STATUTES

OF THE

CAPE OF GOOD HOPE

PASSED BY THE

EIGHTH PARLIAMENT

DURING THE

SESSIONS 1889—1893,

WITH INDEX AND TABLE OF CONTENTS.

[PUBLISHED BY AUTHORITY.]

CAPE TOWN:
W. A. RICHARDS AND SONS, PRINTERS AND STATIONERS, CASTLE ST.
1894.

Digitised by the University of Pretoria, Library Services, 2016

PAGE.

No. 19.—To reduce the Annual Quitrent on Land purchased under the Act No. 5 of 1876. 34
20.—To Amend "The Cattle Removal Act, 1870." 35
21.—To provide for the payment of Costs by persons convicted of Breach of Regulations framed by Village Boards of Management, to prevent or impose restrictions upon the keeping of Ferocious or Troublesome Dogs or other Animals 36
22.—To Authorise the raising of a Public Loan of Three Hundred Thousand Pounds for the purpose of prosecuting and improving the Harbour Works of Table Bay, and providing greater facilities for the conduct of the Business of the Port 37
No. 23.—To Authorise a Company, to be styled "The Metropolitan and Suburban Railway Company (Limited)," to construct a Line of Railway from Cape Town to Sea Point 37
24.—To release the Harbour Board of Port Elizabeth from liability in respect of the Interest payable upon certain Cape of Good Hope Consolidated Stock.. 44
25.—To Extend the provisions of the "Scab Acts" to Field-cornetcies adjoining areas or districts wherein the said Acts are in force .. 44
26.—To Extend the provisions of the Act No. 4 of 1876, so as to confer upon Village Boards of Management, authority in terms of the said Act to plant and cultivate Trees 45
27.—To amend the Law for the Prevention of Vagrancy and Squatting.. 46
28.—To Provide for Acquiring, Constructing, Equipping, and Working certain Lines of Railway and for certain Additional Works on Existing Railways 48
29.—To amend the Pounds Ordinance No. 16 of 1847 50
30.—To Amend the Law relating to Masters, Servants and Apprentices 51
31.—To Amend "The Vineyards Protection Act Amendment Act, 1886," and to continue for another year the Fourth Section of the Act 52
32,—To Apply a Sum of Money for the Service of the Year ending the 30th day of June, 1890 53
33.—To Amend the Law with regard to Wild Ostriches 54
34.—To Establish a Public Holiday on the First Monday in October .. 56
35.—To Amend the "Aliens Naturalization Act, 1883" 56
36.—For the Regulation of the Business of Pawnbrokers 57
37.—To provide certain Relief for Lessees of Crown Lands under the Act No. 19 of 1864, and to extend in certain cases Relief granted under the "The Quitrents Relief Act, 1887" 73
38.—To Provide for the Salary of Her Majesty's High Commissioner for South Africa 74
39.—To Extend and Define the Jurisdiction, Power, and Authority of the Table Bay Harbour Board with regard to Bye-laws framed under the Nineteenth Section of the "Explosives Act, 1887" .. 75
40.—To Consolidate and Amend the Law with regard to the Constitution, Powers, and Functions of Divisional Councils 75
41.—To Compensate the owners of Stock destroyed or injured by Trains on the Government Railways.. 161

1890.

1.—For Applying a further Sum not exceeding One Hundred and Ninety-one Thousand Two Hundred and Eighty-eight Pounds Sterling for the Service of the Year ending the 30th June, 1890.. 163
2.—To apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the Year ended the 30th day of June, 1891 164

Digitised by the University of Pretoria, Library Services, 2016

PAGE.

No. 3.—To Confer upon the Supreme Court of this Colony Jurisdiction as a Court of Appeal from any Court acting under the "Africa Order in Council, 1889," and from which Court appeals to the Supreme Court are authorised in manner provided in that Order .. 164
4.—To Provide for the taking of a Census and the Collection of certain Statistics in the Year 1891 165
5.—To Make provision for the Sale of Food and Drugs in a pure state, and to prevent the Adulteration of Seeds.. 168
6.—To apply a Sum not exceeding Two hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1891 177
7.—To Amend the "Scab Acts Extension Act, 1889" 178
8.—To Enable the Municipal Council of Port Elizabeth to raise a further Loan of £30,000 for the better Storage and Supply of Water for the use of the inhabitants of Port Elizabeth 179
9.—To Amend the Act No. 33 of 1888 180
10.—To Provide for Constructing, Equipping and Working a certain Line of Railway, for the completion of certain Lines of Railway under construction, and for certain Additional Works in connection with existing Railways 180
11.—To Amend the Table Bay Harbour Board Act, 1881 183
12.—To Provide for the Registration of Brands, and to facilitate the identification and recovery of Lost or Stolen Horses, Cattle and Ostriches 184
13.—To Provide for the Acquisition, Construction, or Completion, and for the Equipment of Certain Lines of Railway, and for the purchase of Additional Rolling Stock 189
14.—To Amend in certain respects Act No. 3. of 1867, entitled the "Uitenhage Water Act, 1867" 195
15.—To Amend Act No. 11 of 1871 196
16.—To Facilitate the Transfer of Land mortaged under the "Crown Lands Disposal Act, 1887" 195
17.—To Provide for the Construction of Certain Telegraph and other Public Works 198
18.—To Add to the Provisions of the "Customs Union Tariff Act, 1889" 199
19.—For Rendering valid certain Transfers of Land in Griqualand East.. 200
20.—To Regulate the Sale of Spirits Compounded of Spirits of different classes 201
21.—To Prohibit the Introduction of Rabits into, and to Restrict the Breeding of them in, this Colony 201
22.—To Apply a Sum not exceeding Thirty-eight Thousand Two Hundred and Ninety-five Pounds Four Shillings and Three Pence Sterling for the purpose of meeting and covering certain Unauthorised Expenditure and Excess Expenditure upon certain Loan Acts .. 203
23.—To Authorise the Raising of a further Sum of One Hundred Thousand Pounds Sterling for carrying out certain further works necessary for the improvement of the Harbour of Port Elizabeth 203
24.—For Constituting an additional Fiscal Division 204
25.—To Apply a Sum of Money for the Service of the Year ending the 30th day of June, 1891 205
26.—To Abolish the Tenants' Rate levied by the Municipality of Cape Town and to make other provision in lieu thereof, and to authorise the Town Council of Cape Town to contribute a certain sum towards the maintenance of the South African Public Library and the New Somerset Hospital 206
27.—To Amend "The Vineyards Protection Act Amendment Act, 1886," and to continue for another year the Fourth Section of the Act.. 209
28.—For the Expropriation for public purposes of the Land and Buildings thereon, situated at Cape Town, and commonly called the "Commercial Exchange" 209
29.—For the Protection of Fish in the Territorial Waters of this Colony.. 211
30.—To Amend certain provisions of Act No. 33 of 1889, known as "The Wild Ostriches Act, 1889" 212

Digitised by the University of Pretoria, Library Services, 2016

PAGE.

No. 14.—To Establish a "Contingencies Account" 399
15.—To Consolidate and Amend the Law with regard to Pounds .. 401
16.—To Apply a Sum not exceeding Twenty Thousand One Hundred and Sixty-three Pounds Twelve Shillings and Ninepence Sterling for the purpose of meeting and covering certain Unauthorised Expenditure 422
17.—To Amend the Law regarding the Landing, Shipment and Removal of Firearms and Ammunition 422
18.—To Amend the Act No. 12 of 1890, commonly called "The Brands Registration Act, 1890" 424
19.—To Exempt Public Libraries, Museums, and certain Railway Buildings from the payment of Municipal Rates and Taxes .. 424
29.—To Repeal in respect of certain Districts, certain provisions of the Law relating to Masters and Servants, contained in the Proclamation No. 14 of 1872, of Griqualand West, and to make other provisions in lieu thereof 425
21.—To Provide for the Construction of certain Additional Public Works 425
22.—To Authorise the raising of a Public Loan of One Hundred Thousand Pounds for the purpose of prosecuting and improving the Harbour Works of Table Bay, and providing greater facilities for the conduct of the Business of the Port 426
23.—To Facilitate the Partition of Land Mortgaged under the "Crown Lands Disposal Act, 1887" 427
24.—To Amend "The Vineyards Protection Act Amendment Act, 1886," and to continue for another year the Fourth Section of the Act.. 428
25.—To Consolidate the Law relating to Companies 428
26.—To Regulate the holding of Exhibitions in this Colony 498
27.—To make provision for the Permissive Adoption of taking Votes by Ballot at Elections of Members of Divisional Councils, Municipal, Borough, and Town Councils, and Village Management Boards 502
28.—To Release certain Land vested in the London Missionary Society, and forming portion of the Estate commonly called the "Hankey Estate," from the operation of the last proviso of section 3 of the "London Missionary Society's Institutions Act, 1873," in consideration of the registration of a servitude of free outspan against the title of certain other neighbouring property also vested in the said Society 503
29.—To Apply a Sum of Money for the Service of the year ending the 30th day of June, 1893 505
30.—To Amend the Law relating to the Admission of Advocates and Attorneys of the Supreme Court 507
31.—To Prevent the Sale or Exhibition of Indecent or Obscene Books, Pictures, Prints, and other Articles 509
32.—To Consolidate and Amend the Law relating to Colonial Forces .. 512
33.—To Amend the Law with regard to Native Locations 534
34.—To Amend the "Civil Service Act, 1885," and the "Civil Service and Pension Fund Acts Amendment Act, 1888" 537
35.—To Amend the "Post Office Act, 1882," and to repeal the "Post Office Act Amendment Act, 1886" 539
36.—For enabling the Municipal Council of Woodstock to borrow a Further Sum of Money, not exceeding £25,000, in Debentures or otherwise, on the Credit of the Municipality, and to appropriate the same for a General Drainage Scheme, and further for enabling the said Council to effectually carry out the said Drainage Scheme 541
37.—To Amend and add to the Law regulating the Municipal Corporation and Government of Cape Town 543
38.—To Provide for Assisting certain Divisional Councils in Maintaining and repairing certain Roads and Passes 551
39.—To Further amend in certain respects the "Imvani and Indwe Railway and Coal Mines Act," No. 3 of 1882 554
40.—To Amend the Law relating to Marriage 555

Digitised by the University of Pretoria, Library Services, 2016

PAGE.

1893.

No. 1.—To Apply a further Sum not exceeding One Hundred and Thirty-six Thousand and Eighty-one Pounds Sterling for the service of the Year ending the 30th June, 1893 557
2.—To Apply a Sum not exceeding Six Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1894 558
3—To Provide for Prevention of the Spread of the Disease known as Rabies.. 558
4.—To Amend "The Colonial Forces Act, 1892" 559
5.—To Repeal "The Exhibition Act, 1892" 560
6.—To Exempt Transfer of Certain Lands for School Purposes from Transfer Duty, Stamp Duty, and Fees of Office 560
7.—To Apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the service of the Year ending the 30th day of June, 1894 561
8.—To Amend the "Fiscal Divisions Extension Act, 1888" .. 561
9.—To Amend in certain respects the Act No. 22 of 1872, intituled "Table Bay Docks and Breakwater Management Act" .. 562
10.—To Amend the provisions under which Loans for Irrigation purposes are redeemed 562
11.—To Exempt Private Land in respect of which there shall be Registered Servitudes of Outspan, from the provisions of certain Laws 563
12.—To Give Municipal, Borough and Town Councils, and Village Management Boards further Power to make Bye-laws and Regulations 563
13.—To Vest certain Lands in the Municipal Council of Woodstock .. 565
14.—To Create the Office of a Minister of Agriculture, to Abolish the Office of Secretary for Native Affairs, and to amend the designation of and provide for the assignment of duties to certain Ministerial Officers 565
15.—To Amend the "Fish Protection Act, 1890" 567
16.—To Amend the Constitution Ordinance 568
17.—To Apply a Sum not exceeding Thirty-three Thousand Nine Hundred and Thirteen Pounds Seventeen Shillings and Twopence Sterling for the purpose of meeting and covering certain Unauthorised Expenditure 568
18.—To Provide for the Management of the Harbour of East London .. 569
19.—To Consolidate, Amend and Declare the Law relating to Bills of Exchange, Cheques and Promissory Notes 578
20.—To Authorise the raising of a Public Loan of One Hundred Thousand Pounds for the purpose of prosecuting and improving the Harbour Works of Table Bay, and providing greater facilities for the conduct of Business of the Port 610
21.—To Provide for the Reducing of Gradients and the Relaying of certain portions of existing Railway Lines with Heavy Rails and Sleepers 611
22.—To Amend "The Municipal Act, 1882" 611
23.—To Amend the "Northern Railways Act, 1890," and provide for the disposition of Land comprised in the Railway Land Grant, situated in the Territory of British Bechuanaland 613
24.—To Provide for the Construction of certain Additional Works in connection with Railways 618
25.—To Amend the Criminal Law, and to make further provision for the Protection of Women and Girls 620
26.—To Repeal the Acts No. 44 of 1882, No. 28 of 1885, No. 26 of 1890, and No. 37 of 1892, and to consolidate, amend and add to the law regulating the municipal Corporation and Government of Cape Town. 622
27.—To Prevent the spread of Contagious and Infectious Diseases amongst Cattle and other Animals 673

Digitised by the University of Pretoria, Library Services, 2016

PAGE

No. 28.—To authorise a Company to be styled the Green and Sea Point Water and Electric Lighting Company (Limited), to Construct and Maintain certain Water and Electric Lighting Works .. 678
29.—To Make Provision for the Release of a certain further portion of the Estate Orangezicht, from the entail of *Fidei Commissum* .. 690
30.—To Extend the Provisions of the "Transfer Facilitation Act, 1890" 694
31.—To Amend the Law with regard to Alluvial Diamond Diggings .. 695
32.—To Amend and Alter Ordinance No. 6 of 1852, and to make better provision for the Drainage and Improvement of the Municipalities of Wynberg, Clarement, Rondebosch and Mowbray 698
33.—To Provide for the Management of the South African Public Library 708
34.—To Apply a Sum of Money for the Service of the Year ending the 30th day of June, 1894 714
35.—To Consolidate and Amend the Law relating to the Theft of Stock and Produce 715
36.—To Authorise the Expropriation of Land for the purpose of Roads in the District of Xalanga, Tembuland, in the Transkeian Territories 727
37.—To Provide for the Payment of certain Duty in respect of certain Insurances against Death or Injury from other than Natural Causes 728

Digitised by the University of Pretoria, Library Services, 2016

ACTS OF THE CAPE PARLIAMENT.

No. 1—1889.] [Promulgated 7th June, 1889.

ACT

To Amend the law regulating the imposition of Customs Duties, to provide for the entry by this Colony into a South African Customs Union, and to make provision for the free importation into this Colony of certain articles, and for the equitable distribution of Customs Duties collected on Goods.

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

Operation o Act in connection with the establishment of South African Customs Union: provisions for admission to such Union.

1. This Act shall come into force upon a day to be named by the Governor by proclamation in the *Gazette*, and in such proclamation shall be set forth the names of the colonies, states, or territories constituting a South African Customs Union, and from time to time it shall be lawful for the Governor, by further proclamation in the *Gazette*, to declare the admission to the said Union, as and from the first day of January or July as the case may be after such proclamation, of any other colony, state or territory in South Africa having a civilised Government; provided, however, that no colony, state or territory, not named in the proclamation giving effect to this Act, shall be deemed to be admitted to the said Union until after the expiration of six months from the date of receipt by the Governor of a request from such colony, state or territory asking for a declaration of admission to the said Union.

Acts No. 13 and No. 22 of 1884, No. 8 of 1886, No. 18 of 1887, No. 39 of 1888 repealed, together with other repugnant or inconsistent laws.

2. The Act No. 13 of 1884, intituled an "Act for altering the duties of Customs in the Colony of the Cape of Good Hope"; Act No. 22 of 1884, intituled an "Act for authorising the Governor to grant a Rebate of Customs duty in respect of goods removed overland to certain places beyond the Borders of the Colony"; Act No. 8 of 1886, entituled an "Act to define Railway Materials for the purposes of the Customs Tariff Amendment Act, 1884"; Act No. 18 of 1887, entituled an "Act to exempt Machinery imported for manufacturing purposes from the liability to Customs Duties"; Act No. 39 of 1888, commonly called the "Customs Union Tariff Act, 1888"; and so much of any other Act as may be repugnant to or inconsistent with the provisions of this Act, shall be and are hereby repealed.

Digitised by the University of Pretoria, Library Services, 2016

No. 1—1889.

Schedule A sets forth duties of customs from and after taking effect of Act.

3. On and after the date of the taking effect of this Act there shall be raised, levied, collected and paid upon the goods, wares and merchandize imported or brought into this Colony described and set forth in the Schedule A, hereunto annexed, the duties therein set forth, and all such duties shall, on collection, be paid into the Colonial Treasury.

Schedule B sets forth articles imported free of duty.

4. The goods, wares and merchandize mentioned in the Schedule B, hereunto annexed, shall be admitted into this Colony free of Customs duty.

Rebate of duties upon goods removed overland through Cape Colony to colony, &c., not a member of the Union.

5. Whenever any goods imported or warehoused on importation into this Colony shall be removed overland to any colony, state or territory outside the Customs Union, it shall be lawful for the Governor to grant a rebate of the Customs duties payable on the said goods; provided, however, that no such rebate shall be granted until after notice thereof shall have been given in the *Gazette*.

Three-fourths of duties, collected on goods removed overland to and consumed in any colony, &c., being a member of the Union, to be paid to the Government of such colony, &c.

6. Whenever any goods imported or warehoused on importation into this Colony shall be removed overland to and for consumption in any colony, state or territory within the Customs Union, there shall be payable to the Government of such colony, state or territory three-fourths of the Customs Union duties collected under this Act on the said goods.

Power of Governor to make regulations for the purposes of this Act.

7. The Governor may make and alter, by notice published in the *Gazette*, regulations for the removal and conveyance to and across the borders of the Colony, of the goods referred to in this Act, for the rebate of duties, and for the payment to any other colony, state or territory, of its share of the Customs duties collected by the officers of this Colony.

Penalty for contravention of regulations.

8. Any person who shall contravene any regulation made and published, as in the preceding section mentioned, shall be liable to a fine not exceeding three hundred pounds sterling, and in default of payment, to imprisonment, with or without hard labour, for any period not exceeding twelve months, or to both such fine and such imprisonment; and all goods removed in contravention of any such regulation, and all vehicles and animals made use of in the removal of such goods, shall become liable to be forfeited to the Colonial Treasury.

Rebate of duty on sugars allowed to wholesale consumers manufacturing jams, &c.

9. Under such regulations as may be prescribed by the Governor in that behalf, a rebate of Customs duty may be allowed to wholesale consumers of sugars, for the manufacture of jams, preserves and confectionery: Provided that no premises, on which the brewing of beer or distillation of spirits is carried on, shall be licensed for the manufacturing of jams, preserves and confectionery.

Short title.

10. This Act may be cited as the "Customs Union Tariff Act, 1889."

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE A.

ARTICLES.		£	s.	d.
Ale and Beer	per Imperial gallon	0	1	3
Agricultural Implements (Kafir hoes and picks excepted)	per £100	10	0	0
Axles, Bushes, Springs and Lamps for Carts, Carriages, and other wheeled vehicles ..	,, £100	10	0	0
Bacon and Hams	,, lb.	0	0	2
Bags for Flour, Grain, Coal and Wool ..	,, £100	5	0	0
Beads	,, lb.	0	0	2
Butter	,, lb.	0	0	3
Candles	,, lb.	0	0	2½
Carriages, Carts, Wagons and other wheeled vehicles, including Wheelbarrows ..	,, £100	20	0	0
Cement	,, 400 lbs.	0	2	0
Cheese	,, lb.	0	0	3
Chicory	,, 100 lbs.	0	16	8
Cider	per Imperial gallon	0	1	0
Coals, Coke, and Patent Fuel	per ton	0	2	0
Cocoa and Chocolate	per 100 lbs.	0	16	8
Coffee	,, 100 ,,	0	12	6
Confectionery: Jams, Jellies, Bottled and Tinned Fruits and Manufactured Sweets not being medicated or properly classed as Apothecaryware, but including Sweetmeats of all sorts, and other Articles with which Sugar is largely compounded for preserving purposes	per 100 lbs.	0	16	8
Corks and Bungs	,, £100	10	0	0
Corn and Grain, of all kinds	,, 100 lbs.	0	2	0
Dynamite	,, lb.	0	0	3
Dates	,, lb.	0	0	2
Fish, Preserved or Pressed, in pots, bottles, tins, or wood	,, lb.	0	0	2
Fruits, dried	,, lb.	0	0	2
Flour, Wheaten, or Wheaten Meal ..	,, 100 lbs.	0	5	0
Ginger, dry, Chow-Chow and other similar preserves	,, lb.	0	0	3
Gunpowder	,, lb.	0	0	6
Guns and Gun Barrels	,, barrel	1	0	0
Hops	,, £100	10	0	0
Iron, Bar, Bolt and Rod	,, £100	10	0	0
Lard	,, 100 lbs.	0	12	6
Marble	,, £100	10	0	0

Digitised by the University of Pretoria, Library Services, 2016

ARTICLES.		£ s. d.
Matches, viz.:—		
Wooden, in boxes or other packages containing not more than 100 matches	per gross	0 2 0
Do., in boxes or other packages, containing more than 100 and not more than 200 Matches	,, gross	0 4 0
Wax, Vestas, and Fusees, in boxes or other packages, containing up to 50 Vestas or Fusees	,, gross	0 2 0
Wax, in boxes or other packages containing up to 100 Vestas or Fusees .. (And at the same rate for every additional 50 Vestas or Fusees.)	,, gross	0 4 0
Meats, Salt and Preserved, in tins, cases, or otherwise	per lb.	0 0 2
Metal, Composition and Sheathing ..	,, £100	10 0 0
Mules	each	1 0 0
Oils of all descriptions, other than Chemical, Essential and Perfumed	per Imperial gallon	0 1 0
Oils, Chemical, Essential and Perfumed ..	per £100	15 0 0
Paddy (known in Natal as Coolie Rice) ..	,, 100 lbs.	0 1 6
Pistols or Pistol Barrels	each	0 5 0
Picks and Hoes (Kafir)	each	0 0 6
Pickles and Sauces	per lb.	0 0 2
Rice	per 100 lbs.	0 3 6
Rosin	,, £100	10 0 0
Rock Salt	,, ton	0 2 0
Salt, all other descriptions	,, ton	0 5 0
Soap, Common, Brown, Blue, Yellow, or Mottled	,, 100 lbs.	0 4 2
Soda Caustic	,, £100	10 0 0
Spirits, of all sorts, not exceeding the strength of proof by Sykes' hydrometer, and so on in proportion for any greater strength	per Imperial gallon	0 10 6
Spirits, sweetened or perfumed, Liqueurs and Cordials	per Imperial gallon	0 10 6
Spirits, distilled from the produce of any Colony, State or Territory in the Union (other than Spirits distilled from the produce of vines grown in any Colony, State or Territory in the Union) and imported from one Colony, State or Territory in the Union into another Colony, State or Territory in the Union, not exceeding the strength of proof by Sykes' hydrometer, and so on in proportion for any greater strength ..	per Imperial gallon	0 2 0

Digitised by the University of Pretoria, Library Services, 2016

No. 1—1889.

Schedule A.

ARTICLES.		£ s. d.
Sugar, of all sorts (including Molasses and Concrete)	per 100 lbs.	0 6 3
Staves	,, £100	5 0 0
Tallow	,, 100 lbs.	0 4 2
Tamarinds	,, lb.	0 0 2
Tea	,, lb.	0 0 8
Tin, viz.: Plate or Sheet	,, £100	5 0 0
Tobacco, not Manufactured	,, lb.	0 1 0
Do., Manufactured (not Cigars or Snuff)..	,, lb.	0 2 0
Cigars	,, lb.	0 4 0
and for every £100 value ..	,, £100	10 0 0
Cigarettes	,, lb. gross	0 2 0
Snuff	,, lb.	0 4 0
Turmeric	,, lb.	0 0 3
Turpentine	,, gallon	0 1 0
Varnish	,, gallon	0 1 0
Vegetables, preserved or pressed, in pots, bottles, tins, or wood	,, lb.	0 0 2
Vinegar	,, gallon	0 0 6
Wine in Bottles each of not greater content than 6 to the Imperial Gallon	per dozen bottles	0 12 0
Do. in Bottles each of not greater content than 12 to the Imperial Gallon ..	per dozen bottles	0 6 0
Do. in other Bottles or in Wood ..	per Imperial gallon	0 6 0
Wood, Unmanufactured, other than Teak ..	per cubic foot	0 0 2
Wood, other than Teak, planed or grooved ..	,, cubic foot	0 0 3
Teak	,, cubic foot	0 0 4
Goods not above enumerated or described, nor otherwise charged with duty, and not prohibited to be imported or used in any State, Colony or Territory of the Customs Union	per £100	12 0 0

SCHEDULE B.

Schedule B.

FREE.

All raw produce of South Africa imported overland.

All goods grown, produced or manufactured within the Customs Union, imported overland, excepting Flour manufactured from other than South African Wheat and excepting Spirits upon which the duty of two shillings per imperial gallon is imposed by the above tariff.

Digitised by the University of Pretoria, Library Services, 2016

No. —1889.
Schedule B.

All articles of Military, Naval, or Volunteer Uniforms or Appointments imported for the use of Her Majesty's Imperial or Colonial Forces, or Forces of the States belonging to the Customs Union.
Animals, Living (excepting Mules).
Anchors and Chain Cables for Ships' use.
Bones.
Bottles of Common Glass imported full of Wine, Beer, or other Liquid liable to Customs Duty.
Books, Printed, not being Foreign Reprints of British or South African Copyright Works.
Bullion or Coin.
Carriages, Carts, Wagons, and other Wheeled Vehicles, the manufacture of South Africa, imported overland.
Cotton in its raw state.
Diamonds or other Gems in their rough state.
Feathers, Ostrich, Undressed.
Fencing Wire, Iron Standards, and all other Materials intended to be used solely for the purpose of Wire Fencing.
Fish not specially rated.
Flowers of Sulphur.
Fruit, Green, including Cocoa Nuts.
Guano and other Manures.
*Hair, viz., Angora.
*Hides, Ox and Cow.
*Horns, Ox and Cow.
*Horns, Wild Animals.
Ice.
*Ivory.
Machinery and the component parts thereof, viz.,—for Agricultural, Mining, Sawing, or Manufacturing purposes.
Maps and Charts.
Materials, for use in construction of Railways or Tramways: such materials to mean as follows:—Rails, Sleepers, Fastenings for Rails or Sleepers, Iron Girders, Iron Bridgework Culvert Tops, Locomotives, Tenders, Ballast Trucks, Goodswagons, Railway Carriages, Engine Watertanks, Turn Tables, and Railway Signals.
Materials for use in construction of Telegraph Lines.
Paper for Newspaper and Book Printing purposes.
Photographs.
Pig Iron.
Printers and Bookbinders' materials.
Provisions or other Stores for the Regular Forces in the service of Her Britannic Majesty, and the States belonging to the Customs Union.
Seeds, Bulbs or Plants (Garden).
Sheep Dip.
*Skins, viz.: Goat.
* Seal
* Sheep.
* Wild Animals.

Digitised by the University of Pretoria, Library Services, 2016

Specimens Illustrative of Natural History.
Tobacco, the produce of South Africa, imported overland.
Wine, imported or taken out of bond for the use of Military Officers serving on full pay in the Regular Land and Sea Forces of Her Britannic Majesty, and the States belonging to the Customs Union, and also for the use of Officers of Her Majesty's Navy serving on board any of Her Britannic Majesty's Ships: subject, however, to such regulations as may be made, and provided that if any such wines shall be subsequently sold, except for the use and consumption of any of such Officers serving as aforesaid, the same shall be forfeited and liable to seizure accordingly.
*Wool, viz.: Sheep's.

* Not manufactured, but in the raw state.

No. 2—1889.] [Promulgated 28th June, 1889.

ACT

To Repeal the Ordinance No. 13 of 1874, of the Province of Griqualand West, and to make other provision for the payment of fees of office and fees to practitioners in civil cases in the Courts of Resident Magistrates in the said Province.

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

Griqualand West Ordinance 13 of 1874 repealed.

1. So much of the Ordinance No. 13 of 1874 of the Province of Griqualand West as has not heretofore been repealed, and so much of any other law as may be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed.

Fees in Resident Magistrate's Courts in Griqualand West to be same as in other parts of Colony.

2. From and after the passing of this Act the fees to be taken by officers of and by practitioners in every Court of a Resident Magistrate having jurisdiction in the Province of Griqualand West shall, in respect of every civil case in such court, be the same as and none other than the fees which would be taken and allowed if such Court were a Court of a Resident Magistrate having jurisdiction in the Colony of the Cape of Good Hope, and not in the said Province.

Existing rights saved.

3. Notwithstanding the repeal of the said Ordinance as aforesaid, every agent who at the time of the passing of this Act shall have passed the examination required by the Proclamation of His Excellency Sir Henry Barkly, K.C.B., Governor of Griqualand West, being Proclamation No. 26 of 1872, dated the 23rd day of September, 1872, and who shall be lawfully entitled to practise before any Court of a Resident Magistrate in the said

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1889.

Province, shall, so long as he shall continue so entitled, and shall practise before such Court, be empowered to take fees in accordance with the tariff prescribed by Schedule B of the said Ordinance, and any messenger now in office shall, during his tenure of office, be empowered to take the fees to be taken by the messenger under Schedule A of the said Ordinance, as though the said Ordinance had not been repealed.

No. 3 of 1889.] [Promulgated 28th June, 1889.

ACT

To Apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1890.

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

Revenue charged with £400,000, towards service of year ending 30th June, 1890.

1. The public revenue of the Colony of the Cape of Good Hope is hereby charged towards the service of the year ending 30th June, 1890, with a sum not exceeding Four Hundred Thousand Pounds Sterling (£400,000), which sum shall be applied towards the service of the said year in conformity with the estimates of the expenditure for the said year which have been presented to Parliament.

Short title.

2. This Act may be cited for all purposes as "The Appropriation (part 1889-90) Act, 1889."

No. 4 of 1889.] [Promulgated 28th June, 1889.

ACT

To Repeal the House Duty Act, No. 20, 1878, as amended by Act No. 29, 1882, and by Act No. 21, 1888, and the Hut Tax and House Duty Amendment Act, No. 25, 1888.

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

Repeal of Acts No. 20, 1878, No. 29, 1882, No. 21, 1888, and No. 25, 1888, except as to House Duty for 1888 or any previous year.

1. The Acts No. 20, 1878, No. 29, 1882, No. 21, 1888, and No. 25 of 1888 are hereby repealed: Provided that in regard to all House Duty due and in arrear in respect of the year 1888 or any previous year the said Acts No. 20, 1878, No. 29, 1882, and No. 21, 1888, shall be deemed and taken to remain in force.

Hut Tax to continue under Act No. 37, 1884.

2. Notwithstanding anything in this Act contained, Hut Tax on huts in Native Locations shall continue to be paid in accordance with the provisions of the "Native Locations Act, 1884."

Short title.

3. This Act may be cited as the "House Duty Repeal Act, 1889."

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1889.] [Not yet Promulgated.

ACT

To Amend the Post Office Savings Banks Acts and to afford additional facilities for the Deposit of Money with the Post Office, and for the Disposition, Management and Investment of the same.

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

Savings Bank.

Repeal of sections 3, 8, 9, and 19, and of Schedules A and B of "Post Office Savings Bank Act, 1883," and substitution of other provisions.

1. The third, eighth, ninth and nineteenth sections of the "Post Office Savings Banks Act, 1883," and the Schedules thereunto annexed, marked "A" and "B" respectively, are hereby repealed, and the following sub-sections numbered respectively 1, 2, 3, 4, and Schedules hereunto annexed, marked "A" and "B" respectively, shall be substituted in lieu thereof:

Deposits up to £500 capital authorised, not to exceed £100 in any one year, but not to exceed £600 capital and interest.

(1) Deposits of one shilling or any number of shillings, or of pounds and shillings, will be received from any depositor at any Post Office Savings Bank, provided the deposits made by such depositor in any Savings Bank year ending on the thirtieth day of June do not exceed one hundred pounds, and provided the total amount standing in such depositor's name in the books of the Postmaster-General do not exceed five hundred pounds, exclusive of interest. When the principal and interest together standing to the credit of any one depositor amount to the sum of six hundred pounds, all interest shall cease so long as the same funds amount to the said sum of six hundred pounds.

Interest, calculated to 30th June becomes capital.

(2) Interest on deposits shall be calculated to the thirtieth day of June in every year, and shall then be added to and become part of the principal money.

Particulars to be specified by depositor, and declaration to be subscribed.

(3) Every depositor on making a first deposit shall be required to specify his names in full, occupation and residence, to the officer of the Postmaster-General appointed to receive the deposit, and make, and subscribe with his name, or mark if unable to write, the declaration set forth in the Schedule hereunto annexed, marked "A," to be witnessed by the officer of the Postmaster-General appointed to receive deposits, or by some person known to him, or by some minister of religion in the district in which the depositor resides, or by a Justice of the Peace.

If the depositor cannot write, the certificate at the back of the declaration form shall be filled up and witnessed by two persons both over the age of sixteen years.

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1889.

Accounts to be annually laid before Parliament of all deposits.

(4) An account of all deposits received and paid under the authority of this Act, and of the expenses incurred during the Savings Bank year ended the thirtieth of June, together with a statement of the total amount due at the close of such year, to all depositors, shall be laid before both Houses of Parliament within thirty days after the commencement of each annual session thereafter.

Savings Bank Certificates.

Provision for certificates of £100 in respect of sums transferred from ordinary to special deposit account: certificate not transferable, but redeemable in accordance with regulations.

2. It shall be lawful for the Postmaster-General, subject to the conditions hereinafter set forth, to issue any number of Savings Bank certificates not exceeding ten, of the value of one hundred pounds sterling each, bearing interest at such rate as may from time to time be fixed by the Governor, not exceeding the rate of five pounds per centum per annum, to any depositor in the Post Office Savings Bank who, having like sums at the credit of his ordinary deposit account, may desire to transfer such sum or sums from such ordinary deposit account to a special deposit account represented by such certificates and bearing the interest specified thereon; and such certificate shall not be transferable, but shall be evidence of the depositor's claim upon such special deposit account to the amount specified in such certificate with the interest due thereon, and shall be redeemable upon such previous notice as may be expressed thereon under and by virtue of such regulation in that respect as may from time to time be made by the Governor under the authority of this Act: Provided that no reduction of the rate of interest which the Governor may decide upon shall apply to any certificate issued before such reduction is decided upon, until after the expiration of three months from the day upon which notice of such reduction shall be given in writing either personally served upon or transmitted in course of post to the last known address of the holder of such certificate.

Name of holder of certificate not to be disclosed except to Master of Supreme Court, Postmaster-General, or officers in aid of Act; but authority of Auditor-General not limited.

3. The officers of the Postmaster-General who may from time to time be authorised to issue or repay such certificates shall not disclose the name of any holder of a certificate, nor the amount deposited or withdrawn except to the Master of the Supreme Court, the Postmaster-General, or to such of his officers as may be appointed to assist in carrying this Act into operation: Provided that nothing herein contained shall be deemed to limit the authority of the Controller and Auditor-General.

Separate accounts and investment of deposits.

4. The Postmaster-General shall keep separate accounts of all moneys deposited and paid under the provisions of this Act, and the Treasurer of the Colony shall from time to time, and as often as the account will permit, invest any moneys to the credit of such account, and may from time to time realise or vary any such investments.

Digitised by the University of Pretoria, Library Services, 2016

Certificates to be signed by Postmaster-General and Assistant Treasurer, and registered with Auditor-General.

5. Every Savings Bank certificate issued under the authority of this Act shall be signed by the Postmaster-General and by the Assistant Treasurer of the Colony, and shall be registered in the office of the Controller and Auditor-General.

Certificates on to depositors; transactions through Savings Bank Department.

6. Savings Bank certificates shall be issued only to depositors in the Post Office Savings Bank, and all transactions in connection therewith so far as the deposit of sums of money and the repayment thereof are concerned shall be effected through the intermediary of the Savings Bank Department of the Post Office.

Interest on certificates on 1st Jan. and 1st July.

7. Interest on certificates shall be payable on the first day of January and the first day of July in each year, and the amount due to each holder of a certificate shall, on those dates respectively, be placed to the credit of the account standing in the name of the said depositor in the books of the Post Office Savings Bank.

Interest how calculated in case of transfer from ordinary to special deposit account.

8. Interest shall be calculated from and including the first day of the month next following the date upon which an application shall be received for the transfer of an amount from the ordinary Savings Bank account of a depositor to whom a Savings Bank certificate shall be issued, and shall cease on the last day of the month next preceding that in which the amount of such certificate shall be re-transferred to the Savings Bank account of such depositor.

Fee of 1s. on every certificate.

9. There shall be payable upon the issue of every certificate a fee not exceeding one shilling, which fee shall be attached to the certificate in a postage stamp or stamps of equivalent value.

To whom certificates may be issued under the regulations of Post Office Savings Bank.

10. Certificates may be issued to a trustee on behalf of another person, or for the benefit of a minor, or in the joint names of two or more persons, and the regulations under which such investments shall be received and the amounts thereof repaid, shall in all respects, except as herein otherwise provided, be similar to the regulations for the time being under which like deposits are received and repaid by the Post Office Savings Bank.

Investments of funds not exceeding £1,000 by trustees of certain Societies, Clubs or Funds.

11. The trustee of any Friendly, Charitable or Provident Society, or any other Society, Club, or Fund which may for the time being be authorised to deposit its funds in the Post Office Savings Bank under the authority of the Post Office Savings Banks Act, 1883, or of the Post Office Savings Banks Act Amendment Act, 1886, shall be permitted to invest any portion of such funds in certificates under the same regulations as ordinary depositors: provided, however, that in no case shall the total amount so invested exceed the sum of one thousand pounds sterling, as provided in the case of ordinary depositors.

Repayment on decease of depositor subject to regulations.

12. The repayment of amounts to the representatives of deceased depositors shall in all cases be subject to the regulations in force for the time being of the Post Office Savings Bank in that respect.

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1889.

Special deposit account not to be computed in calculating maximum deposit allowed, but no interest on excess over maximum including amount of such account.

13. In computing the maximum amount allowed to be deposited by a depositor in the Post Office Savings Bank, any deposit for investment in Savings Bank certificates, and any sum credited to the account of a depositor in respect of any such certificates, shall not be reckoned, and it shall be lawful to credit the account of a depositor with any such deposit or sum: Provided that if after such deposit or sum has been credited, the aggregate sum standing to the credit of a depositor exceeds the maximum amount which otherwise is allowed to be deposited in the Post Office Savings Bank either in any one Savings Bank year or in the aggregate, such excess shall bear no interest but shall be applied to the purpose for which it was deposited or be paid over to the depositor.

Difference between Postmaster-General and person claiming to be entitled to money under any certificate to be referred for final decision to Judge of Supreme Court.

14. In case any difference shall arise between the Postmaster-General and any holder of a Savings Bank certificate, or any executor, administrator, next of kin, or creditor, or trustee of a holder of a Savings Bank certificate who may become insolvent or any person claiming to be such executor, administrator, next of kin, creditor or trustee, or to be entitled to any money represented by Savings Bank certificates, then, and in every such case, the matter so in dispute may be referred in writing to the summary decision of one of the Judges of the Supreme Court, and such Judge may enquire into and determine the matter in dispute, and his determination and adjudication on the premises shall be final and conclusive and binding on the said parties: Provided that such Judge may, if he see fit, make such order for further enquiry and determination of the matter in dispute as he may deem necessary.

Power of Governor to make regulations on all matters incidental to operation of Act: Copies of regulations to be laid before Parliament.

15. Except as may be herein otherwise specially provided, the Governor may make and, from time to time as he shall see occasion, alter, by notice published in the *Gazette*, regulations for superintending, inspecting and regulating the mode of keeping and examining the certificate accounts of depositors, and with respect to the issue of certificates, and to the repayment of certificates with interest, and all other matters incidental to the operation of this Act, and all regulations so made shall be binding on the parties interested to the same extent as if such regulations formed part of this Act, and copies of all regulations issued under the authority of this Act shall be laid before Parliament within fourteen days from the date thereof, if Parliament shall then be sitting, and if not, then within fourteen days from the next re-assembling of Parliament.

Account to be annually laid before Parliament of moneys received and paid in respect of certificates.

16. An account of all moneys received and paid under the authority of this Act in respect of investment in Savings Banks certificates, and of the expenses incurred during the Savings Bank year ended the 30th day of June, together with a statement in connection therewith of the total amount due at the close of such year to all depositors in respect of their investments in such

Digitised by the University of Pretoria, Library Services, 2016

certificates, shall be laid before both Houses of Parliament within thirty days after the commencement of each annual session thereafter.

Operation of Act.

17. This Act shall have effect from and after the date of the promulgation thereof.

Short title of Act, and connection with other Acts.

18. This Act may be cited as "The Post Office Savings Banks Additional Facilities Act, 1889," and shall be read as one with the "Post Office Savings Banks Act, 1883," and the "Post Office Savings Banks Act Amendment Act, 1886."

"A." (FACE OF FORM.)

Schedule A.

G.P.O.—No. 296.
S.B.—No. 1.

DEPOSITOR'S BOOK.

.....

No. .....

DECLARATION BY DEPOSITOR ON MAKING FIRST DEPOSIT.

In pursuance of an Act of Parliament,
(Name in full) I,.....*
(Residence) of .....
(Occupation) .....
do hereby declare to the Postmaster-General that I am desirous on my own behalf to become a Depositor in the Post Office Savings Bank. I do further hereby declare that I am not directly or indirectly entitled to any sum or sums standing [in my own name, or] in the name or names of any other person or persons in the Books of the said Post Office Savings Bank; and I do hereby also testify my consent that my deposits in the said Post Office Savings Bank shall be managed according to the Regulations thereof.

I also declare that I clearly understand that for every deposit I shall place in the hands of a Postmaster for transmission to the Post Office Savings Bank, I must see that I receive a direct acknowledgment from the Controller of the Savings Bank Department, and that the Postmaster's entry in the Deposit Book is not sufficient without the further receipt from Cape Town.

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

.....

Signed by the said Depositor } .....
in the presence of me, } .....

Save and except such benefit as I may be entitled to from being a Member of a Friendly Society legally established, or from

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1889. Schedule A.

such sum or sums as may be standing in my name as Trustee, jointly with the name or names, and on behalf of any other Depositor or Depositors.

If the Depositor cannot write, the certificate printed on the back of this form must be filled up and signed in the manner provided.

* In the case of Minors under the age of seven years, the Declaration must be made by one of the parents, or a friend, on behalf of the Minor.

The date on which the Minor will attain the age of seven years must be stated here.

Seven years of age on the.....day of..... 18...., before which day the deposits cannot be withdrawn.

"A" (BACK OF FORM.)

Every Depositor on making a first deposit shall be required to specify his Christian name and Surname, occupation, and residence, to the officer of the Postmaster-General appointed to receive the deposit, and make and sign the Statutory Declaration, to be witnessed by the officer of the Postmaster-General appointed to receive deposits or by some person known to him, or by some Minister of Religion in the district in which the depositor resides, or by a Justice of the Peace.

On making the Declaration, and in all cases in which the signature of the depositor is required, if the depositor cannot write, his mark must be affixed in the presence of a witness, and attested by the signature of that witness.

If the depositor cannot write, the following certificate must be signed by two persons, both over the age of sixteen years:—

We, the undersigned, testify that the Declaration printed on the other side was read to the depositor in our presence and in our hearing, and that the depositor stated that he understood the same.

..... Signature.

..... Occupation.

..... Signature.

..... Occupation.

Digitised by the University of Pretoria, Library Services, 2016

"B." (FACE OF FORM.)

No. 5—1889.
Schedule B.

G.P.O.—No. 297.
S.B.—No. 2.

DEPOSITOR'S BOOK.

.....

No.....

DECLARATION BY THE TRUSTEE OF A DEPOSITOR.

In pursuance of an Act of Parliament,
(Name in full) I, ...
(Residence) of .....
(Occupation) .....
do hereby declare to the Postmaster-General that I am desirous of becoming a Depositor in the Post Office Savings Bank, as Trustee of
(Name in full).....*
(Residence) .....
(Occupation).....
and I do further declare on behalf of myself, and also on behalf of the said .....
that we are not, either jointly or severally, directly or indirectly, entitled to any sum or sums standing [in our own names, or] in the name or names of any other person or persons in the Books of the said Savings Bank above mentioned.

I also declare that I clearly understand that for every deposit I shall place in the hands of a Postmaster for transmission to the Post Office Savings Bank, I must see that I receive a direct acknowledgment from the Controller of the Savings Bank Department, and that the Postmaster's entry in the Deposit Book is not sufficient without the further receipt from Cape Town.

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

.....

Signed by the said Trustee, } .....
in the presence of me, } .....

Save and except such benefit as I, or he, may be entitled to from being a Member of a Friendly Society legally established, or from such sum or sums as may be standing in my name as a Depositor on my own account, or as Trustee jointly with the name or names, and on behalf of any other Depositor or Depositors.

If the Trustee cannot write the certificate printed on the back of this form must be filled up and signed in the manner provided.

* If the person in trust for whom the account is opened be under seven years of age, the date on which he will attain that age must be stated here.

Seven years of age on the .....day of .....
18...., before which day the deposits cannot be withdrawn.

Digitised by the University of Pretoria, Library Services, 2016

5—1889.
Schedule B.

"B." (BACK OF FORM.)

Deposits may be made by a Trustee on behalf of another person, in the joint names of such Trustee and the person on whose account such money shall be so deposited; but repayments of the same, or any part thereof, shall not be made without the receipt and receipts of both the said parties, or the executors or administrators and survivor, in case of the decease of one of them, whose receipt or receipts either personally or by agent appointed by power of attorney, which power of attorney may be executed by an infant of or exceeding the age of fourteen years, shall alone be a valid discharge except in case of insanity, or imbecility of the party on whose behalf the deposits were made, when the Postmaster-General may, on proof of the fact to his satisfaction, allow repayment to be made to the Trustee alone.

Every depositor on making a first deposit shall be required to specify his Christian name and Surname, occupation, and residence, to the officer of the Postmaster-General appointed to receive the deposit, and make and sign the Statutory Declaration to be witnessed by the officer of the Postmaster-General appointed to receive deposits, or by some person known to him, or by some Minister of Religion in the district in which the depositor resides, or by a Justice of the Peace.

On making the Declaration, and in all cases in which the signature of the depositor is required, if the depositor cannot write, his mark must be affixed in the presence of a witness, and attested by the signature of that witness.

If the depositor cannot write, the following certificate must be signed by two persons both over the age of sixteen years:—

We, the undersigned, testify that the Declaration printed on the other side was read to the depositor in our presence and in our hearing, and that the depositor stated that he understood the same.

..... Signature.
..... Occupation.

..... Signature.
..... Occupation.

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1889.] [Promulgated 28th June, 1889.

ACT

For Applying a further Sum not exceeding One Hundred and Seventy-seven Thousand One Hundred and Ninety-nine Pounds Sterling for the Service of the year ending the 30th June, 1889.

Preamble.

WHEREAS it is necessary to provide for certain expenditure necessarily incurred and to be incurred during the year ending on the 30th June, 1889, in addition to the sums provided by the Acts No. 2 and 29 of 1888: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Public Revenue charged with £177,199.

1. The public revenue of the Colony of the Cape of Good Hope is hereby charged towards the service of the year ending on the 30th June, 1889, with a further sum of One Hundred and Seventy-seven Thousand One Hundred and Ninety-nine Pounds Sterling, in addition to the several sums provided for by the said Acts No. 2 and 29 of 1888.

How to be applied.

2. The money granted by this Act shall be applied to the purposes and services expressed in the Schedule annexed hereto, and more particularly specified and set forth in the explanatory detailed Schedule to this Act submitted to Parliament.

Short title.

3. This Act may be cited for all purposes as the "Additional Appropriation 1888-'89 Act, 1889."

SCHEDULE.

Schedule.

Additional Appropriation, 1888-'89.	Establishments.	Services, exclusive of Establishments.	Total.	Required to be provided for.
	£	£	£	£
1. Ministerial Department of Colonial Secretary	7,673	32,801	40,474	40,474
2. Ministerial Department of Treasurer of the Colony	2,402	10,401	12,803	4,099
3. Ministerial Department of Attorney-General	..	243	243	243
4. Ministerial Department of Commissioner of Crown Lands and Public Works	..	131,967	131,967	131,967
5. Ministerial Department of Secretary for Native Affairs	24	392	416	416
Grand Total	10,099	175,804	185,903	177,199

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1889.] [Promulgated 28th June, 1889.

ACT

To Authorise the Proclamation of certain Main Roads.

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

Governor empowered to proclaim certain Main Road.

1. Notwithstanding anything to the contrary contained in the second section of the "Roads Act, 1877," or in that or any other law of this Colony, the Governor may at any time after the passing of this Act, by Proclamation in the *Gazette*, declare the roads generally described and set forth in the Schedule hereunto attached, to be main roads within the meaning of the "Public Roads Act, 1858," and of every other law of the Colony, and thereupon the said roads throughout their entire length shall be deemed and taken to be main roads declared by Act of the Legislature.

Schedule.

SCHEDULE.

IN THE DIVISION OF KIMBERLEY.

1. From the boundary of the Municipality of Kimberley through the farms Kenilworth, Smooks Pan, Eerste Aanleg, Bul Pan, Witpan, Zoutpanfontein, Slypklip, Kransvogel Vlei, Leeuw Poort, Koodos Dam, Spion Heuvel, Doornfontein, through the village of Warrenton, thence to a Junction with the road from Doornfontein to Blignauts Pont next described.

2. From a Junction with the Warrenton road on the farm Doornfontein, thence *via* Blignauts Pont to the boundary of the Colony and Free State near the Vaal River passing over farms Grasbult, School Plaats, Pont Drift and Drie Hoek.

No. 8—1889.] [Promulgated 28th June, 1889.

ACT

To Make further provision for the Apprenticeship of Juvenile Offenders.

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

Juvenile offenders may be apprenticed until 21 years of age.

1. Whenever any child under the age of sixteen years shall be convicted of any offence in terms of the fourth section of the Reformatory Institutions Act, 1879, it shall be lawful for the court before which such conviction shall take place to direct that, in lieu of any of the punishments in the said section mentioned, such child shall be apprenticed to some fit and proper person, who

Digitised by the University of Pretoria, Library Services, 2016

shall be willing to instruct and employ such child in some useful calling, trade, or other occupation, including domestic service and service as a farm labourer, until such child shall have attained his twenty-first year or for some shorter period.

Act 15 of 1856 to apply

2. All and singular the provisions of Act No. 15 of 1856, relating to apprentices, save and except such provisions as are repugnant to or inconsistent with the provisions of this Act, shall, in so far as they are applicable, apply to persons directed to be apprenticed under this Act.

Contract executed before Resident Magistrate.

3. It shall be lawful for any Judge of the Supreme Court, before whom any child shall be convicted as aforesaid, to direct that the contract of apprenticeship shall be executed before a Resident Magistrate to be nominated by such Judge.

Resident Magistrates to be tutors of all minors apprenticed under this Act

4. The Resident Magistrates of the Colony shall be *ex officio* the tutors of all minors apprenticed under this Act and residing within their respective districts instead of their parents, or tutors, testamentary or dative, and shall, upon proof of the unfitness, inability or unwillingness of any master to retain the custody of any such minor, cancel the contract of apprenticeship and apprentice the minor to some other fit and proper person.

Wages to be deposited in Savings Bank.

5. Whenever any wages shall be payable to any minor apprenticed under this Act such wages shall be deposited in his name in such Post Office Savings Bank as the Magistrate shall direct, and shall not be handed over to such minor until the lawful expiration of his apprenticeship, unless the Magistrate shall for special reasons otherwise direct.

How apprentice may be transferred to another person.

6. No master shall assign or transfer to any other person any minor apprenticed under this Act without the consent of the Resident Magistrate of the district in which such master shall reside, but the consent of the minor or of his parents shall not be necessary.

Punishment for desertion.

7. Any minor apprenticed under this Act who shall desert from his master's service during his term of apprenticeship shall be liable, upon conviction before any Court of Resident Magistrate, to be imprisoned with or without hard labour for any period not exceeding twelve months, or to receive twenty cuts with a cane, or to both such imprisonment and whipping.

How contract may be cancelled.

8. It shall be lawful for the Supreme Court, Eastern Districts Court, or High Court of Griqualand or any Circuit Court, within their respective jurisdictions, upon the application of any minor apprenticed under this Act, or of any parent or relative within the fourth degree of consanguinity of such minor, to order the cancellation of any such contract of apprenticeship, as aforesaid, and, if need be, to direct a fresh contract to be entered into before such Magistrate as shall be nominated by such court.

Enquiry as to fitness of master.

9. Every Resident Magistrate shall, before approving of any contract of apprenticeship, make full inquiry as to the fitness of

Digitised by the University of Pretoria, Library Services, 2016

No. 8—1889.

any master to whom the minor is proposed to be apprenticed, and may by advertisement in the *Gazette* and some newspaper circulating in his district, give notice in the English and Dutch languages, that applications may be made to him by farmers or other persons wishing to have the convicted offender apprenticed to them. Such notice shall state the name and age of the offender, the offence of which he stands convicted, and the day upon which such applications will be heard before such Magistrate.

Notice to be given for applications.

Detention of offender until apprenticed.

10. It shall be lawful for the Resident Magistrate, pending the publication of such notice or pending such enquiry as in the last preceding section mentioned, whether the offender shall have been tried before him or shall have been sent by some Judge of the Supreme Court to be apprenticed by him, to direct that such offender shall be detained in prison or be admitted on bail until the contract shall be finally executed.

Short title.

11. This Act may be cited for all purposes as the "Juvenile Offenders Apprenticeship Act, 1889."

No. 9—1889.] [Promulgated 13th August, 1889

ACT

For the Prohibition of Lotteries.

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

Short title.

1. This Act may be cited for all purposes as the "Lotteries Prohibition Act, 1889."

Repugnant laws repealed.

2. The Proclamation of date the 19th day of May, 1789, published on the 27th day of May in the said year, and so much of any other law as is repugnant to or inconsistent with the provisions of this Act shall be and the same are hereby repealed, but nothing herein contained shall be deemed in any way to affect the provisions of the Act No. 28 of 1860, or of the thirteenth subsection of the seventh section of the Act No. 27 of 1882, commonly called the "Police Offences Act, 1882;" or any Art Union legalised in the United Kingdom or in any British Colony.

Definition of terms.

