons by whom the said Order in Council was and is being carried into effect might, according to the Law of this Colony, be responsible in person or purse for acts done in obedience to the said Order in Council, and it is expedient to indemnify and keep harmless as well His Excellency the Governor on account of the said Order in Council as all other persons on account of acts done in obedience thereto :

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. The said Order of His Excellency the Governor in Council made on the Twenty-ninth day of April, One Thousand Eight Hundred and Ninety-two, and all acts done in good faith in obedience thereto or for carrying the same into effect, or which shall be so done at any time hereafter until further provision be made by Law regarding the carriage of such goods as in the said Order in Council are referred to, are hereby confirmed and made and declared lawful, and for such Order in Council and for all such acts His Excellency Sir Charles Bullen Hugh Mitchell, K.C.M.G., Governor of Natal, and all other persons as aforesaid shall be freed, acquitted, and indemnified against all and every person and persons whomsoever ; and all actions and legal proceedings in respect of the said order in Council and of such acts as aforesaid against His Excellency Sir Charles Bullen Hugh Mitchell, K.C.M.G., Governor of Natal, and against all persons so acting as aforesaid shall be discharged and made void.

Indemnity in  
respect of Order  
in Council of  
29th April, 1892.

Act-15, 1900

41. 1901

22. 1902

30. 1902

26. 1903

#### INDIANS.

[See "IMMIGRATION (INDIAN)."]

Act No. 15, 1900 (A).

(A) This Act, dated 30th June, 1900, was not promulgated in time for inclusion in this Volume, but appears in an appendix containing the Acts of 1900,

## INDUSTRIES (COLONIAL).

Law No. 9, 1889.

“To make provision for encouraging by rewards Colonial Manufacturing Industries.”

[26th June, 1889.]

BE IT ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. It shall be lawful for the Governor in Council from time to time to offer rewards for the encouragement of such manufacturing industries in Natal as he may consider to be upon public grounds deserving of such encouragement, and likely to prove of permanent public benefit to the Colony.

Governor may offer rewards for encouragement of manufacturing industries.

2. Such rewards shall be by way of money payments from the general revenue to bona fide makers of such commercial products from raw materials as are commonly included under the term “manufactures,” and shall in all cases be made upon the basis of production of a considerable bulk or quantity within a given time, and in no case shall exceed fifty per centum upon the market value of the first production, the quantity and particulars of which are to be specified as set forth in the next succeeding section.

Upon what basis rewards to be made.

3. Notification of the intention to offer any reward shall be made in the “NATAL GOVERNMENT GAZETTE” at least once a month for four consecutive months: the first notification to be made not less than twelve months before the time for making any payment in terms thereof. Such notice shall state that it is made subject to the provisions of the 4th Section of this Law, and shall specify sufficient particulars regarding the industries in respect of which the rewards are offered, the classes and quantities of goods required to be made, the time to be allowed for production of such goods, the values and the maximum amount to be offered in respect of any particular industry, and such other and further matters as may be proper to be specified.

Notice of intention to offer reward to be published in *Government Gazette*, and to contain certain particulars.

4. A statement of all rewards so offered and the particulars thereof, shall be laid before the Legislative Council of the Colony within fourteen days next after the notification thereof has been made, if the Legislative Council be then in session, otherwise, within fourteen days of the commencement of the then next ensuing session of the Legislative Council.

Statement to be laid before the Legislative Council.

If within [four weeks (A)] after the day on which such statement shall have been laid before the Legislative Council, the said Council shall not as hereinafter provided approve, alter, or reject the same, the same statement shall be deemed to be confirmed, and shall be a sufficient authority to the Governor to cause payments to be made as previously notified.

When statement to be deemed confirmed.

The Legislative Council may by resolution approve, alter, or reject the said statement at any time within [four weeks (B)] after the same shall have been so laid before the said Council.

Legislative Council may approve, alter, or reject statement.

If so approved or altered such statement shall be sufficient authority to the Government to cause payments to be made in terms of the statement as so approved or altered.

Effect of approval or alteration.

If rejected no payment shall be made in respect of the matters contained in such statement.

Effect of rejection.

(A) Words in brackets are expunged, and “eight weeks” substituted, by Law 14, 1890, post.

(B) See note (A).



**Law 9, 1889.**

Notification of confirmation or otherwise of statement to be made in *Natal Government Gazette*.

Provision with regard to payment of rewards.

Rules for carrying out this Law.

In all cases whether the statement be confirmed or approved or altered or rejected by the Legislative Council, notification of such confirmation, approval, alteration, or rejection shall be made in the "NATAL GOVERNMENT GAZETTE" once a week for four consecutive weeks, and in case of any alterations having been so made, the notification shall specify all such alterations.

5. No payment shall be made in pursuance of any notification made under the provisions of the third Section of this Law unless the statement above referred to shall have been submitted as aforesaid to the Legislative Council of the Colony, nor until six weeks shall have elapsed since the notification of the confirmation, approval, or alteration thereof.

6. The Governor in Council may from time to time make, alter, or repeal rules and regulations for more effectually securing and carrying out the objects of this Law.

**Law No. 14, 1890.**

"To Amend Law No. 9, 1889, entitled Law 'To make provision for Encouraging by Rewards Colonial Manufacturing Industries.'"  
[25th June, 1890.]

BE IT ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. In Section Four of the Law No. 9, 1889, entitled Law "To make provision for Encouraging by Rewards Colonial Manufacturing Industries," the words "four weeks" occurring in the seventh and fourteenth lines of said section shall be, and the same are, hereby expunged and erased and the words "eight weeks" shall be inserted and substituted therefor in both said lines.

2. In said Section Four, in the seventh and fourteenth lines thereof, the words "four weeks" shall be construed to mean and to include, and to have meant and included, the period of eight weeks inserted in said Section Four under the provisions of this Law.

3. The said Fourth Section so amended shall be considered and construed as if the words substituted by this Law were contained in said section at the date of the promulgation thereof.

4. The said Law No. 9, 1889, so amended, and this Law shall be construed as one Law.

Amendment of sec. 4, Law 9, 1889.

Construction of sec. 4, Law 9, 1889.

Amendment to date back.

Law 9, 1889, and this Law to be read as one.

**INFANTS.**

[See "MINORS."]

**INHERITANCE.**

[See "INTESTATE ESTATES."]

**INQUESTS (CORONERS).**

[See "MUNICIPAL CORPORATIONS."]

INQUESTS (FIRE).

Law No. 5, 1884.

“To provide for the holding of Inquests in cases of Fire.”

[20th August, 1884.]

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 Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. In the interpretation of this Law, unless repugnant to the context, “Inquest” or “Fire Inquest” shall mean an inquest or enquiry under the provisions of this Law ; “Magistrate” shall mean any Resident Magistrate, or Justice of the Peace when thereto required by the Resident Magistrate of the County or Division in which a fire may have occurred.

Interpretation

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.

Inquest to be held if fire originated under suspicious circumstances.

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.

Magistrate to hold inquest.

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 evidence concerning such fire, and shall examine such persons on oath, and shall reduce their examinations to writing.

Magistrate to summon and examine witnesses on oath.

5. If any person summoned as a witness shall not attend pursuant to such summons, then such person so making default shall, unless some reasonable excuse be proved by oath or affidavit, be liable to be fined by 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 witness.

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 Law shall, as near as may be, be used in all matters to which such forms refer.

Mode of summoning and examining witnesses.

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 of Court, how punished.

8. Nothing in this Law 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 Law had not been passed.

Authority of persons to issue warrants of apprehension not affected by this Law.

## Law 5, 1884.

Scale of expenses payable to witnesses.

If any person believed to be guilty of offence, Magistrate to cause him to be apprehended.

Magistrate to report to Attorney-General result of enquiry as to cause of fire, &c.

By whom expenses of inquest to be paid.

Person demanding inquest may be required to give security for expenses.

If plaintiff in action on insurance policy adjudged not entitled to recover, Court may order that expenses of inquest form part of costs to be paid by plaintiff.

Officers to execute services.

Short title and commencement.

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 (A).

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.

11. At the close of such inquest the Magistrate shall report in writing to the Attorney-General, 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.

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 criminally occasioned, the expense of the inquest shall be paid by the public Treasury; if otherwise, such expense shall be paid by the person requiring or demanding the holding of the inquest. The certificate of the Attorney-General, as to the liability for the payment of such expense by the Treasury, or by any such person, shall be final and conclusive.

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 recognisance, 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 expense.

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.

15. The officers attached to the Court of the Resident Magistrate of the Division in which a fire shall occur, shall execute all the services required under this Law.

16. This Law may be cited as the "Fire Inquests Law, 1884," and shall come into operation from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (B).

## SCHEDULE.

*Form of Process for Summoning Witnesses.*

Schedule.

Fire Inquest for the Division 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 \_\_\_\_\_ noon (as the case may be), then and there to be examined  
at an inquest concerning a fire which occurred at \_\_\_\_\_

(A) For the scale of such expenses see Act 8, 1898, tit. "EVIDENCE AND WITNESSES."

(B) Aug. 26, 1884.

## INQUESTS (FIRE).

3

on (state the place and time). Therein fail not at Law 5, 1884.  
your peril. Schedule.

Dated at this day of 18 .  
Resident Magistrate.

### *Form of Warrant for Apprehension of a Defaulting Witness*

Fire Inquest for the Division 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 par-  
ticularly 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.

Dated at this day of 18 .  
Resident Magistrate.

## INSANITY.

[See "LUNATICS."]

Repealed by Act 32 of 1916, sec. 1

## INSOLVENCY.

[Compare the Natal Insolvency Law with that of the Colony of the Cape of Good Hope; and see Decisions in Insolvency (C.G.H.) by Buchanan.]

## Law No. 47, 1887.

“To Amend and Consolidate the Law of Insolvency.”

[21st November, 1887.]

WHEREAS it is desirable to amend the Laws regulating the due collection, administration, and distribution of Insolvent Estates within this Colony, and to consolidate the Laws relating thereto:

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Law may be cited as “The Insolvency Law, 1887.”

Commencement

2. This Law shall, except as by this Law otherwise provided (A), commence and come into operation from and immediately after the Thirty-first day of December, One Thousand Eight Hundred and Eighty-seven.

Abrogation of all relief to insolvent debtors except as provided by this Law.

3. It shall not be lawful for any Court to grant, nor for any person to obtain, the benefit or relief of cession of goods and property commonly called the “*cessio bonorum*,” nor the benefit of “*attermination*” or “*respite*,” nor the benefit of “*induction*,” nor any other relief to insolvent debtors, save and except under the provision of this Law.

Acts of insolvency.

4. A debtor (B) commits an act of insolvency in each of the following cases:—

- (a) If in Natal, or elsewhere, he makes a conveyance or assignment (c) of his property, except a conveyance or assignment made under the provisions of this Law, to a trustee or trustees for the benefit of his creditors generally (D).
- (b) If in Natal, or elsewhere, he makes a fraudulent conveyance (E), gift, delivery, or transfer of his property, or of any part thereof.
- (c) If in Natal, or elsewhere, he makes any conveyance or transfer of his property, or any part thereof, or creates any charge thereon, which would under this or any other Law be void as a fraudulent preference if he were adjudged insolvent (F).

(A) See secs. 189 and 190.

(B) As to whether an infant (minor) can be made an insolvent, see *Ex pte. Jones*, 18 Ch. D. 109; 50 L.J. Ch. 673, and cf. 46 & 47 Vic. c. 52, s. 4.

As to a married woman, see *In re Quested*, 15 N.L.R. 302; and as to lunatics, see Williams' Bankruptcy Practice, 5th ed., p. 4.

(c) See *Spackman, In re, Foley, Ex pte.*, 24 Q.B.D. 728; 59 L.J. Q.B. 306; 62 L.T. 849—C.A.

(D) A creditor privy to such assignment cannot rely thereon as on an act of insolvency (see *Ex pte. Stray*, L.R., 2 Ch. 374).

(E) Cf. sec. 4, sub-s. (b) of 46 and 47 Vic. c. 52, under which to make an act of bankruptcy the conveyance must include substantially the whole of the debtor's property; the consideration must be a past debt; and there must be no fair present equivalent. See *Twyne's case*, 1 Sm. L.C.

(F) See ss. 92 and 93, post.

Reduction of Costs  
See Act 114/109  
which substitutes  
“acting Officer, Supreme  
Court, for “Master”

- (d) If with intent (A) to defeat or delay his creditors he does any of the following things, namely: departs out of Natal, or being out of Natal remains out of Natal, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house (B). Law 47, 1887.
- (e) If execution issued against him for a sum of not less than £50 has been levied by seizure and sale of his goods under process in an action in any Court.
- (f) If he presents an insolvency petition against himself (c).
- (g) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts, or if he offers to compound, except under the terms of this Law, with his creditors, or any of them (D).
- (h) If having against him the sentence of any competent Court for a sum of not less than £50, and being thereunto required he shall not satisfy the same, or shall not point out to the officer charged with the execution thereof sufficient disposable property to satisfy the same, or if it shall appear from the return made by such officer (E), or his affidavit, that he has not found sufficient disposable property to satisfy such sentence (F).
- (i) If he shall make or cause to be made, either in Natal, or elsewhere, any alienation, transfer, gift, cession, delivery, mortgage, or pledge of any of his goods or effects, movable or immovable, with intent or in such manner as to defeat or delay his creditors in obtaining payment of their debts, or with intent, or in such a manner as to prefer one creditor before his other creditors.

5. A debtor's petition shall allege that the debtor is unable to pay his debts, and being insolvent is desirous of surrendering his estate for the benefit of his creditors; it shall be verified by affidavit, and shall by accompanying schedules or other documents show the particulars of the petitioner's assets (G), debts, and liabilities, the names and residences of his creditors, the securities held by them respectively, and the dates when the securities were respectively given, and the presentation of such petition shall be deemed an act of insolvency, and the Supreme Court, or

Debtor's petition, what it must allege, how verified and what it must show.

(A) Cf. s. 4, sub-s (d) of 46 & 47 Vic. c. 52; there the intent is essential; there is no act of bankruptcy without it, whether the creditors were delayed or not (see *Williams v. Nunn*, 1 Taunt. 270; *Ex pte. Coates, Re Skelton*, 5 Ch. D. 579). See also *Rabbich v. Miller* (6 N.L.R. 167) as to material fact showing intention.

(B) To "keep house" is to keep oneself shut up in the house or denied to creditors (see *Curteis v. Willis*, 4 Dowl. & R. 224; *Ex pte. Bourne*, 16 Ves. 149). Closing the doors and shutters of a bank is evidence of a beginning to keep house, though it be not the domicile of the banker (*Cumming v. Bailey*, 6 Bing. 363; *Hare v. Waring*, 3 M. & W. 362).

(C) Notice of intention to present petition is not an act of insolvency (*In re Ballance*, 13 N.L.R. 53).

(D) Cf. sub-s. (h) of sec. 4, 46 & 47

Vic. c. 52, and see *Ex pte. Oastler*, 13 Q.B.D. 471—C.A., from which it appears that the notice may be oral, but it must be formal and deliberate, and given intentionally.

Semble, a notice in the *Gazette* of intention to present a petition does not come within this sub-s. (*In re Ballance*, 13 N.L.R. 53).

(E) In *Tarboton v. Tarboton's Estate*, 6 N.L.R. 296, Connor, C.J., held that the return there made did not show an act of insolvency within Ord. 24, 1846, s. 4, the repealed Insolvency Law.

(F) See *Risley and Co. v. Karapen* (15 N.L.R. 16) for an instance of an act of insolvency under this sub-sec.

(G) Even apparently worthless scrip must be included in the list of assets (*In re Dod*, 12 N.L.R. 131); also assets under hypothecation and liable to seizure (*In re Allison*, 16 N.L.R. 213).

Law 47, 1887. any Judge thereof sitting in Chambers or at any Circuit Court, shall, except in the cases hereinafter provided for, upon being satisfied with the said petition, and its substantial compliance with the provisions of this Law, and with the proof adduced in support thereof, thereupon make an order accepting the surrender of such debtor's estate, and placing the same under sequestration in the hands of the Master of the Supreme Court. A debtor's petition shall not after presentment be withdrawn without the leave of the Court.

By whom debtor's petition may be presented.

6. A debtor's petition, as in the foregoing section mentioned, may be presented (A) by

- (a) The debtor (B).
- (b) Any person authorised by power of attorney to administer the estate of any person absent from the Colony, in the name of such person so absent (c).
- (c) Any person legally vested with the administration of the estate of any person deceased, in the name of such person deceased.
- (d) Any person legally vested with the administration of the estate of any person legally or actually incapable of the administration of his estate, in the name of such person so incapable.
- (e) The greater number of the partners present in the Colony of any Company trading or having an estate or effects in Natal.

Notice by debtor of intention to apply for leave to surrender.

Procedure in regard to application.

7. Each and every debtor intending to present a debtor's petition shall give notice in the "GOVERNMENT GAZETTE" at least ten clear days (D) before he makes application for leave to surrender his estate, and such notice shall specify the date upon which, and the Court in which, or the Judge before whom he intends to present his petition. The debtor's petition, with any schedules accompanying the same, and all documents intended to be used by the debtor in support of his application, shall be lodged with the Registrar of the Supreme or any Circuit Court, as the case may be, at least ten clear days before the date upon which the application is to be made, and a copy of such petition, schedules, and accompanying documents shall be lodged at the office of the Resident Magistrate of the division in which the debtor resides at least seven clear days before the date on which the application is to be made. Such petition, schedules, and accompanying documents shall, on application, be open to the inspection of creditors and others interested at any time during office hours. No order of sequestration shall be granted on a debtor's petition 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 (E). On the day fixed for the hearing, the Court may hear any creditor of the debtor claiming to be interested in the matter of the debtor's petition

Hearing of application and objections.

(A) As to what amounts to presentment with regard to withdrawal of the petition, see *Schellenberg & Poynton v. Bank of Africa*, 18 N.L.R. 231.

(B) If the debtor is a married woman she should be duly assisted. The practice of accepting the surrender of a married woman engaged in trade is too well established to be disturbed: see *In re Quested*, 15 N.L.R. 302.

(C) The petition can be presented by a person holding an absent debtor's

general power of attorney, see *In re Temol*, 13, N.L.R. 254.

(D) This does not include the day on which the *Gazette* is published or the day for which the application is set down (*In re Siedat*, 19 N.L.R. 96).

(E) The mere allegation of dishonest acts on the part of the debtor, coupled with an irregularity in his Schedules, is not of itself sufficient ground for refusing the petition (*In re C. S. Naidoo*, 15 N.L.R. 156).

either in favour of the same or in opposition thereto, and shall make such order in the premises, accepting the surrender or dismissing the petition, or otherwise, as shall to justice appertain (A).

Law 47, 1887.

8. From and after the publication in the "GOVERNMENT GAZETTE" of the notice of the lodging of the debtor's petition in the foregoing section mentioned (B), 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, 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.

Effect of publication of notice.

9. When a debtor's petition shows that the petitioner has no assets, or when the assets proposed to be surrendered are of an estimated value of less than Fifty Pounds Sterling (C), it shall and may be lawful for the Supreme Court to refuse to grant any order placing the debtor's estate under sequestration unless it shall appear that the small value or absence of any assets is due to unavoidable misfortune (D), and the Supreme Court shall be satisfied with the explanation offered, and in its discretion to decide to grant an order of sequestration of the estate of the said debtor.

Petition showing assets of less value than £50.

10. Subject to the conditions hereinafter specified, if a debtor commits an act of insolvency, the Supreme Court or any Judge thereof sitting in Chambers or at any Circuit Court may, on an insolvency petition being presented by a creditor, or by his representative duly authorised, and upon satisfactory proof in support thereof, grant an order placing the debtor's estate under sequestration in the hands of the Master of the Supreme Court.

Creditor's petition,

11. A creditor's petition, as by this Law prescribed, may be presented against the following debtors, that is to say:—

Debtors against whom a creditor may petition.

- (a) Any debtor who has personally committed an act of insolvency.
- (b) Any debtor whose affairs, he being absent from the Colony, are administered by any person authorised by power of attorney, and who so authorised has committed an act of insolvency in administering the debtor's affairs.
- (c) Any debtor deceased, the administration of whose estate is legally vested in a person who has committed an act of insolvency in administering the deceased debtor's affairs.
- (d) Any debtor incapable of administering his estate when the person legally vested with the administration thereof has committed an act of insolvency in administering such debtor's affairs.

(A) Where the debtor had been trading a few months only and had assets the Court refused the petition (*In re Sulamin Cassim*, 14 N.L.R. 293).

The Court will not accept a debtor's petition presented for the mere purpose of evading a judgment (*In re Rungya Nalke*, 15 N.L.R. 313).

(B) The notice here referred to is the notice of intention to apply for leave to surrender, referred to in sec. 7 (*Mitchell v. Mamod and Graham*, 11 N.L.R. 202).

(C) The Court will not value the assets in an insolvent estate, but where the assets are made up to £50 by book debts an affidavit should be put in with the petition as to their real value (*Insolvent Estate, Lemulu*, 10 N.L.R. 153).

(D) Where a petitioner had been speculating in the Share Market in a risky manner the Court was not satisfied that the smallness of the assets was due to "unavoidable misfortune" (*In re Hughes*, 11 N.L.R. 234; see also *In re Isaacs*, 15 N.L.R. 367).



Law 47, 1887.

- (e) Any partnership company having an estate or effects in Natal when either of the partners thereof, or any person duly authorised to administer the partnership property, has committed an act of insolvency in so administering the partnership affairs or property.
- (f) A partner of a partnership company against which an order of sequestration has been granted on a petition presented by or against such company.

Provided also that no order of sequestration shall be granted, nor any insolvency petition by or against any Joint Stock Company, registered under the "Joint Stock Companies Limited Liability Law, 1864," be capable of presentation under the provisions of this Law.

In what cases a creditor may petition.

12. (1) A creditor shall not be entitled to present an insolvency petition against a debtor unless (A)—

- (a) The debt owing by the debtor to the petitioning creditor (B) shall amount to fifty pounds sterling, or if two or more creditors join in the petition the aggregate amount of debts owing to the several petitioning creditors amounts to one hundred pounds sterling.
- (b) The debt is for valuable consideration for a sum payable either immediately or at some certain future time.
- (c) The act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.
- (d) The debtor is domiciled in Natal (c), or within a year before the date of the presentation of the petition has ordinarily resided or had a dwelling-house (d) or place of business in Natal.
- (e) He gives security, in writing, to the satisfaction of the Master of the Supreme Court, or of the Resident Magistrate of the County or Division in which such petition shall be presented for payment of the necessary fees and charges for prosecution of the said sequestration until the choice or appointment of trustees, and
- (f) A certificate be endorsed on the petition by the Master or such Resident Magistrate as aforesaid that such security has been found.

Petition by a secured creditor

(2) If the petitioning creditor is a secured creditor, he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of his security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same manner as if he were an unsecured creditor.

Verification and particulars of creditor's petition.

13. A creditor's petition shall be verified by affidavit of the creditor or of some person on his behalf having knowledge of the facts, and shall set forth, among such further and other particulars as may be necessary—

- (a) The residence of the debtor.
- (b) The amount of the debt of the petitioning creditor, and the cause thereof, and when due (B).

(A) Cf. 46 and 47 Vic. c. 52, s. 6.

(B) Beneficiary must (in England) be joined with trustee, who, by himself, cannot petition (*Ex pte. Dearle, In re Hastings*, 14 Q.B.D. 184).

(c) As to onus of proving domicile, see *Ex pte. Barne*, 16 Q.B.D. 522—C.A.

(D) See *Ex pte. Hecquard, In re Hecquard*, 24 Q.B.D. 71—C.A.

(E) An omission to show in the petition the date when the debt was due may be immaterial and not a ground for setting aside an order of sequestration (*Randles Bros. & Hudson v. Goolam Jeewa*, 10 N.L.R. 154).

- (c) Whether the debt is secured ; if so, the security held, and the value thereof. **Law 47, 1887.**
- (d) The alleged act or acts of insolvency, and the respective dates thereof.

Such creditor's petition shall pray that the estate of the debtor may be sequestrated for the benefit of his creditors, and upon proof to the satisfaction of the Supreme or any Circuit Court, or any Judge thereof respectively as to the petitioning creditor's debt, and as to the acts of insolvency alleged and otherwise, the said Court or Judge may grant a provisional order, directing that the estate of such debtor be placed under sequestration in the hands of the Master of the Supreme Court until the same shall in manner hereinafter mentioned be adjudged to be sequestrated or the said petition shall be discharged. Provided, however, that such Court or Judge may, in his discretion, refuse to entertain the prayer of any creditor's petition until notice has been given to the debtor as hereinafter provided, and may give leave for such notice to be served in the manner by this Law prescribed, or may refuse the prayer of such petition absolutely.

Provisional order of sequestration.

14. Any creditor who has presented a creditor's petition, and has duly obtained from the Court or a Judge a provisional order directing that the estate of a debtor be placed under sequestration in the hands of the Master of the Supreme Court, or who has obtained leave to serve the notice by this Law prescribed, shall immediately after the obtaining of such order, take out the process of the Supreme Court to summon the debtor to appear before the said Court or the Judge thereof on a day which shall be fixed by the Court or Judge when granting the order or giving leave as aforesaid to show cause why his estate should not by sentence of the said Court or Judge be adjudged to be sequestrated for the benefit of his creditors, and the service of the said process shall be made in the manner provided for the service of any other process of the said Court : Provided that not less than seven days' notice (A) be given to any debtor : Provided also that if any debtor has been forty days absent from his usual place of residence or business within the Colony copies of the said summons shall also be affixed upon the outer door of the Supreme Court and inserted in the " GOVERNMENT GAZETTE " of this Colony. Such summons shall clearly specify the act or acts of insolvency relied upon by the creditor, and there shall be attached to such summons a copy of the creditor's petition and of any other documents used on the original application. A creditor's petition shall not, after presentment, be withdrawn without leave of the Court.

Summons to show cause against order for sequestration.

15. At the hearing upon the return day of the summons, the Court or Judge shall require proof of the debt of the petitioning creditor, of the service of the summons, and of the act of insolvency, or if more than one act of insolvency is alleged in the summons, of some one of the alleged acts of insolvency, and, if satisfied with the proof (B), may grant a final order sequestrating the debtor's estate (c). If the Court or Judge is not satisfied with the proof of the petitioning creditor's debt, or of the act of insolvency, or of the service of the petition, or is satisfied by the debtor

Hearing.

Final order for sequestration.

(A) "Seven days' notice" means seven clear days' notice (*Craig v. Tatham, Lyon & Thorrold*, 20 N.L.R. 29).

(B) At the hearing of the summons to show cause the Court will require further proof by the petitioning creditor of the debt claimed, in addition to that

adduced in the creditor's petition (*Dunn & Co. v. Treu*, 12 N.L.R. 61).

(c) Onus probandi is laid on debtor to show cause against final order of sequestration, and not on creditor to prove acts of insolvency (*Randles Bros. & Hudson v. Goolam Jeewa*, 10 N.L.R. 154).

**Law 47, 1887.** that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the Court may dismiss the summons and petition and supersede the provisional order for sequestration, or may stay all proceedings on the summons for such time as may in the discretion of the Court be deemed reasonable, and may require further proof of the matters in issue. Whenever such summons and petition shall be dismissed by the said Court, all questions affecting the estate of any person against whom it was presented, or any right of such person or of his creditors or debtors, or the validity of any alienation, transfer, gift, cession, delivery, mortgage, pledge, payment, acquittance, surrender, or discharge, made by such person, or payment made to such person, shall be judged of and determined as if such petition had never been presented.

Dismissal of petition.

Effect of dismissal.

Vexatious or malicious petition.

16. If it shall appear to the Court before whom any person has been so summoned as a debtor upon such petition for sequestration that the said petition was unfounded and vexatious or malicious, it shall and may be lawful for the Court to allow the said person, on his application for the same, forthwith to prove any damage alleged to have been by him sustained thereby, and to award to the said person such satisfaction for the said damage as the said Court shall deem fit, or otherwise to leave the said person to his action for the said injury.

Costs of sequestration to be a first charge on assets.

17. The costs of presenting and prosecuting a debtor's or creditor's petition (A) upon which an order of sequestration has been granted, and all costs of sequestration up to and until the appointment of the trustee shall be a first charge on any assets realised in the insolvent debtor's estate, and shall, after having been first taxed and ascertained by the Master, be paid by the trustee as a portion of the costs of administration out of the first money that shall be received by him. If the assets realised by the trustee in any insolvent estate are insufficient to meet the costs of administration, the creditors who have proved concurrent claims on the estate shall be personally liable for such costs in proportion to such claims. The costs incurred in rendering any part of the insolvent estate over which any creditors shall hold any special mortgage, pledge, hypothec, or lien, available for the payment of the debt thereby secured, or of administering the said property, shall be paid out of the proceeds of the property over which any such security extends when the proceeds shall be sufficient for the same, and when the proceeds shall be insufficient such creditor shall be personally liable for the same. The costs of administration shall include the remuneration or commission payable to the trustee, fees of office, to Master, Sheriff, and others, and any other payments and expenses, including law costs, incurred under and by virtue of any resolution of creditors passed at any meeting in relation to any action or other legal proceedings affecting the said estate (B).

Costs of rendering security available for payment of debt secured.

Costs of Administration.

Procedure on granting of order of sequestration.

18. Each and every order of sequestration shall, immediately upon the granting thereof, be transmitted, by the Registrar of the Court, or of the Judge granting the same, to and lodged with the Master of the Supreme Court, with whom shall also be lodged the debtor's or creditor's petition and other documents upon which the said order was granted.

(A) Where a contribution account was filed to meet costs incurred by renewed applications by the debtor on his petition, such applications being rendered necessary by opposition based on inaccuracy in the Schedules, it was held that such costs should be included in the contribution account (*In re Dodd*, 13 N.L.R. 49).

(B) Concurrent creditors who had not attended or voted at a meeting whereat it was resolved to institute an action, were, nevertheless, held liable to contribute to the costs of same under this section (*Sutton's Trustees v. McCubbin*, 12 N.L.R. 351).

*note, Law Office Supreme Court Act-1910.*

The said Master shall forthwith notify to the Sheriff of Natal in writing the granting of every such order of sequestration, and the said Sheriff shall note thereon the date and hour of its receipt. The said Master shall also, when the order has been granted on a creditor's petition and is provisional, cause the same to be notified in the "NATAL GOVERNMENT GAZETTE."

Law 47, 1887.

Notice to Sheriff.  
Publication of provisional order on creditor's petition.

19. The Master of the Supreme Court, upon any estate being placed under sequestration in his hands, shall, by the Sheriff of Natal, or by one or more of his lawful deputies, enter and lay an attachment on the estate and make an inventory thereof. The said Sheriff or deputy may, when the order of sequestration has been granted on a creditor's petition, be accompanied by the petitioning creditor or some one authorised by him on behalf of himself and the other creditors of the said estate, and it shall in all cases be lawful for any one or more of the creditors of an insolvent debtor to be present with and accompany the Sheriff or his deputy when making out any such inventory as aforesaid.

Attachment of estate and inventory.

20. The Sheriff or his lawful deputy attaching any movable property under and by virtue of any order for the sequestration of a debtor's estate shall leave with the person in whose possession any such property is attached a copy of the inventory of such property with a notice that the same has been attached. Any person who, knowing the same to have been attached, shall dispose of, remove, conceal, or receive the same or any part thereof with intent to defeat the said attachment, shall be liable on conviction of such offence to be imprisoned with or without hard labour for any period not exceeding five years: Provided always that the Sheriff, or his lawful deputy, may secure by removal, sealing up, or otherwise, in his discretion, any articles which in the discharge of his duty he may deem it expedient so to secure, or he may leave some person on the premises in custody thereof. The Sheriff shall forthwith report his execution of the said attachment to the Master of the Supreme Court, who shall take such measures and give such directions for the safe custody of the said property as to him shall seem fit. The Sheriff or his lawful deputy shall execute and perform all such acts and duties as he may be required to execute and perform by the Master of the Supreme Court, and shall receive for such services out of the assets of the insolvent estate as to which he may be so employed, such reasonable fees as are or shall be allowed by the Supreme Court for such service.

Service of notice of attachment and copy of inventory.

Defeating attachment.

Securing or taking charge by Sheriff.

Duties of Sheriff.

Remuneration of Sheriff.

21. The Resident Magistrates of Natal in their respective districts shall aid and assist in carrying this Law and the provisions thereof into effect, and for that purpose shall do and execute all such matters and things as they shall be required to do and execute by any rule or order of the Supreme Court by virtue of this Law. Any Resident Magistrate presiding at any meeting in any insolvent estate shall forthwith certify to the Master of the Supreme Court the proceedings thereat.

Duties of Magistrate in regard to carrying Law into effect.

22. If after any order of sequestration has been made on a creditor's petition the debts of the petitioning creditor be found insufficient to entitle such creditor to apply for and obtain such order, or if such order shall be superseded in consequence of the default of the petitioning creditor or his collusion with the debtor, it shall be lawful for the Supreme Court, upon the petition of any other creditor, in compliance with the provisions of this Law, to order that the sequestration be revived and proceeded in as if it had been originally obtained on such last-mentioned petition, and thereafter the said sequestration shall be revived with all the consequences and effects thereof as if it had never been superseded, save only that when the sequestration shall be revived after the same shall have been superseded, the validity of every alienation, transfer, gift, cession, delivery, mortgage, pledge, payment, acquittance, surrender, and

Revival of sequestration

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**Law 47, 1887.** discharge made by such insolvent, and every payment to and dealing with the said insolvent between the time of the superseding of the order for sequestration and the time of the making of the order for reviving the same, shall be judged of and decided upon on such and the like grounds and principles, and no other, as would by law have been applicable to the same in case such order for revival were a primary and original order for sequestration.

Any payment or giving of security by insolvent to petitioning creditor to favour him above other creditors, to be a new act of insolvency.

23. If any person against whom an order of sequestration has been made shall pay any money to the person who obtained the said order, or give or deliver to any such person any satisfaction or security for his debt, or any part thereof, whereby such person may receive more in the pound in respect of his debts than he would be entitled to receive if the sequestration were proceeded in and the estate distributed among the creditors thereof according to their legal rights and preferences, such payment, gift, delivery, satisfaction, or security shall be a new act of insolvency, and every person so receiving such money, gift, delivery, satisfaction, or security, shall in the event of the sequestration being afterwards proceeded in by any other creditor as in this Law provided, or of a new order for sequestration being issued upon such new act of insolvency, deliver up such security, and shall repay the said money gift or the full value thereof to such persons as the Court shall appoint for the benefit of the creditors of such insolvent, and shall pay all the costs which shall be incurred by any other creditor in obtaining the revival of the said sequestration, and shall forfeit the whole of the debt due and owing to him by such insolvent.

Effect of order of sequestration on execution of judgment, and imprisonment of debtor.

24. Further execution of any judgment against any insolvent or his estate for the amount of any debt or sum of money shall, after any order of sequestration of such estate is granted, be stayed during the pendency of such sequestration, and the insolvent, if in prison in virtue of any decree of civil imprisonment given in respect of any judgment, debt, or costs, or any order for committal made in respect of disobedience to any order for the payment of money made in any civil suit or proceeding, may be released from his imprisonment in so far as the same is occasioned by reason of any such decree, order, or arrest as aforesaid, by the order of the Supreme Court, or the Judge thereof granting the order of sequestration, in case such Court or Judge shall not see cause to refuse to make such order, on proof of notice of the application for the discharge and release of such debtor having been served on the judgment creditor. And it shall and may be lawful for the person having right to such judgment to prove the debt and costs secured thereby against the sequestered estate, and to take the benefit thereof upon distribution of the said estate. And where any property has been attached by legal process for satisfaction of any judgment, and has not been sold, or, having been sold, the proceeds thereof remain undistributed in the hands of the Sheriff or other officer of the Law, such property or such proceeds shall be placed under sequestration in the same manner as any other part of the insolvent estate, and the person holding such judgment shall, on the distribution of the said estate, be entitled to be preferred over the proceeds of the property attached, or sold, as the case may be, at the time of the granting of the order of sequestration for the costs incurred by him for and in respect of the writ of execution, and the execution of the same, but not for the amount of his judgment debt, or of his costs of suit by him incurred before the suing out of such writ of execution.

Judgment debt and costs may be proved.

Preference of judgment creditor for costs of execution.

Effect of order of sequestration on pending actions and arrest of insolvent in security of debt.

25. All actions pending against any insolvent for any debt or demand provable against his estate, and all proceedings therein shall, upon any order being made for the sequestration of such estate in virtue thereof be stayed, and the insolvent, if in prison under any arrest granted in security of any debt or demand in regard to which any such action shall

have been instituted, may, by the authority and under the condition in the last preceding section mentioned, be discharged therefrom, and it shall and may be lawful for the plaintiff in such action to prove his debt, together with the taxed costs of suit then incurred against the sequestrated estate, and to take the benefit thereof upon distribution of the said estate: Provided, however, that all actions pending against any insolvent for damages alleged to have been sustained from any injury or wrong, or breach of any contract committed by him, such damages being uncertain, or for recovery of any claim unliquidated as to its amount, and all proceedings therein shall, upon any order being made for the sequestration of his estate, be stayed until a trustee shall be elected for the administration thereof if the sequestration shall remain in force so long; and thereupon the plaintiff in such action, after summoning the trustee to take up and defend the said action, may proceed to obtain the judgment of the Court thereon, and the said judgment, when recovered, together with the taxed costs of suit, shall be a debt provable against the said estate.

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Proof of debt.

Effect of order on actions for damages or unliquidated claims.

26. All actions commenced by any person whose estate shall afterwards be placed under sequestration as insolvent for any debt or demand due to the said estate, and all proceedings therein shall, upon the order for such sequestration being made, be stayed until the trustee thereafter chosen for the administration of the said estate shall make election to prosecute or discontinue the same, and the trustee shall be bound to make such election within six weeks after notice to that effect shall be served upon him by any defendant in any such action, or otherwise shall be deemed to have abandoned the same: Provided, however, that any insolvent shall be permitted to continue in his own name and for his own benefit any action commenced by him previous to his insolvency for any personal injury or wrong done to himself or any of his family, and any damages which may be recovered in any such action shall not go or belong to the insolvent estate, nor shall any property proved to have been purchased or obtained by the insolvent with any such damages.

Effect of order on actions by insolvent.

Trustee may elect to prosecute or abandon.

Actions for personal injury.

27. The Master of the Supreme Court shall, after any estate has been placed under sequestration, upon surrender thereof as insolvent, or has been adjudged to be sequestrated, forthwith cause notice thereof to be given in the "GOVERNMENT GAZETTE" of this Colony, stating the name, address, and description of the debtor, the date of the order, the Court by which the order is made, and the date of the petition.

Publication of notice of sequestration.

28. Where a final order for sequestration has been made on a creditor's petition the insolvent debtor shall make out and submit to the Master of the Supreme Court, within seven days from the date of the order, a statement of and in relation to his affairs verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names and residences of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as the Master may require. Any person claiming to be a creditor of the insolvent may personally or by agent inspect this statement at all reasonable times, and take any copy thereof or extract therefrom without payment of fees.

Statement to be furnished by insolvent after order of sequestration granted on a creditor's petition.

29. As soon as may be after the granting of an order for the sequestration of the estate of any debtor, a general meeting of his creditors, hereinafter called the first, shall be held for the proof of debts, for the examination of the insolvent debtor, and for the election of a trustee or trustees for the collection, administration, and distribution of the said estate. With respect to the summoning of and proceedings at, the first and other meetings of creditors, the rules in the first schedule shall be observed.

First meeting of creditors.

Rules.

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Appointment of  
Committee of  
inspection.

Functions of  
committee.

Vacancy in  
committee.

If there be no  
committee, the  
Master shall act.

Privileges and  
liabilities of a  
private creditor  
to apply to  
partners of a  
creditor com-  
pany, and to  
person admin-  
istering an  
estate.

Procedure  
where assets  
of estate are  
not of the  
value of £75.

30. The creditors qualified to vote may at their first or any subsequent meeting by resolution appoint from among the creditors qualified to vote (A), or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection, for the purpose of superintending the administration of the insolvent's property by the trustee. The committee of inspection shall consist of not more than five nor less than three persons. The committee of inspection shall meet at such times as they shall from time to time appoint, and failing such appointment, at least once a month; and the trustee, or any member of the committee, may also call a meeting of the committee as and when they think necessary. The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting. Any member of the committee may resign his office by notice in writing signed by him, and delivered to the trustee. If a member of the committee becomes insolvent, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant. Any member of the committee may be removed by an ordinary resolution at any meeting of creditors, of which not less than seven days' notice has been given stating the object of the meeting. On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution appoint another creditor or other person eligible as above to fill the vacancy. The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it do not exceed five. If there be no committee of inspection, any act or thing, or any direction or permission by this Law authorised or required to be done or given by the committee, may be done or given by the Master on the application of the trustee.

31. Every privilege and power given by this Law to any creditor in respect of any debt due to him individually by any insolvent and every liability or penalty imposed by this Law on any such creditor shall be and is hereby declared to be given to and imposed on the partner or partners of any company in respect of any debt due to such company by any insolvent and to be given to and imposed on every person legally vested with the administration of the estate of any person deceased or of any person legally or actually incapable of the administration of his estate situated within this Colony in respect of any debt due to such estate by any insolvent.

32. If it shall appear to the Master before causing notice to be given summoning the first meeting that the goods and effects of the insolvent available for the payment of his debts are not of the value of seventy-five pounds sterling he shall specify the same in the said advertisement and notice, and shall therein also give notice that unless it shall be shown at the first meeting called as aforesaid that the goods and effects of the insolvent exceed the value of seventy-five pounds sterling, the Master or Resident Magistrate holding such meeting will summarily proceed to rank the debts which shall be proved at such meeting according to their respective preferences and to direct the proceeds of the insolvent estate to be forthwith distributed accordingly by a trustee to be then elected

(A) This sec. reflects the provisions of sec. 22 of 46 and 47 Vic. c. 52, but in that Act the words "qualified to vote" where secondly occurring are now expunged by the "Bankruptcy Act, 1890," s. 5.

by the majority in value of the creditors attending at such meeting; and in such case the said insolvent shall at such first meeting attend before the creditors to account for his insolvency and shall being thereunto required do and perform thereat all such other matters and things as are required to be done and performed by him at any meeting of creditors under the provisions of this Law. And if at the said first meeting, which meeting may be adjourned from time to time, if the said Master or Resident Magistrate shall deem it necessary to adjourn the same, it shall still appear to the said Master or Resident Magistrate as the case may be before whom the same is holden that the available assets of the said estate do not exceed the amount of seventy-five pounds sterling it shall and may be lawful for the said Master or Resident Magistrate to rank the creditors who shall prove their debts at such meeting according to the legal order of their preference and for the creditors to elect a trustee for the collection, administration, and distribution of the estate of the said insolvent according to the order of ranking and to direct the said trustee forthwith to collect, administer and distribute the same accordingly, and further at the said first meeting the said Master or Resident Magistrate shall and may respectively execute all the powers and authority which may be executed by them at any meeting of creditors under the provisions of this Law, and shall also do and perform thereat all matters and things required to be done for the final settlement of the said estate; and the creditors present at the said first meeting shall then determine what part of the wearing apparel, bedding, household furniture and tools of trade of the insolvent shall be excepted from the sale of his movable property and shall be allowed to him, and shall also give to the said trustee such directions as to the management of the said estate as to them shall seem fit, and no other meeting shall be thereafter holden unless upon cause shown to the said Master by any trustee or creditor of the said estate the said Master shall think fit to order the same: Provided that the Master may in any case where the creditors attending any such first meeting or adjournment thereof in any such estate where the assets do not exceed seventy-five pounds sterling, fail to elect any trustee as aforesaid, nominate and appoint some fit and proper person willing to act to be such trustee.

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Attendance of insolvent.

Proceedings at first meeting.

Election of trustee.

Allowance of insolvent's wearing apparel, tools of trade, &amp;c.

No other meeting to be held except on cause shown.

In default of election of trustee by creditors Master to appoint.

Attendance of insolvent at meetings.

Obligations and duties of insolvent.