3. In this Act the following terms shall bear the meanings herein assigned to them, to wit:—

"Lottery" means every lottery in the common and received acceptation of that term, and more particularly every scheme, arrangement, system, plan, or device by which any prize or prizes, is or are, or is or are intended to be, gained, won, drawn for, thrown or competed for, by lot, dice, or any other mode of chance, either with or without reference to the happening of any uncertain event other than the issue or result of the application or employment of such lot, dice, or mode of chance;

Digitised by the University of Pretoria, Library Services, 2016

"Prize" means money or any other matter, article, or thing, including lands, houses, goods, wares, merchandise or other property, movable or immovable, and including any right to claim money and any right of ownership, possession, use, usufruct or occupation of lands, houses, goods, wares, merchandise or other property;

"To subscribe" means to pay over or deliver, with or without the intervention of an agent, to any person whatsoever, any sum of money or any article, matter or thing, movable or immovable, whether or not such article or thing be to itself of any pecuniary value, for and in consideration of and with a view to receiving from any person or persons whatsoever any right, or the recognition of any right, to participate in or any chance of securing, gaining, or winning any prize in any lottery;

"Subscription" means the money, article, matter or thing subscribed, including the proceeds of such article, matter, or thing if sold or disposed of for money, and including any other article, matter, or thing received therefor by way of exchange or otherwise;

"Ticket" means any symbol, sign, token, warrant or list, or any other means or device of whatsoever nature or kind purporting or intended to confer upon or recognise in any person whatsoever any right or claim to compete for or receive any prize or to have any interest in any lottery.

Persons in any way taking part in a lottery to be liable to a penalty.

4. Any person who shall personally or by any representative authorised by him, or as the representative of any other person or persons known or unknown

(*a*) establish, commence or be a partner or otherwise beneficially interested in any lottery, or

(*b*) manage, conduct, or in any way assist in managing or conducting any lottery, or

(*c*) sell or dispose of, or offer to sell or dispose of, or take or purchase or have any interest in any ticket in any lottery, or

(*d*) knowingly allow any house, room, or other premises under his control to be used in any way by any person for the management and conduct of any lottery or for any business purpose connected therewith,

shall be guilty of an offence against this Act, and shall be liable upon conviction for the first offence to a fine not exceeding two hundred pounds, or in default of payment to imprisonment with or without hard labour for any period not exceeding six months, unless such fine be sooner paid, and for any subsequent offence against this Act to a fine not exceeding five hundred pounds, or to imprisonment with or without hard labour for any term not exceeding twelve months, unless such fine be sooner paid, or to both such fine and such imprisonment.

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1889.

Persons advertising or printing advertisements of a lottery liable to a penalty.

5. No publisher, proprietor, or other person having the control and management of any newspaper or public print, and no proprietor or other person having the control and management of any printing press, shall, by way of advertisement or otherwise, print or publish, either in such newspaper or public print or otherwise, any notice of any lottery intended to be held in this Colony or elsewhere, and any person contravening this section shall upon conviction be liable to a fine not exceeding fifty pounds, or in default of payment to imprisonment with or without hard labour for any period not exceeding one month, unless such fine be sooner paid.

Persons distributing or causing to be distributed notices of a lottery liable to a penalty.

6. Every person who shall personally or by any servant or agent distribute or deliver or cause to be distributed or delivered to any person in this Colony any hand-bill or other document, conveying in print, writing, or in any other way, notice of and information with regard to any lottery, shall be liable on conviction to a fine not exceeding fifty pounds for each act of distribution or delivery, or in default of payment of such fine to imprisonment with or without hard labour for any period not exceeding one month, unless such fine be sooner paid.

Subscribers to a lottery may recover their subscriptions from the promoters.

7. Every subscriber to any lottery may by action in any competent court recover from any person or persons managing or conducting or beneficially interested in any lottery, or from any one of such persons, or from any person who shall have received his subscription, the full amount of such subscription or the value thereof, whether the prizes in such lottery have or have not been distributed before such action is brought.

Prizes in a lottery not recoverable by law, and transfer of immovable property won in a lottery declared illegal.

8. No transfer, delivery or alienation of any prize shall be claimable by any subscriber to any lottery in any legal proceedings, nor shall transfer of any immovable property won as a prize be lawful or be permitted by any Registrar of Deeds in this Colony; provided, however, that any subscriber who has gained and actually received any prize shall not be liable to be called upon to return or restore the same or the value thereof to any person other than the Assistant Treasurer of the Colony who may sue for and recover such prize or its value in any competent court, claiming a declaration of forfeiture under this section of such prize or its value.

Persons engaged in a lottery are liable under this Act although such lottery be got up outside the Colony.

9. No person shall be deemed to be exempt from liability, in any proceedings whether civil or criminal, under any provision of this Act, in respect of any act or thing done or authorised or permitted by him to be done within this Colony with respect or in relation to or in connection with any lottery, merely by reason that the management, conduct, or business of or concerning such lottery is in whole or in part carried on at some place or places beyond the borders of this Colony.

When to take effect.

10. This Act shall come into operation on the thirtieth September, 1889, and not sooner.

Digitised by the University of Pretoria, Library Services, 2016

No. 10—1889.] [Promulgated 30th July, 1889.

ACT

To Authorise and empower the Malmesbury Board of Executors and Trust Company to undertake the business of a Fire Assurance Company.

Preamble.

WHEREAS by Act No. 9 of 1865, and Act No. 34 of 1884, a certain company was incorporated and still subsists and carries on business as a body corporate under the name and title of "The Malmesbury Board of Executors and Trust Company:"

And whereas it is expedient to authorise and empower the said company to add to its existing business the business of undertaking the insurance of immovable and movable property of all kinds against loss or damage by fire:

And whereas it is expedient for the purpose of obtaining the aforesaid object in certain respects to amend the aforesaid Act No. 9 of 1865 and Act No. 34 of 1884:

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

Malmesbury Board of Executors and Trust Company authorised to undertake business as a Fire Assurance Company, and to amend or add to its Deed of Settlement accordingly.

1. Notwithstanding anything to the contrary contained in the Act No. 9 of 1865, or the Act No. 34 of 1884, the company incorporated by the said Acts shall be, and is hereby authorised and empowered

(*a*) To undertake and carry on in all its branches the business of a fire assurance company, and to insure against loss or damage by fire immovable and movable property of all kinds;

(*b*) To make, by way of a supplementary Deed of Settlement, or otherwise, such alterations or amendments of and such additions to the Deed of Settlement of the said company, now registered in accordance with the sixth section of Act No. 9 of 1865, as may be from time to time required for carrying out the objects and purposes of this Act, and of the Act No. 9 of 1865, and the Act No. 34 of 1884, and may be approved of by shareholders or members of the said company in manner provided in the said Deed of Settlement.

Alterations, &c., of Deed of Settlement to be duly registered, and not to be repugnant to this Act.

2. No such alterations, amendments, or additions to the aforesaid Deed of Settlement, and no supplementary Deed embodying such alterations, amendments or additions, shall be of legal force or validity unless and until the same shall have been approved of as aforesaid and a copy thereof shall have been signed by at least three directors for and on behalf of the shareholders or members and registered in accordance with the provisons of the said sixth section or of the seventh section of the Act No. 9 of 1865,

Digitised by the University of Pretoria, Library Services, 2016

No. 10—1889.

and no such alterations, amendments or additions as aforesaid, shall be of legal force and validity in so far as they shall be repugnant to the provisions of this Act.

Corporate existence and rights and liabilities of company continued under change of name.

3. Nothing in this Act contained shall be deemed to alter or affect the continued corporate existence or the rights or liabilities of the said company, but, notwithstanding anything to the contrary contained in the Act No. 9 of 1865, especially the second section thereof, or in the Act No. 34 of 1884, especially the third section thereof, the said company shall be and continue to be identically the same body corporate, composed of the same members or shareholders, but carrying on business under the name and title of "The Malmesbury Board of Executors and Trust and Fire Assurance Company."

Act to be read with Acts No. 9 of 1865, and No. 34 of 1884, and short title of Act.

4. This Act shall be read as one with the Act No. 9 of 1865, and the Act No. 34 of 1884, and may be cited for all purposes as "The Malmesbury Board of Executors and Trust and Fire Assurance Company Act, 1889."

No. 11—1889.] [Promulgated 30th July, 1889.

ACT

To Provide for the Supply of Water in the Woodstock Municipality.

, Preamble.

WHEREAS it is expedient to make provision for the supply of water in the Woodstock Municipality, and for that purpose to confer upon the Woodstock Municipal Council certain rights, powers and privileges over and above the rights, powers and privileges already by law, and especially by Act No. 45 of 1882, vested in and conferred upon the said Council: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Rights, powers, &c., under this Act to be supplementary to other rights, powers, &c., conferred by law on the Woodstock Municipal Council.

1. The rights, powers and privileges by this Act vested in or conferred upon the Woodstock Municipal Council, hereinafter called the said Council, shall for all legal purposes be deemed and taken to be so vested and conferred in supplement of and not in derogation from any rights, powers or privileges vested in or conferred upon the said Council by the Act No. 45 of 1882, or any law in force in this Colony.

Power of Council to enter into agreements for the supply of water, and to enforce the proper performance thereof.

2. It shall be lawful for the said Council for such period, subject to such terms and conditions, and for such considerations as to the said Council shall seem fit in the interest of the inhabitants of the said Municipality, to make and enter into any agreement with any person or body corporate for the supply of water to or within the limits of the Woodstock Municipality, whether the sources of such supply shall be situate within or

Digitised by the University of Pretoria, Library Services, 2016

beyond the said limits: Provided that the said Council shall have supervision and control over the distribution and supply of water within the said limits, and shall have the power and be subject to the duty of representing in legal proceedings all and every ratepayer or inhabitant in the said Municipality in enforcing against any party to any such agreement the due and proper performance thereof, and the due and proper supply of water to any such ratepayer or inhabitant.

Management of waterworks and all right and property in materials, stock, &c., vested in Council.

3. Subject to the terms of any such agreement as aforesaid, the general management of all matters connected with or relating or incidental to the construction, maintenance and working of the waterworks constructed under the provisions of this Act within the limits of the said Municipality, and also the right to and property in all and singular the materials, stock, land, and everything appertaining to the said waterworks, shall be vested in the said Council.

Powers of construction and maintenance.

4. The said Council is hereby empowered to construct and make, or cause to be constructed and made, within the limits of the said Municipality, all such works as may in the opinion of the said Council be necessary and expedient for the purpose of impounding, storing, diverting, appropriating, taking, or conveying the said water, whether by reservoirs, dams, watercourses, or leadings, pipes, conduits, drains, ditches, wells, or other means, and to erect such buildings as may be deemed requisite for the purposes of the said works for securing an adequate supply of water for the purposes of this Act.

Power to enter upon and use lands, and provision for compensation to owners or occupiers.

5. The said Council is hereby empowered to occupy, enclose, take, and use for the purposes of this Act, land set apart as commonage lands for the said Municipality, and also to enter upon, occupy, and use any land the private property of any person or persons whomsoever, for the purpose of making and effecting, maintaining, supervising and repairing a suitable connection between any house and any supply pipes, watercourse, conduit, reservoir, or water-house: Provided, however, that the Council shall make full compensation to any owner or occupier of any land so taken or used under the provisions of this Act.

Powers to lay pipes, &c., along public roads, &c., subject to duty to restore.

6. The said Council is hereby empowered, within the limits of the said Municipality, to lay down and construct pipes, conduits, or any other appliances for the conveyance of water under, across, or along any public road, street or thoroughfare, or under, across, or along any ground set apart in the diagram or conditions of sale of land as a public road, street or thoroughfare, without making or becoming liable to make any compensation; provided that if the said Council shall in any way disturb the surface or otherwise interfere with the free and accustomed use of any such road, street, thoroughfare, or ground, the said Council shall so soon as may be make provision either to restore such road, street, thoroughfare, or ground to its former condition, or for the safe, free and convenient use thereof by all persons entitled to such use.

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1889.

Rights of access.

7. It shall at all times be lawful for the said Council and its engineers, contractors or workmen, and with carts or carriages, to have free access and right of way to, over, and along the works constructed or to be constructed, and to and from all other property of the said Council acquired or to be acquired under the provisions of this Act, for the purpose of making, repairing, relaying, or supervising the said works, or for any other purpose whatsoever incidental to carrying out the purposes of this Act.

Penalties for injuring Council's property and works.

8. Any person who shall wilfully injure, damage, obstruct, or interrupt any building, erection, conduit, reservoir, dam or watercourse, drain, ditch, pipe or pipes, or other work or works, or shall obstruct, hinder or prevent the forming, constructing, completing or maintaining the works contemplated by this Act, or any agreement made as aforesaid, or any of them shall, upon conviction, be liable for each offence to a fine not exceeding twenty-five pounds sterling, or to be imprisoned with or without hard labour for any period not exceeding three calendar months, or to both such fine and such imprisonment: provided that nothing in this section contained shall be held or taken to exempt such person from any civil or criminal liability for any of the aforesaid acts to which he would have been subject if this Act had not been passed, but no person shall be prosecuted criminally, both under this Act and any other law, for or in regard to one and the same act.

Penalties for defiling water.

9. Any person who shall bathe or wash himself in any dam or reservoir belonging to the said Council, or in any stream flowing into such dam or reservoir by means of any watercourse constructed under this Act or any such agreement as aforesaid, or shall wash, throw or cause to enter therein any dog or other animal, or shall place or throw any rubbish, dirt or filth, or other noisome thing in any such dam or reservoir or stream, or wash or cleanse therein any wool, leather, or skin of any animal, or any clothes or other thing whatsoever, shall for every offence be liable to a fine not exceeding five pounds sterling, or to be imprisoned with or without hard labour for any period not exceeding twenty-one days or to both such fine and imprisonment.

Offences how prosecuted.

10. All offences against any of the provisions of this Act may be prosecuted before the Court of the Resident Magistrate of Cape Town, or before any Periodical or other competent Court, which may hereafter be established, having jurisdiction within the said Municipality.

Tariff of charges: bye-laws, &c.

11. The said Council is hereby empowered from time to time to frame, publish, alter and amend a tariff of charges, and to make bye-laws, rules and regulations, by which the supply of water by private or other water leadings, for domestic, irrigating, industrial, or other purposes, shall be regulated within the limits of the said Municipality, and the payment for such supply shall be in accordance with such tariff: Provided, however, that the charge

Digitised by the University of Pretoria, Library Services, 2016

per diem for the first fifty gallons, supplied or ready to be supplied, per diem, to any house shall not exceed threepence.

Power and duty of Council to supply water to every house: compulsory supply of fifty gallons per diem to be paid for by owner.

12. The said Council may from time to time, and shall at any time upon the application of the owner of any house situate within the limits of the said Municipality, make, construct, and lay down pipes, conduits, or any other appliances suitable for the conveyance and supply, and for the measurement of the supply of water to any such house, and the owner of any such house, to which not less than fifty gallons of water per diem shall be supplied or ready to be supplied, shall be liable quarterly, on and after the 31st of March, the 30th of June, the 30th September, and 31st of December in any year, to pay to the said Council such sum for such water supplied or ready to be supplied, as shall be fixed by any tariff framed in accordance with the last preceding section of this Act, which sum shall be deemed to be due in respect of the last preceding quarter of any year on the day terminating such quarter as aforesaid, and shall be recoverable by legal proceedings in any competent Court: Provided, however, that the owner of any such house who shall under this section be deemed to be liable to pay for such water supplied or ready to be supplied to such house during any quarter, shall be the person or persons in whose name the land upon which such house is built shall be registered on the day terminating such quarter as aforesaid, and that nothing herein contained shall be deemed or taken to invalidate, alter or affect any agreement entered into between the owner and occupier or occupiers of any such house: Provided, further, that no owner shall be deemed either to be exonerated from the payment of the whole or any part of any such sum merely by reason that any of the water in respect of which such sum is claimed has not in fact been supplied, if it was ready to be supplied, or to claim that water not supplied, but which was ready to be supplied as aforesaid, shall be supplied upon payment of any such sum: and provided lastly, that for all water supplied over and above the amount of fifty gallons per diem aforesaid, the owner or any occupier of any house to whom such water is supplied shall be liable to pay the amount fixed by such tariff as aforesaid.

Right to enter and cut off supply in order to effect inspection and repairs.

13. The said Council may authorise any person, for the purpose of inspection and repair, to enter upon any house supplied with water by the said Council, between the hours of ten a.m. and four p.m., and to cut off the supply to any such house after twenty-four hours' notice in writing shall have been given of the intention to do so; provided, however, that such supply shall not, under this section, be cut off for any period longer than may be actually required, for the purpose of detecting waste or making necessary repairs.

Right to cut off for default of payment for water.

14. If any person shall, for one week, after lawful demand, fail to pay any sum due for water supplied under the provisions of this Act, the said Council is hereby empowered to enter upon

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1889.

the premises to which the water not paid for has been supplied, and to cut off the supply until the sum due be paid.

Cost of house connection to be borne by owner.

15. The cost of all house connection effected under the twelfth section of this Act with shut-off cocks and suitable house fittings, and of all repairs, shall be borne by the owner of the house to which the water is supplied and paid to the said Council; but if, with the consent of the said Council, the connection is effected by the owner of any such house, the materials for the same shall be purchased from or approved by the said Council, and shall be laid down by the workmen or contractors of the said Council, or under the control of any person approved of by the said Council: Provided, always, that where the water is supplied by meter the work up to and including the meter shall be done by the servants of the said Council, and the work and fittings on the consumers' side of the meter may be done by the owner in such way as he may deem fit, subject to any regulations and bye-laws framed by the said Council.

Surplus rates devoted to purposes of Act; separate accounts to be kept.

16. The said Council may devote any available and surplus sum, raised by way of rates under the provisions of the Act No. 45 of 1882, to carrying out the purposes of this Act, and shall specially account for all money received and expended under the provisions of this Act in a separate account to be annually prepared, which shall lie at the office of the Council for the inspection of ratepayers during the month of March in each year.

Costs, &c., of obtaining Act paid out of municipal revenue.

17. The costs, charges and expenses of obtaining the passing of this Act shall be paid out of the revenue of the said Municipality derived from rates.

Short title.

18. This Act may be cited as the "Woodstock Municipality Water Supply Act, 1889."

No. 12—1889.] [Promulgated 13th August, 1889.

ACT

To Amend the Law regarding Registration and Abandonment of Claims in Diamond Mines.

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

Act read as one with Acts No. 19 of 1883, No. 22 of 1885, No. 18 of 1886, No. 44 of 1887, and inconsistent laws repealed.

1. This Act shall be read as one with Act No. 19 of 1883, Act No. 22 of 1885, Act No. 18 of 1886, and Act No. 44 of 1887, provided that anything in any of the said Acts contained which shall be repugnant to or inconsistent with the provisions of this Act shall be and is hereby repealed.

Section 78 of Act No. 19 of 1883 repealed.

2. Section 78 of Act No. 19 of 1883 is hereby specifically repealed.

Digitised by the University of Pretoria, Library Services, 2016

Act to apply only to proclaimed diamond mines.

3. The provisions of this Act shall be applicable only to duly proclaimed diamond mines.

Claim once registered to remain a claim on the register, whether abandoned or not, and whether actually used for mining purposes or not.

4. When a claim has at any time been registered on the register of any mine under the provisions of section 20 of Act No. 19 of 1883, it shall not be lawful to remove or strike out such claim from such register, but it shall remain registered as a claim until the mine itself in which it is situated be abandoned, in terms of the thirtieth section of Act No. 19 of 1883, whether such claim be or be not in fact abandoned or left derelict, or whether it be or be not actually used for mining purposes.

Registration of abandoned claim.

5. In case any claim in the last section referred to shall be abandoned, registration shall from and after such abandonment be made in the name of the owner of the land upon which the said claim shall be situated, and the word "abandoned" shall be written opposite the entry in the register of such registration, and shall remain there so long as the said claim shall continue to be an abandoned claim, but no longer: Provided that no such registration shall in any way affect the rights of the said owner against the lessee under any contract of lease regarding the said claim.

Words "and rightful owner" expunged from Section 65 of Act No. 19 of 1883.

6. Section 65 of Act No. 19 of 1883 shall be read as though the words "and rightful owner" were struck out and the word "holder" were substituted.

Abandoned claim to be under control of Mining Board free of rent, &c., unless owner shall within 30 days after notice signify willingness to assume claimholder's position.

7. In case of the abandonment of a claim in a mine situated upon land the title of which is not subject to any reservation of minerals or precious stones in favour of the Crown, it shall be lawful for an officer duly appointed by Government on that behalf to give written notice of such abandonment to the owner of such land, and thereupon, unless the said owner shall within thirty days signify to such officer in writing his willingness to take upon himself all the liabilities and responsibilities of an ordinary claimholder in respect of such claim, it shall be lawful for the mining board, body, or officer for the time being representing the claimholders at the said mine, to enter upon the said claim and from time to time to do or cause to be done any work which the mining board, body, or officer aforesaid may consider necessary either for safety of life or property or for other mining purposes in the said mine, in manner authorised by any act, resolution, rule, regulation, or bye-law in that behalf having the force of law, and such mining board, body, or officer shall not be chargeable with any rent, fees, taxes or other charges in respect of such claim, nor be liable to any action at the instance of the owner of such land in respect of such work done upon such claim, and such mining board, body, or officer shall cause an account to be kept of all moneys expended upon such claim in manner hereinbefore set forth, and may grant the necessary order for a warrant to register a lien against such claim for the value of the work so done upon it as by law provided in favour of the person

Digitised by the University of Pretoria, Library Services, 2016

No. 12—1889.

or persons performing the work; and every lien so registered shall be satisfied or paid before the claim on which it is registered shall be re-let or leased. In the event of the owner of the land so signifying his willingness as aforesaid, he shall thereupon become and be subject to all the laws, rules and regulations applicable to other claimholders on such mine in respect of such claim.

Owner signifying willingness shall become subject to all laws, &c., applicable to claimholders.

8. In the interpretation of Act No. 19 of 1883 and of this Act, the word claimholder shall be taken to include partnerships, joint-stock companies, and any public body or body corporate to whom any portion of ground has been or may be assigned for mining purposes whether by way of absolute ownership, lease or otherwise.

"Claimholder" includes partnerships, companies, public bodies, &c., to which claim may be assigned for mining purposes.

9. This Act may be quoted as "The Precious Stones and Minerals Mining Act (Diamond Mines) Amendment Act, 1889."

Short title.

No. 13—1889.] [Promulgated 9th August, 1889.

ACT

To Apply a Sum not exceeding Thirty-four Thousand Eight Hundred and Twenty-eight Pounds Thirteen Shillings and Sixpence Sterling, for the purpose of meeting and covering certain Unauthorised Expenditure.

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

1. The public revenue of this Colony is hereby charged with a sum not exceeding thirty-four thousand eight hundred and twenty-eight pounds thirteen shillings and sixpence sterling, which sum shall be paid for unauthorised expenditure beyond the amounts voted or appropriated for the service of the financial year ended the 30th June, 1888, as described at page xvi of the "Report of the Controller and Auditor-General, with Statements of the Revenue and Expenditure and Appropriation Accounts of the Colony of the Cape of Good Hope, for the financial year 1887–88" [G. 2—'89], presented to both Houses of Parliament by command of the Governor.

Charge on Revenue of certain Unauthorised Expenditure, not exceeding £34,828 13s. 6d.

2. This Act may be cited as the "Unauthorised Expenditure Act, 1889."

Short title.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1889.] [Promulgated 9th August, 1889.

ACT

To Amend the Thirteenth Section of "The Merchandise Marks Act, 1888."

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

Definition of "goods of foreign manufacture."

1. The words "goods of foreign manufacture" in the first sub-section of the thirteenth section of the Act No. 12 of 1888, commonly called "The Merchandise Marks Act, 1888," shall be taken to mean all goods manufactured, made, or produced at any place outside the limits of this Colony.

Sub-section 4 of sec. 4 of Act No. 12 of 1888 amended.

2. The fourth sub-section of the said thirteenth section shall be read and construed as though after the word "Colony" where it first occurs, were inserted the words "or elsewhere," as though instead of the word "a" before the word "place" where it last occurs in the said sub-section, were substituted the word "the," and as though at the end of the said sub-section were added the words "or elsewhere, as the case may be, wherewith the name on such goods is identical, or whereof it is a colourable imitation."

Short title.

3. This Act shall come into operation on a day to be fixed by the Governor, not being any day before the 31st day of August, 1889, and may be cited as "The Merchandise Marks Amendment Act, 1889."

No. 15—1889.] [Promulgated 9th August, 1889.

ACT

To Authorise the Expropriation of Land for the purpose of Roads in the Divisions of Stutterheim, Cathcart, and Komgha.

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

Expropriation of land for roads in divisions of Stutterheim, Cathcart and Komgha.

1. Notwithstanding anything to the contrary contained in any law, it shall be lawful for the Governor at any time after the passing of this Act, to take or expropriate, for the purpose of giving road facilities to certain landholders in the divisions of Stutterheim, Cathcart, and Komgha, such land as he may deem to be necessary for that purpose.

What roads may be proclaimed.

2. The roads in the last section referred to are all or any of the roads referred to in the report of J. Newey and A. E. Murray, dated the 6th day of April, 1889 (G. 36—'89), and shown in the plan annexed to the said report.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1889.

Compensation for taking, &c., of land, to be assessed by Road Board.

3. Compensation in respect of the taking or expropriation as aforesaid shall be claimable in all cases in which such compensation would by law be claimable from a divisional council in connection with the construction, maintenance, or repair of any divisional road, and such compensation shall be assessed, in accordance with the provisions of the Lands and Arbitrations Clauses Act, 1882, but by a Road Board constituted under the provisions of the following section of this Act.

Constitution of Road Board.

4. A Road Board shall be constituted by the Governor by proclamation in the *Gazette*, which shall have the power of arbitrators under the Lands and Arbitrations Clauses Act, 1882, for the purpose of assessing such compensation as aforesaid, and the said board shall be composed of two members appointed by the Governor, not more than one of whom shall be in the service of the Government, and one member appointed by the divisional council of that one of the aforesaid three divisions in which the land shall be situated, in respect of the taking or expropriation of which compensation shall be claimed.

Short title.

5. This Act may be cited as the "Gaika Location Roads Act, 1889."

No. 16—1889.] [Promulgated 9th August, 1889.

ACT

To Repeal the 31st Section of the Regulation of Railways Act, 1861, and to make other provisions in lieu thereof.

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

Section 31 of Act No. 19 of 1861 repealed.

1. The thirty-first section of the Act No. 19 of 1861, commonly called "The Regulation of Railways Act, 1861," shall be and is hereby repealed.

Provision for rules and regulations with respect to the crossing of public roads by any railway.

Penalty for contravention.

2. Where any railway in the Colony crosses any public road on a level adjoining a station, the company owning or working such railway shall comply with and be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Governor, and every such company shall be liable to the penalties provided by the twenty-eighth section of the aforesaid Act for every contravention of any such rule or regulation.

Short title.

3. This Act may be cited as "The Regulation of Railways Amendment Act, 1861."

Digitised by the University of Pretoria, Library Services, 2016

No. 17—1889.] [Promulgated 13th August, 1889.

ACT

To Abolish Tolls on Bridges over the Orange and Great Kei Rivers

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

Act No. 6 of 1877, sections 9 and 10, Act No. 15 of 1871, section 1, sub-sections 2, 3, 5, 6 and the schedule, together with other repugnant or inconsistent laws repealed; but Convention with O. F. State of 2nd Feb., 1875, not impaired.

1. The ninth and tenth sections of the Act No. 6 of 1877, commonly called the "Kei Bridge and Natal Telegraph Act, 1877," the second, third, fifth, and sixth sub-sections of the first section of and the Schedule to the Act No. 15 of 1871, and the Act No. 12 of 1884, together with so much of any other provision of the Act No. 15 of 1871, or any other law in force in this Colony as shall be repugnant to or inconsistent with the provisions of this Act shall be and is hereby repealed in respect of the toll-bars and tolls referred to in this Act: provided that nothing in this Act contained shall be deemed or taken to impair or affect the validity of a certain Convention made and entered into by and between the Governor of this Colony and the President of the Orange Free State and published in the *Gazette* under Proclamation No. 4, dated the 2nd day of February, 1875.

No tolls for the future at or near bridges over Orange or Kei Rivers.

2. From and after the promulgation of this Act, every toll-bar established within this Colony for the purpose of taking tolls at any of the bridges referred to in either of the aforesaid Acts shall be abolished, and thereafter no toll-bar shall be established and no tolls shall be taken at or near any of the said bridges.

Short title.

3. This Act may be cited for all purposes as the "Orange and Kei Rivers Free Bridges Act, 1889."

No. 18—1889.] [Promulgated 9th August, 1889.

ACT

To provide for Constructing, Equipping and Working a Line of Railway in the Orange Free State.

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

Governor shall when expedient construct and equip line of Railway from Norval's Pont to Bloemfontein, in the Orange Free State, subject to Convention between Governor of this Colony and President of Orange Free State.

1. The Governor shall, as soon as may seem to him expedient after the passing of this Act, cause to be constructed and equipped the line of Railway mentioned in the Schedule, and shall cause the same to be maintained and worked, and shall appoint such engineers and other officers and do and perform all such matters and things as he may deem necessary or expedient for such purposes in accordance with a certain Convention entered into with

Digitised by the University of Pretoria, Library Services, 2016

No. 18—1889.

a view to the construction and equipment of such a railway, between the Governor of the Cape of Good Hope and the President of the Orange Free State, copies of which were presented to both Houses of Parliament, by command of the Officer Administering the Government, on the 20th day of June, 1889.

Power to borrow £630,000 for purposes of this Act on Debentures or Stock.

2. For the several purposes in the preceding section mentioned it shall be lawful for the Governor to expend a sum of £630,000, and to raise such sum from time to time, as he may deem expedient either by debentures or stock, or partly by debentures and partly by stock, and the cost necessarily incurred in raising the said loan, including discount, commission and other incidental charges, shall be a first charge against the amount thereof.

Short title.

3. This Act may be cited for all purposes as the "Bloemfontein Railway Act, 1889."

SCHEDULE.

Schedule.

A line of Railway from a point on the north bank of the Orange River near Norval's Pont, to Bloemfontein, in the Orange Free State, including rolling stock, and including one half of the cost of a Bridge across the Orange River near Norval's Pont, £630,000.

No. 19—1889.] [Promulgated 9th August, 1889.

ACT

To reduce the Annual Quitrent on Land purchased under the Act No. 5 of 1870.

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

Reduction of quitrents from and after 1890, under Act No. 5 of 1870, from 1 per cent. to ½ per cent. of the purchase amount.

1. From and after the 1st day of January, 1890, the annual quitrent of one pound sterling for every hundred pounds of the purchase amount of land purchased under the provisions of the Act No. 5 of 1870, shall, notwithstanding anything to the contrary contained in the first sub-section of the first section of the said Act, or in any other law, be reduced to an annual quitrent of ten shillings for every hundred pounds as aforesaid, in respect of payments of quitrent becoming due on or after the said 1st day of January, 1890.

Short title.

2. This Act may be cited as the "Quitrents Reduction Act, 1889."

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1889.] [Promulgated 9th August, 1889.

ACT

To Amend "The Cattle Removal Act, 1870."

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

Amendment of certain sections of Act No. 14 of 1870, as to the 10 mile limit.

1. The several sections hereinafter mentioned of Act No. 14 of 1870, commonly called "The Cattle Removal Act, 1870," shall be amended in the following way, to wit:

(1) From the second section shall be expunged the words "distant therefrom more than ten miles";

(2) From the fifth section shall be expunged the words "and if he shall know that such stock have been removed ten miles or more from the place from which the same were removed";

(3) From the ninth section shall be expunged the words "or if the stock so driven shall not have been removed ten miles," and the words "or that such stock have been removed ten miles or more."

Arrest of person driving or having custody or possession of stock liable to be seized or impounded under Act No. 14 of 1870.

2. Any field-cornet, police officer, justice of the peace, or landed proprietor on his own land, or any road adjoining such land, authorised under the provisions of the fifth section of the said Act, as amended by this Act, to take possession of any stock, shall be and is hereby further authorised and empowered without warrant to arrest the person who shall be driving the said stock, or in whose custody or possession the said stock may be found, and to bring or cause to be brought such person to the nearest gaol, there to be detained and dealt with, subject to the provisions of this Act, as though such arrest had been effected upon a charge of some criminal offence duly made against such person.

Detention of arrested person as upon suspicion of theft.

Inquiry by resident magistrate as to owner of stock seized.

Detention of arrested person pending inquiry for not more than 4 weeks.

3. The resident magistrate of the district wherein the gaol is situate in which such person as aforesaid may be detained, shall forthwith cause inquiry to be made in order to ascertain the owner of or other person interested in the stock in respect of driving, or of the custody or possession of which such person has been arrested, and unless such magistrate shall be sooner satisfied as the result of such inquiry that such person at the time of arrest had the authority of the owner of the said stock or of some person having an interest therein, in driving, or in being in custody or possession of the said stock, such magistrate may either cause such person to be so detained as aforesaid until the expiration of four weeks from the date of arrest, or admit such person to bail.

Release of detained person after 4 weeks or sooner, unless charge preferred against him.

4. After the expiration of four weeks as aforesaid, the said magistrate shall order and direct the release of such person, unless there shall have been laid information against such person charging him with some crime or offence in respect of which his

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1889.

detention is by law warranted; provided that every such person so detained as aforesaid shall, notwithstanding that such period of four weeks shall not have expired, be entitled to claim his release so soon as the said magistrate shall be satisfied that in driving, or in being in custody or possession of the said stock, such person was acting with the authority of the owner of the said stock or of some person having an interest therein.

Penalty for wrongful arrest of any person under colour of this Act.

5. The provisions of the tenth section of the said Act shall *mutatis mutandis* apply to every person who shall wilfully and maliciously and without probable cause, arrest or detain, or cause to be arrested or detained, any other person under colour of the provisions of this Act.

When stock not deemed to be removed from place to place.

6. No stock shall be deemed to be removed within the meaning of the said Act or of this Act merely by reason that such stock shall be found moving from place to place within the limits of any land or immovable property to the occupation whereof, or to the use whereof for purposes of grazing stock or allowing them to drink water, the landholder or other person owning or interested in the said stock is entitled.

Effect and short title of Act.

7. This Act shall be read as one with "The Cattle Removal Act, 1870," and may be cited for all purposes as "The Cattle Removal Amendment Act, 1889."

No. 21—1889.] [Promulgated 13th August, 1889.

ACT

To provide for the Payment of Costs by persons convicted of Breach of Regulations framed by Village Boards of Management, to prevent or impose restrictions upon the keeping of Ferocious or Troublesome Dogs or other Animals.

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

Payment of costs by person contravening regulations of Village Boards of Management as to the keeping of dogs, &c.

1. From and after the passing of this Act it shall be lawful for any Resident Magistrate or Special Justice of the Peace, before whom any person shall be lawfully convicted of a contravention of any lawful regulation framed under the provisions of the Act No. 29 of 1881, for the purpose of preventing or imposing restrictions upon the keeping of ferocious or troublesome dogs or other animals, to make the payment of costs by such person a part of the sentence against him.

Digitised by the University of Pretoria, Library Services, 2016

No. 22—1889.] [Promulgated 13th August, 1889.

ACT

To Authorise the raising of a Public Loan of Three Hundred Thousand Pounds for the purpose of prosecuting and improving the Harbour Works of Table Bay, and providing greater facilities for the conduct of the Business of the Port.

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

Power to raise loan of £300,000, for improvement of Table Bay Harbour Works, &c.

1. It shall be lawful for the Governor to raise by public loan a sum not exceeding three hundred thousand pounds sterling for the purpose of prosecuting and improving the harbour works of Table Bay, and of effecting improvements at the Docks in respect of the storage of goods and the landing and shipment of cargo.

Application of moneys by Harbour Board.

2. The application of the moneys to be raised as aforesaid for the above purposes shall be entrusted to the "Table Bay Harbour Board," appointed or to be appointed under the provisions of any Act relating to the management of the docks and breakwater in Table Bay, and the said Harbour Board shall in respect to such application have and exercise all the powers conferred upon such board by any law.

Interest on this loan not charged to revenue of Board, but to general revenue of Colony.

3. The interest from time to time payable in respect of any moneys borrowed under the authority of this Act shall not be chargeable upon the revenues of the said Harbour Board but upon the general revenue of this Colony.

Short title.

4. This Act may be cited as "The Table Bay Harbour Loan Act, 1889."

No. 23—1889.] [Promulgated 13th August, 1889.

ACT

To authorise a Company, to be styled "The Metropolitan and Suburban Railway Company (Limited)," to construct a Line of Railway from Cape Town to Sea Point.

Preamble.

WHEREAS it is desirable and expedient that a company should be formed under the Limited Liability Act No. 23 of 1861, for the purpose of constructing, equipping, maintaining and making a line of railway from Cape Town to Green Point and Sea Point:

And whereas by Act No. 31 of 1884, "The Green Point and Sea Point Railway Company (Limited)" was authorised and

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1889.

empowered to construct, equip, maintain, and work such a line of railway, in the manner and under the terms and conditions in the said Act set forth:

And whereas the rights, powers, and privileges by the aforesaid Act conferred upon the aforesaid company, were by the Act No. 8 of 1887 thereafter transferred to and conferred upon the "Cape Town and Suburban Railway Company (Limited)" of London, incorporated under the Companies' Acts 1862 to 1886, upon condition that the aforesaid line of railway should be completed on or before the 31st day of December, 1888, and further upon the terms and conditions set forth in the said Act No. 8 of 1887:

And whereas the said line of railway has never been constructed, and was not completed on or before the said 31st day of December, 1888, whereby all rights, powers, and privileges transferred to and conferred upon the said "Cape Town and Suburban Railway Company (Limited)," under the said Act No. 8 of 1887, have ceased and determined:

And whereas a company to be styled "The Metropolitan and Suburban Railway Company (Limited)" is about to be formed to undertake the construction, equipment, maintenance and working of the aforesaid line of railway:

And whereas certain steps have already been taken by the appointment of a provisional directorate, who with other persons interested, have undertaken to defray preliminary expenses towards the promotion of the said object:

And whereas plans and sections of the said railway line have been deposited in the office of the Clerk of the House of Assembly:

And whereas it is expedient that the said Act No. 31 of 1884, and the said Act No 8 of 1887, should be repealed, and that the said company now about to be formed should be authorised to construct, equip, maintain, and work the said line of railway in accordance with the provisions of this Act:

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

Name of company and provisional directors.

1. The company to be styled "The Metropolitan and Suburban Railway Company (Limited)," whereof

JOHN WOODHEAD, Esq. (J.P., Mayor of Cape Town),
G. PIGOT MOODIE, Esq., M.L.C.,
ALEXANDER MAIR, Esq. (General Manager of the South African Loan Mortgage and Mercantile Agency (Limited),
W. S. DARTER, Esq. (Darter & Sons),
H. FLETCHER, Esq. (Fletcher & Co.),
C. FAIRBRIDGE, Esq. (Fairbridge & Arderne, Attorneys, &c.),
MELT ROUX, Esq.,
F. J. WEBSTER, Esq. (Bennett & Webster),

Digitised by the University of Pretoria, Library Services, 2016

C. H. VAN ZYL, Esq. (Van Zyl, Buissinne & Leonard, Attorneys, &c.),
M. L. WESSELS, Esq. (Wessels & Standen, Attorneys, &c.),
A. B. MARAIS, Esq. (Wine Merchant),
CHAS. E. SOLOMON, Esq. (Murray & St. Leger),
J. A. BAM, Jr., Esq.,
C. H. E. BOSENBERG, Esq.,

are the provisional directors, shall be and are hereby authorised and empowered to construct, equip, maintain, and work a railway similar to railway lines already constructed in this Colony, on a gauge of three feet six inches wide, at a gradient of not more than one in forty, from a junction with the Western Line of Railway, at or near the Cape Town Railway Goods Station, and thence *viâ* the Dock Road to Sea Point, within the limits of deviation shown in the plans duly lodged with the Clerk of the House of Assembly, save and except as the said plans may be inconsistent with any of the provisions of this Act, or with any alteration as hereinafter provided: provided, however, that nothing herein contained shall be deemed or taken to authorise or empower the company to erect or construct any building without the consent and approval of the Commissioner of Crown Lands and Public Works upon any ground forming portion or within the limits of the aforesaid Goods Station or the yard thereof.

Authority to construct, &c., a line of railway.

2. The said railway shall commence at such a convenient junction point with the Western Railway System at Cape Town as may be hereafter agreed upon between the Commissioner of Crown Lands and Public Works and the directors; thence following the line of the Dock Road over and along the Colonial Government Railway line or portion thereof, thence over land and on to plantation, property of Harbour Board, crossing over the Dock Road at the lower end of Bree-street through vacant Harbour Board property, across the continuation of Buitengracht-street, and along an unmade street between properties belonging to Messrs. Robertson & Bain; thence crossing Chiappini-street, along an unnamed street, then crossing an unnamed street, along an unnamed road, and crossing Alfred-street, thence over vacant ground the property of the Imperial Government into a public road at the back of the Amsterdam Battery near the Ebenezer Road; thence across Ebenezer Road and over Harbour Board property and across a public road; thence across land the property of the Town Council of Cape Town, to, and over, land the property of the Imperial Government constituting the reserve in the rear of Gallows Hill; thence crossing a public road and the commonage to a point where the road leading to Mouille Point joins the main road to Sea Point; thence to a point next the main road on the commonage aforesaid belonging to the Municipality of Cape Town and to the South African Turf Club; thence to Three Anchor Bay passing over land and road the property of

Line of railway defined.

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1889.

Green Point and Sea Point Municipality; thence over the Imperial Government property in rear of Fort; thence over commonage and roads of Green Point and Sea Point Municipality; thence across vacant lands the property of Messrs. J. F. Wicht, E. Sedgwick, and J. A. Smuts; thence over land belonging to the Green Point and Sea Point Municipality to the termination about two and a half chains beyond the property of Mr. J. H. Wicht;

Deviations when authorised.

provided that it shall be lawful for the directors to deviate from and vary the line of the said railway as shown by the said plans, with the consent of any owner or owners through whose lands the said line may pass, or to such extent as may be sanctioned by the Commissioner of Crown Lands and Public Works upon the request of the directors.

Consent of Governor necessary to certain deviations if required.

3. Notwithstanding anything to the contrary contained in any section of this Act, it shall not be lawful for the directors, without the written consent of the Governor, to cause or permit any deviation to be made from the railway as shown upon the plan or defined by the section of the said railway, deposited with the Clerk of the House of Assembly, between the departure of the line from the Cape Government Railways in the Dock Road, up to, but not including, Buitengracht-street, and from the line emerging from the north-west corner of the Amsterdam Battery reserve to the north side of the Imperial Government property constituting the reserve at Gallows Hill.

Powers of entry upon land, subject to compensation to occupier.

4. The directors may, by any persons thereto duly authorised in writing, enter upon any land for the purpose of surveying the same, and of probing and boring in order to ascertain the nature of the soil, or of setting out the line of railway, making full compensation to the occupier of the said land for any damage thereby occasioned, such damages to be recoverable in the absence of agreement by arbitration under the Lands and Arbitration Clauses Act, 1882, and, in default of an award of arbitrators within three months from the date when such damages shall be alleged to have been sustained, then to be recoverable by action brought in any competent court.

Free entry and occupation of waste Crown lands, with permission of Commissioner of Crown Lands.

5. The directors may, with the permission of the Commissioner of Crown Lands and Public Works, enter upon, take possession of, and hold and retain for the purposes of this Act, free of charge, so much of any waste Crown lands as shall be required for the construction and maintenance of the said railway, or for any other purposes relating to the execution of this Act, and also enter upon any waste Crown land lying convenient to the said railway, and dig for, excavate, and carry away free of charge, all stones, clay, or other material required for the purposes of the said railway: Provided

(*a*) That nothing in this Act contained shall establish any servitude in favour of the said company upon any such land, not being land reasonably required for the actual

Digitised by the University of Pretoria, Library Services, 2016

working of the said railway, which may hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof; and

(*b*) That the term "Waste Crown Land" shall not be taken to apply to land which has been or may be acquired by the Colonial Government, or by any public body representing the Colonial Government, by purchase or otherwise, for any special purpose, or to land which has been or may be reclaimed from the sea.

Powers of directors as to taking, &c., of lands and materials, subject to conditions as to extent to be taken and method of calculating compensation.

6. All and singular the powers which are by the Pup ic Roads Act No. 9 of 1858, bestowed upon the commissioners of roads in regard to taking and acquiring lands and materials necessary for the making or repairing of any such main road as in the said Act is mentioned, or of any works in connection therewith, are hereby bestowed upon the directors, precisely as if the said powers were, *mutatis mutandis*, herein again set forth, and as if the said railway were a public road: Provided

(*a*) That the extent of the land taken for the railway shall not exceed in width thirty feet for the formation line, and sufficient additional width required for the slopes, drainage, stations, approach roads, and all other works, matters, and things which may be requisite or necessary for the efficient construction, maintenance, and working of the said railway; and

(*b*) That in the calculation of the price or compensation to be paid to any person under the provisions of the twelfth section of the Act No. 9 of 1858, in respect of any land belonging to him, and expropriated under this Act, shall be included all damage caused to him by the construction of the said railway across his land.

Sections 56 and 57 of Act No. 9 of 1858, apply *mutatis mutandis* to this railway.

7. The provisions of the fifty-sixth and fifty-seventh sections of the said Act No. 9 of 1858 shall, *mutatis mutandis*, extend and apply to the said railway.

Method to be adopted in crossing street or road.

8. At all places where the lines of the said railway or any deviation thereof shall intersect or cross the line of any street or road, it shall be lawful for the directors to make and carry the said railway across such street or road, either by means of a level crossing or by means of a convenient and sufficient bridge or viaduct over or under such street or road: Provided that the said directors shall be bound:

(*a*) To make all such cuttings, embankments, and approaches, with all such culverts and drains, and all such repairs, as may be requisite to make good the street or road across, or over or under the said railway, at gradients not exceeding one foot in twenty feet; and

(*b*) To maintain and keep in repair all such crossings, bridges, viaducts, cuttings, embankments and approaches, culverts and drains as aforesaid.

Digitised by the University of Pretoria, Library Services, 2016

Provision for crossing of railway by new streets and roads.

9. Nothing in this Act contained shall prevent any street or public road hereafter to be constructed under lawful authority from being made and carried across or under the said railway at all requisite and convenient places; provided that the said authority shall be liable to make good all damage occasioned by such works.

Powers may be exercised by an agent.

10. It shall be lawful for the directors to exercise all and singular the powers by this Act conferred upon them by or through an agent or agents, duly authorised in writing.

Directors may issue debentures.

11. The directors may from time to time, as occasion may require, take up by way of loan to be secured by debentures a sum or sums of money not exceeding in all an amount equal to one half of the subscribed capital of the company, and such debentures shall constitute a first charge on the property, undertaking, and assets of whatsoever nature of the company, and shall be subject to such terms and conditions as to interest and as to repayment of capital as the directors shall determine.

Railway when to be opened for traffic.

12. The said railway, or any portion thereof, shall not be opened for traffic until it shall have been certified to the Governor by some officer to be by him appointed, that the same is sufficiently completed for the safe conveyance of passengers; provided that in the event of any difference or dispute arising between the officer as appointed and the company, such difference or dispute shall be settled by arbitration, to which arbitration the Lands and Arbitrations Clauses Act, 1882, shall, so far as applicable, apply.

Application of Act No. 19 of 1861 to railway when completed.

13. Upon the completion of the said railway, or any portion thereof as aforesaid, the directors shall enjoy all the privileges, and be subject to all the conditions conferred by and contained in the Act No. 19 of 1861, entitled "The Regulation of Railways Act, 1861," or any general Act hereafter passed for the regulation of railways.

Two years for completion of railway from date of commencement.

14. The directors shall be bound and are hereby required to finish and complete the railway within two years, reckoned from the date of the first commencement of the works thereof, so that the said railway may be opened for the public conveyance of goods; provided that, unless the said company shall commence the said railway not later than one year from and after the taking effect of this Act, all and singular the power and authorities conferred by this Act shall cease and determine.

Commencement within one year.

For railway purposes, telegraph and telephone may be constructed, &c.

15. The directors are hereby further authorised and empowered to construct, erect and work for the purposes of the said railway and no other purposes, a telegraph and telephone, or either of them, along or near the said line of railway, subject to the provisions of the Act No. 20 of 1861, entitled "An Act for the Regulation of Electric Telegraphs."

Company to make provision for conveyance of mails.

16. The company shall make provision for the conveyance to or from any station by any of the ordinary or special trains of the company, of such mails, letter bags and articles ordinarily conveyed by the post as the Postmaster-General may from time to time require, and the company shall be responsible for the safe

Digitised by the University of Pretoria, Library Services, 2016

conveyance of such mails, and shall obey and observe all such regulations respecting the taking up and delivery of the same as the Postmaster-General shall reasonably make.

Officers to have free access to all stations.

17. The officers of the Postmaster-General shall have free access to the principal and all other stations of the company, for the purpose of delivering and receiving such mails.

For conveyance of such mails, annual sum not exceeding £7 10s. for each mile of railway open for traffic.

18. For the conveyance of such mails and the delivery thereof at any station of the company such annual sum as may be agreed upon, not exceeding £7 10s. 0d. per annum for each mile of railway open for traffic, dating from the date upon which the mails shall first be conveyed.

Provision for arbitration.

19. In the event of any difference arising between the Postmaster-General and the company, the matter shall be decided by arbitration.

Company how sued, and process how served.

20. The company shall and may be sued within this Colony by the name or style of "The Metropolitan and Suburban Railway Company (Limited)," and the service of process upon the agent of the said company, at his office or place of business in this Colony, shall for all purposes be deemed and taken to be good service upon the company.

Right of Government to purchase railway.

21. At any time after the date of opening for public traffic the said railway, the Colonial Government shall have the right, if so disposed, to purchase from the directors, on giving six months notice to this effect, in three consecutive issues of the *Gazette* of the Colony, and the directors shall be bound, six months after date of the first publication of the said notice, to sell to the Colonial Government the said railway, and also all buildings and plots of land acquired by the company and used in connection with the working of the said railway, together with all rolling stock, engines, carriages, plant, machinery and every matter or thing belonging to or connected with the said railway, as also any telegraph or telephone and apparatus, wire, instruments, and every matter or thing connected with the working therewith, in the possession of the company under this Act, upon such terms as may be agreed upon between the company and the Colonial Government, and failing such agreement, at a price to be settled by arbitration in manner provided for under the "Lands and Arbitrations Clauses Act, 1882."

Act No. 31 of 1884, and Act No. 8 of 1887 repealed.

22. The Act No. 31 of 1884, and the Act No. 8 of 1887, shall be and the same are hereby repealed.

Meanings of terms.

23. In this Act, save where such meanings shall be inconsistent with the context, the following terms shall have the following meanings:

(*a*) "The Company" shall mean the company styled "The Metropolitan and Suburban Railway Company (Limited)";

(*b*) "The directors" shall mean the directors for the time being of the said company.

Short title

24. This Act may be cited for all purposes as "The Metropolitan and Suburban Railway Company's Act, 1889."

Digitised by the University of Pretoria, Library Services, 2016

No. 24—1889.] [Promulgated 13th August, 1889.

ACT

To release the Harbour Board of Port Elizabeth from liability in respect of the Interest payable upon certain Cape of Good Hope Consolidated Stock.

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

Release of Port Elizabeth Harbour Board from liability for interest in certain stock.

1. From and after the passing of this Act, and notwithstanding anything to the contrary contained in the Ordinance No. 21 of 1847, the Act No. 10 of 1858, or any other law, the Harbour Board of Port Elizabeth shall be and is hereby released from all liability to the Colonial Government for and in respect of any amount which but for the passing of this Act would be by law hereafter payable by or chargeable against the said Board by way of interest upon the amount of Cape of Good Hope Consolidated Stock referred to in the following section.

Amount of Stock, £248,937 0s. 2d. issued up to 31st Dec., 1888, under Act No. 16 of 1886, in exchange for converted securities given under various Loan Acts, under which money was raised for the harbour of Port Elizabeth.

2. The release enacted by the last preceding section shall extend to the interest upon an amount of £248,937 0s. 2d., being the amount of Cape of Good Hope Consolidated Stock which, up to and including the 31st day of December, 1888, has been from time to time issued by the Colonial Government under the provisions of the Act No. 16 of 1886 by way of conversion of and in exchange for theretofore existing securities issued or given, for securing the due repayment of portions of certain loans raised under the provisions of the various Acts of Parliament by which the raising of loans has from time to time been authorised for public purposes connected with the development and improvement of the harbour of Port Elizabeth.

Interest referred to to be charge on general revenue of Colony.

3. The amount of interest in respect of which the aforesaid Harbour Board is released by this Act shall be and continue to be a charge upon the general revenue of this Colony.

Short title.

4. This Act may be cited as the "Port Elizabeth Harbour Board Relief Act, 1889."

No. 25—1889.] [Promulgated 13th August, 1889.

ACT

To Extend the provisions of the "Scab Acts" to Field-cornetcies adjoining areas or districts wherein the said Acts are in force.

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

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1889.

Meeting of land-holders and sheep farmers in field-cornetcy adjoining protected area under Scab Acts, to be convened by C.C. on requisition.

Resolution at meeting to come under Scab Acts to be forwarded with requisition to the Governor.

1. It shall be the duty of the Civil Commissioner of any division wherein any field-cornetcy shall be situated which shall adjoin along any portion of any of its boundaries, any area or district wherein the Scab Acts now are or hereafter may be in force, upon receiving a written requisition thereto, signed by not less than twenty-five persons registered as voters for members of Parliament, and resident in such field-cornetcy, to cause a public meeting to be convened by public advertisement, during at least three weeks, of all persons who are land-holders and sheep-farmers within the said field-cornetcy, and if at such meeting or any adjournment thereof a resolution shall be carried by a majority in favour of bringing the Scab Acts into operation in the said field-cornetcy, then it shall be the duty of such Civil Commissioner to forward to the Governor the written requisition aforesaid, together with a certified copy of the resolution carried as aforesaid.

Governor may proclaim field-cornetcy portion of adjoining area for purposes of Scab Acts only.

2. It shall be lawful for the Governor, upon receipt of the requisition and resolution aforesaid, and notwithstanding anything to the contrary contained in the third section of the Scab Act, 1886, to proclaim in the *Gazette* that the aforesaid field-cornetcy shall for the purposes of the Scab Acts, but for no other purpose, be deemed and taken to form portion of the adjoining area or district wherein the said Acts are in force, and thereupon such field-cornetcy shall for the said purposes, but for no other, be deemed and taken to form such portion as aforesaid.

Effect and short title of Act.

3. This Act shall be read as one with the Scab Acts, and may be cited as the "Scab Acts Extension Act, 1889."

No. 26—1889.] [Promulgated 13th August, 1889.

ACT

To Extend the provisions of the Act No. 4 of 1876, so as to confer upon Village Boards of Management, authority in terms of the said Act to plant and cultivate Trees.

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

Village Boards of Management to have powers as to tree planting in accordance with Act No. 4 of 1876.

1. Within the local limits of any community for which there now is or may hereafter be a Board of Management lawfully constituted under the provisions of the "Villages Management Act, 1881," such board shall have and exercise all the powers and functions which by the Act No. 4 of 1876 are conferred upon Divisional Councils, or the commissioners of any Municipality or Town Council.