33. The insolvent debtor shall be bound, unless authorised in writing by the Master or Resident Magistrate, as the case may be, not to attend, or unless prevented by sickness or other sufficient cause, to attend (A) the first, second, and third meetings, or any adjournment of either of them in his estate, and also to attend such further and other meetings as he may be required to attend by the Master or Resident Magistrate before whom such meeting is to be held; the insolvent debtor shall at every meeting of creditors which he shall attend answer all such lawful questions as shall be put to him by the Master or other officers presiding at such meeting, or by the trustee of his estate or any creditor thereof who has proved his claim, and shall give all such information as the meeting may require. The insolvent debtor shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the Master or trustee, execute such documents, and generally do all such acts and things in relation to his property and the distribution of the

(A) Cf. sec. 24 of 46 & 47 Vic. c. 52. In the Imperial Act "attend" means by being actually present in the room (*Ex pte. Best*, 18 Ch. D. 488).



**Law 47, 1887.** proceeds amongst his creditors as may be reasonably (A) required by the Master or trustee, or may be prescribed by general rules, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the Master, trustee, or any creditor or person interested. He shall aid to the utmost of his power in the realisation of his property and the distribution of the proceeds among his creditors. If an insolvent debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property which is divisible amongst his creditors under this Law, which is for the time being in his possession or under his control, to the Master or to the trustee, or to any person authorised by the Court to take possession of it, he shall in addition to any other punishment to which he may be subject under the provisions of this Law or otherwise, be guilty of a contempt of Court, and may be punished accordingly.

Penalties for default.

Set-off in case of mutual dealings.

34. Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom an order of sequestration shall be made under this Law, and any other person proving or claiming to prove a debt under such sequestration, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account and no more shall be claimed or paid on either side respectively (B), but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit to the debtor notice of an act of insolvency committed by the debtor and available against him.

Demand for unliquidated damages, when provable. Debt contracted after notice of act of insolvency.

What debts provable.

Valuation of uncertain debt.

35 (c). Demands in the nature of unliquidated damages arising otherwise than by reason of a contract (D) or breach of trust shall not be provable in insolvency. A person having notice of any act of insolvency available against the debtor shall not prove under the order for any debt or liability contracted by the insolvent debtor subsequently to the date of his so having notice. Save as aforesaid all debts and liabilities (E), present or future, certain or contingent (F), to which the debtor is subject at the date of the order of sequestration, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the order of sequestration, shall be deemed to be debts provable in insolvency. An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being

(A) This does not extend so as to compel the insolvent to submit to a medical examination with a view to a policy being effected on his life (*Board of Trade v. Block*, 13 App. Cas. 570; 58 L.J., Q.B., 113; 59 L.T., 734; 37 W.R. 259).

(B) After notice of an application for winding-up had been duly published an advertising canvasser collected moneys from third parties, due to a Publishing Company, for advertising contracts procured by him. Held, that he could not set off against them a sum due to him by the Company (*Star Printing, &c., Company v. Burgess*, 19 N.L.R. 14).

This sec. is adapted from sec. 38 of 46 & 47 Vic. c. 52, under which an unliquidated debt may be set off (*Peat v.*

*Jones*, 8 Q.B.D. 147), also the right of set-off only accrues where the claims on each side are such as result in pecuniary liabilities, so that the account may be taken and the balance struck (*Eberle's Hotel Co. v. Jonas*, 18 Q.B.D. 459; 56 L.J. Q.B. 278; 35 W.R. 467—C.A.)

(c) This sec. is adapted from sec. 37 of 46 & 47 Vic. c. 52.

(D) As to waiving a tort and proving for breach of contract, see *Ex pte. Baum*, L.R. 9 Ch. 673; 44 L.J. Banky. 25.

(E) Not including (in England) those for alimony payable by a husband under order of the divorce, which cannot be proved for, and must continue to be paid in full (*Ex pte. Linton, In re Linton*, 15 Q.B.D. 239—C.A.)

(F) As to valuing annuities, see *Ex pte. Neal*, 14 Ch. D. 579.

subject to any contingency or contingencies, or for any other reason, does not bear a certain value. Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Supreme Court. If in the opinion of the Court the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect (A), and thereupon the debt or liability shall, for the purposes of this Law, be deemed to be a debt not provable in insolvency. If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may direct the value to be assessed before the Court itself without the intervention of a jury, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in insolvency. Liability shall, for the purposes of this Law, include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur (B), or is or is not likely to occur, or capable of occurring, before the discharge of the debtor; and, generally, it shall include any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of money or money's worth, whether the payment is as respects amount fixed or unliquidated, as respects time, present or future, certain or dependent, on any one contingency, or on two or more contingencies, as to mode of valuation capable of being ascertained by fixed rules or as matter of opinion.

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What is included under the term liability.

36. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs and the other matters referred to in the second schedule, the rules in that schedule shall be observed.

Rules with respect to mode of proving debts, &c.

37. No person whose debt depends upon a contingency or an uncertain condition shall be entitled to petition or join in the petition for sequestration of any estate, or to vote in the choice of trustee, or of any of the other proceedings herein specified, so long as the contingency shall not happen or the condition shall not be performed: Provided always, that the creditor in any such debt, contracted before the order for sequestration shall have been made, may, if he think fit, while the contingency or condition upon which such debt depends shall not have happened, or shall not have been performed, apply to the trustees to set a value upon such debt; and the trustee is hereby required to ascertain the value thereof, and to admit such creditor to prove the amount so ascertained; and such creditor shall thereafter be entitled to vote, and to receive dividends or payment, as in respect of a debt of the value of the amount so ascertained; but whether such value shall or shall not be so ascertained, before the contingency shall have happened, or the condition shall have been performed, such creditor may, whenever such contingency shall have happened, or such condition shall have been performed, prove in respect of his whole debt, and receive dividends or payments thereon with the other creditors: Provided always, that when the creditor in any such debt or claim, the contingency of which shall not have happened, or the condition of which shall not have been performed, and the value of which shall not have been ascertained as aforesaid, shall enter a claim on the estate in respect of such debt, the trustee shall rank the claimant as if the contingency had happened, or the condition had been performed, and

Provision in regard to debts depending upon a contingency or uncertain condition.

(A) See *Ex pte. Waters*, L.R. 8 Ch. 562; 28 L.T. 757.

(B) A surety may prove though he

has not paid the debt for which he is liable (*Ex pte. Delmar*, *In re Herepath*, 38 W.R. 752; 7 M.B.R. 129).

Law 47, 1887. shall forthwith apply to the Supreme Court to make an order, and the said Court shall make such order, for securing the dividend or sum which the claimant would be entitled to draw, until the contingency or condition upon which the debt depends shall happen or be performed, or until it shall have become certain that such contingency or condition shall never happen or be performed, when the sum so secured shall be paid to the claimant, or to the other creditors, as the case may be; and any interest which may in the meantime arise and be received thereupon shall belong to, and be paid to, the other creditors; and provided also, that the holder of any such contingent debt or claim of which the value shall not have been ascertained, and who has been ranked as a claimant, as if the contingency had happened or the condition been performed, shall, for the purpose of agreeing to or dissenting from any offer of composition, be deemed and taken to be creditor for whatever sum the Master of the Supreme Court shall, under the circumstances of the said debt, fix and allow, subject to appeal from his decision to the Supreme Court.

Provision for case of debts not satisfactorily proved, but which may eventually be established.

38. When by reason of the absence of any person from this Colony, or for any other cause appearing to the Supreme Court, the said Court shall be of opinion, that a claimant, who has not proved a debt to the satisfaction of the Court, may eventually be able to establish the same, it shall and may be lawful for the said Court to allow such claim to be entered on the proceedings in the insolvent estate and to give reasonable time for proving the same: and in the meantime to make such order for securing the amount thereof, in case the said claim shall be afterwards established, as the said Court shall see fit.

Mode of ranking creditors of joint and separate estates.

39. In every case in which it shall happen that the estate of any company, and the estate or estates of any one or more partners of such company, shall be concurrently under administration as insolvent (A), the creditors of the said company shall prove their debts against, and rank upon, the estate of the company, and the creditors of each partner, in respect of debts due by such partner, separately from the other partners, shall prove their debts against, and rank upon, the estate belonging to their debtor, separately from the other partners, and the estate of the company shall be first applied in satisfaction of the separate creditors of that estate; and if the estate of the company shall prove insufficient to satisfy the creditors of the company, or if there be no such estate, then each creditor of the company shall rank upon the surplus of each separate estate, which may remain after satisfying the separate creditors of that estate, either by the residue or entire of his debt, as the case may be, but so, however, as not to receive in all more than the whole of their debts respectively; and if the separate estate of any partner shall prove insufficient to satisfy the separate creditors who have claimed upon it, then the separate creditors upon that separate estate shall rank upon the surplus, if any, of the company's estate, which shall remain after satisfying the creditors of that estate in proportion to the share in such surplus belonging to or claimable in right of the particular partner whose separate estate has so as aforesaid proved deficient; and whenever the company's estate shall prove insufficient to satisfy the company's creditors, and the latter shall thereupon receive satisfaction, wholly or in part, out of the surplus of the separate estate of any of the partners of such company, the trustee of the separate estate so satisfying, wholly or in part, any of the creditors of the company, shall be entitled to rank upon the separate estate of any other partner of such company, for amount of whatever the

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(A) See *Grant & Fradd's Trustee v. Russell's Estate* (4 N.L.R. 45) decided on the repealed Insolvency Ordinance.

contribution in respect of the debts of the company, wholly or in part discharged, such trustee may, by law, be authorised to claim: Provided, however, that no partner, if insolvent, and no trustee of the insolvent estate of any partner, shall, under any circumstances, rank for the amount of any such claim for contribution, upon the insolvent estate of any other partner, in competition or concurrence with any of the creditors of the company, claiming upon any such last mentioned estate, which creditors are hereby declared to be entitled to be paid, in preference and priority to any such partner or trustee; and provided, also, that nothing herein contained shall be construed so as to abridge or affect the rights which the creditors of any insolvent company may, by law, possess to seek satisfaction for their debts from any partner or such company whose estate shall not have been sequestered or to abridge or affect the rights which any such solvent partner may, by law, possess, in regard either to the insolvent estate of the company, or to that of any of his partners, whose estate may have been sequestered.

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40. In every case in which the separate estate of any partner of a company shall be sequestered as insolvent, and whether the estate of such company shall also be, or have been, sequestered or not, any creditor to whom the insolvent is indebted, jointly with the other partner or partners of the company, shall be entitled to prove his debt under the sequestration of such separate estate, for the purpose of voting in the election of trustees, and of agreeing to, or dissenting from, any offer of composition, but no further; and such creditor shall not receive any dividend out of the separate estate of the insolvent, until all the separate creditors shall have received the full amount of their respective debts, unless such creditor have been a petitioning creditor, in regard to the sequestration of such separate estate, in which case such creditor may vote, and receive dividends in respect of his debt, in the same manner as the separate creditor of such estate.

Joint creditor may prove on separate estate for certain purposes.

41. In every case not hereinbefore expressly provided for, and relating to the ranking and priority of the joint creditors of any company, in competition with the separate creditors of any of the partners of such company, or relating to the reciprocal claims of any such insolvent estates, in reference to, or in relief of, each other, the rule, for the time being, in respect of the like case, according to the law and administration of bankruptcy in England for the time being (A) shall first be resorted to, and failing any such rule, the common law of the Colony shall be applied.

English rule regarding joint and separate creditors to govern cases not provided for.

42. Any debt which was due, or the cause of which arose prior to the order for sequestration of any estate, may be proved at any meeting of the creditors appointed before the Master or a Resident Magistrate, at any time before the final distribution of the estate; and any creditor may, after the third meeting called in manner hereinbefore provided, at his own expense, call such meeting expressly for the purpose of proving his debt: Provided always, that when any debt is so proved, after any dividend has been paid to the creditors, such dividend shall not in any way, be distributed or affected by, or in respect of, any such debt; and provided also, that when any such debt is proved after the plan of distribution of such estate has been confirmed, and in consequence of the proof of such debt, any alteration in such plan of distribution, or any further proceedings in the sequestration shall be rendered necessary, the creditor proving such debt shall be liable for all expenses which may be incurred in consequence of any such alteration or proceedings.

Time within which debts must be proved.

Special meeting.

(A) See 46 & 47 Vic. c. 52, s. 40.

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Voting by  
proxy.

Questions at  
meeting, how  
determined.

43. In all cases where, under the provisions of this Law, the creditors of any insolvent estate are required or entitled to meet and to vote in any matter regarding such estate, any creditor so entitled may attend and vote at such meeting personally, or by agent, authorised by any proxy or power of attorney to that effect duly executed, upon proof thereof to the satisfaction of the Master of the Supreme Court, Resident Magistrate, or other person presiding at such meeting; and all questions at any meeting of creditors shall be determined by a majority in value of those present and entitled to vote.

Election of  
trustees.

44. At the first meeting called as aforesaid, or any adjournment thereof (if the said Master or Resident Magistrate shall find it necessary to adjourn the same, which they are hereby authorised and empowered to do), a trustee, or trustees, not exceeding two in number, shall be chosen for the collection, administration, and distribution of the insolvent estate and effects. The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or not being approved of by the Supreme Court; and all creditors who have proved debts against the insolvent estate shall be entitled to vote in such choice; and creditors holding any preferable security or lien shall vote in manner and form herein provided and the choice shall be made by the votes of the majority in value of the creditors, or their agents present and entitled to vote: Provided, however, that it shall be competent to any person interested in any such insolvent estate, or the due administration thereof, and who shall complain of any such election, upon giving within two days after the said election a notice in writing of the particulars of such complaint to the said Master, or Resident Magistrate, as the case may be, at any time before the election is confirmed, in manner hereafter mentioned, to bring the same under review of the Supreme Court, who shall summarily or otherwise, as such Court shall see fit, decide and make such order thereon as the justice of the case may require: Provided always, that it shall be lawful for any person interested in the due administration of the estate, at any time after the confirmation, to apply to the Court to recall the confirmation, and set aside the election, on the ground that such election was fraudulently or unduly made: Provided, however, that the said trustees shall give security to the satisfaction of the Master of the Supreme Court before they enter on the office of trustee for the due administration and distribution of the estate of which they have been elected trustees, and the said Master, when satisfied with such security, shall certify that the appointment has been duly made, and submit the name of such trustee or trustees for confirmation, unless the Master objects to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with, or relation to, the insolvent debtor, or his estate, or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally. If any trustee shall fail to give such security within fourteen days after the date of his election his election shall be void, and the Master shall thereupon call a meeting of creditors and take all such steps as are requisite and necessary under the provisions of this Law for the election of a new trustee. As soon as the trustee elected by the creditors shall have accepted his office it shall and may be lawful for the Supreme or any Circuit Court or any Judge thereof respectively upon the report of the Master to make a decree confirming the appointment of such trustee or deciding on the validity of such objections to refuse to confirm the same. If a trustee is not appointed by the

Review of  
election.

Undue or  
fraudulent  
election.

Security to  
be given by  
trustees.

Confirmation of  
election.

creditors (A) at the first meeting or any adjournment thereof in the insolvent estate, or if the election of a trustee by the creditors is not confirmed by the Court or Judge, and the creditors omit to elect a trustee at such further or other meeting summoned for the purpose of appointing a trustee, the Master shall appoint some fit person, subject to the confirmation of the Court or Judge, to be trustee of the insolvent's property: Provided that the creditors may at any subsequent time, if they think fit, appoint a trustee, and on the appointment being made, certified, and confirmed, the person so appointed shall become trustee in the place of the person appointed by the Master.

**Law 47, 1887.**

Provision in case no trustee appointed or election not confirmed.

45. In no case shall it be competent for the creditors to elect as trustee the insolvent himself, or any person related to the insolvent, by consanguinity or affinity within the fourth degree, nor any minor, nor any person who, having had his estate, at any time, placed under sequestration, shall not have obtained the sequestration to be superseded, or who shall not have been rehabilitated under the provisions of the law in force within this Colony; nor any person, not resident within the jurisdiction of the Supreme Court, nor any person having an interest opposed to the general interest of the creditors in the insolvent estate, nor any person declared to be incapable of being elected by virtue of the provisions in the next succeeding section contained.

Disqualifications for trusteeship.

46. If any person elected a trustee shall be proved, to the satisfaction of the Supreme Court, or of any Circuit Court holden for the District in which the election of trustee was had, to have procured, or been privy to the omission from the schedule of the insolvent, of the name of any creditor of the insolvent, with intent thereby to obtain some peculiar advantage in regard to the election of trustee, or to have, either directly or indirectly, given, or promised to give, to any creditor of the insolvent any species of valuable consideration whatsoever, in order to obtain the vote of such creditor at the election of trustee, or to have agreed to secure and make good to any creditor some certain sum or dividend, in discharge or diminution of his debt, upon condition or in order that such creditor should give his vote to such trustee; or to have offered or agreed, in case any creditor of the insolvent should consent to vote for such trustee, to abstain from opening up, or investigating, some previous transactions between such creditor and the insolvent, which were, or were supposed to be, of questionable validity, or to have contrived, or been privy to, any plan of arrangement by which debts or securities, really belonging to some one or more persons, have been divided amongst a greater number of persons, for the purpose merely of increasing the number of votes at the election for trustee, and thereby influencing the same, or to have undertaken to share with any creditor or creditors of the insolvent, in return for his or their votes, the commission or remuneration to be awarded to him as such trustee; then such Supreme or Circuit Court as aforesaid, shall whether before or after the decree confirming the appointment of such trustee, declare such trustee to have forfeited the office of such trustee, in regard to the insolvent estate for which he shall have been elected, and to be incapable of being again elected thereto; and it shall and may be lawful for such Court, if it should so think fit, to further declare that the person so offending shall be incapable of being elected a trustee under the provisions of this Law, for and during his natural life, or such period as such Court shall determine and adjudge; and any person interested in the due administration of the insolvent estate may apply, by

Acts or omissions of trustee entitling the Court to set aside his election and declare him incapable of being elected for a period adjudged by Court.

(A) This includes the case of there being no creditors present at the meeting; see *In re Pugh*, 17 N.L.R. 135.

Law 47, 1887. motion, to such Supreme or Circuit Court as aforesaid; either before or after the decree confirming the appointment of any trustee, to declare any such trustee to have forfeited his office by reason of any such misconduct as aforesaid; and as often as a vacancy in the office of trustee shall be created by any such forfeiture, the Court declaring the same shall order a new trustee to be elected, and the same proceedings shall be had thereon as on the original election of trustee.

Provisional trustees, appointment and duties of.

47. It shall and may be lawful for the Supreme Court, or for any Judge thereof on circuit, and whether sitting in any Circuit Court or not, on cause shown by the Master of the said Court, or any person interested in the due administration of the insolvent estate, and if satisfied that the nature of the debtor's estate or business, or the interests of the creditors generally require the appointment by order of Court, to appoint one or more fit person or persons to be trustee or trustees of any insolvent estate provisionally, and until the creditors of the said estate shall make choice of a trustee (A); which trustee or trustees may be removed at the meeting of creditors for the choice of a trustee, if the said creditors shall think fit, but shall and may, until so removed, act in the collection, administration, and distribution of the said estate, in all respects, the same as trustees elected by the creditors are, by this Law, authorised or required to do: Provided, however, that no such trustee or trustees shall proceed to make sale of any part of the said estate without the authority for that purpose of the Supreme Court, or of some Judge thereof, or of some Circuit Court, or of the Master of the Supreme Court, first had and obtained.

Proviso as to sale of estate.

Insolvent's business, how far and by whom to be carried on.

48. A provisional trustee may, with the authority of the Court or Judge appointing him, or the trustee elected by the creditors may, acting under the instructions of the creditors, carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same.

Remuneration of trustees.

49. All trustees, so appointed by the Court, or elected by the creditors, shall receive and be paid, out of the assets of the said estate, a reasonable compensation for their care and diligence in the said trust, to be assessed by the Master of the said Court, subject to the review of the said Court, upon the petition of any creditor, or of the said trustees, or of any person having any interest in the said estate. A commission of two and a half per centum on the proceeds of all immovable property realised, and five per centum on the proceeds of all movable property realised, shall be deemed reasonable compensation, but such rates may be increased or reduced by the Supreme Court in any estate upon sufficient cause to them appearing. Where a trustee receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required to be performed by himself.

Attorneys' and solicitors' costs.

50. All bills and charges of attorneys and solicitors shall be taxed by the Master of the Supreme Court, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. Every such attorney or solicitor shall on request by the trustee (which request the trustee shall make a sufficient time before framing any account or plan of distribution) deliver his bill of costs or charges to the proper officer for taxation, and, if he fails to do so within fourteen days after receipt of the request, or such further time as the Court on application may grant, the trustee shall declare and distribute

(A) Trustee may be appointed hereunder where creditors fail to attend statutory meeting (*In re Insolvent Estate of De Silva*, 17 N.L.R. 4).

*Transfer  
and Taxing Officer  
Supreme Court  
Act 14/87.*

the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate. Law 47, 1887.

51. Every order made for placing any estate under sequestration as insolvent shall, so soon as made, have the effect, in law, to divest (A) the insolvent, and all persons administering the whole, or any part, of his estate for his use and behoof, and to vest in the Master of the Supreme Court, for the uses and purposes of the sequestration, all the present and future estate, movable and immovable, personal and real, and every right, title, and interest in and to any property, movable or immovable, personal or real, wheresoever the same may be known or found, which shall belong or be due to such insolvent at the date of making such order, or as to which any right or reversion shall then be vested in him, or which may thereafter be purchased or acquired by, or may revert, descend, or be devised, or come, to the insolvent, at any time before the making of the order of Court allowing and confirming, as hereinafter mentioned, the account and plan of distribution to be framed by the trustees (except as in the 55th section is excepted), together with all deeds, vouchers, papers, or writings respecting the same, and after the said order for sequestration has been made, neither the insolvent, nor any person claiming through or under him, shall have power to alienate, give, cede, deliver, mortgage, pledge, or recover, or to release or discharge the same, or any part thereof; neither shall the same be attached by any person as the property of, or belonging to, the insolvent (B).

Effect of order for sequestration on insolvent's property.

52. Every order of Court appointing any provisional trustee, or trustees, shall, so soon as made, have the effect in law, to divest the Master of the Supreme Court, and to vest, in such provisional trustee, or trustees, for the uses and purposes of the sequestration, and until their removal, or until the making of the order of Court, allowing and confirming, as hereinafter mentioned, the account and plan of distribution (whichever shall first happen), all the present and future estates of the insolvent, as fully and completely to all intents and purposes, as the said estate is, by virtue of the next succeeding section of this Law, vested in the trustee, or trustees, elected by the creditors, by the decree of the Court confirming the appointment of the same. And whenever any provisional trustee, or trustees, shall die, or be removed, before the making of the decree aforesaid, for confirming the appointment of any trustee, or trustees, elected by the creditors, then the whole present and future estate of the insolvent for the time being, shall vest again in the said Master, precisely as if the same had never been divested.

Effect of order of Court appointing provisional trustee.

Death or removal of provisional trustee.

53. Every decree made known as herein directed, for confirming any trustee, or trustees, shall, so soon as made, have the effect, in law, to divest the Master of the Supreme Court, or any provisional trustee, and to vest in the trustee, or trustees, thereby confirmed, for the uses and purposes of the sequestration, and so long as such trustee, or trustees, shall continue to hold their office, all the present and future estate, movable and immovable, personal or real, which shall have belonged, or been due, to such insolvent, at the time when the order for placing his estate under sequestration was made, or as to which any right of reversion shall then be vested in him, or which may thereafter be pur-

Effect of decree for confirmation of trustee.

(A) A deed of assignment cannot be made after a provisional order for sequestration has been granted (*Randles Bros. & Hudson v. Rassool Hoosen*, 19 N.L.R. 11).

(B) As to application of this sec. to property of insolvent's wife, married in community, see *In re Dyne's Estate*, 6 N.L.R. 43.



Law 47, 1887. chased, or acquired by, or may revert, descend, or be devised, or come to the insolvent, during the continuance of the sequestration, and before the making of the order of Court allowing and confirming the account and plan of distribution, as hereinafter provided, wheresoever the same may be found or known (except as in the 55th section is excepted), together with all deeds, vouchers, papers, or writings respecting the same; and the said trustee or trustees shall have the like remedy to recover the said estate of the insolvent, or any part thereof, in their own names, for the purposes of the sequestration, as the insolvent himself might have had if his estate had not been sequestrated; and all powers vested in any insolvent at the time the order for placing his estate under sequestration was made, or which may thereafter become vested during the continuance of the sequestration, and before the making of the said order, allowing and confirming the account and plan aforesaid, which such insolvent might have legally executed for his benefit, shall, after the said order for placing his estate under sequestration, and until an order of Court, appointing a provisional trustee or trustees, or until a decree be made for confirming the appointment of a trustee or trustees, elected by the creditors, be executed by the Master of the Supreme Court, and may, after such order appointing a provisional trustee or trustees, be executed by such provisional trustee or trustees until their removal, and may, after their removal, be executed by the said Master, until a decree be made for confirming the appointment of such trustee or trustees as aforesaid, and after such decree is made for confirming such appointment as aforesaid, may be executed by the trustee or trustees whose appointment is thereby confirmed, for the benefit of the creditors, in such manner as the insolvent might have executed the same, and the said insolvent is hereby declared to be incapable to exercise or execute any such power as aforesaid.

What to be deemed property of the insolvent so as to vest in the Master.

54. All goods (A) being at the commencement of the insolvency in the possession, order, or disposition (B) of the insolvent (C) in his trade or business (D), by the consent or permission of the true owner, under such circumstances that he is the reputed owner thereof (E), shall be deemed to be the property of the insolvent, and shall vest in the Master of the Supreme Court, and on the appointment of a provisional trustee, or of the trustee, the property shall forthwith pass to and vest in the trustee appointed.

Transactions of insolvent between period of sequestration and confirmation of account and plan of distribution to be void as against official receiver of estate, with certain exceptions.

55. During the time which shall intervene between the time of the making of the order for the sequestration of any insolvent estate, and the making of the order allowing and confirming the account and plan of distribution, as hereinafter provided, the insolvent, so long as he shall remain without his certificate, shall (except in the certain cases hereinafter excepted), be absolutely disqualified and incapacitated to acquire or possess as against the person in whom, for the time being, the insolvent estate shall by law be vested, any property, goods, or effects, movable

(A) This must be taken to include a policy of insurance, see judgment of Connor, C.J., in *Estate of Isaacs v. Granger*, 9 N.L.R. 203, according to which it also appears that absence of notice to the Insurance Office of an assignment of a policy puts it within the reputed ownership clause. See also 10 N.L.R. 25, and *Gale v. Lewis*, 16 L.J., Q.B. 119.

Cf. 46 & 47 Vic. c. 52, s. 44, sub-s. (2), par. (iii).

(B) Possession of the servant is that of the master (*Jackson v. Irvine*, 2 Camp.

48), and the possession of a carrier is that of his employer (*Hervey v. Lid-diard*, 1 Stark. 123).

(C) Solely (*In re Bainbridge*, Ch. D. 218), but see *In re Silence*, 7 Ch. D. 70.

(D) This does not include farming and market gardening carried on for pleasure though at a profit (*Ex pte. Sully, In re Wallis*, 14 Q.B.D. 950), nor a picture lent by the owner to the artist for exhibition in a public gallery (*Ex pte. Dudgeon, In re Cook*, 1 M.B.R. 108).

(E) See per Lord Selborne in *Ex pte. Watkins*, L.R. 8 Ch. 528.

Law 47, 1887.

or immovable, personal or real, or any right to any such property, goods, or effects; and shall in like manner be absolutely disqualified and incapacitated to cede, transfer, or convey, so as to bind the person in whom, for the time being, the insolvent estate shall by law be vested, any property, goods, or effects, or any debt, claim, or demand, or any bond, bill of exchange, promissory note, or other security for money, and as against or in question with such last-mentioned person, every such attempted cession, transfer, or conveyance shall be totally null and void. And no person who shall have sold and delivered upon credit any goods, wares, merchandise, or other matter or things, to any such insolvent, shall be entitled to reduce or set aside the sale, or to claim the amount of the purchase money from the person in whom the insolvent estate shall, for the time being, by law be vested, by reason merely that the said insolvent was, at the time of the contract of sale, so disqualified and incapacitated as aforesaid, or that the articles sold and delivered have been taken possession of by such person in whom the said estate was vested as aforesaid, for the benefit of the said estate. And no such insolvent shall be deemed or taken to have any power to bind any such last mentioned person, or the insolvent estate in him vested, by any sort or description of dealing, contract, or transaction whatsoever unless the same shall have been entered into by virtue of an authority to that effect from such person in writing: Provided always, that nothing hereinafter contained shall be construed so as to prevent any such insolvent from passing a valid title by any such cession, transfer, or conveyance as aforesaid, while acting, so far as he shall be authorised in writing so to do, as the mandatory or agent of his trustee, or from acting as the mandatory or agent of any other person by whom such insolvent shall be authorised, in writing, so to act, and for whom he shall have been, in writing, permitted so to act by the person in whom, for the time being, the insolvent estate shall be vested: Provided also, that nothing herein contained shall be construed so as to prevent any insolvent, whether acting as such mandatory or agent as aforesaid, or not, from well and effectually passing title to any person whatever, by the delivering to him of any movable goods or effects which were next before such delivery in the actual possession of such insolvent, in pursuance of any real and bona fide purchase from such insolvent, for a just price duly paid, or to prevent any such insolvent from well and effectually passing title to any money paid by him in cash down for any matter or thing purchased by him at the time of such payment, or to prevent any such insolvent from receiving, suing for, and recovering, in his own name, and for his own personal and exclusive use, and free from the control of his trustee, the hire, wages, or reward of his work and labour, or that of any of his family, by him or them bestowed during the intervening time aforesaid, or any part thereof, or any damages claimable by reason of any personal wrong or injury done to such insolvent, or any member of his family; and provided that whenever any property, goods, or effects, shall be proved by such insolvent to have been purchased or obtained by means of any moneys receivable or recoverable as aforesaid for his own personal use; such property, goods, or effects shall also be free from the control of his trustee, in like manner as the moneys were by which they were purchased or obtained.

56. It shall and may be lawful for the trustees to take up and continue in their own names, the process in any action commenced for any debt or demand due to the estate, before their appointment, or to discontinue the same, as they shall see fit; and also to commence any new suit or action in any competent Court for any debt or demand due to or affecting the estate of any insolvent person; and also to defend any

Actions by or  
against  
trustees.

Law 47, 1887. action brought against them, or pending against the insolvent, relating to or affecting the said estate (A).

Removal of trustee and election of new trustee.

57. It shall and may be lawful for the Supreme Court, or any Circuit Court (B), on cause shown by the Master of the Supreme Court, or by any person interested in the administration of the insolvent estate, to remove any trustee or trustees for insolvency, or for any misconduct in the said trust, or on account of absence from this Colony; and thereupon, and as often as any trustee shall die, or obtain leave from the said Court to resign, or shall become incapacitated, it shall and may be lawful for the said Court or any Judge thereof, to order a new trustee to be elected, and the same proceedings shall be had thereon as on the original election of trustees; and it shall and may be lawful for the said Court, or any Judge thereof, in the meantime, to make such order as may be necessary or expedient for the preservation of the insolvent estate, until such new trustee shall be elected and confirmed.

Effect of decree for confirmation of new trustee.

58. Whenever, on the death or removal of any trustee, any new trustee shall be elected and confirmed in manner hereinbefore provided, the decree confirming the appointment of such new trustee shall have the effect in law to vest in the new trustee the whole insolvent estate, present or future, as hereinbefore particularly described, and every power, right, title, privilege, and remedy vested in, or competent to, the former trustee, as trustee, before his death or removal, as fully, and to the same extent, as the same was vested in the former trustee by the decree made for confirming his appointment, in manner aforesaid: Provided always, that the death or removal of any trustee shall not affect the validity or force of any lawful act done by him as trustee for the purposes of the sequestration, prior to his death or removal. And during any period of time which shall elapse between the death or removal of any trustee, and the making of the decree for confirming the election of the trustee confirmed in his place, and no longer, the whole of the then existing insolvent estate shall, except when, notwithstanding such death or removal, there shall remain in office one or more of the trustees of the said estate, be vested in the Master of the Supreme Court.

Continuation of actions by new trustee.

59. Whenever a trustee shall die, or a new trustee shall be chosen, no action relative to the insolvent estate shall be thereby abated; but the Court in which any such action is depending may, upon the suggestion of such death or removal, or that a new trustee has been chosen and confirmed, allow the name of the surviving, or new trustee or trustees, to be substituted in the place of the former; and the said action shall proceed as if such surviving or new trustee or trustees had originally commenced or defended the same.

Notices of appointment or removal of trustees.

60. Every trustee, on being confirmed, shall forthwith cause notice of the sequestration, and of his appointment, to be given by advertisement in the "GOVERNMENT GAZETTE," and the Master of the Supreme Court shall cause notice of every order made for the removal of any trustee to be given by advertisement in the "GOVERNMENT GAZETTE."

Directions to trustees at general meetings of creditors.

61. It shall and may be lawful for any trustee or trustees, at any time, to call a general meeting of the creditors, and to require their directions concerning the collection or sale of any part of the estate, or concerning any matter or question relating to the administration of the said estate, and the trustee or trustees shall call such meeting whenever they are thereto required by one-fourth of the creditors in value, who have produced and proved their claims; and the said trustees shall pursue

(A) See secs. 25 & 26, ante.

(B) These words held not to include

a Judge in Chambers (*In re Davies*, 13 N.L.R. 167).

the directions of the greater part in value of the creditors attending such meeting: Provided always, that fourteen days' notice, at the least, shall be given of every such meeting, and of the purpose thereof, in the "GOVERNMENT GAZETTE," and in a local paper, unless, in any particular case, the Master or Resident Magistrate shall authorise the trustee or trustees to call a meeting upon some shorter notice; and provided also, that no such meeting shall be competent to direct the trustees to do anything calculated to interfere with, or injure, the just rights of any creditor who shall hold any preferable security or lien upon any part of the insolvent estate; and in case any direction shall be given by any such meeting calculated to interfere with or injure such rights, such creditor may apply, by motion to the Supreme Court, to set aside such direction, and thereupon the said Court shall make such order in the premises as shall to justice appertain.

Law 47, 1887.

62. All meetings of creditors called by virtue of this Law, and appointed to be holden in Pietermaritzburg, shall take place before the Master of the Supreme Court; and if appointed to be holden in any District of the Colony other than Pietermaritzburg, then before the Resident Magistrate of such District, or the person acting as such, who shall forthwith certify to the said Master the proceedings thereat.

Meetings of creditors, before whom to be held.

63. It shall and may be lawful for the trustees to take legal advice on any legal question affecting the insolvent estate, or the administration thereof, and to employ an attorney (A) for the conducting and defending of all actions and suits for or against the insolvent estate, and to charge against the insolvent estate all such fees as shall thereby be incurred, and shall be allowed upon taxation by the Master of the Supreme Court, subject to the review of the Supreme Court, upon the complaint of the attorney so employed, or of any person having an interest in the due administration of the estate under sequestration; and when it shall be made to appear to the Supreme Court that any attorney has improperly advised, commenced, conducted, or defended any such action or suit, or incurred any improper or unnecessary expense therein, with the purpose of thereby benefiting himself, and not with the bona fide purpose of thereby benefiting the insolvent estate, it shall and may be lawful for the said Court to order the whole or any part of the costs of such action be paid by such attorney, as the said Court shall see fit.

Employment of attorneys by trustees.

*Bona Fide*  
*Act 14/04*

64. It shall and may be lawful for the Master of the Supreme Court, and for any trustees, whether provisional or elected, respectively, to grant and allow to the insolvent, out of the assets of the insolvent estate, such moderate sum or sums as the said Master or the said trustees, respectively, shall find to be indispensably necessary for the support of the insolvent and his family, pending the decision of the creditors in regard to such support; and the said Master, and such trustees as aforesaid, may, if they shall, respectively, see fit, employ the insolvent, or any other person, in the gathering and preservation of any crops or produce, for any reasonable time necessary for the gathering and preservation thereof; and also leave the said insolvent, or place any other person, in the charge of any property, manufactory, or concern, belonging to the insolvent estate, until the same shall be sold, disposed of, or wound up, and make to the said insolvent, or other person so employed, a reasonable allowance per diem, for his labour; provided that the amount of every such allowance, whether for support or labour, as the case may be, granted before the third meeting of creditors, shall be submitted to such meeting, which meeting shall have power to decide whether

Allowance to insolvent.

Employment of insolvent or other person for preservation of estate.

(A) As to employment of a Law Agent, see *In re Asher*, 6 N.L.R. 69.

Law 47, 1887. any such allowance shall be continued, and if so, for what length of time, and what shall be the amount thereof; and provided also, that every trustee who shall make any such allowance to an insolvent, except with the consent of the creditors assembled at such meeting as last aforesaid, or at some other meeting duly convened, shall forthwith report to the Master of the Supreme Court the amount and grounds of such allowance; and provided, that every such allowance made by any trustee, without the consent of the creditors, shall be subject to the review of the Supreme Court, upon the application of the said Master, or of any person interested in the due administration of the insolvent estate.

Examination of debtor at first meeting.

65. At the first meeting in any insolvent estate there shall be an examination of the debtor as to his conduct, dealings, and property, and such examination may from time to time be adjourned. Any creditor who has tendered a proof, or his representative authorised in writing may question the debtor concerning his affairs and the causes of his failure. The Master or Resident Magistrate, as the case may be, shall take part in the examination of the insolvent debtor, and may put such questions to the debtor as he may think expedient. The trustee may take part therein, and for the purpose thereof may employ a solicitor. The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Master or Resident Magistrate may put or allow to be put to him. Notes of the examination shall be taken down in writing, and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times. On every examination of any insolvent, or on any adjournment thereof before the Master or Resident Magistrate, such Master or Resident Magistrate may in his discretion, at the instance of the trustee, any creditor of the insolvent debtor, or the insolvent debtor himself, issue a summons for and compel the attendance of any witness so required to attend any such examination (A).

Attendance of witnesses.

Public examination before Supreme or Circuit Court or a Commissioner.

66. The Supreme or any Circuit Court, upon the application of the trustee, may in its discretion summon any insolvent debtor before the Supreme or any Circuit Court or any Commissioner of the Supreme Court on a day to be appointed by the Court for the public examination of the debtor, and the debtor, whether he has obtained his order of rehabilitation or discharge, or not, shall attend thereat, and shall be examined as to his conduct, dealings, and property. The said Court or Commissioner may adjourn the examination from time to time. Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure. The trustee shall take part in the examination of the debtor, and for the purpose thereof, may employ a solicitor with or without counsel. The Court may put such questions to the debtor as it may think expedient. The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put, or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him. They shall also be open to the inspection of any creditor at all reasonable times. When the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall, by order, declare that his examination is concluded.

67. The Court may, by warrant, addressed to the Sheriff, or his lawful deputy, cause a debtor to be arrested, and any books, papers, money, and goods in his possession to be seized, and him and them to be

(A) Cf. sec. 17 of 46 & 47 Vic. c. 52.

safely kept as prescribed until such time as the Court may order (A), under the following circumstances:—If, after the filing of a debtor's or the presentation of a creditor's petition by or against him it appears to the Court that there is probable reason for believing that he is about to abscond (B) with a view of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in insolvency against him. If, after the filing of a debtor's or the presentation of a creditor's petition by or against him it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the Master or trustee, or that there is probable ground for believing that he has concealed, or is about to conceal or destroy any of his goods, or any books, documents, or writings which might be of use to his creditors in the course of his insolvency. If at any time after presentation of a creditor's petition, or the filing of a debtor's petition, he removes any goods in his possession above the value of five pounds without the leave of the Master or trustee. If, without good cause shown, he fails to attend any examination ordered by the Court.

68. If any insolvent shall, at the first meeting of his creditors, or any adjournment thereof held as aforesaid, being thereunto required, refuse to lodge a true inventory of his estate and effects, or to surrender the books, papers, writings, documents, bills, or vouchers, relative to his estate as aforesaid, or shall, at his examination before any Court or Commissioner before mentioned, or any meeting of creditors which he shall attend as aforesaid, refuse to be sworn, or shall refuse to answer any lawful questions put to him by such Court or Commissioner, or by the said Master or Resident Magistrate, or the trustee, or any creditor or other person, or shall refuse to sign or subscribe his examination, so reduced into writing as aforesaid (not having any lawful objection to so doing), it shall be lawful for such Court or Commissioner, or for such Master, or such Resident Magistrate, by warrant under his hand, to commit him to such prison as they shall think fit, there to remain without bail until he submit to do the matters aforesaid, or to be sworn, or make answer to such lawful questions as shall by them be put to him, or sign and subscribe such examination as aforesaid.

69. After surrender or adjudication or sequestration of any estate as insolvent, it shall and may be lawful for the Supreme Court or any Circuit Court, upon the application of the trustee, or trustees, to summon before the said Court or any Circuit Court, or any Commissioner of the Supreme Court, the wife of the insolvent, or any person known or suspected to have in possession any of the estate of the insolvent, or to be indebted to the insolvent, or any person whom the said Court may see reason to believe capable of giving information concerning the person, trade, dealing or estate of such insolvent, or any information material to the full disclosure thereof; and also to require such person to produce any books, papers, deeds, writings, or other documents (C), in his or her custody, which may appear to the said Court necessary to the verification

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Arrest of debtor and seizure of goods under certain circumstances.

In what cases the insolvent under examination may be committed.

Wife or any person capable of giving information may be summoned before Court or Commissioner for examination.

(A) Notice of application to the Court for release of a debtor arrested under this sec. must be given to the Trustee (*In re Mahomed Judwat*, 11 N.L.R. 112).

(B) Cf. sec. 25 of 46 & 47 Vic. c. 52, amended by 53 & 54 Vic. c. 71, s. 7, which substitutes for "believing that he is about to abscond" the words

"believing that he has absconded, or is about to abscond."

(C) Cf. sec. 27 sub-s. (1) of 46 & 47 Vic. c. 52. It appears that a Solicitor cannot object to produce on the ground of lien (*Ex pte. Bramble*, L.R., 13 Ch. D. 685). See as to production generally, *Ex pte. Good*, L.R., 21 Ch. D. 868; 51 L.J. Ch. 831.

Law 47, 1887. or disclosure of any of the matters aforesaid; and it shall and may be lawful for the said Supreme Court, or Circuit Court, or Commissioner, to examine every such person upon oath (A), concerning the person, trade, dealings, or estate of such insolvent, and to cause his or her examination to be reduced to writing, and signed by him or her, and annexed to the said proceedings; and if any such person shall, upon being lawfully summoned to appear to be examined, fail so to appear (having no lawful impediment made known to the Court or Commissioner, before whom such person is summoned at such times, and allowed by them), it shall be lawful for such Court, or for such Commissioner under his hand, to grant warrant authorising and directing any officer of the law, or other person, to apprehend the person so summoned and failing to appear, and to bring the said person before such Court or Commissioner, or to lodge the said person in any prison, therein to be detained until the time which such Court or Commissioner shall, on the application of the trustee or trustees, have appointed anew for his or her examination; and the gaoler of any such prison shall cause such person to be brought before such Court or Commissioner at the time and place specified in such warrant. And if any such person so summoned, or brought before such Court or Commissioner for examination, shall refuse to be sworn, or shall refuse to answer any lawful question put by such Court or Commissioner touching any of the matters aforesaid, or shall refuse to sign his or her examination so reduced into writing as aforesaid (not having any lawful objection allowed by such Court or Commissioner) or shall not, being thereunto required, produce any books, papers, deeds, writings, or other documents, in his or her custody or power, relating to any of the matters aforesaid, and to the production of which he or she shall not state any objection allowed by them, it shall be lawful for such Court, or for such Commissioner, by warrant under his hand, to commit him to such prison as they shall think fit, there to remain without bail, until such person shall submit to be sworn, or make answers to all such lawful questions as shall by such Court or Commissioner be put, or sign such examination, or produce such books, papers, deeds, writings, or other documents, as aforesaid, in his or her custody or power, to the production of which no such objection as aforesaid shall be allowed.

Apprehension on failure of appearance.

Person summoned may be committed in certain cases.

On discovery of indebtedness to debtor or possession of property belonging to him, Court may order payment or delivery to trustee.

70. If any person on examination before the Court or Commissioner admits that he is indebted to the debtor, the Court may, on the application on motion of the trustee, order him to pay to the trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, and with or without costs. If any person on examination before the Court or Commissioner admits that he has in his possession any property belonging to the debtor the Court may, on the application on motion of the trustee, order him to deliver to the trustee such property or any part thereof, at such time and in such manner, and on such terms, as to the Court may seem just.

(A) As to power to test credibility of a witness, see *Ex pte. Tilly, In re Scharrer*, 20 Q.B.D. 518; 59 L.T. 188.

The Court refused to authorise the examination under this sec. of a witness upon matters in respect of which an action was contemplated against him; and protected a Solicitor from having to disclose matters communicated to him by his clients (*In re Andrews and Shapley*, 14 N.L.R. 300). See also, as to

privilege of Solicitor, *Re Arnott*, 5 M.L.R. 286, in which it was held that a Solicitor was not bound to disclose his client's residence, if communicated to him as a matter of professional confidence.

As to whether a witness may be represented on the examination by Solicitor and Counsel, see *Williams' Bankruptcy Practice*, 5th Ed. 81.

71. The insolvent and every other person summoned before the Supreme Court, or Circuit Court, or any Commissioner, by order of the said Court to be examined or give evidence, or make disclosure of the trade, dealings, estate, or effects of any insolvent, under or by virtue of this Law, shall have his necessary expenses tendered to him by the trustee or trustees of such insolvent estate, in like manner as is by law required upon service of a subpoena to a witness in any civil suit; and such necessary expenses shall also be tendered to every insolvent who is required by any notice in writing signed by the Master of the Supreme Court, or by any Resident Magistrate, to attend any meeting of creditors other than the first, second, and third meetings as aforesaid, or some adjournment thereof.

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Expenses of persons summoned or of insolvent to be tendered as on service of subpoena.

72. Every insolvent or other person sworn by or before any Court or Commissioner, or by the Master of the Supreme Court, or by any Resident Magistrate, by virtue of any of the provisions of this Law, who shall wilfully make any false answer to any lawful question put by such Court, Commissioner, Master, or Resident Magistrate, such person shall be deemed guilty of the crime of perjury, and on conviction thereof shall suffer any punishment provided by law for such crime.

Persons wilfully making false answer under oath, liable to punishment for perjury.

73. If any person whatsoever be committed by any Court or Commissioner, or by the said Master, or by any Resident Magistrate, for refusing to answer, or not fully answering, any question put to him by them, they shall in their warrant of commitment, specify every such question; and if any person so committed as aforesaid, shall make any application to any Court or Judge, competent to entertain the same, in order to be discharged from such commitment, and there shall not appear to such Court or Judge any insufficiency or informality in the form of the warrant whereby such person was committed, by reason whereof he might be discharged, it shall be lawful for such Court or Judge, and such Court or Judge is hereby required, to re-commit such person to the same prison, there to remain until he shall conform as aforesaid; unless it be shown to such Court or Judge by the party committed, that he has fully answered all lawful questions put to him on his examination as aforesaid; or, if such person was committed for refusing to be sworn, or for not signing his examination, unless it shall appear to such Court or Judge that he had a sufficient reason for the same: Provided also, that such Court or Judge shall, if required thereto by the party committed, consider the whole examination of such party, whereof any such question was a part; and if it shall appear, from the whole examination, that the answer or answers of the party committed is or are satisfactory, such Court or Judge shall and may order the party so committed to be discharged.

In certain cases warrant of commitment to specify questions.

Applications for discharge.

74. In case any suit or action shall be instituted, or sought to be instituted, against the Master of the Supreme Court, or any Commissioner of the said Court, or any Resident Magistrate, by reason, or on account of, any commitment to prison of the insolvent or other person, the said Master, Commissioner, and Resident Magistrate shall respectively possess and enjoy, in reference to such action, and the process and proceedings therein, every right, privilege, and provision, and be subject to every liability which do, or shall by law, belong and pertain to suits or actions instituted, or sought to be instituted, against Justices of the Peace, for anything done by them in the execution of their office: Provided also, that the Court before which any action, founded upon a commitment for refusing to answer, or not fully answering, any question or questions put to the plaintiff, is tried, shall, if required thereto by the defendant, consider the whole examination of the plaintiff, whereof such question was, or such questions were, a part; and if it shall, upon such

Actions against Master or Magistrate.



Law 47, 1887. consideration, appear to such Court that the plaintiff was lawfully committed, the defendant shall have the same benefit therefrom as if the whole of such examination had been set forth in the warrant of commitment.

Offences punishable with maximum of two years' imprisonment with hard labour.

75. Any person against whom an order of sequestration has been granted, and any person whose affairs have been liquidated by arrangement by virtue of the provisions of this Law, shall in each of the cases following be deemed guilty of an offence, and on conviction thereof shall be liable to be imprisoned for any time not exceeding two years, with or without hard labour, that is to say (A) :—

- (1) If he does not, to the best of his knowledge and belief, fully and truly discover to the trustee administering his estate for the benefit of his creditors, all his property (B), real, and personal, and how, and to whom, and for what consideration, and when he disposed of any part thereof except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expenses of his family, unless the jury is satisfied that he had no intent to defraud (C) ;
- (2) If he does not deliver up to such trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud :
- (3) If he does not deliver up to such trustee, or as he directs, all books, documents, papers, and writings in his custody, or under his control, relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud :
- (4) If, after the presentation of an insolvency petition by or against him, or the commencement of the liquidation or within four months next before such presentation or commencement, he conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud :
- (5) If, after the presentation of an insolvency petition by or against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently removes any part of his property of the value of ten pounds or upwards (D) :
- (6) If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intention to defraud :
- (7) If, knowing or believing that a false debt has been proved by any person under the insolvency or liquidation, he fail for the period of a month to inform such trustee as aforesaid thereof :

(A) Cf. 32 & 33 Vic. c. 62 (Debtor's Act, 1869), s. 11.

It would seem that the fact of a debtor having been charged with or convicted of any of the offences specified in this section is no ground for refusing or suspending an order of discharge

under section 180 (*In re White*, 17 N.L.R. 138).

(B) Including after acquired property (*Reg. v. Mitchell*, 43 L.T. 572).

(C) Including property disposed of before bankruptcy (*Reg. v. Mitchell*, 50 L.J., M.C. 76; 14 Cox 490).

(D) See *Reg. v. Creese*, L.R. 2 C.C. 105.

- (8) If, after the presentation of an insolvency petition, by or against him, or the commencement of the liquidation, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law : Law 47, 1887.
- (9) If, after the presentation of an insolvency petition, by or against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs, or to defeat the law :
- (10) If, after the presentation of an insolvency petition, by or against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he makes, or is privy to the making of, any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs, or to defeat the law :
- (11) If after the presentation of an insolvency petition, by or against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission in any document affecting or relating to his property or affairs :
- (12) If, after the presentation of an insolvency petition by or against him, or the commencement of the liquidation, or at any meeting of his creditors within four months next before such presentation or commencement, he attempts to account for any part of his property by fictitious losses or expenses :
- (13) If, within four months next before the presentation of an insolvency petition by or against him, or the commencement of the liquidation, he, by any false representation or other fraud has obtained any property on credit, and has not paid for the same (A) :
- (14) If, within four months next before the presentation of an insolvency petition by or against him, or the commencement of the liquidation, he, being a trader, obtains under the false pretence of carrying on business, and dealing in the ordinary way of his trade, any property on credit, and

(A) The goods must be obtained by the false representation (*Expte. Stallard*, L.R. 3 Ch. 408). The representation must be made with knowledge of its falsity (*Reg v. Cherry*, 12 Cox, 32).

As to form of indictment under similar provision of the Debtor's Act, 1869, see *Reg. v. Watkinson*, 12 Cox, 271; *Reg. v. Pierce*, 56 L.J., M.C. 213; 16 Cox, 213.

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has not paid for the same, unless the jury is satisfied that he had no intent to defraud (A) :

- (15) If, within four months next before the presentation of an insolvency petition by or against him, or the commencement of the liquidation, he, being a trader, pawns, pledges, or disposes of otherwise than in the ordinary way of his trade, any property which he has obtained on credit, and has not paid for, unless the jury is satisfied that he had no intent to defraud :
- (16) If he is guilty of any false representation or other fraud, for the purpose of obtaining the consent of his creditors, or any of them, to any agreement with reference to his affairs, or his insolvency, or liquidation.

Penalty for insolvent quitting or attempting to quit Natal with property within a certain time.

76. If any person, who is adjudged insolvent, or has his affairs liquidated by arrangement, after the presentation of an insolvency petition by or against him, or the commencement of the liquidation, or within four months before such presentation or commencement quits Natal, and takes with him, or attempts or makes preparations for quitting Natal, and for taking with him any part of his property to the amount of twenty pounds or upwards, which ought by Law to be divided amongst his creditors, he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of an offence punishable with imprisonment for a time not exceeding two years, with or without hard labour.

Offences punishable with maximum of one year's imprisonment with hard labour.

77. Any person (B) shall in each of the cases following be deemed guilty of an offence, and on conviction thereof shall be liable to be imprisoned for any time not exceeding one year, with or without hard labour, that is to say :

- (1) If in incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud.
- (2) If he has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property (c).
- (3) If he has, with intent to defraud his creditors (d), concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

Penalty for false claim, &c., wilfully made by creditor.

78. If any creditor in any insolvency or liquidation, by arrangement or composition with creditors, in pursuance of this Law, wilfully and with intent to defraud, makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, he shall be guilty of an offence punishable with imprisonment not exceeding one year, with or without hard labour.

Restrictions on undischarged insolvent in respect of business transactions.

79. An undischarged insolvent shall not, prior to the allowance and confirmation of the first account and plan of distribution, framed by the trustee of his estate, enter into any dealing or business, or take

(A) In *Ex pte. Brett*, 1 Ch. D. 151, a trader being in insolvent circumstances purchased goods on credit and shipped them to Australia, and obtained advances by pledging the bills of lading. Within four months afterwards he became bankrupt. In his examination he stated that he could give no account of what had become of the purchase money. It was held that, in the absence of any evidence of his having obtained the goods on false representations, his con-

duct did not amount to an offence under sub-s. 14 or 15 (Debtor's Act, 1869), and an application by the Trustee for an order to prosecute him was refused. And it was further held that he had not committed an offence under sub-s. 13 of the Debtor's Act, 1869.

(B) Cf. sec. 13 of Debtor's Act, 1869. Not confined to insolvent debtors (*Reg. v. Rowlands*, 8 Q.B.D. 530).

(c) See *Reg. v. Pierce*, 56 L.J., M.C. 85.

(d) See *Reg. v. Rowlands*, 8 Q.B.D. 530.

upon him the buying and selling of any goods, wares, or merchandise for himself without the authority, in writing, of the person in whom the insolvent estate shall for the time being by law, be vested, first had and obtained. Where an undischarged insolvent obtains credit to the extent of twenty pounds or upwards from any person, without informing such person that he is an undischarged insolvent, he shall be guilty of an offence (A), and on conviction thereof shall be liable to be imprisoned for any time not exceeding one year, with or without hard labour.

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Unlawfully obtaining credit.

80. Every trustee, and every creditor of or on the estate of any insolvent shall, with regard to any of the offences set forth in the 75th section of this Law, have the same right of prosecution which any private person has by law, with regard to any offence committed against his person or property, and no other right: Provided always that no creditor or creditors shall be entitled to exercise any such right of prosecution for any such offence without first obtaining from the trustee and producing a certificate that the trustee declines to prosecute for that offence.

Right of trustee or creditor to prosecute.

81. If any person shall receive or accept any alienation, transfer, gift, cession, delivery, mortgage or pledge, made by any insolvent of any part of his estate or effects, with intent to defraud the creditors of the insolvent, knowing, at the time, the same to be fraudulently made, such person shall, on conviction thereof, suffer imprisonment with or without hard labour, for any period not exceeding two years.

Receiving transfer, &amp;c., of estate of insolvent with intent to defraud creditors.

82. If any person shall dispose of, remove, conceal, embezzle, or receive, any movable property belonging to any insolvent estate, which has been attached by virtue of any order for the sequestration thereof, or any movable property, which has been attached by process of any competent Court, knowing the same to have been so attached, and with intent to defeat the said attachment, such person shall, on conviction thereof, suffer imprisonment, with or without hard labour, for any period not exceeding five years.

Dealing with property attached with intent to defeat attachment.

83. In all cases when, on the application of the Master of the Supreme Court, or any trustee, or trustees, of any insolvent estate, it shall, on oath, be made to appear, to the satisfaction of any Judge of the Supreme Court, or Resident Magistrate, or Justice of the Peace, that there is reason to suspect, or believe that property of any insolvent is concealed in any house, or other place, not belonging to the insolvent, it shall and may be lawful for the said Judge, Magistrate, or Justice of the Peace, to grant a warrant to search for and take the said property; which warrant shall be executed in like manner as is by law allowed in execution of a search warrant for property reputed to be stolen and concealed; and any property of the insolvent so found shall forthwith be delivered, if no trustee or trustees have hitherto been confirmed, to the Master of the Supreme Court, or otherwise to the trustee or trustees who have been confirmed, or to any person appointed by the said Master, or trustee or trustees, to receive the same.

Warrant for search for concealed property of insolvent.

84. It shall be lawful for the Master of the Supreme Court, and he is hereby required, so soon as the trustee or trustees, chosen at the first meeting of the creditors of any insolvent estate in manner aforesaid, have been confirmed, forthwith to appoint the second and third meetings of the creditors of the insolvent, to be holden before himself or any Resident Magistrate, at such time, and at such place, as he shall deem most expedient for all parties concerned, for the purpose of receiving proof

Appointment and notification of second and third meetings.

(A) Cf. sec. 31 of 46 and 47 Vic. c. 52. An intent to defraud does not appear to be a material element of the offence. See *Reg. v. Dyson* [1894] 2 Q.B. 176.

**Law 47, 1887.** of debts, and for receiving the report of the trustee or trustees as to the condition of the insolvent estate, and for giving directions to the trustee or trustees as to the management thereof; and the said trustee or trustees shall give notice of the time and place at which, and of the purposes for which, such meeting is to be held, in the same advertisement, in the "GOVERNMENT GAZETTE" and in a local newspaper, in which notice is hereinbefore required to be given by them to the creditors, of their confirmation as trustee or trustees (A).

Election of a Commissioner.

85. It shall and may be lawful for the creditors of any insolvent estate, present at such third meeting as aforesaid, or at any other subsequent meeting, to elect, if they shall by a majority determine to do so, one Commissioner, who shall be either a creditor or the mandatory of a creditor, and the same proceedings shall take place, and the same regulations apply, in regard to his election, as are hereinbefore provided in regard to the election of trustee, except that no decree of the Supreme Court, confirming his appointment, shall be necessary: Provided that no person shall be eligible to be a Commissioner who is disqualified to be a trustee, and provided that, after every such election of a Commissioner, the Master of the Supreme Court, or the Resident Magistrate, as the case may be, shall annex a record thereof to the proceedings in the insolvent estate; and provided that the trustee shall, in all cases when a Commissioner has declined to act, or died, or resigned, or become incapacitated, call a meeting of creditors, for the purpose of electing, should they, by a majority, think proper so to do, a new Commissioner, and such new Commissioner shall be elected in the manner hereinbefore provided: And provided, that no Commissioner shall be entitled to, or receive, any species of salary, commission, allowance, or remuneration whatever, from the insolvent estate, for his services as Commissioner; and provided, that when the question of electing a Commissioner shall be sought to be submitted to any meeting of creditors other than the third meeting, a public notice of not less than fourteen days, shall be given in the "GOVERNMENT GAZETTE," that such a question will be submitted to such meeting.

Duties and powers of Commissioner.

86. It shall and may be lawful for the said Commissioner, when such shall be elected as aforesaid, to superintend the proceedings of the trustee, give his advice and assistance in the management of the estate, inquire, from time to time, into the situation thereof, and of every part thereof, examine all the accounts of the trustee regarding the said estate, require from the trustee all such reasonable explanation or information as he or they may, from time to time, demand, touching any matter or thing belonging to the administration of the said estate, and assist the Master of the Supreme Court in assessing the compensation to be paid to the trustee.

Commissioner may call general meeting of creditors.

87. It shall and may be lawful for the Commissioner to call, at any time, a general meeting of the creditors, and to make to such meeting such reports or representations, in regard to any matter or question respecting the administration of the insolvent estate as he shall deem necessary or expedient; and the trustee shall pursue the directions of the greater part of the creditors attending such meeting: Provided always, that fourteen days' notice, at the least, shall be given of every such meeting, and of the purpose thereof, in the "GOVERNMENT GAZETTE" and in a local paper.

(A) See sec. 60, ante.

88. Any trustee who shall neglect, or refuse, to give to any Commissioner any such information concerning the situation and administration of the insolvent estate, or any such insight into the accounts thereof, as the said Commissioner is, as aforesaid, authorised and empowered to demand and require, shall be deemed and taken to have misconducted himself in his trust, and may thereupon be removed in manner and form as hereinbefore provided, from the office of trustee.

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Trustee neglecting to give to Commissioner information lawfully required, may be removed from office.

89. The trustee or trustees shall, after being confirmed, forthwith call in and collect all debts due to the estate, and, for that purpose, they shall, by advertisement in the "GOVERNMENT GAZETTE," summon all debtors to pay, or cause the same to be paid, to them, at such time and place as shall be therein appointed for that purpose; and any person neglecting or refusing to make such payment, and being afterwards sued for any such debt, shall, if the said trustee or trustees obtain a judgment against him, and if he shall not show cause, to the satisfaction of the Court awarding such judgment, for such neglect or refusal, pay to the said trustee or trustees double costs of suit, for the benefit of the said estate; and the said publication shall be deemed notice thereof to all persons who may reasonably be presumed to have seen the same. And the said trustee or trustees shall also proceed to set aside, and, if necessary, by legal process, all such payments, alienations, and pledges, made by any person whose estate shall be sequestered as insolvent, as are hereinafter particularly described, and declared to be null and void, precisely as if the money, or other property, delivered or pledged, had belonged to the said trustee or trustees at the time of the making of such payments, alienations, or pledges respectively.

Collection of debts due to estate.

Double costs may be awarded against judgment debtor.

90. Every alienation, transfer, gift, cession, delivery, mortgage, or pledge of any goods or effects, movable or immovable, personal or real, made by any insolvent, at a time when it shall be made to appear, by proof, that his liabilities, fairly calculated, exceeded his assets, fairly valued, shall, unless the same shall have been made bona fide, and upon just and valuable considerations, be null and void. And whenever the immediate and necessary effect of any such alienation, transfer, gift, cession, delivery, mortgage, or pledge, as aforesaid, shall be to cause such an excess of liabilities over assets, then the same, to the extent to which such excess shall have been thus produced, shall be null and void (A).

Certain dealings by insolvent with his property to be null and void, unless made bona fide and for value.

91. Any settlement of property not being a settlement made before and in consideration of marriage, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor become insolvent within two years after the date of the settlement, be void against the trustees in the insolvency, and shall, if the settlor becomes insolvent at any subsequent time within five years after the date of the settlement, be void against the trustee in the insolvency if it can be proved (B) that the settlor was at the time of making the settlement unable to pay all his debts (C) without the aid of the property comprised in the settlement,

Settlements made by insolvent, how affected by the insolvency.

(A) A post-nuptial contract comes within this sec. so as to make the property of both spouses, even that acquired before marriage, liable for the debts (*In re Kincade's Estate*, 4 N.L.R. 19). See also *Trustees of Fuller's Estate v. E. Fuller*, 4 N.L.R. 37.

(B) Cf. 46 & 47 Vic. c. 52, s. 47, which appears to lay upon the party claiming under the settlement the onus of proving the facts necessary to support the

settlement; whereas the Natal Law throws the burden of proof necessary to avoid the settlement on the Trustee in the insolvency.

(C) By assets readily available (*Ex pte. Russell*, 49 Ch. D. 588; 51 L.J., Ch. 521); but the settlor's life interest ought to be taken into account in his favour (*Ex pte. Trustee, In re Lowndes*, 18 Q.B.D. 677).

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Covenants in consideration of marriage for future settlement on wife or children.

What is included in term "settlement."

What transactions to be deemed undue preferences, and void.

Alienations and payments made in contemplation of insolvency for benefit of creditor.

Alienations and payments made in contemplation of insolvency for benefit of surety.

Alienations, &c., made in the usual and ordinary course of business to be deemed bona fide.

and that the interest of the settlor in such property had not passed to the trustee of such settlement on the execution thereof. Any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested, or contingent in possession, or remainder, and not being money or property of, or in right of his wife, shall, on his becoming insolvent, before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the trustee in the insolvency. Settlement shall, for the purposes of this section, include any conveyance or transfer of property.

92. Every alienation, transfer, cession, delivery, mortgage, or pledge of any goods or effects, movable or immovable, personal or real, and every payment made by any insolvent to any creditor, such insolvent at the time contemplating the sequestration, either voluntary or otherwise, of his estate, and intending thereby to prefer, directly or indirectly, such creditor before his other creditors, shall be deemed to be an undue preference, and is hereby declared to be null and void. And every such alienation, transfer, cession, delivery, mortgage, or pledge, as aforesaid, made by any insolvent to any person whatever, such insolvent, at the time contemplating, as aforesaid, the sequestration of his estate, and intending thereby to prefer, directly or indirectly, any creditor before his other creditors, shall be deemed to be an undue preference of such creditors, in so far as he shall have been benefited thereby, and the trustee or trustees shall be entitled to recover the amount or value of such undue preference from the creditor so preferred (A).

93. Every alienation, transfer, cession, delivery, mortgage, or pledge of any goods or effects, movable or immovable, personal or real, and every payment made by any insolvent, with the intention of thereby benefiting any person who, not being a creditor of such insolvent, would yet have become liable for the amount paid, satisfied, or secured by the insolvent, in case it had not been so paid, satisfied, or secured, either in the character of a surety for such insolvent, or in some character by law analogous thereto, such insolvent, at the time of contemplating the sequestration, either voluntary or otherwise, of his estate, shall be deemed to be an undue preference, and the trustee or trustees shall be entitled to claim and recover from the person so intended to be benefited, whatever amount the insolvent shall have paid, satisfied, or secured, in discharge or relief of such person's liability.

94. Every alienation, transfer, cession, delivery, mortgage, or pledge, as aforesaid, and every payment made by any insolvent to any creditor in the usual and ordinary course of trade or business, shall, prima facie, be held and taken to have been or given bona fide, and without an intention to give to such creditor any preference, although such insolvent may, at the time, contemplate the sequestration of his estate as insolvent, and in every such case it shall be necessary for the trustee or trustees seeking to set the same aside, to show the existence of some collusive arrangement, mutual understanding, or common consent, between the insolvent and the creditor, the one to give, and the other to get, a preference over the other creditors of the insolvent under colour of a transaction in the usual and ordinary course of trade or business.

(A) See the following cases decided on the corresponding section of the repealed Insolvent Ordinance:—*Standard Bank v. Hess*, N.L.R. 1876, 29;

*Miller v. Nathan Bros.*, 7 N.L.R. 125; *Laatz v. Van Rooyen*, 8 N.L.R. 230; *Payn's Trustees v. Bank of Africa*, 5 N.L.R. 231.

95. Every payment obtained by any creditor before the making of the order for sequestration, by means, or under colour of legal process against the insolvent, shall be deemed an undue preference, and be null and void, when and as often as such payment shall have been obtained or facilitated by connivance of the insolvent, or by collusion between such insolvent and such creditor, such insolvent, when so conniving or colluding, contemplating the sequestration of his estate, and intending to give such creditor, or allow such creditor to get a preference above the other creditors of such insolvent.

Law 47, 1887.  
Undue preferences obtained under colour of legal process.

96. In every case in which any person, whether actually a creditor or not, shall be obliged, by virtue of the 92nd, 93rd, or 95th sections of this Law, to restore or repay, as the case may be, for the benefit of the insolvent estate, any alienation, transfer, cession, delivery, mortgage, or pledge, or any payment, as having been an undue preference, such person shall not be allowed to claim or prove, as a debt, the amount of what he shall have so restored or repaid, but shall wholly forfeit such amount as regards the insolvent, in case such undue preference was received by such person by or through any collusive arrangement, mutual understanding, or common consent between such person and the insolvent, the one to give, and the other to get, such undue preference.

Persons receiving an undue preference through collusion forfeit their debts.

97. It shall and may be lawful for the trustee or trustees of any insolvent estate, in any suit or action which he may cause to be instituted against any person, for the restoration or repayment of any matter, money, or thing, alleged to have been given or paid by the insolvent, by way of undue preference, or claim, amongst other things, that the defendant, in such suit or action, may be declared, by the judgment of the Court, in which such suit or action shall be pending, to have forfeited in regard to the insolvent estate, the amount in which he shall be found to have been unduly preferred, by reason of the collusive arrangement, mutual understanding, or common consent, in the last preceding section mentioned, and the question of such forfeiture shall be tried and determined together with the other questions in the case; and in case it shall not be necessary to institute any suit or action against persons who shall be alleged by the trustee or trustees to have been unduly preferred, the right of any such last mentioned persons, to prove a debt, in respect of the amount or value of the matter, money, or thing, by them restored or repaid, shall, if disputed, be determined in manner and form as is hereinbefore provided for the regulation of the proof of debts.

Question of forfeiture, how to be tried.

98. In case any creditor of any insolvent shall have received from such insolvent an undue preference, but under circumstances which do not, by force and virtue of the 96th section of this Law, occasion a forfeiture of the value or amount of such preference, then in case such creditor shall have received such undue preference in respect of any bill of exchange or promissory note, with recourse on other parties, which was payable by the insolvent, and held by such creditors, or in any respect of any debt of the insolvent, for which such creditor had any security, which, by reason of the act of the insolvent, constituting the undue preference, such creditor has bona fide given up, discharged, or in law precluded himself from enforcing, such creditor shall not be liable to restore or repay, to the trustee or trustees, the value or amount of such undue preference, unless the trustee will indemnify, and save him harmless, in respect of whatever loss such creditor would sustain, in case he were unconditionally condemned and adjudged to restore the value or amount aforesaid, and which loss such creditor would not have sustained, in case he had never received from the insolvent the payment, or other satisfaction, constituting such preference.

Creditors who have received undue preference not to be obliged to restore or refund in certain cases, unless indemnified.



**Law 47, 1887.**

Certain purchases made bona fide, without notice, and for value, from person holding under void transfer, protected.

99. If any person shall lawfully, bona fide, and without notice, purchase or acquire any bills of exchange, promissory notes, or other securities for money, or any goods or effects, movable or immovable, personal or real, which have been alienated, transferred, given, ceded, or delivered, by any insolvent, under circumstances, or in a manner, declared by any of the preceding or succeeding sections of this Law, to be null and void, from any person to whom such bills, notes, goods, or effects, were so alienated, transferred, given, ceded, or delivered, by any true bargain or agreement upon just and valuable consideration, nothing contained in this Law shall extend, or be construed to extend, to annul or affect any right which any such person has lawfully, bona fide, and without notice, purchased or acquired in such bills or notes, goods or effects; but in all such cases the person to whom the same were alienated, transferred, given, ceded, or delivered, by the insolvent, shall be bound and obliged to pay the true value of all such goods and effects, by them disposed of to the third party, to the trustee or trustees of the insolvent estate, for the benefit of the creditors thereof.

Discharges made by insolvent of debts or securities, while contemplating insolvency, void as against trustee.

100. All acquittances, surrenders, or discharges of any just debt, or of any security for any just debt, or other matter or thing, payment or delivery of which has not been actually and bona fide received, made by any insolvent, while contemplating the sequestration of his estate, having the effect to deprive his creditors of the benefit of any debt, or other matter or thing, shall be, and are hereby declared to be, as against the trustee or trustees of such insolvent, null and void; and in every case in which the person accepting from the insolvent any such acquittance, surrender, or discharge aforesaid had, at the time of accepting the same, actual knowledge or reasonable notice that the effect of the same, if undetected, would be to deprive the creditors in the insolvent estate of the debt, or other matter or thing, in question, such person shall, besides making good such debt, matter, or thing, to the trustee or trustees of the insolvent estate, be obliged to pay to such trustee or trustees, a further sum, equal to the value of the debt, or other matter or thing, originally due and owing wrongfully acquitted, surrendered, or discharged, or attempted so to be.

Penalty for knowingly accepting any such discharge surrender or the like.

101. All alienations, transfers, gifts, cessions, deliveries, mortgages, or pledges of any goods or effects, movable or immovable, personal or real, belonging to the insolvent estate, and all payments, and all acquittances, surrenders, and discharges of any just debt due to such insolvent estate, or of any security for any such just debt, or of any other matter or thing belonging or owing to the said estate, made by any insolvent after any order for the sequestration of his estate has been made, and before the making of the order of Court allowing and confirming, as hereinafter mentioned, the account and plan of distribution to be framed by the trustees, shall be, and are hereby declared to be, null and void, the several payments and alienations which such insolvent is, by virtue of the 55th Section of this Law, rendered competent to make, alone excepted.

Alienations, &c., made by the insolvent after order for sequestration and before confirmation of account and plan of distribution, void.

Exceptions.

102. All payment or satisfaction made to any insolvent by any person who was the debtor of such insolvent at the time of the making of any order for the sequestration of the insolvent's estate, after the making such order, shall be null and void; except only, that where the sequestration of such estate shall have been adjudged at the instance of the creditors thereof, all payment or satisfaction, really and bona fide made to any such insolvent, or to any person legally entitled to receive the same on his behalf, before such sequestration has been adjudged, shall be valid and effectual, in case any such person as aforesaid making such payment or satisfaction, had not, when so doing, notice of any order for the sequestration of the estate of the insolvent having been made.

Payments to insolvent, when void.

103. Every provision hereinbefore contained relative to what shall be deemed to be undue preferences, made by persons contemplating the sequestration of their own estates, and to the avoiding of the same, and to the forfeiture, under certain circumstances, of the amount of every such preference, shall be deemed and taken to apply, mutatis mutandis, to preferences given out of the assets of the estates which they administer by persons legally invested with the administration of the estates of deceased persons, and of persons legally or actually incapable of the administration of their estates, when such persons, so invested, contemplate the sequestration of the estates which they administer, and intend to prefer some one or more creditors of any such estate before the other creditors thereof.

Law 47, 1887.  
Provisions relative to preferences to apply to persons administering the estates of other persons.

104. If at the trial of any action brought for the purpose of setting aside any alleged undue preference under the provisions of this Law 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 (A).

Presumption of contemplated sequestration.

105. It shall and may be lawful for the trustee or trustees of the insolvent estate of any deceased person, or of the insolvent estate of any person legally or actually incapable of the administration of his estate, to demand and recover, either from the person legally administering such estate before the sequestration thereof, and by whom any such undue preference shall have been given, out of the assets of such estate, or from the person to whom, or for whose benefit such undue preference shall have been given, the value or amount of such undue preference, or such trustee or trustees may sue such persons successively: Provided always, that it shall not be competent for any such trustee or trustees to require the restoration or repayment of such undue preference, or of the amount thereof, from both such persons as aforesaid concurrently, or to recover from them both, when sued successively, more than the single value or amount of such undue preference, together with the costs and charges of such trustee or trustees.

Trustee of any such insolvent estate entitled to recover, either from the administrator preferring, or from the creditor preferred.

106. It shall and may be lawful for the trustee or trustees to agree, if he or they should think fit, to any offer of composition made by any debtor of the insolvent estate who is himself insolvent, and to compound with any debtor to the insolvent estate, and take any reasonable part of the debt in discharge of the whole, or to give a reasonable time, or take security for the payment of such debt, or to submit any dispute between them and any person concerning or affecting the said estate to the determination of arbitrators, to be chosen by the trustee or trustees, and the party with whom they shall have such dispute, and the award of such arbitrators shall be binding on all the creditors: Provided always, that previous notice of their intention so to agree to any offer of composition, or to compound any debt, or submit any dispute to arbitration, has been given for fourteen days, at least, by advertisement, in the "GOVERNMENT GAZETTE" and in a local newspaper. And for the purpose of such offer of composition, the trustee signing, if more than one, shall reckon only as one creditor in number and value.

Trustee may compound or submit to arbitration upon notice thereof.

(A) The burden of proof is on the plaintiff in an action brought under this section (*Sutton's Trustees v. Merrick & Co.*, 12 N.L.R. 144).

## Law 47, 1887.

As to sale of estate by trustees, conditions of sale, &c.

107. The trustee or trustees shall, subject to the directions of the creditors given in manner hereinbefore provided, forthwith proceed to make sale of all the property belonging to the said estate, movable and immovable, giving due notice thereof in the "GOVERNMENT GAZETTE," and also such other notice as they shall think fit: Provided that from the sale of the said movable property shall be excepted, until the creditors shall determine thereon, the wearing apparel, bedding, household furniture, and tools of trade, of the insolvent and his family; and provided, that the sale of all immovable property shall take place in such manner, and under such conditions, as shall be determined on by the majority in value, of the creditors present at any meeting duly summoned: Provided, however, that such conditions shall be subject to the approval or disapproval of the Supreme Court, or of any Circuit Court, on the application of any person interested in the due administration or reversion of the estate under sequestration (A).

As to wearing apparel, tools, &c., of insolvent.

108. It shall and may be lawful for the said trustee or trustees, with the consent of the majority in value of the creditors, who shall have proved their debts, present at any meeting thereof, and of the purpose of which twenty-eight days' notice shall have been given in the "GOVERNMENT GAZETTE," to permit the said insolvent to retain, for his own use, the whole, or such part of his wearing apparel, bedding, household furniture, and tools of trade, excepted from the sale of his movable property, as the said creditors shall agree to allow to the said insolvent: Provided, that every such permission shall be subject to the approval or disapproval of the Supreme or any Circuit Court, on the application of any person interested in the due administration of the estate.

Arms, horse, and accoutrements of volunteer exempt.

109. The arms and accoutrements (B) of every member of the Volunteer Force, who has been adjudged insolvent, and the horse used in the ranks by any such member, shall be exempt from the sale of the movable property of the insolvent.

Creditors to choose a bank with which trustee shall open an account and lodge the moneys of the estate.

110. It shall and may be lawful for, and shall be the duty of, the creditors of any insolvent estate, at the meeting held for the election of trustees, immediately after such election, in case such election shall take place at such meeting, and in case such election shall not then take place, then, immediately after the votes of the said creditors, in regard to such election, shall have been given to nominate and appoint some certain bank or banks within this Colony, with which bank or banks it shall be the duty of the trustee or trustees of such estate to open an account, and in case of a difference of opinion amongst the said creditors assembled at such meeting, the greater part, in value of the said creditors, shall determine upon the bank or banks to be so nominated and appointed as aforesaid, and from and after any such nomination and appointment of any such bank or banks, the trustee or trustees of such insolvent estate, whether chosen by the creditors, or provisionally appointed, shall, as soon as he or they shall receive any sum of money exceeding Twenty Pounds, belonging to such estate, open an account with such bank or banks in the name of the insolvent estate, and such sum, and every other sum exceeding Twenty Pounds, so received by him or them, shall, with all convenient speed, be paid into such bank or banks, to be placed to the credit of such account, and all checks or orders for the payment of any such money, out of the said bank or banks, shall truly express the cause of

(A) This sec. must be read together with the provisions of secs. 119 & 120—Per Gallwey, C. J., in *McEwan, In re*, 13 N.L.R. 51.

(B) Boots and undress uniform held to be within the meaning of "accoutrements" (*Estate of Halstead*, 9 N.L.R. 22).

such payment, and the name of the person in whose favour it is drawn, and shall be signed by all the trustees, or by one of them for himself and co-trustees: Provided, that in case the creditors of any insolvent estate shall neglect, in manner aforesaid, to nominate any such bank or banks as aforesaid, it shall be lawful for the trustee or trustees as aforesaid, to open an account with, and pay all such monies, as aforesaid, into any such bank or banks in this Colony as he or they shall select; and provided, that every provisional trustee appointed under this Law, before the meeting of creditors for the election of trustees, shall, pending such meeting open an account with, and pay all such monies, as aforesaid, into any such bank or banks in this Colony, as he shall select; and provided, that all trustees, whether provisional or elected, shall, in regard to the bank or banks with which such account as aforesaid shall be kept, and such monies as aforesaid lodged, pursue such directions as they shall, from time to time, receive from any general meeting of the creditors of the insolvent estate.

Law 47, 1887.

111. Any trustee who shall retain in his hands, or knowingly permit any co-trustee so to retain, any sum of money exceeding twenty pounds sterling, part of any insolvent estate, longer than until the first day after his receiving the same, upon which it shall be possible for him to pay the said sum, or cause it to be paid, into some such bank or banks as aforesaid, and who shall not have any just and lawful cause for so retaining the same, or shall employ, for his own benefit, or knowingly permit any co-trustee so to employ, any sum of money, part of any insolvent estate, shall forfeit and pay, for the benefit of the said estate, double the amount of the sum so retained or employed; and the said sum, so forfeited, shall be deducted out of any claim the said trustee may have against the said estate, and the surplus, if any, shall be recovered by action in any competent Court.

Penalty upon trustee retaining or employing money belonging to the estate.

112. The trustee or trustees shall keep an account, wherein they shall enter all property of the insolvent received by them, and all payments made by them on account of the insolvent's estate; which account every creditor who shall have proved, may inspect at all reasonable times; and it shall and may be lawful for the Master of the said Court whenever he shall think fit, to summon the said trustee or trustees, by writing, under his hand, to produce the said book, and the said Master shall, as often as he shall see fit, examine and inspect the same.

Accounts of the trustee.

113. The Master shall take cognizance of the conduct of trustees, and in the event of any trustee not faithfully performing his duties and duly observing all the requirements imposed on him by law, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Master, by any creditor in regard thereto, the Master shall enquire into the matter and take such action thereon as may be deemed expedient. The Master may at any time require any trustee to answer any enquiry made by him in relation to any insolvency in which the trustee is engaged, and may if the Master thinks fit, apply to the Supreme Court to examine on oath, the trustee or any other person concerning the insolvency. The Master may also direct a local investigation to be made of the books and vouchers of the trustee.

Powers of supervision by Master over trustees.

114. If any insolvent shall have entered into any agreement for the purchase or exchange of any estate or interest in any immovable property, it shall and may be lawful, for the trustee or trustees of such insolvent, either to abide by, execute, and sue for performance of such agreement, or abandon the same; and, if the said trustees shall not (upon being thereto required) elect whether they will abide by and execute such agreement, or abandon the same, the vendor, or person having

Powers of trustee in respect of agreements entered into by insolvents for purchase and exchange of immoveable property.

Law 47, 1887. made such agreement as aforesaid, or any one legally claiming under him, shall be entitled to apply, by motion, to the Supreme Court, or to any Circuit Court, who may thereupon order the trustees to deliver up any such agreement, and the possession of the premises, to the vendor or person so agreeing as aforesaid, or any one claiming under him, or may make such other order therein, as the said Court shall think fit: Provided, that nothing herein contained shall prevent such vendor, or person having made such agreement as aforesaid, from suing the trustee or trustees in any competent Court, and recovering judgment against the insolvent estate, for any damage which he shall prove, to the satisfaction of such Court, to have been by him sustained by the non-fulfilment, on the part of the insolvent, of any such agreement, or deprive the said trustee or trustees of their legal defence against such suit.

Abandonment  
of leases.

115. When part of the insolvent estate shall consist of a lease or other interest in immovable property for a limited period, subject to a rent or other like periodic payment, it shall be lawful, save in respect of any part of such lease, or interest as shall be sublet, for the trustee, within three months after sequestration, if duly authorised thereto by a meeting of creditors, to decline by writing served upon the person entitled to receive such rent or payment (hereinafter called the lessor) to continue such interest, and thereupon, save as aforesaid, and as hereinafter otherwise expressly provided, such lease or interest and all charges thereon as against it shall cease and determine: Provided always that if the trustee shall so decline, the lessor may, within one month after being so served, require the trustee to assign to him the entire of the sublet part or parts, if any, subject to the sublease or subleases: Provided also that if the lessor shall not so require, the rent payable to the lessor for such sublet part or parts retained by the trustee, shall be settled by the Master of the Supreme Court, subject to appeal, with all reasonable speed, to the Court: Provided also, that if there shall be such assignment to the lessor of the sublet part or parts, the lessor and the sub-lessee shall have the same rights against one another as if the lessor were the insolvent and there had been no sequestration.

Owner of  
charge upon  
lease may re-  
quire trustee  
not to decline  
such lease.

116. Any person beneficially concerned in any charge upon any such lease or interest may, by himself or his agent, within the first two of such three months as aforesaid, require, in writing, the trustee not to decline such lease or interest, but to transfer or assign to such person the estate of such trustee in the same; and if there shall be more than one such person so requiring the trustee, the Master of the Supreme Court, subject to appeal to the Court, shall select among them, and the trustee shall in such case not decline such lease or other interest, but if previously authorised by the creditors as aforesaid to decline, shall in lieu thereof assign such lease or other interest to such person, and he shall, in respect of any matter thereafter to occur, be liable in his capacity as tenant, in like manner as the insolvent would have been if there had not been any sequestration: Provided always, that such person shall hold such lease or interest, subject to all charges on the same prior to and including his own charge in like manner as the insolvent would have been liable thereto if there had been no sequestration.

Saving of  
lessor's rights.

117. Nothing herein contained shall affect any right of the lessor against the insolvent estate of the assignee of the lease or interest in respect of any matter or claim occurring or arising before such lease or interest shall have been declined or assigned nor in respect of any forfeiture, penalty, or other claim expressly provided for in any instrument creating or affecting such lease or other interest, save so far as any waiver may be deemed to prevent such lessor from enforcing any such demand.

118. All demands in respect of mortgages or charges upon such lease or other interest shall exist against the insolvent estate so far as their security on such lease or interest shall have been defeated by the same being declined or assigned as aforesaid, in like manner as if they had not been originally secured by or charged on the same.

Law 47, 1887.  
Charges on lease when defeated by abandonment exist against estate.

119. The trustee shall not be authorised to sell any property of the insolvent estate which shall be subject to any valid special mortgage, otherwise than subject to such mortgage, unless it shall have been paid, or unless the holder of it, or some person competent to consent for such holder, shall consent in writing to such property being sold discharged from such mortgage, or unless the holder of another special mortgage on such property of earlier date or priority, or some person competent to consent for such last-mentioned holder, shall have consented in writing to such property being sold discharged from such, his earlier, mortgage: Provided always that nothing in this section shall take away from the latter mortgagee before any such sale the right of putting himself in the place of an earlier mortgagee by redeeming him.

Sale of property subject to mortgage.

120. The trustee may sell any property in the insolvent estate subject to any mortgage or charge thereon unless the holder of such mortgage or charge, or the agent of such holder, shall before such sale have required in writing a sale of such property discharged from such mortgage or charge, and the purchaser of any such property, subject to any mortgage or charge, and his property shall be liable thereto in like manner as the insolvent and his property would have been if there had not been any sequestration.

Purchaser's liability on sale subject to mortgage.

121. The proceeds of the sale of any property in the insolvent estate which was subject to any mortgage or charge, shall, subject to the expenses of such sale, be applicable to the payment of such of the said mortgages and charges, and interest thereon, as such property shall be sold free from according to their respective priorities, as against such property before such sale; and any balance left unpaid upon any such mortgage shall, save as otherwise preferentially secured in the insolvent estate, be deemed of the nature of a concurrent demand. There shall be included in the expenses of such sale any quit-rent, rate, tax, or other charge or assessment on the property mortgaged; any costs of advertising, or for otherwise giving publicity to any sale; all auctioneer's charges and commission; any sum expended in the upkeep or other preservation or improvement, or administration of the property mortgaged since the lodging of the insolvency petition; the commission or other remuneration of the trustee in respect of the realisation of the said property; any costs incurred in respect to the title deeds of the property, or otherwise, in making the mortgaged property available for sale; and if there are no other available assets, the costs of administration of the debtor's estate. If the proceeds of any property are insufficient to meet the expenses of the sale thereof such mortgage creditor or creditors shall be personally liable for the same. Rent or any other income or pecuniary advantage derived from any property specially mortgaged shall be deemed to be, and be included in the proceeds of the sale of such property, and be accounted for as such by the trustee.