Rates for the purposes of this Act how levied, and money how held and accounted for.

2. The Divisional Council of the division in which such community is situated shall be required for the purposes of this Act to exercise the rating power conferred upon such Council by the

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1889.

sixteenth section of the Act No. 29 of 1881, as though the said purposes had been set forth and specified in the said Act, and every sum received by any such Board as aforesaid from such Council shall be held and accounted for by such Board in accordance with the provisions of the said Act.

Short title.

3. This Act may be cited as the "Villages Tree Planting Act, 1889."

No. 27—1889.] [Promulgated 13th August, 1889.

ACT

To Amend the Law for the Prevention of Vagrancy and Squatting.

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

Meaning of terms under Vagrancy Acts.

1. For the purposes of the Act No. 23 of 1879, commonly called the "Vagrancy Act, 1879," and of this Act, the following terms shall bear the following meanings:—

"Farm" means any land not situated within the local limits of any municipality or corporate town, or of any area within which the "Villages Management Act, 1881," is or hereafter may be in force;

"Squatter" means any person who, not being a servant or apprentice of the owner of any farm, and not being himself the owner or lawful occupier of such farm, is notwithstanding permitted by such owner or lawful occupier to possess or occupy any hut, house, or other building in or upon such farm;

"Owner" includes

(*a*) The registered owner or person entitled to the beneficial ownership of any land;

(*b*) The lessee of any Crown land or private land;

(*c*) The lawful occupier of any land;

(*d*) Any person placed in lawful possession or occupation of any land as the duly authorised representative, agent, or manager, for and on behalf of the registered owner or person entitled to the beneficial ownership of such land, or for and on behalf of any lessee thereof;

but does not include, in respect of the hut, house, or other building possessed or occupied by him,

(*e*) Any person who, either as a servant or apprentice of the owner or occupier of any land, or as a squatter, is in possession or occupation of any hut, house, or building upon such land.

Section 4 of Act No. 23 of 1879 amended.

2. The words "without lawful excuse (the proof of which excuse shall lie on such person)" shall be and are hereby expunged

Digitised by the University of Pretoria, Library Services, 2016

from the fourth section of the "Vagrancy Act, 1879," and in their place and stead shall be read the following words, to wit, "without the permission of the owner (the proof of which permission shall lie on such person)," and no servant or apprentice of any owner of any land, and no squatter upon the land of any owner shall for the purposes of the said section be deemed to be qualified merely by the possession or occupation of any hut, house, or building on such land to give permission for and on behalf of such owner.

Fines and penalties to be imposed.

3. After the words "shall be liable" where they first occur in the said section shall be inserted the words "to a fine not exceeding one pound, with the alternative of imprisonment with or without hard labour for a period not exceeding fourteen days unless such fine be sooner paid or"; and after the words "shall be liable" where they next occur in the said section the words "to a fine not exceeding two pounds, with the alternative of imprisonment with or without hard labour for a period not exceeding one month, unless such fine be sooner paid or"; and after the words "in the case of the first conviction, and" in the said section the words "to a fine not exceeding five pounds, with the alternative of imprisonment with or without hard labour for a period not exceeding three months unless such fine be sooner paid or."

Addition to definition of "idle and disorderly person" in sec. 4 of Act No. 23 of 1879.

4. Every person shall be deemed to be an idle and disorderly person within the meaning and for all the purposes of the aforesaid Act and of this Act, and shall upon conviction be liable to the penalties provided by the fourth section of the aforesaid Act, who shall be found without the permission of the owner of any farm (the proof of which permission shall lie on such person)

(*a*) loitering upon any road crossing such farm; or

(*b*) in or loitering at or near any hut, house, or other building upon any farm, whether such hut, house, or other building shall or shall not be in the possession or occupation of any servant or apprentice of the owner of such farm, or in the possession or occupation of any squatter.

Power of owner of farm without warrant to search for and apprehend idle and disorderly persons in huts, &c., occupied by servant or squatter.

5. Every owner of a farm shall be and is hereby authorised, for the purpose of searching for any idle and disorderly person, to enter without warrant and make search in any hut, house or other building upon such farm, which shall be in the possession or occupation of any servant or apprentice of such owner, or in the possession or occupation of any squatter, and any idle and disorderly person found by such owner in any such hut, house, or other building, may be apprehended without warrant and dealt with in manner provided in the fifth section of the aforesaid Act.

Effect and short title of Act.

6. This Act shall be read and construed as one with the "Vagrancy Act, 1879," and may be cited for all purposes as the "Vagrancy Law Amendment Act, 1889."

Digitised by the University of Pretoria, Library Services, 2016

No. 28—1889.] [Promulgated 13th August, 1889.

ACT

To Provide for Acquiring, Constructing, Equipping, and Working certain Lines of Railway and for certain Additional Works on Existing Railways.

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

Certain railways specified in Schedules shall, when expedient, be constructed and equipped.

1. The Governor shall, as soon as may seem to him expedient, after the passing of this Act, cause to be acquired or to be constructed and equipped, the several railways set forth in Schedules A, B, and C to this Act, and shall cause the same to be maintained and worked, and shall appoint such engineers and other officers, and do and perform all such acts, matters and things as he may deem necessary or expedient for such purposes: Provided that the line of railway mentioned in Schedule A shall only be constructed in the event of the Government of the Orange Free State signifying before the 31st July, 1890, that the Volksraad of that State has authorised an extension from Bethulie Bridge to some point on the Norval's Pont Bloemfontein Line: Provided also that if the railway set forth in Schedule C to this Act be not acquired before the 30th day of November, 1889, the authority granted by this Act for the acquisition of the said railway shall lapse.

Additional works authorised.

The Governor shall likewise cause to be constructed as aforesaid, the additional works in Schedule D to this Act set forth.

Expenditure authorised: (*a*) for Railways, £401,225; (*b*) for additional works, £341,071.

2. For the purposes of acquiring, and of constructing and equipping the said railways and providing rolling stock, as in the said Schedules A, B and C set forth, it shall be lawful for the Governor to expend a sum not exceeding £401,225, and for the purpose of constructing the additional works in the said Schedule D set forth, a sum not exceeding £341,071.

Provision for above expenditure, £162,296 by debentures or stock; £355,000, under Act No. 20 of 1888, £225,000. under Act No. 20 of 188 .

3. For the several purposes aforesaid, it shall be lawful for the Governor to raise a sum of £162,296 sterling, from time to time as he may deem expedient, either by debentures or stock, or partly by debentures and partly by stock, and the costs necessarily incurred in raising the said loan, including discount, commission and other incidental charges, shall be a first charge against the amount thereof; and further to apply a sum of £355,000 out of the moneys authorised to be raised under Act No. 20 of 1888, Schedule B, and a further sum of £225,000 out of the moneys authorised to be raised under the provisions of the "Temporary Loans Act," being the Act No. 20 of 1883.

£190,000 authorised under Act No. 25 of 1884, sub-sec. 4, to be a charge against general revenue.

4. So much of section 3 of Act No. 25 of 1884 as deals with the amount of one hundred and ninety thousand pounds (£190,000), authorised under sub-section 4 of section 1 of Act

Digitised by the University of Pretoria, Library Services, 2016

No. 25, 1884, being a portion of the sum of two hundred and eighty-two thousand pounds (£282,000) in the said section mentioned, is hereby repealed, and the said sum of one hundred and ninety thousand pounds (£190,000) is made a charge against the general revenue of the Colony. No. 28—1889.

5. This Act may be cited as the "Railways Extension and Additional Works Act, 1889." Short title.

SCHEDULE A.

Schedule A.

No.	Description.	Amount.
1	A Line from Burghersdorp to Bethulie Bridge with Rolling Stock	£263,725

SCHEDULE B.

Schedule B.

No.	Description.	Amount.
1	An Extension of the Kalk Bay Line from its present terminus at Kalk Bay to Simon's Town, with Rolling Stock ..	£37,500

SCHEDULE C.

Schedule C.

No.	Description.	Amount.
1	The Purchase of the Line from Worcester to Ashton, known as the Cape Central Railways	£100,000

SCHEDULE D.

Schedule D.

Additional New Works to be constructed in connection with Railways already constructed.

No.	Description.	Amount.
		£
1	Additional Fencing of Existing Lines	5,000
2	Additional Rolling Stock, Engines, Carriages and Trucks ..	225,000
3	Workshops, Works and Water Supply, Locomotive Department	25,441
4	Stations, Sidings and improved accommodation for Passengers	45,180
5	Coal Sheds	2,250
6	Stores, Warehouses and Offices	4,500
7	Accommodation for Railway Employés	18,700
8	Additional Cost of Norval's Pont Bridge on Colesberg Extension (one half of £30,000)	15,000
	Total ..	£341,071

Digitised by the University of Pretoria, Library Services, 2016

No. 29—1889.] [Promulgated 13th August, 1889.

ACT

To amend the Pounds Ordinance No. 16 of 1847.

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

Amendment of section 36 of Ord. No. 16 of 1847.

1. From the thirty-sixth section of the Ordinance No. 16 of 1847, commonly called the "Pounds Ordinance," shall be expunged the words "either of the three last preceding sections," and instead thereof shall be inserted the words "the thirty-second, thirty-third, and thirty-fourth sections."

Amendment of section 41 of Ord. No. 16 of 1847.

2. In the forty-first section of the said Ordinance the words "thirty-second or" shall be inserted before the word "thirty-third."

Person entitled to damages under section 45 of Ord. No. 16 of 1847 may require damages to be assessed by award of field-cornet and two land-holders, who shall proceed according to sections 41, 42, 43 and 44, but must be satisfied of infection, and ascertain whether infected sheep or goats mixed with others.

3. Notwithstanding anything to the contrary contained in the forty-fifth section of the said Ordinance, it shall be lawful for any person entitled to claim damages under the said section in respect of the trespass of any infected sheep or goats upon any property, to require that the amount of damages shall be assessed and determined according to the award of a field-cornet and two landholders: Provided that

(1) The provisions of the forty-first, forty-second, forty-third, and forty-fourth sections of the said Ordinance shall apply to every reference to award under this section;

(2) "field-cornet" shall include "assistant field-cornet";

(3) the field-cornet and landholders shall before awarding any damages be satisfied that the trespassing sheep or goats are infected with brandziekte, scab, or scurvy, and shall ascertain whether or not the trespassing sheep or goats were found mixed with sheep not trespassing and free from such diseases;

(4) if any of the sheep or goats found trespassing are so infected, all of them shall be deemed to be similarly infected;

Costs of unnecessary reference given against claimant.

(5) if the award shall not be for a sum greater than would be claimable by way of damages under the forty-fifth section the field-cornet and landholders shall in their award order the person requiring the same to pay the costs of the reference;

Damages not to be additional to special damage under section 8 of Act No. 28 of 1886.

and (6) no person who shall claim damages under this section shall be entitled to claim any sum by way of special damage under the provisions of the eighth section of "The Scab Act, 1886."

Provisions of section 36 to apply to sheep, &c., impounded under section 41 of Ordnance or section 3 of this Act.

4. The provisions of the thirty-sixth section of the said Ordinance shall *mutatis mutandis* apply to all sheep or goats impounded, in respect of which damages are claimed either under the forty-fifth section of the said Ordinance or under the third section of this Act.

Digitised by the University of Pretoria, Library Services, 2016

Road inspectors, &c., authorised to impound on outspan places.

5. Any road inspector in the service of a divisional council, or other person specially authorised by resolution of such council, may exercise the powers conferred by the twenty-seventh section of the said Ordinance upon magistrates, justices of the peace, field-cornets, assistant field-cornets, and other persons therein referred to, for impounding animals found trespassing upon outspan places.

Effect and short title of Act.

6. This Act shall be read as one with the aforesaid Ordinance, and may be cited for all purposes as "The Pounds Ordinance Amendment Act, 1889."

No. 30—1889.] [Promulgated 13th August, 1889.

ACT

To amend the Law relating to Masters, Servants, and Apprentices.

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

Jurisdiction of special justices of the peace extended to all offences against Masters and Servants Acts.

1. Every Special Justice of the Peace shall, within the local limits by law fixed and determined for his jurisdiction, have and be entitled to exercise over and in respect of any person with regard to any offence wherewith such person shall be charged against any provision of any of the Acts commonly called the "Masters and Servants Acts, 1856 to 1875," as amended by this Act, the same jurisdiction, power and authority, as if he were a Resident Magistrate; provided that it shall not be lawful for any such Special Justice of the Peace to punish any offender, subject to the provisions of the said Acts, in any higher or more severe manner than by fine, not exceeding two pounds, or by imprisonment, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding one month: Provided, further, that the provisions of the third to the eleventh sections inclusive, and of the thirteenth section of the Act No. 10 of 1876 shall *mutatis mutandis* apply to regulate, limit, and define the jurisdiction of and the procedure to be adopted by every Special Justice of the Peace under the authority of this section.

Offender against Sec. 7 of Act No. 18 of 1873 may be imprisoned without option of fine.

2. Notwithstanding anything to the contrary contained in the seventh section of the Act No. 18 of 1873, as amended by the third section of the Act No. 7 of 1875, the provisions of the second to the sixth sections inclusive and the ninth sections respectively of the said Act No. 18, 1873 (as the last-mentioned section is amended by this Act) shall extend and apply to any man-servant employed as a domestic servant or to perform any bodily labour in manufactures, or as a boatman, porter, groom, stablekeeper, gardener, or other occupation of a like nature.

Digitised by the University of Pretoria, Library Services, 2016

No. 30—1889.

Servant or apprentice reasonably suspected of offence against Master and Servants Acts must accompany master before Magistrate; if he refuses is liable to arrest.

3. Notwithstanding anything to the contrary contained in the ninth section of the Act No. 18 of 1873, or in the first section of the Act No. 7 of 1875, it shall be lawful for the master of any servant or apprentice, if he shall have reasonable and probable cause to suspect such servant or apprentice of having committed any offence against any provision of any of the Acts commonly called the "Masters and Servants Acts, 1856 to 1875," as amended by this Act, to order and require such servant or apprentice forthwith to proceed in his, the said master's, company before the nearest Resident Magistrate or Special Justice of the Peace having jurisdiction in the district or place where such master so suspects that such offence has been committed, there to answer a charge of having committed such offence; and any servant or apprentice who shall neglect or refuse to obey any such order made by his master, having such reasonable and probable cause of suspicion as aforesaid, shall be liable to be arrested by his master without warrant, and conveyed in custody before such Resident Magistrate or Special Justice of the Peace as aforesaid, to be by him dealt with according to law; provided that no servant or apprentice shall be bound or obliged to obey such order as aforesaid, unless or until he shall be informed of the nature of the charge which his master intends to prefer against him.

Effect and short title of Act

4. This Act may be cited for all purposes as the "Masters and Servants Act, 1889," and shall be construed as one with the "Masters and Servants Acts, 1856 to 1875," which, with this Act, may be cited collectively as the "Masters and Servants Acts, 1856 to 1889."

No. 31—1889.] [Promulgated 13th August, 1889.

ACT

To amend "The Vineyards Protection Act Amendment Act, 1886," and to continue for another year the Fourth Section of the Act.

Preamble.

WHEREAS it is expedient that the provisions of the fourth section of "The Vineyards Protection Act Amendment Act, 1886," should be continued for another year: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Section 4 of Vineyards Protection Act Amendment Act, 1886, continued in force till 30th June, 1890.

1. The provisions of the fourth section of "The Vineyards Protection Act Amendment Act, 1886," shall continue and be in force until the 30th June, 1890, and no longer, anything in the tenth section of the said Act to the contrary notwithstanding; provided however:—

Digitised by the University of Pretoria, Library Services, 2016

No. 31—1889

Compensation provided for not more than three years net yield of crop.

That the term upon which shall be calculated the value of the net yield for which compensation in regard to any loss sustained by any person and in respect of any claim accruing after the first day of July, 1889, by reason of any destruction or prohibition under the provisions of the Vineyards Protection Act, 1886, shall not exceed three years in lieu of the term of two years provided by the said fourth section.

No. 32—1889.] [Promulgated 13th August, 1889.

ACT

To apply a Sum of Money for the Service of the Year ending the 30th day of June, 1890.

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

Public revenue to be charged with £2,165,579.

1. The public revenue of the Colony is hereby charged towards the service of the year ending the 30th day of June, 1890, with a sum of two million one hundred and sixty-five thousand five hundred and seventy-nine pounds sterling, in addition to the sum of four hundred thousand pounds sterling provided for by Act No. 3 of 1889.

How to be applied

2. The money granted by this Act shall be applied to the purposes and services expressed in the schedule annexed hereto, and more particularly specified and set forth in the estimates and supplementary estimates of the expenditure for the year ending 30th June 1890, with the notes to such estimates, submitted to and approved by Parliament.

Not to be applied except as granted.

3. The said aids and supplies shall not be issued or applied to any use, intent or purpose other than the particular services to which the said amounts have been granted respectively by this Act, and the aforesaid schedule, estimates, and supplementary estimates.

Short title.

4. This Act may be cited for all purposes as the "Appropriation Act, 1889."

Digitised by the University of Pretoria, Library Services, 2016

No. 32—1889.

Schedule.

SCHEDULE.

Summary of Recapitulations of Estimates and Supplementary Estimates.	Establishments.	Services exclusive of Establishments.	Total.	Required to be provided for.
	£	£	£	£
I. Prime Minister's Department	28,992	21,235	50,227	39,797
II. Ministerial Department of Colonial Secretary ..	532,905	478,908	1,011,813	918,949
III. Ministerial Department of Treasurer of the Colony ..	44,763	1,195,828	1,240,591	103,796
IV. Ministerial Department of Attorney-General .	109,587	68,350	177,937	163,382
V. Ministerial Department of Commissioner of Crown Lands and Public Works	53,186	1,238,523	1,291,709	1,285,019
VI. Ministerial Department of Secretary for Native Affairs	60,825	10,925	71,750	54,636
Grand Totals	830,258	3,013,769	3,844,027	2,565,579
Less amount provided for by Act No. 3 of 1889				400,000
Total required to be voted ..				2,165,579

No. 33—1889.] [Promulgated 13th August, 1889.

ACT

To amend the Law with regard to Wild Ostriches.

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

Repeal of Act No. 12 of 1870, and Act No. 15 of 1875, except as to proceedings commenced before the passing of this Act.

1. The Act No. 12 of 1870, together with any Proclamation issued under the provisions of the said Act, and the Act No. 15 of 1875, commonly called the "Wild Ostriches Act, 1875," as well as so much of any other law as may be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed: Provided, however, that any proceedings actually commenced against any person before the passing of this Act for or in respect of any offence against any provision of either of the aforesaid Acts shall be continued until the final end and determination thereof, as though this Act had not been passed.

Digitised by the University of Pretoria, Library Services, 2016

No. 33—1889.

Licence to kill ostriches on unoccupied Crown lands.

2. The several Civil Commissioners throughout the Colony are hereby authorised to issue to any person applying therefor, a licence to kill wild ostriches upon unoccupied lands belonging to the Crown, which licence

(1) Shall be in such form as the Governor shall direct, and shall be covered with stamps of the value of twenty pounds sterling,

(2) Shall be in force for one year from the date thereof, or for such longer period as the Governor may sanction and as may be specified in such licence,

(3) Shall authorise the holder thereof to kill, catch, capture, hunt, or shoot at wild ostriches upon unoccupied land belonging to the Crown, and to take and remove any eggs found thereon, being the eggs of any wild ostrich:

Provided that every person who shall at the date of the passing of this Act be a holder of any licence under the Act No. 12 of 1870, shall be during the time specified in such licence entitled to the privileges of the holder of a licence under this section, but to no other or greater privileges.

Offence of killing, &c., wild ostriches, or taking, &c., eggs in or from private land: fine to be paid to occupier of land where offence committed.

3. No person, other than the owner or occupier of any land, not being unoccupied land belonging to the Crown, shall, without the authority or consent of such owner or occupier, kill, catch, capture, hunt or wound any wild ostrich upon such land, or take, remove, interfere with, or disturb the eggs of any such ostrich found in or upon such land, and any person who shall be convicted of a contravention of this section shall be liable to a fine not exceeding twenty pounds sterling, and in default of payment to imprisonment with or without hard labour for any term not exceeding six months.

Similar offence by unlicensed person in respect of unoccupied Crown lands: fine paid to treasury, subject to payment of portion to informer.

4. The provisions of the last preceding section shall *mutatis mutandis* apply to every person who shall, without a licence under this Act, kill, catch, capture, hunt, wound, or shoot at any wild ostrich upon any unoccupied land belonging to the Crown, or take, remove, interfere with, or disturb the eggs of any wild ostrich, found in or upon such land: Provided, however, that all fines under this section shall be recovered for the benefit of the Colonial Treasury, subject to the payment of an amount not exceeding one-half of such fine to any informer through whose information any offender shall be convicted.

Secretaries to represent Divisional & Municipal Councils, and Boards of Management, for the purposes of this Act.

5. For the purposes of this Act, the Secretary of every Divisional Council, acting under the authority of the said council, shall be deemed to be the occupier of every main and divisional road and of every public outspan place in each division, the Secretary of every Municipal Council or Board of Commissioners acting under the authority of the said Council or Board shall be deemed to be the occupier of all land vested in such Council or Board, or to the use or occupation of which the inhabitants in the municipality have acquired a common right, and the Secretary of every

Digitised by the University of Pretoria, Library Services, 2016

No. 34—1889.

Board of Management constituted under the Villages Management Act, 1881, shall when acting under the authority of the said Board, be deemed to be the occupier of all lands to the use or occupation of which the inhabitants within the local limits under the management of such Board have acquired a common right.

Effect and short title of Act.

6. This Act may be cited as the "Wild Ostriches Act, 1889."

No. 34—1889.] [Promulgated 13th August, 1889.

ACT

To Establish a Public Holiday on the First Monday in October.

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

Public holiday on first Monday in October, in Cape division and other divisions where holiday proclaimed.

1. The first Monday in the month of October in each and every year shall be a public holiday throughout the Cape Division, and it shall be lawful for the Governor, by Proclamation in the *Gazette*, to declare and make known that from and after the date of such proclamation, the first Monday, or any other day, in the month of October in each and every year, shall be a public holiday throughout any other division of this Colony.

Act No. 3 of 1856 to apply in divisions where the holiday established by this Act is observed, to the said holiday.

2. Throughout any division in which the aforesaid day shall at any time be a public holiday under this Act, the provisions of the Act No. 3 of 1856 shall be in force as though the aforesaid day were in the first section of the said Act specifically referred to as a holiday.

Short title.

3. This Act may be cited as the "Public Holiday Act, 1889."

No. 35—1889.] [Promulgated 13th August, 1889.

ACT

To Amend the "Aliens Naturalization Act, 1883."

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

Amendment of second schedule to Act 2 of 1883.

1. The form in the second schedule to the Act No. 2 of 1883 is hereby amended by the addition of the following question:—

(8) Have you ever been convicted and sentenced for any of the following crimes:—Treason, murder, culpable homicide, rape, theft, fraud, perjury or forgery, or, if so, have you received a free pardon?

Amendment of section 4 of Act 2 of 1883.

2. In the fourth section of the Act No. 2 of 1883, all the words after the word "until" down to the end of the said section, shall be and are hereby expunged, and in place and stead thereof shall be inserted the following words, to wit:—

Digitised by the University of Pretoria, Library Services, 2016

"There be delivered to the Colonial Secretary a certificate signed by some Resident Magistrate, Justice of the Peace or Field-cornet to the effect that the applicant is known to the person so signing, and that to the best of such person's belief and knowledge the applicant is a person of good repute who has either never been convicted of and sentenced for treason, murder, culpable homicide, rape, theft, fraud, perjury, or forgery, or, if he has been so convicted and sentenced, that he has received a free pardon." No. 35—1889.

3. In the eleventh section of the Act No. 2 of 1883 the words "two shillings and sixpence" shall be substituted for the words "one pound." Fee for naturalization.

No. 36—1889.] [Promulgated 13th August, 1889.

ACT

For The Regulation of the Business of Pawnbrokers.

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

Preliminary.

1. This Act shall come into effect on the 1st day of January, 1890, and may be cited as the Pawnbrokers' Act, 1889. Short title.

2. In this Act— Interpretation of terms.

"Pawnbroker" includes every person who carries on the trade or business of taking movable property in pawn or pledge:

"Pledge" means an article pawned with a pawnbroker:

"Pawner" means a person delivering an article for pawn to a pawnbroker:

"Shop" includes dwelling-house and warehouse, or other place of business, or place where business is transacted:

"Unfinished goods or materials" includes any goods of any manufacture or of any part or branch of any manufacture either mixed or separate, or any materials whatever plainly intended for the composing or manufacturing of any goods, after such goods or materials are put into a state or course of manufacture, or into a state for any process or operation to be performed thereupon or therewith and before the same are completed or finished for the purpose of wear, use or consumption:

"Constable" includes any peace officer:

3. In order to prevent evasion of the provisions of this Act, the following persons shall be deemed to be persons carrying on the business of taking movable property in pawn (that is to say), every Extension of Act to keepers of certain shops.

Digitised by the University of Pretoria, Library Services, 2016

No. 36—1889.

person who keeps a shop for the purchase or sale of movable property, or for taking in movable property by way of security for money advanced thereon, and who purchases or receives or takes in movable property, and pays or advances or lends thereon any sum of money not exceeding ten pounds with or under an agreement or understanding expressed or implied, or to be from the nature and character of the dealing reasonably inferred, that such movable property may be afterwards redeemed or repurchased on any terms; and every such transaction, article, payment, advance, and loan shall be deemed a pawning, pledge, and loan respectively within this Act.

Executors of pawnbrokers.

4. The provisions of this Act relating to pawnbrokers shall extend to and include the executors of deceased pawnbrokers, except that an executor shall not be answerable for any penalty personally or out of his own estate, unless the same is incurred by his own act or neglect.

Agents, servants, apprentices, &c., of pawnbrokers.

5. For the purposes of this Act anything done or omitted by the servant, apprentice, or agent of a pawnbroker in the course of or in relation to the business of the pawnbroker shall be deemed to be done or omitted (as the case may be) by the pawnbroker; and anything by this Act authorised to be done by a pawnbroker may be done by his servant, apprentice, or agent.

Cessionaries, assigns, or executors of pawners.

6. The rights, powers, and benefits by this Act reserved to and conferred on pawners shall extend to and be deemed to be reserved to and conferred on the cessionaries or assigns of pawners, and to and on the executors of deceased pawners; but any person representing himself to a pawnbroker to be the cessionary, assign or executor of a pawnor shall, if required by the pawnbroker, produce to the pawnbroker the cession, assignment, letters of administration, or other instrument under which he claims.

Application of Act in respect of loans.

7. This Act shall apply—

(1) To every loan by a pawnbroker of forty shillings or under:

(2) To every loan by a pawnbroker of above forty shillings and not above ten pounds, except as in this Act otherwise provided in relation to cases where a special contract respecting the terms of the loan (as authorised by this Act) is made between the pawner and the pawnbroker at the time of the pawning.

Nothing in this Act shall apply to a loan by a pawnbroker of above ten pounds, or to the pledge on which the loan is made, or to the pawnbroker or pawner in relation to the loan or pledge; and, notwithstanding anything in this Act, a person shall not be deemed a pawnbroker by reason only of his paying, advancing, or lending on any terms any sum or sums of above ten pounds.

Exception of loans before commencement of Act.

8. Nothing in this Act shall apply to a loan made by a pawnbroker before the commencement of this Act, or to the pledge on which such loan is made, or to the pawnbroker or pawner in relation to such loan or pledge.

Digitised by the University of Pretoria, Library Services, 2016

General Obligations of Pawnbrokers.

Pawnbrokers to keep books, &c., as in schedule.

9. A pawnbroker shall keep and use in his business such books and documents as are described in the first schedule to this Act, in the forms therein indicated or to the like effect, and shall from time to time as occasion requires enter therein in a fair and legible manner the particulars indicated in and in accordance with the directions of that schedule, and shall make all inquiries necessary for that purpose.

If a pawnbroker fails in any respect to comply with the requisitions of this section he shall be guilty of an offence against this Act.

Pawnbrokers to keep names over doors, and tables of rates, &c., exhibited in shops.

10. A pawnbroker shall observe the following rules :—

(1) He shall always keep exhibited in large characters over the outer door of his shop his christian name and surname or names, with the word pawnbroker:

(2) He shall always keep placed in a conspicuous part of his shop (so as to be legible by every person pawning or redeeming pledges, standing in any box or place provided in the shop for persons pawning or redeeming pledges) the same information as is by the rules of the first schedule to this Act required to be printed on pawn-tickets.

If a pawnbroker fails in any respect to comply with the requisitions of this section he shall be guilty of an offence against this Act.

Pawning; Redemption; Sale.

Pawn-tickets to be given for pledges.

11. A pawnbroker shall on taking a pledge in pawn give to the pawner a pawn-ticket, and shall not take a pledge in pawn unless the pawner takes the pawn-ticket.

Profit and charges allowed to pawnbrokers.

12. A pawnbroker may take profit on a loan on a pledge at a rate not exceeding that specified in the second schedule to this Act.

A pawnbroker may demand and take the charges specified in the same schedule in the cases and according to the rules therein stated and prescribed.

A pawnbroker shall not, in respect of a loan on a pledge, take any profit, or demand or take any charge or sum whatever, other than those specified in the same schedule.

A pawnbroker shall, if required at the time of redemption, give a receipt for the amount of loan and profit paid to him; and such a receipt shall not be liable to stamp duty unless the profit exceeds twenty shillings.

Pledges redeemable for one year.

13. Every pledge shall be redeemable within twelve months from the day of pawning, exclusive of that day, within which every pledge shall continue to be redeemable.

Pledges for 10s. or under not redeemed in time forfeited.

14. A pledge pawned for ten shillings, or under, if not redeemed within the year of redemption, shall become and be the pawnbroker's absolute property.

Digitised by the University of Pretoria, Library Services, 2016

Pledges above 10s. redeemable until sale.

15. A pledge pawned for above ten shillings shall further continue redeemable until it is disposed of, as in this Act provided, although the year of redemption has expired.

Sale by auction of pledges above 10s.

16. A pledge pawned for above ten shillings shall, when disposed of by the pawn-broker, be disposed of by sale by public auction, and not otherwise; and the regulations in the third schedule to this Act shall be observed with reference to the sale.

A pawnbroker may bid for and purchase at a sale by auction, made or purporting to be made under this Act, a pledge pawned with him; and on such purchase he shall be deemed the absolute owner of the pledge purchased.

Offences by auctioneers.

17. If an auctioneer does anything in contravention of the provisions of this Act relating to auctioneers, or fails to do anything which he is required by this Act to do, he shall be guilty of an offence against this Act.

Power to inspect sale book.

18. At any time within three years after the auction at which a pledge pawned for above ten shillings is sold the holder of the pawn-ticket may inspect the entry of the sale in the pawnbroker's book, and in the filled-up catalogue of the auction (authenticated by the signature of the auctioneer) or in either of them.

Pawnbroker to account for surplus within three years, subject to set-off.

19. Where a pledge pawned for above ten shillings is sold, and appears from the pawnbroker's book to have been sold for more than the amount of the loan and profit due at the time of sale the pawnbroker shall, on demand, pay the surplus to the holder of the pawn-ticket in case the demand is made within three years after the sale, the necessary costs and charges of the sale being first deducted.

If on any such demand it appears from the pawnbroker's book that the sale of a pledge or pledges has resulted in a surplus, and that within twelve months before or after that sale the sale of another pledge or other pledges of the same person has resulted in a deficit, the pawnbroker may set off the deficit against the surplus, and shall be liable to pay the balance only after such set-off.

Offences as to pledges for above 10s.

20. If with respect to pledges for loans of above ten shillings a pawnbroker—

(1) Does not *bonâ fide* according to the directions of this Act sell a pledge pawned with him:

(2) Enters in his book a pledge as sold for less than the sum for which it was sold, or fails duly to enter the same:

(3) Refuses to permit any person entitled under this Act to inspection of an entry of sale in the pawnbroker's book, or of a filled up catalogue of the auction, authenticated by the auctioneer's signature, to inspect the same:

(4) Fails without lawful excuse (proof whereof shall lie on him) to produce such a catalogue on lawful demand:

(5) Refuses to pay on demand the surplus to the person entitled to receive the same:

Digitised by the University of Pretoria, Library Services, 2016

he shall in every such case be guilty of an offence against this Act, and shall be liable on conviction thereof in a court of Resident Magistrate to a fine not exceeding ten pounds.

Special Contracts.

Power to make special contracts, subject to restrictions.

21. Notwithstanding anything in this Act, a pawnbroker may make a special contract with a pawner in respect of a pledge on which the pawnbroker makes a loan of above forty shillings, provided always, that—

(1) The pawnbroker at the time of the pawning shall deliver to the pawner a special contract pawn-ticket, signed by the pawnbroker:

(2) A duplicate of the special contract pawn-ticket shall be signed by the pawner.

The provisions of this Act, save as far as the application thereof is excluded by the terms of the special contract, shall apply thereto.

A special contract pawn-ticket, or the duplicate thereof, shall not be subject to stamp duty.

Delivery up of Pledge.

Holder of pawn-ticket entitled to redeem.

22. The holder for the time being of a pawn-ticket shall be presumed to be the person entitled to redeem the pledge, and, subject to the provisions of this Act, the pawnbroker shall accordingly (on payment of the loan and profit) deliver the pledge to the person producing the pawn-ticket, and he is hereby indemnified for so doing.

Production of pawn-ticket on redemption.

23. A pawnbroker shall not (except as in this Act provided) be bound to deliver back a pledge unless the pawn-ticket for it is delivered to him.

Liability of pawnbroker in case of fire.

24. When a pledge is destroyed or damaged by or in consequence of fire, the pawnbroker shall nevertheless be liable, on application within the period during which the pledge would have been redeemable, to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan and profit, and twenty-five per cent. on the amount of the loan.

A pawnbroker shall be entitled to insure to the extent of the value so estimated.

Compensation for depreciation of pledge.

25. If a person entitled and offering to redeem a pledge shows to the satisfaction of a court of Resident Magistrate that the pledge has become or has been rendered of less value than it was at the time of the pawning thereof by or through the default, neglect, or wilful misbehaviour of the pawnbroker, the court may, if it thinks fit, award a reasonable satisfaction to the owner of the pledge in respect of the damage, and the amount awarded shall be deducted from the amount payable to the pawnbroker, or shall be paid by the pawnbroker (as the case requires) in such manner as the court directs.

Digitised by the University of Pretoria, Library Services, 2016

No. 36—1889.

Protection of owners and of pawners not having pawn-tickets.

26. The following provisions shall have effect for protection of owners of articles pawned, and of pawners not having their pawn-tickets to produce:

(1) Any person claiming to be the owner of a pledge but not holding the pawn-ticket, or any person claiming to be entitled to hold a pawn-ticket, but alleging that the same has been lost, mislaid, destroyed, or stolen, or fraudulently obtained from him, may apply to the pawnbroker for a printed form of declaration, which the pawnbroker shall deliver to him:

(2) If the applicant delivers back to the pawnbroker the declaration duly made before a justice of the peace by the applicant, and by a person identifying him, the applicant shall thereupon have, as between him and the pawnbroker, all the same rights and remedies as if he produced the pawn-ticket: Provided that such a declaration shall not be effectual for that purpose unless it is duly made and delivered back to the pawnbroker not later than on the third day after the day of which the form is delivered to the applicant by the pawnbroker (exclusive of a day or days on which the pawnbroker is prohibited from carrying on business):

(3) The pawnbroker is hereby indemnified for not delivering the pledge to any person until the expiration of the period aforesaid:

(4) The pawnbroker is further hereby indemnified for delivering the pledge or otherwise acting in conformity with the declaration, unless he has actual or constructive notice that the declaration is fraudulent or false in any material particular.

If any person makes a declaration under this Act, either as an applicant or as identifying an applicant, knowing the same to be false in any material particular, he shall on conviction be liable to the punishment attaching by law to perjury.

Delivery to owner of property unlawfully pawned.

27. In each of the following cases,—

(1) If any person is convicted under this Act of knowingly and designedly pawning with a pawnbroker anything being the property of another person, the pawner not being employed or authorised by the owner thereof to pawn the same:

(2) If any person is convicted of feloniously taking or fraudulently obtaining any goods and chattels, and it appears to the court before which he is tried that the same have been pawned with a pawnbroker:

(3) If in any legal proceedings it appears to any court that any goods and chattels brought before it have been unlawfully pawned with a pawnbroker:

the court, on proof of the ownership of the goods and chattels,

Digitised by the University of Pretoria, Library Services, 2016

may, if it thinks fit, order the delivery thereof to the owner, either on payment to the pawnbroker of the amount of the loan or of any part thereof, or without payment thereof, or of any part thereof, as to the court, according to the conduct of the owner and the other circumstances of the case, seems just and fitting.

Summary order for delivery of pledge to person entitled.

28. If a pawnbroker, without reasonable excuse (proof whereof shall lie on him) neglects or refuses to deliver a pledge to the person entitled to have delivery thereof under this Act, he shall be guilty of an offence against this Act, and a court of Resident Magistrate may, if the court thinks fit, with or without imposing a penalty, order the delivery of the pledge on payment of the amount of the loan and profit.

General Restrictions on Pawnbrokers.

Prohibition of purchasing pledges; taking pledges from children, &c.

29. If a pawnbroker does anything of the following things,—

(1) Takes an article in pawn from any person appearing to be under the age of twelve years or to be intoxicated;

(2) Purchases or takes in pawn or exchange a pawn-ticket issued by another pawnbroker;

(3) Employs any servant or apprentice or other person under the age of sixteen years to take pledges in pawn;

(4) Carries on the business of a pawnbroker on Sunday, Good Friday, or Christmas Day, or a day appointed for public fast, humiliation, or thanksgiving;

(5) Under any pretence purchases, except at public auction, any pledge while in pawn with him;

(6) Suffers any pledge while in pawn with him to be redeemed with a view to his purchasing it;

(7) Makes any contract or agreement with any person pawning or offering to pawn any article, or with the owner thereof, for the purchase, sale or disposition thereof within the time of redemption;

(8) Sells or otherwise disposes of any pledge pawned with him except at such time and in such manner as authorised by this Act;

he shall be deemed guilty of an offence against this Act.

Unlawful Pawning and Taking in Pawn.

Unlawful pawning of goods not property of pawner.

30. If any person knowingly and designedly pawns with a pawnbroker anything being the property of another person, the pawner not being employed or authorised by the owner thereof to pawn the same, he shall in addition to any punishment to which he may be sentenced by any Court of Law for such offence, be liable to pay to the owner of such property any sum not exceeding the full value of the pledge, upon application by such owner to the Court before which such trial shall take place.

Digitised by the University of Pretoria, Library Services, 2016

No. 36—1889.

Proceedings where persons offering articles in pawn do not give a good account of themselves, &c.

31. If any person does any of the following things,—

(1) Offers to a pawnbroker an article by way of pawn, being unable or refusing to give a satisfactory account of the means by which he became possessed of the article;

(2) Wilfully gives false information to a pawnbroker as to whether an article offered by him in pawn to the pawnbroker is his own property or not, or as to his name and address, or as to the name and address of the owner of the article;

(3) Not being entitled to redeem, and not having any colour of title by law to redeem, a pledge, attempts or endeavours to redeem the same:

he shall be guilty of an offence against this Act.

In every such case, and also in any case where, on an article being offered in pawn to a pawnbroker he reasonably suspects that it has been stolen or otherwise illegally or clandestinely obtained, the pawnbroker may seize and detain the person and the article, or either of them, and shall deliver the person and the article or either of them (as the case may be) as soon as may be into the custody of a constable, to be dealt with according to law.

Prohibition of taking in pawn linen clothing, unfinished goods, &c., in certain cases.

32. If a pawnbroker knowingly takes in pawn any linen or apparel or unfinished goods or materials intrusted to any person to wash, scour, iron, mend, manufacture, work up, finish, or make up, he shall be guilty of an offence against this Act, and shall be liable, on conviction thereof in a court of Resident Magistrate to a fine not exceeding double the amount of the loan, and the pawnbroker shall likewise restore the pledge to the owner thereof, in the presence of the court, or as the court directs.

Search warrant for linen, &c., unlawfully pawned.

33. If the owner of any linen, or apparel, or unfinished goods, or materials intrusted to any person as aforesaid, and unlawfully pawned with a pawnbroker, or the owner of any other article unlawfully pawned with a pawnbroker (the last-mentioned owner having on oath satisfied a Resident Magistrate that his goods have been unlawfully obtained or taken from him), makes out on oath before such magistrate that there is good cause to suspect that a pawnbroker has taken in pawn the linen, apparel, goods, materials, or article aforesaid, without the privity or authority of the owner, and makes appear to the satisfaction of the magistrate probable grounds for such suspicion, the magistrate may issue his warrant for searching, within the hours of business, the shop of the pawnbroker.

If the pawnbroker, on request by a constable authorised by the warrant, refuses to open the shop and permit it to be searched, a constable may break it open within the hours of business, and search as he thinks fit therein for the linen, apparel, goods, materials, or article aforesaid, doing no wilful damage; and if any pawnbroker or other person opposes or hinders the search, he shall be guilty of an offence against this Act.

Digitised by the University of Pretoria, Library Services, 2016

If on the search any linen, apparel, goods, materials, or article aforesaid, is or are found, and the property of the owner thereof is made out to the satisfaction of a court of Resident Magistrate, the court shall cause the same to be forthwith restored to the owner thereof.

Licences.

Licence under tariff 15 of Act No. 20 of 1884, to be ten pounds.

34. In tariff 15 of Act No. 20 of 1884, the amount, twenty-five pounds, the licence duty required to be paid by a pawnbroker for a licence under the said Act, shall be taken to be and shall be read as ten pounds. Such licence, no matter at what period of the year the same may be taken out, shall expire on the 31st of December then next. When any such licence shall be issued upon or after the first day of July, there shall be payable only one-half of the appointed sum. If taken out at any time before the first of July there shall be no deduction. The provisions of the sixth section of Act No. 13 of 1870, shall *mutatis mutandis* apply to all persons who should under the provisions of this Act take out and possess a licence.

Separate licences required for each shop.

35. A separate licence shall be taken out and paid for by every pawnbroker for each pawnbroker's shop kept by him.

Cesser of licence on conviction.

36. If a pawnbroker is convicted on indictment of any fraud in his business, or of receiving stolen goods knowing them to be stolen, the court before which he is convicted may, if it thinks fit, direct that his licence shall cease to have effect, and the same shall so cease accordingly.

Licences not to be granted without certificate.

37. After the passing of this Act a pawnbroker's licence shall not be granted to any person except on the production and in pursuance of the authority of a certificate granted under this Act; save that it shall not be necessary for any person being at the commencement of this Act a licensed pawnbroker, or for his executors, assigns, or successors, to obtain such a certificate.

Any licence granted in contravention of this section shall be void.

Certificates to be granted by magistrates.

38. Certificates under this Act shall be granted by the Resident Magistrate of the district in which the applicant desires to carry on business.

Form and duration of certificate.

39. A certificate under this Act shall be in the form given in the fourth schedule to this Act, or to the like effect, and shall be in force for one year from its date.

Notice of first application.

40. A person intending to apply for the first time for a certificate under this Act shall proceed as follows, to wit,—

Twenty-one days at least before the application he shall give notice by registered letter sent by post of his intention to the Resident Magistrate of the district in which he intends to carry on business, and shall in the notice set forth his name and address and shall cause a like notice to be affixed and maintained for the said period at the court of the said Resident Magistrate.

F

Digitised by the University of Pretoria, Library Services, 2016

No. 36—1869.

Grounds of refusal of certificate.

41. An application for a certificate shall not be refused, except on the following grounds, or one of them:

(1) That the applicant has failed to produce satisfactory evidence of good character;

(2) That the shop in which he intends to carry on the business of pawnbroker, or any adjacent house or place owned or occupied by him, is frequented by thieves or persons of bad character.

(3) That he has not complied with the last preceding section.

Forgery of certificate.

42. If any person forges a certificate, or tenders a certificate knowing it to be forged, he shall, on conviction thereof, be liable to the penalties for the crime of forgery.

A licence granted in pursuance of a forged certificate shall be void; and if any person makes use of a forged certificate, knowing it to be forged, he shall be disqualified from obtaining at any time thereafter a pawnbroker's licence.

Penalties and Legal Proceedings.

General penalty for offences.

43. If a pawnbroker or other person is guilty of an offence against this Act, in respect whereof a specific penalty is not prescribed by this Act, he shall be liable, on conviction thereof in a court of Resident Magistrate, to a penalty not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for any term not exceeding one month.

Application of penalties.

44. Penalties recovered under this Act, not directed to be otherwise applied, may be applied under direction of the court in which they are recovered, as follows:

(1) Where the complainant is the party aggrieved, one moiety of the penalty may be paid to him or such other proportion thereof as the court may deem sufficient to compensate such party.

(2) Where the complainant is not the party aggrieved, there shall be paid to him no part or such part only of the penalty as the court thinks fit.

Amends for frivolous informations.

45. Where an information or complaint of any offence against this Act is laid or made before a court of Resident Magistrate and is not further prosecuted, or if any such information or complaint is further prosecuted, but it appears to the court by which the case is heard that there was no sufficient ground for the making of the charge, the court shall have power to award such amends, not exceeding the sum of five pounds, to be paid by the informer or complainant to the party informed or complained against for his loss of time and expenses in the matter, as to the court seem meet; and every sum so awarded shall be recoverable as penalties under this Act are recoverable.

Penalty on common informers compounding informations.

46. If any person lodges an information for an offence alleged to have been committed against this Act by which he was not personally aggrieved, and afterwards directly or indirectly

Digitised by the University of Pretoria, Library Services, 2016

receives without the permission of the Resident Magistrate having jurisdiction, any sum of money or other reward for compounding, delaying, or withdrawing the information, he shall be guilty of an offence against this Act.

Detention of persons offering forged pawn-tickets, &c.

47. If any person utters, produces, shows, or offers to a pawnbroker a pawn-ticket which the pawnbroker reasonably suspects to have been counterfeited, forged, or altered, the pawnbroker may seize and detain the person and the ticket, or either of them, and shall deliver the person and the ticket, or either of them (as the case may be) as soon as may be into the custody of a constable, to be dealt with according to law.

Production of books, &c., before justices.

48. A pawnbroker shall at any time, when ordered or summoned by a court of competent jurisdiction, attend before the court and produce all books and papers relating to his business which he is required by the court to produce.

If he fails to do so, he shall be guilty of an offence against this Act.

Contracts not void on account of offences.

49. Where a pawnbroker is guilty of an offence against this Act, any contract of pawn or other contract made by him, in relation to his business of pawnbroker, shall nevertheless not be void by reason only of that offence, nor shall he by reason only of that offence lose his lien on or right to the pledge or to the loan and profit; but nothing in this section shall restrict the operation of any provision of this Act providing for the delivery of any movable property, or the restoration of any linen, apparel, goods, materials, or article to the owner, under the order of any court.

Pretection of persons executing Act.

50. If any person is sued or prosecuted for any thing done by him in pursuance or execution or intended execution of this Act, he may plead generally that the same was done in pursuance or execution or intended execution of this Act, and give the special matter in evidence.

Digitised by the University of Pretoria, Library Services, 2016

No. 86—1889.

First Schedule.

THE FIRST SCHEDULE.

Forms of Books and Documents.

I.—PLEDGE BOOK.

of Pawnbroker.

of 18 .

For date of Redemption.	For Profit charged.	£ s. d. For Amount of Loan.	For No. of Pledge in the Month.	For Name of Pawner.	For Address of Pawner.	For Name of Owner, if other than Pawner.	For Address of Owner, if other than Pawner.	For List of Articles Pawned as described on Pawn-Ticket.

Rule.

All entries in the last five columns respecting each pledge shall be made on the day of the pawning thereof or within four hours after the end of that day.

II.—PAWN-TICKET.

A.—*For loan of ten shillings or under.*

Pawned with [*John Smith,*] pawnbroker,
[20, *Plein-street, Cape Town*],
this [17*th*] day of [*March*, 18],
by [*Henry Williams*] of [12, *St. John's-street, Cape Town*],
for the sum of [*ten*] shillings,
[*One Black Frock Coat.*]

*The following is to be printed on the ticket, on the front or back, or partly on the front and partly on the back.

*The pawnbroker is entitled to charge,—

For this ticket .. .. One penny.

For profit on each two shillings or part of two shillings lent on this pledge for not more than one calendar month .. .. One penny.

And so on at the same rate per calendar month.

After the first calendar month any time not exceeding fourteen days will be charged as half a month, and any time exceeding fourteen days and not more than one month will be charged as one month.

This pledge must be redeemed within twelve calendar months and seven days from the date of pledging. At the end of that time it becomes the property of the pawnbroker.

If the pledge is destroyed or damaged by fire the pawnbroker will be bound to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan.

If this ticket is lost, mislaid, or stolen, the pawner should at once apply to the pawnbroker for a form of declaration to be made before a justice of the peace, or the pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him and claims to redeem the same.

Digitised by the University of Pretoria, Library Services, 2016

No. 36—1889.

B.—*For loan of above ten shillings and not above forty shillings.*

Pawned with [*John Smith*], pawnbroker.
[20, *Plein-street, Cape Town*],
this [18*th*] day of [*March*, 18 .]
by [*Henry Williams*], of [20, *St. John's-street, Cape Town*],
for the sum of [*eleven*] shillings,
[*One Grey Tweed Coat.*]

*The pawnbroker is entitled to charge—

For this ticket .. .. One penny.

For profit on each two shillings or part of two shillings lent on this pledge for not more than one calendar month .. .. .. One penny.

And so on at the same rate per calendar month.

After the first calendar month any time not exceeding fourteen days will be charged as half a month, and any time exceeding fourteen days and not more than one month will be charged as one month.

*The following is to be printed on the ticket, on the front or back, or partly on the front and partly on the back.

If this pledge is not redeemed within twelve calendar months and seven days from the day of pledging, it may be sold by auction by the pawnbroker, but it may be redeemed at any time before the day of sale.

Within three years after sale the pawner may inspect the account of the sale in the pawnbroker's books on payment of one penny, and receive any surplus produced by the sale. But deficit on sale of one pledge may be set off by the pawnbroker against surplus on another.

If the pledge is destroyed or damaged by fire the pawnbroker will be bound to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan.

If this ticket is lost or mislaid the pawner should at once apply to the pawnbroker for a form of declaration to be made before a justice of the peace, or the pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him and claims to redeem the same.

C.—*For loan of above forty shillings.*

Pawned with [*John Smith*], pawnbroker.
[20, *Plein-street, Cape Town*],
this [19*th*] day of [*March*, 18],
by [*Henry Williams*], of [12, *St. John's street, Cape Town*],
for the sum of [*fifty*] shillings.
[*One Shooting Coat.*]

*The pawnbroker is entitled to charge—

For this ticket .. .. One penny.

For profit on each two shillings and sixpence or part of two shillings and sixpence lent on this pledge for every calendar month or part of a calendar month .. .. .. One penny.

*The following is to be printed on the ticket, on the front or back, or partly on the front and partly on the back.

If this pledge is not redeemed within twelve calendar months and seven days from the day of pledging, it may be sold by auction by the pawnbroker, but it may be redeemed at any time before the day of sale.

Within three years after sale the pawner may inspect the account of the sale in the pawnbroker's books on payment of one penny, and receive any surplus produced by the sale. But deficit on sale of one pledge may be set off by the pawnbroker against surplus on another.

If the pledge is destroyed or damaged by fire the pawnbroker will be bound to pay the value of the pledge after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan.

Digitised by the University of Pretoria, Library Services, 2016

No. 36—1889.

If this ticket is lost or mislaid the pawner should at once apply to the pawnbroker for a form of declaration to be made before a justice of the peace, or the pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him and claims to redeem the same.

III.—SALE BOOK OF PLEDGES FOR LOANS OF ABOVE TEN SHILLINGS.

[Date and place of sale.]

[Name and place of business of Auctioneer.]

For No. of Pledge as in Pledge Book.	For date of Pawning.	For Name of Pawner.	£ s. d. For Amount of Loan.	For Amount for which Pledge sold as stated by Auctioneer.

IV.—DECLARATION WHERE PLEDGE CLAIMED BY OWNER.

TAKE NOTICE *if this declaration is false the person making it is punishable as for perjury.*

Unless this printed form is taken before a justice of the peace and declared to and signed and delivered back to the pawnbroker not later than the day of , the articles mentioned in it will be delivered to any person producing the pawn-ticket.

I, *A.B.*, of , in pursuance of the Pawnbrokers' Act, 1889, do solemnly and sincerely declare that the article [*or* articles] described below is [*or* are] my property, and that I believe they are pledged at the shop of

The article [*or* articles] above referred to is [*or* are] the following :—

And I, *C.D.*, of , in pursuance of the same Act, do solemnly and sincerely declare that I know the person now making the foregoing declaration to be *A.B.* of

Declared before me, this day of , 18 .

E.F., Justice of the Peace.

V.—DECLARATION WHERE PAWN-TICKET LOST, &c.

TAKE NOTICE *if this declaration is false the person making it is punishable as for perjury.*

Unless this printed form is taken before a justice of the peace and declared to and signed and delivered back to the pawnbroker not later than the day of , the articles mentioned in it will be delivered to any person producing the pawn-ticket.

Digitised by the University of Pretoria, Library Services, 2016

No. 36—1889.

I, *A.B.*, of in pursuance of the Pawnbrokers' Act, 1889, do solemnly and sincerely declare that pledged at the shop of pawnbroker, the article [*or* articles] described below being property, and received a pawn-ticket for the same, which has since been by , and that the pawn-ticket has not been sold or transferred to any person by or to knowledge or belief.

The article [*or* articles] above referred to is [*or* are] the following:—

And I, *C.D.*, of , in pursuance of the same Act, do solemnly and sincerely declare that I know the person now making the foregoing declaration to be *A.B.* of

Declared before me, this day of 18 .

E. F., Justice of the Peace.

VI.—RECEIPT.

[*Date.*]

Received on redemption of pledge No. .. .. ..

Amount of loan .. ..

Profit .. ..

Total .. .. ..

[*A.B.*,]
Pawnbroker.

VII.—SPECIAL CONTRACT.

SPECIAL CONTRACT UNDER ACT OF PARLIAMENT.

Pawned with [*John Smith*,] pawnbroker.
[20, *Plein-street, Cape Town*,]
this [17*th*] day of [*April*, 18 .]
by [*Henry Williams*], of [12, *St. John-street, Cape Town*],
for the sum of [*forty-eight shillings*],
[*One Marble Clock.*]

TERMS OF THE SPECIAL CONTRACT.

*The pawnbroker charges—

For this ticket .. ..

Profit at the rate per calendar month of .. .. ..

After the first calendar month any time not exceeding fourteen days will be charged as half a month, and any time exceeding fourteen days and not more than one month will be charged as one month .. ..

*The following is to be printed on the ticket, on the front or back, or partly on the front and partly on the back.

The charge for storage of this pledge will be per calendar month, or any part of a month, in addition to the charges above mentioned.

This pledge is pawned for the period of † months.