Application of proceeds of sale of mortgaged property.

122. No merely general mortgage or general mortgage clause on any instrument executed after the promulgation of this Law, shall confer any preference on the mortgagee in respect of any property in the insolvent estate not in the lawful possession or under the control of such mortgagee at the date of the sequestration, and which at the time the deed was executed shall not have been delivered up to the mortgagee by deed of assignment as further security. No mortgage or pledge of movables shall confer any preference on the mortgagee or pledgee thereof

Preference by general mortgage.

Mortgage or pledge of moveables.

Law 47, 1887. until the deed constituting such mortgage or pledge is registered in the public debt registry office, and the date of such registration shall for all the purposes of this Law be deemed to be the date of the execution of any such deed: Provided that nothing in this section shall alter the common law of the Colony in reference to the pledge of movables by actual delivery to, and attention (A) by, the pledgee for the whole term of such pledge.

Special mortgagee not consenting to sale free of mortgage.

123. If any special mortgagee, whose consent to a sale of the mortgaged property, free from his mortgage, shall then be requisite, shall upon application by the trustee, in writing to him, or his agent, competent to assent, not consent, with all reasonable speed, to transfer his demand from the mortgaged property to the proceeds of the sale thereof, in usual order, so as that such sale may take place free from such mortgage, such mortgagee shall thereafter have no claim on foot of such mortgage against any part of the insolvent estate, other than the property so specially mortgaged to him, and shall not thereafter have any right of voting as a creditor by such mortgage demand.

Transfer of specially mortgaged property to mortgagee in satisfaction of his demand.

124. When the trustee shall be duly authorised thereto by a meeting of creditors, he may transfer, assign, or accede any specially mortgaged property to any special mortgagee thereof, subject to any prior special mortgages thereon, in satisfaction of the whole, or any part of such transferee's demand, and subject to or discharged from any charges subsequent thereto, as shall be by such meeting authorised, and as shall be agreed to by such transferee, and the transaction shall be deemed a sale within the provisions of section 120 hereof: Provided always, that any special mortgagee may apply to the Master of the Supreme Court to order the trustee to summon a meeting of creditors for the purpose aforesaid: Provided also, that any special mortgagee on such property, who would be injured by the proposed transfer, may, at his own risk, in respect of expenses, require the trustee to offer the property for public sale, on the terms of the proposed transfer, to the best and highest bidder, and such expenses shall be the first charge upon any price thereby realised.

Sale of property discharged from mortgages.

125. Nothing hereinbefore contained shall be deemed to lessen any such right as may have been vested heretofore in any trustee, to sell any property free from any charges thereon, other than special mortgages, save so far as any such charge shall be preferent to any special mortgage to which such property shall remain subject; nor shall anything in this Law affect the efficacy of any decree or order of any Court in reference to sales thereunder.

Certain vendors not entitled to reclaim property found in the estate.

126. No person, from whom any insolvent shall have purchased any property, movable or immovable, personal or real, and who shall have delivered, or caused or permitted such property to be delivered, to such insolvent, shall be entitled either to claim such property being in the sequestrated estate, or to claim to be preferred, in any way, for the price or value thereof, by reason alone that such property was sold by such person, to such insolvent, without any period having been stipulated, until the expiration of which period the price should not be payable, or upon any actual agreement, or tacit understanding, that such price should be paid, or payable forthwith: Provided, that nothing herein contained shall be deemed or taken to alter or affect any previous law in force in this Colony, in regard to the right of a vendor to rescind any

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(A) "Attention" is evidently a misprint for "retention." It is printed, however, as it stands in the original copy of the Law.

sale, and reclaim his property, on account of fraud and circumvention practised upon him by the purchaser, except only in so far as the matters aforesaid, hereby declared to be of themselves not sufficient to entitle any such vendor to claim again property sold and delivered, shall have been deemed to amount to, or to be conclusive evidence of, such fraud and circumvention; and provided also, that nothing herein contained shall apply to any case in which any such vendor shall, within ten days of the delivery of any property sold as aforesaid, reclaim, by notice, in writing, the possession of the said property, and proceed thereafter, without any unnecessary delay, to enforce the re-delivery of the said property by means of legal process. Law 47, 1887.

127. It shall and may be lawful for the Supreme Court, upon the application of any insolvent, to release, if it should so think fit, the estate of such insolvent from sequestration, whenever it shall be certified to the said Court, by the Master of the said Court, that all creditors, who have proved debts, or entered claims against such estate, have testified, in writing, their consent to such release (A), or whenever it shall be certified, by the said Master, that all the creditors, who have proved debts or entered claims as aforesaid, have been paid, or have had tendered to, or deposited for them, as the case may be, the full amount, as well principal as interest, of their several demands (B): Provided, that no such application to release any such estate from sequestration, under the provisions of this section, shall be capable of being granted until after the third meeting of creditors, as hereinbefore mentioned, shall have been held (C); and provided, that it shall be lawful for the said Court, before granting any such application as aforesaid, to make, or cause to be made, such enquiry relative to the existence of other just and lawful creditors who have neither proved or claimed as to the Court may seem meet, and thereupon to grant, or refuse, such application, and that either absolutely or conditionally, as to the said Court shall seem just; and provided, that no such release as aforesaid shall be construed to be a discharge of the insolvent, or to alter or affect, in any way, the rights of any creditors of any such insolvent, who have neither proved debts nor entered claims upon the insolvent estate, which rights shall be judged of, after any such release, exactly as if such estate had never been surrendered.

When all creditors consent or have been satisfied, estate may be released from sequestration.

128. The trustee or trustees of any insolvent estate shall, as soon as may be, and not later than six months after their appointment, unless upon application to the Supreme Court, upon sufficient cause to the satisfaction of the said Court, further time be given for that purpose, frame and lay before the Master of the said Court, an exact account and balance of the said estate, containing the proceeds of all sales and debts then collected, and an account of all debts still outstanding, and an inventory of all property and effects still unsold, and also all debts due by the said estate; and shall also form a general plan for distribution of the assets of the said estate, specifying, first, such creditors as are preferent by law, in the order of their legal preference, and secondly, the concurrent creditors, and, as nearly as may be, the probable balance

Account and plan of distribution, and when to be laid by trustees before the Master.

(A) Semble, the Supreme Court has no jurisdiction to grant release when no creditors have proved in the estate (*Insolvent Estate of Moodie*, 7 N.L.R. 61). But see *Estate of Ridgway*, 7 N.L.R. 182.

(B) This applies also to an assigned estate, see sec. 164 and *In re Burnup*, 17 N.L.R. 173.

(C) Where all parties agree to withdrawal of sequestration in favour of a composition scheme privately arranged the Court may cancel the order of sequestration although no meetings of creditors have been held (*In re Potgieter*, 19 N.L.R. 61).



Law 47, 1887. which will remain for division amongst them (A). And when, and as often, as the usual place of residence of any insolvent shall be in any Division of this Colony, other than Pietermaritzburg or the County thereof, the trustee or trustees of that insolvent shall, before laying the account and plan aforesaid before the said Master, or concurrently therewith, lay the same before the Resident Magistrate of such Division, in whose office it shall remain, for the inspection of creditors, for at least seven days; and every such Resident Magistrate shall cause to be affixed in some public place in or about his said office, a list of all insolvent estates in which such account and plan as aforesaid remains, for the time being, for inspection, together with the date of its intended transmission.

Preferential debts.

Wages.

Joint and separate estates of partners.

Concurrent debts.

Interest on debts.

Effect of insolvency on apprentices and artied clerks.

Transfer of indenture.

129. In the distribution of the property of the insolvent there shall be paid in priority to all other debts, and in addition to all other preferences and priorities (B) provided by any laws already passed, or hereafter to be enacted, all wages or salary of any clerk or servant in respect of services rendered to the insolvent during six months before the date of the order of sequestration, not exceeding fifty pounds: and all wages of any labourer or workman not exceeding fifty pounds whether payable for time or piece work in respect of services rendered to the insolvent during six months before the date of the order of sequestration. The foregoing debts shall rank equally between themselves and shall be paid in full unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves (C). In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate. Subject to the provisions of this Law all debts proved in the insolvency shall be paid *pari passu*. If there is any surplus after payment of the foregoing debts it shall be applied in payment of interest from the date of the order of sequestration at the rate of six pounds per centum per annum on all debts proved in the insolvency (D).

130. Where at the time of the order of sequestration, any person is apprenticed or is an artied clerk to the insolvent, the adjudication of insolvency shall, if either the insolvent or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement. And if any money has been paid by or on behalf of the apprentice or clerk to the insolvent as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the Court, thinks reasonable out of the insolvent's property to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the insolvent under the indenture or articles before the commencement of the insolvency and to the other circumstances of the case. Where it appears expedient to a trustee he may, on the application of any apprentice or artied clerk to the insolvent, or any person acting on behalf of such apprentice or artied clerk, instead of acting

(A) See *In re Mawson*, 14 N.L.R. 76, as an instance of a plan of distribution deficient in the formalities required by this section.

(B) See *In re Mawted*, 14 N.L.R. 61,

as to preference of debts due to the Colonial Government.

(C) Cf. 51 & 52 Vic. c. 62, sec. 1.

(D) Cf. 46 & 47 Vic. c. 52, s. 40, sub-ss. (3) to (6).

under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person (A). **Law 47, 1887.**

131. If any trustee shall neglect to lay before the Master of the Supreme Court any account by this Law 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 (B) shall summarily make such order thereupon, and impose such penalty for the non-observance thereof as to such Court shall seem fit and proper (C). **Failure of trustee to file accounts.**

132. As soon as the Master shall receive from the trustees any such account of the estate and plan for distribution, the same shall lie open in his office, for the inspection of the creditors, a reasonable time, to be appointed by the said Master, not being less than fourteen days from the advertisement thereof, according to the distance from Pietermaritzburg of the residence of any creditor who has proved a debt against the said estate; and the said trustee or trustees shall cause notice thereof to be given in the "GOVERNMENT GAZETTE," and that the Supreme Court will thereupon be moved to confirm and allow the said account and distribution of the estate. **Account and plan of distribution to lie open for inspection.**

133. It shall and may be lawful for the insolvent, or any party interested in the estate under sequestration, and for any creditor who may conceive himself aggrieved by the said plan of distribution, within the time aforesaid, to enter his objection; in writing, with the said Master stating the grounds thereof; and also, it shall and may be lawful for the Supreme Court to permit such objection to be entered at any time before the final confirmation of the said plan, upon sufficient cause to be shown to the satisfaction of the said Court, and upon such terms as the said Court shall impose. **Confirmation.**

134. Any person objecting to the said account, or plan of distribution, shall apply to the Supreme Court, on motion, calling upon the trustees, and also upon the party whose interest might be affected thereby, to show cause why the said plan should not be altered or amended, as the case may be; and thereupon it shall and may be lawful for the said Court, upon hearing the said parties, to make such order thereon as to the said Court shall seem fit: Provided that when any alteration or amendment shall be ordered in the said plan, whereby the interest of any party, who has not made appearance in the said Court, shall be affected, the same shall again lie open for inspection of the creditors, and notice thereof shall be given as aforesaid. **Objections of creditors.**

135. It shall and may be lawful for the trustee or trustees, after the expiration of the time appointed for the inspection of the said account and plan of distribution, and no objection being entered thereto, or if any objection has been stated, after the Court has made order thereon, as aforesaid, to apply to the Supreme Court, on motion, praying that the said plan may be allowed and confirmed by the Court; and thereupon it shall and may be lawful for the said Court to allow and confirm **Account and plan may be amended by Court on motion.**

(A) This sec. reflects the provisions of sec. 41 of 46 & 47 Vic. c. 52.

(B) The application is a matter for the full Court and cannot be heard in Chambers (*In re Mamojee Amod & Co.*, 14 N.L.R. 75). See also Act 39, 1896, s. 10, tit. "COURTS (SUPREME)."

(C) Trustee may be ordered to pay

personally costs of application (*In re Estate of Molla Ebrahim*, 17 N.L.R. 4). Trustee's commission allowed, although he had not filed his accounts within prescribed time, no injury having been done to the estate through the delay (*Insolvent Estate of Sutton*, 12 N.L.R. 276).

Law 47, 1887. the same (A) : and such allowance and confirmation shall have the effect of a final sentence of the said Court, except against such creditors as shall afterwards be admitted by the said Court, in manner hereinbefore provided, to prove their debts, and rank upon the said estate at any time before the final distribution thereof.

Distribution of estate.

136. After confirmation and allowance of the said account and plan of distribution, the trustees shall, upon the demand of the said creditors, distribute the said estate according thereto, and the remedy of any creditor to obtain payment of, and dividend due to him shall be, during the continuance in office of the said trustee or trustees, to the Supreme Court, or any Circuit Court, by motion.

Scheme of division.

137. If it shall, from the nature and circumstances of the insolvent estate, be found impracticable to frame the plan of distribution aforesaid, so as to arrange the distribution according thereto, of the whole of the insolvent estate, then the trustee or trustees shall, as soon as may be, after the allowance and confirmation of the said plan, and not later than six months after such allowance and confirmation, unless upon application to the Supreme Court, upon sufficient cause to the satisfaction of the said Court, further time be given for that purpose, frame and lay before the Master a scheme of division which shall contain an account of such of the matters hereinbefore required, in regard to the account and plan of distribution in the 128th section of this Law mentioned, as the then state and condition of the assets of the insolvent estate shall permit, and shall duly apportion the funds in hand amongst the creditors, and the like proceedings, in all respects, shall be had and taken relative to the said scheme of division, as are hereinbefore prescribed in regard to the said account and plan of distribution, and after the allowance and confirmation of such scheme of division, the dividends declared thereby shall be distributed, and there shall be the like remedy as aforesaid for obtaining the same; and if it shall happen that the whole of any insolvent estate shall not be included in one such scheme of division as aforesaid, then, as soon as may be after the framing of the same, but not later (except as hereinbefore excepted) than six months after the date on which the six months above fixed, for the framing of the first scheme of division, shall have expired, a second such scheme of division shall, in like manner and form, be framed, and proceeded on, and so on from six months, until the whole estate shall have been wound up, and finally distributed.

Same course to be followed in respect to contribution account, when filed, as in case of distribution account.

138. In the event of a trustee filing an account and plan of contribution the same course shall be followed as in the case of an account and plan of distribution, but the Supreme Court shall require to be furnished by the Master of such Court with a full report on the said account (B) specifying the reasons for the contribution claimed and the accuracy of the account in detail, and that the several items in the said account are supported by vouchers, and the said Court shall, if satisfied upon the report of the Master and such further proofs as may be produced to or be called for by the Court, grant a provisional order allowing and confirming the said account and plan of contribution : Provided, however,

(A) The Court may authorise insertion of an item omitted in the account (*In solvent Estate of Shapley & Co.*, 17 N.L.R. 3); or where the account has already been confirmed may direct its amendment by the Master so as to bring it into harmony with Law (*In re Gadsden*, 18 N.L.R. 14).

(B) Objections to a contribution account will not be heard in the absence of a report from the Master (*In re Walter*, 14 N.L.R. 135). See also note to sec. 17, ante, citing *In re Dodd*, 13 N.L.R. 49.

that in the event of the trustee requiring to enforce against any creditor a claim to contribution for any sum of money, which, by the said account and plan of contribution, any such creditor shall be liable to pay an application on motion, of which notice shall be duly served on the said creditor, shall be necessary, and the Court, upon hearing the said application, shall make an order directing the creditor to pay, or shall grant such other order as may to justice appertain.

Law 47, 1887.

139. The trustee or trustees shall, whenever any dividend is payable, give a public notice in the "GOVERNMENT GAZETTE," stating that such dividend is in course of payment, and calling upon all creditors entitled thereto to apply for and receive the same; and in case any dividend or dividends shall remain unclaimed in their hands for the space of six months after the date of the confirmation of the account by virtue of which such dividend is payable, then it shall be the duty of the trustee or trustees to deposit such unclaimed dividend or dividends with the Master of the Supreme Court (A); and if any trustee or trustees shall neglect to deposit with the said Master any dividend remaining unclaimed for the space and term aforesaid, such trustee or trustees shall forfeit and pay, for the benefit of the Colonial Treasury, any sum not exceeding the amount of the dividend or dividends unduly retained, which shall be awarded by the Supreme Court; and it shall be lawful for the said Master to summon any such trustee or trustees to show cause, before the said Court, why he or they should not be adjudged to pay to him the amount of any such dividend or dividends, as also the fine or forfeiture aforesaid, and the said Court shall summarily make such decision thereon as to it shall seem meet; and the said Master shall be, at all times, after the confirmation and allowance of the plan of distribution, authorised and entitled to call upon such trustee or trustees to show, by vouchers, or other sufficient proof, what number of the dividends payable are actually paid; and, for the purpose of the penalty hereby imposed, any neglect or refusal to produce such vouchers or other sufficient evidence, to prove the payment of any given dividend, shall amount to prima facie proof that the same is still unclaimed; and it shall be lawful for the Supreme Court, in case of disobedience, by any such trustee or trustees, to any order or decision of such Court, made by virtue of this, or of the 136th section, to direct the sum in question to be levied by attachment and sale of the goods of the offender, or otherwise to commit such offender to prison, until he shall obey such order, or until the said Court shall order his liberation, or, otherwise, to apply both remedies, and that either concurrently or successively as the Court shall see fit.

Notification of payment of dividend.

Unclaimed dividends to be paid to Master.

140. When any trustee desires to resign his office, or so soon as the plan of distribution of the insolvent estate has been confirmed, it shall be lawful for such trustee to apply to the Supreme Court, by motion, for leave to resign his office, and to be discharged and acquitted of the said trust; and if no valid objection be stated, and if the Court be satisfied that the trustee has complied with the regulations of this Law, so far as regards him, his application may be granted by the said Court; but if any objection be stated thereto, the Court shall proceed to determine the same in a summary manner, and shall make such order thereon as they shall think fit; and if the application of the trustee for leave to resign be granted, the said Court shall thereupon make such order as they shall think fit for the preservation and administration of the estate, until a new trustee be chosen and confirmed, and for the discharge and acquittance of the said trustee, and for the security and payment of any

Resignation and discharge of trustees.

(A) See Law 49, 1884, ss. 3 and 12, tit. "COURTS (SUPREME)."

Law 47, 1887. unclaimed dividends to the parties entitled to the same: Provided always, that no order of the said Court, allowing the said trustee to resign, shall prevent the trustee, thereafter chosen and confirmed in his stead, from calling upon him to account for any part of his conduct as trustee, prior to his resignation; and provided always, that before making any application for leave to resign, the trustee shall make out a full statement of his accounts, and of the situation of the insolvent estate, and shall call a meeting of the creditors to consider the same, of which meeting at least twenty-eight days' notice shall be given by advertisement in the "GOVERNMENT GAZETTE," intimating the purpose of the meeting; and also that the aforesaid statement will, in the meantime, lie open for their inspection in the office of the Master of the Supreme Court.

Application of trustee for release.

141. When the trustee has realised all the property of the insolvent, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, and has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the Supreme Court may, on the application of the trustee, take into consideration the report of the Master, to be framed by him in reference to the application, and any objection which may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly (A). Where the release of a trustee is withheld the Court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty. An order of the Court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the insolvent, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact. Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office (B).

Contracts, &c., to persuade creditors to compound, or to sign certificate void.

142. All preferences, gratuities, securities, or payments granted, made, or promised by any insolvent to, or in trust for, any creditor of such insolvent, and all secret and collusive agreements and transactions intended to persuade any such creditor to accept any offer of composition, or security for composition, shall be, and are hereby declared to be, null and void; and any creditor who shall have received any money, matter or thing, or promise of the same, as a consideration for, or inducement to, such creditor to accept any such composition, shall forfeit a sum equal to the amount of whatever debt such creditor originally proved upon the insolvent estate, together with the amount of whatever money, matter, or thing he may have received from such insolvent, as such consideration or inducement as aforesaid, and also the amount of any composition which may have been paid or secured to such creditor; and all such moneys, matters, or things hereby declared to be claimable or recoverable from any such creditor, shall and may be sued for and recovered in any competent Court, by any person who was a creditor of such insolvent estate at the time of the acceptance of any such composition, for the use and benefit of such person jointly with that of all such other persons who were also creditors at the time aforesaid, as shall, within twenty-eight days after a public notice in the "GOVERNMENT

(A) See *In re Oppermann*, 12 N.L.R. 367, with regard to the position of proving creditors.

(B) This sec. is adapted from sec. 82 of 46 and 47 Vic. c. 52.

GAZETTE," signed by the person purposing to sue, join and concur in the bringing of such suit, and agree to contribute to the expense thereof; but no such notice need set forth the name of the party intended to be sued, or state more than that legal proceedings are intended to be taken under this section, in a certain case, of which the particulars may be learned from the person signing the said notice.

Law 47, 1887.

143. In every case any residue of the insolvent estate, which may remain after the payment of all claims thereupon, shall be paid to the insolvent or his legal representatives, to whom shall also be restored the property of, and in all debts and assets belonging to the estate which may, after the satisfaction as aforesaid, of all claims, remain or be outstanding (A).

Residue of estate to be paid to insolvent.

144. Any trustee becoming insolvent, and being indebted to the estate of which he was trustee, in respect of any sum of money improperly retained or employed by him, if he shall obtain his certificate and allowance thereof, shall not be discharged thereby, as to his future effects, in respect of the said debt, and such insolvent shall be for ever incapable of being again elected a trustee under this Law.

Insolvent trustee not discharged from debt and disqualified for the office.

145. Any insolvent who, after his certificate has been allowed, shall have any action brought against him for any debt, claim, or demand, due by him at the time his estate was surrendered or adjudged to be sequestrated, proved, or hereby made provable, or in any manner claimable, against his estate, may plead in general that the cause of action accrued before he surrendered his estate, or the same was sequestrated as aforesaid, and may give this Law and the special matter in evidence; and such insolvent's certificate, and allowance thereof, shall be sufficient evidence of the insolvency, surrender, or adjudication, and other proceedings precedent to the obtaining the said certificate and allowance thereof (B).

In action for debt provable in the insolvency, debtor may plead his certificate.

146. No writ of civil imprisonment for non-payment or non-satisfaction of any judgment or decree shall be granted or issued by the Supreme or any other Court of this Colony in cases in which the defendant, or other party against whom such writ of civil imprisonment is sought to be issued, shall prove to the satisfaction of the Court to which such application is made that such defendant, or other party, as aforesaid, has not property or means sufficient to satisfy in whole, or in part, the said judgment or decree. There shall be excepted from the operation of the above enactment (C).

No writ of civil imprisonment shall be granted against person who has no means to satisfy judgment.

A trustee or person acting in a fiduciary capacity (D), and making default when ordered to pay any sum in his possession, or under his control (E).

Exceptions.

(A) Cf. sec. 65 of 46 & 47 Vic. c. 52. Held in England that the bankrupt has no property in the surplus so as to be able to assign it by way of security, and he is not entitled to receive it till all the debts, &c., have been paid (*Ex pte. Sheffield, Re Austin*, 10 Ch. D. 434; 40 L.T. 15; 27 W.R. 622—C.A.)

(B) Cf. sec. 30, sub-s. 3, of 46 & 47 Vic. c. 52.

(C) Cf. sec. 4 of the Debtor's Act, 1869 (32 & 33 Vic. c. 62). See Act 22, 1896, ss. 55 & 56, tit. "COURTS (MAGISTRATES)".

(D) Held to include an auctioneer

(*Crowther v. Elgood*, 34 Ch. D. 691), a solicitor's town agent (*Litchfield v. Jones*, 36 Ch. D. 530), and a receiver (*Geut, In re*, 40 Ch. D. 190); but not a promoter of a company (*Phosphate Sewage Co. v. Hartmont*, 25 W.R. 743), or trustees ordered to pay the market value of bonds improperly sold (*Walker, In re*, 63, L.T. 237), or a partner receiving money on account of the firm (*Piddocke v. Burt*, 70 L.T. 553); and see generally *Marris v. Ingram*, 13 Ch. D. 338.

(E) See *Middleton v. Chichester*, 40 L.J. Ch. 237.

Law 47, 1887.

An attorney or solicitor making default when ordered to pay costs for misconduct as such, or when ordered to pay a sum of money in his character of an officer of the Court making the order (A).

An insolvent debtor making default in any payment for the benefit of his creditors of any portion of a salary, or other income, in respect of the payment of which the Supreme Court is authorised to make an order.

After confirmation of plan, insolvent may acquire property.

147. From and after the making of the decree aforesaid, confirming the account and plan of distribution of the insolvent estate aforesaid, or if there be more than one account, then the first account, the insolvent, although he shall not have obtained his certificate, and the allowance thereof, shall be competent to acquire and possess, for his own use, and as his own property, all such goods and effects, movable or immovable, personal or real, as may be purchased or acquired by him, or may revert, descend, or be devised, or come to him in manner whatsoever, other than by virtue of any right or reversion which was vested in the insolvent at the date of the order for the sequestration of his estate, precisely as if the estate of such insolvent had never been placed under sequestration (B).

Future property of uncertificated insolvent, how to be made available to creditors.

148. In every case in which any insolvent shall not have obtained the allowance of his certificate as hereinbefore mentioned, it shall and may be lawful for the trustee or trustees of the insolvent estate, should any such be, or for the Master of the Supreme Court, or for any creditor of the insolvent estate, to whom it shall appear, by such account and plan as aforesaid, or any such scheme of division as aforesaid, that any portion of his debt is still due and owing, to apply to the Supreme Court, or any Circuit Court, by motion, of which notice shall be given to said insolvent, for leave to issue execution against such insolvent, for any sum not exceeding the whole amount of the deficiency which shall, at the time of making such application, exist in the insolvent estate (C); and the said Court, upon being satisfied, by affidavit or otherwise, that a certain deficiency does so exist, and that there are reasonable grounds for believing that there are assets (D) belonging to the insolvent capable of satisfying the same, wholly or in part, shall allow a writ of execution to be issued, and such writ of execution shall be executed in the like manner as writs of execution issued upon judgments of the said Court, and every attachment or levy made thereunder, and every incident belonging thereto, as well in regard to the right of other writs of execution lodged in the hands of the Sheriff, or other proper officer of the law, to share in the proceeds levied and made, as otherwise shall be judged of upon the same principles which do, or shall, by law, belong to ordinary writs of execution; and the proceeds of every execution, levied under the provisions of this section, shall be paid by the Sheriff, or other proper officer of the law, to the trustee or trustees of the insolvent estate, if such there be, or, if there be none such, to the Master of the Supreme

(A) This includes default by a solicitor in payment of a balance found due to his client on taxation (*Re Rush*, L.R., 9 Eq. 147; *Re White*, 23 L.T. 387), or in payment of defendant's costs where the solicitor has sued without the plaintiff's authority (*Jenkins v. Fereday*, L.R., 7 C.P. 358). See also *Harvey v. Hall*, L.R., 16 Eq. 324; *Dudley, In re*, 12 Q.B.D. 44; *Strong, In re*, 32 Ch. D. 342.

(B) See *In re Peter Steel*, 19 N.L.R. 147.

(C) *In re Estate of Himanchal* (5 N.L.R. 225) gives an instance of such an application under the repealed Insolvency Ordinance.

(D) Connor, C.J., *In re Forsyth's Estate* (7 N.L.R. 59) threw the onus of proof of there being an available asset on the applicant, this being a decision under the repealed Insolvency Ordinance.

Court; and every such payment, by the said Sheriff, or other proper officer of the law, shall be deemed in law to be the distribution of the proceeds of the writ of execution, and the amount of any such proceeds of the writ of execution, and the amount of any such proceeds which shall be so paid to any such trustee or trustees, or to the said Master, after deducting thereout any costs which shall have been properly incurred by the party realising the same, shall be divided amongst all such creditors of the insolvent estate as shall, before the distribution thereof, claim to be admitted to participate in the same: Provided that the said trustee or trustees, or the said Master, as the case may be, shall distribute such proceeds rateably and proportionably amongst the creditors so claiming, except that if the said proceeds shall have arisen out of an execution issued at the instance of any concurrent creditor, such creditor shall receive a dividend greater by five shillings in the pound than that receivable by any other creditor of equal rank; and if by reason of there being preferent creditors in the said estate, or from any other cause the said recompense shall be deemed inadequate, it shall be lawful for the Master of the Supreme Court to award to such concurrent creditor such reasonable commission in lieu thereof as he shall think fit, subject to an appeal to the Supreme Court: Provided also, that no division of such proceeds shall be made by any such trustee or trustees, or by the said Master, until after twenty-one days' previous notice shall have been given in the "GOVERNMENT GAZETTE," and in a local paper.

Law 47, 1887.

149. It shall not be lawful for any person to make application for the process of any Court, or for leave to issue execution against any insolvent, 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.

Limitation of proceedings against insolvent for debt provable in the estate.

150. Where an insolvent is an officer or clerk or otherwise employed or engaged in the civil service of the Colony, the trustee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary as the Supreme Court, on the application of the trustee with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct. Before making any order under this section the Court shall communicate with the chief officer of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the chief officer to the terms of such payment (A). Where an insolvent is in the receipt of a salary (B) or income (C) other than as aforesaid, or is entitled to any half-pay or pension, or to any compensation granted by the Government, the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half-pay, pension, or compensation, or of any part thereof, to the trustee to be

Insolvency of officers, clerks, and employees in the Civil Service.

(A) Cf. sec. 53 of 46 and 47 Vic. c. 52, as to which see *Ex pte. Huggins*, 21 Ch. D. 85; 51 L.J., Ch. 935.

(B) Including the salary of a commercial traveller of £100 a year, terminable by a week's notice (*Ex pte. Brindle*, *In re Brindle*, 56 L.T. 498; 35 W.R. 596); and an actor's salary though payable by agreement, determinable, on assignment, by the manager without notice (*Ex pte. Shine*, *In re Shine*. [1892] 1 Q.B. 522), but not a collier's wages (*Ex pte. Lloyd*, *In re Jones*, [1891] 2 Q.B.

231), as to which see also the last par. of this sec., which is not in the Imperial Statute.

(C) Not including a voluntary allowance by the Secretary of State for India to an Indian officer on compulsory retirement (*Ex pte. Webber*, 18 Q.B.D. 11; 56 L.J., Q.B. 209), or the earnings of a professional man dependent on his own skill and knowledge (*Ex pte. Benwell*, *Re Tutton*, "bone setter," 14 Q.B.D. 301; 54 L.J., Q.B. 53; 51 L.T. 677—C.A.)



Law 47, 1887. applied by him in such manner as the Court may direct. Nothing in this section shall take away or abridge any power of any competent authority to dismiss an insolvent, or to declare the pension, half-pay, or compensation of any insolvent to be forfeited (A). No order for the attachment of the pay of any Volunteer, or of the wages of any servant, labourer, or workman, shall be made under the provisions of this Law.

Uncertificated insolvent may surrender new estate.

151. It shall and may be lawful for the Chief Justice of this Colony, or any other of the Judges of the Supreme Court, to accept if he shall see cause so to do, the surrender of the estate of any insolvent who shall not have obtained his certificate and the allowance thereof, at any time after the making of the decree of Court confirming the plan of distribution as aforesaid (B), and the estate of any such insolvent may be adjudged to be sequestrated at the instance of his creditors, as well those whose debts remain unsatisfied from any former sequestration (if there shall have been more sequestrations than one), as those whose debts have been incurred since the making for the last time, of such decree as aforesaid, precisely as if the estate of such insolvent had never been placed under sequestration.

Compulsory sequestration against uncertificated insolvent.

152. In addition to the several matters and things hereinbefore mentioned and declared to be respectively acts of insolvency—all of which are hereby declared to be applicable to the case of every such insolvent as is in the last preceding section mentioned, equally with every other person, the suffering of any attachment to be laid on, under, and by virtue of any writ of execution issued under and by virtue of the 148th section of this Law, shall be deemed to be an act of insolvency in the case of every such insolvent as aforesaid, and shall entitle any creditor or creditors whose debt or debts is or are of the competent amount, and has or have accrued since the making of the last decree confirming such account and plan of distribution as aforesaid, to petition in manner and form as by this Law is provided, to have the estate of such insolvent as aforesaid sequestrated for the benefit of his creditors.

Ranking of old and new creditors on insolvent estate, in case of new insolvency.

153. As often as the estate of any insolvent, remaining as aforesaid uncertificated, shall be again sequestrated as insolvent, the creditors under any former sequestration shall prove debts and rank upon the insolvent estate for whatever balance shall still be due and owing to them, respectively, according to the nature of their respective debts, whether preferent or concurrent, just as if the last order for sequestration had been the only such order ever issued.

Rule as to undue preferences by uncertificated insolvent.

154. In determining all questions relating to undue preferences given by any insolvent remaining as aforesaid uncertificated, and the proceedings thereon, and the consequences thereof, the creditors under any former sequestration, and those who have first become such since the making of the last decree confirming the account and plan of distribution, shall be considered as one body, and without difference or distribution, except in so far as in particular cases, the circumstances of the one class of creditors or of the other may affect, as matter of evidence, the application of the principles hereinbefore, in regard to such questions aforesaid stated and set forth.

(A) Civil appointments in general are held at the pleasure of the Colonial Government. See Law 22, 1874, s. 8, tit. "PENSIONS," and Act 21, 1894, ss. 20—24, tit. "CIVIL SERVICE."

(B) These words preclude the Court

from accepting the surrender of an estate on the petition of an uncertificated insolvent where the distribution account of the previous sequestration has not been confirmed (*In re Williams*, 16 N.L.R. 231).

155. 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 "NATAL GOVERNMENT GAZETTE" two lists, showing respectively—

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Lists of uncertificated insolvents to be published in the *Government Gazette* 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 this Law to be given by the said Master by advertisement in the "NATAL GOVERNMENT GAZETTE," shall be defrayed by Government.

156. Where a debtor is adjudged insolvent he shall, subject to the provisions of this Law, be disqualified for (A)—

Disqualifications of insolvents.

- (a) Being appointed or acting as a Justice of the Peace;
- (b) Being elected to or holding or exercising the office of Mayor, or Town Councillor of any Municipal Corporation;
- (c) Being elected to or holding or exercising the office of Chairman or Member of any Local Board.

The disqualifications to which an insolvent is subject under this section shall be removed and cease if and when—

Removal of disqualification.

- (d) The adjudication of insolvency against him is annulled, or
- (e) He obtains from the Court his discharge, with a certificate to the effect that his insolvency was caused by misfortune, without any misconduct on his part (b). The Court may grant or withhold such certificate as it thinks fit.

157. If a person is adjudged insolvent whilst holding the office of Mayor or Town Councillor of any Municipal Corporation, or Chairman or Member of any Local Board, his office shall thereupon become vacant (c).

Effect of insolvency on office of Mayor, Town Councillor, &c.

158. Every deed or instrument made or entered into between a debtor and his creditors, or any of them, or a trustee on their behalf (d), relating to the debts or liabilities of the debtor, and his release therefrom, or the distribution, inspection, management, and winding-up of his estate, or any of such matters, shall be as valid, effectual, and binding, on all the creditors of such debtor, as if they were parties to and had duly executed the same. Provided the following conditions be observed, that is to say:—

Composition deeds, &c., to be binding on all creditors, if following conditions observed.

- (1) A majority in number, representing three-fourths in value of the creditors of such debtor, whose debts shall respectively amount to ten pounds and upwards, shall, before or after the execution thereof by the debtor, in writing, assent to, or approve of, such deed or instrument: Provided, however, that in the computation of the requisite value the amount due to each creditor, after deducting the value of the securities held by him on the debtor's property, shall alone be reckoned.

(A) Cf. ss. 32—36 of 46 & 47 Vic. c. 52.

(B) See *Re Lord Colin Campbell*, 20 Q.B.D. 816.

(C) An enactment, similar in effect, with regard to members of the Legislative Council and Legislative Assembly

is contained in sec. 32 of Law 14, 1893, tit. "PARLIAMENT." See also sec. 38 of that Law.

(D) As to the application of this sec. to partnership estates, see *South African Loan, &c., Agency v. Birkett*, 6 N.L.R. 77.

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- (2) If a trustee or trustees be appointed by such deed or instrument, such trustee or trustees shall execute the same.
- (3) The execution of such deed or instrument by the debtor shall be attested by an Attorney or Solicitor or a Notary Public.
- (4) Within twenty-eight days from the day of the execution of such deed or instrument by the debtor, the same shall be produced and left with the Master of the Supreme Court of this Colony, for the purpose of being registered (A).
- (5) Together with such deed or instrument there shall be delivered to the said Master an affidavit by the debtor or some person able to depose thereto, or a certificate by the trustee or trustees, that a majority in number, representing three-fourths in value, of the creditors of the debtor, whose debts amount to ten pounds or upwards, have in writing assented to or approved of such deed or instrument, and also stating the amount in value of the property, and credits of the debtor, comprised in such deed.
- (6) Immediately on the execution thereof by the debtor, possession of all the property comprised therein, of which the debtor can give or order possession, shall be given to the trustee or trustees (B).
- (7) And immediately on the execution of any such deed a notice thereof in writing, specifying the immovable property, and rights affecting immovable property conveyed thereby, shall be given by the debtor, or the trustee, to the Registrar of Deeds.
- (8) Together with such deed or instrument there shall be delivered to the Master of the Supreme Court, a list showing to the best of the knowledge, information, and belief of the debtor or other person by whom the list is made, the debts and liabilities of every kind of the debtor, and the times when such debts and liabilities were contracted or incurred, and the considerations for the same, the names, residences, and occupations of his creditors, and the respective amounts due to them, and the securities held by them, and the estimated value of such securities.
- (9) A statement, showing to the best of the knowledge, information, and belief of the debtor, or other person by whom the statement is made, the debtor's property and credits, and the estimated value thereof.

Certain particulars of deeds to be registered by Master and advertised.

159. The date, names, and descriptions of the parties to every such deed or instrument, not including the creditors, together with a short statement of the nature and effect thereof, shall be entered by the said Master in a book to be kept exclusively for the purposes of such registration. Such entry shall be made within forty-eight hours after the deed shall have been left with the said Master, and a copy of such entry shall be published in the "NATAL GOVERNMENT GAZETTE" within ten days from the making of such entry.

Notice of list or statement to be given in Gazette within time directed by order of Court. Creditors may inspect, &c.

160. Notice of the leaving of such list or statement, and of any amendments or additions thereto shall be given in the "GOVERNMENT GAZETTE" within such time after such list or statement shall have been left, as the Supreme Court may direct in any rule or order framed for that purpose; and any person stating himself, in writing, to be a creditor of such debtor, may personally, or by attorney or agent, inspect the lists

(A) Where, under the repealed Insolvency Ordinance, the time had expired the Court could not extend (*In re Odell*, 5 N.L.R. 32), but see now sec. 161, post.

(B) The trustee is not entitled to claim books of account hypothecated under a Notarial Bond (*In re S. R. Kidd & Co.*, 15 N.L.R. 9).

or statements and any additions or amendments, and may, on application in such manner as the Supreme Court may order or direct, have a copy thereof or extracts therefrom. Law 47, 1887.

161. Every deed, instrument, or agreement whatsoever by which a debtor, not having been adjudged insolvent by virtue of this or any other Law which may be in force in this Colony, on such behalf conveys, or covenants, or agrees to convey, his estate and effects or the principal part thereof, for the benefit of his creditors, or makes any arrangement or agreement with his creditors or any person on their behalf for the distribution, inspection, conduct, management, or winding up of his affairs or estate, or the release or discharge of such debtor from his debts or liabilities, shall, within twenty-eight days from and after the execution thereof by such debtor, or within such further time as the Supreme Court, or any Judge thereof, sitting in Chambers, shall allow (A), be registered in the office of the Master of the Supreme Court, and in default thereof, shall not be received in evidence (B). All composition deeds between a debtor and his creditors must be registered.

162. Every such deed, on being so registered as aforesaid, shall have a memorandum thereof written on the face of such deed, stating the day, and the hour of the day, at which the same was brought into the office of the said Master for registration. Memorandum to be attached by Master.

163. The Master of the Supreme Court is hereby authorised and required, as soon as practicable after any such deed or instrument shall have been lodged with him for registration under the provisions of this Law, to call a meeting of the creditors named in such deed or instrument to be held within fourteen days after an advertisement in that behalf in the "GOVERNMENT GAZETTE," for the purpose of proving debts against the said assigned estate, or against such debtor, such proof of debts shall be made in a like manner and form to proof of debts in insolvent estates, and in the computation of the requisite number and value of such creditors, any creditor who shall hold a preferable security or lien upon any part of the assigned estate shall, in the affidavit produced by him, at the time of proving his debt, put a value upon such security so far as his debt may be thereby covered, and the amount due to such secured creditor, after deducting the value of the securities as so fixed by him, shall alone be reckoned: Provided always, that in all matters affecting the property over which any such secured creditor may hold security, or lien, the said creditor shall be reckoned in number and value for the full amount of his claim (C). Master must call a meeting of creditors for proof of debts.

164. From and after the registration of every such deed or instrument in manner aforesaid, the debtor and creditor, and trustees, parties to such deed, or who have assented thereto or are bound thereby, shall in all matters relating to the estate and effects of such debtor be subject to the jurisdiction which the Courts of this Colony have in virtue of this Law, and shall respectively have the benefit of and be liable to all the provisions of this Law, in the same or like manner as if the debtor had been adjudged insolvent, and the creditors had proved, and the trustees of such deed or instrument had been appointed trustees of such debtor's estate; and the existing or future trustees of any such deed or instrument, and the creditors under the same, shall as between themselves respectively, and as between themselves and the debtor and against Provisions of insolvent laws extended to the parties to such deeds.

(A) Where a deed, through inadvertence, has not been registered within this period it seems the Court will authorise registration provided the interval is not too long (*In re Daws, Ex pte. Bond*, 15 N.L.R. 115).

(B) The construction of this and sec. 162, discussed in *Savage & Hill and others, In re*, 14 N.L.R. 188.

(C) See application of this provision in *Egner, In re*, 14 N.L.R. 287.

**Law 47, 1887.** third persons, have the same powers, rights, and remedies, with respect to the debtor and his estate and effects, and the collection and recovery of the same as are possessed or may be used or exercised by trustees of insolvent estates or creditors with respect to the insolvent, or his acts, estate or effects in insolvency; and except where the deed shall expressly provide otherwise, the Court shall determine all questions arising under the deed according to the law and practice in insolvency, as far as they may be applicable, and shall have power to make and enforce all such orders as it would be authorised to do if the debtor in such deed had been adjudged insolvent, and his estate were administered in insolvency (A).

Execution against debtor to be stayed, except against absconding debtors.

165. After notice of the filing and registration of such deed has been given as aforesaid, no execution or other process against the debtor's property in respect of any debt, and no process against his person in respect of any debt other than such process as may be had against a debtor about to depart out of the Colony, or property about to be conveyed out of the Colony, shall be available to any creditor or claimant without leave of the Supreme Court, or of any Judge thereof sitting at Chambers or at any Circuit Court, and a certificate of the filing and registration of such deed under the hand of the said Master, and the seal of the Supreme Court shall be available to the debtor for all purposes of a protection against any process or execution, save as is in this clause mentioned.

Petition for sequestration against debtor may be dismissed.

166. In case of any petition for sequestration against a debtor, after the execution of such deed or instrument as is hereinbefore described, and pending the time allowed for the registration of such deed or instrument, all proceedings under such petition may be stayed if the Court shall think fit, and in case such deed or instrument shall be duly registered as aforesaid, the petition shall be dismissed.

Provision as to unknown creditors.

167. If a debtor cannot obtain the assent of a majority in number, representing three-fourths in value of his creditors, by reason of his being unable to ascertain by whom bills of exchange, promissory notes, or other negotiable securities accepted, drawn, made, or endorsed by him, are held, or by reason of the absence of creditors in a foreign country, or other similar circumstances, it shall be sufficient, if he obtains the consent of a majority in number, representing three-fourths in value, of all his other creditors, to such deed or instrument, as aforesaid: Provided that notice shall have been inserted by, or on behalf of, the debtor, in the "GOVERNMENT GAZETTE," and in one or more newspapers published in the County or place at which he shall have carried on business immediately prior to the date of such deed or instrument, or if there should be no newspaper published in that town or place, then in one or more newspapers published in the City of Pietermaritzburg, or the Town of Durban, requiring his creditors to signify their assent or dissent from such deed or instrument, by notice, in writing, addressed to the trustees thereof, within fourteen days from the insertion of such notice, and that the affidavit or certificate of the trustee or trustees shall state the circumstances of the case, and the same shall be allowed by the Court: Provided the deed or instrument be in such form as is expressed in the Third Schedule to this Law annexed, which shall vest all the estate and effects of the debtor in the trustees of such deed; and provided that all such other conditions as are hereinbefore required be duly complied with.

Affidavits and declarations of proof to be filed with the Master.

168. Every affidavit or declaration of proof by the creditors of such debtor shall be filed with the Master within such time as such rules or orders may direct, and the filing of every such affidavit shall be entered

(A) See sec. 127, ante, and footnote.

by the Master in a book to be kept by him, as filed in the matter of the deed or instrument executed by such debtor; and any person stating himself in writing to be a creditor of such debtor may, personally, or by attorney or agent, inspect such book, and also every affidavit or declaration filed in the matter of the deed or instrument, executed by the debtor, and may, in such manner as such rules or orders direct, have copies thereof or extracts therefrom.

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Creditors may inspect and have copies.

169. Any creditor of a debtor executing any such deed or instrument whose debt shall exceed ten pounds may, at any time after the registration of the deed or instrument, apply for, and obtain from, the Supreme or Circuit Court, or the Court of any Resident Magistrate, a summons requiring such debtor or any creditor, or person stated to be a creditor of such debtor, or any person whom the Court shall believe to be capable of giving any information concerning the dealings and transactions of the debtor, to appear at the said Court, or at any place fixed by the Court, upon a day and time to be named in such summons, and then and there to be examined before the said Court, or a Commissioner thereof, concerning the dealings and transactions of any such debtor, or the debt due or stated to be due from the debtor to such or any creditor; and such debtor or creditor, or other person, as the case may be, shall be bound to attend at the time and place named in the summons, and to submit himself to examination, and at the conclusion of such examination, the Court or Commissioner, as the case may be, shall determine by whom the whole or any part of the expense of procuring the attendance, and of the attendance of the person examined, and of his examination, and of the attendance of all other parties properly attending such examination shall be borne, whether by the creditor procuring the summons, or by the person examined, or by the debtor, or by trustees or inspectors of his estate, either personally or out of the estate of the debtor, or by the estate of the debtor or otherwise; and an order shall be drawn up by the Court or Commissioner in accordance with such determination, and be enforced against the parties bound by such order, in the same manner that orders under the Insolvent Laws of the Colony are enforced; but nothing in this section shall take away or abridge any jurisdiction or authority belonging to the Court independently thereof.

Any creditor whose debt exceeds £10 may summon the debtor, &c., to be examined.

170. The creditor procuring such summons shall give notice to the trustees or inspectors, if any, acting under the deed or instrument, and, where the summons is directed to a creditor, or the debtor, of the time and place appointed for the examination. The debtor, trustees, or inspectors shall be at liberty to attend such examination, and to take part therein, subject to the direction of the Court.

Creditor procuring summons to give notice.

Who may take part in examination.

171. Nothing in this Law contained shall dispense with the necessity of transfer before the Registrar of Deeds of any immovable property comprised in any deed within the provisions of this Law in any case in which such immovable property could or ought to be so transferred if comprised in any deed of sale, or the like, not under this Law, in order that the dominion of such immovable property shall pass from such debtor, but upon any transfer to the trustee of any deed under this Law, in such his capacity, the sum of five pounds may be paid in lieu of transfer dues.

Transfer of land by debtor necessary.

172. In case of a transfer to a trustee under Section 171 of this Law if when the claims of the creditors are fully satisfied, there should remain registered in the name of such trustee any immovable property under such transfer, such property shall be transferred to the assignor free of all transfer dues, stamps, and fees of office.

Land remaining in trustee's name after satisfaction of creditors to be transferred to assignor free.

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Power for creditors to accept and Court to approve composition or arrangement.

173. When the estate of any debtor shall have been placed under sequestration by virtue of this Law, the creditors may at the first meeting, or any adjournment thereof, or at any special meeting duly convened to consider the question, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the insolvent debtor, or a proposal for a scheme of arrangement of the insolvent debtor's affairs. The composition or scheme shall not be binding on the creditors unless it is confirmed, by a resolution passed by a majority in number representing three-fourths in value of all the creditors who have proved, at a subsequent meeting of the creditors, and is approved by the Supreme Court. Any creditor who has proved his debt may assent to or dissent from such composition or scheme by a letter addressed to the Master in the prescribed form and attested by a witness so as to be received by such Master not later than the day preceding such subsequent meeting, and such creditor shall be taken as being present and voting at such meeting. The subsequent meeting shall be summoned by the Master, or the trustee if elected prior thereto, by not less than seven days' notice, and shall not be held until after the examination of the debtor by this Law provided for is concluded. The notice shall state generally the terms of the proposal. A report thereon by the Master, or by the trustee if elected prior thereto, shall be presented to the said meeting. The debtor, or the trustee, may, after the composition or scheme is accepted by the creditors, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given by advertisement in the "GOVERNMENT GAZETTE," published at least seven clear days prior to the day of hearing.

Master's and trustee's report upon composition or scheme.

174. The Court shall, before approving a composition or scheme, hear a report of the Master, and a further report of the trustee, as to the terms of the composition or scheme, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor. If the Court is of opinion that the terms of the composition or scheme are not reasonable, or are not calculated to benefit the general body of creditors, or in any cases in which the Court is required under this Law, where the debtor is adjudged insolvent, to refuse his discharge, the Court shall, or if any such facts are proved as would under this Law justify the Court in refusing, qualifying, or suspending the debtor's discharge, the Court may, in its discretion, refuse to approve the composition or scheme. If the Court approves the composition or scheme, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the composition or scheme, or by the terms thereof being embodied in an order of the Court. The Court may also make an order annulling the insolvency and vesting the property of the insolvent in him, or in such other person as the Court may appoint, on such terms, and subject to such conditions, if any, as the Court may declare. A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in insolvency. A certificate of the Master that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity. The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested, and any disobedience of an order of Court made on the application shall be deemed a contempt of Court. If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court on satisfactory evidence that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the

The Court may annul the insolvency and vest the property in the insolvent or other person.

Effect of acceptance.

Proof of validity.

Provisions, how enforced.

Annulling of composition or scheme, and adjudging debtor insolvent

debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any creditor, adjudge the debtor insolvent, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged insolvent under this Law, any debt provable in other respects which has been contracted before the date of the adjudication shall be provable in the insolvency. If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, the provisions of this Law, so far as the nature of the case and the terms of the composition or scheme admit, shall apply to the trustee as if he were a trustee in insolvency, and as if the terms insolvency, insolvent, and order of sequestration, included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and order approving the composition or scheme. No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts, of all debts directed to be so paid in the distribution of the property of a bankrupt (A). The acceptance by a creditor of a composition or scheme shall not release any person who under this Law would not be released by an order of discharge if the debtor had been adjudged insolvent.

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Trustee under composition to be as a trustee in insolvency.

Priority of debts.

175. Notwithstanding the acceptance and approval of a composition or scheme, such composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Law, the debtor would not be discharged by an order of rehabilitation or discharge in insolvency, unless the creditor assents to the composition or scheme.

As to certain special debts creditor's assent necessary.

176. It shall and may be lawful for any insolvent at any time after the third meeting of creditors, or in the event of there being only one such meeting of creditors under the provisions of this Law, then at any time, not being less than three months after the said sole meeting of creditors, to lodge with the trustee of the insolvent estate, and a certified copy thereof with the Master of the Supreme Court, a statement of the liabilities and assets of his estate in the form A in the fourth schedule hereto annexed, as near as may be, and shall also, in manner aforesaid, lodge a statement in the form B in the fourth schedule hereto annexed, as near as may be, of the capital of which he was possessed three years prior to insolvency, or at the date of his commencing business in any case where insolvency occurred within three years, and of the gross profits acquired by him during the period to which the statement shall extend, and of the sources of such profits, and of the trade expenses incurred by him in acquiring such gross profits, and of the losses in trade and by bad debts and otherwise, and of his personal expenses. Such statements are hereinafter referred to as the balance-sheet.

Balance Sheet, how and when to be filed.

177. It shall and may be lawful for any insolvent, after he has filed with the Master of the Supreme Court the balance-sheet in the preceding section mentioned, to apply to the Supreme Court by motion for his discharge (B): Provided that at least six weeks' notice of the day on which such motion is to be made shall be given by advertisement in the "GOVERNMENT GAZETTE," and that six weeks shall intervene between the filing of balance-sheet and the day of application by the insolvent

Insolvent after filing balance sheet may apply for discharge.

(A) See sec. 129, ante.

(B) As to the object and nature of rehabilitation and discharge generally, see *Pairall's Estate*, 7 N.L.R. 23—per Connor, C. J.

Where there was only one creditor and the insolvent had made a misstatement to him an application under Law 27, 1863 (repealed) was refused (*Goodwin's Estate*, 7 N.L.R. 28).



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Applicant to give security for costs.

debtor for his rehabilitation or discharge: Provided also, that no such motion shall be capable of being made until such insolvent shall have given security to the satisfaction of the Master of the Supreme Court in the sum of twenty pounds sterling for the payment of the costs of any person who may appear to oppose such discharge, and to whom the Court may in its discretion see fit to award costs. Each and every such application for the rehabilitation or discharge of an insolvent debtor shall be made in open court.

Insolvent to be examined before Master or Resident Magistrate 21 days after filing balance sheet by a trustee or creditor.

178. Every insolvent shall, within twenty-one days after he shall have filed his said balance-sheet, attend before the Master of the Supreme Court, or before the Resident Magistrate, as the case may be, on a day to be appointed by the said Master by notice in the "GOVERNMENT GAZETTE" and in a local newspaper, to be examined on his balance-sheet and his general dealings, and on all matters relating to his trade, dealings, or estate, and the trustee or trustees, and any creditor who has proved his claim, may, either by himself, his advocate, attorney, or agent, examine such insolvent on said balance-sheet, and generally on all matters relating to his trade dealings or estate either before or after his insolvency. With respect to the summoning of the meeting for the examination of any insolvent upon his balance-sheet, the rules in the first schedule shall be observed, and notice of the appointment be sent by the Master fourteen days at least before the day appointed to each creditor who has proved.

Mode of obtaining rehabilitation or discharge.

179. Every insolvent applying to the Court as aforesaid for his rehabilitation or discharge shall make oath, in writing, that he has made a full and fair surrender of his estate (A), and that he has not granted any preference or security, or made or promised any payment, or entered into any secret or collusive agreement or transaction with intent to persuade his trustee or trustees, or any creditor, to forbear opposing such insolvent's discharge by the said Supreme Court; and upon the day fixed for the hearing of such motion, the insolvent may appear in person or by counsel, and the application may be supported by affidavit or by the examination of witnesses, viva voce, before the Court. The trustee or trustees, or any of the creditors of the insolvent who have proved their claims, may appear in person or by counsel, and oppose the granting of the discharge aforesaid: Provided, however, that any trustee or creditor so opposing the granting of the insolvent's rehabilitation or discharge must, seven days before the day fixed for such motion, give notice in writing to such insolvent applicant of his intention to oppose, and the grounds of his opposition. The personal attendance of such insolvent at the hearing of such motion shall not be necessary unless the Supreme Court, or any Judge thereof, shall, on the application of any trustee or creditor who has proved, or other person interested, on or before the day fixed for the hearing, so direct. At the hearing the Court may put such questions to the insolvent debtor and receive such evidence as it may think fit.

Trustee or creditor may oppose discharge.

Person opposing to give notice.

Discharge.

180. On the hearing of the application, the Court shall take into consideration a report of the Master (B), as also a report which shall be furnished by the trustee (C), as to the insolvent's conduct and affairs,

(A) The first part of this sec. is taken from the repealed Law 27, 1863, s. 16, under which it was held that an insolvent had not made a full and fair surrender who had omitted from his schedule a reversionary interest, considering it to be of no value; and his rehabilitation was consequently suspended (*In re Payn's Estate*, 6 N.L.R. 55).

(B) Where the Master's report is insufficient it will be referred back to him for further enquiry (*In re Woods*, 14 N.L.R. 177).

(C) See *In re Cross*, 15 N.L.R. 43, where an order of discharge was granted though no account had been filed by the Trustee.

and may either grant or refuse an absolute order or discharge, or suspend the operation of the order for a specified time, or grant an order of discharge, subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property: Provided that the Court shall, on proof of any of the facts hereinafter mentioned, either refuse the order or suspend the operation of the order for a specified time, or grant an order of discharge subject to such conditions as aforesaid (A). The facts hereinbefore referred to are—

- (a) That the insolvent has omitted to keep in the English language, such books of account as are usual and proper in the business carried on by him, and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency (B).
- (b) That the insolvent has continued to trade after knowing himself to be insolvent.
- (c) That the insolvent has contracted any debt provable in the insolvency without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it (c).
- (d) That the insolvent has brought on his insolvency by rash and hazardous speculations (D) or unjustifiable extravagance in living (E).
- (e) That the insolvent has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him.
- (f) That the insolvent has within three months preceding the date of the filing of a debtor's or creditor's petition when unable to pay his debts as they become due given an undue preference to any of his creditors.
- (g) That the insolvent has on any previous occasion been adjudged insolvent or made a statutory composition or arrangement with his creditors.
- (h) That the insolvent has been guilty of any fraud or fraudulent breach of trust.

For the purposes of this section the report of the Master of the Supreme Court shall be prima facie evidence of the statements therein contained. The Court may as one of the conditions referred to in this section require the insolvent to consent to judgment being entered against him for any balance of the debts provable under the insolvency which is not satisfied at the date of his discharge, but in such case execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the insolvent has since his discharge acquired property or income available for payment of his debts (F). A discharged

(A) Cf. 53 & 54 Vic. c. 71, s. 8, which replaces the repealed sec. 28 of the Bankruptcy Act, 1883.

(B) No books need be kept where it is not usual to keep books at all in the particular business carried on (*In re White*, 17 N.L.R. 138, following *In re Mutton*, 19 Q.B.D. 102).

(c) See *In re White*, 14 Q.B.D. 600; 54 L.J., Q.B. 384—C.A. See also sec. 77, ante.

(D) As to what is "rash and hazardous speculation," see *In re Nurden*,

12 N.L.R. 81; *In re Tod*, 12 N.L.R. 121; *In re Salaman*, 14 Q.B.D. 936; 54 L.J., Q.B. 238.

(E) See *In re Stainton*, 19 Q.B.D. 182; 57 L.T. 202. The Act of 53 & 54 Vic. c. 71 adds to a similar provision in the Bankruptcy Act, 1883, the words "or by gambling, or by culpable neglect of his business affairs."

(F) Order for rehabilitation may be suspended and judgment given against applicant for proportion of deficiency (*In re Isaacs*, 10 N.L.R. 79).

**Law 47, 1887.** insolvent shall notwithstanding his discharge give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee.

Effect of order discharge.

181. An order of discharge shall not release the insolvent from any debt on a recognizance, nor from any debt with which the insolvent may be chargeable at the suit of the Crown or at the suit of the Sheriff or other public officer, or any person on a bail bond entered into for the appearance of any person prosecuted for any offence, and he shall not be discharged from such excepted debts, unless the Colonial Treasurer certifies in writing his consent to the insolvent being discharged therefrom. An order of discharge shall not release the insolvent from any debt or liability incurred by means of any fraud or fraudulent breach of trust (A) to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party (B). An order of discharge shall release the insolvent from all other debts provable in insolvency or in any manner claimable against his estate (C). An order of discharge shall be conclusive evidence of the insolvency, and of the validity of the proceedings therein; and in any proceedings that may be instituted against an insolvent who has obtained an order of discharge in respect of any debt from which he is released by the order, the insolvent may plead that the cause of action occurred before his discharge, and may give this Law and the special matter in evidence. An order of discharge shall not release any person who, at the date of the filing of the debtor's or creditor's petition, was a partner or co-trustee with the insolvent, or was jointly bound, or had made any joint contract with him or any person who was surety or in the nature of a surety for him.

Debtor not exempted from criminal proceedings by reason of his discharge.

Contracts, &c., to persuade creditors to compound or sign certificate void.

182. Where a debtor has been guilty of any criminal offence he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge, or that a composition or scheme of arrangement has been accepted or approved.

183. All preferences, gratuities, securities, or payments granted, made, or promised by any insolvent to or in trust for any creditor of such insolvent, and all secret and collusive agreements and transactions intended to persuade any such creditor to forbear opposing the insolvent's application for his rehabilitation and discharge, shall be and are hereby declared to be null and void, and any creditor who shall have received any money, matter, or thing, or promise of the same as a consideration for or inducement to such creditor to forbear opposing the application of an insolvent for his rehabilitation and discharge, shall forfeit a sum equal to the amount of whatever debt such creditor originally proved upon the insolvent estate, together with the amount of whatever money, matter, or thing he may have received from such insolvent as such consideration or inducement as aforesaid; and all such moneys, matters, or things, hereby declared to be claimable or recoverable from any such creditor shall and may be sued for and recovered in any competent Court by the trustee or any creditor of the insolvent who has proved his claim.

Order granting discharge to be final and conclusive.

184. The order of Court granting the discharge of any insolvent, absolutely or conditionally, or refusing or suspending the allowance thereof, shall be final and conclusive, and shall not be reviewed by the Court unless the Court shall thereafter see good and sufficient cause to believe that the granting of such discharge, or the refusal or suspension

(A) Cf. 46 & 47 Vic. c. 52, s. 30; and see sec. 146, ante.

(B) The creditor's right to sue arises on discharge (*Ex pte. Hemming, Re Chatterton*, 13 Ch. D. 163).

(C) Rehabilitation does not apply to an insolvent company or partnership

(*South African Loan, &c., Agency v. Birkett*, 6 N.L.R. 77).

The Court will not rehabilitate the partner of an insolvent firm unless his private estate has also been declared insolvent (*In re Johnson*, 6 N.L.R. 92).

thereof has been obtained on false or insufficient evidence, or by reason of an improper suppression of evidence, or has otherwise been fraudulently obtained. In any of which cases it shall and may be lawful for the Court upon the application of the insolvent, or of the trustee, or any creditor of the insolvent who has proved his claim, and subject to such order as to deposit of a sum for costs, and to such notices to the insolvent, or to any trustee, or creditor who has proved, by advertisement or otherwise as the Court shall think fit to grant a rehearing of the matter, and to rehear the same accordingly. And upon such rehearing the Court shall make such order as to the granting of such discharge or the refusal or suspension thereof as the justice of the case may require, in like manner, upon like conditions, and having regard to the like circumstances, as far as the case will admit, as upon an original hearing. And in case the discharge shall have been previously granted, and upon such rehearing the granting thereof shall not be confirmed, such discharge shall be of no force or effect whatever, but, on the contrary, null and void. Any insolvent who has been refused an order of rehabilitation or discharge may, at any time after the expiration of one year from the date of such refusal, apply by motion to the Supreme Court to allow him to renew his application for his discharge, and the Supreme Court, upon good and sufficient cause being shown, may permit the insolvent to renew such application, and such application shall be made in the same manner and subject to the like conditions as are imposed by this Law on the first application.

**Law 47, 1887.**  
Mode of review.

Insolvent may renew application for discharge after expiration of a year from former refusal.

185. The Master of the Supreme Court shall enter on record, and have the custody of all proceedings relating to any insolvency under and by virtue of this Law; and the insolvent, or any creditor who has proved, shall, at all reasonable times, have inspection of the same, and be permitted to take extracts or copies therefrom; and extracts of such proceedings, signed by the said Master, shall be received as evidence in all Courts of Justice within the Colony.

As to records of proceedings under the Law.

186. A copy of the "NATAL GOVERNMENT GAZETTE" containing any notice inserted therein in pursuance of this Law shall be evidence of the facts stated in the notice. The production of a copy of the "NATAL GOVERNMENT GAZETTE" containing any notice of an order adjudicating a debtor insolvent shall be conclusive evidence in all legal proceedings of the order having been duly made and of its date.

Natal Government Gazette to be evidence.

187. The forms in the sixth Schedule where applicable, and where they are not applicable forms of the like character, with such variations as circumstances may require, may be used and shall be sufficient in law.

Forms to be used.

188. All notices and other documents for the service of which no special mode is directed may be sent by prepaid post letter to the last known address of the person to be served therewith.

Service of notices and documents.

189. The Supreme Court may from time to time make, revoke, and alter general rules for carrying into effect the objects of this Law, and also touching the form and manner of proceeding under the same, and for regulating the fees payable for matters done under said Law. All general rules made under the foregoing provisions of this section shall be laid before the Legislative Council within three weeks after they are made, if the Legislative Council is then sitting, and if the Legislative Council is not then sitting, within three weeks after the beginning of the then next session of the Legislative Council, and shall be judicially noticed, and shall have effect as if enacted by this Law. Such general rules as may be required for purposes of this Law may be made at any time after the passing of this Law: Provided always, that the said general rules so made, revoked, or altered, shall not extend the jurisdiction of the Court. After the commencement of this Law no general rule, under the provisions of this section, shall come into operation until

Power of Supreme Court to make general rules.

Law 47, 1887. the expiration of one month after the same has been made and issued. Until revoked or altered under the provisions of this Law, and so far as the same are not in conflict with or repugnant to the provisions of this Law, the rules of the Supreme Court of 28th August, 1863, 22nd November, 1869, 3rd October, 1873, and 20th July, 1875, shall, so far as the same are applicable, be deemed to be rules framed under the provisions of this Law.

Repeals. 190. The Ordinances and Laws described in the Fifth Schedule are hereby repealed as from the commencement of this Law. The repeal effected by this Law shall not affect—

Matters not affected by the repeals contained in this Law.

- (a) Anything done or suffered before the commencement of this Law under any Law repealed by this Law ; nor
- (b) Any right or privilege acquired, or duty imposed, or liability, or disqualification incurred under any Law so repealed ; nor
- (c) Any fine, forfeiture, or other punishment incurred, or to be incurred, in respect of any offence committed, or to be committed, against any Law so repealed ; nor
- (d) The institution or continuance of any proceeding or other remedy, whether under any Law so repealed or otherwise, for ascertaining any such liability or disqualification, or enforcing, or recovering any such fine, forfeiture, or punishment as aforesaid.

Notwithstanding the repeal effected by this Law, the proceedings under any insolvency or assignment under the Insolvent Ordinance No. 24 of 1846, and the Assignment Laws No. 2 of 1868 and No. 11 of 1869, pending at the commencement of this Law, shall, except so far as any provision of this Law is expressly applied to pending proceedings, continue, and all the provisions of the Insolvent Ordinance of 1846, and any amendment thereof, and the Assignment Laws of 1868 and 1869 shall, except as aforesaid, apply thereto as if this Law had not passed.

## SCHEDULES.

### THE FIRST SCHEDULE.

First Schedule.

1. The first meeting of creditors shall be summoned for a day not later than fourteen days after the estate of any debtor has been placed under sequestration, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.
2. The Master of the Supreme Court shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the "NATAL GOVERNMENT GAZETTE," and in a local newspaper.
3. The said Master shall also, as soon as practicable, send through the Post Office to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, but the proceedings at the first meeting shall not be invalidated by reason of any such notice not having been sent or received before the meeting.
4. The meeting shall be held at such place as is in the opinion of the Master most convenient for the majority of the creditors, and be presided over by the Master or the Resident Magistrate.
5. The trustee shall summon a second meeting for the proof of debts not later than fourteen days from the date of his confirmation.

Law 47, 1887.  
First Schedule.

6. The trustee shall summon a third meeting for the proof of debts, and also for laying before the Master or Resident Magistrate, his report as to the condition of the insolvent estate and for receiving from the creditors directions as to the management thereof; such third meeting shall be held not later than one calendar month from the date of his confirmation.

7. The trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court or so requested in writing by one-fourth in value of the creditors who have proved.

8. Meetings subsequent to the first meeting shall be summoned by notice in the "NATAL GOVERNMENT GAZETTE," and in a local newspaper, and by sending notice through the Post Office of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the trustee summoning the meeting.

9. The Master shall preside at all meetings in insolvent estates held in Pietermaritzburg, the Resident Magistrate of the division, or some person nominated by him, and failing any such nomination, the Chief Clerk of the Resident Magistrate shall preside at all such meetings held in any place in the Colony other than Pietermaritzburg (A).

10. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt, provable in insolvency, to be due to him from the debtor.

11. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

12. For the purpose of voting a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance, if any, due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court, on application, is satisfied that the omission to value the security has arisen from inadvertence.

13. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom an order of sequestration has not been made as a security in his hands, and to estimate the value thereof and for the purposes of voting, but not for the purposes of dividend to deduct it from his proof.

14. It shall not (B) be competent to the trustee, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value as estimated with an addition thereto of twenty per centum: Provided that where a creditor has put a value on such security, he may at any time before he has been required to give up such security as aforesaid correct such valuation by a new proof and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

(A) This section does not empower the Chief Clerk to conduct the examination of the insolvent upon oath (*In re Wood*, 11 N.L.R. 227). See Law 2, 1891, post.

(B) It is evident that this sentence should read affirmatively, but the word "not" is in the signed copy of the Law filed in the Master's office.

Law 47, 1887.  
First Schedule.

15. Every debt against an insolvent estate must be proved to the satisfaction of the Master or Resident Magistrate presiding at any meeting of creditors, who shall admit the debt or reject the same as not proved for the purpose of voting, but his decision shall be subject to appeal to the Supreme Court.

16. A creditor may vote either in person or by proxy.

17. A creditor may give a general proxy to his manager or clerk or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

18. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof for or against any specific resolution, or for or against any specified person as trustee or member of a committee of inspection.

19. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a trustee in obtaining proxies, or in procuring the trusteeship, except by the direction of a meeting of creditors, the Court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the Committee of Inspection or of the creditors to the contrary.

20. A creditor may appoint the trustee of the debtor's estate to act in manner prescribed as his general or special proxy.

21. The Master or Resident Magistrate, or the person presiding at any meeting of creditors may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place, and whenever practicable notice of any adjournment shall be given in the manner prescribed as to other meetings.

22. A meeting shall not be competent to act for any purpose except the proving of debts and the adjournment of the meeting, unless there are present or represented thereat at least three creditors, or all the creditors, who have proved, if their number does not exceed three (A).

23. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week, at the same time and place, or to such other day as the Master or Resident Magistrate, or the person presiding, may appoint, not being less than seven nor more than twenty-one days.

24. The Master or Resident Magistrate, or the person presiding at any meeting shall cause minutes of the proceedings at the meeting to be drawn up, and such minutes shall be signed by him. The Resident Magistrate shall certify such minutes and forward in all cases to the Master. The original minutes of all meetings in insolvent estates shall be filed of record in the office of the Master of the Supreme Court, where they shall be open to the inspection of creditors and other persons on application.

25. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner, or employer in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor. Provided that where any person holds special proxies to vote for the appointment of himself as trustee, he may use the said proxies and vote accordingly.

(A) Where a duly constituted meeting is adjourned for further examination of the insolvent, it is not necessary that a quorum should attend at such

adjourned meeting, to proceed with the examination (*In re Hall Bros.*, 10 N.L.R. 40).

## THE SECOND SCHEDULE.

Law 47, 1887.

## PROOF OF DEBTS.

*Proof in Ordinary Cases.*Second  
Schedule.

1. Every creditor shall prove his debt as soon as may be after the making of an order of sequestration.

2. A debt may be proved by delivering or sending through the post, in a prepaid letter to the Master or Resident Magistrate, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt. It shall be the duty of the trustee to file the proof at the first meeting of creditors held after the receipt of such affidavit.

3. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The Master or trustee may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is, or is not, a secured creditor.

6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting and at all reasonable times.

*Proof by Secured Creditors.*

8. If a secured creditor realises his security he may prove for the balance due to him after deducting the net amount realised.

9. If a secured creditor surrenders his security to the Master or trustee for the general benefit of the creditors, he may prove for his whole debt.

10. If a secured creditor does not either realise or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

- (a) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value.
- (b) If the trustee is dissatisfied with the value at which a security is assessed he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the Court may direct. If the sale be by public auction the creditor or the trustee on behalf of the estate may bid or purchase.
- (c) Provided that the creditor may at any time by notice in writing require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the trustee does not within six months after receiving the notice signify, in writing, to the creditor his election to exercise the power he shall not be entitled to exercise it.



Law 47, 1887.  
Second  
Schedule.

11. Where a creditor has so valued his security he may at any time amend the valuation and proof on showing to the satisfaction of the trustee or the Court that the valuation and proof were made bona fide on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation, but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the trustee shall allow the amendment without application to the Court.

12. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or as the case may be, shall be entitled to be paid out of any money for the time being available for dividend, any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation before that money is made applicable to the payment of any future dividend; but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

13. If a creditor, after having valued his security, subsequently realises it, or if it is realised under the provisions of Rule 10, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

14. If a secured creditor does not comply with the foregoing rules he shall be excluded from all share in any dividend.

15. Subject to the provisions of Rule 10, a creditor shall in no case receive more than twenty shillings in the pound and interest as provided by this Law.

16. When any rent or other payment falls due at stated periods, and the order of sequestration is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order, as if the rent or payment grew due from day to day.

#### *Interest.*

17. On any debt or sum certain payable at a certain time, or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the order of sequestration, and provable in insolvency, the creditor may prove for interest, at a rate not exceeding six per centum per annum, to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise then from the time when a demand, in writing, has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

#### *Debts payable at a future time.*

18. A creditor may prove for a debt not payable when the order of sequestration was granted, as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest, at the rate of six pounds per centum per annum, computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

*Admission or Rejection of Proofs.*

Law 47, 1887.  
Second  
Schedule.

19. The trustee shall examine every proof, and the grounds of the debt, and shall represent to the Master or Resident Magistrate, as the case may be, his objections, if any, to the admission of such proof. The Master or Resident Magistrate shall, in writing, admit or reject each proof in whole or in part, or may require further evidence in support of it. If he rejects a proof, he shall state, in writing, to the creditor the grounds of the rejection (A).

20. If the trustee thinks that a proof has been improperly admitted, the Supreme Court, or any Judge thereof, may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

21. If a creditor is dissatisfied with the decision of the Master or Resident Magistrate in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision, and before adjudging finally as to the admission or rejection of any debt, may remit such case to the Master or Resident Magistrate for further proof, or may direct any question of fact to be tried by pleadings and proofs, or adopt such other course as to such Court shall seem fit.

22. The Court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or upon the application of the debtor.

THIRD SCHEDULE.

Third Schedule.

This deed, made the \_\_\_\_\_ day of \_\_\_\_\_ between A. B. the debtor and C. D. and E. F., the trustees on behalf, and with the assent of the undersigned, creditors of A. B., witnesseth that A. B. hereby conveys all his estate and effects to C. D. and E. F., absolutely to be applied and administered for the benefit of the creditors of A. B. in like manner as if A. B. had been at the date hereof duly adjudged insolvent. In witness whereof, etc.  
(Signed) A.B.

SCHEDULE OF CREDITORS.

THE FOURTH SCHEDULE—FORM A.

Fourth  
Schedule.

Statement of Liabilities and Assets.

Direct Debts due at date of insolvency	£ s. d.	Assets Surrendered	£ s. d.
For wages or salaries ...		Cash in hand or in Bank at date of surrender or sequestration ...	
Upon Promissory Notes, Bills, or Acceptances ...		Bills receivable on hand same date ...	
Upon Open Accounts ...		Estimated value of Debts due to Insolvent at same date ...	
Secured by Bond, Deposit of Property, or otherwise ...		Value of Landed Property...	
<b>Total direct Debts ...</b>	<b>£</b>	Value of Household Furniture...	
Proportion of indirect Debts due at date of insolvency, likely to fall eventually on the Estate (and which proportion is to be arrived at by deducting from the total indirect debts the part thereof likely to be borne by persons primarily liable, as between them and the insolvent) ...		Value of other Assets, if any, specifying them ...	
		Deficiency between Assets and Liabilities ...	
	<b>£</b>		<b>£</b>

(A) The Master has no jurisdiction to expunge a proof when once admitted (*In re Nicolson*, 20 N.L.R. 44).

Law 47, 1887.

## THE FOURTH SCHEDULE—FORM B.

Statement showing how Deficiency in above Statement occurred.

Fourth Schedule.	£ s. d.	£ s. d.
Capital three years prior to insolvency (or at date of commencing business if insolvency happened within three years ... ..		Trade expenses within three years from date of insolvency, or since commencement of business ... ..
Gross profits acquired within the three years, or since commencement of business, stating sources of profits...		Losses in trade during same period ... ..
Balance showing excess of losses and expenses over and above capital, and gross profit ... ..		Personal expenses during same period ... ..
		Losses by bad debts during same period ... ..
		Losses in respect of indirect liabilities by default of persons who, as between them and the insolvent, ought to have paid the same during same period...
	_____	_____
	£	£
	_____	_____

## THE FIFTH SCHEDULE.

*Ordinances and Laws Repealed.*

Fifth Schedule.

Ordinance No. 24, 1846.—Ordinance for regulating the due collection, administration, and distribution of insolvent estates within the District of Natal.

Ordinance No. 6, 1843.—Ordinance for regulating the due collection, administration, and distribution of insolvent estates within this Colony.

Law No. 27, 1863.—Law to amend Ordinance No. 24, 1846, entitled "Ordinance for regulating the due collection, administration, and distribution of insolvent estates within the District of Natal."

Law No. 7, 1866.—Law to amend Ordinance No. 24, 1846, entitled "Ordinance for regulating the due collection, administration, and distribution of insolvent estates within the District of Natal," and to make provisions to secure a more expeditious appointment of trustees and liquidation and distribution of such estates.

Law No. 21, 1868.—Law to amend the Law in relation to trust deeds for the benefit of creditors, composition deeds, and inspectorship deeds executed by debtors.

Law No. 11, 1869.—Law to amend the Law No. 21, 1868.

Law No. 22, 1868.—Law to give effect to process of insolvency instituted in the Colony of the Cape of Good Hope as regards immovable property of the insolvent estates situate within the Colony.

Law No. 11, 1872.—Law to amend certain provisions of the Law No. 27, 1863.

Placaat of the Emperor Charles V., bearing date the fourth day of October, 1546. Section six thereof.



## INSOLVENCY.

Law 47, 1887.  
Sixth Schedule.

*List B.—Secured and Partly-Secured Creditors.*

No.	Name.	Address and Occupation.	Amount.			Date when Contracted.	Consideration.	Particulars of Security.	Date when given.	Estimated value of Security.
			£	s.	d.					

*Statement of Affairs.*

<i>Liabilities.</i>			<i>Assets.</i>		
	£	s. d.		£	s. d.
Unsecured Creditors, List A			Immovable property, List E		
Secured and partly Secured Creditors, List B ... ..			Stock-in-Trade, husbandry, or other movable property at List F ... ..		
Liabilities on Promissory Notes or Bills other than Debtor's own ... ..			Book Debts, List G ... ..		
Acceptances as per List C. of which it is expected will rank against the Estate for dividend ... ..			Cash at Bankers ... ..		
Preferential Creditors for rent, rates, taxes, wages, &c., as per List D ... ..			Cash in hand ... ..		
			Promissory Notes, Bills, or other similar Securities, List H ... ..		
			Household furniture, estimated to produce... ..		
			Other property, List I ... ..		
			Deficiency ... ..		
	£			£	

The above Statement and the several Lists hereunto annexed are, to the best of my knowledge and belief, full, true, and complete statements of my whole estate and effects, movable and immovable, personal and real, in possession, expectancy, or contingency, or to which I have any eventual right, and of all debts due to and by him.

(Signed)  
Sworn before me at                      this                      day of                      18                      .  
(Signed)

Justice of the Peace.

*List C.—Liabilities of Debtor on Promissory Notes or Bills other than his own acceptances.*

No.	Maker or acceptor's name and address.	Date when due.	Amount. £ s. d.	Holder's name and address.	Amount expected to rank against Estate for dividend.

*List D.—Preferential Creditors for Rent, Rates, Taxes, and Wages.*

Law 47, 1837.  
Sixth Schedule.

No.	Name of Creditor.	Address and Occupation.

Form No. 2.

*Creditor's Petition (A).*

To the Honourable the Chief Justice and  
Judges of the Supreme Court of the  
Colony of Natal.

Between

A.B., Plaintiff,  
and  
C.D., Defendant.

The petition of A.B. humbly sheweth,

1. That the above-named C.D., residing at \_\_\_\_\_, is justly and truly indebted to me in the sum of £ \_\_\_\_\_, arising from and being

2. That I do not, nor does any person on my behalf, hold any security on the said debtor's estate, or on any part thereof, for the payment of the said sum ;

or,

That I hold security for the payment of [or part of] the said sum, and I estimate the value of such security at the sum of £ \_\_\_\_\_

3. That C.D. has committed the following act or acts of insolvency —namely [here set out separately the acts of insolvency, and the several dates thereof].

4. That I am desirous that an order be granted for the compulsory sequestration of the estate of the said C.D. for the benefit of his creditors.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(Signed)

I, \_\_\_\_\_, of \_\_\_\_\_, the petitioner above mentioned, do make oath and say that the statements in the foregoing petition contained are true to the best of my knowledge and belief.

Sworn before me, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(Signed)

(Signed)

Justice of the Peace.

Form No. 3.

*Petition for the Appointment of a Provisional Trustee.*

To the Honourable the Chief Justice and other the Judges of the  
Supreme Court of the Colony of Natal,  
In the Insolvent Estate of \_\_\_\_\_

(A) A creditor's petition should contain the same particulars as a debtor's (*McCubbin v. Soolaman*, 12 N.L.R. 42).

Law 47, 1887. The petition of the undermentioned creditors of the above Insolvent Estate

Humbly sheweth, That the said estate was surrendered [or compulsorily sequestrated] as insolvent on the day of

That the undermentioned creditors of the said estate have claims against the said estate, to the amount set opposite their respective signatures.

That there are in the said estate the following articles, which are of a perishable nature, and which require to be immediately attended to.

[Here insert any special reasons for the appointment of a provisional trustee.]

That is a fit and proper person to be provisional trustee of said estate.

Wherefore your petitioners most humbly pray that your Lordships will be pleased to appoint the said as provisional trustee of the said insolvent estate, pending the election of a permanent trustee with power to sell perishable articles if need be.

And your petitioners as in duty bound will ever pray.

Dated at this day of

	Amount of Debt.
A.B.,	... ..
C.D.,	... ..
E.F.,	... ..

I, of , one of the petitioners above-mentioned do make oath and say that the statements in the foregoing petition contained are true, to the best of my knowledge and belief.

Sworn this day of

Before me

Form No. 4.

Bond of Trustee.

In the Insolvent Estate of

Know all men by these presents that we, C.D., of and E.F., of , and G.H., of , are jointly and severally held, and firmly bound to the Master of the Supreme Court in £ , to be paid to the said Master of the Supreme Court, or his assigns. For which payment to be made we bind ourselves, and each and every of us, in the whole, our, and each of our, heirs, executors, and administrators, jointly, and severally, firmly by these presents.

Whereas on the day of , 18 , A.B., of , was adjudged insolvent, and whereas at the meeting of creditors, under the said insolvency, the said C.D. was appointed trustee of the property of the insolvent, and whereas the said trustee has been directed to give security, by bond, to the Master of the Supreme Court in the sum of £ , with two sufficient sureties thereto :

Now, therefore, the condition of this bond or obligation is such that if the said C.D. shall, and do, from time to time, well and sufficiently perform and execute all and singular the duties required of him as trustee by the Insolvency Laws of this Colony, or any general rule made or hereafter to be made, under such Laws, this obligation shall be void, or otherwise shall remain in full force and virtue.

Dated at this day of 18 , and signed by the above bounden C.D., E.F., and G.H., in the presence of the subscribed witnesses.

As Witnesses :	(Signed)	C.D.
	"	E.F.
	"	G.H.

## Form No. 5.

Law 47, 1887.  
Sixth Schedule.*Certificate of Appointment of Trustee.*

In the Insolvent Estate of A.B.

This is to certify that C.D., of \_\_\_\_\_, has been duly appointed and confirmed as trustee of the estate of the said A.B., who was adjudged insolvent on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(Signed)

Master of the Supreme Court.

## Form No. 6.

*Notice to Creditors of First Meeting.*

In the Insolvent Estate of A.B.

Take notice that the first meeting of creditors in the above matter will be held on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_ o'clock.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(Signed)

Master of the Supreme Court.

## Form No. 7.

*Notice to Debtor to attend First Meeting of Creditors.*

In the Insolvent Estate of A.B.

Take notice that the first meeting of your creditors will be held on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, at \_\_\_\_\_ o'clock, at [here insert place where meeting will be held] and that you are required to attend thereat and submit to such examination and give such information as the meeting may require.

And further take notice that if you fail to comply with the requirements of this Notice you will be guilty of a contempt of Court, and may be punished accordingly.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(Signed)

Master of the Supreme Court.

## Form No. 8.

*Notice of Meeting—General Form*

In the Insolvent Estate of \_\_\_\_\_

Take notice that a meeting of creditors in the above matter will be held on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock.

Agenda :

[Here insert purpose for which Meeting was called.]

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(Signed)

Trustee.

## Form No. 9.

*Affidavit for the Proof of an Unsecured Debt.*

In the Insolvent Estate of \_\_\_\_\_ saith that \_\_\_\_\_

maketh oath and whose estate has been placed under sequestration in the hands of the Master of the Supreme Court, was, at the issuing of the order for the sequestration thereof, and still is, justly and truly indebted to \_\_\_\_\_ in the sum of £ \_\_\_\_\_ for \_\_\_\_\_ according to the account hereunto annexed; and this deponent further saith that no other



INSOLVENCY.

Law 47, 1887.  
Sixth Schedule.

person besides the said Insolvent is liable for the said debt, or any part thereof, and that he hath not, nor hath any other person to his knowledge for the use of \_\_\_\_\_ received any security for the same, or any part thereof.

Sworn this \_\_\_\_\_ day of \_\_\_\_\_ 18 .  
Before me—

Form No. 10.

*Affidavit for the Proof of Debt on a Promissory Note or Bill of Exchange.*

In the Insolvent Estate of \_\_\_\_\_  
maketh oath and saith that  
whose estate hath been placed under sequestration in the hands of the Master of the Supreme Court was, at the issuing of the order for the sequestration thereof, and still is justly and truly indebted to \_\_\_\_\_ in the sum of \_\_\_\_\_ for \_\_\_\_\_ according to the account hereunto annexed, and this deponent further saith that he hath not, nor hath any other person to his knowledge, or for the use of \_\_\_\_\_ received any security for the said debt or any part thereof, save and except the following Promissory Note [or Bill of Exchange].

Date of Pr. Note [or Bill of Ex.]	By whom drawn.	By whom accepted.	To whom payable, and when.	By whom endorsed.	Amount.

And this deponent further saith that besides the said insolvent the endorser \_\_\_\_\_ above mentioned \_\_\_\_\_ liable to this deponent for the amount of the Note [or Bill] endorsed by \_\_\_\_\_ as aforesaid

And this deponent lastly saith that the aforesaid Promissory Note [or Bill of Exchange] produced by \_\_\_\_\_ in proof of \_\_\_\_\_ debt aforesaid is in all respects genuine and true.

Sworn this \_\_\_\_\_ day of \_\_\_\_\_ 18 .  
Before me—

Form No. 11

*Affidavit for the Proof of Debt on a Mortgage Bond.*

In the Insolvent Estate of \_\_\_\_\_  
maketh oath and saith that \_\_\_\_\_ whose estate hath been placed under sequestration in the hands of the Master of the Supreme Court was, at the issuing of the order for the sequestration thereof, and still is, justly and truly indebted to \_\_\_\_\_ in the sum of £ \_\_\_\_\_ together with the interest thereon, reckoned at the rate of \_\_\_\_\_ per cent. per annum, from the \_\_\_\_\_, day of \_\_\_\_\_ upon and by virtue of the bond hereunto annexed, passed by the said Insolvent on the \_\_\_\_\_ day of \_\_\_\_\_ before \_\_\_\_\_ under special hypothecation of \_\_\_\_\_ and for the payment of which \_\_\_\_\_ are jointly liable with the said Insolvent.