†Not less than three.

After the expiration of that time the pledge may be sold by auction by the pawnbroker. But it may be redeemed by the pawner at any time before the day of sale.

Within three years after sale the pawner may inspect the account of the sale in the pawnbroker's books on payment of , and receive any surplus produced by the sale. But deficit on sale of one pledge may be set off by the pawnbroker against surplus on another.

If the pledge is destroyed or damaged by fire the pawnbroker will be bound to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan, unless otherwise agreed upon by the pawner and pawnbroker.

Digitised by the University of Pretoria, Library Services, 2016

No. 36—1889.

If this ticket is lost or mislaid the pawner should at once apply to the pawnbroker for a form of declaration to be made before a justice of the peace, or the pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him and claims to redeem the same.

(Signed) [*John Smith,*] pawnbroker.
(Signed) [*Henry Williams,*] pawner.

2nd Schedule.

THE SECOND SCHEDULE.

Profit and Charges allowed to Pawnbrokers.

PART I.—PROFIT ON LOAN.

A. On a loan of forty shillings or under—

For any time during which the pledge remains in pawn not exceeding one month, for every two shillings or fraction of two shillings lent .. .. .. One penny.

For every month after the first, including the current month in which the pledge is redeemed, although that month is not expired, for every two shillings or fraction of two shillings lent .. .. .. One penny.

Provisoes.

1. If the pledge is redeemed before the end of the first fourteen days after the expiration of any month, the pawnbroker shall, in respect of those fourteen days, be entitled to take half of the amount which he would be entitled to take for the whole month.

B. On a loan of above forty shillings—

For every month or part of a month for every sum of two shillings and sixpence or fraction of a sum of two shillings and sixpence .. .. One penny.

PART II.—CHARGE ON PAWN-TICKET.

Where the loan is ten shillings or under .. .. One penny.
Where the loan is above ten shillings .. .. .. Two pence.

PART III.—CHARGE ON INSPECTION OF SALE BOOK.

For the inspection of the entry of a sale .. .. One penny.

PART IV.—CHARGE ON FORM OF DECLARATION.

Where the loan is five shillings or under .. ..
Where the loan is above five shillings .. .. .. One penny.

Rule.

This sum is to be paid by the applicant at the time of application.

Third Schedule.

THE THIRD SCHEDULE.

Regulations as to Auctions of Pledges above Ten Shillings.

1. The auctioneer shall cause all pledges to be exposed to public view.
2. He shall publish catalogues of the pledges, stating—
   (1) The pawnbroker's name and place of business.
   (2) The month in which each pledge was pawned;
   (3) The number of each pledge as entered at the time of pawning in the pledge book.
3. The pledges of each pawnbroker in the catalogue shall be separate from any pledges of any other pawnbroker.
4. The auctioneer shall insert in some public newspaper circulating at the place where the pawnbroker carries on business an advertisement giving notice of the sale, and stating—
   (1) The pawnbroker's name and place of business;
   (2) The months in which the pledges were pawned.

Digitised by the University of Pretoria, Library Services, 2016

5. The advertisement shall be inserted on two several days in the same newspaper, and the second advertisement shall be inserted at least three clear days before the first day of sale.

6. Pictures, prints, books, bronzes, statues, busts, carvings in ivory and marble, cameos, intaglios, musical, mathematical, and philosophical instruments, and china, sold by auction, shall be sold by themselves, and without any other goods being sold at the same sale, four times only in every year (that is to say), on the first Monday in the months of January, April, July, and October and on the following day and days, if the sale exceeds one day, and at no other time.

7. Where a pawnbroker bids at a sale the auctioneer shall not take the bidding in any other form than that in which he takes the biddings of other persons at the same sale; and the auctioneer on knocking down any article to a pawnbroker shall forthwith declare audibly the name of the pawnbroker as purchaser.

8. The auctioneer shall, within fourteen days after the sale, deliver to the pawnbroker a copy of the catalogue, or of so much thereof as relates to the pledges of that pawnbroker, filled up with the amounts for which the several pledges of that pawnbroker were sold, and authenticated by the signature of the auctioneer.

9. The pawnbroker shall preserve every such catalogue for three years at least after the auction.

THE FOURTH SCHEDULE.

Fourth Schedule.

Forms of Certificates of Magistrates.

I, [*here insert description of the magistrate*] do hereby certify that I do authorise the grant to *A.B.*, of in the division of of a licence to carry on the business of a pawnbroker at

Witness my hand this day of 18 .

E.F., Resident Magistrate for

No. 37—1889.] [Promulgated 13th August, 1889.

ACT

To provide certain Relief for Lessees of Crown Lands under the Act No. 19 of 1864, and to extend in certain cases Relief granted under "The Quitrents Relief Act, 1887."

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

Commissioner, with approval of Parliament, may fix price lower than is provided by section 18 of Act No. 15 of 1887, in case of purchase by lessee under Act No. 19 of 1864 before 1st May, 1890.

1. Notwithstanding anything to the contrary contained in the eighteenth section of the Act No. 15 of 1887, commonly called the "Crown Lands Disposal Act, 1887," it shall be lawful for the Commissioner of Crown Lands and Public Works, upon any application made hereafter and on or before the first day of May, 1890, for relief under this section by any holder on lease of Crown Lands under the Act No. 19 of 1864, to entertain such application,

Digitised by the University of Pretoria, Library Services, 2016

37—1889.

and if after due inquiry and consultation he shall be satisfied that the application is deserving of consideration, it shall be lawful for the Commissioner to fix a price less than a sum, which reckoned as a principal sum would after the rate of six pounds sterling per hundred pounds, produce an amount of interest equal to the rent reserved on such lease, and such lesser price, when approved of by resolutions of the Legislative Council and House of Assembly but not before, shall be deemed for all legal purposes to be the price fixed under the said eighteenth section of the said Act.

Previous redemption of part of original quitrent when considered by land board under section 4 of Act No. 27 of 1887, may be taken into account in favour of applicant for reduction under that Act.

2. In case any land board appointed under the fourth section of the Act No. 27 of 1887, commonly called "The Quitrents Relief Act, 1887," shall on inquiry and investigation into the circumstances of any case of application for relief under the said Act, have found that any part of the original quitrent has been previously to such application redeemed, and if such board has heretofore made a valuation of the true annual value of the quitrent upon the understanding that the redemption of part of the original quitrent should have been considered in favour of the quitrent holder, it shall be lawful for the Governor to substitute for the quitrent originally set forth in the title, the quitrent determined upon such valuation, in place and stead of the quitrent determined upon any valuation made of the part not redeemed, without reference to the previous redemption of a part of the original quitrent.

Short title.

3. This Act may be cited as the "Crown Lands and Quitrent Relief Act, 1889."

No. 38—1889.] [Promulgated 13th August, 1889.

ACT

To provide for the Salary of Her Majesty's High Commissioner for South Africa.

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

High Commissioner to receive annual salary of £3,000.

1. For and in respect of the year ending the thirty-first day of December, one thousand eight hundred and ninety, and every subsequent year, there shall be paid out of the public revenue of this Colony to Her Majesty's High Commissioner for South Africa the sum of three thousand pounds sterling by way of annual salary.

Short title.

2. This Act may be cited for all purposes as "The High Commissioner's Salary Act, 1889."

Digitised by the University of Pretoria, Library Services, 2016

No. 39—1889.] [Promulgated 13th August, 1889.

ACT

To extend and Define the Jurisdiction, Power, and Authority of the Table Bay Harbour Board with regard to Bye-laws framed under the Nineteenth Section of the "Explosives Act, 1887."

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

Control of Table Bay Harbour Board, for purposes of section 19 of Act No. 4 of 1887 and bye-laws thereunder over parts of port or harbour outside docks, basins, &c.

1. For the purposes of the nineteenth section of the Act No. 4 of 1887, commonly called the "Explosives Act, 1887," and of any bye-laws already or hereafter made thereunder for regulating the conveyance, loading and unloading of explosives in the port or harbour of Table Bay, the Table Bay Harbour Board shall be deemed and taken to be the harbour authority having jurisdiction, power, and authority in respect not only of the docks, basins, and other works connected therewith in the said port or harbour, but also of all parts of the said port or harbour not included in the said docks, basins and other works.

Port officer or his representative to be deemed the agent or representative of Harbour Board for the purposes of this Act.

2. Whenever in the aforesaid section or any such bye-laws as aforesaid any report or notice is or may hereafter be prescribed to be given to, or any certificate be required to be granted, or any act, matter or thing to be done or approved by the Port Officer or his representative in the aforesaid port or harbour, such report or notice shall be deemed to be given and shall by the Port Officer or his representative be forthwith communicated to the Table Bay Harbour Board, and such certificate, act, matter or thing shall be deemed to be required from such Port Officer or his representative, as the duly authorised agent or representative of the said Board, and such Port Officer or his representative shall for the purposes of this Act conform to and abide by all lawful orders, directions or instructions given to him by the said Board.

Short title.

3. This Act may be cited as the "Table Bay Harbour Board (Explosives) Act, 1889."

No. 40—1889.] [Promulgated 16th August, 1889.

ACT

To Consolidate and Amend the Law with regard to the Constitution, Powers, and Functions of Divisional Councils.

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

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

DIVISION I.

PART I.

PRELIMINARY.

Short Title.

1. This Act may be cited for all purposes as "The Divisional Councils Act, 1889."

Laws repealed set forth in Schedule A.

2. The laws set forth in the Schedule A to this Act, to the extent therein set forth, together with so much of any other law as may be repugnant to or inconsistent with any of the provisions of this Act, shall be and the same are hereby repealed.

Effect of repeal stayed pending election of new councils, and new councils to succeed the old.

3. Notwithstanding the repeal of the said laws, they shall be deemed to continue in force in any division until the date of the first meeting of a council elected under the provisions of this Act for such division, and all rights or liabilities theretofore vested in or incurred by the council of such division shall be deemed and taken to pass by succession to, in favour of, or against the council elected under this Act in place and stead of such former council, and to be in all respects enforceable by and against such council elected under this Act as though such council were the former council.

Interpretation of terms.

4. In this Act the following terms shall, unless another meaning appears clearly from the context to be intended, bear the following meanings:

"Division" shall mean "fiscal division";

"Council" shall mean the divisional council of any division heretofore or hereafter by law locally constituted and defined, including divisions of all provinces or territories annexed to and forming portion of this Colony;

"Councillor" shall mean divisional councillor or member of the council of a division;

"Voter" shall mean a person by law entitled to vote in the election of a councillor;

"Ratepayer" shall mean a person liable to the payment of rates in any division;

"Meeting" shall mean a meeting of the council of a division;

"Contractor" shall mean every person who directly or indirectly has a pecuniary or valuable interest in any money or other valuable consideration paid or given, or to be paid or given, by any council for services performed, for work or labour done, or for any goods or things of whatsoever nature or kind bought or hired by or supplied to such council;

"Field-cornet" shall mean, in connection with any election for councillors, such a person as is mentioned in the thirty-seventh section of this Act, as well as a field-cornet, and shall include the Resident Magistrate and the Civil Commissioner or other person in the cases provided for by the thirty-sixth and thirty-eighth sections;

Digitised by the University of Pretoria, Library Services, 2016

"Polling Officer" shall mean any person duly authorised to take the poll at any election under this Act;

"Divisional Road" shall include proclaimed branch roads;

"Construction" shall in the case of main roads, save when the context indicates the contrary, mean the first making of a main road over ground where there was no main road before, and shall include all work necessary to be done for completing such road down to the opening thereof for traffic; and the terms "maintenance," "preservation" and "keeping in repair" shall, in the case of all roads, include all work necessary to be done to any road already opened for traffic, and in order to put, keep, and have it in good and substantial repair and in condition fit for use and traffic.

DIVISION II.

PART I.

Constitution of Councils and Number of Councillors.

Six districts in all divisions except the Cape division.

5. Every division of this Colony, except the division of the Cape, shall, for the purpose of this Act, be divided into six sub-divisions, to be called districts.

Limits of districts to be fixed or altered by proclamation. Each district to comprise one or more field-cornetcies and to be distinguished by a number. If not sufficient field-cornetcies in division, districts to be formed as convenient.

6. It shall be lawful for the Governor, by proclamation in the *Gazette*, to fix and prescribe and to alter when necessary the limits of each of the six districts of every division, in such manner as shall, after investigation, be found most convenient and advantageous, subject to the following conditions:—

(*a*) Every such district shall (except as hereinafter excepted) be formed of one field-cornetcy, or of more than one, and no field-cornetcy shall be divided for the purpose of forming any such district.

(*b*) The districts of every division (except the division of the Cape) shall be distinguished by numbering the same respectively, beginning at number one and proceeding to number six.

(*c*) As often as any division shall contain fewer field-cornetcies than six, then it shall be lawful for the Governor to divide such last-mentioned division into six districts, in whatever way shall appear to be most convenient; and every such district shall be as legally constituted as if it consisted of an undivided field-cornetcy.

Number of councillors to be elected for each council.

7. Every council (except the council of the Cape division) shall be composed of members, to be styled divisional councillors, who shall be elected as follows:

Each of the five districts, other than the district in which the office of the Civil Commissioner for the division shall be situated, shall elect one councillor, and the district in which the said office shall be situate shall elect:

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

(*a*) One councillor, if the value of the rateable property for the purposes of this Act within the said district, according to the valuation roll for the time being of the division, shall be less than double the value of the rateable property as aforesaid within the other five districts divided by five;

(*b*) Two councillors, if the first-mentioned value shall be double but less than treble the said value of the other five districts divided as aforesaid;

(*c*) Three councillors, if the said first-mentioned value shall be treble or more than treble the said value of the other five districts divided as aforesaid.

Cape division includes Cape Town and Green Point and Sea Point Municipalities.

8. For the purpose of this Act, the division of the Cape shall include the municipalities of Cape Town and of Green Point and Sea Point, according to their respective limits for the time being.

Nine districts in Cape division, and fourteen councillors of its council.

9. The division of the Cape shall, for the purpose of this Act, be sub-divided into nine districts, instead of six, and the council of the said division shall consist of fourteen members, to be styled "divisional councillors," instead of eight.

Cape Town & Green Point and Sea Point Municipalities to form the ninth district of the Cape division.

10. The division of the Cape, exclusive of the municipalities of Cape Town and Green Point, shall be divided into eight districts, numbered from one to eight, and the said municipalities conjointly shall form the ninth district of the said division, and shall be styled "The Cape Town and Green Point District."

The Cape Town and Green Point district to elect six councillors.

11. Of the fourteen councillors constituting the council of the Cape division, six shall be elected by the Cape Town and Green Point district, and one by each of the eight other districts contained in the said division.

PART II.

Alteration and better Definition of Boundaries of Adjoining Divisions.

Governor may, on representation by and after agreement between councils of adjoining divisions, declare new boundaries between such divisions.

12. Whenever any two or more councils shall represent to the Governor that the boundaries of their respective divisions, where the same adjoin each other, are inconvenient or are not sufficiently defined, and require to be altered and duly defined, and shall agree upon and properly describe the proposed new boundaries, the Governor may, if he see fit, declare such new boundaries to be the future boundaries of the said divisions; and thenceforth such boundaries shall be the boundaries of such divisions for all purposes.

In cases of disputes as to boundaries commissioners may be appointed to decide between councils of adjoining divisions.

13. Whenever any dispute or difference shall arise or exist between any two councils of adjoining divisions as to the actual position of the boundary or any portion of the boundary between the said divisions, or in any case where the boundaries between

Digitised by the University of Pretoria, Library Services, 2016

adjoining divisions are inconvenient, and one of the councils of such divisions shall claim that such boundaries shall be altered, such dispute or difference or claim as the case may be, shall if either council so desire, be submitted for decision to a commissioner or commissioners who shall be appointed for that purpose, and who shall make such survey, search, or inquiry as shall be proper and necessary to enable him or them to decide such dispute, difference or claim.

Act No. 6 of 1882 to apply to proceedings of commissioners as though they were arbitrators.

14. Whenever possible the provisions of "The Lands and Arbitrations Clauses Act, 1882," and especially of the second and third sections of the said Act, shall apply to proceedings instituted and carried on under the provisions of the last section in same manner as if the commissioners were arbitrators, save and except that when two commissioners are appointed by the respective councils, a third shall be appointed by the Commissioner of Crown Lands and Public Works.

Commissioners to report their decision to the Governor, who may declare boundaries accordingly.

15. The commissioner or commissioners appointed under the provisions of this Act shall determine in detail the definition of the boundary or portion of boundary with regard to which the dispute or difference has arisen or exists, or a claim has been made as aforesaid, and shall draw up a report embodying the decision arrived at, defining or altering such boundary or portion of boundary, and thereupon the Governor, upon consideration of such report, may, if he see fit, declare such boundary or portion of boundary in accordance with such decision; and thenceforth the boundary or portion of boundary so declared shall for all purposes be deemed and taken to form the boundary between the said divisions.

Provisions as to rates, loans, debts, and voters' lists, in cases where a portion of one division is separated from it and added to another.

16. When any portion of a division shall, under the operation of this Act, be separated from that division and added to any other division, the following provisions shall apply:—

(1) In case any rates lawfully levied by the council of the division to which the separated portion belonged shall be due or unpaid at the date of such separation, such rates shall be recoverable by the council of the division to which such portion has been added, as if the same had been assessed by such lastmentioned council; and a certificate of the chairman of such firstmentioned council shall be *prima facie* evidence of the amount of rate due and of the assessment thereof in any action for the recovery of any such rate.

(2) In case the council of the division to which the separated portion belonged shall, before the date of separation, have lawfully raised any sum of money on loan upon the credit of any rates assessed or to be assessed by such council, or shall have incurred any lawful debt upon the faith of such rates, then the council of the division to which such portion has been added shall be liable to pay

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

to the council of the other division an equitable portion of such loan or debt to be agreed upon between the respective councils, or, failing agreement, to be determined by arbitration.

(3) The Civil Commissioner of the division to which the separated portion belonged shall make out and transmit to the Civil Commissioner of the division to which such portion has been added, a list of any voters for the purposes of this Act resident in such portion, and the list so transmitted shall be added to the list of voters for the purposes of this Act for any field-cornetcy in which such separated portion shall be incorporated, or shall be added to the list of such voters of that field-cornetcy if the separated portion shall be constituted a separate field-cornetcy; and the lists of voters for such firstmentioned division as reduced, and of such lastmentioned division as increased, shall respectively form the lists of voters for the purposes of this Act for such divisions.

PART III.

QUALIFICATION, &c., OF ELECTORS; MAKING OF VOTERS' ROLL, &c.

Qualification of voters in the election of councillors.

17. The following persons shall be entitled to have their names placed on the voters' roll of any division for the purposes of this Act, and all persons whose names appear on such voters' roll and no other persons shall be entitled to vote at any election of councillors for such division:

(1) Male persons of full age liable for the payment of Divisional Council rates as owners or lessees under this Act of immovable property within such division which is not in occupation of any occupier entitled to vote under this Act;

(2) Male persons of full age who shall be occupiers, and shall have been in occupation for not less than twelve months previous to the date of the framing of the voters' roll, of any immovable property situated within the division and valued according to the assessment roll in force in the division at not less than seventy-five pounds:

Provided that

(*a*) In respect of any unoccupied property at the time of the making of the voters' roll, in any division, liable to the payment of Divisional Council rates, the owner thereof being a male of full age, shall be entitled to be registered as a voter on the said roll and to vote in place and stead of any occupier so long as the said roll shall be in force.

Digitised by the University of Pretoria, Library Services, 2016

(*b*) In case two or more persons of full age shall be and have been for not less than twelve months as aforesaid in joint occupation of any immovable property in any division, then and in that case if the value of the said property according to such assessment roll as aforesaid when divided by the number of such joint occupiers, shall be equal to not less than seventy-five pounds for each person, each of such joint occupiers who may be male persons shall be entitled to be registered as a voter and to vote, but if such value so divided shall be less than seventy-five pounds for each person, then and in that case such property shall for the purposes of this section be deemed unoccupied property.

(*c*) Every person entitled to vote in any district which is by this Act empowered to elect more than one councillor, shall be entitled to give one vote and no more for each of any number of candidates at such election not exceeding the number to be elected for such district.

Special disqualifications of electors.

18. The following persons shall not be entitled to vote at any election of divisional councillors:—

(*a*) All persons who have not paid all sums due from them in respect of any Divisional Council rates made payable three months before the day of voting.

(*b*) Persons convicted of treason, murder, rape, theft, perjury, or of bribery, or receiving a bribe, or of any other corrupt practice at any election, or any infamous crime, and who shall not have received a free pardon.

(*c*) Persons whose names do not appear upon the voters' roll for the time being.

Triennial list of voters to be framed by the secretary of council.

19. The secretary of every council shall, on or before a day to be fixed by the Governor before the taking effect of this Act by notice in the *Gazette*, and thereafter before the first day of July in every third year, make out a list to be called the "voters' roll," containing the names of all persons qualified to vote under the provisions of this Act, which list shall shew—

(1) The names in full of the voters, arranged according to the alphabetical order of surnames.

(2) Description of property giving title to vote.

(3) Whether the voter be owner, lessee or occupier.

Completion of list to be notified by advertisement, list to lie open for inspection, and day to be notified for hearing claims and objections.

20. The secretary shall, immediately after making out the said list, notify by advertisement in some newspaper generally circulating in the neighbourhood, and in such other manner as the council shall from time to time direct, that a copy of such list is ready for inspection at the council office, and if the council shall so direct, at such other place as may be appointed, and a copy of such list shall be open to inspection at such office, and at each appointed place as aforesaid, during office hours, for a period of

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

fourteen days; the said advertisement shall also intimate that on a certain day and hour, and at a place to be therein set forth, claims to be inserted in, or objections to, the said list will be heard and determined as hereinafter in the next succeeding section is provided.

Chairman and two councillors to hold court on day notified, with power to adjourn.

21. The chairman and two councillors elected for that purpose by the council shall, on the day so notified, in open court, hear all such claims and objections, and determine thereon, and may adjourn the sitting of such court from time to time as may be necessary.

Instructions to chairman and councillors holding court.

22. The said chairman and councillors shall, in revising the voters' roll, be guided by this Act and the following directions and provisions; that is to say, they shall

(1) Insert the name of every person who shall prove to their satisfaction that he is entitled to be inserted in the voters' roll, according to the provisions of this Act.

(2) Except in the case of death, retain on the list the names of all persons to whom no objection has been made.

(3) Retain on the list the name of every person objected to, unless the person objecting appears by himself, or some one on his behalf, in support of such objection, and establishes the same by satisfactory proof.

(4) In case any objection is made and satisfactorily proved, expunge the name of the person objected to from the voters' roll.

(5) Expunge from the voters' roll the name of any person inserted therein who is proved to be dead.

(6) Correct any mistake or supply any omission which may appear to have been made in the voters' roll.

Revised roll to be certified by chairman, and to continue in force till new roll made and revised.

23. The revised roll, certified by the chairman of the council, shall be the voters' roll for the division, and shall continue in force, and shall not be added to or otherwise altered until a new roll has been made for the division and revised under the provisions of this Act, whether the same be duly made at the time appointed or afterwards.

Certified copy of roll to be *prima facie* evidence.

24. Any printed or written copy, purporting to be a copy of the voters' roll of any division or field-cornetcy, signed by the chairman of the council, shall be *prima facie* evidence of such roll and of the contents thereof.

Omission of formalities prescribed by sec. 20 not to invalidate proceedings or roll.

25. No omission to make any notification by advertisement or otherwise, with regard to any list, or to exhibit, or keep any list for inspection, shall be deemed to prevent, invalidate, or render imperfect any of the proceedings by this Act prescribed with regard to the compilation or completion of any list or roll, or to invalidate any such list or roll.

Digitised by the University of Pretoria, Library Services, 2016

Governor may appoint day for holding court of revision where prescribed time has elapsed.

26. If from any cause the revision of any list awaiting revision under this Act has not been made or completed within the proper time appointed or allowed for that purpose, the Governor may appoint a day for holding a court for revising such list, and such day shall as to all such acts and proceedings as then remain to be done or had with respect to such list, be deemed to be for all intents and purposes the day appointed for such revision, and all further proceedings shall be had and taken accordingly.

Omission or non-completion of preparation or revision of roll rectified by direction of Governor or at request of council.

27. If from any cause the preparation or revision of the voters' list has been omitted or not completed, the Governor may at the request of the council of the division, direct the same to be done within such time as may be prescribed by the order in council authorising it, and upon the publication of such order in the *Gazette*, such omission or non-completion shall be rectified, and such list validated in accordance with the terms of such order.

PART IV.

QUALIFICATION, &c., OF COUNCILLORS.

Qualification of councillors.

28. Every male person whose name shall appear upon the voters' roll of any division for the purposes of this Act, and who shall be registered in the land registers of this Colony as the owner of immovable property situated in such division, which shall at the time of any election under this Act be valued for assessment for rating purposes at an amount not less than £500 sterling, shall (except as is hereinafter excepted) be eligible to be elected by any district into which such division shall be sub-divided as aforesaid, to be a councillor for such district of the council of such division: Provided

Lessees under Act No. 19 of 1864 deemed to be owners.

(*a*) That all lessees of Crown land under the Act No. 19 of 1864 shall, for the purposes of this section only, be deemed to be registered owners of land valued in the proportion of £100 sterling for every amount of £6 sterling annually payable by way of rent in respect of the land leased under the said Act, and

(*b*) That as often as any such immovable property or land so valued as aforesaid shall be jointly owned or leased by more persons than one, every joint owner or lessee shall be eligible to be elected as aforesaid in case the value of such property, when divided by the number of the joint owners or lessees thereof, shall yield the sum of £500 sterling; but that in case such joint owners or lessees shall, by the land registers aforesaid or by the lease, appear to be entitled in unequal shares, no such joint owner or lessee shall be eligible, in respect of such share only to be elected unless his share shall, regard being had to the total value of the property, yield a sum not less than £500 sterling.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Disqualification of certain persons for election or continuing as councillors.

29. No person whose estate shall be under liquidation, under assignment, or under inspection on behalf of his creditors, no insolvent who shall not have obtained his rehabilitation, no alien who has not been naturalized, no person convicted of treason, murder, rape, theft, perjury, or other infamous crime, and who shall not have received a free pardon, no person of unsound mind, and no person who is not qualified or who is disqualified by this Act, shall be capable of being elected or of continuing a councillor.

Further disqualifications.

30. No person holding any office or place of profit under Government, or under or in the gift of the council of any division, or concerned in or participating in the profit of any contract with any council, or concerned in or in the profit of any work to be done under the authority of any such council, shall be capable of being or continuing a councillor of that council: Provided that nothing in this section contained shall extend or apply to any contract entered into by any company, partnership or association consisting of more than twenty persons, or any incorporated company, when such contract is entered into for the general benefit of such company, partnership, or association: and provided that it shall be lawful for any councillor to purchase at public sale any property or right which the council of which he is a member shall offer to sell by public competition.

PART V.

Mode of Election of Councillors.—Corrupt Practices at Elections, &c.

Notice in *Gazette* calling for nomination of councillors.

31. On a day to be appointed by the Governor by notice in the *Gazette* after the taking effect of this Act, and thereafter on or before a day to be fixed by the Civil Commissioner of every division, such Civil Commissioner shall, by a notice in the *Gazette*, in the English and Dutch languages, call upon the voters in the respective districts composing such division, to nominate a candidate or candidates for every such district respectively, and such notice shall be in substance as follows:

Divisional Council for the Division of———.

Form of notice.

The voters in the several districts of the division of ——— are hereby invited to nominate, in writing, candidates for the representation of such districts respectively in the divisional council at the ensuing election. Every candidate must be nominated by not fewer than five persons entitled to vote for the district, or otherwise his nomination will be null and void, in district No.* ——— (which is entitled to return ——— members) each candidate must be nominated separately, by not fewer than five voters. No voter can sign more nominations than one, on pain of having his name erased from all the nominations in which it appears, and considered as if never placed there. All nominations

Digitised by the University of Pretoria, Library Services, 2016

must be received by the undersigned not later than the —— day of ————, 18—, and any nomination received later than that day will be null and void. Every voter signing any such nomination must state his place of residence.

Dated this —— day of ———, 18—.

(Signed) A. B., Civil Commissioner
for the Division of———

*In the notice to be given by the Civil Commissioner of the Cape, instead of "in district No.——," say "in the Cape Town and Green Point district."

Nominations received up to day to be named in notice, not less than 30 days after date of notice.

32. The day to be inserted in any such notice as aforesaid as that on or before which all nominations must be received, shall be a day not less than thirty days after the date of such notice.

Publication of notice in newspaper and in other ways.

33. Besides publishing such notice as aforesaid in the *Gazette*, the Civil Commissioner shall publish the same in some newspaper, if any, published in his division; or should there be no such newspaper, then in any newspaper circulating in such division, and shall post a copy of such notice inside and outside of every court of Resident Magistrate in such division; and shall, by such other means as the then existing council shall determine, make known such notice or the substance thereof: provided that no failure to comply with the provisions of this section or any of them shall vitiate or in any way affect any election or other proceeding under the provisions of this Act.

Form of nomination in either English or Dutch.

34. The nomination of a candidate for any district may be written in English or Dutch, and shall be in substance as follows:

We, the undersigned, voters for district No. ——, do hereby nominate A.B., of ————, in this division, to become a councillor of the divisional council of this division for the said district No. —. Dated this —— day of ————, 18—.

(Signed) C. D. ———— (name place of residence).
E. F. ————
G. H. ————
I. J. ————
K. L. ————
&c., &c., &c.

Provided

Lack of certain formalities not to vitiate nomination.

(*a*) That as often as any person signing any such nomination shall be a registered voter residing in the district to which such nomination relates, his omission to state his place of residence shall not vitiate or affect the validity of his signature.

Nomination of ineligible candidate to be received, and disqualification recorded by Civil Commissioner.

(*b*) That although the Civil Commissioner may deem a candidate to be ineligible he shall nevertheless receive the said nomination and make a record in writing of such special reception and his reasons for deeming the candidate to be ineligible.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

(*c*) That no informality in any such nomination shall vitiate the same so long as the requisite number of competent voters shall have signed the same, and so long as the names of the candidate or candidates, and the district for which they are nominated, shall be discoverable from the terms of the nomination.

Nomination by not less than five voters; name of person nominated with his consent not to be withdrawn: candidate may be nominated for more than one district.

35. No person not nominated as aforesaid by five voters or upwards shall be eligible to be a candidate or to be elected as a councillor for any district of any division, and no person duly nominated with his consent shall have any power to withdraw his name: Provided that if the same person shall be nominated for more districts than one, he shall be deemed to be a candidate for each district for which he shall have been so nominated.

Provision for the taking of polls in different districts: field-cornets and in certain cases Resident Magistrates to be polling officers.

36. The poll for each district in any division (except the Cape Town and Green Point district in the division of the Cape) shall (except as hereinafter in this and in the next succeeding section is excepted) be taken by the field-cornet (who shall be the polling officer) at his residence, in case such district shall be constituted by a single field-cornetcy; and as often as any district shall comprise more field-cornetcies than one, the poll shall be taken by the respective field-cornets of such field-cornetcies, each at his own residence, in his own ward: Provided that the poll for every field-cornetcy in which there shall be a court of Resident Magistrate shall be taken by the Resident Magistrate at his court-room: And provided

Special provisions as to the duties of different polling officers; as to the appointment of polling places additional to or in lieu of the field-cornet's residence; as to the place where voters must vote.

(*a*) That as often as any Resident Magistrate shall not be himself the Civil Commissioner of the division in which such court-room shall be situated, the Civil Commissioner shall proceed, in regard to such Resident Magistrate and the poll to be taken by him, precisely as if such Resident Magistrate had been a field-cornet, whose duty it was to take such poll.

(*b*) That as often as the Civil Commissioner shall be himself the Resident Magistrate to take the poll in any field-cornetcy, he shall give the notice in the third sub-division of the fortieth section of this Act described, and conform (as shall also such Resident Magistrates as are not Civil Commissioners) to the provisions of the Act regulating the taking of the poll by field-cornets.

(*c*) That it shall be lawful for the Governor to appoint one or more additional polling places in any field-cornetcy, and for the Civil Commissioner to appoint such polling officers as may be required to take the polls thereat.

(*d*) That as often as the residence of the field-cornet of any ward shall be so situated as to be remote from, or difficult of access by, the greater number of the voters in

Digitised by the University of Pretoria, Library Services, 2016

such ward, the Civil Commissioner may appoint some more convenient place for the taking of the poll in such ward.

(*e*) That no voter shall vote except in the field-cornetcy in which such voter stands registered.

Appointment of polling officer in place of field-cornet in certain cases.

37. The Civil Commissioner of each division shall, previous to any election of members of any council, appoint, in writing, some fit and proper person in each ward who shall be the polling officer to act in place and stead of such field-cornet, in case, by reason of illness, absence, or other sufficient cause, such field-cornet should not in person be able to take the poll for a member or members in such ward; and the poll taken by any such person shall be as legal, valid, and effectual as if the same had been taken by such field-cornet.

Polling place and polling officer in the Cape Town and Green Point district of the Cape division.

38. The poll for the Cape Town and Green Point district in the Cape division shall be taken at the Town-house, in Cape Town, or at some other convenient place or places to be fixed by the Governor by notice in the *Gazette*, by the Civil Commissioner of the Cape division, or by such other person or persons as the Governor shall by such notice nominate and appoint.

Notice in *Gazette* of names of candidates duly nominated, notice of poll in case of poll required.

39. As soon as may be after the day fixed by the notice in the thirty-first section of this Act mentioned as the latest day upon which nominations can be received, the Civil Commissioner shall, by notice in the *Gazette*, give notice of the names of the candidates nominated for each district respectively, and the place, day, and hour at or upon which the poll is to take place: Provided

(*a*) That if, in any case no greater number of candidates shall have been nominated for any district than the number to be then elected, no poll in or for such district shall take place, and the candidate or candidates so nominated shall be deemed to be duly elected.

(*b*) That the notice in this section mentioned shall name the districts, if any, for which no poll is to be taken, and the candidate or candidates elected for the same.

(*c*) That besides publishing such notice in the *Gazette*, the Civil Commissioner shall make it known by such other means as are in the thirty-third section of this Act set forth, which section shall apply to the notice in this section mentioned as fully as if the same were herein again repeated.

Documents and papers to be delivered to polling officers for the purpose of taking polls.

40. The Civil Commissioner shall, not less than seven days before the day named by him in the notice in the last preceding section mentioned for the taking of the poll in any particular field-cornetcy, deliver or cause to be delivered to the polling officer the documents or papers following, that is to say:

(1) A paper writing containing the names of the candidates nominated in manner aforesaid for the district in regard to which the poll is to be taken.

Digitised by the University of Pretoria, Library Services, 2016

No. 40- 1889.

(2) A list, written or printed, of the voters in such field-cornetcy whose names are on the voters' roll for the purposes of this Act,—the said list to be certified under the hand of the Civil Commissioner to be correct.

(3) A notice, legibly written, ready to be signed by the field-cornet, and which he is required to post at his residence or office, which notice shall be, in substance, as follows:—

Division of ———. *District No.* ——.

Notice is hereby given that a poll for the (member or members, as the case may be) of the divisional council for the above district will be held at this place (or at ———) on the —— day of ——— next, opening at eight o'clock in the morning and closing at five o'clock in the afternoon. The candidates nominated for this district are the following:

A. B.
C. D.
E. F.
&c., &c.

All votes given for any person except one of the above-named persons, will be thrown away.

Dated this —— day of ————, 18—.

(4) A number of pages of ruled paper calculated to be sufficient to contain the names of the voters signing one after another on each successive line. Each page to have at the top, legibly written, the name of one candidate, and but one, and every candidate to have a number of pages reckoned to prove sufficient for the names of those who will vote for him.

(5) A printed paper containing the several sections of this Act, from the twenty-eighth to the forty-ninth both inclusive, in the English and Dutch languages.

(6) A printed paper containing the form of solemn declaration to be made by the field-cornet, as such form is hereinafter in the fifty-second section set forth.

Notice of poll to be posted by polling officer, but omission not to void poll.

41. The field-cornet shall, forthwith upon the receipt of the documents or papers in the last preceding section mentioned, fill in at the foot of the notice in the third sub-division of the said section set forth, the date when he received the same, and then sign such notice, and post the same for general information at some conspicuous place at or near his residence or office: Provided that no neglect or failure to comply with any of the provisions of this section shall render void the poll to which such notice relates.

Polling hours 8 a.m. to 5 p.m.

42. The poll at every polling place in any district shall open at eight o'clock a.m. and close at five p.m., before or after which hours respectively no votes shall be received.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Candidates may be represented at polling place by one agent, who must deliver authority in writing to polling officer.

43. Any candidate may be present or may appoint in writing one agent to represent him at any polling place for the purpose of seeing that the votes are fairly taken and recorded. In case an agent be appointed, the polling officer shall require such agent to deliver to him for record his authority in writing to act, and if such agent shall neglect or refuse so to do, the said polling officer shall not be at liberty to recognise his agency.

Manner of voting: voter to sign his name, or make his mark, on the paper headed by the name of the candidate for whom he desires to vote

44. The manner of voting shall in substance be this: The polling officer shall ascertain that the person coming to vote is a registered voter entered upon the list of voters, and having ascertained that such person is so entered, the polling officer shall ask for whom he votes. When the voter has named the candidate for whom he intends to vote, the polling officer shall lay before the voter one of the ruled pages received by him, having at the top the name of that candidate, and the voter shall, if able and willing to do so, write, in the presence of the polling officer, his name upon the upmost vacant line. Should the voter be unable or unwilling to write his name, he may, in the presence of the field-cornet, make his mark, in which case the field-cornet, or some other person in the polling officer's presence, shall write the christian name and surname of the voter, and the voter shall touch the top of the pen whilst the person who writes his name makes a cross (x) between the christian name and the surname. The words "his mark," above, below, or in connection with this cross shall not be necessary, nor the signature of any person as a witness to the making of such mark.

Manner o voting where more than one candidate to be elected.

45. As often as the district for which any poll is taken under this Act shall be entitled to elect more than one member the manner of voting shall be the same as that in the last preceding section described, except that there shall be laid before the voter for his signature ruled papers, as aforesaid, bearing the names of such candidates not exceeding the number of members to be then elected, as the voter shall have named as the candidates for whom he votes.

Provision for correction of mistake in voting on the wrong paper. In the absence of such mistake vote cannot after signature be withdrawn.

46. If the field-cornet shall by mistake lay before any voter a paper headed by another name than the name of the candidate named by such voter, and such voter's name shall be affixed to such paper before the mistake shall have been discovered, then the name of such voter, in case before leaving the polling-room he shall so desire, shall be struck out of that paper, and he shall be at liberty to sign another paper headed by the name of the candidate originally named by such voter; but no voter who shall have once affixed his name to a paper headed by the name of the candidate originally named by him shall be competent afterwards, upon an allegation of mistake or for any other reason, to withdraw his vote: Provided, however, that a voter may, after naming a candidate as the candidate for whom he votes, but before he has

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

finished signing his name or making his mark to a paper headed by the name of that candidate, correct his error or change his purpose, and vote, as aforesaid, for another candidate.

No vote to be received unless voter's name found on list, but certain errors in spelling, &c., in the list not to debar voter from voting if identity established.

47. When any person comes to vote, the polling officer shall as aforesaid see that such person is a voter named upon the list of voters received from the Civil Commissioner, and unless his name shall be found upon such list, shall refuse to receive his vote: Provided that when and as often as the identity of any voter shall be established, and it shall be made to appear to the field-cornet that he is really and truly the person meant by the name upon the said list, no omission in the name upon the list of one or more of the christian names of such voter, and no error in the spelling of any christian name or surname of such voter, whether the error be in the spelling of the name upon the list, or in the spelling of the name by the voter, shall destroy or affect the validity of any vote, so long as the surname as written by or for the voter shall be of the same sound with the surname upon the list, or so long as the surname as written by or for the voter, although not of the same sound with the surname upon the list, shall be a known corruption of that surname, or the name upon the list shall be a known corruption of the surname as written by or for the voter.

Questions which may be put by polling officer to person tendering vote, and which must be duly answered when put.

48. At any election the polling officer shall if he see fit or if required to do so by any candidate or his duly authorised agent put to the person tendering his vote any of the questions following :—

(1) Are you the person whose name appears upon the list of voters received from the Civil Commissioner of this division for the purposes of this election ?

(2) Have you already voted at this election for this district ?

(3) Have all sums due and payable by you in respect of Divisional Council rates made payable three months or more before this date been paid ?

And no person who shall refuse to answer any such question or who shall not answer the first and third of such questions absolutely in the affirmative, and the second of such questions absolutely in the negative shall be entitled or permitted to vote.

Penalty for wilful false answer, or for voting more often than permitted by law.

Every person who shall wilfully make a false answer to any of the questions aforesaid, or who shall poll or attempt to poll more than once, or more than the number of votes which such person is entitled to poll at such election, in case such person is entitled to vote for more candidates than one, shall, upon conviction, be liable to be imprisoned with or without hard labour for any period not exceeding three months.

No voter required to answer other questions, and if prescribed questions answered satisfactorily voter to be entitled to vote.

49. No voter shall at any election be required to answer any questions except as aforesaid, and no person claiming to vote at any election shall be excluded from voting except by reason of its appearing to the polling officer upon putting any such question

Digitised by the University of Pretoria, Library Services, 2016

allowed as aforesaid that he is not the person whose name appears on the said list, or that he has previously voted at the same election, or that such sums as aforesaid due for rates are unpaid, or except by reason of such person refusing to answer any of the said questions.

Adjournment of poll in case of interruption or obstruction at any polling place.

50. When the proceedings at any election are interrupted or obstructed at any polling-place by any riot or open violence, the polling officer shall not finally close the poll, but shall adjourn the taking of the poll at such polling-place to the day following, and, if necessary, such polling officer shall further adjourn such poll until such interruption or obstruction has ceased, when he shall again proceed with the taking of the poll at the place at which the same shall have been so interrupted or obstructed.

Duties of polling officer at close of poll.

51. As soon as may be after the close of the poll at any polling place, the polling officer shall sign his name at the foot or on some other part of every separate leaf or sheet containing the names of voters who have voted, and shall cast up the number of votes given for each candidate for whom votes shall have been given, and shall put down in writing, one after another, upon a separate paper, the names of the candidates, and opposite to each name the number of votes given for that candidate, and should any candidate have received no vote, shall write opposite his name the word "none;" and the paper containing the statement of such numbers, signed in attestation of its correctness by the polling officer and by one other person, being an owner of fixed property in the division, who shall also cast up the votes, shall be carefully preserved by such polling officer until he shall know that the parcel mentioned in section fifty-three has been received by the Civil Commissioner.

Solemn declaration to be taken by polling officers.

52. The polling officer shall at the same time in the presence of the person who shall have signed the paper in the last preceding section mentioned, sign a solemn declaration, under the Ordinance No. 6, 1845, being the solemn declaration mentioned in the sixth sub-division of the fortieth section, and which solemn declaration shall be in substance as follows:

Solemn Declaration.

I, A.B., do solemnly and sincerely declare that I have taken the poll referred to in the accompanying polling papers, to the best of my ability, fairly and impartially, and without favour or prejudice in regard to any candidate, and that the accompanying polling papers contain a true statement, to the best of my knowledge, of the votes given at the said poll. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Ordinance No. 6, 1845, entitled

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

"An Ordinance for substituting declarations in the place of certain oaths, and for the suppression of voluntary and extra-judicial oaths and affidavits."

Declared this ——— day of ———— 18—.

A.B.

Witness: C.D.

Provided that every solemn declaration, when so signed and witnessed as aforesaid, shall be of the same force and effect as if it had been declared before a Resident Magistrate or Justice of the Peace.

Polling papers, with declaration to be delivered by polling officer to Civil Commissioner in secure parcel.

53. As soon as the solemn declaration aforesaid shall have been signed and witnessed, the polling officer shall carefully and securely make up into a parcel all the polling papers relating to the poll just taken, together with the said solemn declaration, and shall address the said parcel to the Civil Commissioner of the division, and shall safely deliver or cause to be delivered the said parcel to such Civil Commissioner; but the polling officer shall not enclose in the said parcel the paper in the fifty-first section mentioned, but shall himself keep that paper, as in the said section is enjoined.

Duties of Civil Commissioner on receipt of parcel; proceedings in case of irregularity.

54. The Civil Commissioner receiving any such parcel as aforesaid shall forthwith examine the papers therein contained, and in case he shall find that any separate leaf or sheet containing the names of voters who had voted has been omitted to be signed by the polling officer, or find that the solemn declaration aforesaid has been omitted to be enclosed, or, being enclosed, has been enclosed unsigned or unwitnessed, or find any other irregularity of a like nature, then such Civil Commissioner shall, without delay, inform the polling officer of the irregularity committed, and it shall be competent for the said polling officer to correct the same, and upon his correcting the same, the several papers relating to the said poll shall be in the same plight and condition as if no such irregularity had been committed: Provided that the polling officer by whom such irregularity was committed shall be liable for the expenses, if any, attendant upon the correction of the same.

Complaints with regard to proceedings at polls may be lodged with Civil Commissioner within seven days after closing of poll.

55. It shall be competent for any voter registered or alleging himself to be registered as such in any district, who shall complain that his vote, duly tendered at the poll taken in such district was rejected by the polling officer, or shall complain that at such poll a person not registered as a voter in such district was admitted to vote, or who shall complain of any other irregularity fallen into at any such poll, to lodge with the Civil Commissioner his complaint, in writing, stating the name of the person so rejected or admitted, or the particulars of any other alleged irregularity, and requesting that the grounds of such complaint may be investigated: Provided that if such complaint shall not be lodged within seven

Digitised by the University of Pretoria, Library Services, 2016

days after the day of the closing of the poll, it shall be of no effect, and the poll as taken shall not be capable of being afterwards impeached by such complainant in any action or proceeding at law.

Duties of Civil Commissioner in investigating complaints, and powers of amending polling papers if complaint well founded.

56. As often as the Civil Commissioner shall receive any such complaint as aforesaid he shall, in the most speedy and inexpensive manner practicable, cause the polling officer and the party complaining, and the party, if any, whose vote is questioned, or the persons concerned in any other alleged irregularity, to attend before him, and shall, in their presence, inquire into the grounds of such complaint, and if he shall find that the vote of any person so complaining was improperly rejected, shall enter such vote for the candidate for whom it was tendered; and if he shall find that any person not entitled to vote was admitted to vote, shall strike out such vote from the polling paper or polling papers in which it appears; and if he shall find that any other irregularity was fallen into, shall correct such irregularity: Provided

Procedure for the investigation of complaints.

(*a*) That every person complaining and every person complained against shall be entitled to be assisted by an agent:

(*b*) That the Civil Commissioner may, should the circumstances of the case require it, take evidence on oath, and may summon witnesses to appear before him to give evidence, and the form of summoning witnesses, and the consequences of attendance or non-attendance shall, *mutatis mutandis*, be in substance the same as are set forth in the sixteenth, seventeenth, and eighteenth of the rules, orders, and regulations of the Courts of Resident Magistrates contained in the schedule marked B to the Act No. 20 of 1856:

(*c*) That the Civil Commissioner may if he shall so think fit, award his reasonable costs to any person concerned in such investigation, to be paid by any other person concerned therein, and shall tax and ascertain such costs, and shall certify in writing to the Clerk of the Court of Resident Magistrate for the district in which the person liable to pay such costs shall reside, the amount of such costs, and the process of such court may issue for the levy of such costs, precisely as if such costs had been costs recovered in a civil suit by the person to whom they shall have been awarded by the Civil Commissioner.

Resort to a Judge in Chambers if Civil Commissioner be uncertain as to proper decision upon any complaint.

57. If the nature of any such case as aforesaid shall be such that the Civil Commissioner shall be uncertain regarding the decision proper to be given upon it, it shall be competent for him to draw up a statement of the facts, and such statement shall be signed by such Civil Commissioner, in attestation of its correctness, and such Civil Commissioner shall transmit the same to the

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Registrar of the Supreme Court, to be by him submitted to a Judge in Chambers for his consideration and determination: Provided that every Civil Commissioner within the divisions wherein the Court of the Eastern Districts or the High Court of Griqualand shall have concurrent jurisdiction with the Supreme Court, shall transmit all such cases as aforesaid to the Registrar of the Court of the Eastern Districts, or of the High Court of Griqualand as the case may be, for the consideration and determination of a Judge of such court.

Judge may call for further information, and his decision shall be final.

58. The Judge before whom any such statement as aforesaid shall be laid may, should the same appear to him to be defective, call for further information from the Civil Commissioner who transmitted it, and shall give such a decision as shall appear to him to be right and proper, and such decision shall, for the purpose of the poll to which it relates, be final and conclusive.

Remedy for person aggrieved by the decision of Civil Commissioner upon any complaint, if proceedings taken within forty-two days. Civil Commissioner protected in discharge of his duty, unless decision wilfully wrong.

59. Nothing in this Act contained shall prevent any person who had within the seven days aforesaid complained that his vote was, at any such poll as aforesaid, improperly rejected, and whose complaint the Civil Commissioner shall have decided not to be well founded, or any person whose vote given at any such poll shall, by the Civil Commissioner, have been struck off upon some other person's complaint, or any person whomsoever having an interest in the subject-matter of any such decision by the Civil Commissioner, from seeking redress in any competent court: Provided

(*a*) That no such person shall commence any suit or proceeding in any such court, for the purpose of obtaining such redress, later than forty-two days next after the pronouncing by the Civil Commissioner of the decision complained of:

(*b*) That no Civil Commissioner shall be made a party to such a proceeding unless it be alleged that his decision was wilfully wrong: And if the court before which any such suit or proceeding shall be instituted shall find that the decision complained of was not wilfully wrong, it shall award the Civil Commissioner his reasonable costs against the party by whom the same shall have been alleged should it be consonant with justice so to do; and should it not be so consonant such costs shall be paid from and out of any moneys at the disposal or under the administration of the divisional council.

When polling papers are in order candidate or candidates with largest number of votes elected.

60. If the Civil Commissioner shall find, upon examining the papers received from each polling place in any district, that the same are regular and formal, he shall cast up the votes given for the respective candidates for such district, and shall ascertain for whom the greatest number of votes in such district shall have been given, and such candidate shall be the councillor for such district: Provided

Digitised by the University of Pretoria, Library Services, 2016

(*a*) That, in regard to any district entitled to elect more members than one, the Civil Commissioner shall ascertain what candidates, equal in number to the number of members to be then elected, shall have received more votes than any other candidate, and such candidates shall be the members for such district:

Civil Commissioner not to strike out vote unless complaint lodged.

(*b*) That the Civil Commissioner shall not of his own motion and without a complaint lodged, strike out any vote upon the polling paper upon the ground that, in his opinion, the voter's name was not a name upon the list sent to the polling officer:

During seven days for lodging complaints, candidates may inspect polling papers.

(*c*) That during the seven days aforesaid any candidate or person appointed in writing by any candidate shall be at liberty to inspect the several polling papers, and to compare them with the lists of voters with which such polling papers ought to correspond.

If parcel of polling papers lost by accident, polling officer's written statement of results to be acted upon.

61. If the parcel in the fifty-third section mentioned containing the polling papers of any polling place should be lost or destroyed before it shall have been received by the Civil Commissioner, then the paper writing by the fifty-first section directed to be made and signed shall be received and acted upon by the Civil Commissioner, in place and stead of the polling papers so lost or destroyed.

Penalty for wilfully causing loss or destruction of parcel of polling papers.

62. If any person shall wilfully occasion the loss or destruction of any such parcel as in the fifty-third section mentioned, or of any of the contents of any such parcel, such person shall, upon conviction, be liable to a fine not exceeding forty pounds, and in default of payment thereof to imprisonment, with or without hard labour, for any period not exceeding three months, unless such fine be sooner paid.

Civil Commissioner, except in Cape division, to publish after seven days in *Gazette* the names of elected councillors for the several districts.

63. When the Civil Commissioner of any division, except the division of the Cape, shall have ascertained, in manner aforesaid, the names of the councillors who shall have been elected by the districts respectively composing his division, the said Civil Commissioner shall forthwith cause to be published in the *Gazette* the names of such councillors, placing opposite to or in connection with every such name the number of the district by which such councillor was elected: Provided

In case of equality of votes election determined by lot.

(*a*) That if, in any district, two or more persons who have received the greatest number of votes, and who cannot be both or all elected, shall each have received the same number of votes, then the question between such persons shall be determined by lot, to be drawn in presence of the Civil Commissioner and not fewer than seven witnesses:

(*b*) That the name of no member for any district in which a poll was taken shall be published until the expiration of seven days from the day on which such poll was taken:

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Provisions as to Cape division.

(*c*) That the provisions of this section shall apply to the Cape division, and to the Civil Commissioner of such division, save only that such Civil Commissioner shall publish the names of fourteen members instead of eight, and shall describe the several districts of the said division in the manner in which such districts are in the tenth section of this Act mentioned and described.

Civil Commissioner, after publishing names of councillors, to enclose polling papers in packet, and deliver to secretary of council; packet to be kept for six months and may then be destroyed unless council objects.

64. The Civil Commissioner shall, after publishing such notice in the *Gazette* as is provided for in the last preceding section, enclose in one packet all the polling papers aforesaid, and shall seal up such packet and endorse thereon a description of the contents thereof, and sign such endorsement with his name. The said sealed packet shall be delivered to the secretary to the council, who shall safely keep such sealed packet for six months after the receipt thereof, and after the expiration of six months such papers may be destroyed in the presence of two councillors, unless the council shall otherwise direct.

During six months packet only to be opened by order and in presence of council, or by order of competent court. Penalty for unlawfully opening packet.

65. No such sealed packet of polling papers shall be opened during the said period of six months, unless by order and in presence of the council, or by order of some competent court. And if any person shall, contrary to the provisions hereof, wilfully break the seal of or open any such packet, he shall, upon conviction, be liable to a penalty not exceeding twenty pounds.

Election not to be set aside for defect of title in officer by or before whom election held or poll taken.

66. No election under the provisions of this Act shall be liable to be set aside by reason only of any defect in or want of title of the officer or person by or before whom such election or any polling for the same, has been held: provided that such person has been acting in the office giving the right to preside at such election.

Notice of elected members to embody notice of first meeting not sooner than twenty-one days after notice.

67. The Civil Commissioner shall, in the same *Gazette* in which he shall cause to be published the names of the councillors elected to form the council, apprise such members, by public notice, of the day, the hour, and the place at which the first meeting of the council will be held: Provided

Personal notice to elected councillors.

(*a*) That such first meeting shall not take place sooner than twenty-one days from the day of the publication of such notice:

(*b*) That the Civil Commissioner shall, over and above such notice, inform each of the said councillors respectively, in writing, delivered or transmitted through the post or otherwise to the usual place of business, if any, or to the place of abode of such councillor within reasonable time of the day, hour, and place appointed for such first meeting.

Digitised by the University of Pretoria, Library Services, 2016

Complaints which cannot affect result of poll not to delay publication of names of elected councillors; otherwise publication delayed pending decision of complaints.

68. The lodging of any complaint such as is in the fifty-fifth section described shall not prevent or delay the publication of the names of any candidate who would, even if every complaint so lodged were adjudged to be legal or well-founded, still be councillor for the district to which such complaint relates. But if the decision upon such complaint or complaints might alter or affect the result of the poll, then no candidate for such district whose election might be so affected shall be published as the member for, or as a member for, such district, until such complaint shall have been investigated and decided.

Publication of names of duly elected councillors for one district not to be delayed by reason that publication in another district cannot yet be made.

69. The non-attendance of all the voters of any district for the purpose of electing a councillor or the existence in regard to any district of any complaint or complaints of such a nature as to stay the publication of the name of any candidate as the councillor for any district shall not prevent or delay the publication, as aforesaid, of the names of the members for the other districts of the division to which such district belongs.

Definition and punishment of "corrupt practices."

70. All the acts enumerated as "corrupt practices" in any Act for the time being in force regulating or in respect of elections of members of Parliament, shall, *mutatis mutandis*, be deemed to be "corrupt practices" with reference to all elections under this Act. And every person committing any act forbidden or made punishable by any such Act relating to elections of members of Parliament, in reference to any elections under this Act, shall upon conviction incur and be liable to such penalty or punishment as is by such Act provided.

All complaints as to ineligibility of candidate, or as to corrupt practices to be dealt with like other complaints under sec. 55.

71. If any person ineligible under this Act to be elected a member of the council shall, nevertheless, have been nominated, and shall have been elected, or if any other candidate or any voter for the district should complain that any candidate has by himself or his agents been guilty in connection with the election of any corrupt practice as now by law defined, it shall be competent for such candidate or voter to lodge within seven days next after the day on which the poll in and for such district was taken, but not later, with the Civil Commissioner, a complaint stating the ground of such ineligibility or illegality, and thereupon the like proceedings, *mutatis mutandis*, as are in the fifty-fifth, fifty-sixth, fifty-seventh and fifty-eighth sections mentioned, shall apply to such complaint and the decision thereupon: Provided that, in regard to any complaint grounded upon the alleged ineligibility of any candidate, the attendance of the polling officer who took the poll shall not be necessary.

Council in existence to remain in office pending publication of the names of a quorum of newly elected councillors.

72. If, by reason of the failure in one or more districts to nominate or to elect candidates, or of the existence of irregularities or of errors in the taking of any polls, not yet corrected, or of complaints not yet decided, it shall so happen that there shall not be published in manner aforesaid, in any division, the names of

Digitised by the University of Pretoria, Library Services, 2016

40—1889.

councillors of the new council sufficient to form a quorum, the council then in existence shall remain in office until a number of councillors of the new council sufficient to form a quorum shall have been published: Provided that, as soon as a number of councillors of the new council sufficient to form a quorum shall have been published, then such councillors shall, for the time being, form such council, and such council shall be, to all intents and purposes, competent to perform all functions and duties belonging to it, in case such functions or duties shall not, by some particular act or acts, require the presence of a greater number of councillors than the number so published.

Election in Cape Town and Green Point district of Cape division to proceed *mutatis mutandis* in accordance with provisions of preceding sections.

73. For the purpose of the election of councillors of the council of the Cape by the Cape Town and Green Point district of the said division, the provisions of the several sections of this Act from the thirty-ninth to the seventy-second, both inclusive, shall, *mutatis mutandis*, apply to such election, precisely as if the said Cape Town and Green Point district were a field-cornetcy, and as if the Civil Commissioner or other person nominated as aforesaid, to take a poll for such district, were a field-cornet and polling officer.

Governor may by notice in the *Gazette* extend time for nomination of candidates and for doing other acts not done in accordance with provisions of this Act.

74. If it shall happen that, by reason of any accident or other cause, the Civil Commissioner of any division shall not, in regard to the election of a council for such division under the provisions of this Act, give on the proper date the notice in the thirty-first section mentioned, or shall not give any other notice, or do any other act, by any previous section of this Act required, whereby it shall happen that the names of at least a quorum of candidates to be councillors of any new council cannot be published before the latest day on which a poll for the election of councillors could be held, it shall be lawful for the Governor to authorise such Civil Commissioner to publish, or cause to be published, such a notice as aforesaid, fixing such day or days for the receiving of nominations for candidates for the representation of the several districts of such division, and such day or days for publishing any other notice or doing any other act, as may be most convenient, and the councillors of the old divisional council shall remain in office until the first meeting of the council elected under the provisions of this Act.

If a councillor not elected on polling day through accident or other cause than neglect of voters, another polling day may be appointed by the Governor.

75. If any district of any division shall, from accident or other cause, not being the neglect of the voters to attend, as hereinafter mentioned, fail, at any poll appointed for such district, to elect a councillor for such district, it shall be lawful for the Governor to authorise the taking, in such district, upon such day as may seem convenient, of another poll, and such other poll shall be deemed to be as legal, valid, and effectual as if it were the poll first appointed for such district: Provided

Digitised by the University of Pretoria, Library Services, 2016

If failure to elect any councillor in any district be due to neglect of voters to attend at the poll, new notice to be published for nomination of candidates by any voters in the division; and poll to be taken for district of all voters in the division. Future district elections to proceed in ordinary course by poll of voters in that district only.

(*a*) That as often as it shall be certified to the Governor by the Civil Commissioner of any division, that at the poll duly appointed for any district, no member of the council was elected, by reason that no voter for such district attended to give his vote, then the Governor shall direct the Civil Commissioner to call by a notice in the form in the next succeeding section set forth, to be published in manner and form and for the same time as the notice in the thirty-first section of this Act mentioned, for a new nomination of candidates to fill the seat or seats in the council remaining vacant by reason that the district aforesaid so failed to elect; and shall, as soon as may be after the day fixed by such notice as the latest day for receiving such nominations, by another notice, published in manner and form as the notice in the thirty-ninth section of this Act mentioned, announce the names of the candidates nominated, and the day on which and the place at which a poll will be taken for the councillor or councillors whom the district which so failed to elect was entitled to elect, and such poll shall be taken by the Civil Commissioner in the court-room of the Resident Magistrate nearest to his office, and shall be kept open during the hours in the forty-second section specified; and at such poll every voter entitled to vote in any district of the division for councillors of that division shall be entitled to vote for the councillor or councillors to be then elected, and the person or persons elected at such poll shall be deemed to be the councillor or the councillors (as the case may be) for the district which shall have so, as aforesaid, failed to elect:

(*b*) That when the councillor or councillors so elected as aforesaid shall vacate office, the district for which he or they sat shall be again entitled to elect its councillor or councillors (as the case may be) precisely as if this section had never been passed:

(*c*) That as often as the district which so failed to elect shall be a district entitled to have elected more councillors than one, then each voter at the said poll shall be entitled to give one vote, and no more, for each of any number of candidates, not exceeding the number of councillors to be then elected:

(*d*) That if any district entitled to have elected more councillors than one shall have elected one or more, but not all of the councillors who should have been elected at such poll, then the provisions of this section regarding an election by the whole of the voters in the division shall apply to the election of the councillor or councillors who

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

shall not have been elected at such poll, in like manner as if no councillor had been elected at such poll; and the notice in the next succeeding section mentioned shall be modified accordingly.

76. The notice in the last preceding section mentioned, calling for the nomination of candidates, shall be in substance, as follows:—

Divisional Council for the Division of ————.

Form of notice to voters in the division to nominate candidates for district which has failed to elect.

Whereas the District No. — failed to elect a councillor (or councillors as the case may be) at the last election, by reason that no voter of such district attended at the poll to give his vote, I hereby invite the voters entitled to vote for councillors in the several districts of this division to nominate, in writing, candidates for the representation of the said District No. —. Every candidate must be nominated by not fewer than five voters, or otherwise his nomination will be null and void. No voter can sign more nominations than one, on pain of having his name struck out of all the nominations in which it appears, and considered as if never placed there. All nominations must be received by the undersigned not later than the —— day of ————, 18—, and any nomination received later than that day will be null and void. Every voter signing any such nomination must state his place of residence.

Dated this —— day of ————, 18—.

(Signed) A.B., Civil Commissioner for the Division of ————————.

Form of nomination by voters of division for district councillor.

77. The form for nominating candidates in reference to the notice in the last preceding section mentioned shall, in substance, be the form in the thirty-fourth section of this Act set forth, except that the word "said" in the said form shall be struck out: Provided that the provisions of the thirty-fifth section of this Act, except the last proviso thereof, shall apply to all nominations made under this section.

On failure by district voters to nominate without reasonable and sufficient cause, right of nomination and election passes to voters in the entire division, and new notice calling for nominations must issue.

78. If the voters of any district shall, without some reasonable and sufficient cause, to be judged of by the Governor, fail to nominate any candidate for such district, in case such district shall be entitled to elect one councillor, or the necessary number of candidates, in case such district shall be entitled to elect more councillors than one, then the right to nominate and elect the councillor or councillors for such district for whom no nomination shall have been received shall devolve upon the voters throughout the several districts of the division, and thereupon the provisions of the seventy-fifth, seventy-sixth and seventy-seventh sections of this Act shall, *mutatis mutandis*, apply to the election of such

Digitised by the University of Pretoria, Library Services, 2016

councillor or councillors: Provided that as often as the Governor shall be of opinion that a reasonable and sufficient cause existed for the failure to nominate as aforesaid, then the Governor may authorise the Civil Commissioner to issue a fresh notice, such as is in the thirty-first section of this Act mentioned, calling for nominations of candidates, in like manner as if the seat or seats for the district in question had become casually vacant.

Triennial tenure of office by elected councillors, but councillor may be re-elected.

79. The councillors throughout the Colony who shall be elected in manner aforesaid shall come into office on the date of the first meeting of the council to which they are elected, and shall go out of office on the 1st day of November, 1892, and a fresh election shall be held before the said day in the said last-mentioned year, and so on with triennial vacancies and triennial elections for ever; and all and singular the several provisions of this Act regulating the first election, after this Act shall take effect, shall, *mutatis mutandis*, extend and apply to all successive elections: Provided that nothing in this section contained shall prevent a councillor going out of office from being re-elected.

PART VI.

Expenditure upon Elections.

Notices in *Gazette* relating to election and required by this Act to be inserted free of charge by Government, but all other expenses connected with election to be defrayed out of moneys at the disposal of council.

80. The expenses arising out of the election of councils,—that is to say, the cost of publishing notices under this Act in any newspaper other than the *Gazette*, the cost of all printed papers hereinbefore directed to be provided in regard to the taking of any poll and the cost of remunerating field-cornets or others for their services in and about any election or the taking of any poll,—shall, except as next hereinafter is excepted, be defrayed from and out of moneys at the disposal or under the administration of the council: Provided that all notices relating to such election, required by this Act to be inserted in the *Gazette*, shall be so inserted through the Colonial Government, free of charge to the council.

Remuneration of field-cornets and others rendering services at elections to be according to tariff established by the Governor.

81. The remuneration to field-cornets or others in the last section referred to shall be according to a tariff to be fixed, and altered and amended from time to time, by the Governor, provided that the Governor shall have the power, if he deems fit, to increase such tariff remuneration in any special case at the request of the Council.

PART VII.

Retirement and Vacancies in Councils.

Resignation of councillor's office, and causes of vacation of office.

82. Any person elected to be a councillor or appointed to fill any other office under this Act shall be at liberty to resign such office by writing addressed to the Chairman or Secretary of the Council, and such resignation shall be complete from the date of its receipt by the said Chairman or Secretary.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

The office of any councillor shall become vacant in case such councillor shall

(a) Death. (a) Die.

(b) Resignation. (b) Resign his office.

(c) Incapacitated by judgment of competent court. (c) Be declared incapacitated from holding office by any competent court.

(d) Loss of qualification. (d) During the time for which he is elected cease to be qualified.

(e) Absence for 3 months from meetings. (e) Absent himself from the meetings of the council for three months from the time of his last attendance, without leave of the council first had and obtained, from any meeting, whether ordinary or special, which may have been held within that period, unless he shall have been prevented by sickness or some other lawful and sufficient cause, to be judged of by the council: Provided that every member prevented from attending at such meetings as aforesaid by sickness or other cause, shall be bound to report, or cause to be reported, to such council, not later than twenty-eight days next after the day on which the last of the said meetings shall have been held, the cause of his non-attendance; and if no such report shall have been received, or, being received, shall be resolved by the council not to be lawful and sufficient, then the seat of such member shall, as aforesaid, become vacant: And provided that, in regard to special meetings of the council, absence from the same shall not be reckoned or regarded for the purposes of this section unless notice of the same shall have been given to the member who shall have absented himself, in reasonable and customary time.

(f) Conviction and sentence without option of fine. (f) Be convicted and sentenced to imprisonment without the option of a fine for any offence.

(g) Holding Crown office of profit, insolvency, assignment of estate, contracting with council, becoming surety for contractor. (g) Become the holder of any office of profit under the Crown, or become insolvent, or assign his estate for the benefit of his creditors, or become a contractor under any contract with the council of which he is a councillor, or be interested in any such contract directly or indirectly, or become surety for any contractor under such contract.

Councillor elected by more than one district must, under penalty of void election, within fourteen days declare for which district he elects to sit.

83. As often as any person shall have been elected as a councillor by more districts than one, he shall be bound to declare to the Civil Commissioner of the division, within fourteen days next after the publication of his name as councillor for such districts respectively for which of the said districts he elects to sit as councillor, and upon such election by him the seat or seats of such person for the other district or districts by which he was elected

Digitised by the University of Pretoria, Library Services, 2016

shall become vacant: Provided that in case such person shall not within the fourteen days aforesaid, make his election as aforesaid, then all the seats in the council for which seats such person was elected shall become vacant.

Provision for election to fill casual vacancies in councils.

84. As often as any casual vacancy shall occur in any council, upon any of the grounds in the last preceding section mentioned, or upon any other ground mentioned in this Act, then all and singular the provisions of this Act in regard to elections shall, *mutatis mutandis*, apply to the election of a member to supply such vacancy: Provided that the dates to be fixed for receiving the nomination of candidates, and for the taking of the poll (if any) shall be, as regards the filling up of casual vacancies, in the discretion of the Civil Commissioner.

PART IX.

Position of Civil Commissioner and Procedure at Meetings of Council.

Civil Commissioner *ex officio* a councillor, and Chairman when present at meetings of council; but if acting Civil Commissioner be also Secretary of Council, he shall not be a councillor or preside.

85. The Civil Commissioner of the district shall, *ex officio*, be a councillor of his division, and shall, when present, preside as chairman at all the meetings thereof: Provided that if, in any case, the person acting as Civil Commissioner shall be the secretary of the council, then such person shall not be a councillor, or preside as chairman at any of its meetings.

Quorum at meetings of council.

86. At every meeting of any council which shall consist of less than seven councillors, three councillors with or without the Civil Commissioner shall form a quorum; and at every meeting of any council which shall consist of seven or more than seven councillors, four councillors, with or without the Civil Commissioner, shall form a quorum.

Election of Chairman when Civil Commissioner absent from meeting.

87. Every meeting of any council at which the Civil Commissioner shall not be present shall, before proceeding to business, elect some councillor present to be the chairman of such meeting.

No casting vote for the Chairman.

88. The Civil Commissioner or other councillor presiding at any meeting shall in regard to all questions that may come before such meeting have his original or deliberative vote, but not a casting vote.

Meetings open to the public, vote of majority to decide.

89. All meetings of the council shall be open to the public, and all questions shall be decided by a majority of the councillors present.

Councillor pecuniarily interested in matter under discussion not to vote, under penalty of £50 sterling.

90. No councillor shall vote upon or take part in the discussion of any matter in or before the council in which he has directly or indirectly by himself or his partners any pecuniary interest. And any councillor contravening the provisions of this section may be prosecuted on sworn information by any person, and shall, for every offence, be liable to a penalty not exceeding fifty pounds.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Adjournment of meetings whether quorum present or not.

91. The councillors present at any meeting may from time to time adjourn such meeting: and if at any meeting of the council a sufficient number of members be not present to exercise the powers vested in the council, the councillors present, or the major part of them or any one councillor, if one only be present, may adjourn such meeting.

Notice required before resolution of council can be reconsidered for revocation or alteration; and revocation or alteration requires majority of two-thirds of councillors present if number present not greater than number present at former meeting.

92. No resolution at any meeting of the council shall be revoked or altered at any subsequent meeting, unless notice of the intention to propose such revocation or alteration be given to each of the councillors fourteen days at least before holding the meeting, nor unless such revocation or alteration be determined upon by a majority consisting of two-thirds of the councillors present at such subsequent meeting, if the number of councillors present at such subsequent meeting be not greater than the number present when such resolution was come to or by a majority if the number of councillors present at such subsequent meeting be greater than the number present at such former meeting.

Notice of meetings to be given to each councillor, with notice of object of any special meeting which shall not transact any but business set forth in such notice.

93. All notices of any special or adjourned meeting of the council shall be in writing, and shall be delivered or sent by post or otherwise to the usual place of business (if any) or to the place of abode of each of the councillors at such time, previous to such meeting, as the council may by its bye-laws provide, and every such notice shall specify the time of meeting, and in case of a special meeting, shall specify the object thereof, and no business shall be transacted at any special meeting except such as is stated in the notice thereof.

Occasional or standing committees; delegation of powers; quorum of committees fixed by council.

94. The council may from time to time, as they may see fit, appoint occasional or standing committees, either of a general or a special nature, and may delegate to any committee or single councillor any inquiry or power to do any act which they may think fit, and in case of a committee may fix the quorum of every such committee, and every such committee may from time to time appoint one of its members to be chairman thereof, and the council may from time to time continue, alter, or discontinue such committee, and every such committee shall report to the council.

Procedure of committees of council; if quorum not fixed two councillors must be present.

95. Every committee so appointed may meet from time to time and may adjourn from place to place, as they may think proper, but no business shall be transacted at any meeting of the committee unless the quorum of members (if any) fixed by the council, and if no quorum be fixed, two members be present, and at all meetings of the committee if the chairman be not present one of the members present shall be appointed chairman, and all questions shall be determined by a majority of the votes of the members present.

Vacancy in council or committee not to invalidate proceedings of quorum.

96. No proceeding of the council or of any committee shall be invalidated or be illegal in consequence only of there being any vacancy in the number of councillors at the time of such proceed-

Digitised by the University of Pretoria, Library Services, 2016

ing, provided that a quorum of such council or committee be present.

Minutes of meetings of council or committee to be duly kept by Secretary, and signed by Chairman at next meeting; and when attested by signature of Chairman and Secretary a copy or extract from such minutes to be received as *prima facie* evidence in all courts

97. The council shall by way of minutes cause entries of all the proceedings of the council and of every committee appointed by them with the names of the councillors who attend at each meeting, and of the names of all councillors voting upon any question for the decision of which a division is called, to be duly made from time to time in books to be provided for the purpose, which shall be kept by the secretary under the superintendence of the council. And every such entry shall be signed by the chairman at the meeting next succeeding the meeting at which such proceeding has taken place. And every entry purporting to be such entry as aforesaid and to be so signed, or a copy of or an extract from such entry, attested by the signatures of the chairman and secretary, shall be received as evidence in all courts, without proof of the meeting to which the same shall refer having been duly convened or held, or of the persons attending such meeting having been or being councillors or members of committee respectively, or of the signature of the chairman or of the fact of his having been chairman, all which last-mentioned matters shall be presumed until the contrary is proved.

Minute books to be open to inspection by councillors, ratepayers, and creditors of the council, and copies or extracts may be taken without fee.

98. Such books shall at all reasonable times be open to the inspection of any of the councillors and of any ratepayer or creditor of the council, any of whom may at all reasonable times, without fee, make any copy of or take any extract therefrom.

Proceedings of council or committee not invalidated by reason of defect in election or appointment or of disqualification of chairman, councillor or officer.

99. All proceedings of the council, or of any committee, or of any person acting as chairman, councillor, or officer of the council as the case may be, shall, notwithstanding that it be afterwards discovered that there was some defect in the election or appointment of any such chairman, councillor, or officer, or any disqualification, be as valid and effectual as if every such chairman, councillor, or officer, had been duly elected and qualified.

Appointment by council or Governor in case no Chairman or Secretary, or none who will or can act.

100. If at any time there shall be no chairman or secretary, or any chairman or secretary shall refuse to act or be incapable of acting as by this Act provided, all acts and things which may or are required to be done by such chairman or secretary, as the case may be, may lawfully be done and performed by such one of the councillors as the council may appoint for that purpose, and failing such appointment by the council, by such person as the Governor may appoint.

PART X.

Officers of Council.

Secretary and other officers of council, appointed and removed by council.

101. Every council shall have a secretary, and such other officers (if any) as shall be deemed necessary by such council, and such officers shall be appointed by such council, and shall hold office during the pleasure of the council: Provided

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

(*a*) That the secretary and other officers appointed by any council shall remain in office, notwithstanding the occurrence of any number of general elections of members of such council, unless removed by such council.

Security to be given by officers dealing with funds.

(*b*) That every council shall take from every officer employed by it, who shall be charged with the receipt or disbursement of any of the funds of such council, sufficient security for the due performance of his duty.

Civil Commissioner's clerk may be secretary of council.

102. Nothing in this Act contained shall prevent any council from appointing, with the consent of the Governor, any Civil Commissioner's clerk to be secretary to such council.

Salaries to officers.

103. It shall be lawful for every council to assign to its secretary and other officers such salary as it shall deem adequate and proper, to be paid out of any rates or other funds at the disposal of such council.

Termination of employment of officers by three months' notice, in the absence of stipulation or of misconduct of officer.

104. Unless it shall be otherwise stipulated in the contract with, or appointment of, any such secretary or other officer, the employment of any such secretary or officer shall terminate upon a notice upon either side of not less than three months, or in case of misconduct without notice.

Suspension by chairman of any officer for misconduct to be reported to next meeting of council: Temporary successor may be appointed by chairman, but council appoints permanent successor.

105. The chairman may at any time suspend from office or service any officer or servant of the council who may in his opinion be guilty of misconduct or neglect, and if necessary temporarily appoint another in his place: Provided that at the next meeting of the council after such suspension the chairman shall report the matter to the council, and if the officer or servant so suspended be dismissed by the council, no salary or wages shall be due or paid to him from and after the date of his suspension, and every person so temporarily appointed shall hold office and receive remuneration (which shall in no case exceed that paid to the officer or servant so suspended) only until the council shall decide whether the person suspended shall be reinstated or be dismissed, and until a successor be appointed in his stead.

Officers not to receive other remuneration for official duty than appointed salary or allowance, nor to be interested in any contract; penalty dismissal and incapacity for future office.

106. Every officer employed by the council who shall exact or accept on account of anything done by virtue of his office, or in relation to the matters to be done under this Act, any fee or reward whatsoever other than the salary or allowance by way of salary allowed by the council, or who shall be in anywise concerned or interested in any contract made by the council, shall be dismissed as for misconduct and incapable of being afterwards employed by the council in any official capacity.

PART XI.

Auditors; Accounts; Borrowing Powers, &c.

Annual election of auditors by voters in the division, at meeting of which due notice shall be given.

107. Two auditors of the accounts of every council, who shall be deemed to be officers of the council, and amenable to regulations under the Audit Act of 1875, shall be elected by the persons

Digitised by the University of Pretoria, Library Services, 2016

entitled to vote for councillors at a public meeting of such persons, to be convened by the Civil Commissioner of the division, and to be held, except in regard to the Cape division, in the court-room of the district of which such Civil Commissioner is the Resident Magistrate, on the second Wednesday of the month of January succeeding every general election of councillors: Provided

(*a*) That the Civil Commissioner shall convene such meeting by a notice posted for not less than fourteen days next before the day of meeting at or near his public office, and published in any newspaper issued in the town or village in which such meeting is to be held, or, if there be no such newspaper, then in some newspaper circulating in the division:

(*b*) That if such Civil Commissioner shall fail or neglect to post or publish such notice, the said meeting shall, nevertheless, be held at ten o'clock a.m. on the day and at the place aforesaid:

(*c*) That such meeting may be adjourned till a future day should the persons present thereat and entitled to vote so determine:

(*d*) That the public meeting for the division of the Cape shall be held on the day aforesaid, in the Town House, Cape Town.

Disqualifications for the office of auditor.

108. It shall not be competent to elect as an auditor any councillor or officer of the council of which the accounts are to be audited by such auditor, nor any person related to any councillor or officer of such council in or within the third degree of consanguinity or affinity: Provided

(*a*) That no auditor who was at the time of his election duly qualified to be elected shall cease to hold such office by reason that some person related to him in or within such third degree shall, after the election of such auditor, become a councillor of the council to supply some casual vacancy, or by reason that such auditor and some person who was, when such auditor was elected, already a member of the council, shall after such election become related to each other in or within the third degree of affinity:

(*b*) If any auditor shall after his appointment as such be elected a councillor of the council, his office of auditor shall, *ipso facto*, become vacant.

Nomination of auditors at meeting: appointment must be accepted at the meeting.

109. At every meeting held for the election of auditors every person proposed to be elected an auditor shall be nominated by one person entitled to vote, and such nomination shall be seconded by some other such person: Provided that no person shall be elected an auditor unless, being personally present, he shall accept the office, or some one of the electors present shall produce his

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

acceptance of the office by a writing under his hand; and, failing such acceptance, verbal or written, then an election of a person instead of the person in respect of whom such acceptance shall not be given shall at such meeting take place, until some two persons shall be chosen who shall, at such meeting, agree to act.

Vacation of the office of auditor, remaining auditor to act till vacancy filled.

110. Should any auditor die or resign, or refuse to act, or become incapable of acting from mental or bodily disease, or cease to reside in the division for which he was elected, or become insolvent, or assign his estate for the benefit of his creditors, or become a contractor, or be directly or indirectly interested in any contract, or be or become surety for any contractor with the council of which he is to audit the accounts, or be elected a councillor of such council, his office shall become vacant, and the remaining auditor shall act alone until the next election of auditors, or of one auditor, as the case may be, as hereinafter provided.

Proceedings for filling vacancy in the office of auditor.

111. If the election of auditors should fail to take place, or should become void for any reason, or if such election having taken place, both or either of the auditors shall, upon any of the grounds in the immediately preceding section mentioned, vacate office, then the Civil Commissioner shall, upon such notice as is in the one hundred and seventh section mentioned, convene a public meeting for some convenient day, not being less than fourteen days after the day on which such notice shall be posted, as in the said section mentioned, and such meeting shall proceed to elect two auditors or one auditor, as the case may be, in manner and form provided by the said section.

Books to be kept by the council; inspection and right to take copies of books, valuation rolls, and rating lists.

112. The council shall cause books to be provided and true and regular accounts to be kept therein of all sums of money received and paid on account of and for the council, and of the several purposes for which such sums of money have been received and paid, which books together with all valuation rolls and rating lists shall at all reasonable times on every Wednesday be open at the office of the council to the inspection of any councillor, ratepayer, or creditor of the council as well as by the auditors under this Act. And any such person may without fee take copies of or extracts from the said books.

Duties of auditors; publication of abstract of accounts; certificate and declaration by auditors; penalty for wilfully untrue certificate.

113. It shall be the duty of the auditors to examine, half-yearly, the accounts of receipts and payments of the council, to ascertain that they are supported by proper vouchers, that the expenditure is in accordance with votes, or resolutions, or contracts of the council, and that such votes, and resolutions, and contracts are authorised by law; and also to ascertain and certify the amount of the cash balance in the hands of the council or of its treasurer, and where such cash is deposited; to publish for and on behalf of the council in the English and Dutch languages in some newspaper published in the division, or if there be none, some newspaper circulating therein, an abstract of the accounts, with a

Digitised by the University of Pretoria, Library Services, 2016

certificate of the auditors as to their correctness or otherwise, which certificate shall be in the form prescribed by regulations under the Audit Act of 1875; and if any such auditor shall wilfully certify any such account knowing the certificate or the account verified by it to be untrue in any material particular, he shall be deemed to be guilty of contravening this section of this Act, and shall upon conviction be liable to punishment by fine not exceeding twenty pounds, or in default of payment of the fine, by imprisonment with or without hard labour for any period not exceeding one month.

Accounts to be balanced within one month after 30th June and 31st December in each year for purposes of audit and all vouchers, books, &c., to be produced to auditors, who may either sign accounts as correct, or disallow improper items.

114. For the purpose of the examination by the auditors in the one hundred and thirteenth section provided, the council shall in each year, not later than the thirty-first day of January and the thirty-first day of July, cause the accounts of the council to be balanced to the thirty-first day of December and the thirtieth day of June immediately preceding such firstmentioned dates respectively, and after each such balancing the auditors shall audit the said accounts as soon as conveniently may be. And the council shall, by the secretary, produce and lay before the auditors the accounts so balanced as aforesaid, with all vouchers in support of the same, and all books, papers and writings in their custody or power relating thereto; and if the auditors after due inquiry shall be satisfied that all moneys received have been duly accounted for, and that all payments charged have been duly authorised and made, they shall sign the said accounts, in token of their allowance thereof, but if they think there is just cause to disapprove of any item of the said accounts they may disallow the same, stating in a report to the council their reasons for disapproval.

Persons who may be present at audit and submit objections, in writing, to any part of the accounts.

115. Any person interested in the said accounts, either as a creditor of the council, or as a ratepayer, may be present at the audit of the said accounts, by himself or his agent, and may make any objection in writing, signed by such person or his agent, to any part of such accounts.

Audited statements to be laid half-yearly before council in February and August, shewing assets and liabilities, half-yearly receipts and payments, and rates made and contracts entered into.

116. Half-yearly statements showing the financial position of the council to the end of December and June respectively shall be prepared and laid before the council at their first ordinary meeting in the months of February and August respectively. Such statements shall be audited by the auditors and shall contain an account of all moneys received or paid by the council during the preceding half-year, and a statement of all rates made and contracts entered into during such half-year, and of all assets and liabilities of the council.

Inspection of audited statement.

117. The council shall cause every such audited statement to remain for inspection at the office of the council, and any creditor or ratepayer of the council, or any person acting on his behalf, may at all reasonable times, on every Wednesday at such office, inspect such statement and compare the same with the books and documents relating thereto in the possession of the council.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Audited accounts, when produced at open meeting in February or August, or at adjournment thereof, shall be examined, settled, and if approved, certified by chairman.

118. The accounts of the council so balanced as aforesaid and audited, and either allowed or disallowed by the auditors as aforesaid, together with the said statement, shall be produced at the lastmentioned meetings of the said council, or at some adjournment thereof, at which meetings all creditors, ratepayers, and other persons interested as aforesaid may be present, and the accounts shall then be finally examined and settled by the council, and if the same be found just and true they shall be allowed by the council and certified accordingly, under the hand of the chairman of such meeting. And a copy of the abstract published under the one hundred and thirteenth section of this Act shall be kept by the secretary at the office of the council.

Copy of auditors' abstract to be kept by secretary.

Governor may appoint examiner of council's accounts.

119. The Governor may from time to time appoint some person to examine the accounts of any council. And such council shall by the secretary produce and lay before the person so appointed all books and accounts of the council with all vouchers in support of the same, and all books, papers, and writings in their power relating thereto.

Powers of examiner appointed by Governor.

Penalty on person neglecting or refusing to comply with duties under this section; False oath equivalent to perjury.

120. For the purpose of every examination under the provisions of the last preceding section it shall be lawful for the person appointed to hear, receive, and examine, evidence upon oath (which oath such auditor is hereby empowered to administer), and by summons under his hand, to require such persons as he may think fit to appear personally before him at a time and place to be stated in such summons, and to produce all such books and papers as may be necessary for such audit. And any person so required who shall without lawful excuse, neglect or refuse to attend in obedience to such summons, or who having appeared shall refuse to be examined upon oath or affirmation, or to take such oath or affirmation, or having taken such oath or affirmation, to answer such questions as shall be put to him, shall incur and be liable to a penalty not exceeding ten pounds for every act or offence, and in default of payment to be imprisoned with or without hard labour for any period not exceeding three months unless such fine be sooner paid: Provided that no conviction under this section shall be taken to exempt the person convicted from liability to do or perform the act, matter, or thing required to be done or performed by him, or from being successively convicted and punished for every distinct commission of the same act or offence; and provided further that any such person who shall make any wilfully false statement upon oath shall be deemed to be guilty of the crime of perjury.

Remuneration of auditors out of funds of council.

121. The remuneration to be paid to auditors elected under this Act shall be such amount as shall have been previously fixed by the council, and such remuneration, together with the cost of publishing every notice of meeting and abstract of accounts, shall be paid from and out of the funds of the council.

Digitised by the University of Pretoria, Library Services, 2016

Final audit by Controller and Auditor-General of accounts of councils, which must then be laid before Parliament.

122. Every council shall cause an exact and particular account to be kept, and to be made up and balanced at the end of each half year, in manner and form prescribed from time to time by regulations framed under the Audit Act of 1875, of all moneys raised or collected or otherwise received by such council or by any person on its behalf, under the provisions or for the purposes of this Act, and of all rates assessed under this Act due and in arrear, and of all disbursements made and expenses incurred by the said council for the said purposes, distinguishing the amount derived from each source of receipt, and shall forward such account, rendered and audited, by the aforesaid auditors in conformity with the aforesaid regulations, and accompanied by their certificate of its accuracy and correctness and by all necessary vouchers, to the Controller and Auditor-General of the Colony, by whom it shall be audited, and an abstract of all such accounts so audited shall be laid before both Houses of Parliament. If any person who may be surcharged by the Controller and Auditor-General as having made or authorised or as being otherwise answerable for any illegal payment appearing in the accounts of any divisional council, shall fail to adjust or recover such surcharge within such time as may be allowed for its recovery in regulations framed under the provisions of the sixth section of the "Audit Act, 1875," the Controller and Auditor-General shall report such surcharge and all necessary particulars to the Attorney-General, who shall sue the person or persons in default, in any court of competent jurisdiction, for the recovery of any amount which, in the opinion of such Attorney-General, has been properly surcharged, and any costs adjudged to be payable by the defendant in any such suit, shall be payable by such defendant personally or out of the funds of the divisional council concerned, as such court may direct.

Power of Attorney-General to recover amount properly surcharged.

Accounts of council to show separately expenditure on objects for which contributions are received

123. Every council which shall receive or be entitled to any contribution from any other council or from Government, or any person or public body, shall keep its accounts in such manner as to shew separately and correctly the expenditure really and *bona fide* made by such council upon the object or for the purpose for which such contribution is received or claimable, and shall half-yearly forward a detailed account of such expenditure to the Government or contributory.

Surplus funds may be deposited in banks.

124. Whenever the funds at the disposal of any council may exceed the amount immediately required for carrying into effect the objects of this Act, every such council may deposit the surplus in any joint-stock bank or Savings Bank in the Colony.

Public funds granted in aid of specific work to be applied to purpose specified, and accounts to show application.

125. Whenever any sum of money may be granted from the public treasury to any council, in aid of any specific work within such division, such money shall be applied to the special purpose stated in such grant, and to none other; and the accounts of the council shall be so framed and kept as to show such application.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Overdraft by Council for temporary accommodations not to exceed prior year's income.

126. For the temporary accommodation of councils, it shall be lawful for such councils with the consent of the Governor to obtain advances from banks, by overdraft of the current account upon the credit of the council. But no such overdraft or accommodation shall at any time under any circumstances exceed the prior year's income.

Councillors personally liable for sums unlawfully borrowed with their consent on account of the council.

127. If after the commencement of this Act, any council borrow any money, as on the credit of the council but to the payment of which divisional council funds are not legally applicable, all councillors who have consented to the borrowing of such money shall be jointly and severally liable to repay the same and all interest thereon to the persons from whom the same was borrowed, and the same may be recovered from such councillors or any of them, as money lent by such persons to such councillors in any court of competent jurisdiction, but in no case shall such money be recoverable from or out of divisional council funds.

PART XII.

Remuneration to Councillors.

Remuneration of councillors for attending meetings.

128. It shall be lawful for each council, out of any funds at its disposal or under its administration, to pay to each councillor attending any meeting of such council, travelling expenses at a rate, in regard to each member, to be fixed by such council, not exceeding in the whole ten shillings per day for every day necessary for journeying to, remaining at, and returning from the place of meeting: Provided that no councillor whose ordinary place of residence shall not be distant more than five miles from the place in which any meeting of such council shall be held shall be entitled to receive any payment for or in regard to his attendance at such meeting either by way of travelling expenses or otherwise.

No other remuneration to be received by councillor in respect of his office; penalty for contravention.

129. No councillor shall have or receive any salary or allowance, or exact, accept or receive any fee or reward whatsoever, not granted or allowed by this or some other Act, for, on account, or by reason of his office as such councillor; nor shall any member become a contractor with the council of which he shall be a member. Any person contravening this section of this Act may be prosecuted upon sworn information by any person, and shall incur and be liable to a penalty not exceeding one hundred pounds: Provided that nothing in this section contained shall prevent any councillor from receiving any fee or allowance which the Governor shall authorise for or on account of any service performed by such councillor under and in pursuance of any Act of Parliament, or any fee or allowance specially granted to him by the council for inspection of roads or works under the control of the council according to a tariff to be approved of by the Governor.

But special fees and allowances for special services may be taken when authorised by Governor or according to tariff by him approved.

Digitised by the University of Pretoria, Library Services, 2016

Secretary to certify payments to councillors; penalty for wilful false certificate.

130. No payment under the two last preceding sections shall be made out of the funds at the disposal of the council save upon the certificate of the secretary which, with the receipt of the councillor, shall be preserved as the proper vouchers for such payments, and if the secretary shall grant any such certificate which to his knowledge shall be false in any material particular, he shall be liable for each offence to a fine not exceeding fifty pounds or to imprisonment with or without hard labour for a period not exceeding three months unless such fine be sooner paid, or to such imprisonment without the option of a fine.

PART XIII.

Suits and Proceedings by and against Councils.

Legal name of council.

131. The council of any division may sue or be sued by the name or style of "The Divisional Council of ————," and may in all legal proceedings be referred to by that name or style.

Invalidity of election of council not to affect legal proceedings.

132. The invalidity of any election under this Act shall not affect any action, suit, or other proceeding by or against any council, but every such action, suit, or other proceeding shall be tried and determined as if no such objection existed.

Secretary may appear in court for council without producing authority; but other agent if appearing must produce authority signed in specified form.

133. In all suits and proceedings in any court of Resident Magistrate by or against any council, it shall be lawful for the secretary of such council to appear as the agent of such council, without producing his authority to sue and to defend: Provided that nothing herein contained shall be construed so as to prevent any council from appearing in any such court by an agent other than the secretary of such council; and the power to sue or defend, to be produced by such agent, and filed with the clerk of the court, shall be signed by the secretary thus: "By order of the Divisional Council, A.B., Secretary of such Council."

Power to sue or defend in other courts how to be signed.

134. In all suits and proceedings in any court other than the Court of the Resident Magistrate, the warrant to sue or defend shall be signed by the Civil Commissioner thus: "By order of the Divisional Council, C.D., Civil Commissioner."

Signature of Civil Commissioner *prima facie* evidence of authority of council to sue or defend.

135. No proof need be given in any court that the Civil Commissioner or the secretary of the council (as the case may be), in signing any such warrant or power as aforesaid, acted under the authority of the council, but evidence shall be admissible to prove the contrary.

Service of process how effected.

136. Any summons or notice, or any writ or other proceeding at law requiring to be served upon any council may be served by being given personally to the chairman or secretary, or left at the council office.

Jurisdiction of Resident Magistrate in all cases for recovery of rates.

137. The Resident Magistrate of any district shall have jurisdiction in all cases of suits for the recovery of divisional council rates without reference to the amount thereof, and he is hereby empowered to adjudicate upon all such cases notwithstanding that he shall be chairman of the council.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

PART XIV.

LAPSING OF ANY COUNCIL FOR A DIVISION.

On lapse of three months of council for any division Governor may annex such division to adjoining division for the purposes of this Act only, but books and accounts must be kept separately.

138. In case there should not be at any time in any division, for the space of three months, any council, then it shall be lawful for the Governor, by proclamation, to annex such division to any adjoining division in and for which division a council shall exist, and thereupon the council of such lastmentioned division shall become the council of the other division so annexed, and shall be competent to exercise, and is hereby required to exercise, all and singular the provisions and authorities which might under this Act have been exercised by the council of the division so annexed, did such a council exist: Provided

(*a*) That such annexation shall take place only for the purposes of this Act, and not for any other purpose;

(*b*) That notwithstanding any such annexation, the council of the division to which any other division shall have been annexed shall keep books and frame the accounts required by this Act in such a way as to keep the receipts and expenditure of the division which shall have been so annexed as aforesaid distinct and separate from the receipts and expenditure of the division to which such division shall have been annexed;

(*c*) That the secretary and auditors of the council of the division to which any other division is so annexed shall perform their respective duties for and on behalf of both divisions, but shall receive out of the funds of the annexed division such separate remuneration for the addition to their duties caused by the annexation as the said council shall determine.

Governor may appoint by proclamation councillors to form a council for a division whose elected council has lapsed. Such appointed council shall hold office for three years.

139. Notwithstanding anything in the preceding section mentioned, it shall be lawful for the Governor, under the circumstances therein set forth, instead of annexing the division in and for which no council shall exist to another division, to nominate and appoint, by proclamation, such number of fit and proper persons as he shall select, being not less than five nor more than seven, to be the council of such division, for the purposes of this Act; and every such nominated council shall be competent to exercise, and is hereby required to exercise, all and singular the powers and authorities which might under this Act have been exercised by a council duly elected, did such a council exist: Provided

(*a*) That the persons so nominated and appointed may or may not be persons resident within such division, as may be found convenient:

(*b*) That every nominated council shall go out of office at the end of three years, reckoned from the day of the publication of the proclamation appointing such council,

Digitised by the University of Pretoria, Library Services, 2016

and be succeeded by another council to be appointed by proclamation as aforesaid, and so on, as long as no council shall be elected for that division.

Division whose council has lapsed may at any time elect a council under this Act, and annexation or appointment may then be annulled by proclamation.

140. Should any division which shall have been annexed as aforesaid to any other division, or for which a council shall have been appointed as aforesaid, at any time after such annexation or appointment, elect and have a council for such division, it shall be lawful for the Governor, by proclamation, to revoke and annul such annexation or appointment from and after such convenient day as the Governor shall fix and announce; and from and after such day, but not sooner, the council so elected shall be deemed and taken to be in office, and shall take over from the council previously in office all moneys, contracts, officers, matters, and things belonging to the administration of such council in regard to such division, in the plight and condition in which they shall then be, precisely as if the period of office of such previous council had terminated by effluxion of time.

DIVISION III.

Powers, Duties, and Functions, &c., of Councils.

SUB-DIVISION I.

PART I.

Roads, &c.

Powers and duties of council with regard to divisional and main roads respectively.

141. Every council shall, with the funds at its disposal for such purposes, be invested with the power and charged with the duty of making all divisional roads, and of superintending, maintaining, keeping in repair, preserving, and improving all main and divisional roads, within the division represented by such council.

Clause vesting property in the council, and conferring power of administration in accordance with this Act.

142. The right to and property in all and singular the roads under the superintendence, control and management of the council of any division, and to and in all gates, bars, sheds, houses, buildings, toll-houses, public dams, upon or belonging to any such public road, and to and in all materials for road-making, plant, cattle, implements, utensils, and things whatsoever, which may be provided by such council, and used for the purposes of this Act, and all property, movable and immovable, duly acquired by such council for the purposes of this Act, shall vest in such council, and such council shall be authorised and entitled to administer and dispose of any of the said matters and things for the purposes of this Act and in accordance with the provisions thereof as to such council may seem expedient.

Powers of council as to entry and inspection.

143. Every council shall for the purposes of this Act have power, by themselves or their officers, to enter at all reasonable hours in the daytime into and upon any building or land within

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

the division for the purpose of executing any work or making any inspection authorised to be executed or made by them under this Act without being liable to any legal proceedings on account thereof.

PART II.

Powers to take Lands and Materials, and Proceedings in connection therewith.

Power to enter on and take possession of land for road purposes, and purposes incidental to the making of roads; power to take materials.

144. Every council may enter upon and take possession of so much of any land belonging to the Crown as may be required for the purposes set forth in the one hundred and forty-first section, and for any other purpose subsidiary to the proper exercise and discharge of the power and duty by that section conferred and imposed, including the erection of toll-houses, toll-bars, and residences for workmen or other persons employed by such council in connection with such exercise and discharge, and every council may enter upon all such land lying convenient to any main or divisional road, and there may dig, get, and carry away any stone, clay, or other materials which may be required or serviceable for the purposes of this Act.

Similar power where one council is charged with the duty of maintaining main road lying in another division, and corresponding duties also to be discharged by such council.

145. As often as any council is or shall be, by any law, charged with the duty of maintaining and keeping in repair any line of main road lying in any other division than that to which such council belongs, the council so charged shall be and it is hereby invested with all and singular the same powers and authorities in regard to the taking of lands and materials, whether of the Crown or of private persons, the erection of toll-houses and toll-bars, and residences for workmen and other persons employed by such council as in the last section mentioned, the taking of tolls, the renting or farming of tolls, and the protection of tolls by penalties, which would have been possessed by the council of the division in which such line of road shall lie, in case such council had been charged with maintaining such line and keeping it in repair; and the council first aforesaid shall be charged with the performance of every duty in regard to such line which the council of the division in which it lies would have been charged with in case such lastmentioned council had been charged with such maintenance and repair.

Council invested with the rights of Government under Cradock's proclamation, by express stipulation or otherwise, with regard to the taking of land and the raising and carrying away of materials, but notice must be given to the proprietor. Gates with lock and key to be provided where entrance made through fences.

146. For the purposes aforesaid every council and every person duly authorised by such council is hereby invested with all and singular the legal rights, if any, belonging to the Government of this Colony, in respect to the taking of any land, and the raising and carrying away materials for making and repairing public roads, whether such rights have been preserved to the said Government by the proclamation of His Excellency Sir John Francis Cradock, bearing date the 6th day of August, 1813, permitting the conversion of lands on loan into places on perpetual quitrent,

Digitised by the University of Pretoria, Library Services, 2016

or have been created by express stipulation or condition in any grant of freehold property, or exist in any other way or manner whatsoever: Provided

(*a*) That no land be taken, or materials be raised or carried away as aforesaid, without previous notice to the proprietor thereof.

(*b*) That where fences exist and the council is desirous to obtain an entrance through such fences, such council shall have the power to make such entrance, but the council shall be bound to erect gates with locks and with keys, to be kept by the owner or occupier of the land, and by any person authorised by the council, and such gates shall be kept locked when not required to be opened for use.

Compensation to be determined by agreement or arbitration under Act No. 6 of 1882.

147. If any council should, for the purposes aforesaid, require to take or use any land, or to dig, get, or carry away any materials situated as aforesaid, belonging to any person who may not be bound by law to allow such council so to do without requiring any recompense or payment, and who may think proper to require compensation from such council, it shall be lawful for such council to agree with such person as to the amount of such compensation, and in the absence of agreement the amount of compensation shall be determined by arbitration in manner provided by "The Lands and Arbitrations Clauses Act, 1882."

Governor to have powers conferred by sections 144 and 147.

148. The Governor shall have in respect of the construction of main roads all powers, and be subject to all duties, conferred or imposed upon any council under the one hundred and forty-fourth and one hundred and forty-seventh sections of this Act.

PART III.

Proclamation and taking over of Roads.

Proclamation of main or divisional road by Governor at request of council, which proclamation may be revoked or altered at like request.

149. The Governor may, at the request of the council of any division, by proclamation, declare any road or portion of a road situate in such division to be a main or divisional road; and such road shall thereupon be deemed for all purposes to be a main or divisional road, as the case may be; and any such proclamation may, at such request, be from time to time altered or revoked as may be thought expedient; provided that by no such proclamation without consent of Parliament shall Government be deemed to be authorised to incur the cost of constructing any new main road or portion thereof.

Construction of main road to be completed before road handed over to council; disputes to be decided by arbitration under Act No. 6 of 1882.

150. No main road or portion of a main road now in course of construction, or which may hereafter be constructed, shall be placed in the hands of any council before such construction shall have been completed, and as often as any council shall be required to take over any main road as having been con-

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

structed, it shall be lawful for such council, in case it shall not consider that such road is yet constructed, according to the true intent and meaning of this Act, to require that the question in dispute shall be decided by arbitration in manner provided by "The Lands and Arbitrations Clauses Act, 1882."

Duty of Government as to retaining walls of mountain passes.

151. It shall be the duty of the Colonial Government, from and out of the public revenue, to keep in usual and customary repair the retaining walls of every mountain pass in this Colony for the space of twelve months next after the day upon which any such pass shall hereafter be taken over by any council.

PART IV.

Closing or Diverting of and Erection of Gates across Roads.

Governor, at request of council, may proclaim that road in division shall cease to be a main or divisional road, or that any such road or any public road, path, or track in the division shall be closed or diverted.

152. It shall be lawful for the Governor, at the request of the council of any division as aforesaid, and by proclamation as aforesaid, from time to time to declare that any main or divisional road or part of any main or divisional road in the division now in existence, or which may hereafter be in existence, shall cease to be a main or divisional road, as the case may be, and such road, or part of a road, as the case may be, shall thereupon cease to be such road accordingly; or to declare that any main, divisional, or other public road, path, or track in such division shall be diverted or closed at such time as shall be specified in that behalf in any such proclamation; and such road, path, or track shall thereupon be so diverted or closed as the case may be accordingly: Provided

Notice required before proclamation by Governor, to afford opportunity for objections.

(*a*) That no such request as aforesaid shall be entertained by the Governor unless and until a notice in writing of the intention to make the same shall have been posted for general information at some conspicuous place outside of the building wherein the office of such council is situated, and at the residence of each field-cornet of the division, and until notice of such intention shall have been published in the *Gazette* once in each month for a period of three months, and once a week during six weeks in some newspaper published within the division, or if none such, in some newspaper circulating within the division, which notice shall in some part thereof clearly describe the road, path, or track sought to be affected and the situation thereof, and shall require any person objecting to lodge with the said council, within three months after the date of the posting or first publication of such notice, his objections thereto in writing; and any objections which may be so lodged shall be transmitted to the Governor, together with any such request as aforesaid;

Digitised by the University of Pretoria, Library Services, 2016

(*b*) That the words path or track shall not be taken to mean trekpaths lawfully used in certain districts of the Colony:

Trekpaths not included in path or track.

(*c*) That at the request of the council of any division the Governor may proclaim as a divisional road any main road or portion of a main road which has ceased under this section to be a main road:

Road which has ceased to be a main may be proclaimed a divisional road.

(*d*) That the right of the public to travel along any main or divisional road, or part thereof, which has ceased to be such road shall continue unless and until such road or part thereof shall have been diverted or closed.

Public right retained to travel along road until closed or diverted.

153. Whenever the owner or occupier of any land over which a public road, path, or track shall pass shall be desirous of fencing such land, he shall be at liberty to do so if he provides a swing-gate in such fencing so as to allow persons entitled to use such road, path or track, free passage; and such gate shall at all times be kept in proper repair to the satisfaction of the Divisional Council by the owner or occupier of such land: Provided that any gate placed across any public road, path, or track, which is not a swing gate, substantially constructed and properly hung, shall be deemed to be unlawfully so placed, and the owner or occupier of the property whereon such gate is placed shall in every such case be liable to all such penalties and obligations as would be incurred by any person wilfully obstructing such public road, path or track.

Lands over which public road runs may be fenced, if free passage be secured by swing gate kept in proper repair, substantially constructed and properly hung.

154. Any person, not being such owner or occupier, or not being thereto duly authorised by such owner or occupier, who shall open or unfasten any gate erected or provided in pursuance of the provisions of the last section, except for the purpose of then and there passing through the same with or without any vehicle or animals in his care, or of enabling some other person or persons so to pass, or who shall pass through any such gate and shall fail or neglect, forthwith after so passing through the same, to close and fasten such gate or cause it to be closed and fastened, shall, upon conviction before any Resident Magistrate or Special Justice of the Peace, be liable to a penalty of not exceeding five pounds, or in default of payment thereof, to imprisonment with or without hard labour for any term not exceeding thirty days, unless such fine be sooner paid. And any person who shall damage or destroy such gate whether in passing through or otherwise, shall forthwith make the same good, and in case of failure or neglect shall upon conviction before any Resident Magistrate or Special Justice of the Peace be liable to a penalty of not exceeding ten pounds, or in default of payment thereof to imprisonment, with or without hard labour, for any term not exceeding two months, unless such fine be sooner paid.

Penalty for opening, and for leaving open any swing gate except for purpose of lawful passage.

Penalty for damaging, &c., any such gate.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

PART V.

Definition of Width of Roads.

Application of sections 155 to 161 when specially proclaimed for any division.

155. The provisions of this part of this Act shall—that is to say the provisions of sections one hundred and fifty-five to one hundred and sixty-one inclusive—apply to such divisions of the Colony as shall be proclaimed in manner hereinafter mentioned, and no other.

Council may determine width of public roads, which here includes every road over which a right of way exists: but no alteration of width of road passing between houses or improved lands.

156. It shall be the duty of every council to fix and determine what shall be the width of every public road withintheir jurisdiction to be constructed for the use of wheeled vehicles, and also the width to be allowed on each side of such roads for the purpose of removing stock in cases where such roads are not enclosed; and for the purposes of this section every road over which a right of way shall exist in favour of some person or persons other than the owner or occupier of the land on which such road is situate, shall be taken to be a public road: Provided that no alteration shall be made in the width of any road passing through or between any garden, cultivated lands, orchards, vineyards, or between buildings on homesteads.

Circumstances to be considered by council in determining the width of public roads.

157. In determining the width of the several roads the council shall take into consideration the circumstance of any such road being

(1) A main road,
(2) A divisional road,
(3) A road with the right of way mentioned in the one hundred and fifty-sixth section of this Act,
(4) A mountain pass, or
(5) An approach to a drift;

and also the nature of the soil over which such road passes, and whether the same is used for pastoral or agricultural purposes: Provided that it shall be lawful for every council to select and appoint upon enclosed public roads resting places (each of which shall not exceed half an acre in extent or be distant less than two miles from each other), for cattle passing along such roads, and such resting places shall be selected and agreed upon by the council, and the owner of the land upon which the same are to be reserved; and in case of disagreement the selection of such resting places, and the amount of compensation (if any) to be paid out of the funds of the council for injury to property or other loss, shall be settled or determined by arbitration, in manner provided by "The Lands and Arbitration Clauses Act, 1882."

Resting places for cattle, subject to compensation determined by agreement or by arbitration under Act No. 6 of 1882.

Council to notify definition of width of roads to field-cornets, and in *Gazette* and public newspapers.

158. Having defined the width of the several roads within its division, the council shall give notice of the same to the several field-cornets of the division: and shall also publish such notice in the *Gazette* and in some one or more newspapers, if any, published or circulating in such division.

Digitised by the University of Pretoria, Library Services, 2016

159. Within a reasonable time after such notice has been given the council shall, if necessary, remove all fences or obstructions which shall in any way encroach upon the roads of which the width has been defined as hereinbefore provided for; but the owners of the fences so removed shall be entitled to receive compensation for such removal, the amount thereof to be agreed upon between such owners and the said council, and in case of any dispute as to such amount, the question shall be referred to arbitration in manner as provided by "The Lands and Arbitration Clauses Act, 1882."