And the deponent further saith that he values the said security at the sum of £                      and that he hath not, nor hath any other person to his knowledge, for the use of                      , received any other security whatever for the said debt or any part thereof.

And this deponent lastly saith that the bond aforesaid produced by him in proof of his debt aforesaid, is in all respects genuine and true.

Sworn this                      day of                      18  
Before me—

Form No. 12.  
*General Proxy.*

In the Insolvent Estate of A.B.

I, C.D., of                      , a creditor, hereby appoint E.F. to be my general proxy in the above matter, excepting as to the receipt of dividend.

Dated at                      this                      day of                      18  
(Signed) C.D.

As witness—

Form No. 13.  
*Special Proxy.*

In the Insolvent Estate of A.B.

I, C.D., of                      , a creditor, hereby appoint E.F. as my proxy at the meeting of creditors to be held on the                      day of                      to vote for [or against]. [Here specify the particular resolution or name of proposed trustee.]

Dated at                      this                      day of                      18  
(Signed) C.D.

As witness—

Form No. 14.  
*Request to deliver Bill for Taxation.*

In the Insolvent Estate of A.B.

To C.D.

I hereby request that you will, within fourteen days of this date, deliver to the Master of the Supreme Court, for taxation, your bill of costs as attorney or solicitor, failing which I shall, in pursuance of the Law, proceed to file an account declaring and distributing a dividend without regard to any claim you may have against me, or against the estate of the debtor.

Dated at                      , this                      day of                      18  
(Signed) E.F.,  
Trustee.

Form No. 15.  
*Notice to Insolvent under Section 150*

In the Insolvent Estate of A.B.

To A.B.

Take Notice that I intend to apply to the Supreme Court, on the                      day of                      , 18                      , at                      o'clock, for an order under Section                      of the Insolvency Law, 188                      , for the payment of a part of your salary [or income] to me as Trustee for the benefit of the Creditors under your insolvency.

Dated at                      , this                      day of                      18  
(Signed)                      Trustee.

*Repd by Stat 32 1916 Sect. 1*

## Law No. 2, 1891.

“To amend Law No. 47, 1887, entitled ‘Law to amend and consolidate the Law of Insolvency.’”

[5th June, 1891.]

BE IT ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Supreme Court  
may appoint  
Commissioners  
having powers  
as under Law  
47, 1887.

1. The Supreme Court of the Colony of Natal may, from time to time, appoint fit and proper persons, who may be willing to act, to be Commissioners, during pleasure, of the said Court for the purpose of exercising all the powers and authority of Commissioners of the Supreme Court under the provisions of Law No. 47, 1887, and of this Law, in any case in which any such Commissioner may be requested so to act by the Master of the Supreme Court.

Powers and  
duties of  
Commissioners  
so appointed.

2. Any meeting of Creditors in an insolvent estate may be held before a Commissioner so appointed as aforesaid, who shall thereafter forthwith certify the proceedings of the meeting to the Master of the Supreme Court, if the meeting shall have been held at Pietermaritzburg, otherwise to the Resident Magistrate, who shall forward the same to the Master of the Supreme Court. For the purpose of calling and holding such meetings, and of summoning witnesses, and of the examination of the insolvent and of witnesses, and for all other purposes appertaining thereto, every such Commissioner shall have, and shall exercise the powers and authority of a Commissioner appointed under the provisions of Law No. 47, 1887.

This Law to be  
read with Law  
47, 1887.

3. This Law, and the Law No. 47, 1887, shall be read and construed together as one Law.

## INSURANCE.

[See “INQUESTS (FIRE)”]; and as to annual license for Insurance Company, see tit. “REVENUE.”]

*Insurance Companies Security Act 47/04*

*Act-43/06*

*Act 1/07. provides for  
Safeguarding Life Insurance Contracts  
in view of Compulsory Military Service*

INTEREST.

INTEREST.

Law No. 6, 1858.

“ For Securing Free Trade in Money.”

[10th April, 1858.]

WHEREAS there exists at present in this Colony no local Law or Ordinance by which a legal rate of interest is fixed : And whereas, doubts have arisen as to whether the Roman-Dutch Law, as adapted to the trade and commerce of this Colony, fixes any legal rate of interest : And whereas, it is necessary for the prosperity of the trade and commerce of this Colony, that such doubts, and all impediments to the introduction, circulation, and free use and trade in money, should be removed :

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, by and with the advice and consent of the Legislative Council thereof, as follows :—

1. That from and after the passing of this Law, it shall and may be lawful for any bank, public or private company, person or persons, to enjoy and exercise free and unrestricted trade in money, and to lend or invest the same in bills, bonds, or other securities, at any rates of interest, or premium, or discount, that may be arranged or agreed upon between the borrower and lender of capital, within this Colony of Natal, any existing Law to the contrary notwithstanding : Provided that in every case where no special rate of interest has been agreed upon, there shall be no higher rate of interest chargeable than six per cent. per annum.

*N 37/20 S1*  
Money may be lent at any rate of interest.

Where not fixed, to be six per cent. per annum.

2. No minor shall be entitled to claim from his tutor or guardian any higher rate of interest than that actually realised by such tutor or guardian from the amount of property belonging to such minor, under the administration of such tutor or guardian, during the minority of such minor ; or, when no such interest has been realised, any higher rate of interest than six per cent. per annum on the amount under the administration of such tutor or guardian.

Rate of interest chargeable by minors to their tutors or guardians.

3. In any case in which spouses are united in marriage without community of goods, or on which one of the spouses has specially received any sum, matter, or thing from the community of goods, the money accruing to one such spouse from the other, or from the estate of the other, shall not bear interest at any higher rate than six per cent. per annum.

Rate of interest on money accruing to one spouse from the other.

4. This Law shall take effect and be in force from the passing thereof (A).

Commencement

INTERMENT.

[See “ BURIAL.”]

INTERPRETATION OF LAWS, &c.

[See “ STATUTES.”]

INTERROGATORIES.

[See “ EVIDENCE AND WITNESSES.”]

(A) April 13, 1858.

## INTESTATE ESTATES.

[See "COURTS (SUPREME)"; "ESCHEATS." As to Indians, see "IMMIGRATION (INDIAN)"; and as to Natives, see "NATIVE LAW" and "WILLS (NATIVES)."]

*w. 14/82.*  
*vic 2/25 (Natal)*  
*at 13/1918.*

**Law No. 22, 1863 (A).**

"To prevent Community of Goods attaching to certain Marriages, and to enable the Spouses of such Marriages to devise their properties."

[3rd August, 1863.]

WHEREAS it is expedient to exempt certain spouses from the laws in force in Natal relating to community of goods, and relating to testamentary disposition of property, and to make provision for wives in cases of death, and intestacy of the husbands, and to enable persons married in South Africa to avail themselves of the provisions thereof:

BE IT ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Wife of person dying intestate entitled to one-half property, where no children.

One-third in case there shall be issue.

5. When the husband of any such marriage, from which community of goods is excluded by the provisions of this Law, shall die intestate, and leave his wife him surviving, then, in any such case, the wife so surviving her husband shall be entitled to receive and have one-half of the property, movable and immovable, belonging to her deceased husband (B); but in case there shall be lawful issue of her husband, him surviving, then, in any such case, the wife so surviving shall be entitled to receive and have one-third of the property, movable and immovable, belonging to her deceased husband.

**Law No. 7, 1885 (c).**

"To amend the Law as to Legitimate and other Legal Portions."

[23rd September, 1885.]

1. No legitimate portion shall be claimable of right by anyone out of the estate of any person who shall die after the taking effect of this Law.

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

3. From and after the taking effect of this Law the Sixth Law of the Ninth Title of the Fifth Book of the Code of Justinian, commencing with the words "Hac Edictali," and commonly called or known as the Law or "Lex Hac Edictali," shall be and the same is hereby repealed, as regards the estate of any person dying after the taking effect of this Law.

(A) See this Law in full under tit. "COMMUNITY OF GOODS."

(B) See note to this sec. under tit. "COMMUNITY OF GOODS."

(C) See this Law in full under tit. "WILLS."

5. Nothing in this Law contained shall affect or alter the Laws of Law 7, 1885. Inheritance "ab intestato" at present in force in this Colony.

6. This Law shall be in operation on and after the day next after that of the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A).

*Rep. by act 24/1  
sec. 1*

Act No. 38, 1899.

"To make better provision for the Administration of Intestate Estates and for the Registration of Deaths."

[11th September, 1899.]

WHEREAS it is expedient to amend and consolidate the law relating to the administration of Intestate Estates, and for that purpose to amend the law with reference to the Registration of Deaths within this Colony:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Intestate Estate Administration Act, 1899," and shall come into operation on January 1st, 1900. Short title.

2. In this Act, unless the context otherwise requires:— Interpretation.

The expression "Master" means the Master of the Supreme Court, or the officer from time to time appointed by the Governor to fulfil his duties.

The expression "Intestate Estate" means the estate of a deceased person who died without a will, or without having appointed an executor, or in respect of whose will or estate an executor is at any time required, and no provision is made in such will for the appointment of an executor.

"Court" means the Supreme Court or any Judge thereof or Circuit Court having jurisdiction.

"Meeting of next of kin and creditors" means any duly summoned meeting of the surviving spouse, next of kin, creditors and legatees of any deceased person.

"Property" means any property estate effects thing or right, whether vested contingent or reversionary and whether movable or immovable.

3. The Laws and Act mentioned in the first schedule to this Act are repealed to the extent mentioned therein, but this repeal shall not invalidate or prejudice any thing or proceeding begun or completed, nor affect any offences committed before this Act came into force, all which shall be dealt with as if this Act had not been passed. Repeal.

**Act 38, 1899.**

Master to cause election of executor to take place of deceased executor, where will makes no provision.

Master to make enquiries as in Schedule 3 on death of person whose estate requires administering.

Who may take charge of estate pending appointment of executor.

Master to require inventory to be taken.

Summary administration where value of estate not over £100.

Modes of administration.

14. Upon receiving information to his satisfaction as to the death of any person who is the Executor under any will which makes no provision for the further appointment of Executors, and under which another Executor is required, the Master shall cause another Executor Dative to be elected or appointed in terms of this Act, in the same manner as in the case of an intestate estate.

15. Upon receipt of information of the death of any person the Master shall (unless it appear that the estate of such person does not require to be administered in terms of this Act) inquire or cause inquiry to be made, either by himself or through a Magistrate, or through the Natal Police Department, for the purpose of ascertaining the particulars contained in Schedule No. 3, or such other particulars as he may consider necessary; and it shall be the duty of any person of whom such inquiries are made to answer the same to the best of his knowledge.

16. The surviving spouse, if any, may take charge of the estate until the appointment of an Executor Dative, or the Master of the Court may authorise some person so to take charge of the estate, or the Court may appoint a Curator Bonis until the appointment of an Executor Dative: Provided always, however, that nothing herein contained shall prejudice the right of any creditor to have such estate placed under sequestration as insolvent; and provided further that no such surviving spouse or person authorised by the Master of the Court to take charge of an estate shall have any power of alienating or encumbering the same or any part thereof by virtue of this section without the sanction of the Court.

17. The Master shall, as soon as practicable after hearing of the death of any such deceased person, require an inventory of the property of the deceased person to be taken, and for such purpose shall be entitled to require the relatives of the deceased person, or any other person having knowledge, to frame such inventory if able so to do, or to give him information as to what property the deceased had, and the nature thereof: Provided that the Master may exercise the powers of this section in respect of the estate of any deceased person who has left a will under which there is no existing executor capable of acting, and no power of further appointment.

18. So soon as the Master shall have obtained such inventory as he may think sufficient for the time being, in cases where he is satisfied that the intestate estate of the deceased does not then exceed £100 in value, the Master shall be entitled, subject to appeal to the Court, to summarily administer any such estate if he so thinks fit after the lapse of not less than fourteen days from the death of the deceased in any of the following ways:—

- (a) He may agree with the surviving spouse, upon payment by him or her of the debts of the estate, and upon such other terms as he may think just, for delivery to the same of such estate; or if the deceased have left children and no wife or husband surviving, the Master may, upon such terms as he may think just, hand over such estate to any major child or relative who may agree to pay the debts thereof and take charge of the children, if minors.
- (b) The Master may himself administer such estate in the same way as an Executor Dative, but without the appointment of any Executor Dative, and without giving security.
- (c) The Master may summarily appoint a guardian where required in any such case, and relieve such guardian from any obligation to find security.

- (d) The Master may authorise any Magistrate to exercise any or all of the powers which are conferred upon him by this section. Act 38, 1899.

Provided always :

- (a) That in all estates administered under this section no fees, charges, or expenses shall be charged, levied, or demanded by the Master or Magistrate, or by the Supreme Court, or by any official of the Government ; and No fees to be charged.
- (b) That due notice shall be given in the " NATAL GOVERNMENT GAZETTE " that any such estate is to be summarily administered. Notice to be given in Gazette.

19. In all cases where the value of the intestate estate of the deceased shall appear to the Master at the time not to exceed £200 the Master may summarily appoint an Executor Dative, and guardian, if one be required, and may, in his discretion, relieve such Executor or guardian for such period as he think fit, or entirely, from the obligation of finding security : Provided that any person interested in such estate may apply to the Court to cancel or vary such appointment or make a fresh appointment at any time within fourteen days from the date thereof, and the Court may make such order on such application as may be just. Where value of estate not over £200 executor and guardian may be appointed summarily.

20. In all cases where an estate is not summarily administered or an Executor summarily appointed as aforesaid, the Master shall publish a notice calling a meeting of the next of kin and creditors of the deceased for the purpose of proving debts and electing an Executor Dative at a time therein specified, not being less than ten days from the day of publication, and at a place which may either be the office of the Master or the office of any Magistrate, other than the Magistrate having jurisdiction in the City of Pietermaritzburg, according as the Master may determine. Procedure when estate is not summarily administered.

21. The Master or Magistrate, as the case may be, shall be guided by the following rules so far as possible in the appointment of an Executor Dative, namely :— Rules governing appointment of executor dative.

- (a) Whenever a competition shall take place for the office of Executor Dative the surviving spouse, failing whom the next of kin or some of the next of kin, and failing them the creditor or creditors who have proved their debts, or the person or persons nominated by them, and thereafter the legatee or legatees, shall be preferred to the office of Executor Dative, subject to the provisions hereinafter contained.
- (b) Where the debts of the estate are large, or where it is not apparent that the estate will be fully sufficient to discharge such debts, the Master or Magistrate may appoint a creditor or creditors or some other suitable person, as Executor Dative, either in conjunction with or without the surviving spouse or some of the next of kin, or some legatee.
- (c) Where the estate is of large value and the administration thereof apparently intricate, the Master or Magistrate may appoint some independent person in conjunction with anyone else who may be appointed as Executor Dative.
- (d) The Master shall ascertain so far as possible by the votes of those attending the meeting their wishes with regard to the appointment of an Executor Dative, and may or may not act upon such votes, according as he may think right.



Act 38, 1899.

- (e) Amongst competing creditors who have proved their debts, or competing legatees, a person elected by the majority in value shall be preferred, other things being equal.
- (f) Nothing herein contained shall prevent two or more Executors Dative being selected from one or more of the above-mentioned classes of persons.
- (g) If it shall appear to the Master or Magistrate that any valid objection exists to any of the above persons or any of the above classes of persons, or that someone not included in the above classes of persons should be elected, the Master or Magistrate may pass over such persons, or classes of persons, and appoint someone else as Executor Dative.
- (h) If no person attend any such meeting, or if no valid election of Executor Dative be made thereat, the Master shall be entitled to appoint an Executor Dative.

Motion to set aside appointment of executor dative.

22. It shall be competent for any person, having an interest in any such estate, to move the Court to set aside any election or appointment by the Master or a Magistrate of an Executor Dative, or for the Court to make such order therein as may be just.

When set aside further meeting to be called.

23. When an appointment of an Executor Dative shall have been set aside by the Court, the Master shall thereupon call a fresh meeting of next of kin and creditors for the purpose of electing another Executor Dative, unless the Court shall otherwise order.

Guardians to have same preference in voting as their minors would have if free.

24. Whenever any of the next of kin, or creditors, or legatees of any such deceased person shall be minors or otherwise under guardianship or curatorship, then such guardian, or curator, or the like, shall be entitled to the same preference in the voting for Executor Dative as those whose guardians or curators they may be would have had if free from guardianship or curatorship.

How guardian appointed where will makes no provision.

25. Whenever it shall be necessary to appoint a guardian to any minor child of a deceased person, and no provision by will or other valid deed for such appointment exists, such guardian may be elected at the same time, and in the same way, and subject to the same provisions as an Executor Dative, provided, however, that creditors shall not have power to vote for the election of a guardian: Provided always that the Court may at any time appoint a guardian to any such minor.

Appointment of executor dative in place of executor testamentary.

26. Whenever any Executor Testamentary shall have died, or become incapacitated to act as such, or have been duly removed from his office, or have declined to act, and the will under which he was appointed shall not have made due provision for the appointment of another Executor Testamentary in his place, or whenever the appointment of an Executor Dative has otherwise become necessary, the Master shall, upon receiving any information thereof, forthwith call a meeting of next of kin and creditors for the election of an Executor Dative, and the same provisions shall apply to any such election and to any such Executor Dative (subject, however, to the provisions of any such will) as in the case of a person dying intestate: Provided always, however, that the Court may, where any Executor Dative has been so elected to act in place of an Executor Testamentary, order and direct, if it so think fit, that such Executor Dative shall be considered and dealt with as if an Executor Testamentary, and as if otherwise freed from the operation of this Act; and provided further that the Court may where there are surviving Executors, or a surviving Executor, authorise such surviving Executor or Executors to act, without the election of any person to supply any vacancy.

27. Whenever the Executor Dative of any estate shall die, or become incapacitated, or be relieved from his office, or resign, then another Executor Dative shall, subject always to the provisions of the preceding section, be elected, and the same provisions shall apply to such election and to such Executor Dative as in the case of a first election or first Executor, unless the estate in question shall have been fully and duly administered.

Act 38, 1899.

Where an executor dative dies, &c., another executor shall be elected.

DIVISION 3.

*Security of Executors Dative.*

28. Every Executor Dative, save so far as the Court or Master may have lawfully relieved him from such obligation, shall, before entering upon the administration of the estate, find security to the satisfaction of the Master for the due and faithful performance of his duties in such reasonable amount as the Master may, in each particular case, determine; and such security shall be so completed within three weeks from the date of the Executor Dative's appointment, or within such further period, not exceeding one month, as the Master may, in writing, allow; and failing completion of such security as aforesaid, the Master may cancel the appointment of such Executor Dative and call a fresh meeting of next of kin and creditors for the election of another Executor Dative, or the Master may bring the failure of such Executor Dative to complete security before the Court, which may thereupon make such order in the premises as may be just.

Executor dative to give security within certain time.

Failing completion of security Master may cancel appointment or inform Court.

29. The Court or the Master shall be entitled to direct any Executor Dative, whose appointment may be so cancelled, to pay the costs and expenses incurred by the estate or by his office through the failure of the Executor Dative so to complete his security.

Executor dative may be ordered to pay costs.

30. In the event of any surety of an Executor Dative becoming insolvent, or becoming, in the opinion of the Master, unable or unfit to discharge the obligation of suretyship if so required, or in the event of any security given by an Executor Dative becoming in his opinion insufficient, then, and in any such case, the Master shall be entitled to require the Executor Dative to procure another surety or fresh security, and the same provisions shall apply to any fresh surety or fresh security as in the case of the original surety or security.

When Master may require further security.

31. The Master shall be entitled, whenever any additional property of any estate shall have been brought to his notice in respect of which security shall not have already been given, to require the Executor Dative to find further security to his satisfaction, and such security shall be found and completed in the same manner and within the like period, and subject to the same provisions, as the original security.

When additional property brought to Master's notice he may require further security.

32. No Executor Dative, and no surety of an Executor Dative, shall be entitled to be relieved from his obligation in respect of the security to be given in terms of Section 28 by reason of any informality in respect of the document by which security is given; provided it sufficiently appear that such security was intended to be given by such Executor Dative or surety, and the extent to which security was intended to be given.

Informality in document not to relieve obligor.

33. The law of prescription at present applicable to suits or actions for money claimed upon or by virtue of any policy of assurance (A) shall apply to suits or actions for money claimed against any surety upon or by virtue of any surety bond given in terms of this Act.

Prescription of suits against surety.

(A) See Law 14, 1861, s. 3, tit. PRESCRIPTION."

Act 38, 1899.

Sales to be by public auction.

45. All sales of immovable property of any estate shall be by public auction upon such terms as the Master may approve, and after due notice in terms of this Act, save so far as—

- (a) The Court may in any case otherwise specially direct, or
- (b) The Master may authorise any special notice.

Master may pay out capital for maintenance of minor.

46. The Master may from time to time, if upon enquiry it shall appear to him desirable in the interests of any minor, pay out or authorise the Executor Dative to pay out of the capital of any minor's property in the hands of the Master or such Executor any sum or sums of the minor for the maintenance or education of such minor not exceeding in all £100, or such other sum as the Court may direct.

Where will subsequently discovered Court may annul appointment of executor dative.

47. Whenever after the appointment of an Executor Dative it shall appear to the Court that there was in existence a valid will appointing some person capable of acting to be Executor Testamentary, the Court may annul the appointment of an Executor Dative: Provided always that the costs of administration duly incurred and the disbursements duly made by the Executor Dative shall be a first charge upon the estate, and shall be repaid to him by the Executor Testamentary unless it shall be made to appear that the Executor Dative knew of such will before the incurring of such costs of administration, or before the making of such disbursements.

Executors dative are officers of Court.

48. Executors Dative shall, in respect of their office, be deemed to be officers of the Supreme Court, and the duties of such office shall be subject to supervision by the Master.

#### DIVISION 5.

#### *Executors' Accounts.*

Account to be filed within six months.

49. Every Executor Dative shall, within six months of the date of his appointment, file with the Master an exact account and balance of the estate setting forth his dealings therewith and the proceeds of all sales and debts collected, all payments made, and an inventory of all property and effects still unsold, and also all debts due by the said estate, and further, an account setting forth the distribution made or proposed to be made amongst the creditors, legatees, or other persons entitled to share in the said estate according to the order of their legal preferences, and thereafter within every succeeding period of six months shall, until the estate shall be fully liquidated and distributed, file similar accounts, and all Executors' accounts as aforesaid shall be duly advertised and be brought by the Executor before the Court for confirmation within a period of six weeks from the day of filing: Provided always

Extension of time may be granted.

- (a) That the Master may extend the periods for filing any one account from time to time for any term not exceeding one year in all, and where the liabilities of the estate have been discharged the Master may authorise the filing of accounts every year instead of every six months;
- (b) That the Court may extend the periods for filing accounts for such term as it may think fit;
- (c) That if the Executor fails to file any account within the proper time he shall not, except by permission of the Court, be allowed to charge or receive anything by way of commission in respect of the administration of so much of the estate as is represented in such account.
- (d) That the Court may for any sufficient reason disallow an Executor's commission either wholly or in part.

Executor's commission may be disallowed either wholly or in part.

- (e) All accounts shall, as far as possible, be supported by vouchers, and the Master shall have power to call for any vouchers or explanations he may consider necessary. Act 38, 1899.  
Vouchers.
- (f) That where objection has been taken to any Executor's accounts, the same shall be disposed of within such term as may from time to time be fixed by Rule of Court, and, so soon as such objection is disposed of, confirmation of the accounts shall be obtained; Confirmation of  
accounts.
- (g) That the Court or the Master may extend the time for confirming any account to any period not exceeding six months;
- (h) That the Master may, in writing, dispense with the necessity of bringing before the Court for confirmation the accounts in any estate where the gross proceeds are under £100: Provided, however, that this sub-section shall not prevent any aggrieved person bringing such account before the Court to be dealt with by the Court, and that the advertisement of such accounts shall state that in accordance with this sub-section it is not intended to procure the confirmation of such accounts;
- (i) That with the exception of accounts, the necessity for confirming which has been dispensed with by the Master, a report shall be made by the Master upon all accounts in intestate estates brought before the Court for confirmation. Report to be  
made by Master.

50. Where the deceased resided at some place within the Colony, but more than twenty miles from the Court House, Pietermaritzburg, then, unless the Master, in writing, shall dispense with compliance with this section, such account or accounts, or a copy thereof, shall, in addition to being filed with the Master, be filed at the office of the Magistrate of the Division in which the deceased resided, and there remain for a period of at least ten days after the notice of such filing, and before confirmation thereof. The Magistrate shall forward to the Master any objections against any such account which may have been lodged with him, and if no objections have been lodged he shall report accordingly. How and where  
accounts to be  
filed.

51. Due notice of the filing, and also of the time and place of any application for the confirmation of any Executor's account, shall be given by him forthwith, so that at least fourteen days shall elapse between the date of such notice and the application for confirmation. Notice of filing  
to be given.

DIVISION 6.

*Legal Proceedings.*

52. No action shall be brought against an Executor in respect of any claim against the estate, nor shall any action, commenced against the deceased in his lifetime, be continued against any Executor unless, in each case, written notice shall have been given to the Executor calling upon him within seven days to admit or deny such claim, and unless he shall have failed to admit such claim, within such period, or shall have denied the same: Provided, that in any case, upon cause shown, the Court may at any time authorise the commencement, continuation, or abandonment of any such action. Notice to be  
given to ex-  
ecutor before  
action.

DIVISION 7.

*Removal or Resignation of Executors.*

53. The Court may, upon application by any aggrieved person, or upon the report of the Master, remove any Executor Dative from his office if it shall appear that such Executor Dative has committed How executor  
dative may be  
removed.

Act 38, 1899. a breach of, or has failed to duly perform the duties of his office, or if the estate of the Executor Dative have been placed under sequestration as insolvent: Provided always that such removal shall not affect the liability, prior to removal, of such Executor Dative, or of his surety or any security given by him in respect of the estate.

Resignation of executor dative, by consent of Master under certain conditions.

54. Any Executor Dative may, with the written consent of the Master, resign his office as such, subject to the following provisions:

- (a) That he shall pay all expenses caused to the estate by his resignation and the election of another Executor Dative;
- (b) That he shall have duly filed all accounts in connection with the estate up to the date of his resignation;
- (c) That the Master shall be satisfied that another Executor Dative can be obtained to act in his place;
- (d) That the Master may require the prepayment by the Executor Dative of such an amount as he may think sufficient to cover the expenses of any such resignation and fresh election.

#### DIVISION 8.

#### *Offences and Penalties.*

Executor *de son tort*, liabilities of.

55. If before letters of administration have been granted by the Master to him any person shall, without prior sanction of the Court, take upon himself to administer, distribute, or otherwise dispose of any estate, or any part thereof, except in so far as the Court may adjudge the same to have been, or to be absolutely necessary for the safe custody or preservation thereof, or for providing a suitable funeral for the deceased, or for the subsistence of the family left by the deceased, or of any live stock, or, if any Executor Dative, prior to completing his security, shall take upon himself to administer, distribute, or otherwise dispose of the estate, or any part thereof, every such person shall thereupon, and in respect and by reason of such undue administration, distribution, or disposal of any estate, or any part thereof, become and be personally liable to pay to the creditors all debts due by the deceased at the time of his death, or which have thereafter become due by his estate, and all legacies left by the deceased in so far as the property of any such estate shall be insufficient for the full payment thereof (A).

Provided always:

- (a) That if he shall prove to the satisfaction of the Court before which he shall be sued that the true amount and value of the property which has actually been unduly administered, distributed, or disposed of by him, did not exceed a certain sum, and that his administration, distribution, or disposal of such estate was not fraudulent, then, and in every such case, such person shall be personally liable for the amount of such sum, or such part thereof only as he shall fail to prove has been distributed or disposed of in such manner and for such purposes as by law the same ought to have been distributed or disposed of; and
- (b) That such person shall be liable to pay the taxed costs incurred in, and concerning such suit by the plaintiff therein, notwithstanding that such person's liability may have been so restricted as aforesaid, unless the Court shall be of opinion that the plaintiff's action was "malá fide."

(A) See Williams on Executors, 5th ed. 225.

56. Every person shall be deemed to be guilty of an offence cognizable in the Court of a Magistrate, and, on conviction, be liable to punishment not exceeding what is hereinafter set forth who may do any of the acts hereinafter set forth, viz. :—

Act 38, 1899.  
Offences.

- (a) Refuse within a reasonable time to give the Master, or any person duly authorised by him to require the same, such information as the Master is entitled to require under this Act, or wilfully give false information, in which case the punishment may be a fine not exceeding £10 sterling, or, in default of payment, imprisonment for a period not exceeding one month ;
- (b) Wilfully refuse or neglect to comply with any order which the Master is entitled to give in terms of this Act, in which case the like punishment may be inflicted ;
- (c) Wilfully make any false claim against any intestate estate, in which case punishment may be the same as that for the time being in respect of the crime of perjury.

Refusal to give information.

Disobedience of Master's order.

False claims.

57. Any wilful contravention of the provisions of this Act in respect of which no punishment is otherwise imposed shall be deemed to be an offence, cognizable in the Court of a Magistrate, and shall be punishable by a fine not exceeding £10, or, in default of payment, by imprisonment for a period not exceeding one month, with or without hard labour.

Punishment for offences not otherwise provided for.

DIVISION 9.

*Miscellaneous.*

58. Where a deceased person dying intestate had his domicile in another country in which his estate is being administered as intestate, and has left movable property in this Colony, then the Executors or Administrators of such intestate duly appointed in the country of domicile shall be entitled to take possession of and administer such movable property in the same way as if it were in the country of domicile, whether Executors Dative have been appointed in this Colony or not, subject to the following provisions :—

Administration of moveable property of intestate domiciled in another country.

- (a) Nothing shall be done under this section until such Foreign Executors or Administrators have obtained an order of the Court authorising them to proceed hereunder, and such order shall only be applied for after at least one month's notice of the time and place of application has been given in terms of this Act ;
- (b) Before acting upon any such order the said Executors or Administrators shall give security from time to time in the same manner as Executors Dative appointed under this Act ; such security shall also impose a liability to comply with the provisions of this Act and any orders of Court affecting such estate ;
- (c) All persons having claims against the estate of such deceased person shall be entitled to prove the same before the Master at any time during a period to be fixed by the Court either at the time of granting the aforesaid order or subsequently, and such proof shall be made and be admitted or rejected by the Master, and be subject to appeal in the same manner, so far as may be, as in the case of other intestate estates administered under this Act ;

Foreign executors to obtain order of Court ;

And give security.

Proof of claims.

**Act 38, 1899.**

Saving of rights of persons having claims on the property.

Court may refuse order unless satisfied on certain matters;

Or may grant it subject to conditions.

Duties of executor with regard to minor or lunatic having an interest in the estate.

Registrar of Deeds not to transfer immovable property without leave.

Master to require intestate estates to be administered and executors of a will to prove same.

Master at all times entitled to demand accounts, &c.

Notices and advertisements, how to be given.

- (d) Nothing contained in this section shall affect or prejudice the claims or rights of any person in respect of any property of the said intestate estate in this Colony whether by way of mortgage, hypothec, pledge, lien, charge, lease, or otherwise, which claims or rights may be enforced by the Court in the same way as in the case of other intestate estates administered under this Act;
- (e) The Court may decline to grant any order under this section if it be not satisfied that such order will be in the interest of such intestate estate as a whole, or that persons resident in Natal and having claims against such intestate estate will be equitably treated and be exempted from unreasonable delay;
- (f) The Court may, in granting any order under this section, impose such terms and conditions as may be just, and may from time to time confer on such Executors or Administrators such of the powers of this Act as to property in this Colony belonging to such estate as may to the Court seem meet.

59. Every Executor appointed under this Act who shall in the course of his duties find that any minor not having a lawful guardian or curator, or any lunatic not having a lawful curator, or any person absent from this Colony not having a lawful representative within the same, has any just and lawful right and claim to the estate of which he is Executor, or any part thereof, shall forthwith transmit in writing to the Master a statement containing the name of such minor, lunatic, or absent person, and specifying the nature and amount of the property to which there is such right or claim as aforesaid.

60. The Registrar of Deeds shall not pass transfer of any immovable property which is registered in the name of any deceased intestate person, or his estate, or to which he or it appears to him to be entitled, without leave of the Court, or, in cases where the deceased left no will affecting such property, or where the Master is authorised to allow sale or transfer under this Act, without the written sanction of the Master.

61. The Master shall have power to require the intestate estate of any deceased person to be administered in terms of this Act, and the Executors under the will of any deceased person to prove the same and to take out letters of administration, unless they decline in writing to act, and if his requirements under this section are not complied with the Master may bring the matter before the Court, which shall make such order in the premises as may be just.

62. The Master shall be entitled at all times to demand from Executors Dative appointed, whether before or after this Act, information and accounts of their administration, and he may bring any matter connected with such administration which, in his opinion, requires enquiry or amendment before the Court, which shall make such order in the premises as may be just.

63. All notices or advertisements required by this Act may be sufficiently given by the Master or by any Executor Dative by advertisement in the "NATAL GOVERNMENT GAZETTE" and any one newspaper published in Pietermaritzburg and one newspaper published in Durban, unless by the context it appears that notice shall be given in some other manner: Provided always, that the Master may in any case require any such notice to be advertised more frequently or in any other newspapers in the Colony, and in the case of any deceased person who had business in other countries the Master may require publication of notices in such other countries.

64. The Master shall be entitled, in order to better carry out the objects of this Act, Act 38, 1899.

- (a) To authorise meetings of next of kin and creditors to be held before any Magistrate in lieu of being held at the Master's Office, the Magistrate in any such case having the same powers and being subject to the same provisions as the Master ;
- (b) To authorise any Magistrate or any member of the Natal Police Force to make enquiries or take inventories on his behalf, or to carry into effect any specific order which the Master is entitled to give under this Act ;
- (c) To call upon any Executor Dative to carry out the duties of his office, and upon his failure to do so to bring such failure before the Court, whereupon the Court shall make such order as may be just.

Authorities to Master to carry into effect the objects of the Act.

65. Any Assistant Master who may be appointed by the Governor (A) shall be entitled to exercise all the powers, and be liable to perform all the duties imposed under this Act upon the Master, or so much of such powers and duties as the Court may by general rule or special order from time to time direct.

Powers and duties of Assistant Master.

66. Any appointment, decision, direction, or action of the Master, Assistant Master, or Magistrate or other person under this Act, shall be subject to appeal or review by the Court at the instance of any aggrieved party.

Appeals.

67. The operation of this Act shall not be affected by any words or expressions in any will or testamentary disposition intended to exclude the Master or Government or officials thereof.

Provisions of Act cannot be excluded.

68. Subject to the provisions of this Act the Court may from time to time make rules and repeal or vary the same with reference to the following matters :—

Rules.

- (a) The forms to be used in connection with the election of Executors, their accounts, and the administration of estates, and the manner in which claims against such estates are to be presented for proof and admitted or rejected ;
- (b) The duties of the Master or other officers charged with any responsibilities under this Act, the books, registers, and accounts to be kept by them, and the like ;
- (c) Forms of procedure under this Act, and the cases in which matters may be brought before Circuit Courts in lieu of the Supreme Court or a Judge thereof in Chambers ;
- (d) The conditions under which and the times within which reviews and repeals under this Act may be begun or prosecuted, and the manner in which the Master may appear or be represented in Court ;
- (e) The fees of office chargeable by the Master or any officers of the Court in respect of business connected with the carrying into effect of this Act ;
- (f) The remuneration payable to Executors in respect of the performance of their duty, and the forfeiture of any such remuneration for any failure to perform their duty ;
- (g) The carrying into effect fully and completely the provisions of this Act :

Provided always that, until the making of Rules as aforesaid, the existing Rules and practice shall remain in force.

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(A) For authority for Governor to appoint Assistant Master see Act 39, 1896, ss. 64 and 68, tit. "COURTS (SUPREME)."



Act 38, 1899.

Schedule No. 1.

*Repeal.*

Enactments repealed.  
Schedule No. 1. Law 20, 1866

Extent of repeal.

So much of Section 3 as refers  
to Executors Dative.

Law No. 16, 1867.  
So much of Section 6 as relates  
to deaths, Schedule G, and  
so much of the Law as is in  
conflict with this Act.

Act No. 17, 1894.

Schedule No. 2.

*Schedule B.*

Schedule No. 2.

19.....

Deaths in the district of.....

When died and where.	Name and Surname.	Sex.	Age.	Rank or profession.	Causes of death.	Whether any property left.	Signature, description, and residence of informant.	When registered.

I,.....of.....following the occupation of  
.....do solemnly declare that the foregoing information is  
true to the best of my knowledge and belief.  
(Signature.)  
Declared before me this.....day of.....19.....  
at.....

Registrar for the District of.....  
or Justice of the Peace, as the case may be.

Schedule No. 3.

Schedule No. 3.

Name of deceased.	Date of decease.	Place of decease.	Sex.	Age.	Rank or profession.	Nationality.	Birthplace.	Names of parents and their place of abode; if unknown, name and place of abode of the nearest relative known.	Whether married or unmarried, or widower, or widow. If married, place of marriage and whether with or without ante-nuptial contract.	Children, if any, and whether majors or minors. If no children, then the names of brothers and sisters, and whether majors or minors.	Whether any property left.	Whether any will.

INTESTATE ESTATES.

18

SCHEDULE No. 4.

Act 38, 1899.  
Schedule No. 4.

Supreme Court of Natal.

Master's Letters of Administration.

In the Intestate (or Testate) Estate of.....

This is to certify that.....  
of..... has been appointed Executor Dative to  
administer this estate in terms of the Law as to intestate administra-  
tion (or, if there be a Will, "the Will of the deceased, dated.....")

Dated at.....this.....day of.....19.....

repealed by Act 22. 1916 sect: 1

1

(B) see Act 23/1908  
" 41/09  
" 44/06  
" 27/3/05

INTOXICATING LIQUORS.

Reg. under this Act as under:-  
4. N. 628 1896  
" 526 1894  
" 656 1906.

ature Beer,

INTOXICATING LIQUORS. (A)

Act-23/08 substituted in Act-31/05 Act No. 38, 1896. (B) See act 27/05

" To amend and consolidate the Laws regulating the sale of Intoxicating Liquors."

[21st July, 1896.]

Act-41/09  
Voluntary Licenses)

WHEREAS it is expedient to amend and consolidate the Laws regulating the sale of Intoxicating Liquors:

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:

Short title.  
Commencement  
Repeals.

1. This Act may be cited as the "Liquor Act, 1896."
2. This Act shall come into operation on the First day of November, 1896.
3. The Ordinances, Laws, and Acts mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule, and all other Ordinances and Laws relating to the sale of wines, beers, or spirituous liquors are also repealed, in so far as they are in conflict with this Act, but no further.

repealed by  
A 30/28 S 3

Provided that:—

- (a) Any order, license, certificate, by-law, rule or regulation made or granted under any enactment hereby repealed shall continue in force as if it had been made or granted under this Act.
- (b) Any officer appointed, any body elected or constituted, and any office established under any enactment hereby repealed shall continue and be deemed to have been appointed, elected, constituted or established as the case may be under this Act.
- (c) Any document referring to any Act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment of this Act.
- (d) The by-laws and regulations made by Municipal Corporations under Law No. 19, 1872, or Local Boards under Laws No. 11, 1881, and No. 39, 1884, or under any amending Laws or Acts, in regard to fixing the rates and regulating the charges for the issue of and receiving the charges for licenses within the jurisdiction of such Corporations or Local Boards respectively shall, save so far as they may be contrary to this Act or any regulations thereunder, remain in full force and effect under this Act until altered, added to, amended or repealed by such Corporations and Local Boards respectively.
- (e) The sale of methylated spirits, except where specially mentioned in this Act, shall continue to be regulated by the Excise Act of 1895.
- (f) The repeal shall not prejudice any right acquired, nor annul or lessen any liability incurred before the passing of this Act.

(A) As to supplying policeman in uniform, and as to right of policeman to enter public-house in discharge of his duty, see Act 1, 1894, s. 39, tit. "POLICE."

As to taking liquor on board of Her Majesty's ships, see Law 9, 1887, tit. "CRIMINAL LAW," page 29.

- (g) All proceedings against, and all penalties and forfeitures incurred under any of the repealed Laws, may be dealt with and enforced thereunder, or under this Act. Act 38, 1896.
- (h) All proceedings taken or commenced under any of the repealed Laws may be continued under this Act.

4. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say :— Interpretation.

A "New License" means a license applied for in respect of premises not licensed for the sale of intoxicating liquors at the date of the application therefor (A).

"Intoxicating liquor" or "liquor" means any spirits, wines, liqueurs, ale, beer, porter, cider, perry, or other fermented, distilled, spirituous, or malt liquor of an intoxicating nature, methylated spirits (B), and every drink with which any such liquor shall have been mixed (C).

"License" means any license 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: Provided that a Retail License issued under this Act is a license given to the person named therein, to be used on the premises therein described.

"Native" means and includes all members of the Aboriginal Races or Tribes of Africa, south of the Equator, including liberated Africans, commonly called "Amandawo," and whether exempted or not exempted from the operation of Native Law, and Griquas and Hottentots, and any person whose parents come under the description of Natives, Griquas or Hottentots (D).

"Indian" means and includes all Natives of India who have been brought, or who may be brought as Immigrants into this Colony under the provisions of the Laws and Acts for the time being in force in that behalf, and their descendents, and shall include natives of India who may have come or who may come to this Colony otherwise than as aforesaid, or their descendants.

"Borough" means a Borough in terms of Law No. 19 of 1872.

"Township" means a Township in terms of Law No. 11, 1881, as amended by Law No. 39, 1884.

5. Nothing in this Act shall apply :—

Exemptions.

- (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) To sales during a Session of Parliament by any person appointed by the President of the Legislative Council or the Speaker of the Legislative Assembly as caterer of the Refreshment Rooms of the Houses of Parliament, who may sell any spirituous or other liquors subject to such rules and conditions as may be laid down by a Refreshment Room Committee of the Council or Assembly.

(A) Amended by Act 36, 1899, s. 1, post.

(B) As to meaning of "methylated spirits," see Act 32, 1895, s. 3, tit. "REVENUE."

(C) See further definition in Act 36, 1899, s. 2, post.

(D) See *Durban Corporation v. Brown* (3 N.L.R. 98) as to meaning of word "native," under Law 22, 1878, now repealed. See also *Downes v. Clerk of the Peace*, 13 N.L.R. 22.

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(4) To sales of any of the liquors aforesaid made by any Sheriff, Messenger, or other officer acting under the authority of any Court, Judge, or Magistrate.

(5) To garrison canteens, or to any canteen of any Volunteer encampment, or Police encampment, regulated under the Law relating to the Volunteers or Police.

Offence of selling liquor without licence.

6. Any person who shall sell any liquor without the license authorising the particular sale shall be deemed guilty of an offence.

Wholesale license.

7. A wholesale license is required where liquors are sold in any quantity not less than two gallons imperial measure if in cask or than twelve reputed quart or twenty-four reputed pint bottles if in bottle.

Issue thereof.

8. A wholesale license will be issued by the Chairman of a Licensing Board on tender of the license money and of the requisite stamps.

*Let Act 41*  
Retail license.

9. A retail license is required of one or other of the classes hereafter described where liquors are sold in quantities less than the minimum quantity that may be sold under a wholesale license.

Classes of retail license.

10. Retail licenses are divided into the following classes:—

- Hotel.
- Country Hotel.
- Bar.
- Bottle.
- Colonial Beer.
- Native Beer (A).

Hotel.

11. An hotel license authorises the sale of liquors in retail quantity to persons sleeping or boarding on the premises of the hotel.

Country hotel.

12. A country hotel license authorises the sale of liquors in retail quantity to persons on or off premises situate outside a Borough or Township.

Bar.

13. A bar license authorises the sale of liquors in retail quantity to persons on or off premises situate in a Borough or Township.

Bottle.

14. The minimum quantity of liquor to be sold under a bottle license is one reputed pint. The bottle is to be corked, and to be sealed, capped or wired, unless closed with a screw stopper, and is not to be opened on the premises.