Removal of existing obstructions by council, subject to compensation in case of fences determined by agreement or arbitration under Act No. 6 of 1882.

160. Any person who shall, after such notice has been given defining the width of public roads in any division, erect any fence or raise any obstruction which shall encroach upon the width of any road as defined under the provisions of this Act, shall be called upon immediately to remove the same, and in case of his neglect to do so, such fence or other obstruction shall be removed by the council at the expense of such person, which shall be recoverable at the suit of the council in the Court of the Resident Magistrate of the district in which such fence or other obstruction shall be situate.

Removal of obstructions, made after notice, by council at expense of person raising obstruction.

161. It shall be lawful for the Governor, at the request of the council of any division, from time to time, to put this part of this Act in force in such division, by proclamation published in the *Gazette*, and upon the like request and in like manner to suspend the operation of those sections for such time as the Governor may deem necessary.

Proclamation of sections 155 to 161 in any division at request of council; and proclamation of suspension of operation of those sections.

PART VI.

Tolls and Toll Bars.

162. All toll-bars lawfully established at the time of the passing of this Act shall continue to be so established; and all tolls leviable thereat shall continue to be leviable and receivable by the council of the division, as if the same had been established under this Act; and every council may, from time to time, with the sanction of the Governor and by a proclamation in the *Gazette* to be by him issued in that behalf, abolish or remove any such toll-bar, or notwithstanding anything to the contrary contained in any law, abolish or alter any of the rates of toll now or hereafter existing within its division: Provided

Established toll-bars and tolls to continue; but council may, with Governor's sanction by proclamation, abolish or remove any toll-bar, or abolish any rates of toll or alter them to rates not more than thrice the amount of existing rates, without prejudice to the rights of any renter or farmer of tolls in the division.

(*a*) That it shall not be competent for any council to increase any toll existing at the time of the taking effect of this Act to rates or amounts exceeding treble the rates or amounts of the tolls payable at the time of the taking effect of this Act:

(*b*) That it shall be lawful for any council, from time to time, with such sanction as aforesaid, at its discretion, to alter particular items in any tariff of tolls, by increasing or

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

diminishing the same, without altering the other items of such tariff, as also to add new items or omit old items:

(*c*) That no such proclamation shall be issued unless the Governor shall be satisfied that the person, if any, entitled under the one hundred and sixty-fourth section, to rent or farm the tolls at any toll-bar in the division, the tolls whereof would be affected by such proclamation, has had notice of the proposed abolition or alteration, and has either consented or has no reasonable grounds for objection.

How toll-bars may be established by proclamation after notice in the *Gazette*, but not in any municipality or corporate town without consent of the council or corporate body.

163. Every council may, after having given six weeks' previous notice in the *Gazette* of their intention so to do, erect and establish, at such places as it may deem fit upon any roads under its charge, as many toll-bars as it may deem requisite, and may demand and receive thereat such reasonable tolls as it may deem proper, to be appropriated to the maintenance and improvement of any such roads: Provided, always, that no toll-bar shall be erected or established, and no toll shall be demanded or received, without the previous sanction of the Governor, to be published in a proclamation in the *Gazette* to be by him issued in that behalf and provided that no toll-bar shall be erected or established within the limits of any municipality or corporate town save with the consent of the municipal council or corporate body, and subject to such terms and conditions as may be mutually arranged.

Power of council to let or farm for one year the tolls at any toll-bar either by tender or to the highest and best bidder at public auction, notice calling for tenders or of the sale being given, and a bond with sureties being entered into for the payment of the stipulated hire.

164. Every council may, from time to time, if it shall deem fit, let or farm the tolls to be payable at any toll-bar on any road in the division, by tender or by public auction, to the highest and best bidder, for any term not exceeding one year in any case: Provided

(*a*) That previously to every letting of such tolls the council shall give, by notice to be posted at the office of the council, and published in some newspaper published in the division, or, if none, in some newspaper circulating therein, or otherwise in some convenient manner, a public notice of the time and place at which tenders will be received, or any such auction as aforesaid will take place:

(*b*) That in every letting of such tolls, whether by tender or by auction, the council shall require the farmer or renter thereof to enter into a bond, with not less than two sufficient sureties, to the satisfaction of the council, each binding himself as principal debtor for the payment of the whole rent or hire of the said tolls, at the time and in the manner in that behalf to be in the said bond specified; and if any instalment or payment of such rent or hire shall be in arrear and unpaid for the space of three days after the same may have become

Provisions for recovery of unpaid hire.

Digitised by the University of Pretoria, Library Services, 2016

due, the council may, by any person duly authorised in that behalf, enter upon and take possession of the said tolls, and of all toll-houses, or other buildings of which the renter or farmer in default would otherwise be entitled to the use, and may re-let the said tolls, or otherwise may place a collector or collectors in receipt thereof, and in possession of the said houses and buildings, as to such council may seem fit; and the sum for which the said renter or farmer may have been in default, together with all further instalments or payments stipulated to be made by the said farmer or renter, shall be due and demandable from him, in like manner and form as if he still remained in receipt of the said tolls, credit being given to him for whatever sums may be received on account of the said tolls less the expense of collecting, in respect of the term for which the said tolls were let to the renter or farmer making default;

Highest bidder at auction to produce sureties forthwith, or right put up again for disposal at his risk if lower price obtained.

(*c*) That unless the highest bidder shall forthwith on the day of sale produce two such sufficient sureties as aforesaid, who shall forthwith sign such bond or an undertaking to execute the same, the right to rent or farm the tolls shall not be knocked down to the said highest bidder, but shall forthwith be again put up for disposal by public auction, and the difference between the highest bid then obtained and any greater sum which may have been bid by the said highest bidder shall be a debt due by him to the council, to be recovered in any competent court.

Table of tolls to be conspicuously shown at every toll-bar.

165. Every council, or, in case of any letting to hire, every renter or farmer of any tolls, shall affix, or cause to be affixed, in a conspicuous place, at each toll-bar whereat any toll is payable, a table of the tolls to be taken thereat, plainly and legibly painted or printed in the English and Dutch languages, under a penalty not exceeding five pounds, to be sued for by any person in any competent court, for his own use.

Toll-keeper may prevent passage unless tolls paid; and penalty for evading payment of lawful tolls.

166. The person entitled to demand and receive the toll payable at any toll-bar or toll-gate, may prevent the passing through such toll-bar or toll-gate, of any vehicle or animal on which any toll shall be payable, until such toll be paid; and if any person liable to any toll from whom it has been duly demanded, or who, by any act of his own, intended to prevent a due demand from being made, may have succeeded in preventing such due demand from being made, and may, without paying the said toll, and without the consent of the person entitled to demand the same, or without some other lawful authority, have proceeded through or beyond the place where the same is of right demandable, such person shall upon conviction in any competent court be liable to a fine of not less than twenty shillings, and not more than

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

ten pounds, and in default of payment thereof, shall be liable to be imprisoned and kept at hard labour for any period not exceeding one month, unless such fine be sooner paid.

Exemptions from the payment of tolls.

167. No toll shall be demanded at any bar on account of the use of any road by any vehicle or animal employed in conveying, or in returning from conveying, any gravel, stone, or other material for making or repairing the roads, under the control of the council of the division, or any buildings, matters, or things belonging thereto, or for any vehicle or animal used by any officer engaged on council duty, or used by any officer or soldier being in proper staff or regimental or military uniform, dress or undress, and on duty, or for any vehicle conveying Imperial Stores, and provided with a pass signed by the proper Imperial authorities, or for any vehicle or animal used by any officer or member of any volunteer corps, or of the Cape Mounted Rifles, in uniform and on duty, or of any police force on duty ; and further, no more than one full toll in any one day, to be computed from twelve of the clock at night to twelve of the clock of the next succeeding night, shall be demanded in respect of the same vehicle or animal for passing and repassing through the same toll-bar.

"Toll-bar" shall include "ferry." Provisions for collection or farming, and for division of revenue from tolls, at any ferry situated partly in one and partly in another division.

168. All and singular the provisions of this Act with regard to toll-bars and tolls shall be read as though the word "toll-bar" included "ferry": Provided

(*a*) That if, in any case, it shall so happen that any ferry at which there is a toll shall ply between two divisions, and not be wholly in either of them, then the tolls taken at such ferry shall be divided between the councils of both divisions, share and share alike:

(*b*) That in regard to any such ferry, such councils shall, by mutual agreement, arrange between them which council shall have the letting or farming of the toll at such ferry, and that, failing such agreement, the Governor shall decide.

Equitable division of income from tolls, in certain cases, to be settled by arbitration.

169. If there shall now or hereafter at any time be any toll-bar lawfully established on any main road at or near the boundary between two divisions, it shall be lawful for the Governor at the request of the council of either of the said divisions, in case the councils of the said divisions cannot mutually agree to an equitable division of the income derived by the one of them from the establishment of such toll-bars, to direct that arbitrators, to be appointed in accordance with the provisions of the fourteenth section of this Act, shall inquire into and determine what share, if any, of such income it is in their opinion fair and reasonable that the council of the division in which such toll bar is situated should pay to the council of the adjoining division, and after receiving the award of the arbitrators aforesaid, or the majority of them, the Governor shall cause the same to be proclaimed in the

Digitised by the University of Pretoria, Library Services, 2016

Gazette, and from and after the date of any agreement arrived at between the said councils as aforesaid, or of such proclamation, as the case may be, the council wherein the said toll bar shall be situated shall be bound and obliged to conform to, abide by, and obey the terms of such agreement or award, as the case may be.

PART VII.

Construction of Bridges.

Governor may call for tenders for the construction of bridges on the line of main roads.

170. It shall be lawful for the Governor, from time to time, by notice in the *Gazette*, to call for tenders from any joint-stock company, or other co-partnership, or private person who may be prepared to enter into a contract for the construction of one or more bridges over rivers which are crossed by any line of main road in this Colony.

Details required to be contained in tenders to be sent in, as to construction, site, &c., of bridge, and tolls to be paid.

171. Every such tender shall specify the river or rivers over which the party tendering proposes to construct a bridge or bridges, and shall state the spot or site or spots or sites where it is proposed to construct the same, and shall describe in detail the nature or character of the bridge or bridges proposed to be constructed, and the materials of which the same shall be made, and shall contain or annex a tariff showing the maximum or highest rate of all tolls proposed to be levied at every such bridge, and shall set forth the number of years, reckoned from the day of the execution of the contract for the building of any such bridge, during which term tolls, not exceeding the rates specified in such tariff, shall be payable to the party tendering, and shall also contain all such other information as the said notice calling for tenders shall describe or require.

Governor may treat with parties tendering.

172. Should it appear to the Governor that any tender sent in, in pursuance of any such notice, is of such a nature as to give promise that a contract may be founded upon it, which it would be for the public interest to enter into, then the Governor shall, if necessary, cause the party tendering to be communicated with, for the purpose of coming to a clear and full understanding upon all points necessary to be understood before concluding such contract, and of agreeing upon any modifications which may appear desirable.

Proposals when clearly understood to be communicated to the council of any division in which the whole or part of the proposed bridge would be situate.

173. As soon as a clear and full understanding shall have been come to between the Government and the party tendering, the Governor shall cause the proposals of the party tendering to be transmitted or communicated to the council of the division in which any such bridge is proposed to be constructed, to the end that such council may advise the Governor whether, in the opinion of such council, it will be expedient to conclude a contract upon the terms proposed, and, if not, what modification of any of those terms the said council would suggest: Provided that if in any case

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

any such bridge should be a bridge connecting two divisions, and not entirely in either of them, then the full particulars aforesaid shall be transmitted to the councils of both divisions.

Council to advise the Governor, within what distance from the bridge no other toll-bar should be established.

174. Every council to which any such proposals as aforesaid shall have been transmitted or communicated shall, when advising the Governor upon the subject thereof, inform him respecting the distance from either end of the proposed bridge within which distance it should not be competent during the term for which the party tendering is to be entitled to the tolls taken at such bridge, to put up or have any other toll-bar or toll-gate upon the road passing over such bridge, to the end that such restriction as to distance may be embodied in the contract, should a contract be made.

When Governor may enter into contract.

175. In case the party tendering shall agree with the council or councils as to the distance from the proposed bridge within which no toll shall be established, other than the toll at such bridge, or shall agree to any modification of such distance which any such council shall consent to make, and in case the Governor, after receiving and considering the advice of the council or councils upon the subject of such proposals, shall decide that it will be for the public interest to enter into a contract with the party tendering, it shall be lawful for the Governor, and he is hereby authorised, to enter into such contract, and such contract shall be of the same force and effect as if embodied in this Act.

Contract to specify time within which bridge shall be completed and contain agreement to keep it in repair under penalty for breach.

176. Every such contract shall (amongst other things) specify a time within which the bridge or bridges, the subject matter of such contract, shall be completed and opened for traffic, and shall contain a covenant by the party contracting, that such party shall keep and have the said bridge or bridges in reasonably good repair and condition during and throughout the term of years for which such party is to be entitled to receive tolls at the rates agreed upon, and shall specify some sum of money to be paid to the Government by the party contracting, for and on account of any breach of any such engagement or covenant, by way of ascertained and liquidated damages for such breach: Provided that the Governor, if satisfied that any such breach arose from causes over which the parties contracting had no control, may remit the payment of such damages.

Governor may remit penalty.

Contracting party to deliver over bridge in good repair on expiration of period.

177. Every party contracting for and constructing any such bridge shall be, and such party is hereby declared to be, bound and obliged, at the expiration of the term of years during which such party is to be entitled to receive the tolls aforesaid, to deliver over the said bridge to the Colonial Government in reasonably good repair and condition, and such bridge shall, from and after such delivery, become and be public property, precisely as if it had been originally constructed by the said Government: Provided that, if any dispute or controversy shall arise or exist regarding the state

Arbitration in case of dispute.

Digitised by the University of Pretoria, Library Services, 2016

and condition of the said bridge at the time of such delivery or proposed delivery, such controversy or dispute shall be settled by arbitration under the "Lands and Arbitrations Clauses Act, 1882."

Bridge when delivered to be deemed part of main road, and at all times protected by law as regards protection of main roads and the levying of tolls.

178. Every such bridge when delivered to the Colonial Government shall forthwith for all the purposes of this Act be deemed to become and be a portion of the road on the line of which such bridge is situate, and to become and be in the charge and custody of the council of the division in which such bridge is situate. Every such bridge shall at all times as regards its protection against injuries, whether malicious or through carelessness, be deemed to be, in law, a main road, or part or portion thereof, and the tariff of tolls authorised by any such contract as aforesaid to be taken at any such bridge shall during the continuance of such contract be, and the same is hereby declared to be, as legal, valid, and effectual as if the same had been established by this Act, and as though the person entitled under such contract were a lessee of a toll-bar on a main road.

Security for proper execution of contract to be given.

179. Every party contracting for the construction of any such bridge under this Act shall give security to the satisfaction of the Governor for the due fulfilment by him of all the covenants, undertakings, and obligations by him to be fulfilled and kept under the contract and under this Act.

Councils empowered to contract for bridging rivers on divisional roads, but Governor's sanction required.

180. It shall be lawful for any council to enter into a contract with any joint-stock company, or other co-partnership or private individual, for the construction of any bridge over any river crossing any line of divisional road in the division which such council represents, in like manner as by this Act provided in regard to bridges over rivers crossing lines of main road: Provided that no such contract shall be concluded by any council without the previous sanction of the Governor.

Application for sanction to be accompanied by full particulars.

181. Every application to the Governor by any council requesting such sanction as aforesaid shall contain or be accompanied by the several particulars hereinbefore by the one hundred and seventy-first section of this Act required in regard to all tenders in the said section mentioned.

Application to be published in *Gazette*, and time fixed for sending in objections.

182. The Governor, upon receiving any such application and particulars shall, by notice in the *Gazette*, publish the said application and particulars, or an abstract of them, for general information, and shall in such notice, state that any parties objecting to the construction of the bridge or bridges mentioned in such application, upon the proposed terms, may send to the Colonial Secretary, on or before some day to be fixed in such notice, not being earlier than thirty-one days from the date of the first publication of such notice, their objection to such construction.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Governor, after hearing and deciding all objections, may sanction a contract as proposed or with modifications.

183. In case the Governor, after considering any such application as aforesaid, and all objections, if any, urged against it, shall decide that it will be for the public interest that the council shall be authorised to conclude the contract mentioned in such application, or any modification of the contract which the Governor shall suggest, and the council and the party proposing to contract with them shall agree to, the Governor shall, through the Colonial Secretary, give his sanction to the council to enter into such contract, and any contract so sanctioned shall be of the same force and effect as if embodied in this Act.

Sections 176, 177, and 178 to apply *mutatis mutandis* to contract, to make bridge in the line of divisional road.

184. The provisions of the one hundred and seventy-sixth, one hundred and seventy-seventh, and one hundred and seventy-eighth sections of this Act shall extend and apply *mutatis mutandis* to every such contract as is in the last preceding section mentioned, and precisely as if wherever the terms "Colonial Government," "Government," and "Governor" are used in any of the said sections, the term "council" had been used in their place and stead.

Where proposed bridge is within municipal limits, the municipal council to have the powers conferred on divisional councils.

185. Every municipal council of any municipality shall, in regard to any bridge to be constructed within the limits of such municipality, be invested with all and singular the powers and duties hereinbefore conferred and imposed upon divisional councils in regard to the construction of bridges over rivers crossing divisional roads, and all and singular the provisions of sections one hundred and eighty to one hundred and eighty-four inclusive, shall, *mutatis mutandis*, apply to all contracts for the construction of bridges proposed to be entered into by any municipal council: provided that in the interpretation of this Act the term "municipal council" shall mean any board of commissioners, municipal, or town, or borough council elected by any municipality, town, or borough established under any law.

Where proposed bridge on main road shall connect municipal with other land, municipal council to be consulted on proposal.

186. As often as any bridge proposed to be constructed under this Act, upon any line of main road, shall be a bridge connecting any municipality with any extra-municipal ground, then the Governor shall, besides transmitting the proposal in the one hundred and seventy-third section mentioned to the divisional councils concerned, transmit the same to the municipal council of such municipality to the end that such board may advise the Governor in like manner as is hereinbefore provided with respect to divisional councils.

Where proposed bridge on divisional road shall connect municipal with other land, municipal council and divisional council may join in application to Governor.

187. As often as any bridge proposed to be constructed under this Act, upon any line of divisional road, shall be a bridge connecting any municipality with any extra-municipal ground, then it shall be lawful for the municipal council of such municipality, and the divisional council concerned, to agree together in regard to the terms and conditions of the contract to be entered into for the construction of such bridge, and to join together in the application to the Governor for his sanction to such contract.

Digitised by the University of Pretoria, Library Services, 2016

188. All tolls which may be taken at any such bridge connecting any municipality with extra-municipal ground at any time after the expiration of the term of years during which the tolls payable at such bridge shall be taken by the party who constructed such bridge, shall belong to the divisional council or to the municipal council, or be divided between them in some certain proportion as the said councils shall determine by mutual agreement: Provided

Revenue from tolls to whom payable after termination of right of party constructing bridge described in two foregoing sections.

(*a*) That the cost of keeping such bridge in repair after it shall have become public property shall be borne by that one of the two bodies which shall be in receipt of the said tolls; or should such tolls be divided between the two bodies in a certain proportion, then the said cost shall be borne by such bodies in the same proportion.

Bridge to be maintained by body receiving revenue from tolls.

(*b*) That the Governor shall not give his sanction to any contract for the construction of any such bridge until the divisional council and the municipal council concerned shall have agreed together regarding the division or other appropriation of the tolls, if any, to be taken at such bridge, after the expiration of the term during which the tolls are to be taken by the party who constructed such bridge.

Governor's sanction to be withheld until divisional council and municipal council have agreed as to appropriation of tolls after termination of right of party constructing bridge.

189. In regard to any bridge which shall be constructed under this Act entirely within the limits of any municipality, it shall be lawful for the municipal council of such municipality upon and after the expiration of the term of years during which the tolls payable at such bridge shall be taken by the party who constructed such bridge, to exercise all the powers by this Act conferred upon divisional councils with regard to the establishment of a toll-bar and the levying of tolls thereat in connection with such bridge, and the income received under this section shall be for the use and benefit of the funds of such municipality.

Municipal council to levy tolls, where bridge is within municipality, after right of contracting party shall have ceased.

190. Every such bridge as is in the one hundred and eighty-sixth section of this Act mentioned shall, at all times from and after the construction thereof, be deemed to be a portion of the main road leading over it to or through the municipality, and every such bridge as is in the one hundred and eighty-seventh section mentioned shall be deemed to be a portion of the divisional road leading over it to or through the municipality, and every such bridge as is in the one hundred and eighty-fifth section mentioned shall be deemed to be a portion of the municipal road or street along which it is constructed: Provided that nothing herein contained shall extend to, alter, or affect any of the provisions of the one hundred and eighty-eighth section of this Act regarding the appropriation of tolls or the duty of making repairs.

Bridges mentioned in secs. 185, 186, 187, shall be deemed portion of muncipal, main, or divisional road as the case may be; but sec. 188 not affected.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Councils of two divisions may join in application for Governor's sanction for the construction of bridge.

191. As often as any bridge proposed to be constructed under this Act, upon any line of divisional road, shall be a bridge connecting two divisions, and not entirely in either of them, then it shall be lawful for the councils of both the divisions concerned to agree together in regard to the terms and conditions of the contract to be entered into for the construction of such bridge, and to join together in the application to the Governor for his sanction to such contract, and the provisions of the one hundred and seventy-sixth, one hundred and seventy-seventh, and one hundred and seventy-eighth sections of this Act shall extend and apply to every such contract as is in this section mentioned, as well as to every contract mentioned in the one hundred and eighty-fifth and one hundred and eighty-seventh sections of this Act.

Tolls to be levied on bridge connecting two divisions, after right of party constructing it shall have ceased, shall be equally divided between the two, unless by the Governor otherwise determined.

192. If any bridge constructed under this Act (being a bridge over which a line of main road or a line of divisional road passes) shall be a bridge connecting two divisions, and not entirely in either of them, then it shall be lawful for the Governor, upon and from and after the expiration of the term of years during which the tolls payable at such bridge shall be taken by the party who constructed such bridge, and with the advice of the councils of both such divisions to establish, by proclamation, tolls to be payable at such bridge, and the tolls levied at such bridge shall be divided between the said two divisions in equal shares and proportions, unless the Governor shall otherwise determine: Provided

(*a*) That the Governor shall, and may, in equally dividing or otherwise appropriating the said tolls, by proclamation, make due provision, as circumstances shall demand and convenience dictate, for the superintendence, maintainance, preservation and keeping in repair of the said bridge by one or both of the councils of such divisions.

(*b*) That the provisions of this Act shall be deemed to extend to all toll bars and tolls established under this section.

PART VIII.

Government Inspection of Main Roads and Bridges, Proceedings by Ratepayers to enforce proper Making and Maintenance of Roads by Councils, &c.

Governor may direct periodical inspections and reports of main roads, &c., if roads, &c., not properly maintained, may direct repairs to be effected by council, and if road, &c., be not repaired in time prescribed as reasonably necessary, not being less than three months, Governor may

193. It shall be lawful for the Governor to direct periodical inspections and reports to be made of the condition and requirements of all main roads and bridges, or pontoons on the line of any main road, and should the report of the inspecting officer be of such a nature as to show that any section of main road or any such bridge or pontoon is not properly maintained, it shall be lawful for the Governor to direct that a full report of the nature of the repairs required be sent to the secretary of the council of the division in which the road, bridge or pontoon is situated, and

Digitised by the University of Pretoria, Library Services, 2016

to direct that such road, bridge or pontoon shall be placed in proper repair, and should the council, so addressed through their secretary, fail to place such road, bridge or pontoon in proper repair, to the satisfaction of such inspecting officer as the Governor may appoint, within such reasonable time as the inspecting officer may report to be necessary for that purpose, being not less than three months, it shall be lawful for the Governor to direct that such road, bridge or pontoon shall temporarily be removed from the charge of the council of the division in which either may be situate, and the Governor may cause such road, bridge or pontoon to be put into proper repair, and the sums expended in placing the road, bridge or pontoon in proper repair, together with all reasonable expenses of the person or persons employed in the inspection aforesaid, shall be a debt due by the said council to the Treasurer of this Colony: Provided that a certificate from the Chief Inspector of Public Works, countersigned by the Controller and Auditor-General of Public Accounts, shall be transmitted to the secretary of the council, setting forth the particulars of such debt, and such certificate shall in all courts and places be conclusive evidence of the amount of such debt.

temporarily remove road, &c., from charge of council and cause repairs to be effected at expense of council, which shall receive certified particulars of debt so due.

Certificate conclusive evidence of amount of debt.

194. If on the report of such inspecting officer as aforesaid, it shall appear that any main road, bridge or pontoon situate in any division is not in a proper state of repair, and that such main road, bridge or pontoon cannot be placed in a proper state of repair without such an expenditure as would necessitate a rate exceeding one penny in the pound for main road purposes in such division, then in case the council of such division shall impose a rate of not less than one penny in the pound for main road purposes, and shall prove to the satisfaction of the Governor that such rate has been duly assessed, and that an amount equal to the total amount of such rate will be applied to the repair of the main roads, bridges and pontoons within such division, it shall be lawful for the Governor to supplement the funds of such council available for main road purposes by a grant in aid out of the public revenue, not exceeding in any case the amount to be realised by such rate as aforesaid, and to be expended upon the main roads, bridges and pontoons aforesaid, in case such grant shall be required for putting, or towards putting, the said main roads, bridges and pontoons in a proper state of repair: Provided

If rate of one penny in the pound is reported insufficient for proper repair of main roads, bridges or pontoons, in any division, Governor may supplement funds of council available for main road purposes.

(*a*) That no second or further grant in aid shall be made within twelve months next after the making of the first or any succeeding grant.

(*b*) That unless an amount equal to the amount contributed from the public revenue in any year shall be expended by the council upon the main roads, bridges and pon-

Digitised by the University of Pretoria, Library Services, 2016

toons of its division within twelve months next after the making of its contribution, then the deficiency shall be recoverable from such council under the "Public Bodies Debts Act, 1867."

Reconstruction or extraordinary repair of bridge or pontoon on line of main road, requiring extraordinary expenditure, shall, if council has satisfactorily performed its duties, be regarded as coming under the head of construction.

195. If by reason of floods or other casualty, any bridge or pontoon on the line of any main road shall be carried away, or shall sustain damage entailing an extraordinary expenditure for repairs of more than one hundred pounds sterling, or if from natural decay any bridge or pontoon shall require to be reconstructed or to be repaired at an expenditure exceeding two hundred and fifty pounds sterling, and if in either case it shall have been proved to the satisfaction of the Governor, that notwithstanding the due exercise of reasonable foresight on the part of the council to which the maintenance of such bridge or pontoon belongs, such casualty by floods or otherwise could not have been prevented, and further that the council responsible has in all respects satisfactorily performed its duties of maintenance, preservation and keeping in repair in respect of such bridge or pontoon, then the reconstruction or such extraordinary repairs of such bridge or pontoon, as the case may be, shall be regarded as coming under the head of construction: Provided that if at any time any doubt or question should arise whether any particular work necessary to be done on or about any main road should be regarded as coming under the head of construction or the head of maintenance, such doubt or question shall be decided by the Governor, which decision shall be final, unless Parliament shall otherwise decide.

Where question arises as to any work as properly under construction or under maintenance the Governor shall decide, subject to decision, if any, of Parliament.

Ratepayers, representing at least three-fourths in value of rated property in any field-cornetcy, may insist on repair of any neglected road in division, and unless council can prove that on roads in such field-cornetcy it has during preceding three years expended the sums received from road rates therein levied, the road rates levied therein after such demand shall in the first place be devoted to repair of the neglected road.

196. Whenever any council shall refuse or neglect to maintain in proper repair any main or divisional road within the division, any number of persons liable to be assessed to road rates in any field-cornetcy, or in any two or more field-cornetcies, through which such road may pass, being not less than three-fourths in value of the persons so liable within the said field-cornetcy or field-cornetcies, may apply in writing to the said council, and demand that such road may be put in proper repair: upon the receipt of which demand the said council shall be bound, within a reasonable time, to put such road into proper repair; and no fresh road rates levied after the receipt of such demand within such field-cornetcy or field-cornetcies shall be appropriated to any other purpose than the repair of such road, until the repair thereof be completed: Provided, always, that the foregoing provision shall not apply in any case in which any council may prove that it has expended in the repair of other roads in the said field-cornetcy or field-cornetcies, within the preceding three years, the sums which it has received as road rates leviable therein during that period.

Digitised by the University of Pretoria, Library Services, 2016

Majority of ratepayers, being a majority of three-fourths in value, in one or more field-cornetcies may request the levy of a special additional rate by the council for the making, &c., of a road other than a main or divisional road, and the council shall comply with such request and apply the rate accordingly.

197. Whenever the majority of any persons liable to be assessed to road rates in any field-cornetcy, or in any two or more field-cornetcies in a division, being not less than three-fourths in value of persons so liable within such field-cornetcy or field-cornetcies, should desire to have a road situate therein, which is not a main or divisional road, made, improved, or repaired, they may apply to the council in writing, setting forth their wishes, and request that a special additional rate, not exceeding in any one year the amount of one penny in the pound upon the value of the immovable property within such field-cornetcy or field-cornetcies liable to be rated, may be levied upon such property, for the purpose of being appropriated by the council, or by a committee of the inhabitants of such field-cornetcy or field-cornetcies, to be approved by the council, to the purpose aforesaid; and every such council shall be bound to comply with such application within three months after it has received an application for its imposition.

PART IX.

Contributions to other Funds in regard to Roads and Bridges.

Contribution to making or improving road or bridge in other division only lawful if resolved on by meeting of ratepayers, convened after thirty days' notice, except contributions arranged under sec. 199 or be prescribed by law.

198. Before any council may contribute to the making or improving of any road, bridge or pontoon in any other division, otherwise than according to the provisions of the one hundred and ninety-ninth section of this Act or of any law, it shall, by a notice to be published in the English and Dutch languages, in the *Gazette*, and in some newspaper published in the division, or, if none be there published, then in some newspaper there circulating, call a meeting of the owners of immovable property liable to be assessed under this Act, to be held at some convenient place and time, to be named in such notice, such time to be at least thirty days after the issue of such notice, for the purpose of deciding whether any, and if so what, sum shall be contributed by such council to such road, bridge or pontoon, and upon what terms and conditions; and if, at such meeting, the majority in value of rateable property resolve that the council be authorised to contribute a certain sum, then such council may pay over to the council of the division in which such road, bridge or pontoon may be, any sum not exceeding the sum named in such resolution, upon the terms and conditions approved at such meeting: Provided, however, that any council may call such meetings as aforesaid, from time to time, for the purpose of increasing the amount of the contribution to any such road, bridge or pontoon, or of varying the terms or conditions of such contribution; and that, if any such meeting as aforesaid should reject the proposal to contribute or to add to any previous contribution, no similar meeting shall be again called to consider the same proposal, until the expiration of six calendar months from the day on which such previous meeting was held.

No second meeting within six months from previous meeting.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Provisions for joint action and contribution by councils of adjoining divisions in making or improving roads connecting the divisions: if councils cannot agree matter may be left to arbitration of Assistant Commissioner of Crown Lands.

199. Whenever any council may decide upon making or improving, in its division, any line of road which leads to or through any other division, the said council shall communicate to the council of the other division the course of the proposed line, and the public purposes which the proposed work is meant to serve, and shall desire the concurrence of the last mentioned council in the making or improving of such road; and any two or more councils agreeing upon the making or improvement of a road which passes through any part of their several divisions, may arrange together as to the execution of the work on such road, and as to the contribution from one to the other of funds in aid of the execution of such work; and if any such councils cannot agree as to the making, or improvement, or maintenance of a road in which they are jointly interested, or in which one of the divisions is interested, and the other divisions do not consider themselves to be interested, and if the councils of the divisions concerned are willing to submit to arbitration of the Assistant Commissioner of Crown Lands and Public Works, the said Assistant Commissioner shall consider and arbitrate in such matter, and his arbitration, confirmed by the Governor, shall be binding upon the parties, and final.

Times for payment of contribution by one council to another, and for recovery of unpaid contributions.

200. Every payment or contribution to be made by any one council to any other council shall, unless other provision is specially made by law or mutual consent of the said councils, become due and payable on the first day of July in each year, and in case it shall not be made within one month after the said date, the same may be sued for in any competent court by the council entitled to receive the same: Provided that as often as any different time or times shall be fixed for the payment of any such contribution, by law or mutual consent as aforesaid, the same shall be payable and recoverable at and after the time or times so fixed.

Rates may be assessed by council to meet contributions due from it or expenses of carrying out duty of maintaining and repairing road in any other division.

201. It shall be lawful for every council which is or shall be required to pay or contribute any sum of money to any other council, under any law, to assess rates upon the immovable property of the contributing division for the purpose of such contribution, precisely as if such money were required for the maintenance and keeping in repair of a main road lying within such last mentioned division; and in like manner every council which is, or shall be, by any law charged with the duty of maintaining and keeping in repair any part of any line of main road lying in any other division than that which such council represents, may assess rates upon the immovable property of the division to which such council belongs, for the purpose of such maintenance and repair as though such part of such line of main road lay in the lastmentioned division.

Digitised by the University of Pretoria, Library Services, 2016

Municipal councils to contribute to maintenance and repair of main road running through municipality: work may be done according to mutual agreement between divisional and municipal councils, and in case of dispute according to decision of Governor; special exception of municipalities in Cape Division.

202. As often as any line of main road within any division shall pass through any municipality or corporate town, the divisional council and the commissioners or municipal, town, or borough council of such municipality or corporate town (as the case may be) shall contribute, share and share alike, to the cost of maintaining and keeping in repair that piece or portion of such main road lying within the limits of such municipality or corporate town, and the divisional council and the said commissioners or municipal, town, or borough council shall, by mutual agreement, settle between them by whom, or in what manner, the work of maintaining and keeping in repair such piece or portion of road shall be performed: Provided that should they be unable to agree in regard to any matter or question relating to their respective rights and duties under this section, the matter or question in controversy may by either party be submitted to the Governor, whose decision shall be final; and provided further that nothing in this section contained shall apply to any municipality or corporate town within the Cape division; and that the cost of maintaining and keeping in repair the main roads within the limits of municipalities or corporate towns within the said division shall be borne by the divisional council of the said division.

Certain divisional roads in Cape division to be maintained by Town Council of Cape Town, and council of Cape division to pay to Town Council half of rates on property in Cape Town.

203. The following shall be included among the divisional roads of the Cape division, for the purposes of this Act, viz.: Sir Lowry-street, from the Toll; through the Imhoff, Strand-street, down Bree-street, to the North Wharf; from the Lower Toll to the Town Market. And in consideration of the Town Council of Cape Town keeping in repair those thoroughfares, the council of the Cape division shall pay to the Town Council, out of every levy to be made under this Act, one-half of the amount raised from the property within the municipality of Cape Town.

PART X.

Offences in regard to Roads, &c.

Sections 3, 4 and 5, of Ordinance No. 9 of 1846, shall apply to all public roads.

204. The provisions of the third, fourth, and fifth sections of the Ordinance No. 9 of 1846, intituled "Ordinance for the better preservation of the public roads and the prevention of accidents and injuries thereon," shall apply to all public roads; provided that the provisions as to negligent, careless, or furious driving shall not apply to any public road in any town or village for which municipal regulations for the prevention of negligent, careless, or furious driving shall be provided.

Penalty for malicious destruction, injury, or damage done to any public road, toll-bar, toll-house, &c.

205. If any person maliciously destroy, injure, or in any way do damage to any public road, whether main road or divisional road, or any toll-bar or toll-house, building, or work of any kind whatever, erected or made under the authority of this Act, or being upon or belonging to, any public road within the Colony, it shall

Digitised by the University of Pretoria, Library Services, 2016

No 0—1889.

be lawful for any person who may see the offence committed to apprehend, and also for any other person to assist in apprehending, the offender, and by the authority of this Act, and without any warrant, to deliver him to any field-cornet, constable, or peace officer, who is to keep him in safe custody, and with all reasonable dispatch to convey him before the Resident Magistrate within whose district the offence has been committed; and if the person or persons accused be convicted of any such offence by any such Resident Magistrate, he or they shall forfeit, severally and respectively, any sum not exceeding three pounds for every such offence, and shall also make full satisfaction for the damage which may have been done thereby: and one moiety of any sum so forfeited shall be paid to the person or persons upon whose information such offender or offenders have been apprehended or brought to trial, and the other moiety shall be paid to the council of the division in which such offence was committed, to be applied by it for the purposes of this Act; and if any such offender do not, upon such conviction, pay the said forfeiture and satisfaction, such Magistrate shall commit him to prison, there to be kept to hard labour, if such Magistrate so order, for any time not exceeding three calendar months, unless the said forfeiture and satisfaction be sooner paid: Provided

Arrest without warrant.

Payment to informer of half of sum forfeited by offender, other half to council.

Council not debarred by this section from its action for damages.

(*a*) That nothing herein contained shall prevent the said council from bringing any action for damages before any court having jurisdiction, should it consider the amount of such damages to exceed the jurisdiction of any Resident Magistrate.

Council may prosecute through secretary for damage to public, other than main road.

(*b*) That the secretary of the said council by authority of the said council shall be competent to prosecute in any case of damage or injury to any public road, without previously applying to the public prosecutor.

Penalty for malicious arrest under this section.

(*c*) That any person who shall maliciously, and without reasonable and probable cause, apprehend any person, without warrant, for an alleged contravention of this section, shall, upon conviction, be liable to the same penalty as that by this section provided for the contravention thereof.

Jurisdiction of resident magistrate to award damages to council for injury done through carelessness, and to imprison for 14 days person neglecting to pay.

206. If any person should, through carelessness, do damage or injury to any of the matters or things in the last preceding section mentioned, any Resident Magistrate having jurisdiction shall, upon the application or complaint of the secretary of the council within whose division such damage or injury may have been done, duly authorised thereto by the said council, according as such damage shall have been done to a main road, or some road other than a main road, summon the party complained of, and upon hearing the parties on both sides, or on the non-appearance of the party complained of, examine the matter of complaint, and may award such sum of

Digitised by the University of Pretoria, Library Services, 2016

money, by way of satisfaction to the council as to such Resident Magistrate may appear reasonable; and in case of neglect or refusal forthwith to pay such money, together with all expenses attending the recovery thereof, such Resident Magistrate may sentence the party so neglecting or refusing, to any period of imprisonment with or without hard labour not exceeding fourteen days, unless such money be sooner paid: Provided, however, that nothing herein contained shall prevent any such council from bringing any civil action for damages against any person doing such damage or injury as aforesaid, before any court having jurisdiction, should he or they consider the amount of such damages to exceed the jurisdiction of any Resident Magistrate.

No. 40—1889.

Council not debarred by this section from action in higher court for damages beyond resident magistrate's jurisdiction

SUB-DIVISION II.

PART I.

Public Outspans.

207. All public outspans in any division shall be under the management and control of the divisional council of such division. A divisional council may, with the consent of the Governor, let a portion of any outspan over which it has control, not exceeding in extent one morgen, with a limited right of grazing over the remainder, subject to conditions for the erection of buildings for the accommodation of travellers, the making, or keeping in repair of dams, the eradication of burr-weed or noxious plants or otherwise, such as the Governor shall approve: Provided that before submitting any application and conditions for the Governor's approval, notice thereof shall be given in the newspapers in which the notices of such council are usually published, for one month, and if any objections be made such objections shall be forwarded to the Governor together with the council's remarks thereon. No such letting shall be for a period longer than seven years.

Control of public outspans.

SUB-DIVISION III.

PART I.

Public Health.

208. Whenever any area within this Colony shall be fixed by the Governor by proclamation under the provisions of the "Public Health Act, 1883," if the whole or any portion of such area shall not be situated within the local limits of any municipality, of any community in which the "Villages Management Act, 1881," is in operation, or of any town or village wherein any Resident Magistrate or Special Justice of the Peace is resident and has jurisdiction, the council of the division wherein is included the whole

Council to be local authority in area fixed under Act No. 4 of 1883, in respect of portion of such area situated in division but not in the limits of any municipality, village community, or town or village having a resident magistrate or special J.P.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

or any portion of such area not so situated within such local limits, shall, for the purposes and within the meaning of the Act No. 4 of 1883, and the Act No. 41 of 1885, especially section two of the firstmentioned Act, be deemed and taken, in respect of such whole or portion of such area so included as aforesaid, to be the "local authority," and no board shall be nominated by the Governor under the said section within any such area.

Special rates to be levied as occasion may require for health purposes.

209. The council of every division is hereby empowered as occasion may require, to levy special rates upon all property situated within such division, exclusive of any municipality or community under the Villages Management Act, and liable to be rated by such council, for the purpose of defraying any expenses incurred or to be incurred under the provisions of the "Public Health Act, 1883," and such special rate shall be levied and collected in the same manner as other rates provided for in this Act.

Council may levy rate in aid of local authority in division which has no power to levy rates, and such rate shall be levied by council on written application by such local authority.

210. In case any expense shall be incurred in carrying out the provisions of the "Public Health Act, 1883," by any local authority not having by law the power to levy rates upon the landed property within the area over which such local authority shall exercise its powers, it shall be lawful for the council of the division in which such area is situated, and such council is hereby required upon the application, in writing, of such local authority stating the amount required to be raised for the purposes of this section to levy a special rate upon all the rateable property within such area, and such rate shall be levied and collected by the said council in all respects as if it were a rate lawfully levied by such council for its own purposes.

Special rate on each hut or dwelling on Crown land, to be collected in the same manner as a hut tax.

211. In addition to the rates provided for in the two last preceding sections, and as a portion of any such rate which may hereafter be levied, the council of any division may assess and levy upon all huts or dwellings erected within the division, or within such areas as are mentioned in the last preceding section, as the case may be, upon Crown land not liable to be rated, a rate in the proportion of one shilling for each hut or dwelling for every farthing in the pound levied upon the assessed owner of rateable property: Provided that such lastmentioned rate shall, in respect of any huts or dwellings liable therefor in any native location, be collected by the inspector of such location or by such other officer as the Governor may appoint, and shall be recovered as though such rate were hut tax payable in respect of such huts or dwellings.

Act No. 10 of 1884 not affected.

212. Nothing in this Act contained shall be deemed to alter or affect the provisions of the "Public Health Extension Act, 1884."

SUB-DIVISION IV.

PART I.

POUNDS, POUND FEES, &c.

Management and control of pounds vested in council.

213. The general management and control of every pound, other than pounds situated within any municipality or corporate

Digitised by the University of Pretoria, Library Services, 2016

town, is hereby vested in and conferred upon the council of the division in which such pound is situate, and every such pound lawfully established at the date of the passing of this Act shall be deemed and continue to be a lawful pound within the meaning of this Act, unless or until such pound shall be abolished.

Established pounds to continue till abolished.

214. It shall be lawful for the Governor by proclamation in the *Gazette* at the request of the council of any division to declare and establish any pound at any spot or site named and desired by such council, and to declare the abolition of any existing pound; provided that nothing herein contained shall be so construed as in any way to prejudice or take away any legal rights vested in any poundmaster or other person lawfully interested in the continuance of any pound which may hereafter be abolished, or to deprive such person of any legal remedy arising out of any contract with any such council.

Governor may, at request of council, proclaim or abolish pounds, without prejudice to legal remedies if poundmasters or other persons interested in abolished pound.

215. The council of every division may at its discretion appoint and dismiss any poundmaster of any pound in such division, subject to the terms of such contract as may be entered into between such council and such poundmaster.

Council may appoint and dismiss poundmaster subject to terms of contract.

216. Advertisements or notices of intended sales of impounded animals, commonly called pound notices, shall be published in manner and form as the council of each division shall, from time to time, approve of and direct; and the approval by the Governor aforesaid of any particular manner or form of publication shall cease to be necessary or required, anything in the nineteenth section of the Ordinance No. 16, 1847, to the contrary notwithstanding: Provided that the half-yearly notices of dates and places of holding pound sales in the twentieth section of the said Ordinance mentioned shall continue to be published by and at the expense of the council of each division.

Advertisements or notices of intended sales published at expense of and as approved by council.

217. All moneys which, under or by virtue of the twenty-third section of the Ordinance No. 16, 1847, would become the property of Her Majesty the Queen, and be paid into the Colonial Treasury, shall henceforth be received by the council of the division, to be applied in defraying the cost of publishing the pound notices and other notices connected with pounds: Provided that an account shall be rendered and audited in accordance with this Act of all moneys so received, and that the surplus of such moneys, if any, shall be applicable to the purposes set forth in the two hundred and seventy-eighth section of this Act.

Moneys going to Treasury under section 23 of Ordinance No. 16 of 1847 to go to council; account to be audited; and balance applied under section 278 of Act.

218. The powers vested in Civil Commissioners and Justices of the Peace under and by virtue of the thirty-seventh section of the Ordinance No. 16 of 1847 shall be vested in and exercised by the council of each division in respect of all pounds, other than municipal pounds, situate in such division.

Powers of Civil Commissioners and Justices of the Peace under section 37 of Ordinance No. 16 of 1847 vested in council, except as to municipal pounds.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Mileage rates, pound fees, &c., under Act No. 31 of 1875 to be fixed by council.

219. The rate of mileage, pound fees, fees for herding, grazing, and feeding, and trespass money payable in respect of all domesticated ostriches impounded under the provisions of the Act No. 31 of 1875, shall be such as the council of each division shall from time to time fix and determine.

Tariff of fees and charges to be published in *Gazette* and public newspaper; may be altered or amended by council; pending tariff provisions of Act No. 31 of 1875 and Schedule to continue in force.

220. Immediately after the framing of such tariff of fees and charges by any council, the said council shall publish the same in the *Gazette* and in some newspaper circulating in the division, and shall furnish each poundmaster with a copy thereof, and the said tariff shall forthwith be of full force and effect in such division until altered or amended in like manner by such council: Provided that unless and until any council shall frame and promulgate such tariff of fees and charges, the provisions of the Act No. 31 of 1875, and of the Schedule thereto, shall continue to be in force in said division.

SUB-DIVISION V.

PART I.

Animals, Licences to keep Dogs, &c.

Tax on dogs may be imposed by council and collected by means of licences or otherwise.

221. Every council shall have the right to impose a duty or tax upon dogs within its division, which tax shall be collected by means of licences to be granted by such council, or in such other manner as such council shall determine, subject, however, to the proviso in the next succeeding section contained.

Rules and regulations may be framed by council, subject to Governor's approval, and publication in the *Gazette* and public newspapers.

222. The council shall have the power to frame rules and regulations in regard to the form of licences for keeping dogs, the manner of taking the same out, or in regard to any other mode of collecting the duty or tax hereby authorised to be imposed: Provided, however, that all such rules and regulations shall be subject to the approval of the Governor, and such rules and regulations, if so approved of, shall be published in the *Gazette*, and some one or more newspapers, if any, published or circulating withinthe division for which such rules and regulations are framed.

Application of funds derived from tax on dogs.

223. The funds collected by any council as the proceeds of the said duty or tax or of fines and penalties under the two hundred and thirty-second section of this Act shall be applied by such council for the destruction of wild carnivorous animals or for the purposes of the two hundred and seventy-eighth section of this Act.

Tax to be not greater than 5s. nor less than 2s. 6d.; no tax on dogs under three months of age.

224. The amount of the duty or tax authorised to be levied shall not be more than five shillings, nor less than two shillings and sixpence for each dog: Provided, always, that no duty shall be payable for or in respect of any dog under the age of three months or thereabouts.

Digitised by the University of Pretoria, Library Services, 2016

Penalty for keeping dog in any division without paying tax imposed in such division.

225. Every person keeping a dog within any division, the council of which shall have imposed the duty or tax in this Act provided for, without having paid such duty, shall be subject, on conviction, to a fine not exceeding the sum of one pound sterling, or, in case of non-payment, to imprisonment with or without hard labour for any term not exceeding fourteen days, unless such fine be sooner paid.

Powers of justices of the peace, field-cornets, constables and officers of the peace, and of proprietors or occupiers of land, to call upon travellers with dogs to produce licence or proof of payment of tax under this part of this Act. Provision for report to council of division where person describes himself as residing.

226. If any justice of the peace, field-cornet, constable, or other officer of the peace, or any proprietor or occupier of land, shall request any person travelling with a dog in his custody, charge, or possession, to produce his licence for keeping such dog, or to afford other sufficient proof that he has paid a duty or tax for the same under the provisions of this Act, or has a licence to keep the same from some Municipality or Village Board of Management, and shall, after failure of such production, have no reason to believe that such person either has a fixed abode or is licensed to keep such dog, then and in such case it shall be the duty of such officer, proprietor, or occupier to demand from such person the particulars of his name and abode, and the place whither he is travelling, and thereupon it shall be the duty of such officer, proprietor, or occupier, with all convenient speed, to send to the council of the division, a report stating such particulars as he shall have obtained, and describing the person in whose custody, charge, or possession, such dog shall have been found or seen; and upon receiving such report such council shall, if such person travelling as aforesaid shall have described himself as living in any other division, send such report to the council of such other division: Provided that if any person travelling as aforesaid, from whom such particulars as aforesaid shall have been demanded, shall refuse to give answers thereto, or shall wilfully give false answers thereto, he shall be deemed to be guilty of the offence of contravening this section of this Act, and shall, upon conviction, be liable to a fine not exceeding one pound, or in case of non-payment to imprisonment, with or without hard labour, for any period not exceeding fourteen days, unless such fine be sooner paid; and provided that, subject to the provisions of the three next succeeding sections of this Act, it shall be lawful for any justice of the peace, field-cornet, constable, or other officer of the peace, or for any collector of the duty or tax on dogs lawfully appointed by any council for that purpose, to destroy any dog found by him at any place within the limits of the division or district within which such justice of the peace, field-cornet, constable, or other officer of the peace has authority, or such collector is appointed to collect the duty or tax on dogs, and it shall be lawful for any proprietor or occupier of land to destroy any dog found trespassing upon the land owned or occupied by such proprietor or occupier.

Penalty for refusing to answer, or for giving wilfully false answers.

Power of above mentioned persons to destroy dogs under certain circumstances.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Dog found in custody of any person not to be destroyed if licence produced by person or satisfies J.P. &c., that he has a fixed abode, or has paid tax in any division.

227. Nothing in the last preceding section contained shall render it lawful for any of the persons therein mentioned to destroy any dog at any time when such dog shall be in the custody, charge, or possession of some person if such person shall either

(1) Upon request under the said section produce a licence to keep such dog, or

(2) Satisfy any such justice of the peace, field-cornet, constable, or other officer of the peace, that the person in whose custody, charge, or possession such dog shall be found has a fixed abode, or that a duty or tax has been at that time duly paid in any division in respect of such dog.

Nor if person in whose custody dog is found pays to collector the amount of the tax.

228. Nothing in the two hundred and twenty-sixth section of this Act contained shall render it lawful for any collector of the duty or tax on dogs to destroy any dog found in the custody, charge or possession of any person unless such person shall after demand on failure to produce a licence for such dog have refused or neglected to pay the amount of the duty or tax on such dog levied in the division within which the said collector is lawfully appointed as aforesaid, in accordance with rules and regulations framed in pursuance of the provisions of this Act.

Penalty for obstructing person exercising lawful powers under this part of this Act.

229. Any person who shall in any way hinder, prevent, obstruct, or interfere with any person duly authorised to exercise and while lawfully exercising the powers conferred by the provisions of this Act in regard to dogs, shall upon conviction be liable to the penalties prescribed in the two hundred and twenty-sixth section of this Act.

Licences are annual and expire on 31st December.

230. Every duty or tax authorised by the aforesaid Act to be levied upon dogs shall be payable annually, and every licence to keep a dog shall expire upon the 31st day of the month of December next after the issue of such licence.

Tax on dogs not levied by divisional council within limits of municipality, &c., where municipal tax exists.

231. No duty or tax on dogs shall be imposed or levied under this Act by any council within any area which shall be within the jurisdiction of any Municipality or Village Board of Management which shall already have imposed a duty or tax upon dogs: Provided that in case any Municipality or Village Board of Management shall not have imposed a tax on dogs kept within the area under its jurisdiction, it shall be lawful for the council of the division to impose and levy within such area the duty or tax authorised by this Act: and thereupon no such Municipality or Village Board of Management shall have the power to impose any such tax within the same area.

No municipal tax to be subsequently imposed if divisional council is first in imposing tax under this part of this Act.

232. All fines and penalties imposed under the provisions of this part of this Act shall, when recovered, be paid over to the council; and all costs incurred in prosecuting offences under the said Acts shall be borne by the person convicted, and the court before which such person has been tried and convicted may

Digitised by the University of Pretoria, Library Services, 2016

make the payment of costs a part of the sentence against him: Provided that in case of failure to recover such costs or any part thereof from such person, the said costs or the part not so recovered as well as any costs incurred in relation to such recovery shall be borne by such council.

Fines and penalties recovered, to be paid to the council.

SUB-DIVISION VI.

PART I.

EXTIRPATION OF XANTHIUM SPINOSUM AND OTHER NOXIOUS WEEDS AND PLANTS.

233. The Civil Commissioner of each division of the Colony shall, on the taking effect of this Act, cause a public notice, in the English and Dutch languages, warning all owners and occupiers of landed property within the division of the liability they will incur by neglecting to eradicate or otherwise destroy any of the burr weed, called Xanthium Spinosum, which may exist upon their land, to be posted at or near the court-house of every Resident Magistrate in such division, and at or near the residence or office of every field-cornet therein, and at all other places within such division at which the Civil Commissioner shall deem it desirable to post the same, and thereupon every owner and every occupier of land within any division shall be bound to eradicate or destroy any of the said weed growing or being upon the land owned or occupied by him: Provided that it shall be lawful for the Governor if he shall in any special case deem fit, and if he shall be requested so to do by the council of the division, to declare by notice in the *Gazette* that the bed of any public river within such limits as he shall fix shall be exempted from the operation of this part of this Act.

Civil commissioner to publish notices warning persons against neglecting to extirpate Xanthium Spinosum or burr weed. Special exemption of river beds, if Governor see fit.

234. Every council receiving information after the giving of such notice that any owner or occupier is failing to obey the provisions of this part of this Act shall, by notice in writing, call upon such owner or occupier to show cause why the said council should not at his expense take immediate measures for eradicating or destroying the said weed or plant, and unless such owner or occupier shall give security to the satisfaction of the said council that he will, within a reasonable time to be fixed by such council, eradicate or destroy the said weed or plant, then it shall be lawful for such council, and it is hereby required, to employ all labourers necessary for eradicating or destroying the said weed or plant so growing as aforesaid, and all the charges thereby incurred shall, from the said owner or occupier, be recoverable with costs in the court of the Resident Magistrate; or instead of proceeding to eradicate or destroy the said weed or plant, the said council may, if it think fit, summon such owner or occupier before the court of the

Duty of council on receiving information that any owner or occupier is not obedient to the provisions of this part of this Act.

Council must then either eradicate weed at cost of owner or occupier, or summon him for neglect.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Resident Magistrate to answer for his neglect to eradicate the said weed or plant, and upon proof of such neglect such owner or occupier shall be subject to a fine of not less than one pound for every week which shall have elapsed between the dates of the service of the said notice and the time when such owner or occupier shall have finally eradicated the said weed or plant, to the satisfaction of such person as shall be appointed for that purpose by the council.

Penalty for neglect.

Duty of eradicating weed on waste Crown lands, municipal lands, village lands or native locations.

235. The Commissioner of Crown Lands in respect of waste Crown lands, and the commissioners or council of any municipality in respect of municipal lands, and Boards of Village Management in respect of village lands, and the headmen of native locations as representing the inhabitants thereof in respect of location lands, shall be charged with the duty of eradicating or destroying the said weed when found on such lands, and shall obey the provisions of the two last preceding sections of this Act, and be deemed to own such waste Crown lands or municipal lands, or village, or location, as the case may be, and as owners to be amenable to the proceedings provided in the last preceding section of this Act.

Council may appoint inspectors for the purposes of this part of this Act. Penalty for obstructing inspector.

236. Persons authorised, in writing, by councils to inspect lands for the purpose of this part of this Act shall be at liberty to enter upon and inspect lands within the division, and anyone obstructing any person so authorised shall, upon conviction by the Resident Magistrate of the district, be liable to a fine not exceeding five pounds.

Contribution out of public revenue if annual expense in eradicating weed exceeds £100 in any division.

237. If in one year the costs and charges incurred in any division by the council thereof for the eradication and destruction of the said weed shall when properly audited under the provisions of this Act be found to exceed the sum of one hundred pounds sterling (£100), then one-half of the expense incurred over and above that sum shall be paid from and out of the public revenues of the Colony.

Other noxious weeds or plants may be proclaimed at the request of any council, and shall then come under this part of this Act.

238. It shall and may be lawful for the Governor, at the request of any council, to declare by notice in the *Gazette* that any other noxious or destructive weed or plant shall be dealt with in manner similar to that provided by this Act in the case of the burr weed, called Xanthium Spinosum, and thereupon all the provisions of this part of this Act relating to the burr weed, called Xanthium Spinosum, shall apply in respect of such other noxious or destructive weed or plant.

Penalty for negligence on the part of council in eradicating or destroying noxious weeds or plants.

239. Whenever it shall come to the knowledge of the Government that any weed or plant referred to in this part of this Act is growing in any division, and that the council of such division has not taken, or is not taking, all the necessary steps, and exercising all the powers and authorities conferred on it by this Act to eradicate or destroy the said weed or plant, it shall be lawful

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

to summon such council, at the suit of such person as the Colonial Secretary shall appoint for that purpose, before any competent court, to answer for their neglect, and to show cause why an order should not be made to compel the said council to perform the duty imposed upon them by this part of this Act.

SUB-DIVISION VII.

PART I.

CONTRACTS.

Contracts of council to be in writing if price or sum paid exceeds £10.

240. Every council acting in pursuance of the provisions of this Act may, from time to time, enter into any contract with any person or company for any work to be done, or for any materials or things to be furnished for the purposes of this Act, and all contracts upon which the price or sum to be paid may exceed ten pounds sterling shall be in writing, and shall specify the work to be done, or the materials or things to be supplied, and the price or sum to be paid for the same respectively; and, in the case of work to be done, the time within which the same shall be completed; and shall provide some penalty to be suffered in case of non-performance of the contract, and shall be signed by not less than two councillors, and also by the person or persons contracting; which contract, or a copy thereof, shall be entered in a book to be kept for that purpose.

Terms and conditions to be included in contracts.

Execution by two councillors.

Except in cases of emergency public notice to be given of important intended contracts calling for proposals.

241. Except in cases of emergency before any contract for the execution of any work or the furnishing of any goods to the amount of fifty pounds or upwards is entered into by the council, fourteen clear days' notice at the least shall be given in some newspaper generally circulating in the division, expressing the purpose of such contract, and inviting any person willing to undertake the same to make proposals for that purpose to the council. And the council shall accept the proposal, which on a view of all the circumstances appears to them to be most advantageous, and may take security for the due and faithful performance of every such contract, or the council may decline or accept any such proposal.

Best proposal to be accepted, if any; and security may be required.

Contracts binding on succeeding councils; but no contract to run for more than three years.

242. All contracts entered into by any council for the doing of any work or the supplying of any materials, articles or things required by such council, shall be binding upon their successors in office: Provided that no such contract shall be made to endure for a longer period than three years from the day of its date.

Digitised by the University of Pretoria Library Services, 2016

No. 40—1889

SUB-DIVISION VIII.

RATING POWERS; VALUATION AND ASSESSMENT FOR RATING PURPOSES; APPLICATION OF FUNDS; CONTRIBUTIONS.

PART I.

RATEABLE PROPERTY.

Rateable property and exceptions.

243. All persons owning immovable property within any division, including any municipality within such division, shall be liable to be rated for the purposes of this Act, save as hereinafter excepted, that is to say:

(1) Immovable property belonging to the Crown whether vested in the Colonial Government or otherwise, except as in the next succeeding section set forth.

(2) Immovable property vested in or belonging to any municipal board, or town council, except as in the next succeeding section set forth.

(3) Buildings appropriated exclusively to the purposes of public worship or to public schools, libraries, or museums.

(4) Burial grounds.

(5) Land used exclusively for hospitals, lunatic asylums, benevolent asylums or orphanages.

Crown or municipal lands how and when rated, and now assessed.

244. All Crown lands leased under the provisions of Act No. 19 of 1864 or of any other Act in case such lastmentioned letting shall be for a period not less than one year, and all municipal common lands leased under Act No. 45 of 1882 or any other Act for a period not less than one year, shall be liable so long as the same shall be under lease, to be rated for the purposes of this Act, and for the purpose of every assessment of such Crown or Municipal lands, the value of the lands comprised in any such lease shall be deemed to be sixteen times the amount of the annual rent payable by or under such lease: Provided that the Colonial Government and any municipality shall not be liable to pay any rates in respect of such lands.

PART II.

MODE OF MAKING VALUATION.

Periodical valuation for rating purposes by competent valuers.

245. The council of every division shall from time to time, but not less than once in five years, cause to be made for such division a valuation of all rateable property within the division by a competent person or competent persons as valuers, not being councillors, and the rates made by the council for the purposes of this Act shall be made upon such valuation.

Form of declaration by valuer.

246. Every valuer shall, before entering upon the valuation entrusted to him, make before some Justice of the Peace, a solemn declaration in the terms following:—

Digitised by the University of Pretoria, Library Services, 2016

"I, ———, do solemnly and sincerely declare that I will to the best of my skill and knowledge, and without fear, favour or prejudice, truly and impartially appraise and value all such property as I shall be required to value in the division of ———, for the purpose of assessment. And I make this solemn declaration conscientiously intending to fulfil the same; and by virtue of the provisions of the Ordinance No. 6, 1845, entitled 'An Ordinance for substituting Declarations in the place of certain Oaths, and for the suppression of voluntary and extra-judicial Oaths and Affidavits.' No. 40—1889.

"Declared at ———, this ——— day of ———,

"Before me, ———."

247. Every such declaration as aforesaid shall be lodged with and preserved by the council appointing such valuator. Declaration of valuer to be lodged and preserved.

248. It shall be lawful for the council at any time to direct that an interim valuation be made of any property discovered to have been omitted from the valuation roll, and of any property subdivided or permanently improved by the erection of buildings or otherwise, or of any property materially diminished in value by fire, flood, or similar cause between any two valuations, and to appoint a valuer or valuers for the purpose, and the valuation roll shall be amended in accordance with the results of such interim valuation, when any objections thereto have been finally decided in accordance with the provisions of this Act. Interim valuation of omitted, divided, improved, or deteriorated property.

249. Every valuer shall, for the purpose of making the valuation as aforesaid, have power to enter at all reasonable hours in the day time, into and upon any rateable property within the division without being liable to any action or other proceeding on account thereof. Valuer to have reasonable right of entry in daytime.

250. It shall be lawful for any valuer to put to any person in occupation or charge, or being the owner of any rateable property which such valuer shall have been authorised under the provisions of this Act to value, questions upon all such matters as may be necessary to enable such valuer correctly to value such property, and to state the names of the owner and occupier or lessee thereof, and such other particulars as may be necessary to be stated in his valuation with regard to the premises. And if after being informed by such valuer of his purpose in putting such questions, and of his authority under this Act to put the same, any such person in occupation or charge, or any such owner, shall refuse or wilfully omit to answer the same to the best of his knowledge and belief, or shall wilfully make any false answer or statement in reply to such questions, such person shall, for every such offence, be liable to a penalty not exceeding ten pounds. Owner or occupier, or person in charge, must answer valuer's questions.

Penalty for refusing to answer, or for false answer.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Valuation roll when completed shall lie for inspection, and council to give thirty days' notice of holding of court to hear objections.

251. As soon as the valuation roll aforesaid shall have been completed in any division, it shall lie in the office of the divisional council, or such other place as the council may authorise, for the inspection of every owner, occupier or lessee of any property included therein, who may, upon all lawful days, and at reasonable hours, inspect the same and take extracts therefrom, and the council shall, after the valuation roll has been completed, by notice in the English and Dutch languages in the *Gazette*, announce, for general information, that the said council will, upon some day and at some hour and place, to be fixed in such notice, hold a court for the purpose of hearing and determining objections to such valuation: Provided

Provisions as to notice, and proof thereof in legal proceedings.

(*a*) That such notice shall be published in the *Gazette* for not less than thirty days before the day appointed therein for the holding of such court:

(*b*) That the same or a similar notice shall be published in at least one newspaper which may be published, or which may circulate within such division, and shall be posted at or near the court-house of every Resident Magistrate's Court, whether stated or periodical, situated within such division, and at some conspicuous place at all public markets within such division; and that the council of such division shall adopt such other means of giving publicity to such notices as circumstances shall permit:

(*c*) That it shall not be necessary, in any suit or proceeding for the recovery of any rate, to prove anything further, in the nature of due notice of any such valuation as aforesaid, than the publication of the notice aforesaid in the *Gazette*.

Council to hear and decide on objections at court holden for the purpose.

252. Upon the day and at the place mentioned in such notice, the council shall hold a court, and shall hear all objections which may be urged to any valuation by any owner or occupier or lessee as aforesaid, or other person on his behalf, nominated in writing, and shall inquire into the merits of such objections, and for that purpose may take the oath or affirmation of any person whom it shall see fit to examine (which oath or affirmation the chairman of such council is authorised to administer), and shall confirm or correct or alter any valuation objected to, as truth and justice shall require: Provided that the said court may, if necessary, be adjourned from time to time, upon the application of any person objecting, who shall show reasonable grounds for not being ready with his proofs, or for the purpose of obtaining further evidence in regard to any case which shall have been partly heard.

Oath to be taken by chairman presiding over court and by other councillors.

253. The chairman presiding over any such court shall, before said court proceeds to hear objections to any valuation, take himself, in open court, the following oath:

Digitised by the University of Pretoria, Library Services, 2016

I, A. B., do solemnly swear that I will, to the best of my skill and knowledge, and without fear, favour, or prejudice, truly and impartially adjudge upon all questions that may come before me as a member of this court. So help me God!

And he shall then administer the same oath to the other councillors forming the court.

Court may increase or diminish valuation.

254. It shall be competent for the said court, acting in manner and in form as by this Act directed, to increase or diminish the value put, in and by any valuation which shall be under the review of such court, upon any property.

Objection as to under valuation may be made by any ratepayer.

255. Any person liable to the payment of rates in respect of any property included in any valuation, who shall consider that any property included in such valuation is valued lower than it ought to be, may send in to the secretary of the council an objection in writing, setting forth the nature of such property and the value which the person objecting considers true and just: Provided that such objection shall be sent so as to be received by the said secretary not later than fourteen days before the day appointed for the holding of the said court.

Objection must be made fourteen days before court held.

Notice of objection to be given by secretary to owner, &c., of property affected by objection.

256. The secretary of any council receiving such objection, shall forthwith serve upon the owner, or occupier, or the lessee of the property of which the value is objected to, a notice in writing, setting forth the exact terms of the objection lodged, and intimating that such objection will come on for consideration at the court aforesaid.

Owner, &c., may in writing, consent to objection, and property shall be raised in value accordingly.

257. Should the person receiving notice as aforesaid, that an objection has been lodged by the person named in such notice, against the value put upon the said property, consent that the valuation upon such property may be increased to the amount claimed in and by the objection, such person may in writing, inform the secretary aforesaid that he consents to such increase, and such secretary shall report such consent to the court aforesaid at its sitting, and thereupon the value of such property shall be increased accordingly.

Objector to receive notice of consent of owner, &c.

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

In absence of consent, objector and owner, &c., may appear before court personally or by an agent.

259. In case no such consent as aforesaid shall be given as aforesaid, then the person objecting and the person resisting the objection may, in person, or by any agent appointed in writing, appear before the court aforesaid, upon the day appointed for the sitting thereof, and such court shall proceed to determine upon such objection.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

If objector does not appear, or objection fails, it shall be dismissed; and court may award costs against objector to owner, &c., appearing in person or by an agent.

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

Costs may be given against owner, &c., who has not consented, if valuation increased.

261. If the person entitled as aforesaid to receive, and who shall have received, notice of an objection lodged to any valuation, shall fail to appear at the sitting of the court, or, appearing, shall fail to rebut the proof made that the valuation objected to was too low, so that the valuation objected to shall be increased, then the court may, should it think fit, give costs to the objecting party: Provided

Provisions for guidance of court in awarding or refusing costs.

(*a*) That no costs shall be given against any person who shall have received notice of objection, and who shall appear at the sitting of the court, and then and there declare his consent that the valuation objected to shall be increased to some amount less than the amount claimed in and by such objection, which shall be admitted by the objecting party, or found by the court to be the true and just value.

(*b*) That even where such person appears to consent that the value objected to shall be increased to the full amount claimed in and by the objection, no costs shall be given against him, in case he shall prove to the satisfaction of the court that he received notice of such objection so short a time before the sitting of the court that he could not send in as aforesaid, to the secretary, before the sitting of the court, his consent to such increase in the valuation.

(*c*) That no costs shall be given against any person who shall have received notice of objection as aforesaid, in case such person shall show that he made no application to the valuer to fix the amount of the valuation.

(*d*) That in case of any increase of valuation caused by the act or omission of the valuer alone, the court shall consider whether any reasonable costs of the objector should not be borne by the funds of the council.

Costs awarded recoverable by action in court of Resident Magistrate upon proof of order of court awarding costs.

262. As often as the court aforesaid shall see reason to give costs to any person against any other person, such costs shall be the same as would be payable by a suitor condemned in costs in a civil case in the Court of the Resident Magistrate of the district; and such costs shall be recoverable by action in the Court of such Resident Magistrate: Provided that, upon proof made of the

Digitised by the University of Pretoria, Library Services, 2016

order of the court aforesaid giving costs, the liability for such costs shall not be brought into question in the Court of the Resident Magistrate, but only the amount thereof.

Objections may be made at sitting of court, but hearing of objection may be adjourned.

263. Although no objection shall have been lodged in manner and form, and within the time in this Act mentioned, it shall be lawful for the court aforesaid, at the sitting thereof, should it so think fit, to allow any such person as might have lodged an objection under the two hundred and fifty-fifth section, to make such objection then and there, in writing, and thereupon, should the person entitled to receive notice of such objection be present, and consent, the said court may proceed summarily and at once to inquire into and decide upon such objection: provided that if such lastmentioned person be not present, or, being present, shall demand time to answer the objection, then the court shall adjourn till some future day to be then and there appointed for deciding upon such objection, at which day, or upon some other day to be fixed by a further adjournment, the said court shall decide finally upon such objection, and make such order as to costs as shall to justice appertain.

Decision on merits of objection to be final.

264. The decision of the said court upon any objection to any valuation shall, save as to the question of costs, be final and conclusive, and shall not be capable of being reviewed or reversed by any court or proceeding whatsoever.

PART III.

Making of Rates.

Assessment of rates when valuation roll settled, after notice to councillors.

265. As soon as the valuation roll of the whole of the rateable property in any division shall have been completed, and all objections thereto decided, the council may proceed to assess and impose upon all persons liable thereto, such a rate as it may deem necessary and expedient for the purposes of this Act on the value of the rateable property: Provided

(*a*) That no such rate shall be assessed until after the expiration of thirty days from the issue by the secretary at the request of any two councillors of a notice to the several councillors, which shall express the intention to propose such assessment, and after the publication of such notice once for such period in the *Gazette*, and at least once in one of any newspapers that may be published or circulated in the division:

Only one rate in twelve months.

(*b*) That no rate shall be imposed under this section more frequently than once in twelve months.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

PART IV.

Recovery of Rates.

Rates when due; notice to be given.

266. Every rate so assessed as aforesaid shall become due and payable upon a certain day to be fixed by the council; of which day and of the amount of which rate the said council shall give in the English and Dutch languages at least thirty days previous notice in the *Gazette:* Provided

(*a*) That the same or a similar notice shall also be published and posted, in like manner as is hereinbefore directed in the last preceding section, in regard to the certain notice therein mentioned:

(*b*) That it shall not be necessary, in any suit or proceeding for the recovery of any such rate, to prove anything further as to due notice thereof having been given than the publication of the announcement thereof in the *Gazette.*

Rates to be recoverable by legal proceedings if not paid on or before due date.

267. Whenever any council has announced in the *Gazette* as hereinbefore required, the day on which any rate, duly assessed under this Act, shall become due and payable, it shall be incumbent upon all persons liable to such rate to pay the amount thereof so due to the secretary, or to any person whom the council may have authorised to receive the same, on or before the day fixed in the said announcement for the payment of the same, on pain of being forthwith liable to legal proceedings for the recovery of the amount.

Evidence in proceedings to recover rates.

268. In any proceeding to levy or recover rates or consequent on the levying or recovering of any rate under the provisions of this Act the valuation rolls and rate books of the council, and all entries purporting to be made therein in manner by this Act required, extracts or certified copies thereof signed by the chairman, shall upon production thereof alone be *prima facie* evidence of such rate, and of the contents thereof without any evidence that the notices required by or other requirements of this Act, have been complied with: Provided that it shall be competent for any person proceeded against to offer evidence to prove the contrary.

Owner, or lessee, or occupier may be sued jointly or separately for rates due, but owner *prima facie* liable to occupier who pays rates.

269. Every council may, in suing for the recovery of rates, proceed against the owner or lessee, or occupier, either separately or both of them in one and the same action, each for the whole rate, in any competent court, and recover the same by the judgment and process of such court: Provided

(*a*) That any occupier of property on which a rate has been assessed, who is not the owner thereof, and who has not entered into such occupation, in pursuance of any agreement for becoming the owner thereof, shall, in the absence of any agreement to the contrary, be enabled to retain or recover from such owner the amount of any

Digitised by the University of Pretoria, Library Services, 2016

rate which he may have so paid, but not any costs or expenses which he may have incurred, or been condemned to pay, in the course of any suit or action brought against him by the council for non-payment of any such rate :

Occupier only liable for rates becoming due during his occupation.

(*b*) That no occupier of any immovable property shall be liable for any rate which had become due and payable thereon at any time before he entered upon the occupation thereof:

Liability once accrued to continue though ownership or occupation ceases or lease determined.

(*c*) That any person who may have become liable for any rate as aforesaid, shall continue to be liable for such rate, although he may have ceased to own, to hold on lease, or to occupy the property in respect of which the rate had been imposed.

Remedy by distress without action under warrant signed by chairman.

270. If after the expiration of the time fixed for the payment of any such rate as aforesaid, any person fail to pay any rates due by him it shall be competent for the council to cause a demand in writing to be made upon such person, requiring such person to pay the amount stated in such demand within fourteen days after service thereof. And in case any person who shall have had any such demand delivered to him personally, or left at his ordinary place of residence, or place of business, or office, shall make default, it shall be lawful for the chairman of the council to issue his warrant directed to the messenger of the Court of the Resident Magistrate of the district, requiring such messenger to levy and raise the amount stated therein by sale of the goods and chattels found on the premises in respect of which such rate shall be due, and continuing to be occupied by the person on whom such notice shall have been served. And every such messenger receiving any such warrant shall execute the same as if a warrant issued out of the Court of the Resident Magistrate of the district, and shall conform to such rules and make such charges in respect of the execution of such warrant as are for the time being applicable to warrants of such court as aforesaid.

Recovery of rates by action in resident magistrate's court.

271. Notwithstanding the provisions of the last preceding section the council may at their discretion after the expiration of the time fixed for the payment of any rate as aforesaid, recover from any person in default (without further notice or demand) the amount of rates due by such person by action in the Court of Resident Magistrate of the district wherein the rated property is situated, as hereinbefore by the one hundred and thirty-seventh section of this Act is provided, or in any other competent court.

Alternative actions where person liable does not reside in district where rated property is situated.

272. In case any person liable for any rate shall not reside within the district wherein the rated property is situated, action may be brought either in the Court of the Resident Magistrate of such district, or in the Court of Resident Magistrate of the district in which such person shall reside: Provided that as often as any such person not resident in the district in which the rated property is situated shall be proceeded against in the Court of Resident

Service of process.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Magistrate of such district, the summons directed to such person may be served upon the person, if any, in occupation of such property, or upon the persons summoned, by the messenger of the Court of the Resident Magistrate of any district in which such person shall be found.

Interest on overdue rates.

273. In case any rates made or levied under the provisions of this Act shall remain unpaid after three months from the date fixed by the council for the payment thereof, interest upon such rates shall be chargeable and recoverable by such council at the rate of six per centum per annum, reckoned from the said date.

Act No. 28 of 1881, to apply after five years default in payment of rates on derelict land.

274. The fourth section of the Act No. 28 of 1881 shall, in respect of any rates due and payable to any council under this Act, be read as though the word "five" were therein inserted instead of the word "ten."

Payment of last rate to be proved before registrar of deeds may pass transfer.

275. Before passing transfer of any immovable property within any division, every Registrar of Deeds shall require the production of a receipt or other voucher showing that the rates last due to the council of such division upon such property have been paid.

Notice to registrars of deeds of rates made by council.

276. It shall be the duty of every secretary to a council, immediately after the making of rates by such council, to transmit to such Registrars of Deeds as the council may think fit, a written notice showing the date upon which such rates become due. Until the receipt by any Registrar of Deeds of such notice the rate, of which notice has last been given to him by such secretary, shall be taken to be the rate for the payment of which a receipt or other voucher is required to be produced under this Act.

PART V.

Apportionment and Application of Rates.

General rate to be divided into two parts: certain charges and expenses to be borne proportionately by the two parts.

277. At the time of assessing any general rate under this Act, every council shall apportion such rate into two parts, the first part for the maintenance, preservation, and repair of main roads in the division, and the public dams upon such roads, and the second part for the construction, maintenance, preservation, repair and improvement of divisional roads within the division and for other purposes for which under this Act the funds at the disposal of the council may be applied: Provided that the following charges and expenses shall be borne proportionately by the two parts into which such general rate is divided, to wit:

(1) The expenses of any election of a member or members of such council;
(2) The expenses of valuation of and assessment of property;
(3) The collection of road rates under this Act;
(4) The salary of the secretary, auditors, and other lawfully appointed officers of such council;

Digitised by the University of Pretoria, Library Services, 2016

(5) The payments by law authorised to be made to members of such council;

(6) Any other charge or expense which such council may lawfully incur, and as to which the council may by resolution, approved of by the Governor, determine, that it shall be borne in such proportion as aforesaid.

Save as aforesaid the part of every general rate which shall be apportioned for the maintenance, preservation, and repair of main roads shall be devoted to the purposes for which it is apportioned, and separate accounts shall be kept showing the receipts and expenditure for those purposes.

How second part of rate, and other moneys received by council from other sources to be appropriated.

278. All money raised or received by any council from the other part of the general rate in the last preceding section referred to, and all other moneys raised or received from any other source for the purpose of this Act, and not specially appropriated by law for purposes other than those in this section set forth, shall, subject to the last preceding section of this Act, be appropriated

(1) To the construction, maintenance, preservation, repair, and improvement of the several divisional roads within its division, and the public dams upon such roads;

(2) To the making or improving of any public road within the division, not being a main or divisional road;

(3) To contributing towards the cost of making or improving of any road or bridge, proposed to be made or improved under the one hundred and ninety-eighth or one hundred and ninety-ninth sections of this Act in any adjoining division, which would be of so much benefit to the inhabitants of the division to which such council belongs, as to make it desirable that it should contribute to such work;

(4) To asserting by legal process the right of the public to any public road within the division, not being a main road, which the council shall ascertain to exist, and shall find to have been stopped up or otherwise obstructed by any person or persons whomsoever;

(5) To encourage the planting and cultivation of trees, in accordance with the Act No. 4 of 1876;

(6) To defray expenses necessarily incurred in connection with the definition of width of roads;

(7) To defray expenditure in connection with the eradication or destruction of Xanthium Spinosum or any other noxious weed or plant as by this Act provided;

(8) To meet any expenditure not otherwise by law provided for, of which the Governor shall approve;

(9) Generally for all purposes for which money may lawfully be expended by such council, and for which no sufficient special or other provision has been made by this or any

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

other law: Provided that nothing in sub-section four of this section contained shall be construed so as to require such council to resort to legal process for the purpose therein mentioned, or to prevent any person from resorting to such process to which he would but for this section be entitled.

SUB-DIVISION IX.

PART I.

Bye-Laws or Regulations.

General provision as to bye-laws or regulations.

279. Every council may from time to time make, alter, and revoke bye-laws or regulations for all or any of the following purposes:—

(1) Regulating the proceedings of the council and the duties of their officers and servants and preserving order at council meetings;

(2) For preventing injury to any dams or the pollution of any water over which the council may have control;

(3) For planting and preserving trees and shrubs and preventing injury thereto;

(4) For regulating the use of and generally controlling outspan places;

(5) For regulating traffic upon, over, or in, and preventing injury to roads, bridges, pontoons, ferry boats, or any other property, movable or immovable, vested in the council;

(6) For the more effectual eradication or destruction or prevention of the spread from adjoining divisions of Xanthium Spinosum or any other noxious weed or plant;

(7) Generally for the purposes of this Act.

But no such bye-law or regulation shall be contrary to the provisions of this Act or of any other law in force in this Colony.

Notice of and opportunity to inspect intended bye-law, &c.

280. After any resolution for passing any bye-law or regulation has been agreed to by the council, and not less than seven days before the same is confirmed by further and final resolution of the council, a copy of such bye-law or regulation shall be deposited at the office of the council, and shall be there open to the inspection of any person, at all reasonable times, and a notice shall be published in some newspaper generally circulating in the neighbourhood, setting forth the general purport of the proposed bye-law or regulation, and stating that a copy is open to inspection as aforesaid.

Digitised by the University of Pretoria, Library Services, 2016

Bye-law, &c., approved and published by Governor to have force of law in division.

281. After any bye-law or regulation has been confirmed by the council it shall be submitted for the approval of the Governor, and if approved shall be published in the *Gazette*, and thereupon such bye-law shall have the force of law in the division.

Power of repeal of bye-law vested in Governor.

282. Every bye-law or regulation in force in any division hereafter constituted or brought under the operation of this Act may be repealed by the Governor.

Penalties for breach of bye-law, &c

283. Any bye-law or regulation made under this Act may impose a penalty for any breach thereof, and may also impose different penalties in case of successive breaches, but no penalty shall exceed twenty pounds. And any such bye-law or regulation may provide that in addition to any such penalty, any expense incurred by the council in consequence of any breach of such bye-law or regulation, or in the execution of any work directed by any such bye-law or regulation to be executed by any person, and not executed by him, shall be paid by the person committing such breach or failing to execute such work.

Gazette evidence of bye-law, &c.

284. A copy of the *Gazette* containing any bye-law or regulation shall be evidence of the due making and provisions thereof.

DIVISION IV.

PART I.

Miscellaneous Provisions.

Council in office when Act takes effect to continue till new council elected.

285. Every council which shall be in office at the time of the taking effect of this Act shall continue in office until the date of the first meeting of a council elected under the provisions of this Act, and shall continue to perform its functions and duties, and exercise its rights and be subject to its liabilities just as if this Act had not passed.

Council may appoint newspaper for publications, &c., under Act.

286. In all cases in which any matter or thing is by this Act required to be published, advertised, or inserted in a newspaper generally circulated in the division, the said newspaper shall be such newspaper as the council shall for the time being appoint in that behalf.

Signature of two councillors or secretary sufficient authentication.

287. Every order, notice, or other document requiring authentication by the council may be sufficiently authenticated if signed by two councillors or by the secretary.

Penalty for obstructing council, or persons employed by it, in discharge of powers or duties.

288. Every person who shall at any time obstruct the council or any person employed by them, or any person appointed by the Governor, in the performance of anything which they are respectively empowered or required to do by this or any other Act, shall, in the absence of any other penalty specially provided in any case, be liable to a penalty not exceeding five pounds.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Council may proceed for penalties.

289. The council may order proceedings to be taken for recovery of any penalties and for the punishment of any person offending against the provisions of this Act, or of any bye-law made thereunder, and may order the expenses of such prosecution or other proceedings to be paid out of the funds at its disposal.

Offences against this Act, not otherwise defined.

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

Penalty for offence against Act or bye-law, &c., in cases not otherwise provided for.

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

Recovery of penalties.

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

In proceeding for contravention of bye-law, &c., not necessary to set forth number, or describe bye-law.

293. In any prosecution for contravening the provisions of any bye-law or regulation it shall be sufficient to allege the act complained of and that the accused is guilty of contravening or offending against a bye-law or regulation in force in the division, without describing the bye-law or regulation by number or otherwise.

Imprisonment for default of payment of penalties.

294. Whenever any penalty shall have been imposed under the provisions of this Act or of any bye-law or regulation made thereunder, and the person convicted shall not forthwith pay the same, the court may direct that such person be imprisoned with or without hard labour for a period not exceeding one month if the penalty imposed do not exceed five pounds, or not exceeding three months if the penalty be above five pounds, and such person shall be detained and kept to hard labour accordingly unless he shall sooner pay the penalty.

Council entitled to receive penalties recovered.

295. All penalties recovered for offences against the bye-laws of any division or for offences against this Act committed in any division, or in any way in respect of the division, shall be paid into the funds of the council of such division.

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

Powers, functions, and duties of councils under certain laws not affected by this Act.

296. Nothing in this Act contained shall be deemed to alter in any way the powers, functions and duties conferred or imposed upon divisional councils by any of the following laws or by any other law not repealed by this Act, and the said powers, functions, and duties shall be deemed to be hereby conferred and imposed upon every council elected or appointed under this Act :

The Act No. 24 of 1858, or any Act heretofore constituting any division in this Colony; Act No. 20 of 1861, Section 3, commonly called "The Electric Telegraph Act, 1861";

The Acts No. 7 of 1865, No. 8 of 1866-1867, No. 15 of 1869, No. 9 of 1879, commonly known as the Land Beacons Acts;

The Act No. 11 of 1867, commonly called "The Public Bodies Debts Act, 1867";

The Act No. 14 of 1870, Section 14, commonly called "The Cattle Removal Act, 1870";

The Act No 6 of 1873, commonly called "The Locomotives Act, 1873";

The Act No. 4 of 1876;

The Act No. 29 of 1881, Section 16, commonly called the "Villages Management Act, 1881";

The Act No. 11 of 1882, commonly called the "Local Works Loans Act, 1882";

The Act No. 26 of 1882, Section 9, commonly called the "Right of Passage of Water Act, 1882";

The Act No. 3 of 1883, Section 6, commonly called "The Cemeteries Act, 1883";

The Act No. 28 of 1883, Sections 28, 30, and 32, commonly called the "Liquor Licensing Act, 1883";

The Act No. 30 of 1883, Sections 5 and 25, commonly called "The Fencing Act, 1883";

The Act No. 7 of 1884, Section 2, commonly called the "Villages Management Act Amendment Act, 1884";

The Act No. 21 of 1884, Section 2, commonly called "The Dutch Language Judicial Use Act, 1884";

The Act No. 37 of 1884, Section 3, commonly called the "Native Locations Act, 1884";

The Act No. 13 of 1885, Section 4, commonly called the "Ostrich Feathers and Skins Theft Further Repression Act, 1885";

The Act No. 28 of 1886, Section 3, commonly called "The Scab Act, 1886";

The Act No. 36 of 1886, Section 12, commonly called the "Game Law Amendment Act, 1886";

The Act No. 4 of 1887, commonly called the "Explosives Act, 1887";

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1889.

The Act No. 15 of 1887, Sections 2, 5, and 18, commonly called the "Crown Lands Disposal Act, 1887"; Act No. 27 of 1887, Section 6, commonly called "The Quitrents Relief Act, 1887";

The Act No. 23 of 1888, Section 52, commonly called the "Convict Stations and Prisons Management Act, 1888";

The Act No. 28 of 1888, Section 13, commonly called the "Forest Act, 1888":

Provided, also, that wherever by any other law, any power, function or duty has been heretofore conferred or imposed upon every council, or upon any particular council, such power, function or duty shall be deemed, subject to the provisions of this Act, to be conferred or imposed upon all councils, or upon the particular succeeding council, as the case may be, elected or appointed under the provisions of this Act.

Secretary of Council to furnish certificate of property value.

297. It shall be the duty of the secretary of the council of every division at any time, upon the request of any owner of any immovable property situated within such division, to furnish and supply to such owner a certificate under the hand of such secretary, setting forth such property as described in the valuation roll in force at such time, together with the value placed thereon in such roll.

Date of taking effect of Act.

298. This Act shall come into force on a day to be proclaimed by the Governor in the *Gazette*.

Schedule A.

SCHEDULE A.

REPEALED LAWS.

Laws.	Short Titles or Descriptions.	Extent of Repeal.
Act No. 1 of 1857.	For transferring from the Colonial Government to the Divisional Councils certain Powers and Functions relating to the Public Pounds of the Colony.	The whole.
Act No. 9 of 1858.	To provide for the management of the Public Roads of the Colony.	So much as has not heretofore been repealed.
Act No. 11 of 1859.	To amend the Act No. 9 of 1858.	Sections five, six and seven.
Act No. 5 of 1860.	"Road Act Amendment Act, 1860."	The whole.
Act No. 1 of 1863.	To provide for the Construction and Maintenance of the Public Roads of the Colony.	The whole.
Act No. 10 of 1864.	"The Road Act, 1864."	Sections one to twelve inclusive, fifteen to eighteen inclusive, thirty to thirty-two inclusive and thirty - four to forty-one inclusive.
Act No. 25 of 1864.	"The Bridge Building Act, 1864." ..	The whole.
Act No. 27 of 1864.	For promoting the Extirpation of the Burr Weed called Xanthium Spinosum.	The whole.

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE A—*continued.*

Act No. 4 of 1865.	"The Divisional Councils Act, 1865."	So much as has not heretobefore been repealed.
Act No 21 of 1867.	For conferring on Divisional Councils certain Powers relating to the Regulation and Management of Pounds in their Divisions.	The whole.
Act No. 7 of 1869.	To regulate the Conditions upon which it shall be lawful for Divisional Councils to erect Toll-bars and levy Tolls within the Limits of Municipalities or other Corporated Towns.	The whole.
Act No. 15 of 1869.	"Divisional Councils Acts Amendment Act, 1869."	The whole.
Act No. 3 of 1870.	To render Lessees of Crown Lands under Act 19 of 1864, liable to the payment of Road Rates and qualified as Members of Divisional Councils.	The whole.
Act No. 22 of 1873.	"The Road Act, 1873."	The whole.
Act No. 11 of 1877.	"Roads Act, 1877."	The whole.
Act No. 37 of 1879.	"The Roads Act, 1877, Amendment Act, 1879."	The whole.
Act No. 4 of 1883.	"Public Health Act, 1883."	Section five.
Act No. 14 of 1884.	"Dog Tax Act, 1884."	The whole.
Act No. 27 of 1884.	"Public Roads Width Act, 1884."	The whole.
Act No. 15 of 1885.	"Dog Tax Act Amendment Act, 1885."	The whole.
Act No. 31 of 1885.	"Roads Act Amendment Act, 1885."	The whole.
Act No. 33 of 1885.	"Adjoining Divisions Boundaries Act, 1885."	The whole.
Act No. 41 of 1885.	To amend the "Public Health Act, 1883."	Section three.
Act No. 12 of 1887.	"Dog Tax Act Further Amendment Act, 1887."	The whole.
Act No. 32 of 1887.	To repeal a certain Section in the "Roads Act, 1877," and to substitute another in lieu of it.	The whole.
Act No. 40 of 1887.	"Public Health Act, 1887."	The whole.
Act No. 24 of 1888.	To amend the Act No. 31 of 1875, and the Act No. 1 of 1857.	The whole.

No. 41—1889.] [Promulgated 13th August, 1889.

ACT

To compensate the Owners of Stock destroyed or injured by trains on the Government Railways.

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

Colonial Government liable for stock destroyed or injured by daylight by train on unfenced line of Government railway.

1. The Colonial Government shall be and is hereby obliged to make compensation to and indemnify the owner of any stock destroyed or injured by any train running by daylight on any part now or hereafter included in the system of railways known

Digitised by the University of Pretoria, Library Services, 2016

No. 41—1889.

as the Cape Government Railways, if the part of the line at which such destruction or injury takes place is unfenced at that time, and if no compensation shall have at any time been paid to any person by the Colonial Government for or in respect of the right to construct such part of such line; provided that no person shall be entitled to recover any sum of money under this Act for the destruction or injury of any stock who shall fail within forty-eight hours after such stock shall have been destroyed or injured, to give notice to the nearest station-master of the destruction or injury thereof, and of the number and kind of stock so destroyed in respect of which compensation is claimed; and provided, also, that the carcases or remains of all destroyed stock, and all injured stock, in respect of which any claim is made under this Act for compensation or indemnification, shall be diligently and to the best of his ability, kept and preserved by the owner making such claim, for a period of not less than three full days from the time when such destruction or injury took place, and shall be shown to any person appointed for the purpose of ascertaining the value of the stock so destroyed or injured.

Notice of claim to be given within 48 hours to Resident Magistrate.

Carcases and injured animals to be diligently preserved for 3 days.

Claimant disentitled by failure of diligence in keeping carcases, &c., and by making fraudulent or grossly excessive claim.

2. No person who shall fail diligently and to the best of his ability to keep and preserve such carcases or remains of destroyed stock, or such injured stock as aforesaid, or who shall make any claim for compensation or indemnification under this Act which any court of competent jurisdiction shall determine to be either fraudulent or grossly excessive, shall be entitled to any of the benefits of this Act; and any person who shall make any such claim with intent to defraud shall be liable on conviction to all the penalties of the crime of fraud.

Penalty for fraudulent claim.

Meaning of "Stock."

3. "Stock" shall include horse, gelding, mare, colt, mule, ass, bull, ox, cow, calf, sheep, goat, and ostrich.

Short title.

4. This Act may be cited as the "Railway Injuries Compensation Act, 1889."

Digitised by the University of Pretoria, Library Services, 2016

ACTS OF THE CAPE PARLIAMENT.

ACT 1—1890.] [Promulgated 27th June, 1890.

ACT

For Applying a further Sum not exceeding One Hundred and Ninety-one Thousand Two Hundred and Eighty-eight Pounds Sterling for the Service of the year ending the 30th June, 1890.

Preamble.

WHEREAS it is necessary to provide for certain expenditure necessarily incurred and to be incurred during the year ending on the 30th June, 1890, in addition to the sums provided by the Acts No. 3 and 32 of 1889: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Public Revenue charged with £191,288.

1. The public revenue of the Colony of the Cape of Good Hope is hereby charged towards the service of the year ending on the 30th June, 1890, with a further sum of One Hundred and Ninety-one Thousand Two Hundred and Eighty-eight Pounds Sterling, in addition to the several sums provided for by the said Acts No. 3 and 32 of 1889.

How to be applied.

2. The money granted by this Act shall be applied to the purposes and services expressed in the Schedule annexed hereto, and more particularly specified and set forth in the explanatory detailed Schedule to this Act submitted to Parliament.

Short title.

3. This Act may be cited for all purposes as the "Additional Appropriation 1889-'90 Act, 1890."

SCHEDULE.

Schedule.

Additional Appropriation, 1889-'90.	Establishments.	Services, exclusive of Establishments.	Total.	Required to be provided for.
	£	£	£	£
1. Prime Minister	105	1,300	1,405	1,405
2. Ministerial Department of Colonial Secretary	2,994	32,563	35,557	35,557
3. Ministerial Department of Treasurer of the Colony	1,650	15,915	17,565	17,565
4. Ministerial Department of Attorney-General	2,540	..	2,540	2,540
5. Ministerial Department of Commissioner of Crown Lands and Public Works ..	153	132,737	132,890	132,890
6. Ministerial Department of Secretary for Native Affairs	634	697	1,331	1,331
Grand Total	8,076	183,212	191,288	191,288

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1890.] [Promulgated 3rd July, 1890.

ACT

To Apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1891.

Preamble.

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

Revenue charged with £400,000 towards service of year ending 30th June, 1891.

1. The public revenue of the Colony of the Cape of Good Hope is hereby charged towards the service of the year ending the 30th June, 1891, with a sum not exceeding Four Hundred Thousand Pounds Sterling (£400,000), which sum shall be applied towards the service of the said year in conformity with the estimates of the expenditure for the said year which have been presented to Parliament.

Short title.

2. This Act may be cited for all purposes as "The Appropriation (part 1890-91) Act, 1890."

No. 3—1890.] [Promulgated 11th July, 1890.

ACT

To confer upon the Supreme Court of this Colony Jurisdiction as a Court of Appeal from any Court acting under the "Africa Order in Council, 1889," and from which Court appeals to the Supreme Court are authorised in manner provided in that Order.

Preamble.

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

Supreme Court to be Court of Appeal in respect of Courts for which it is prescribed as Court of Appeal by "Africa Order in Council, 1889."

1. The Supreme Court of this Colony shall have jurisdiction under this Act as a Court of Appeal to entertain, hear, and determine all appeals in matters brought before it from, and all cases stated for its opinion by, any Court in respect of which the said Supreme Court has been or may hereafter be prescribed as a Court of Appeal in manner provided in and by Her Majesty's Order in Council, made on the fifteenth day of October, 1889, and known as the "Africa Order in Council, 1889."

Powers, &c., of Supreme Court as Court of Appeal under this Act.

2. As such Court of Appeal the said Supreme Court shall have and exercise all powers, authorities, and jurisdiction in respect of all matters brought before it which are conferred upon Courts of Appeal under or by any article, provision, or rule of the aforesaid Order in Council.

Digitised by the University of Pretoria, Library Services, 2016

Procedure for bringing appeals.

3. All appeals to the said Supreme Court under this Act shall be brought within such time and in such manner, as regards the form and transmission of the appeal, and as to the day of execution and otherwise, as may be prescribed by any rules of procedure made under the aforesaid Order in Council.

Procedure for prosecuting, &c., of appeals.

4. The Judges of the said Supreme Court, as a Court of Appeal under this Act shall have power from time to time to make rules for the regulation of the procedure to be adopted in and about the prosecution, hearing, and determination of all matters brought before the said Supreme Court in appeal or on any case stated in writing: provided that no such rule shall be repugnant to or inconsistent with any article, provision, or rule contained in or made in manner prescribed by the aforesaid Order in Council.

Law to be applied by Supreme Court.

5. The said Supreme Court, as a Court of Appeal under this Act, shall determine any matter brought before it in accordance with the law which the Court from which such matter is brought either in appeal or upon a case stated in writing may, by the aforesaid Order in Council, or by any other order, law or rule binding upon the said Court, lawfully apply to the decision and determination of such matter.

Effect of Act.

6. This Act shall come into force from and after a day to be fixed by the Governor by Notice in the *Gazette*.

Short Title.

7. This Act may be cited as "The Supreme Court Appellate Jurisdiction Extension Act, 1890."

No. 4—1890.] [Promulgated 19th August, 1890.

ACT

To provide for the taking of a Census and the Collection of certain Statistics in the Year 1891.

Preamble.

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

Provision for taking account of the number of persons and live-stock in the Colony, on a day to be fixed.

1. An account shall be taken, in manner hereinafter directed, of the number of persons and the number of each kind of live stock, within the Colony of the Cape of Good Hope, including any Territories annexed to this Colony, on such day in the month of April, in the year one thousand eight hundred and ninety-one, as the Governor may appoint.

Appointment by Governor of supervisors in different districts.

2. For the taking of such account the Governor may appoint and remove supervisors, and define the districts for which they shall respectively act, and determine the number of enumerators to be appointed by such supervisors respectively.

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1890.

Enumerators appointed, &c., by supervisors subject to approval of Governor.

3. Every supervisor shall, subject to the approval of the Governor, appoint enumerators for his district, and assign sub-districts to such enumerators, and, subject to such approval as aforesaid, may remove any such enumerator, and appoint another in his place.

Declaration to be made by enumerator.

4. Every enumerator shall make and subscribe before a Justice of the Peace a declaration in the form in the schedule to this Act annexed, and shall deliver the same to the supervisor of the district when returning the forms under this Act; and any enumerator making and subscribing a false declaration shall be deemed guilty of perjury.

Governor may make regulations, to be published in *Gazette*, for purposes of this Act; penalty for contravening regulations.

5. The Governor may from time to time make and alter regulations for the forms to be used in the taking of the account in the first section mentioned, and for the execution of all matters and things arising under this Act not herein expressly provided for, including regulations for ascertaining the number of persons travelling on the appointed day within this Colony or by sea between Ports of this Colony, and for the collection of agricultural, educational, industrial or other statistics by means of the census supervisors and enumerators, and generally for the more fully carrying out the objects and purposes of this Act; and such regulations, when published in the *Gazette*, shall have the full force of law, and every person who shall be guilty of a breach of any such regulations shall be liable to a penalty not exceeding five pounds.

Free transmission and delivery of letters, telegrams, &c., on the subject of this Act, to or from the Colonial Secretary or any supervisor or enumerator.

6. All letters and packets, and all telegraphic messages on the subject of this Act transmitted by post or electric telegraph within the Cape Colony, including the Territories in the first section mentioned, to or from the Colonial Secretary or any supervisor or enumerator, if marked with the word "Census," shall be transmitted and delivered free of postage or charges until such day in the year one thousand eight hundred and ninety-one as the Governor may by notice in the *Gazette* appoint.

Occupier or person in charge of dwelling to fill in copy of forms left at house, and to deliver copy filled in to enumerator: enumerator to complete defective copies.

7. The Governor may in cities, towns and such other localities as may to him appear proper, cause the necessary forms, together with general instructions to be printed on the back of such forms, to be left, on or before the day in the first section mentioned, at any dwelling in any enumerator's sub-district, and in all such cases it shall be the duty of the occupier or person in charge of such dwelling, to deliver on demand the said forms duly completed in every particular to the enumerator calling for the same: provided that the said enumerator shall forthwith examine the said forms as handed to him, and shall satisfy himself that the said forms have been fully, truly and correctly filled up, and if not so filled up in every particular, the enumerator shall himself, then and there, make the same complete according to the best information which he shall be able to obtain.

Digitised by the University of Pretoria, Library Services, 2016

8. In cases not provided for by the last section, the enumerator shall on the day next following that fixed by the first section, or as soon thereafter as possible, proceed to receive or take an account, in writing, of the number of persons who were within the limits of his sub-district on the night of the day so fixed, and shall inform himself of all the particulars specified in the said forms, using a separate form for each family occupying a separate dwelling or a separate portion of a dwelling—the word dwelling meaning any house, building, booth, tent, waggon, cart, hut or other erection in or under which any person usually sleeps, and every ship or other vessel in any port or harbour of the Cape Colony.

Enumerator to take account of persons without delay, and inform himself of particulars.

Meaning of dwelling.

9. The Colonial Secretary on receipt of the completed forms shall cause the same to be examined and cause any defect or inaccuracy therein to be supplied or corrected as far as may be possible, and shall with all convenient speed prepare abstracts made therefrom, and such abstracts shall be printed and laid before both Houses of Parliament.

Defect or inaccuracy in forms returned to be corrected by Colonial Secretary, and abstracts to be laid before Parliament.

10. If any occupier or person in charge of any dwelling shall refuse or wilfully neglect to fill up to the best of his or her knowledge, information, or belief the forms left under the provisions of section seven of this Act, at such dwelling, or to sign and deliver the same, or shall refuse or wilfully neglect to answer or shall untruly answer any enquiry made by an enumerator for any of the purposes of this Act, or shall wilfully make, sign or deliver, or cause to be made, signed or delivered, any false return or statement of any particular in such forms, or shall obstruct any person in the performance of any duty under this Act, the person so offending shall be liable to a penalty not exceeding five pounds. Such penalty shall not be imposed against any person who from conscientious scruples shall omit or decline to state his or her religion, and the proof of such conscientious scruple may be the filling up of the column set apart for that purpose with the word "object": and such penalty shall not be imposed for any false return or statement regarding the number of his or her livestock against any person who not being aware of the precise number of such stock shall give in respect thereof an estimate or reasonable approximation to the truth.

Penalty for refusal or wilful neglect on part of occupier or person in charge to comply with section 7, or to answer inquiries, and for false return or statement.

Conscientious scruples warrant omission of statement as to religions.

11. If any person accept the office of enumerator under this Act and afterwards without lawful excuse refuse or wilfully neglect to perform any duty of such office, the person so offending shall be liable to a penalty not exceeding five pounds.

Penalty on refusal or wilful neglect by enumerator to do his duty.

12. If any officer, supervisor, enumerator or clerk divulge the contents of any forms under this Act, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty for official breach of duty in divulging contents of forms.

13. All fines imposed under this Act or the Regulations promulgated thereunder shall be recoverable in a summary manner, before a Resident Magistrate, and in default of payment of any fine the

Jurisdiction: disposition of fines.

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1896.

accused shall be liable to imprisonment, with or without hard labour, for any period not exceeding one month, unless such fine be sooner paid.

Short title.

14. This Act may be cited as "The Census Act, 1890."

Schedule.

SCHEDULE.

Form of Declaration to be made by Enumerators.

I, , an Enumerator appointed under "The Census Act, 1890," do solemnly declare that the forms numbered from to inclusive, contained in the packet to which this declaration is attached, are all the forms under the said Act which have been completed and received by me in the sub-district to which I was appointed, and that the whole contents of the said forms are true to the best of my knowledge, information and belief.

(Signed) A.B.

Made before me on the day of 18

Justice of the Peace.

No. 5 of 1890.] [Promulgated 22nd August, 1890.

ACT

To make provision for the Sale of Food and Drugs in a pure state, and to prevent the Adulteration of Seeds.

Preamble.

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

General.

Title.

1. This Act may be cited as "The Sale of Food and Drugs and Seeds Act, 1890," and shall come into operation on a day to be fixed by the Governor by Proclamation in the *Gazette*.

Interpretation.

Definitions.

2. For the purposes of this Act the following terms shall, unless the context otherwise requires, have the meaning herein assigned to them, namely :—

"Food" shall include every article used for food or drink by man, other than drugs or water.

"Drug" shall include medicine for internal or external use.

"Butter" shall mean the substances usually known as butter, made exclusively from milk, or cream, or both, with or without salt, or other preservative, and with or without the addition of colouring matter.

"Butterine," "Margarine," or other similar article shall mean all substances, whether compounds, or otherwise, prepared in imitation of butter, and whether mixed with butter or not.

Digitised by the University of Pretoria, Library Services, 2016

"Proof" shall mean the strength of proof as ascertained by Sykes' hydrometer.

"To kill Seeds" means to destroy by artificial means the vitality or germinating power of such seeds.

"To dye Seeds" means to apply to seeds any process of colouring, dyeing, or sulphur smoking.

"Resident Magistrate" means a Resident Magistrate having jurisdiction within the district in which any offence under this Act is committed.

"Schedule" means the schedule to this Act.

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

"The Minister" means the Minister to whose department the control and management of this Act shall be assigned.

DESCRIPTION OF OFFENCES.

Prohibition of the mixing of injurious ingredients, and of selling the same.

3. No person shall mix, colour, stain, or powder, or order, or cause or permit any other person to mix, colour, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold or offered, exposed, or kept for sale in that state, and no person shall offer, sell, expose, or keep for sale any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding twenty pounds for the first offence, and in default of payment he shall be liable to imprisonment, with or without hard labour, for a period not exceeding three months, unless such penalty be sooner paid, and for a second or subsequent offence a penalty not exceeding fifty pounds, and in default of payment he shall be liable to imprisonment, with or without hard labour, for a period not exceeding six months unless such penalty be sooner paid.

Prohibition of the mixing of drugs with injurious ingredients and of selling the same.

4. No person shall, except for the purpose of compounding as hereinafter described, mix, colour, stain, or powder, or order, or cause, or permit any other person to mix, colour, stain, or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug with the intent that the same may be sold, offered, exposed, or kept for sale in that state, and no person shall sell, offer, expose, or keep for sale any such drug so mixed, coloured, stained, or powdered under the same penalty in each case respectively, as in the preceding section for a first and second or subsequent offence.

Exemption in case of proof of absence of knowledge.

5. No person shall be liable to be convicted under either of the two last preceding sections of this Act, if he shows to the satisfaction of the Court before whom he is charged that he did not know of the article of food or drug, in respect of which he is charged being so mixed, coloured, stained, or powdered as in either of these sections mentioned, and that he could not with reasonable diligence have obtained that knowledge.

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1890.

Prohibition of the sale of articles of food and of drugs not of the proper nature, substance, and quality.

6. No person shall sell, or attempt to sell to the prejudice of the purchaser any article of food, or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser under the penalties provided by the third section of this Act, provided that an offence shall not be deemed to be committed under this section in the following cases; that is to say:

(1) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage, or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof;

(2) When the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent;

(3) When the food or drug is compounded as in this Act mentioned;

(4) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

Provision for the sale of compounded articles of food and compounded drugs, and protection from offences by giving of label.

7. No person shall sell or attempt to sell any compounded article of food, or compounded drug which is not compounded of ingredients in accordance with the demand of the purchaser under the penalties provided by the third section of this Act: Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label, distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed.

Prohibition of the abstraction of any part of an article of food before sale, and selling without notice.

8. No person shall, with the intent that the same may be sold, offered, exposed, or kept for sale in its altered state without notice abstract from an article of food any part of it, so as to affect injuriously its quality, substance or nature, and no person shall sell, offer, expose, or keep for sale any article so altered, without making disclosure of the alteration, under the penalties provided by the third section of this Act.

Possession by dealer of deleterious substances.