Premises licensed for bar or bottle.

15. No bar or bottle license, except in connection with an hotel, shall be issued unless the premises are so arranged that the entry by customers is from a public street (B) or thoroughfare (C), and not from any yard belonging to the premises (D).

Colonial beer.

16. A colonial beer license is issuable in a case where no other liquor than beer made in the Colony is sold.

Native beer.

17. A Native beer license is required to authorise the sale of Native beer in any Borough or Township. No Native beer license shall be issued in disregard of any resolution of a Town Council or Town Board passed in opposition to that class of license.

Not to be sold outside towns.

18. The sale of Native beer upon premises whereon any business is carried on, outside a Borough or Township, is prohibited (E).

(A) See sections 32 and 33 for the amount of the license duties.

(B) As to what is a public street or thoroughfare within the meaning of this sec. see *D.A.A. Association v. Durban Licensing Board*, 18 N.L.R. 68.

(C) This does not mean that there shall be no entry whatever except from

a public street or thoroughfare, but that a customer's entry must be so (*Wise v. Licensing Board, Pietermaritzburg*, 18 N.L.R. 59).

(D) See proviso added by Act 36, 1899. s. 3, post.

(E) See Act 36, 1899, s. 4, post.

at top of p. 1.

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19. The Chairman of a Licensing Board shall, at the request of the General Manager of Railways, issue a bar license to any person who may have entered into a contract with the Department to cater for passengers at a railway station, and shall at like request cancel such license.

Act 38, 1896.  
Railway bar.

20. No liquor shall be sold at a railway station to be consumed off the railway premises or line.

Railway premises.

21. A railway bar may be opened for the convenience of railway passengers in the period closed as regards ordinary bars for such reasonable time, having regard to the arrival and departure of trains, as may be fixed by the General Manager, and notified on a notice-board conspicuously placed at the entrance to the bar.

Railway bar hours.

22. If any person being a resident of a town in which a railway station is situate, and not being a passenger nor using the railway premises for railway purposes, shall be in a railway bar during the extra hours for the purpose of procuring liquor he shall be deemed to have committed an offence.

Illegal use of railway bar.

23. A club license is required where liquors are supplied to members, and to honorary members and guests admitted under the club rules. It will be issued in the same way as a wholesale license.

Club licence.

24. Any new club license which may be obtained where the club is carried on for purposes of gain, or for the benefit of any proprietor, steward, caterer, or farmer, or of a person holding a retail license off the club premises, shall be void unless the Attorney-General shall have certified that, having regard to the rules and list of members, the club is a club proper to be licensed under this Act.

New clubs.

*See 2, 5 44 32.*  
*...*

25. A club license, not being a temporary license, will not authorise the supply of liquor to be consumed off the club premises.

Club premises.

26. A club committee may take out in the name of its steward or other like officer a temporary license to supply its own members, honorary members and guests in a club, marquee, or shed, at any races, sports, or like entertainments.

Temporary club license.

27. The Chairman of any Licensing Board may give to the holder of any retail license a temporary bar license for not more than three days, to sell liquors at races, sports, or like entertainments, if the applicant produces the written consent of the Committee of such races, sports, or like entertainments, and the license may be revoked by the Chairman for reason to him sufficient.

Temporary bar license.

28. The licenses required by this Act are issuable by the respective Licensing Boards (A).

Issue of licenses.

29. A Licensing Board in arriving at its decision on any application for a license shall have regard to all evidence led by any person as to—

Matters to be considered by Licensing Boards.

- (a) The character of the applicant.
- (b) The nature of the premises.
- (c) The position of the premises as regards any place of public worship, school, or hospital, or the like.
- (d) The manner in which the applicant has conducted any licensed ~~(b)~~ retail business in the past.

*Wholesale or Act*

30. An appeal shall lie to the Supreme Court or Circuit Court against any decision by a Licensing Board (B).

Appeal.

31. Every license shall expire on the 31st day of December, provided that if the license is taken out after four months or eight months of the calendar year have expired, there shall be an abatement in the licensing money of one-quarter or one-half, as the case may be.

Term of license.

(A) Semble, the Board may take legal advice in arriving at a decision upon an application for a license (*D.A.A. Association v. Durban Licensing Board*, 18 N.L.R. 33).

(B) As to the grounds upon which the Court will refuse to alter the decision of a Licensing Board, see *Griffin v. Durban Licensing Board*, 19 N.L.R. 37.

Act 38, 1896.

License duties:  
Country.

32. The money to be charged for licenses (A) outside Boroughs and Townships shall be:—

	£
Country Hotel	8
Colonial Beer	5
Temporary License, for each day	1
Wholesale	10
Club	20
Bottle License	10

License duties:  
Boroughs and townships.

33. Town Councils and Town Boards may charge for licenses other than Railway bar licenses, issued in Boroughs and Townships such sums as may be fixed by by-laws, but not exceeding the following rates:—

Hotel, Bar, or Bottle:	Borough. Township.	
	£	£
First year	50	25
Succeeding years	30	15
Hotel and Bar:		
First year	100	30
Succeeding years	60	20
Colonial Beer	20	10
Native Beer	6	6
Wholesale	30	20
Club	30	20
Temporary Licenses, for each day	1	1

Payment of  
license money.

34. No license shall be issued in a Borough or Township, unless a receipt for the license money has been lodged with the Clerk of the Licensing Board.

Stamps on  
town licenses.

35. Each license issued in a Borough or Township shall carry Government stamps to a value equal to one-tenth of the license money.

Stamps on  
country  
licenses.

36. Licenses outside Boroughs and Townships shall carry stamps to the value of the license money.

Cancellation of  
Stamp.

37. All stamps on licenses shall be cancelled by the Chairman or a member of a Licensing Board before the license becomes effective.

Country hotel  
premises.

38. No country hotel license shall be issued unless evidence is adduced satisfactory to the Licensing Board that the premises afford reasonable accommodation for man and beast, and are provided with proper sanitary arrangements.

By-laws in  
towns:  
Suitability of  
premises.

39. Town Councils and Town Boards may pass by-laws in the same way as other by-laws with respect to the suitability of premises for the retail trade in liquors, and no license shall be granted in disregard of such by-laws.

Native  
locations.

40. No license shall be issued for the sale of liquors within the limits of any Native Location without the written consent of the Secretary for Native Affairs.

Certain persons  
disqualified  
from holding  
new license.

41. No new license shall be granted or transferred to any person or to the wife of any person—

- (1) Holding office or appointment under Government:
- (2) Occupying premises of which any member of a Licensing Board, constable, or member of a Police Force is the proprietor or landlord, or in which such constable or member has an interest:

(A) See as to native beer, Act 36, 1899, s. 5, post.

(3) Convicted of selling liquor without a license until after a period of one year subsequent to the date of such conviction, unless the applicant shall be able to show to the satisfaction of the Board that the act of which he was convicted was wholly due to inadvertence. Act 33, 1896.

42. A Licensing Board, or the Chairman of a Licensing Board until a meeting of the Board can be held, may for any reason appearing sufficient to such Board or Chairman transfer a retail license for its unexpired period to any person other than the original licensee, and the transferee shall in such case be in the same position as if his name had been mentioned in the original license: Provided that no such transfer shall be made when the original licensee has been convicted of an offence under this Act within the preceding twelve months. Transfer of retail license.

43. In every case when a new license is applied for it shall rest with the applicant to show to the Licensing Board by memorial or otherwise reasonably sufficient grounds for the issue of such new license. Applicant for new license to show cause.

44. The reasons for the granting or refusing of any retail license are to be shortly stated by or on behalf of the Board on the record of its proceedings; and a dissenting member's reasons may be also so recorded. Board to record reasons for decision.

45. No new retail license shall be issued in any Borough or Township if a majority of the persons whose names are on the Burgess Roll or Town Roll, and residing or carrying on business within the neighbourhood (as hereafter defined) of the premises for which a license is sought, shall have lodged with the Clerk of the Board, seven days before the hearing, a memorial or memorials, signed by them, objecting to the license applied for. Any name shown by the applicants to be wrongly signed to such memorial shall be disregarded by the Board. Memorials objecting to issue of a new license in a town.

46. The term "neighbourhood," as used in the last preceding section, shall be deemed to be bounded by a circle drawn with a radius of one hundred and fifty yards from the front door of the premises for which a license is sought. Meaning of term "neighbourhood."

47. No new retail license shall be issued in any ward of a Borough if there shall have been lodged at any time within two years next before the hearing of the application with the Clerk of the Licensing Board a memorial or memorials, signed within a period of three months prior to presentation, by a majority of persons whose names were on the Burgess Roll and residing or carrying on business within the limits of the ward objecting to the issue of new licenses within any such ward. Memorials against issue of a new license in a borough ward.

48. No new retail license shall be issued in any township if there shall have been lodged, at any time within two years next before the hearing of the application with the Clerk of the Licensing Board a memorial, or memorials, signed within a period of three months prior to presentation by a majority of persons whose names were on the Town Roll, and residing or carrying on business within the limits of the township, objecting to the issue of new licenses within any such township. Or in a township.

49. No new retail license shall be issued in any Fieldcornetcy if a majority of the voters registered for the election of Members of the Legislative Assembly, and residing in the Fieldcornetcy, shall have lodged with the Clerk of the Board, seven days before the hearing, a memorial or memorials, signed by them, objecting to the license applied for. Memorials against issue in a fieldcornetcy of a new license.

50. No new retail license shall be issued in any Fieldcornetcy if there shall have been lodged, at any time within two years next before the hearing of the application, with the Clerk of the Licensing Board a memorial or memorials, signed within a period of three months prior to presentation by a majority of the voters registered for the election of Members of the Legislative Assembly, and residing in the Fieldcornetcy, objecting to the issue of new licenses within such Fieldcornetcy. Or of any new license.

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## INTOXICATING LIQUORS.

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Wards for purposes of this Act.

51. It shall be lawful for the Governor, by proclamation, to divide any Fieldcornetcy, other than a Municipal Borough, into two or more wards for the purposes of this Act, and thereupon the provisions of this Act shall, "mutatis mutandis," apply to such new wards.

Local option by-laws.

52. It shall be competent for any person, or body of persons, to apply to the Colonial Secretary for by-laws to be passed for the more convenient application of the principle of local option, as provided for by this Act, and thereupon the proposed by-laws may be published in the "NATAL GOVERNMENT GAZETTE," to the intent that objections thereto may also be lodged, and any by-laws thereafter passed by the Governor in Council, not in violation of the principles of this Act, shall have the same force after promulgation as if herein inserted; and the lengthening of the radius, mentioned in Clause 46, under any special circumstances shall not be deemed a violation of the principles of the Act.

Licensing Boards.

53. A Licensing Board shall be established in each Borough and Township, and also in each Magisterial Division, as regards areas outside a Borough or Township.

Constitution.

54. Each Board shall consist of three members, appointed in the first fourteen days of December or as soon thereafter as may be, by the Governor, the Town Council, or Town Board respectively, and vacancies may be filled in the same manner from time to time as they occur.

Chairman and clerk.

55. The Magistrate and his Clerk shall be respectively Chairman and Clerk of Boards outside Boroughs and Townships.

Of Town Boards.

56. The Town Council and Town Board respectively shall appoint a chairman of the Board of the Borough or Township, and the Town Clerk or other officer appointed by a Town Council or Town Board shall be the Clerk of a Licensing Board in a Borough or Township.

Records and copies.

57. The Clerk of a Board shall keep a record of all proceedings, and shall grant copies thereof on tender of a reasonable fee to be determined in case of need by the Master of the Supreme Court.

Quorum: decision.

58. Two members of a Licensing Board shall be a quorum of the Board; in case there shall be a division of opinion when only two members are present at a meeting of the Board, the decision of the Chairman if he be present, or of the senior member in the absence of the Chairman, shall be the decision of the Board.

Seniority.

59. The seniority of members of a Licensing Board shall be determined by the order in which their appointments have been made.

10 Rules for procedure and forms of licenses.

60. The proceedings of Licensing Boards and the forms of licenses shall be regulated by Rules to be from time to time framed by a Board appointed by the Governor, and published in the "NATAL GOVERNMENT GAZETTE."

24/1896  
56/1906.

Notice of applications and objections.

61. The rules of Licensing Boards shall provide for due notice of all applications for licenses and of all objections to be taken thereto.

Sittings of Board.

62. Each Licensing Board shall sit in the first fourteen days of December and whenever convened by the Chairman.

Accommodation.

63. The Licensing Board in a Borough or Township shall be provided with suitable accommodation by the Town Council or Town Board.

Persons disqualified to sit as members.

64. The following persons shall not sit as members of a Licensing Board:—

- (a) Any person interested in the way of trade, manufacture, purchase, or sale of liquors.
- (b) Any person belonging to an association pledged to the suppression or support of the liquor trade.
- (c) Any person interested as proprietor, lessee, or mortgagee of the premises sought to be licensed.

65. [Repealed by Act 36, 1899.]

66. No person shall sell, barter, or otherwise supply intoxicating liquor to any Native or Indian, save as hereafter specially provided :

Act 38, 1896.  
Sale to Natives and Indians prohibited.

Liquor may be supplied for medicinal purposes (A), and in such case the burden of proof will be upon the dealer or the person who supplied it, to show that the liquor was required for such purpose.

Exceptions: Medical purposes.

Liquor may be supplied to an Indian for consumption by such Indian only upon the licensed premises and not elsewhere. The liquor so supplied to an Indian shall not be supplied in a bottle, but only in a glass or measure belonging to the dealer which is to be left on the premises after the liquor has been consumed.

Indians on premises.

Provided, however, that any person being a Native or Indian within the meaning of this section, may be exempted from the operation of the section by a letter of exemption granted by order of the Governor in Council (B).

Letter of exemption.

67. No person shall be allowed to obtain liquor, from a retail dealer, through an Indian or Native, otherwise than upon an order signed (c) by him, and dated and addressed to the retail dealer setting out the article to be supplied. The licensed dealer shall, before acting upon any such order, assure himself of the genuineness of such order, and that the same is signed by some European resident, or by some European known to such licensed dealer, and that it is dated upon the day upon which it is presented. It shall be the duty of the licensed dealer on sending out any liquor in terms of such order to give to the Indian or Native messenger a return pass, dated, and directed to the person who sent the order; and the counterfoil of such return pass shall have on it a number corresponding with the number placed on the order by the retail dealer. Every such order shall be filed by the retail dealer, and shall be kept filed for a period of one month, and every such order and the counterfoil of the return pass shall be accessible to an inspector, sub-inspector, superintendent, or sergeant of police. Books of return passes and counterfoils will be supplied through Licensing Boards to, and at the expense of, the dealers.

Order for procuring liquor through a Native or Indian.

68. Any person who shall sell, barter, or supply any intoxicating liquor to any Native or Indian in contravention of the provisions of this Act, shall for a first offence forfeit and pay any sum not exceeding Ten Pounds Sterling nor less than Five Pounds Sterling, or in default of payment be imprisoned with hard labour for any period not exceeding three months nor less than one month, and if he be the holder of any license

Punishments for illegal sale to Natives or Indians.

(A) It has been held that where there is honest belief that liquor supplied is required for medicinal purposes a pass is not necessary (*Isaacs & Peters v. Supt. of Police, Pietermaritzburg*; 18 N.L.R. 41). But see now Act 36, 1899, s. 7, post, amending this section.

act, see *Ingleton v. Supt. of Police, Pietermaritzburg*, 5 N.L.R. 172; and as to liability of licensed dealer for the act of his barman, see *Isaacs & Peters v. Supt. of Police, Pietermaritzburg* (18 N.L.R. 41), over-ruling *Clerk of Peace v. Walton & Mack* (11 N.L.R. 107).

(B) The onus of proof of exemption is on the person charged with supplying (*Attorney-General v. Duval*, 19 N.L.R. 133).

Under the repealed Law 22, 1878, a licensee was held not liable to conviction for an offence committed by a person having no authority from him to sell liquor (*Oliif v. Supt. of Police*, 12 N.L.R. 73). See also *Giyasudeen v. Attorney-General*, 14 N.L.R. 230.

(C) A printed signature would clearly not be within the terms of the section. See *Jones v. Town Clerk of Durban*, 14 N.L.R. 38).

But see now Act 36, 1899, ss. 8 & 9, passed since the above decisions were given.

(D) As to whether managing barman can be punished for fellow barman's

see - 1 not numbers

INTOXICATING LIQUORS.

Act 38, 1896. for the sale of wines, spirits, or other intoxicating liquor, then in addition to such sentence as aforesaid, the Magistrate shall be empowered to adjudge such license to be suspended for any period not exceeding three months. Any person convicted of a second or any subsequent offence within twelve months shall forfeit and pay any sum not exceeding Twenty-five Pounds Sterling nor less than Ten Pounds Sterling, or in default of payment be imprisoned with hard labour for any period not exceeding six months nor less than three months, and if he be the holder of any such license as aforesaid, then in addition to such sentence as last aforesaid the Magistrate shall be empowered and required to adjudge such license to be cancelled, and such cancellation shall for a period of one year bar any application by the person so convicted for a retail license: Provided that if notice be forthwith given of appeal against the decision of the Magistrate to the Supreme Court, accompanied by a deposit into Court of Ten Pounds as an earnest of good faith, the judgment of suspension or cancellation of license shall be in abeyance for a period of six weeks or such further period as the Supreme Court may order.

See  
Act 44  
86.

69. [Repealed by Act 36, 1899.]

Illegal sale on board a ship in harbour.

70. In case of any sale of liquor on a vessel within the inner harbour of Natal the Master shall be deemed to have contravened this Act: Provided, however, that any such Master may, out of duty paid stores freed by the Customs Department for such purpose, permit the sale of liquor to any passenger on board who may be bound to a destination out of Natal and who has not embarked in Natal.

Security for appearance of a ship master to answer summons.

71. If a summons shall be issued against the Master of a vessel for a contravention of this Act, he shall not be entitled to a clearance for his vessel or to the services of a pilot unless he shall have lodged a sum of £10 with the Collector of Customs as security that the charge will be answered by himself or his agent within six months.

Punishment for drunkenness.

72. Any person found at any time in a public place drunk and incapable or drunk and riotous shall be deemed to have committed an offence, and may be arrested and kept under arrest until he can be brought before a Magistrate, or be bailed. For the first offence the accused shall be liable to a fine not exceeding One Pound Sterling, with the alternative of imprisonment for a period not exceeding fourteen days, with or without hard labour, and for a subsequent offence within 12 months to a fine not exceeding Five Pounds Sterling, with the alternative of imprisonment for a period not exceeding three months, with or without hard labour (A).

Ejection of drunken or disorderly person from premises.

73. Any licensed person may refuse to admit, or may turn out of the premises in respect of which his license is granted, any person who is drunk, or who is violent, quarrelsome, or disorderly, whether drunk or not, and any person whose presence on his premises would subject him to a penalty under this Act, and may refuse to serve any such person with liquor. Any such person, who upon being requested by such licensed person, or his agent, or servant, or any constable or policeman, to quit such premises, refuses or fails so to do, shall be liable to a penalty not exceeding Five Pounds Sterling, 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.

Punishment for refusal to quit.

Actions for price of liquor not maintainable.

74. No person shall be entitled to or shall maintain any cause, action or suit for, or recover at law any sum of money or demand for on account of any liquor sold in any quantity less than one quart at any

(A) Limit of punishment extended by Act 36, 1899, post.

one time (A); nor for or on account of any particular item or article in any account or demand for liquor so sold where the quantity shall be less than one quart; and in case any person shall take or receive any pawn or pledge from any person, by way of security for the payment of any sum or sums of money owing by such person for liquors so sold, or shall take or receive in payment thereof any article whatsoever in lieu of money, every such person so offending and being convicted thereof, shall be deemed guilty of an offence, and the person or persons to whom any such pawn or pledge shall belong, shall have the same remedy for recovering such pawn or pledge, or the value thereof, as if it had not been given as a pledge. Act 38, 1896.

75. If notice in writing shall be given by any Inspector or Superintendent of Police to any licensed dealer that any person named in such notice has been convicted of drunkenness on three specified occasions in the preceding twelve months, it shall be an offence under this Act for such licensed dealer to serve such person with liquor, or to allow him, unless a member of the dealer's family, to be on the licensed premises until the expiration of six months from the date of the last conviction. Prohibition by notice against supplying liquor to person repeatedly convicted.

76. The Magistrate of any Division may, by an order in writing, after due enquiry on oath, forbid the selling of liquor to any person who, by excessive drinking of liquors, mispends, wastes, or lessens his estate, or greatly impairs his health, or disturbs the peace of his family. Every licensed dealer 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 be deemed to have committed an offence (B). Magistrate may prohibit sale to certain persons addicted to liquor.

77. The holder of a retail license who may have committed any of the following acts shall be deemed guilty of an offence:— Offences by holder of retail license.

- (1) Suffering or permitting drunkenness or violence and noisy conduct upon his premises.
- (2) The selling of liquor to any person already in, or bordering on, a state of intoxication.
- (3) Suffering any constable or policeman during his hours of duty to be on his premises except to restore order or in the execution of duty.
- (4) Suffering gambling on his premises (c).
- (5) Permitting his premises to be used by disorderly persons.
- (6) Selling any liquors to a person apparently under the age of fifteen years.

(A) Quære whether this would apply to a hotelkeeper supplying liquor to his guests, see *Re Intestate Estate of Wheeler*, 9 N.L.R. 140.

(B) This section is re-enacted by sec. 13 of Act 36, 1899, post, with the addition of the words "Any prohibited person who shall obtain liquor shall likewise be guilty of an offence."

(c) Negligence on the part of a hotel proprietor in not keeping his house in order makes him liable under this subsection. See *Supt. of Police, Newcastle, v. Powell*, 19 N.L.R. 195.

It may be useful also to compare this sub-sec. with sub-s. (1) of sec. 17 of 35 & 36 Vic. c. 94, and the cases decided

thereon. The following are amongst numerous authorities cited in a footnote to the Act in Chitty's Statutes:—

Connivance, either on the part of the licensed person or his servant in charge, is sufficient to support a conviction (*Redgate v. Haynes*, 1 Q.B.D. 89; 33 L.T. 779; also see *Bosley v. Davies*, 1 Q.B.D. 84, and *Bond v. Evans*, 21 Q.B.D. 249). "Gaming" is "playing at any game for money or money's worth," and the licensed person may be convicted for allowing his own private friends to play cards in the licensed premises for money (*Patten v. Rhymer*, 29 L.J., M.C. 189; see also *Danford v. Taylor*, 20 L.T. 483, and *Bew v. Harston*, 3 Q.B.D. 454).

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- (7) Mixing with any liquors any injurious, poisonous, or deleterious ingredient, or material for the purpose of adulteration, or selling such adulterated liquors.
- (8) Doing anything forbidden by this Act to be done, or neglecting to do anything by him required by this Act to be done.

Isityimiyana.

78. Any person making, selling, using, or being in possession of the drink or liquor made from fermented treacle and called "Isityimiyana," shall be deemed to have committed an offence.

79. Every offence committed under this Act shall be prosecuted in the Court of the Magistrate in whose Division the offence was committed, and all fines levied thereunder shall be paid to Her Majesty, her heirs and successors, and unless remitted, shall be applied to the use of the Government: Provided always, that in case any such offence be committed within the limits of any Borough or Township, it shall be competent for any person appointed by the Town Council or Town Board to prosecute, and in such case any fine inflicted shall be paid into the town fund (A).

Evidence of sale.

80. In any proceeding relative to any offence under this Act, for the sale of drink without a license, or to a prohibited person, it shall not be necessary for the prosecutor to show that any money actually passed, or that any liquor was actually consumed, if the Magistrate hearing the case be satisfied that a transaction in the nature of a sale actually took place.

Duration of suspension of license.

81. In case any license has been or shall be suspended for any term beyond the period for which such license is granted, such suspension shall operate as regards any license granted in continuance of the license so suspended.

Conviction to be recorded on license.

82. Any licensed person brought before the Court of a Magistrate upon a charge of contravention of the provisions of this Act shall produce (B) his license for examination and deliver the same to the Magistrate, who shall, if the holder be convicted upon such charge, cause the conviction and the sentence to be recorded on the license, and in the event of the cancellation of the license, the license shall be retained by the convicting Magistrate, and not be returned to the licensed person so convicted as aforesaid.

Search for liquor on unlicensed premises.

83. It shall be lawful for any Inspector or Superintendent of Police, or any Police Constable having a special written authority from a Magistrate, Justice of the Peace, Inspector or Superintendent of Police, at all reasonable hours, to enter into and upon any premises which shall not be licensed under this Act for the sale of wines and spirits and malt liquors, in which it shall be reasonably suspected that any liquors are improperly sold or kept for sale, and then to search such premises: Any liquors found in the course of such search may be seized and removed, and forfeited in furtherance of any judgment of a competent Court.

Award of part of penalty to informer.

84. The Court before which any offence under 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, not being a Police Officer, or in the employ of the Police, who may have given such information as shall have led to the conviction of the offender.

Punishment for contraventions 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, or of any regulations thereunder, shall be liable to a penalty not exceeding Twenty Pounds Sterling, and in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months.

(A) See *McCormick v. Clerk of the Peace*, 17 N.L.R. 194, decided under the repealed Laws 22, 1878, and 10, 1890.

(B) The obligation to produce the license extends to a barman. See Act 36, 1899, s. 15, post.

SCHEDULE.

Act 38, 1896.  
Schedule.

*Ordinances and Laws Repealed.*

No. and Year.	Title.	Extent of Repeal.
Ord. 9, 1847	For Regulating the Sale of Wines and Spirituous and Fermented Liquors within the District of Natal.	The whole Ordinance.
3, 1853	For altering and amending the Ordinance No. 9 of 1847, entitled "Ordinance for Regulating the sale of Wines and Spirituous and Fermented Liquors within the District of Natal."	The whole Ordinance.
Law 13, 1861	For amending Ordinances No. 9, 1847, and No. 3, 1853, entitled "Ordinances for Regulating the Sale of Wines, Spirituous and Fermented Liquors within the District of Natal."	The whole Law.
23, 1863	To amend the Ordinance No. 9, 1847, entitled "Ordinance for Regulating the Sale of Wines, Spirituous and Fermented Liquors within the District of Natal."	The whole Law.
19, 1872	Municipal Corporations Law.	Sub-section (b) of Sec. 71, and so much of Secs. 71, 72, and 73 as may relate to liquor licenses.
22, 1878	To prohibit the Sale and Disposal of Spirits and other Intoxicating Liquor to persons of the Native race.	The whole Law.
23, 1878	To amend the Ordinance No. 9, 1847, entitled "Ordinance for Regulating the Sale of Wines and Spirituous and Fermented Liquors within the District of Natal."	The whole Law.
38, 1884	License and Stamp Law, 1885.	The following items in Schedule A of the Law (A).
47, 1884	To amend and extend in certain respects the provisions of the Municipal Corporations Law, 1872, in so far as regards the City and Borough of Pietermaritzburg.	Secs. 10, 11, 12.

(A) The items are omitted here as the Act is now wholly repealed by Act 43, 1898, tit. "REVENUE."

Act 38, 1886.  
Schedule.

No. and Year.	Title.	Extent of Repeal.
20, 1885	To amend the License and Stamp Law, 1885.	So far as relates to charge on license to a Retail Wine and Spirit Dealer in the towns of Pietermaritzburg or Durban, or at any place within 3 miles of either of said Towns, when granted for a period of 6 months (A).
11, 1888	To amend the 8th section of Law 23, 1878, entitled "Law to amend the Ordinance No. 9, 1847, 'Ordinance for Regulating the Sale of Wines and Spirituous and Fermented Liquors within the District of Natal.'" "	The whole Law.
18, 1888	For Regulating the Sale of Kafir Beer, commonly known as "Utywala."	The whole Law.
10, 1890	To amend Law No. 22, 1878, entitled "Law to prohibit the Sale and Disposal of Spirits and other Intoxicating Liquor to persons of the Native race."	The whole Law.
20, 1890	To Regulate the Sale and Disposal of Intoxicating Liquor to Indians.	The whole Law.
17, 1892	To amend the Law regulating the granting of Licenses to Sell Intoxicating Liquors.	The whole Law.

**Act No. 36, 1899.**

"To Amend the Liquor Act, 1896."

[11th September, 1899.]

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

1. Section 4 of Act No. 38, 1896, shall be amended as follows:

A "New License" means a license applied for in respect of premises not licensed at the date of application for the sale of intoxicating Liquor in the particular manner for which authority is sought under the license applied for.

(A) This Law is now wholly repealed by Act 43, 1898, tit. "REVENUE."

*checked by  
A 30/28 53*

Meaning of  
"new license."

2. The words "intoxicating liquor," or "liquor," whenever used in Act No. 38, 1896 (hereinafter referred to as the principal Act), or in this Act, shall include any intoxicating or fermented liquor or liquid from whatever substance it may have been prepared. In so far as the principal Act and this Act apply to the sale or supply of liquor to Natives or Indians, the word "liquor" shall also include yeast or any other ferment.

Act 36, 1899.  
What included in terms "intoxicating liquor" or "liquor."

3. The following proviso shall be added to Section 15 of the principal Act :

Amendment of sec. 15, Act 38, 1896.

Provided that the Board shall have full authority and discretion to order, as a condition of the license the closing of any doors which they may consider unnecessary to the proper carrying on of the business.

4. The sale of Native beer upon premises outside a borough, township, or village being the seat of a Magistracy, either as a business or in combination with any other business is prohibited. Provided, that this section shall not be deemed to prevent the sale and supply of Native beer by Native women, according to their usual practice, and not as a permanent business.

Sale of Native beer.

*Handwritten:* 7. 4. 27/05  
see . 4

5. Section 32 of the principal Act shall be and the same is hereby amended by the addition of the following at the end thereof, namely :—

Amendment of sec. 32, Act 38, 1896.

Native beer (at a village being the seat of a Magistracy) . . . £3.

6. Section 65 of the principal Act shall be, and the same is hereby repealed, and in lieu thereof the following section shall be substituted, namely :—

Repeal of sec. 65, Act 38, 1896.

No retail dealer shall sell, or keep his premises open for the sale of liquors, or supply liquors to be drunk on the licensed premises during any part of Sunday, or between the hours of eleven o'clock at night and six o'clock in the morning : Provided the keeper of an hotel may sell liquors at meal times to persons having meals on the hotel premises on Sundays and until 1 o'clock a.m. on all days to persons lodging on the hotel premises, or to bona fide travellers (A), and bar keepers at railway stations may sell liquors within the extra hours fixed by the General Manager in terms of Section 21.

Prohibited hours.

*Handwritten:* 10 in Arrington's  
Liquor Law  
22. 32. 05/07

Every person who, by falsely representing himself to be a traveller or lodger, buys or obtains (B), or attempts to buy or obtain, at any premises any intoxicating liquor within the period during which such premises are closed in pursuance of this Act shall be guilty of an offence :

Obtaining liquor by false representations during prohibited hours.

(A) Quære whether the onus is on the seller to prove that the purchaser was an actual bona fide traveller. The question was raised at the Durban Circuit Court (Dec. 18, 1899) in *Madore v. Clerk of the Peace* before Mason, J., but was not decided. Cf. sec. 10 of 37 & 38 Vic. c. 49, and see footnotes thereto in Chitty's Statutes. The last par. of the sec. provides that a person "shall not be deemed to be a bona fide traveller unless the place where he lodged during the preceding night is at least three miles distant from the place

where he demands to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare." Yet notwithstanding this limitation it appears from the decisions that the enactment is capable of much refinement for the true meaning.

(B) Act 37 and 38 Vic. c. 49, s. 10, excuses the seller in such a case if the Court is satisfied that he "truly believed" the purchaser to be a bona fide traveller, and that he took "all reasonable precautions" to ascertain if such was the fact.



**Act 36, 1899.**

Special provisions for boroughs and townships.

*See Act 32 of 01.*

Provided always that within the limits of any Borough or Township, within the meaning of this Act, any person holding a bar license, and carrying on the business of a restaurant, or eating-house proprietor on the premises licensed for the sale of liquors by retail as aforesaid, shall be entitled on Sundays between the hours of 1 p.m. and 2.30 p.m. and between the hours of 6 p.m. and 7.30 p.m. to supply liquor in retail quantities to persons then bona fide and actually having meals at the restaurant or eating house in question. Any person holding a Bar License within the limits of any Borough or Township as aforesaid, and carrying on in conjunction therewith a restaurant or eating house, as above set out, shall be entitled on the occasion of any public or private dinner, being about to take place on such licensed premises, to address a written requisition to the Chairman of the Licensing Board of such Borough or Township requesting permission to be allowed to supply liquor in retail quantities for the purposes of such dinner, and the Chairman of such Licensing Board, should he in his discretion consider that the circumstances of the occasion are such that consent may reasonably be given to an extension of time, shall have power and authority to grant a special permission authorising the sale of liquor on such premises for the purposes of any such dinner, up to a time to be stated in the permit.

When liquor to be deemed supplied for medicinal purposes.

7. The following clause shall be inserted in Section 66 of the principal Act before the proviso thereof:—

Liquor shall not be deemed to have been supplied for medicinal purposes unless the dealer or the person who supplied it shall produce the prescription therefor of a duly licensed medical practitioner, or shall otherwise satisfy the Court that there was urgent necessity.

Holder of retail license may be convicted if liquor supplied on his premises.

8. The holder of a retail license may be convicted of any offence defined by the principal Act, as amended by this Act, relating to the sale, barter, or supply of liquor if it shall appear that the sale, barter, or supply took place upon his premises, notwithstanding that he may not have had any direct cognizance thereof, or that the sale, barter, or supply was by some other person, whether employed by him or not, and upon any such charge it shall be sufficient to prove that the sale, barter, or supply took place upon the premises.

More than one person may be convicted for same act.

9. Any person liable to be charged with an offence under the principal Act, as amended by this Act, may be charged and convicted, notwithstanding that some other person may also be charged or convicted for the same act, and any two or more persons so liable may be charged and convicted either together or separately.

Power of Magistrate to cancel or suspend license.

10. Upon the conviction of any person for the sale, barter, or supply of any intoxicating liquor to any Native or Indian in contravention of the provisions of this Act, the Magistrate shall be empowered to order, in terms of the principal Act, the suspension or cancellation of the license of the person upon whose premises such contravention took place.

Natives not to be employed for sale of liquor

11. No Native shall be employed as a barman or otherwise for the sale of liquor upon licensed premises, and any such sale by a Native shall be an illegal sale within the meaning of the principal Act.

Repeal of sec. 69, Act 38, 1896.

12. Section 69 of the principal Act shall be repealed, and in lieu thereof the following Section shall be substituted:—

69. Any Indian or Native found in the possession of liquor without having a return pass therefor as provided for in Section 67 of this Act, or who, if in possession of a return pass, shall not duly convey such liquor to the person who granted the order, or is discovered with a manifest intention of dealing with the liquor otherwise than by conveying it to the person to whom the return pass is addressed, shall be guilty of an offence, and may be at once arrested and summarily tried by a Magistrate. Act 36, 1899

13. The Magistrate or any Division may, by an order in writing, after due enquiry on oath, forbid the selling of liquor to any person who, by excessive drinking of liquors, misspends, wastes, or lessens his estate, or greatly impairs his health or disturbs the peace of his family. Every licensed dealer who shall, with a knowledge of such prohibition, sell to any such person any liquor, and any person who with such knowledge shall give to, purchase, or procure for such prohibited person any liquor, shall be deemed to have committed an offence. Any prohibited person who shall obtain liquor shall likewise be guilty of an offence. Prohibition of sale of liquor to persons addicted to excessive drinking.

14. Any police officer or constable whilst in the performance of his duty shall be empowered to enter upon any licensed premises for the purpose of removing any drunken or disorderly person, making an arrest, or for any other lawful purpose. Police may enter licensed premises for lawful purpose.

15. The provisions of Section 82 of the principal Act shall apply to every case in which a licensed dealer is liable to be charged with an offence under this or the principal Act; and the obligation to produce a license shall extend to a barman or other person having the charge or control thereof. Production of license and recording of sentence thereon.

16. Notwithstanding anything contained in Section 72 of the principal Act, a Magistrate may sentence any habitual drunkard to be imprisoned for a period not exceeding six months, either without hard labour or with such labour as he is capable of performing. Punishment for habitual drunkenness.

17. This Act and Act No. 38, 1896, shall be read together as one Act, and any offence defined by this Act shall be deemed to be an offence under the principal Act. Construction of Act.

## INVENTIONS.

[See "PATENTS."]

## IRRIGATION.

[See "LANDS IMPROVEMENT, &C."]

## JEWISH MARRIAGES.

[See "MARRIAGE."]

## JOINT DEBTORS.

[See "CONTRIBUTION AND INDEMNITY."]

## JOINT STOCK COMPANIES.

[See "COMPANIES (JOINT STOCK)," and "COMPANIES (WINDING-UP)."]

## JUDGES.

[See "COURTS (SUPREME)"; "COURTS (NATIVE)." See also Law 14, 1893, ss. 43-45, tit. "PARLIAMENT."]

*Repealed by Act 5<sup>01</sup> Law No. 11, 1876.**"To fix the Salaries of the Chief Justice and other Judges of the Supreme Court"*

[11th November, 1876.]

WHEREAS it is expedient to make other provisions than at present exist, in respect of the Salaries of the Chief Justice and the Puisne Judges of the Supreme Court of this Colony;

BE IT THEREFORE ENACTED by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

Repeal.

1. The Law No. 16, 1863, is hereby repealed.

Salaries of Judges.

2. The Chief Justice and the Puisne Judges of the Supreme Court shall be paid out of the Revenues of the Colony the yearly Salaries assigned to their respective offices in the Schedule hereunto annexed.

Obsolete section.

3. [*This Law not to affect pensions of Henry Connor (Chief Justice) and Henry Lushington Phillips, both now deceased.*]

Salary of Judge of Native High Court not increased by this Law.

4. Nothing in this Law contained shall be held or construed to increase the present salary attached to the office of Judge of the Native High Court, or to make the salary of such office exceed the sum of Eight Hundred Pounds Sterling per annum, which sum was the salary of a Puisne Judge of the Colony at the time of the passing of the "Native Administration Law, 1875."

Commencement

5. This Law shall come into and be in operation from and after the 1st day of January next.

JUDGES.

SCHEDULE OF YEARLY SALARIES.

	£
Chief Justice ... ..	1,200 (A).
First Puisne Judge ... ..	1,000
Second Puisne Judge ... ..	1,000

Law 11, 1876.  
Schedule.

Law No. 2, 1892.

*Repealed by Act-5701*

“To amend Law No. 11, 1876, entitled ‘Law to fix the Salaries of the Chief Justice and other Judges of the Supreme Court.’”

[11th June, 1892.]

BE IT ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. The Schedule of Law No. 11, 1876, entitled “Law to fix the Salaries of the Chief Justice and other Judges of the Supreme Court,” shall be amended by expunging the item of One Thousand Two Hundred Pounds (£1,200) therein appointed as the yearly salary of the Chief Justice of the Supreme Court, and inserting in lieu thereof the item One Thousand Five Hundred Pounds (£1,500).

Amendment of  
Schedule of  
Law 11, 1876.

Act No. 35, 1895.

“To increase the number of Judges of the Supreme Court.”

[24th August, 1895.]

WHEREAS it is expedient to increase the number of Judges of the Supreme Court:

BE IT THEREFORE ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. This Act shall commence and take effect from and after such day as shall be fixed by Proclamation of the Governor in the “GOVERNMENT GAZETTE” (B).

Commencement

2. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Law No. 10, 1857, and all Laws amending the same (C).

Joint construction  
of Laws.

3. [Repealed by Act No. 39, 1896.]

4. [Repealed by Act No. 39, 1896.]

5. The Judge appointed in pursuance of this Act shall be in the same position as if he had been appointed a Puisne Judge of the said Supreme Court in pursuance of the said hereinbefore mentioned Laws; and all the provisions of the Laws for the time being in force in relation to the qualification and appointment of Puisne Judges of the said Supreme Court and to their tenure of office and to their precedence, and to their salaries and pensions and all other provisions relating to such Puisne Judges, shall apply to the additional Judge appointed in pursuance of this Act in the same manner as they apply to the other Puisne Judges of the said Court respectively (D).

Status, precedence,  
salary  
and pension.

6. [Repealed by Act No. 39, 1896.]

7. [Repealed by Act No. 39, 1896.]

(A) Increased to £1,500 by Law 2, 1892, post.

(B) Took effect Jan. 1, 1896, see Proclamation in *Government Gazette* of 24th Dec., 1895.

(C) Repealed by Act 39, 1896, tit. “COURTS (SUPREME).”

(D) See Act 31, 1899, tit. “COURTS (SUPREME),” as to precedence of Puisne Judges, constitution of Court, &c.

## JURIES (A).

[See "COURTS (SUPREME)"; "CRIMINAL LAW," &amp;C.] .

*Amended by Act 31 of 1917 so far as it relates to jurors in criminal cases.*

## Law No. 10, 1871.

"To amend and consolidate the Laws relative to the constitution and formation of Juries, and to trials by Jury."

[28th November, 1871.]

WHEREAS for the better and more effective administration of Justice within the Colony, it is expedient to amend and consolidate the law relating to the constitution of juries and to trials by jury :

BE IT THEREFORE ENACTED, by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

Short title.  
Repeal of  
former Laws.

1. This Law may be cited as the "Jury Law, 1871."
2. The Ordinance No. 6, 1852, entitled an Ordinance "To amend and consolidate the law relative to the constitution and formation of Juries"; the Ordinance No. 7, 1852, entitled an Ordinance "To introduce the institution of trial by Jury in civil cases"; the Ordinance No. 9, 1852, entitled an Ordinance "To amend the Ordinance No. 6, 1852, entitled an Ordinance to amend and consolidate the law relative to the constitution and formation of Juries"; the Law No. 22, 1866, entitled Law "To alter and amend Ordinance No. 6, 1852, entitled an Ordinance 'To amend and consolidate the law relative to the constitution and formation of Juries'"; and so much of the Law No. 10, 1857, entitled a Law "For the better administration of justice within the Colony of Natal," as is repugnant to, or inconsistent with, the provisions of this Law (B), and any other enactments, regulations, or customs repugnant to, or inconsistent with, the provisions of this Law, shall be, and they are hereby repealed, except as to anything lawfully done thereunder, and except as to the recovery and appropriation of penalties for offences against the same heretofore committed: Provided always that no Law or Ordinance repealed by any of the Laws or Ordinances hereinbefore recited shall be revived by the repeal of the said herein recited Laws or Ordinances; and provided further that where in said Law No. 10, 1857, or any other Law or Ordinance, reference is made to the said repealed Ordinance No. 7, 1852, or to any other of the Laws or Ordinances hereby repealed, this Law shall, upon its taking effect, be deemed and held to be referred to.

*Constitution of Juries.*

Qualifications  
of jurors.

3. Every man, except as hereinafter excepted, between the ages of 21 and 60 years, who shall possess any immovable property of the value of £100, or who shall rent any such property of the yearly value of £24 within the Colony, shall be qualified and liable to serve as a juror therein.

(A) See secs. 40 to 56, inclusive, of the Supreme Court Act, 1896.

(B) Law 10, 1857, is now wholly repealed by the Supreme Court Act, 1896.

4. The following persons shall be exempt from serving as jurors :— **Law 10, 1871.**  
Exemptions.
- 1st. Members of the Executive and Legislative Councils.
  - 2nd. Persons holding office in the Civil Service of the Government of the Colony and officers of the Legislative Council.
  - 3rd. Advocates and Attorneys of any Courts of Law, if actually practising, and their clerks, notaries public in actual practice, and the officers of any Courts of Law.
  - 4th. Ministers of Religion and Schoolmasters.
  - 5th. Physicians, Surgeons, Apothecaries, and Chemists and Druggists in actual practice, and their Assistants (A).
  - 6th. Officers of Her Majesty's Army and Navy on full pay, and Volunteers when on duty (B).
  - 7th. Masters of vessels actually employed, and licensed Pilots.
  - 8th. Railway and Telegraph Clerks.
  - 9th. Sheriff's Officers, Policemen and Constables.
  - 10th. Natives who have not obtained their exemption from the operation of Native Law under Law 28, 1865.
5. No man who has been convicted of treason or any other infamous crime unless he shall have received a free pardon, shall be qualified to serve on any jury (C). Disqualifications.

*Formation of Jury List.*

6. The Clerk of the Peace in every county and division, or other officer appointed for the purpose by the Lieutenant Governor for any county or division shall, on or before the 1st day of August in every year, transmit to the Resident Magistrate thereof a true list, in alphabetical order, of every man residing within such county or division who shall be qualified and liable to serve on juries as aforesaid, with the true Christian and surname correctly and legibly written at full length, and with the true residence, degree, calling, or business, and nature of the qualification of every such man, in the proper columns of the form of return in Schedule A hereto annexed. Officer to prepare jury lists on or before 1st August, and transmit same to Magistrate.

7. The Resident Magistrate shall forthwith cause a copy thereof to be affixed upon the principal door of the Court House of such county ; and to such list and copy thereof shall subjoin a notice that all objections thereto will be heard and determined by him at any time before the 1st day of September then next. And the first list prepared under this Law shall, with the Notice appended thereto, be also published in the " NATAL GOVERNMENT GAZETTE " in full ; and, in like manner, in every succeeding fifth year thereafter, the list and notice shall likewise be published in full in the " NATAL GOVERNMENT GAZETTE," and in every intermediate year in which the list is not required to be published in the " NATAL GOVERNMENT GAZETTE " in full the Resident Magistrate shall prepare for publication therein, in lieu of the entire list, a notice, as aforesaid, setting forth the alterations or amendments, if any, which have been made in the last preceding published list, or if no such alterations or amendments have been made, stating accordingly. Publication and calling for objections.

(A) Dental surgeons are also exempt from service on a jury under this subsection (*Reg. v. Irulen and others*, 16 N.L.R. 54).

(B) See also as to Volunteers, Act 23, 1895, s. 31, tit. " VOLUNTEERS."

(C) See addition to this sec. made by Law 14, 1883, post, referring to Indian Immigrants.

Law 10, 1871.  
Magistrate may  
correct the lists.

8. The Resident Magistrate shall have the power, after hearing such objections, to strike out of the said lists the names of all persons not qualified or liable to serve as jurors, and also of all persons disabled from serving as jurors by mental imbecility or any bodily infirmity; and also to insert in the said lists the names of any persons qualified and liable to serve as jurors which may have been omitted therefrom.

Corrected list to  
be forwarded to  
Sheriff.

9. A copy of the list so corrected, signed by the Resident Magistrate, shall be transmitted by him on or before the 10th day of September to the Sheriff of the Colony of Natal (A).

How long list  
shall be used.

10. The list so transmitted shall be called the "Jury List" of the said county, and shall be brought into use on the First day of October following, and shall continue to be used for one year then next ensuing (B).

#### *Mode of Summoning Juries.*

How juries to  
be selected.

11. When it shall be necessary to summon a jury the Sheriff shall summon, or cause to be summoned, the persons whose names shall be on the jury list (save as is hereinafter excepted), taking one from the top of each successive alphabetical section of said list, commencing with the section under the letter A, and repeating such process until the requisite number of jurymen is obtained; and upon receiving the new list in each year the Sheriff shall begin with the names in such list following the names of persons who were last summoned in the preceding year. Provided always, that no jurymen shall be summoned a second time until the said jury list shall be exhausted, and that when any alphabetical section or sections shall be exhausted, the jury shall be summoned from the remaining alphabetical sections or section so long as there remains a sufficient number of names from which to summon the requisite jury.

Summonses.

12. Eight days, at least, before the sitting of the Supreme Court in criminal cases, and also eight days before the sitting of any other Court in criminal cases which shall be triable by jury, the Sheriff shall issue summonses according to the form in the schedule hereto marked B, requiring the attendance thereat of twenty-seven good and lawful men, selected from the jury list, as provided for in the last preceding clause.

Requisition to  
Sheriff for jury  
in civil cases.

13. Whenever any jury shall be lawfully required for the trial of any civil action, the Registrar of the Supreme or Circuit Court, or the Clerk of the Court of the Resident Magistrate, as the case may be, shall cause the Sheriff to summon, in manner aforesaid, so many persons named in the jury list as shall, in the opinion of one of the Judges of the Supreme Court or Resident Magistrate, be needed to attend the Court.

Summonses,  
service of.

14. Every summons shall be personally served upon or left at the usual place of abode of the person summoned, five clear days before the day appointed for the sitting of the Court.

Twenty mile  
radius.

15. No man shall be summoned whose place of abode shall be distant more than twenty miles in a direct line from the place at which the Court shall be holden.

Panel.

16. The Sheriff shall cause to be delivered to the Registrar or Clerk, as the case may be, of the Court, a panel, containing the names, places of abode, and description of the person so summoned.

Verification of  
panel.

17. The officer or officers who summoned the jury shall, if required, attend before the Court and verify the panel by oath.

(A) See Law 24, 1874, s. 3, and Law 8, 1878, post.

(B) See Law 8, 1878, s. 5, post.

18. If any man, having been duly served with a summons, shall fail to attend, or being present shall not appear when called, or after appearance shall withdraw himself without the leave of the Court, or shall refuse to serve as a juror, the Court may, unless some reasonable excuse be proved on oath or affidavit, impose upon the man so making default, such fine, not exceeding £10, as to the Court shall seem meet.

Law 10, 1871.  
Penalty on defaulting juror.

*Formation of Juries.*

19. At the sitting of the Court, the names of all the jurors summoned shall be written on separate pieces of card or paper of equal size, and put into a box, and upon the trial of any case the Registrar or Clerk of the Court shall, in open Court, draw therefrom until such number of men appear as are required for the trial of the case, who, after all just causes of challenge allowed, shall remain as fair and indifferent; and the same shall be done whenever it shall be necessary to form a new jury.

Juries to be drawn by ballot.

20. Whenever it shall happen that the requisite number of jurors shall not have been summoned, or shall not appear, or shall not remain as fair and indifferent after all just causes of challenge allowed, then it shall be lawful for the Court to put upon the jury so many good and lawful men of the bystanders (qualified and liable as aforesaid) as shall be sufficient to make up the full number thereof (A).

Deficiency, how supplied.

21. The cards or papers containing the names of the jurors sworn on any jury shall be kept apart until such jury shall be discharged, and shall then be returned into the ballot box.

Balloting papers.

22. If any case shall be brought on for trial, before the jury in any other case shall have brought in their verdict, if no objection be raised by or on behalf of the prisoner, the Court may order another jury to be drawn from the names remaining in the ballot box.

During retirement of jury another jury may be balloted for.

23. If no objection shall be made on behalf of any of the parties to any case, it shall be lawful for the Court to try such case with the same jury, which shall have tried or been drawn to try any other case. Provided that each such juror shall be re-sworn and liable to be challenged as aforesaid.

Same jury may try several cases.

24. If any man shall be returned as a juror on any jury list who shall not be qualified according to this Law, the want of qualification shall be good cause of challenge only, and he shall be discharged upon such challenge if the Court shall be satisfied of the fact.

Want of qualification cause of challenge only.

*The Challenging of Jurors.*

25. All challenges must be made as the name of each juror is called, and before he is sworn; and no omission, error, or irregularity by the Sheriff or any of his officers in the time or mode of service of any jury summons, or in the summoning or return of any juror or jurors (where there shall be no question as to his or their identity) by a wrong name or names, shall be cause of challenge either to the array or to any such juror; nor shall any matter which might have been objected by way of challenge (to the polls or to the array as the case may be) invalidate or affect any verdict in any case, civil or criminal, unless the objection shall have been taken by way of challenge.

Challenges, when and how made.

(A) Persons serving as provided in this sec. are entitled to payment. See Law 4, 1892, post.



## Law 10, 1871.

In criminal cases.

26. In criminal cases the prosecutor and the prisoner may each challenge three jurors without assigning any cause, and may challenge any number of jurors for any of the following causes, upon proof thereof to the satisfaction of the Court—that is to say:—

1st. Want of qualification.

2nd. Consanguinity or affinity within the fourth degree, either to the prisoner or to the party injured.

3rd. Favour to the prisoner or to the person entitled to prosecute, if the Public Prosecutor does not prosecute.

In civil cases.

27. In civil cases either of the parties, or his advocate, may challenge three jurors without assigning any cause, and may challenge any number of jurors for any of the following causes, upon proof thereof, as aforesaid, that is to say:—

1st. Want of qualification.

2nd. 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.

3rd. For having, directly or indirectly, an interest in the result of the case.

4th. For having previously advisedly and deliberately expressed an opinion as to the merits of the case.

Triers in absence of cause of challenge.

28. In case there shall be reason to believe that any person, not liable to challenge for any of the foregoing causes, is nevertheless for any reason likely to be biased in favour of either of the parties to the case, the Court shall, upon the motion of either party, or his advocate, cause the names of three persons to be drawn from the names remaining in the ballot box, who shall be called triers, and shall try the impartiality of the juror objected to, without appeal.

Triers may be challenged.

29. Such triers shall be liable to challenge in the same manner as jurors.

*Trials by Jury (A).*

What cases may be tried by jury.

30. Whenever an issue of fact, except in the cases hereinafter mentioned, shall have been joined in the Supreme Court or any Circuit Court, or in the Court of the Resident Magistrates of Durban and Pietermaritzburg, in any civil action or cause, wherein the sum or matter of dispute shall exceed the amount or value of Fifteen Pounds, the same may, upon the application of either of the parties, his attorney or advocate in such case, be tried by a jury in manner hereinafter mentioned.

aled by Act 32  
917, Sect. 112

What cases may not be tried by jury.

31. No trial by jury shall be had in the following cases:—

1st. Where the plaintiff claims a provisional judgment in virtue of any written acknowledgment of a debt, signed by the defendant or on his behalf.

2nd. Where a matter of record, as a judgment, or the like, is pleaded in any action, and the opposite party pleads that there is no such record existing.

Application for jury, to whom made and when.

32. Application for a jury shall be made in writing to the Registrar or Clerk of the Court, as the case may be, seven clear days before the day appointed for the hearing of the cause.

(A) Secs. 30 to 47, inclusive, of this Law are repealed, "so far as they relate to the Supreme or Circuit Court," by the Supreme Court Act, 1896.

33. Every party making such application as aforesaid shall at the same time deposit such sum of money for remuneration of jurors as may be determined by any rule of the Court in which the cause is depending; and such deposit shall be made in such manner, at such time, and with such officer, as the said Court may prescribe, and such remuneration of jurors shall be costs in the cause. **Law 10, 1871.**  
Deposit for payment of jury.
34. Upon the receipt of such application, together with such payment as aforesaid, the Registrar or Clerk of the Court shall cause the said notice thereof to be communicated to the opposite party in such cause, either by post or by causing the said notice to be delivered to him or left at his present or last place of abode. Registrar to give notice to opposite party,
35. The Registrar or Clerk shall certify to the Court the manner in which such notice has been served, and such certificate shall be deemed conclusive evidence that the notice has been so served. And certify same to Court.
36. The jury in civil cases shall consist of seven men, of whom a majority of not less than five shall determine the verdict; and in criminal cases, of nine men, of whom a majority of not less than seven shall determine the verdict. Constitution of juries.
37. After a jury shall have been charged with any case, they shall be kept apart by themselves, until they have delivered their verdict (A); and if the jury shall desire to withdraw to consider their verdict, they shall be kept apart by themselves by an officer of the Court until they have agreed upon their verdict, or have been discharged by the Court, or the Court shall have resumed its sitting, and such 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 whether they have agreed upon their verdict; and any person guilty of the offence of corruptly influencing or attempting to influence any juror, or consenting thereto, may be punished with fine and imprisonment on conviction before any competent Court. Jury to be kept apart to consider verdict.  
Corrupting jurors.
38. The Court may, in any case after the expiry of two hours after the jury have retired to consider their verdict, and after they have declared, and the Court are satisfied that there is no likelihood of the jury agreeing, discharge such jury, and cause a new jury to be impannelled, sworn, and charged with the case, and the trial shall be heard as if the first jury had not been impannelled. Non-agreement of jury.
39. When the jury are prepared to deliver their verdict, the Registrar or Clerk of the Court shall say to them, in criminal cases, "Gentlemen, how say you, is the prisoner guilty or not guilty?" (B) or in civil cases shall say, "Gentlemen, do you find for the plaintiff, or the defendant?" and the foreman shall thereafter pronounce the verdict—guilty or not guilty—or, for the plaintiff or the defendant—as the case may be, and thereafter the Registrar or Clerk of the Court shall say to the jury, "So say how many of you?" Mode of delivering verdict.
40. In criminal cases the jury may acquit the prisoner of part of the charge against him, and find him guilty of the remainder. Partial acquittals.
41. In all cases the jury may return a special verdict, finding the facts of the case and referring the law to the Court. Special verdicts.

(A) See Law 10, 1872, post.  
(B) Where the statement made by the jury in answer to this question had

not been recorded an amendment of the Record was allowed, *Cadiz, J., diss. (Reg. v. Pearse, 7 N.L.R. 209).*

## Law 10, 1871.

Grounds of application to set aside verdict and grant new trial.

42. Either party may apply to the Supreme Court to set aside the verdict or decision of the jury in civil cases, and grant a new trial upon any of the following grounds:—

- 1st. Where the jury or any of them have accepted a bribe.
- 2nd. Where the jury or any of them have conversed otherwise than openly in the presence of the Court, with any party to the cause, or the agent, attorney, or advocate of such party, on the subject of the trial, after having been sworn.
- 3rd. Where the verdict was manifestly against the evidence, the law, or the legal instructions of the Court.
- 4th. Where the Court has misdirected the jury upon any point of law or fact; provided objection shall have been taken to the direction of the Court, as to any such point or points, of law or fact, during the trial.
- 5th. Where the debt or damages found by the jury are greatly too much or too little when compared with the evidence in the cause.
- 6th. Where either of the parties has been taken by surprise at the trial by the production of evidence which he had no reason whatever to anticipate (A).

When Court may not refuse new trial.

43. The Court may in all cases refuse to grant a new trial except in cases in which it shall be fully satisfied that substantial justice has not been done.

Notice of application for new trial.

44. Any party intending to make application for a new trial shall, seven clear days before making such application, give or cause to be given to the opposite party, or his attorney or advocate, and also to the Registrar or Clerk of the Court, notice in writing, together with copies of the affidavit, or affidavits, or other documents upon which he intends to found such application

Mode of application.

45. Every application for a new trial shall be made in open court, and shall be founded upon an affidavit, duly filed, setting forth the precise grounds upon which such application is made.

Court may impose terms.

46. The Court in granting a new trial shall impose such terms on the party in whose favour it is granted as shall seem meet.

Attornies' addresses to jury.

47. Every Court before which any trial shall be had by means of a jury shall, and it is hereby expressly required to prevent any party or his attorney or advocate from addressing the jury upon any point not relevant to the issue, or to make any statement which cannot be proved by the evidence before the Court.

Law of England to be followed in civil cases.

48. [Repealed by Law No. 4, 1892.]  
49. All matters relating to trial by jury of civil cases not herein expressly provided for shall be determined as nearly as practicable according to the law and usage of England (B).

This Law may be extended to any Court.

50. It shall be lawful for the Lieutenant Governor, by Proclamation, to extend all or any of the provisions of this Law to any Court within the Colony.

*Provisional Jury List.*

Jury lists used before operation of this Law.

51. Whereas it is necessary to make provision for the trial by jury of cases, before the provisions of this Law can be brought into full opera-

(A) See power of Judge to enter judgment contrary to verdict under the Supreme Court Act, 1896, s. 53, but see also note (A), p. 5, ante.

(B) This sec. is repealed, so far as it relates to the Supreme or Circuit Court, by the Supreme Court Act, 1896.

tion : Be it therefore enacted that in the meantime, and until the coming into force of the first Jury Lists prepared under this Law, the Jury Lists now in use for the trial of cases and prepared under the repealed Ordinance, shall be deemed and taken as Jury Lists under this Law, and shall be used for the trial of all cases, both civil and criminal, which shall be tried by jury. Law 10, 1871.

52. This Law shall commence and take effect from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A). Commencement

SCHEDULE A.

*Form of Jury List.*

Christian and Surname at full length.	Place of abode.	Title, Quality, Calling, or Business.	Nature of Qualification.

Schedule A.

SCHEDULE B.

*Form of Summons.*

Mr.

You are hereby summoned to appear as a Juror at the Supreme Court [or Circuit Court, or Court of the Resident Magistrate of \_\_\_\_\_, as the case may be], to be holden at \_\_\_\_\_ in the County [or Division] of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon, and there to attend from day to day, until you are discharged by the Court.

Schedule B.

\_\_\_\_\_, Sheriff.  
\_\_\_\_\_, 187\_\_\_\_.

**Law No. 10, 1872 (B).**

"To Amend Jury Law, 1871."

[18th October, 1872.]

WHEREAS by the 37th section of the Law No. 10, 1871, known as "Jury Law, 1871," it is among other things enacted that after a jury shall have been charged with any case they shall be kept apart by themselves until they have delivered their verdict, and that the officer of the Court keeping the jury apart for certain purposes shall be sworn as in the said section is mentioned: and whereas in certain cases the recited provisions occasion unnecessary inconvenience to juries, and expense to the Revenue or the parties, and multiplication of oaths:

*Repealed by Act 32 of 1911 Sect. 112*

(A) Dec. 5, 1871.

(B) This Law is repealed in so far as relates to trials other than trials before

a Magistrate. See Act 39, 1896, Sched. 1, tit. "COURTS (SUPREME)." See also Law 8, 1878, s. 12, post.

Law 10, 1872.

BE IT THEREFORE ENACTED by the Lieutenant Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

Provisions of sec. 37 of Law 10, 1871, not to be compulsory, with certain exceptions.  
Proviso.

1. That the said recited provisions of the said 37th section of the Law 10, 1871, except so far as they may direct the jury to be apart when they retire to consider their verdict, shall not respectively be deemed compulsory, save as far as the Judge or Magistrate presiding at any trial shall thereat so direct : Provided always that such Judge or Magistrate may cause the jury to be sworn that they respectively will not, during any adjournment of the Court in the trial, previously to the verdict being given, communicate with others than their fellow jurors in the case, with reference to the evidence or the verdict.

Commencement

2. This Law shall be in operation from and after the promulgation thereof in the "GOVERNMENT GAZETTE" (A).

*Reh 14/27 3 501*

Law No. 24, 1874.

"To make provision as to Jury Lists for the Counties of Pietermaritzburg and Durban respectively."

[1st October, 1874.]

WHEREAS it is expedient to make provision with reference to the summoning of juries in the Boroughs and Counties of Pietermaritzburg and Durban respectively, in consequence of the separation into two Divisions of such Counties respectively :

BE IT THEREFORE ENACTED by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. When there shall be separate Jury Lists for the separate Divisions aforesaid, the Jury Lists of the two Pietermaritzburg Divisions shall for the purpose of summoning juries, and of ascertaining alphabetical order and alphabetical sections for such summoning be deemed but one list ; and in like manner the Jury Lists for the two Durban Divisions shall for the said purposes be deemed but one Jury List (B).

2. Until there shall be such respective separate lists as are in the last foregoing section first referred to, the single Jury List for the whole District comprising the said two Divisions respectively shall be deemed to have been and shall be and continue to be the Jury List for the purpose of summoning Juries as if there had not been any such separation into respective Divisions as aforesaid.

3. No failure of transmission by the Resident Magistrate to the Sheriff, under Section 9 of the Jury Law, 1871, before the 10th day of September in any year, shall be deemed to have invalidated or to invalidate the legality of any Jury List when it shall be in fact transmitted : Provided always, that until the transmission of any Jury List under this section the preceding Jury List shall be deemed to have continued and shall continue in force.

4. This Law shall be in operation from and after the publication thereof in the "GOVERNMENT GAZETTE" (C).

*as far as applies  
jury lists for criminal cases  
amended by  
Act 31 of 1917  
sect. 391*

Separate lists to be deemed one list.

Single list to continue until there be two lists

Failure of transmission as required by Jury Law not to invalidate any jury list.

Commencement

(A) Oct. 22, 1872.  
(B) See Law 8, 1878, s. 11, post.  
(C) Oct. 6, 1874.

*Act 11/27 530*

**Law No. 8, 1878.**

“To provide for the Amendment of the Jury Laws and the Constitution and Formation of Special Juries in certain cases.”

[9th September, 1878.]

WHEREAS the increasing importance of the issues raised in many Civil Cases renders it advisable to provide for the constitution and formation of Special Juries :

AND WHEREAS it is desirable in other particulars to amend the Jury Laws of this Colony :

BE IT THEREFORE ENACTED by the Lieutenant Governor of the Colony of Natal, with the advice and consent of the Legislative Council thereof, as follows :—

1. As soon as the Jury Lists for the County of Pietermaritzburg and the City Division have been transmitted to the Sheriff, in terms of the provisions of the Jury Law, 1871, it shall be the duty of the Sheriff to summon the respective Resident Magistrates of such County and Division, the Mayor of the Borough of Pietermaritzburg, and the President of the Pietermaritzburg Agricultural Society, to meet forthwith in Pietermaritzburg, and when assembled it shall be the duty of such officers to consider such lists and to mark thereon the names of such persons as in their opinion, from their general intelligence or knowledge of business and commercial affairs, are qualified to serve as Special Jurors. The names so marked as aforesaid, and not exceeding ~~five~~ in number, shall form and constitute a list of Special Jurors.

Formation of special jury list for Pietermaritzburg County and the City Division.

2. As soon as the Jury Lists for the County of Durban, the Division of Durban Borough, and the Inanda Division of Victoria County have been transmitted to the Sheriff in terms of the provisions of the Jury Law, 1871, it shall be the duty of the Sheriff to summon the respective Magistrates of such County and Divisions, the Mayor of the Borough of Durban, and the Chairman of the Natal Chamber of Commerce (A), to meet forthwith in Durban ; and when assembled it shall be the duty of such officers to consider such lists, and to mark thereon the names of such persons as in their opinion, from their general intelligence or knowledge of business and commercial affairs, are qualified to serve as Special Jurors. The names so marked as aforesaid, and not exceeding ~~five~~ in number, shall form and constitute a list of Special Jurors.

Formation of special jury list for Durban County, Durban Borough and the Inanda Division.

3. For the purpose of marking such Jury Lists, in order to form and constitute such Lists of Special Jurors, any three of the persons summoned in accordance with the foregoing provisions shall form a quorum.

Quorum.

4. The fact that the name of any person qualified and liable to serve as a Juror has been placed on the List of Special Jurors shall not have the effect of exempting such person from such service as he would otherwise have been liable to under the provisions of the Jury Laws.

Persons placed on special jury list not exempt from other service.

5. Such Lists of Special Jurors, when compiled as aforesaid, shall be brought into use on the First day of October in each and every year, and shall continue in force for one year.

When list of special jurors to come into force.

6. Whenever any Special Jury shall be desired for the trial of any civil action in the Supreme or Circuit Court, it shall be the duty of the Registrar of such Court, on the consent of the parties to the suit, or on order made on application to the Supreme Court, or any Judge thereof

Application for special jury in Supreme Court.

(A) Incorporated by Law 31, 1884, under the title of the Durban Chamber of Commerce.

*100 Act 39/74*  
*100 Act 39/74*

**Law 8, 1878.** for such purpose, to cause the Sheriff to summon in manner provided by the Jury Laws of this Colony, fifteen (A) persons whose names appear in the list of special jurors, prepared or compiled as aforesaid from the Jury Lists for the County of Pietermaritzburg and the City Division.

Application for special jury in Durban Circuit Court.

7. Whenever any Special Jury shall be desired for the trial of any civil action in the Durban Circuit Court, it shall be the duty of the Registrar of such Court, on the consent of the parties to the suit, or on order made on application to the Supreme Court, or any Judge thereof for such purpose, to cause the Sheriff to summon, in manner provided by the Jury Laws of this Colony, fifteen (B) persons whose names appear in the list of Special Jurors, prepared or compiled as aforesaid from the Jury Lists for the County of Durban, the Division of Durban Borough, and the Inanda Division of Victoria County.

Constitution of special jury.

8. A Special Jury shall consist of five men, of whom a majority of not less than four shall determine the verdict.

Allowance to special jurors.

9. Every Special Juror serving on a Special Jury in any civil case shall be entitled to receive the sum of one pound and one shilling in respect of any day or fraction of a day on which he shall so serve; and in addition thereto, when summoned from a greater distance than six miles, he shall be entitled to an allowance for horse-hire at the rate of ten shillings per diem (C).

Power of challenge reserved.

10. The power and authority to challenge jurors in civil cases under the Jury Law, No. 10, 1871, shall extend and be applicable to Special Jurors summoned under this Law.

Present jury lists for Durban County and Borough, and Inanda Division, to be deemed one list for Durban Circuit Court.

11. The Jury Lists for the County of Durban, the Division of Durban Borough, and the Inanda Division of Victoria County, shall, for the purpose of summoning Juries for the Durban Circuit Court, in civil as well as criminal cases, and of ascertaining alphabetical order and alphabetical sections for such summoning, be deemed but one list.

Amendment of prior Laws repugnant hereto.

12. The Laws No. 10 of 1871, No. 10 of 1872, and No. 24 of 1874, and any other Laws which may be in any wise repugnant to or inconsistent with any of the provisions of this Law, shall be, and the same are hereby, so far amended, and the said amended Laws shall be read and construed together with this Law.

Commencement

13. This Law shall be in operation from such date as the Lieutenant Governor shall fix and determine by Proclamation in the "GOVERNMENT GAZETTE."

*Reh A 11/27 530*

**Law No. 14, 1883.**

"To Amend the Laws relating to the Constitution and Formation of Juries for Trials in Civil and Criminal Cases."

[12th November, 1883.]

WHEREAS, for the better and more effective administration of Justice within the Colony of Natal, it is expedient to amend the Laws relating to the constitution and formation of Juries for trials in Civil and Criminal Cases, and in order to effect this object it is necessary to limit the class of persons qualified to serve on Juries to duly qualified electors under the "Franchise Amendment Law of 1882":

BE IT THEREFORE ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

(A) May be ten by assent of parties, see secs. 43 & 44 of the Supreme Court Act, 1896.

(B) See note to sec. 6, supra; and as to mode of application for special jury, (C) See proviso added by Act 15, 1895, post.

*Amended by Act 31 of 1917, Sect. 391 so much as relates to jury lists for criminal cases.*

1. Section 5 of the "Jury Law, 1871," is hereby amended by the addition of the following words at the end thereof:—"And no Indian Immigrant who is not entitled to exercise the Electoral Franchise under the 'Franchise Amendment Law of 1882,' and whose name shall not have been placed on the Voters' List as a duly qualified elector under that Law, shall be qualified to serve on a Jury."

Law 14, 1883.  
Sec. 5 of "Jury Law, 1871," amended.

2. The Laws No. 10 of 1871, No. 10 of 1872, No. 24 of 1874, and No. 8 of 1878, and any other Laws which may be in any wise repugnant to or inconsistent with any of the provisions of this Law, shall be and the same are hereby so far amended, and the said amended Laws shall be read and construed together with this Law.

Laws inconsistent with this Law amended.

3. This Law shall commence and take effect from and after the promulgation thereof in the "NATAL GOVERNMENT GAZETTE" (A).

Commencement

*Reh 11/27 5301*

**Law No. 4, 1892.**

"To amend Law No. 10, 1871, entitled 'Law to amend and consolidate the Laws relative to the constitution and formation of Juries, and to trials by Jury.'"

*So much as re to jurors in criminal cases Amended by Act of 1917, Sect. 3*

[21st June, 1892.]

BE IT ENACTED by the Governor of Natal, with the advice and consent of the Legislative Council thereof, as follows:—

1. Section 48 of Law No. 10, 1871, entitled "Law to amend and consolidate the Laws relative to the constitution and formation of Juries, and to trials by Jury" shall be, and the same is, hereby repealed.

Repeal of sec. 48 of Law 10, 1871.

2. Every person summoned to serve as a juror at the Criminal Session of any Court, or in any civil case, and attending in obedience to such summons, and every person who shall serve upon a jury under the provisions of Section 20 of Law No. 10, 1871, shall be entitled to receive the sum of seven shillings and sixpence in respect of each day or part of a day on which he shall be required to attend the sitting of the Court as a juror until lawfully discharged; and in addition thereto the travelling and hotel expenses of jurors shall reasonably be allowed according to the sums bona fide and actually paid, [but in no case shall they exceed sixpence per mile (B)].

Payment of jurors.

Expenses.

3. All payments under the provisions of the preceding section to persons attending at the Criminal Session of any Court shall be defrayed from the public revenue of the Colony. The expenses of jurors in civil cases shall be paid as provided in Law No. 10, 1871.

Payments, how defrayed.

4. Nothing in this Law contained shall be deemed to apply to any person summoned to serve upon a special jury under the provisions of Law No. 8, 1878.

Saving as to special juries.

**Act No. 15, 1895.**

"To Amend Law No. 8, 1878."

[8th August, 1895.]

WHEREAS it is expedient to amend the Law No. 8, 1878:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

(A) Nov. 13, 1883.

(B) Words in brackets are repealed by Act 5, 1899, post.

*Reh 11/27 5301*



Act 15, 1895.  
Amendment of  
sec. 9, Law 8,  
1878.

1. The 9th Section of Law No. 8, 1878, is hereby amended by adding thereto the words following:—

Every person summoned to serve as a special juror in any civil case, and who shall attend Court in obedience to such summons, but without serving as a special juror in any case, shall be entitled to receive Ten Shillings and Sixpence per diem for his attendance, and if summoned from a greater distance than 6 miles, to an allowance for horse hire of Ten Shillings per diem.

If the parties to the suit or their attorneys shall sign assent in this behalf, the number of special jurors to be summoned shall be ten instead of fifteen, as required by Sections 6 and 7 of Law No. 8, 1878.

Construction.

2. This Act shall be read with and taken as part of the said recited Law.

*Rep 11/27 S 307*

Act No. 5, 1899.

“To amend Law No. 4, 1892, entitled Law ‘To amend Law No. 10, 1871,’ entitled Law ‘To amend and consolidate the Laws relative to the constitution and formation of Juries, and to trials by Jury.’”

[30th June, 1899.]

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

1. The words “but in no case shall they exceed Sixpence per mile,” occurring in the last line of Section 2 of Law No. 4, 1892, are hereby repealed.

2. Every juror shall before receiving payment lodge with the paying officer a declaration in the form of the Schedule to this Act setting forth his actual and bona fide travelling and necessary hotel expenses, and shall as far as practicable support the declaration by vouchers showing such expenditure.

3. It shall be within the discretion of the paying officer to refuse to pay to a juror any expenditure that shall, in his opinion, be manifestly unnecessary or excessive, and there shall be no appeal against the decision of the paying officer.

SCHEDULE.

I, A.B., a juror duly summoned and attending at the Sessions of the Court for the do hereby solemnly declare that the actual and bona fide travelling and hotel expenses incurred by me in attending the said Sessions amount to the sum of £

(Signed) A.B.

JURISDICTION.

[See “COURTS,” &c. ; “PLEADING PRACTICE, &c.”]

*amended by Act 31  
1917, so much as  
relates to jurors in  
criminal cases*

Travelling  
expenses.

Declarations  
and vouchers  
in support of  
account.

Discretion of  
paying officer.

JUSTICES OF THE PEACE.

Ordinance No. 6, 1846.

“ Ordinance for creating Justices of the Peace within the District of Natal.”

[7th January, 1846.]

1. WHEREAS it is expedient that Justices of the Peace should be appointed in and for the District of Natal, having the like powers and authorities as Justices of the Peace in other parts 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 thereof, that it shall and may be lawful for the Lieutenant Governor of the District of Natal to appoint, by commissions under his hand and seal, Justices of the Peace for the said District, and to assign to every such Justice of the Peace as the bounds or limits within which he shall be empowered to act, either the whole of the said District, or such a portion or division of the same as he the said Lieutenant Governor shall deem fitting and shall define.

*Repealed by Act 16, sect. 11.*

Lieutenant Governor of Natal may commission Justices of the Peace.

2. And be it enacted, that every Justice of the Peace shall before acting as such take and subscribe the oath of allegiance, and make and subscribe the declaration of office set forth in the Schedule hereunto annexed, before the said Lieutenant Governor or the Recorder of Natal, or the Crown Prosecutor of Natal, or any other Justice of the Peace who shall himself have taken and subscribed the said oath and made and subscribed the said declaration.

Such persons to subscribe oath of allegiance and declaration of office.

3. And be it enacted, that all and singular the clauses and provisions contained in the second and remaining sections of the Ordinance No. 32 of 1827, entitled, “ Ordinances for creating Justices of the Peace in this Colony ” (A), shall, except as hereinafter in this section excepted, be deemed and taken to apply to the jurisdiction, powers, rights and privileges of Justices of the Peace appointed under and by virtue of this Ordinance, and that as fully as if the said sections were herein again set forth and word for word repeated. Provided, however, that when the Clerk of the Peace is mentioned and referred to in the third section of the said Ordinance the Crown Prosecutor of Natal (B) shall be deemed and taken to be meant and intended.

Certain provisions of Ord. 32, 1827, to extend to Natal.  
*Repealed by Act of 1917, Sect. 391 in so far as it empowers Justices to hold preparatory examinations.*

4. And be it enacted, that every such Justice of the Peace shall be, and is hereby declared to be a Magistrate within the meaning of the Ordinance No. 18, 1845, entitled, “ Ordinance for regulating the manner of proceeding in Criminal Cases in the District of Natal ” (c).

Justices of the Peace to be Magistrates under Ord. 18, 1845.  
*Repealed Act 31 of Sect. 36*

5. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof by any proclamation to be by the Lieutenant Governor of the District of Natal for that purpose issued, and posted upon or affixed to any public place in Pietermaritzburg in the said District.

Commencement

(A) Vide infra.  
(B) See tit. “ ATTORNEY-GENERAL.”  
(C) And may therefore give costs in private prosecutions as provided in sec. 16, Law 18, 1845 (*Carter v. Alexander*, 5 N.L.R. 288—per Wragg, J.)

Ord. 6, 1846.

SCHEDULE (A).

*Oath of Allegiance.*

Schedule.

I, \_\_\_\_\_ do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria. So help my God!

*Declaration of Office.*

I, \_\_\_\_\_, do solemnly and sincerely declare, that, as a Justice of the Peace for the District of Natal, I will do equal right to rich and poor to the best of my ability, and according to law; and that I will well and truly discharge my duty as Justice of the Peace without fear, favour, or affection.

**Ordinance No. 32, 1827.**

“ Ordinance for creating Justices of the Peace in this Colony.”

[11th December, 1827.]

1. WHEREAS it is expedient for the preservation of the public peace, the security of individuals, and the due execution of the Laws that Magistrates be appointed in the several Districts of this Colony, with power to apprehend, commit to prison, or hold to bail all vagrants, rioters, robbers, or other notorious offenders found within their several jurisdictions, in order that such offenders may be brought to trial; and with power to do all other such matters and things as the said Magistrates may by law be appointed to do: Be it therefore enacted, and it is hereby enacted, that from and after the passing of this Ordinance it shall and may be lawful for the Governor or Lieutenant Governor for the time being from time to time as occasion may require to appoint Justices of the Peace, under the Great Seal of the Colony of the Cape of Good Hope, for Capetown and the District thereof, and the several country districts respectively, who shall take and subscribe the oath of allegiance and the oath of office set forth in the schedule hereunto annexed before the Chief Justice or any Judge of the Supreme or Circuit Courts, or before the Civil Commissioner or any Magistrate of the district for which such Justice is assigned to act (who are hereby empowered and required to administer the same); and the Clerks of the Peace respectively shall enter in the records of their respective districts that the said oaths were duly administered and taken.

Lieutenant  
Governor to  
appoint Justices  
of the Peace.

Justices of  
the Peace em-  
powered to  
preserve the  
peace, &c.

To inquire of  
all crimes;

2. And be it further enacted, that from and after the passing of this Ordinance, the persons who shall be so appointed as aforesaid to act as Justices of the Peace, shall have power, and are hereby required, to preserve the public peace, and for that purpose to call to their aid and assistance all Fieldcornets, Constables, and peace officers, military officers, and others, His Majesty's subjects, to quell all riots, brawls or other disturbances and to lodge all rioters, brawlers, vagrants, and disturbers of the peace, in any prison within their respective jurisdictions, to be dealt with according to law, and they are hereby authorised and required to inquire of all crimes and offences committed, or alleged to be committed, within their respective jurisdictions, and for that purpose to summon and examine upon oath all witnesses, touching such crimes and

(A) See Law 14, 1869, tit. "OATHS."

offences, and to apprehend and cause to be apprehended, all criminals and offenders, and to deal with them according to law: And the said Justices of the Peace are hereby authorised and required, upon information or complaint in writing, upon oath made to them, or any of them, to cause to come before them all those who have used any threats (A) towards any person or persons, whether regarding their bodies, or the firing of their houses, and to require of them sufficient security for the peace or their good behaviour towards His Majesty or his subjects; and if they shall not give such security, then to cause them to be safely kept in prison till they shall find such security.

Ord. 32, 1827.

To take sureties of the peace;

3. And be it further enacted, that all Justices of the Peace shall cause all informations and complaints made to them, in writing, upon oath, as aforesaid, and all recognizances or other securities for keeping the peace, or for good behaviour, taken by them, to be sent to the Clerk of the Peace (B), acting for the District or place for which the said Justices are assigned respectively, within twenty-one days after such information or complaint made, or security taken; and for every such information or complaint, made as aforesaid, and not sent as aforesaid, and for every such recognizance or security taken, and not sent as aforesaid, every Justice so offending shall incur and be liable to the payment of a fine of twenty pounds sterling.

To forward informations, &c., to Clerks of the Peace.

4. And be it further enacted, that all gaolers and keepers of prisons shall receive into their custody, and safely keep, every person committed to their charge by warrant under the hand and seal of any Justice of the Peace, until they be discharged by due course of law.

Gaolers to keep prisoners.

5. And be it further enacted that no process shall be sued out against, nor any copy of any process at the suit of a subject, shall be served on any Justice of the Peace for any thing by him done in the execution of his office, until notice in writing of such intended process shall have been delivered to him, or left at the usual place of his abode, by the Attorney or Agent for the party who intends to sue, or cause the same to be sued out, or served at least one calendar month before the suing out or serving the same; in which notice shall be clearly and explicitly contained, the cause of action which such party has, or claims to have, against such Justice of the Peace, on the back of which notice shall be endorsed the name of such Attorney or Agent, together with the place of his abode.

Notice of action to be given to Justice.

6. And be it further enacted, that no person shall recover any judgment against any Justice of the Peace, in any case where the action shall be grounded upon any act of the defendant as Justice of the Peace, unless it is proved upon the trial of such action that such notice was given as aforesaid; but in default thereof, such Justice shall be entitled to a judgment and his full costs.

Notice of action to be proved at trial.

7. And be it further enacted, that it shall and may be lawful for such Justice of the Peace, within one calendar month after such notice given as aforesaid, to tender amends to the party complaining, or to the attorney or agent of such party; and in case the same is not accepted, to plead such tender to any action to be brought against him grounded on such process, together with the plea of "not guilty," and any other plea, with the leave of the Court; and if the Court before which such action is brought, shall find the amends so tendered to have been sufficient, then such Court shall give judgment for the defendant, and in such case, or in case the plaintiff shall not proceed in his action, or in case judgment

Justice may tender amends.

(A) See *Carter v. Alexander*, 5 N.L.R. 288.

(B) See Ord. 6, 1846, sec. 3, ante.

Ord. 32, 1827. shall be given for the defendant on any proceeding in the nature of a demurrer, such Justice shall be entitled to like costs as he would have been entitled to in case he had pleaded not guilty only ; and if the Court shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant on such other plea or pleas, then the said Court shall give judgment for the plaintiff, and such damages as the said Court shall think proper together with the costs of suit.

Justice may pay money into Court.

8. And be it further enacted, that in case such Justice shall neglect to tender any amends, or shall have tendered insufficient amends, before the action brought, it shall and may be lawful for him, by leave of the Court where such action shall depend, at any time before the hearing of the said cause, to pay into the Court such sum of money as he shall think fit, whereupon such proceedings, orders and judgments shall be had, made and given in and by such Court, as in other actions where the defendant is allowed to pay money into Court.

Cause of action to be stated in notice.

9. And be it further enacted, that no evidence shall be permitted to be given by the plaintiff, on the trial of any such action as aforesaid, of any cause of action, except such as is contained in the notice hereby directed to be given.

Warrant in first instance to be demanded in action against constable, &c.

10. And be it further enacted, that no action shall be brought against any constable, or other officer, or against any person or persons acting by his order and in his aid, for anything done in obedience to any warrant under the hand or seal of any Justice of the Peace, until demand hath been made or left at the usual place of his abode, by the party or parties intending to bring such action, or by his or their attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand ; and in case after such demand and compliance therewith by showing the said warrant to, and permitting a copy to be taken thereof by, the party demanding the same, any action shall be brought against such constable, or other officer, or against such person or persons acting in his aid, for any such cause as aforesaid, without making the Justice or Justices who signed or sealed the said warrant, defendant or defendants, that, on producing and proving such warrant at the trial of such action, the Court shall give their judgment for the defendant or defendants, notwithstanding any defect of jurisdiction in such Justice or Justices ; and if such action be brought jointly against such Justice or Justices, and also against such constable, or other officer, or person or persons acting in his or their aid, as aforesaid, then on proof of such warrant, the Court shall find for such constable or other officer, and for such person or persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid ; and if the judgment shall be given against the Justice or Justices, that in such case the plaintiff or plaintiffs shall recover his or their costs against him or them, to be taxed in such manner by the proper officer, as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants, for whom such judgment shall be found as aforesaid.

When double costs allowed to plaintiff.

11. And be it further enacted, that where the plaintiff, in any such action against any Justice of the Peace, shall obtain a judgment, in case the Judge before whom the cause shall be tried, shall, in open Court, certify on the back of the record, that the injury for which such action was brought, was wilfully and maliciously committed, the plaintiff shall be entitled to have and receive double costs of suit.

Limitation of action.

12. And be it further enacted, that no action shall be brought against any Justice of the Peace, for anything done in the execution of his office, or against any constable, or other officer, or person acting as aforesaid, unless commenced within six calendar months after the act committed.

## SCHEDULE.

Ord. 32, 1827.

*Form of the Oath of Allegiance (A).**Form of the Oath of Office to be taken and subscribed by Justices of the Peace.*

I, \_\_\_\_\_, do swear, that as Justice of the Peace Schedule.  
 in the \_\_\_\_\_ of \_\_\_\_\_, in all articles in  
 the Governor or Lieutenant Governor's commission to me directed, I  
 will do equal right to the rich and to the poor to the best of my ability  
 and power, and according to the laws and customs of the Colony, and  
 Ordinances and Proclamations thereof; and I will not be of counsel  
 of any quarrel depending before me; and the issues, fines, americiaments,  
 that shall happen to be made, and all forfeitures that shall fall before  
 me, I will cause to be entered without any concealment or embezzling,  
 and will truly send them to the Colonial Treasury, or otherwise dispose  
 of them according to law; I will not obstruct the course of Justice for  
 gift or other cause, but well and truly will discharge my duty as Justice  
 of the Peace, without partiality, favour or affection. So help me God!

**Law No. 9, 1865.**

“Law to empower the Lieutenant Governor to nominate Justices of the  
 Peace within the Colony to issue the Process of the Supreme Court,  
 or any other competent Court, under Ordinance No. 5, 1852, for  
 the arrest of persons about to leave the Colony, and for the attach-  
 ment of property about to be removed therefrom” (B).

*Ref A 2/10*

(A) See the form provided by Law 14,  
 1869, tit. “OATHS.”

(B) Ordinance 5, 1852, was repealed  
 by Law 22, 1889, which in its turn was  
 repealed by Act 22, 1896, tit. “COURTS

(MAGISTRATES),” so that this Ordinance  
 is obsolete.

It may also be noted that by the  
 Volunteer Act, 1895, s. 17, an officer in  
 command of a corps is *ex officio* a J.P.  
 whilst holding such command.

END OF VOL. I.