9. If any person selling, offering, exposing, or keeping for sale any spirits, wine, malt, or other liquor, shall have upon his premises or in his possession any vitriol, coculus indicus, nux vomica, tobacco or tobacco juice, pepper, chillies, opium, aloes, salts of zinc or lead, copperas, faba amara, logwood, or any extract or preparation thereof respectively, or any other poisonous or deleterious substance whatsoever, otherwise than for some innocent purpose, the proof

Digitised by the University of Pretoria, Library Services, 2016

of which shall lie on such person, he shall be liable to the penalties by the third section of this Act, and all such vitriol, coculus indicus, nux vomica, tobacco or tobacco juice, pepper, chillies, opium, aloes, salts of zinc or lead, copperas, faba amara, logwood, or such extract or preparation thereof, or any such other poisonous or deleterious substance as aforesaid shall be forfeited to the Crown and may be seized without warrant by any Justice of the Peace, Field-cornet, Police Constable, or any person authorised to carry out the provisions of this Act.

In sale of adulterated articles, no defence to allege purchase for analysis

10. In any prosecution under the provisions of this Act for selling or attempting to sell to the prejudice of the purchaser any article of food, or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser having bought only for analysis or any proceeding at law, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question though defective in nature, or in substance, or in quality, was not defective in all three respects.

Appointment and Duties of Analysts, and Proceedings to obtain Analysis.

Appointment of analysts.

11. The Governor may appoint one or more persons possessing competent knowledge, skill and experience as analysts of all articles of food and drugs, and seeds sold within this Colony, and may from time to time remove him or them as he shall deem proper, and such analysts shall discharge such duties as may from time to time be imposed upon them by the Minister at such rate of remuneration as Parliament may vote for the purpose: Provided that no person shall be appointed an analyst under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs, or seeds within this Colony.

Power to purchaser of article of food to have it analysed.

12. Any purchaser of an article of food, or of a drug, or of seeds, shall be entitled to obtain from any analyst appointed under this Act, on payment to such analyst of a sum not exceeding twenty-one shillings, an analysis of such article by such analyst, and to receive from him a certificate of the result of such analysis: Provided that nothing herein contained shall be taken to impose upon any such purchaser the necessity to obtain such analysis and certificate before instituting any complaint or proceeding under this Act if he shall have sufficient evidence otherwise.

Search for adulterated articles and power to obtain a sample of food or drug, or seeds.

13. Such officer as shall by notice in the *Gazette* have assigned to him the general administration of this Act, or any person duly appointed by him in that behalf, any Resident Magistrate or person appointed by him in that behalf, and any Justice of the Peace, Field-cornet, or police constable may enter with or without

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1890.

warrant, any shop, store, or other premises, or any place or vehicle wherein he shall have reasonable grounds to suspect that any food or drugs or seeds are kept for the purpose of contravening this Act, and he may search for and demand to have delivered to him samples of any such food or drugs or seeds which he shall find therein, and on refusal or neglect to supply such samples he may seize and carry away a sufficient quantity for the purpose of investigation, and every person so refusing or resisting or declining entrance as aforesaid shall be liable to the penalties in the third section of this Act mentioned in addition to any other penalties by law provided.

Person refusing to sell to officer liable to a penalty.

14. If any officer or authorised official as in the last section mentioned shall apply to purchase any article of food or any drug or seeds exposed for sale, or on sale in any shop, or store, or premises, place, or vehicle, and shall tender the price of the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, or authorised official as aforesaid, such person shall be liable to a penalty not exceeding ten pounds, and in default of payment to imprisonment, with or without hard labour, for a period not exceeding three months unless such penalty be sooner paid.

Provision for dealing with samples purchased for analysis.

15. The person purchasing or otherwise obtaining any article with the intention of submitting the same to analysis shall forthwith notify to the seller or his agent selling the article his intention to have the same analysed by an analyst under this Act, and shall offer to divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent. He shall afterwards retain one of the said parts for future comparison, and submit the third part, if he deem it right to have the article analysed, to the analyst as aforesaid.

Provision when sample is not divided

16. If the seller or his agent do not accept the offer to divide the said article in his presence, the analyst receiving the article for analysis shall if informed accordingly divide the same into two parts, and shall seal or fasten up one of those parts, and shall cause it to be delivered when he supplies his certificate to the person applying for the analysis, who shall retain the same for production in case proceedings shall afterwards be taken in the matter.

Provision for sending article to analyst through the Post Office.

17. If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the analyst through the post office as a registered parcel or letter, subject to any regulations which the Postmaster-General may make in reference to the carrying and delivery of such article, and the charge for postage of such article shall be deemed one of the charges of the prosecution.

Digitised by the University of Pretoria, Library Services, 2016

In certain cases evidence may be given by persons other than public analyst.

18. In any case in which an article may be of so perishable a nature, or so composed that it cannot safely be sent to an analyst appointed under this Act, and further, in case any Resident Magistrate upon application made to him, of which he shall keep a record, shall be of opinion that, for the purposes of any prosecution or proceeding under this Act, a sufficient analysis can be conveniently obtained within his district, he may take the evidence of such qualified person or expert as he may select in lieu of the certificate of an analyst appointed under this Act as aforesaid.

Form of the certificate.

19. The certificate of the analysis shall be in the form set forth in the schedule hereto, or to the like effect.

Quarterly report of the analyst.

20. Every analyst appointed under this Act shall report quarterly to the Treasurer of the Colony the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis, and the sum paid to him in respect thereof; and a copy of such report shall be laid before Parliament.

Suspected articles to be examined on importation.

21. From and after the taking effect of this Act all articles of food imported as merchandise into and landed at any port in this Colony may be subject to examination by the Customs or other officers appointed in that behalf, and samples may, when deemed necessary by such officers, be taken, and with all convenient speed be examined by an analyst as aforesaid; and if, upon such analysis, the same shall be found to be in contravention of this Act, the same shall be forfeited and destroyed, or otherwise disposed of as the Treasurer of the Colony may direct.

Exemption of employer from penalty.

22. Where an employer is charged with an offence against this Act he shall be entitled to have any other person whom he charges as the actual offender brought before the Resident Magistrate before whom such employer is charged, and if after the commission of the offence has been proved the employer proves to the satisfaction of the Magistrate that he had used due diligence to enforce the execution of this Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be convicted of such offence, and the employer shall be exempt from the penalty.

Special Provisions as to Butter, &c.

Marking of cases containing butter, &c.

23. Every person importing into this Colony any butter, butterine, margarine, or similar article shall conform to the following regulations:—

(1) Every package, whether open or closed, and containing butter, butterine, margarine, or similar article, shall be branded or durably marked "Butter," "Margarine" (or other article as the case may be) on the top, bottom, and sides in printed capital letters.

Digitised by the University of Pretoria, Library Services, 2016

(2) If such article be exposed for sale, there shall be attached to each parcel thereof so exposed, and in such manner as to be clearly visible to the purchaser a label marked in printed capital letters containing the word "Butter," "Margarine," (or other article as the case may be).

(3) Every person selling any such article save in a package duly branded or durably marked as aforesaid, shall in every case deliver the same to the purchaser in or with a paper wrapper, on which shall be printed in capital letters clearly visible to the purchaser the word "Butter," "Margarine" (or other article as the case may be). Any person contravening this section shall be liable to the penalties provided by the third section of this Act.

Special Provisions as to Seeds.

Offences in relation to seeds.

24. Every person who with intent to defraud or to enable another person to defraud, sells, or causes to be sold, any killed or dyed seeds shall be punished as follows; that is to say:

(1) For the first offence he shall be liable to a penalty not exceeding ten pounds, and in default of payment to imprisonment, with or without hard labour for a period not exceeding three months, unless such penalty be sooner paid.

(2) For the second and any subsequent offence he shall be liable to a penalty not exceeding twenty pounds, and in default of payment to imprisonment, with or without hard labour, for a period not exceeding three months, unless such penalty be sooner paid.

Proceedings against Offenders.

Intent to defraud particular person need not be alleged.

25. In any proceeding for any offence under this Act it shall be sufficient to allege that the person accused did the act charged with intent to defraud, or to enable some other person to defraud without alleging an intent to defraud any particular person, or an intent to enable any particular person to defraud any particular person, and on the trial of any such offence it shall not be necessary to prove an intent to defraud any particular person, or to enable any particular person to defraud any particular person, but it shall be sufficient to prove that the person accused did the act charged with an intent to defraud, or with intent to enable some other person to defraud, or with the intent that any other person might be enabled to defraud.

Proceedings against offenders.

26. All proceedings against the person charged with violating the provisions of this Act shall be commenced within a reasonable time, and, in the case of a perishable article, not more than twenty-one days from the time of purchase from such person for test purposes of the food or drug for the sale of which in contravention to the terms of this Act the seller is rendered liable to prosecution.

Digitised by the University of Pretoria, Library Services, 2016

Certificate of analyst *prima facie* evidence for the prosecution, but analyst may be called if required.

27. In such proceedings the production of the certificate of the analyst shall be evidence of the facts therein stated, unless the defendant shall at his expense require that the analyst shall be called as a witness, and the parts of the articles retained by the person who purchased or obtained the same shall be produced: Provided that the defendant instead of requiring the attendance of the analyst as a witness shall be entitled to put interrogatories, approved of by the Resident Magistrate to such analyst, and such interrogatories and the answers thereto shall be received in evidence in any such proceeding.

Defendant to prove that he is protected by exemption or provision.

28. In any prosecution under this Act when the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act, it shall be incumbent upon him to prove the same.

Defendant to be discharged if he prove exemption or provision.

29. If the defendant in any prosecution under this Act prove to the satisfaction of the court before whom he is charged that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the purchaser, and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the charges and costs incurred by the prosecutor unless he shall have given due notice to him that he will rely on the above defence.

Contracts not to be affected.

30. Nothing in this Act contained shall in any way interfere with contracts and bargains between individuals and the rights and remedies belonging thereto: Provided that in any action brought by any person for a breach of contract on the sale of any article of food, or of any drug, or of any seed, such person may recover alone or in addition to any other damages recoverable by him the amount of penalty in which he may have been convicted under this Act, together with the costs paid by him upon conviction, and those incurred by him in and about his defence thereto, if he prove that the article, or drug or seed the subject of such conviction and sold to him as and for an article or drug or seed of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful or that the amount of costs awarded or claimed was unreasonable.

Forging certificate or warranty.

31. (1) Every person who shall forge or shall utter, knowing it to be forged for the purposes of this Act, any certificate, or any writing or signature, shall be guilty of the crime of

Digitised by the University of Pretoria, Library Services, 2016

forgery or uttering a forged instrument as the case may be, and punishable accordingly.

(2) Every person who shall wilfully apply to an article of food, or a drug, or seed in any proceedings under this Act, a certificate, or invoice, or warranty given in relation to any other article, or drug, or seed, shall be guilty of an offence under this Act, and be liable to imprisonment, with or without hard labour, for a period not exceeding twelve months.

(3) Every person who shall give a false warranty, or invoice in writing to any purchaser of an article of food, or drug, or seed, sold by him as principal or agent, shall be guilty of an offence under this Act, and shall be liable to the penalties provided by the third section of this Act.

(4) Every person who shall give a label with any article sold by him which shall falsely describe the article sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to the penalties provided by the third section of this Act.

Reduction of strength of brandy, whisky, rum and gin.

32. In determining whether an offence has been committed under the sixth section of this Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin or any other spirits.

Governor may exempt food, drugs or seeds imported direct for any State or Territory beyond the Colony from the operations of this Act.

33. The Governor may, by Proclamation in the *Gazette*, at the request of the Government of any state or territory beyond the boundaries of this Colony, exempt, under such regulations as to him may seem fit, any food, or drugs, or seeds imported through the sea ports of this Colony into such state or territory directly: Provided that foods, drugs, or seeds so exempted shall, in case of re-importation into this Colony, become subject to the provisions of this Act.

Governor may make regulations.

34. The Governor shall have power to make rules and regulations for the guidance and conduct of officers and persons employed in carrying this Act into effect, and for prescribing all things necessary to be done for effectually carrying the provisions of this Act into effect, and such regulations shall have the force of law.

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE.

No. 6—1890.
Schedule.

FORM OF CERTIFICATE.

To (1)

I, the undersigned, Public Analyst for the
do hereby certify that I received on the day of
18 , from (2)
of
a sample of
for analysis (which then weighed (3)), and have analysed the same, and declare the result of my analysis to be as follows :—

I am of opinion that the same is a sample of genuine

or

I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under :—

OBSERVATIONS (4)

As witness my hand, this day of 18
at

A.B.

(1) Here insert the name of the person submitting the article for analysis.
(2) Here insert the name of the person delivering the sample.
(3) When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.
(4) Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or for improving its appearance, or was unavoidable, and may state whether in excess of what is ordinary or otherwise, and whether the ingredients or materials mixed are or are not injurious to health.

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

No. 6—1890.] [Promulgated 2nd August, 1890.

ACT

To Apply a Sum not exceeding Two Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1891.

Preamble.

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

Revenue charged with £200,000 towards service of year ending 30th June, 1891.

1. The public revenue of the Colony of the Cape of Good Hope is hereby charged towards the service of the year ending the 30th June, 1891, with a sum not exceeding Two Hundred Thousand Pounds Sterling (£200,000), which sum shall be applied towards

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1890.

the service of the said year in conformity with the estimates of the expenditure for the said year which have been presented to Parliament.

Short title.

2. This Act may be cited for all purposes as "The Second Appropriation (part 1890-91) Act, 1890."

No. 7—1890.] [Promulgated 19th August, 1890.

ACT

To amend the "Scab Acts Extension Act, 1889."

Preamble.

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

Field-cornetcy adjoining area or district of Transkeian Territory where Rules and Regulations under Proclamation No. 32 of 1889 are in force, may be proclaimed as an area or district under Scab Acts, if meeting of landholders and farmers has resolved accordingly, and if Governor approves.

1. If in any field-cornetcy which shall adjoin along any portion of any of its boundaries any area or district in the Transkeian Territories in which area or district the Rules and Regulations for the prevention of the Scab disease in sheep and goats, promulgated by Proclamation No. 32 of 1889, dated the 18th February, 1889, are or shall have been proclaimed in force, the procedure appointed by the first section of the Scab Acts Extension Act, 1889, shall have been taken by the calling of the meeting therein provided for, and if at such meeting a majority of persons, being landholders and sheep farmers, within the said field-cornetcy, shall have carried a resolution in favour of bringing the Scab Acts into operation in the said field-cornetcy, which resolution shall have been forwarded by the Civil Commissioner of the division to the Governor, it shall be lawful for the Governor to proclaim in the *Gazette* that the Scab Acts are in force in the said field-cornetcy, which shall thereupon be deemed and taken to be an area or district within the meaning of the said Acts.

Field-cornetcy adjoining field-cornetcy referred to in section 1, may, if similar resolution has been passed, be proclaimed as part of same area or district under Scab Acts.

2. If in any other field-cornetcy which shall adjoin along any portion of any of its boundaries any such field-cornetcy as aforesaid, a resolution in favour of bringing the Scab Acts into operation in such adjoining field-cornetcy shall in similar manner as aforesaid have been carried and forwarded to the Governor, it shall be lawful for the Governor to proclaim in the *Gazette* that the Scab Acts are in force in such adjoining field-cornetcy, which shall therefore be deemed and taken for the purposes of the Scab Acts, but for no other purposes, to form portion of the area or district established by proclamation under the first section of this Act.

Effect and short title of Act.

3. This Act shall be read as one with the "Scab Acts Extension Act, 1889," and may be cited as the "Scab Acts Amendment Act, 1890."

Digitised by the University of Pretoria, Library Services, 2016

No. 8—1890.] [Promulgated 22nd August, 1890.

ACT

To enable the Municipal Council of Port Elizabeth to raise a further Loan of £30,000 for the better Storage and Supply of Water for the use of the Inhabitants of Port Elizabeth.

Preamble.

WHEREAS by the Act No. 31 of 1877, known as "The Port Elizabeth Water Supply Act, 1877," the Municipal Council of Port Elizabeth was empowered to borrow and take up at interest such sum or sums of money not exceeding in the whole one hundred and fifty thousand pounds sterling, upon the security of the municipal rates of the Municipality of Port Elizabeth, for the purpose of constructing such reservoirs, dams, filter beds, watercourses or leadings and other works as might be deemed requisite for securing an adequate supply of water for the inhabitants of the town of Port Elizabeth and for the shipping visiting that port.

And whereas it is expedient that the said Municipal Council should be authorised to raise in a similar manner, upon the security of the municipal rates of the said Municipality, a further sum of thirty thousand pounds sterling, which it is expected will be sufficient for the construction of a storage reservoir or storage reservoirs and filter beds for the accumulation of a supply of water available in times of drought, as well as for increasing the ordinary supply of water for the said town:

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

Borrowing powers conferred.

1. It shall be lawful for the said Council to borrow and take up from time to time upon interest such further sum or sums of money, not exceeding Thirty Thousand Pounds in the whole, as may be necessary for constructing and completing such reservoir or reservoirs and filter beds for the storage of water as may be found requisite, and all such pipes, sluices, water-leadings, and other works as shall be required for making the same available for increasing and securing the permanent supply of water for the said Municipality.

Money borrowed how to be employed.

Provisions of Act No. 31, 1877, to apply.

2. All the provisions of the said Act No. 31 of 1877, with regard to the money thereby authorised to be borrowed, and with regard to the security and repayment thereof, and the payment of the interest thereon, shall apply to the said additional loans in the same manner as if the whole sum of One Hundred and Eighty Thousand Pounds had been by the said Act authorised to be borrowed.

Short Title.

3. This Act may be cited for all purposes as the "Port Elizabeth Additional Water Supply Act, 1890."

o

Digitised by the University of Pretoria, Library Services, 2016

No. 10—1890. No. 9—1890.] [Promulgated 19th August, 1890.

ACT

To amend the Act No. 33 of 1888.

Preamble. BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No permit required for conveyance of sheep from one place to another, if neither place is within a proclaimed district or area.

1. Notwithstanding anything to the contrary contained in the fifth or any other section of the Act No. 33 of 1888, no such permit as is in the said fifth section referred to shall be required in respect of any sheep which shall be conveyed on a continuous journey by rail from any place not within any proclaimed district or area to any other place not within any proclaimed district or area, notwithstanding that in the course of such journey the truck, van, carriage or train, by which such sheep is conveyed may pass through any part of some proclaimed district or area.

Act to take effect only in regard to railways proclaimed in the *Gazette*.

2. This Act shall take effect only in regard to such line of railway, or portion thereof, as the Governor may from time to time by Proclamation in the *Gazette* declare to be subject to the provisions of this Act.

Effect of short title.

3. This Act shall be read as one with the Scab Acts, and may be cited as the "Scab Law Amendment Act, 1890."

No. 10—1890.] [Promulgated 22nd August, 1890.

ACT

To provide for Constructing, Equipping and Working a certain Line of Railway, for the completion of certain Lines of Railway under construction, and for certain Additional Works in connection with existing Railways.

Preamble. BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Government authorised to construct certain line of railway: Schedule A.

1. The Governor shall, as soon as may seem to him expedient after the passing of this Act, cause to be constructed and equipped the line of railway set forth in Schedule A to this Act, and shall cause the same to be maintained and worked, and shall appoint such engineers and other officers, and do and perform all such acts, matters and things as he may deem necessary or expedient for the purpose.

Governor authorised to complete certain lines of railway: Schedule B.

2. The Governor shall, as soon as may seem to him expedient after the passing of this Act, cause to be completed the lines of railway now under construction which are referred to in Schedule B.

Digitised by the University of Pretoria, Library Services, 2016

3. The Governor shall likewise cause to be constructed and provided the additional works in connection with existing lines of railway which are set forth in Schedule C to this Act.

Governor authorised to construct and provide certain additional works; Schedule C.

4. For the purposes of constructing and equipping the line of railway set forth in Schedule A, the Governor may expend a sum not exceeding Nine Hundred and Eighty Eight Thousand Eight Hundred and Seventy Nine Pounds Sterling, for the purpose of completing the lines of railway set forth in Schedule B, the Governor may expend a sum not exceeding One Hundred and Two Thousand Two Hundred Pounds Sterling, and for the purpose of constructing and providing the additional works set forth in Schedule C, the Governor may expend a sum not exceeding Four Hundred and Ninety Nine Thousand Two Hundred and Seventy Six Pounds Sterling.

Authority to expend for above purposes, the sums of £988,879, £102,200, and £499,276, or £1,590,355 in all.

5. For the several purposes aforesaid, the Governor may from time to time as he may deem expedient, raise a sum of One Million Five Hundred and Ninety Thousand Three Hundred and Fifty-Five Pounds Sterling, either by debentures or stock, or partly by debentures and partly by stock, and the costs necessarily incurred in raising the said loan, including discount, commission, and other incidental charges, shall be a first charge against the amount thereof.

Authority to raise a sum of £1,590,355, in Debentures or Stock.

6. For the purposes of this Act the provisions of the second to the fifth sections inclusive of the "Railway Act, 1874," shall be deemed *mutatis mutandis* to be in this Act re-enacted.

Sections 2, 3, 4, 5 of Act No. 19 of 1874, to apply *mutatis mutandis*.

7. This Act may be cited as the "Railway Extension and Additional Works Act, 1890."

Short title.

SCHEDULE A.

Schedule A.

No.	Description.	Amount.
1	A line from the Indwe Coal Mines to a point between Cyfergat and Molteno, and from a point on the Eastern Line about ten miles north of Molteno, *via* Steynsburg, to Middelburg-road Station	£988,879

Digitised by the University of Pretoria, Library Services, 2016

No. 10—1890.

Schedule B.

SCHEDULE B.

Completion of lines under construction.

No.	Description.	Amount.
1	Kalk Bay to Simon's Town	£47,500
2	Eerste River to Sir Lowry Pass	16,900
3	Colesberg Junction to Norval's Pont (including a Bridge)	37,800
		£102,200

Schedule C.

SCHEDULE C.

Additional works to be constructed and provided in connection with existing lines.

Description.	Amount.
Additional Works on Existing Lines:—	
(*a*) Renewing Main Line with Heavier Rails	£67,012
(*b*) Reducing Gradients	7,000
(*c*) Rolling Stock, Passenger Carriages ..	35,000
(*d*) Vacuum Brakes	15,000
(*e*) Workshops—Salt River and Uitenhage ..	31,539
(*f*) Stations and Sidings (Port Elizabeth) ..	150,000
,, ,, (Cape Town) ..	47,605
(*g*) Additional Accommodation on Three Systems	51,750
(*h*) Accommodation for Railway Employés ..	62,475
(*i*) Telegraphs, Electric Lights and Signals..	14,430
(*j*) Stores and Warehouses	8,000
(*k*) Water Supply	9,465
	£499,276

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1890.] [Promulgated 22nd August, 1890.

ACT

To amend the Table Bay Harbour Board Act, 1881.

Preamble.

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

Number of Commissioners of Table Bay Harbour Board increased to eight: Mayor of Cape Town to be *ex officio* a member.

1. Notwithstanding anything to the contrary contained in the fourth or fifteenth sections of the Act No. 26 of 1881, commonly called the "Table Bay Harbour Board Act, 1881," the Board of Commissioners therein referred to shall, from and after the passing of this Act, consist of eight persons, being the seven persons elected or appointed from time to time, together with the Mayor of Cape Town for the time being, who shall *ex officio* be a Commissioner during the period during which he shall occupy the position of Mayor of Cape Town, but no longer.

Nominated Commissioners to hold office for three years.

2. Every nominated Commissioner shall hold office for a period of three years from the date of his nomination, unless the Governor shall sooner revoke his nomination, or unless his office shall become vacant, but after the expiration of such period such Commissioner may be again nominated by the Governor or elected as a Commissioner.

How vacancies o nominated Commissioners and Mayor may be filled.

3. The office of every nominated Commissioner, and of the Mayor of Cape Town as a Commissioner of the said Board, shall become vacant on any ground on which, in terms of the seventeenth section of the said Act, the office of an elected Commissioner would become vacant, but every such vacancy under this section may be filled by the Governor by nomination, provided that if the office of the Mayor of Cape Town as a Commissioner shall at any time become vacant under this section, the Commissioner nominated by the Governor to fill such vacancy shall hold office only until the election of another Mayor of Cape Town shall have taken place and shall have been notified to the said Board: and provided further that, notwithstanding anything contained in the seventeenth or any other section of the said Act, any member of the said Board may by leave of the Board be absent from the ordinary meetings of the Board for any period not exceeding six months without vacating his office.

Uncertificated in solvent ineligible fo election as Commissioner.

4. No Commissioner of the said Board whose office shall become vacant on the ground of insolvency or assignment of his estate shall be capable of being again elected or nominated as a Commissioner until his estate shall have been discharged or released from sequestration or assignment.

Effect an title of Act.

5. This Act shall be read as one with the Act No. 26 of 1881, and may be cited as the "Table Bay Harbour Board Amendment Act, 1890."

Digitised by the University of Pretoria, Library Services, 2016

No. 12—1890.] [Promulgated 22nd August, 1890.

ACT

To Provide for the Registration of Brands, and to facilitate the identification and recovery of Lost or Stolen Horses, Cattle and Ostriches.

Preamble.

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

Act to come into force on appointed day in scheduled districts.
Short title.

1. This Act shall come into force in the districts named in the Schedule thereto, on a day to be appointed by the Governor by Proclamation in the *Gazette*, and may be cited as the "Brands Registration Act, 1890."

Extension of operation of Act to adjoining divisions, but only after request by Divisional Council in accordance with resolution taken at meeting held after 6 weeks' notice.

2. The operation of this Act may thereafter be by similar Proclamation extended to and throughout any division, ~~any portion of~~ any boundary of which shall adjoin ~~any portion of any~~ boundary ~~of any district~~ or division in which the Act shall then ~~already be in force~~, but no such Proclamation shall issue unless and until

(*a*) The Divisional Council of such first-named division shall have passed by a majority of the elected members of such Council, a resolution requesting the Governor to issue such Proclamation; and

(*b*) It shall be proved to the satisfaction of the Governor that at least six weeks before the date of such resolution notice has been given in some newspaper circulating in such division of the proposal to pass such a resolution at some meeting referred to in such notice.

Meaning of terms.

3. In this Act the following terms shall have the following meanings :—

"Horse."—Any horse, mare, gelding, colt, filly, ass, or mule.

"Cattle."—Any bull, cow, ox, heifer, steer, or calf.

"Registrar."—The Registrar of Brands appointed under this Act.

"Register."—A Register Book containing a list of the brands of horses, cattle, or ostriches, registered with the Registrar.

"Proprietor."—The registered proprietor of any brand.

"Brand."—The impression of any letter, sign, or character branded upon any horse, cattle, or ostrich.

"Similar Brand."—A brand so like another brand as to be likely to be mistaken for it.

"Brand Directory."—The list of the brands of horses, cattle or ostriches, compiled by the Registrar and published by the Government printers whether in the shape of a book or of quarterly lists in the *Gazette*.

Digitised by the University of Pretoria, Library Services, 2016

"Fees."—Any fees, rates, or charges which any person may be liable to pay under this Act or the Regulations made in pursuance thereof.

Appointment of Registrar and Deputy Registrars of Brands; their functions and offices.

4. The Governor may from time to time appoint, and as occasion may require remove some officer or officers in the service of the Colonial Government to exercise under this Act the functions of

(*a*) The Registrar of Brands for all parts of this Colony wherein this Act shall be in force,

(*b*) Deputy Registrars, for different districts or divisions wherein this Act shall be in force, who shall be subordinate to the Registrar for the purposes of this Act,

and the Governor may from time to time by notice in the *Gazette* determine the place or places at which shall be situated the office or offices of the Registrar or Deputy Registrars.

Three registers to be kept for brands of horses and cattle respectively.

5. The Registrar shall keep three registers for the registration of the brands of horses, cattle or ostriches respectively.

Application to be registered as proprietor of brand or brands for any district or division in which Act is in force: fees to be deposited.

6. Every owner of any horse, cattle or ostrich, running in any part of any district or division, in which this Act shall be in force, may deposit the prescribed fees and make application in writing to the Registrar, or to the Deputy Registrar of such district or division, to be registered as the proprietor of one brand for horses or one brand for cattle, or one brand for ostriches, running in such district or division, or of all such brands, and all such applications made to any Deputy Registrar shall forthwith be forwarded by him to the Registrar, together with the fees deposited.

Certificate of receipt of application.

7. Upon receiving any such application and fees, every Deputy Registrar, and the Registrar, upon receiving any such application and fees direct from the applicant, shall send to the applicant a certificate of such receipt in the form hereinafter provided for.

If brand applied for already registered for same district or division, or if other objections under Act or regulation, Registrar must give immediate notice and return fees deposited.

8. If at the time when the Registrar shall receive either directly from any applicant, or through any Deputy Registrar, any such application in respect of any district or division, in which this Act shall be in force, there shall already be in the appropriate register, a registered proprietor for the same district or division of the brand the registration of which is applied for, or any brand which the Registrar shall deem to be similar thereto, or if the registration of any brand is applied for, the registration of which is prohibited by any provision of this Act, or any regulation made as hereinafter provided, the Registrar shall forthwith return to the applicant the fees deposited, and give notice, in writing, to the applicant of the reason why his application cannot be entertained, and shall proceed no further on such application, but shall keep a record thereof.

Digitised by the University of Pretoria, Library Services, 2016

No. 12—1890.

Admissible applications to be numbered and entered in a special book, and notice thereof giving description of brand, &c., to be published thrice in *Gazette*.

9. Whenever the Registrar shall receive any application in respect of which it shall not be necessary to give the notice prescribed by the last preceding section of this Act, and in respect of which the prescribed fees shall be deposited, such application shall be numbered and entered by the Registrar in a book to be kept for the purpose, and shall without delay cause the name and residence of the applicant and the description of his brand to be published three times in the *Gazette*.

If no other applications within two months from first notice, applicant to be registered as proprietor of brand.

10. If, within two months from the date of the first publication in the *Gazette*, no application shall be made by any other person for the registration of the same or a similar brand in the same register for the same district or division, the brand notified shall be deemed to be the brand of the applicant, and he shall be registered accordingly as the proprietor thereof.

Modification of brands, when the same or similar brands are applied for by different persons: if applicants do not agree, Registrar may decide on necessary modifications.

11. If at the expiry of the aforesaid period of two months, one or more other applications shall have been received and entertained for the registration of the same or a similar brand, in the same register for the same district or division, the Registrar shall cause notice, in writing, to be given to every applicant, setting forth every other application, and calling upon the applicants within two months from the date of such notice to arrange such modifications of their proposed brands that they shall no longer be the same as or similar to each other, and unless the applicants shall, within the said two months or such further time as the Registrar may by regulations be authorised to allow, agree upon and by common consent communicate in writing to the Registrar modifications approved by him, the Registrar shall and may make such modifications as may be necessary in all or any of the proposed brands, and shall give notice of such modification to the several applicants, and forthwith after any modification shall be approved of or made and notified by the Registrars under the provisions of this section, he shall register the several applicants as proprietors of the respective brands determined by him after such modification.

Certificate of registration to be sent by Registrar to proprietor.

12. The Registrar shall send to every applicant a certificate of registration so soon as such applicant shall be registered under this Act as the proprietor of any registered brand.

Letter, numeral, sign, or character, prescribed by regulations to form part of every brand registered for that district or division.

13. The letter, sign, or character prescribed by regulations under this Act for any district or division shall form part of every brand to be registered for the district or division to which such letter, sign, or character refers.

Brands containing signs or characters other than letters or numerals not to be registered till cost of type or block paid for by applicant.

14. If any brand shall contain any sign or character other than letters or numerals, such brand shall not be registered until the applicant shall have defrayed the cost of preparing a type or block of such brand for the purpose of advertisement in the *Gazette*.

Quarterly return of brands and proprietors to be published.

15. At the end of each quarter of every year after this Act shall come into force, the Registrar shall prepare alphabetical

Digitised by the University of Pretoria, Library Services, 2016

lists of the brands of horses, cattle and ostriches, and of the names and residences of the proprietors of brands registered under this Act in each district or division during such quarter, and such list shall be published in the *Gazette*.

Annual compilation of Brand Directory.

16. As soon as may be after the 31st day of December in each year after this Act shall come into force, the Registrar, or such other officer as the Governor shall appoint, shall compile and publish a Brand Directory containing a correct and complete list of all registered brands and of names and residences of all proprietors registered for every district or division up to that date.

Cession and transfer of registered right to brands: registration of such cession and transfer.

17. Any registered proprietor may cede and transfer his right to any registered brand to any person, provided that such cession and transfer shall only take place in the prescribed form, and be of validity when registered by the Registrar upon payment of the prescribed fee; and every person receiving such cession and transfer shall be entitled to a certificate thereof under the hand of the Registrar.

Penalty for unauthorised imposition of brand.

18. Any person, not being the registered proprietor of any brand in any district or division, and not acting with the authority of such registered proprietor, who shall within any district or division wherein this Act shall be in force, impose or cause to be imposed upon any horse, cattle, or ostrich as the case may be, any such registered brand, shall be liable upon conviction to a fine not exceeding ten pounds, and in default of payment to imprisonment with or without hard labour for any term not exceeding one month.

Evidence in criminal trials may be given to prove registered brands: certificate of Registrar admitted in evidence.

19. On the trial of any person for the theft of any horse, cattle, ostrich, or for receiving such horse, cattle, or ostrich, or any part or portion thereof knowing the same to have been stolen, it shall be competent for the prosecution to give evidence that the brand upon the animal or ostrich alleged to have been stolen is the registered brand of the person alleged to be the owner of such animal or ostrich, or of some person through or from whom such owner derived his right to such animal or ostrich, and a certificate purporting to be under the hand of the Registrar shall constitute *prima facie* proof of the facts therein alleged.

Burden of proof rests on accused found in possession of horse, cattle, ostrich, branded with registered brand, upon proof of ownership and that a theft has been committed.

20. On the trial of any such person as aforesaid who shall have been apprehended in possession of any horse, cattle or ostrich branded with any registered brand upon proof being given of the ownership of such horse, cattle or ostrich, and that a theft thereof has been committed, the onus of proving that such horse, cattle, or ostrich was or were lawfully or innocently in his possession shall rest upon the accused person.

Poundmaster to keep Brand Directory and *Gazette*.

21. Every poundmaster in any district or division wherein this Act shall be in force shall keep a copy of the latest edition of the Brand Directory, and a file of the *Gazettes* containing the alphabetical lists required to be published quarterly as aforesaid,

Digitised by the University of Pretoria, Library Services, 2016

No. 12—1890.

and on receipt of a fee of one shilling shall at all reasonable hours permit a search in the Brand Directory and such *Gazettes*, and copies of any entries to be made by any person. Every poundmaster contravening this section shall be liable to a fine of two pounds sterling.

Duty of poundmaster to give notice to registered proprietor of last brand on impounded horse, cattle or ostriches.

22. Whenever any horse, cattle, or ostrich shall be impounded within any district or division wherein this Act is in force, the poundmaster shall forthwith give notice, verbally or by letter, to the registered proprietor or proprietors of any brand or brands which shall appear on such horse, cattle, or ostrich, and every such poundmaster contravening this section shall be liable to a fine of one pound sterling.

Additional pound fee for unbranded horse, cattle or ostrich over one year old.

23. The council of every division in which this Act shall be in force may fix and determine a pound fee to which every poundmaster in such division shall be entitled, to wit, an additional pound fee not exceeding three pence for and in respect of any horse, head of cattle, or ostrich, above the age of one year, which shall be impounded in his pound, if such horse, cattle, or ostrich shall bear no registered brand.

Regulations to be made by Governor.

24. The Governor may from time to time, by Proclamation in the *Gazette*, make, amend, alter, or repeal such regulations as may be necessary in pursuance and for the proper carrying out of the provisions of this Act, and specially for the following purposes:—

(1) To prescribe, in detail, the duties of the Registrar and Deputy Registrars;

(2) To provide the forms in which applications for registration shall be made;

(3) To prescribe the forms in which any certificates provided for by this Act shall be given by the Registrar or Deputy Registrars;

(4) To prescribe the form and manner of giving any notice required but not specially provided for by this Act;

(5) To prescribe the manner in which the registers, alphabetical lists, brand directory, books, and records required by this Act shall be kept and made;

(6) To prescribe the letters, numerals, signs, or characters by which districts or divisions shall be known for the purposes of this Act;

(7) To prescribe the fees to be paid to the Registrar or Deputy Registrars under the provisions of this Act;

(8) To prescribe the form in which any cession or transfer of the right to any registered brand shall be effected;

(9) To prescribe the size of any brands entitled to registration, the portions of the body on which horses, cattle, or ostriches shall respectively be branded, and the order in which different brands shall be imposed;

Digitised by the University of Pretoria, Library Services, 2016

(10) To prescribe a penalty not exceeding a fine of two pounds sterling for any breach of any regulation made in accordance with any provision of this Act. No. 13—1890.

25. All fees, other than pound fees, received, and all penalties recovered under the provisions of this Act shall be paid into the Colonial Treasury. Fees and penalties to be paid into Treasury.

SCHEDULE. Schedule.

King William's Town.
Komgha.
East London.
Stutterheim.
Cathcart.
Queen's Town.
Tarka.
Victoria East.
Peddie.
Fort Beaufort.
Stockenstrom.
Bedford.
Somerset East.
Uitenhage.
Albany.
Bathurst.
Port Elizabeth.
Alexandria.
Jansenville.

No. 13 of 1890.] [Promulgated 22nd August, 1890

ACT

To Provide for the Acquisition, Construction, or Completion, and for the Equipment of Certain Lines of Railway, and for the Purchase of Additional Rolling Stock.

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:— Preamble.

1. It shall be lawful for the Governor to raise from time to time, as he may deem expedient, either by debentures or in stock, or partly by debentures and partly in stock a sum not exceeding in the whole the sum of two hundred and ninety-six thousand eight hundred pounds sterling to provide for the cost of the construction of a line of railway from Kimberley to Warrenton, in accordance with the terms of certain agreements, dated the 29th day of October, 1889, and the 23rd day of January, 1890, respec- Governor may raise £296,800 for cost of line from Kimberley to Warrenton.

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1890.

tively, between the Colonial Government and the British South Africa Company, which agreements are set forth in full in the Schedule to this Act.

Governor may raise £562,200 for cost of the construction of line from Warrenton to Vryburg.

2. It shall also be lawful for the Governor to raise in manner provided by the preceding section a further sum not exceeding in the whole the sum of five hundred and sixty-two thousand two hundred pounds sterling, to provide for the cost of the continuation of the aforesaid line from Warrenton to Vryburg in the territory of British Bechuanaland in accordance with the terms of the said agreements.

Governor authorised to acquire above lines, or to acquire the completed portion and construct the uncompleted portions.

3. It shall be lawful for the Governor, as soon as he may deem expedient after the passing of this Act to acquire or take over, for and on behalf of the Colonial Government, from the British South Africa Company the aforesaid lines of railway from Kimberley to Warrenton and from Warrenton to Vryburg in accordance with the terms and conditions of the agreements in the Schedule to this Act; or to acquire and take over such portions of the said lines as may at the time be completed, and to cause to be constructed the remaining portions of the said lines.

Governor authorised to cause lines to be equipped and worked.

4. In the event of the Governor acquiring or constructing the said lines or portions of the said lines in manner provided by the preceding section, it shall be lawful for him to cause the whole of the said lines to be equipped, maintained, and worked, and he shall appoint such engineers and other officers, and do and perform all such acts, matters and things as he may deem necessary or expedient for the purpose.

Colonial Government to be vested with the rights and duties of the British South Africa Company as to working and construction of lines.

5. From and after the date of the acquisition or taking over of the said lines or portions of the said lines as aforesaid by the Governor, the Colonial Government shall be vested with the same rights, powers, duties, functions and privileges as to working the said railways, and with the same rights and powers as to the construction of the uncompleted portions of the said railways, if any, as were theretofore secured to or vested in the said British South Africa Company by virtue of any agreement entered into either with the High Commissioner and Governor of British Bechuanaland, or with any private person.

Act 19 of 1861 to apply to railways under this Act within the Colony.

6. The several provisions of Act 19 of 1861, entituled "An Act for the Regulation of Railways in this Colony," save and except the 29th and 30th sections thereof, shall *mutatis mutandis* apply to so much of the said railway lines as are within this Colony, precisely as if the said railways belonged to a company, and there were a board of directors, the functions of the said board being performed by the Governor with the advice of the Executive Council.

Governor may raise £125,000 for completion of Norval's Pont-Bloemfontein line, and £135,000 for additional rolling stock.

7. It shall be lawful for the Governor to raise from time to time, as he may deem expedient, either by debentures or stock, or partly by debentures and partly by stock, and to expend the

Digitised by the University of Pretoria, Library Services, 2016

sum of one hundred and twenty-five thousand pounds for the completion of a railway now under construction from a point on the north bank of the Orange River near Norval's Pont to Bloemfontein in the Orange Free State, and the sum of one hundred and thirty-five thousand pounds for the purchase of additional rolling stock.

Cost of raising loan to be a first charge thereon.

8. The costs necessarily incurred in raising the aforesaid sums, including discount, commission and other incidental charges shall be a first charge against the amount thereof.

Short title.

9. This Act may be cited as the "Northern Railways Act, 1890."

SCHEDULE.

Schedule.

I.

MEMORANDUM OF AGREEMENT between the COLONIAL GOVERNMENT, represented by the COMMISSIONER OF CROWN LANDS AND PUBLIC WORKS, of the one part, and the Honourable CECIL JOHN RHODES, M.L.A., representing the BRITISH SOUTH AFRICA COMPANY, under Royal Charter, of the other part, in the matter of the said Company's proposal to construct a line of Railway through Colonial Territory from the present terminus at Kimberley *via* Fourteen Streams to the boundary of British Bechuanaland, and from thence through the Territory of British Bechuanaland to a terminal point at or near Vrijburg.

1. This Agreement is based upon the letter dated Cape Town, 24th October, 1889, addressed by the said Cecil John Rhodes to the Prime Minister, and the Prime Minister's answer thereto of 26th October, copies of which are hereunto annexed.

2. The Colonial Government consents to the said Company's proposal of constructing, at its (the said Company's) own risk and expense, the said line from the Kimberley Terminus to a point on the North Bank of the Vaal River, near Fourteen Streams, including a Bridge over the Vaal River, and for that purpose agrees to place the said Company in possession of the powers granted to the said Government, under and by virtue of Section 2 of Act 20 of 1888, for the due construction of the said railway, and for expropriation of the land required for such construction; and in regard to further extension from a point on the North Bank of the Vaal River through Colonial territory to the boundary of British Bechuanaland, and from thence through the territory of British Bechuanaland to a point at or near the town of Vrijburg, the said Colonial Government promises to give to the said Company every facility in its power; provided, always, that the said Company shall, at its own risk, obtain or secure the concurrence, if required, of the Government for the time being of British Bechuanaland for the construction of such portion of the said line of railway as passes through the said territory of British Bechuanaland.

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1890.

3. The said railway is to be constructed in every respect as regards gauge, weight of rails, gradients, curves, buildings necessary for the safe working of the line, and general efficiency, equal to the existing Colonial Government railways.

4. The line of survey from the Kimberley Terminus to Fourteen Streams, made by Mr. Dalton, to be followed as far as practicable, and Mr. Dalton's survey, with plans and indent of bridge over the Vaal River, to be placed at the disposal of the said Company, the said Company paying the expenses thereof.

5. The Company aforesaid to have the use of the line of main road, as far as it is already constructed from Kimberley to Warrenton, for the purposes of the said railway; the said Company paying into the Colonial Treasury the actual amount of expenditure already incurred and to be incurred in the construction of the said main road up to the 30th November, 1889.

6. The work of construction of the said railway to be done under the inspection and to the satisfaction of the General Manager of Railways of the Cape Colony or such other officer as he may appoint to represent him.

7. The Colonial Government aforesaid shall have the right at any time, during or after construction, to take over the said line, or any portion thereof, subject to the provisions of the next succeeding section of this Memorandum of Agreement, on payment to the said Company of the actual cost incurred by the said Company in construction of the said line or portion of the said line, the term "actual cost" to mean the capital sum expended on construction, certified to by the General Manager of Railways as per Section 6, including so much interest on the capital sum, not exceeding three and three-quarters per centum per annum, reckoned from the respective dates of the raising of the sums necessary from time to time for the construction of the said line to the day of its being taken over by the said Colonial Government, as shall not have been paid out of net earnings, it being understood that the said interest shall be the first charge against the net earnings; and the term "actual cost" shall not include any loss or deficiency arising from the working and maintenance of such line or portion of such line while in the hands of the said Company or the said Company's representatives, such loss or deficiency being borne entirely by the said Company.

8. If the said Colonial Government, by virtue of the reservation of right of taking over the said line or any portion thereof, shall, at any time before the completion of the said line of railway from the terminus at Kimberley to the terminus at or near Vrijburg, require the said company to hand over to the said Colonial Government that portion of the line from Kimberley terminus to a point on the North Bank of the Vaal River, as described in Schedule B to Act No. 20 of 1888, the said Colonial Government, having taken over the said portion of the said line, shall not any longer have the option of refusing to take over the remaining portion of the said line when completed and declared open for traffic to the terminus at or near Vrijburg, under the conditions set forth in the preceding section of this Memorandum of Agreement.

Digitised by the University of Pretoria, Library Services, 2016

9. In the event of the Colonial Government taking over the said line or any portion thereof, on the aforesaid conditions, payment shall be made to the said Company either in Colonial Debentures bearing interest at three and three-quarters per centum per annum, or in cash payable at the Colonial Treasury, Cape Town, at the option of the Colonial Government.

10. The traffic rates on any portion of the said line within the Cape Colonial boundaries shall be in conformity with the existing Colonial tariff in every respect, and in the same proportion of mileage, unless otherwise agreed upon by mutual consent; the same shall apply to the extra-Colonial portion of the said line; provided, however, that the said Company (at its own risk) shall obtain or secure any concurrence which may be required on the part of the Government for the time being of British Bechuanaland.

11. As soon as the said line or any portion thereof is declared open for traffic the Colonial Government will, if so desired, undertake to work the same in conjunction with the Colonial Government Railway, Western and Midland Systems, on such conditions as may then be agreed upon between the parties, and subject to notice of termination on either side at not less than six months, or on the part of the said Colonial Government at one month's notice in the event of the said Colonial Government deciding upon taking over the said line, or portion of line, as provided for in Sections 7 and 8 of this Memorandum of Agreement.

12. A formal contract on the lines herein set forth is to be drawn up in due legal form, and the agreement herein accepted by both parties is considered to be from this date binding upon both parties, subject, however, as far as the Government of the Colony is concerned, to the approval and sanction of both Houses of Parliament, which will be asked for during next Session of Parliament.

Dated at Lourensford, Somerset West, this 29th day of October, 1889, in the presence of the subscribed witnesses.

(Signed) F. SCHERMBRUCKER,
Commissioner of Crown Lands and Public Works.

(Signed) C. J. RHODES,
For British South Africa Company.

Witnesses:

(Signed) J. SIVEWRIGHT.
(Signed) C. B. ELLIOTT.

II.

AGREEMENT, DATED 23RD JANUARY, 1890, BETWEEN THE COLONIAL GOVERNMENT AND THE HONOURABLE C. J. RHODES.

Agreement,

Made at Cape Town on the twenty-third day of January, 1890, by and between the Honourable Cecil John Rhodes, M.L.A., as representing the British South Africa Company, of the one part, and Sir John Gordon Sprigg, K.C.M.G., on behalf of the Government of the Colony of the Cape of Good Hope, of the other part, with reference to Railway Extension from Kimberley through British Bechuanaland, on the following terms and conditions, to wit:—

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1890.

1. The Railway to Vryburg to be built on the following terms:—

The Cape Government to raise and advance to Mr. Rhodes the necessary money on the same terms as they raise it.

2. The Cape Government to hold as security the line of railway in addition to the six thousand square miles of land in Bechuanaland, which shall be duly hypothecated.

3. In case the Cape Government shall take over the line on or before the 30th June, 1891, the Cape Government shall be entitled to share in the proportion of two to one with Mr. Rhodes in the proceeds of all lands that may have been realized, and to be a partner in the proportion of two to one in whatever lands may at the date of purchase remain unsold.

4. It is understood that all lands sold must be subject to a substantial quitrent of not less than One Pound Sterling per thousand acres, and any lands unsold at date of taking over railway shall be jointly dealt with in the aforementioned proportion; it being understood that for a period of twelve months after the date of purchase of railway neither party shall sell his share without first giving the refusal to the other party, and in the event of this right of pre-emption not being acted upon, any lands sold subsequently shall be subject to the same substantial quitrent.

5. If either the Government of the Cape Colony or Mr. Rhodes shall at any time object or refuse consent to any proposal of the other for the sale or other disposition of the whole or any portion of the land referred to in this Agreement, or if any question or dispute shall arise between them relative to the management, sale, or other disposition of the whole or any portion of the said land, either party may call upon the other to refer and submit such proposal, question, or dispute to the arbitration of one arbitrator jointly appointed; or if no joint appointment can be agreed upon, then to the arbitration of the Chief Justice of the Cape Colony; and the decision of such arbitrator or of the Chief Justice, as the case may be, shall be given with due observance of the terms of this Agreement and consideration of what is fair and reasonable, and shall, when given, be binding, final, and conclusive with respect to such proposal, question, or dispute.

6. In the final liquidation of the account either party shall have the right to purchase all the quitrents accruing to the other on a basis of twenty years' purchase.

7. It is further understood that Mr. Rhodes binds himself to proceed with the Railway Extension from Vryburg to Mafeking, provided the Cape Government purchases the Kimberley-Vryburg Section on the foregoing terms, and he receives a further grant of six thousand square miles in Bechuanaland.

In witness whereof the parties hereto have hereunto affixed their respective signatures at the time and place first above written.

(Signed) C. J. RHODES,
For the British South Africa Company.
(Signed) J. GORDON SPRIGG.

In presence of:
(Signed) SYDNEY COWPER, } Witnesses.
(Signed) JAMES D. CORMACK, }

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1890.] [Promulgated 22nd August, 1890.

ACT

To amend in certain respects Act No. 3 of 1867, entitled the "Uitenhage Water Act, 1867."

Preamble.

WHEREAS it is expedient to amend in certain respects the Act No. 3 of 1867, entitled the "Uitenhage Water Act of 1867:" Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Amending section 7, Act No. 3 of 1867.

1. Anything in the provisions of the Act No. 3 of 1867 to the contrary notwithstanding, the Section Seven of the said Act No. 3 of 1867 shall be read and construed as if the words "Act No. 30 of 1877 as amended by Act No. 12 of 1883" had been originally inserted in the said Section in place of the words "Ordinance No. 9 of 1836, or of the Act No. 13 of 1864," contained in the said Section.

Cost of Act how to be borne.

2. The necessary costs, charges and expenses of obtaining this Act may be paid by the "Mayor, Councillors, and Ratepayers of Uitenhage," out of the ordinary revenues of the Municipality, or out of the proceeds of any rate levied under the provisions of the said Act No. 3 of 1867.

Short title.

3. This Act may for all purposes be cited as the "Uitenhage Water Act Amendment Act, 1890."

No. 15—1890.] [Promulgated 22nd August, 1890.

ACT

To amend Act No. 11 of 1871.

Preamble.

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

Free hawking of produce or manufactures of British Bechuanaland; Act No. 11 of 1871, s. 1, amended accordingly.

1. The first section of the Act No. 11 of 1871 shall be read as if the words "or British Bechuanaland" were inserted after the word "Colony" in the said section.

No. 16—1890.] [Promulgated 22nd August, 1890.

ACT

To facilitate the Transfer of Land mortgaged under the "Crown Lands Disposal Act, 1887."

Preamble.

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

Digitised by the University of Pretoria, Library Services, 2016

No. 16--1890.

Notice may be given by seller and purchaser of land disposed of under Act No. 15 of 1887, and bonded in favour of Government: such notice to be given to Treasurer of the Colony, and to set forth particulars respecting such land and the mortgage bond thereon.

1. Whenever any person, hereinafter called the seller, being the registered owner of any land disposed of under the provisions of the Act No. 15 of 1887, commonly called the "Crown Lands Disposal Act, 1887," shall be the debtor to the Colonial Government under any mortgage bond affecting such land and passed in accordance with the provisions of the second section of the said Act, shall have lawfully agreed to transfer such land to any other person, hereinafter called the purchaser, the seller and purchaser may jointly give notice in writing, signed by them or their duly authorised agents, to the Treasurer of the Colony, which notice shall be substantially in the form set forth in the schedule hereto.

Notice to be accompanied by certificate of Civil Commissioner of division or resident magistrate as to amount unpaid under bond, as to payment of interest due or becoming due thereunder and as to *bona fides* of proposed transfer.

2. Such notice shall be accompanied by a certificate which shall be signed and granted, upon payment of a fee of five shillings, by the Civil Commissioner of the division, or if there be no Civil Commissioner then by the Resident Magistrate of the district in which such land as aforesaid is situated, which certificate shall set forth the amount remaining unpaid under such mortgage bond, and that all interest has been paid which either is due or will become due up to or upon the next date fixed for the payment of interest under such bond after the date of such notice as aforesaid, which certificate shall moreover set forth that to the best of the knowledge and belief of such Civil Commissioner or Resident Magistrate as the case may be, the transfer is proposed to be made *bonâ fide* and without intention in any way to defeat or delay the Government in the enjoyment of its rights against the seller.

Bond, notice and certificate to be forwarded to Registrar of Deeds to be dealt with under this Act.

3. Within fourteen days after the receipt of such notice and certificate as aforesaid, the Treasurer of the Colony may cause to be delivered to the Registrar of Deeds, in whose office the said mortgage bond is registered or recorded, such mortgage bond, notice, and certificate as aforesaid, together with a written instruction to such Registrar at any time within six weeks from the date of such notice, to deal with the said mortgage bond in manner provided by this Act.

Transfer to be passed within six weeks, if all other legal requisites fulfilled, without cancellation of bond; and entries to be made in Debts Register and endorsement on bond.

4. After receiving such mortgage bond, notice, and certificate as aforesaid, and upon being satisfied that all other legal requisites have been complied with for the purpose of passing and registering the transfer of such land, the Registrar of Deeds shall, if duly required so to do within the aforesaid period of six weeks, allow transfer of such land from the seller to the purchaser to be passed and registered in his office, notwithstanding that such mortgage bond shall not be cancelled; but in every such case such Registrar shall, at the time of allowing such transfer to pass and be registered, cause entries to be made in the Debts Register in his office and an endorsement upon such mortgage bond in manner hereinafter provided.

Digitised by the University of Pretoria, Library Services, 2016

Form of entries in Debts Register.

5. The entries in the Debts Register shall be (*a*) an entry setting forth that the debt of the seller is cancelled in accordance with the provisions of this Act, and (*b*) an entry setting forth that the purchaser is the debtor to the Government in the amount which remains due and unpaid under such mortgage bond.

Form of endorsement on bond.

6. The endorsement upon such mortgage bond shall set forth (*a*) the name of the purchaser, (*b*) the date of registration of transfer, and (*c*) that, in accordance with the provisions of this Act, the purchaser has been substituted for the seller as debtor to the Government under such mortgage bond.

Return of bond, &c., by Registrar to Treasurer of the Colony.

7. Forthwith after the completion of such entries and endorsement the mortgage bond, together with the aforesaid notice and certificate, shall be returned by the Registrar of Deeds to the Treasurer of the Colony.

Act not to relieve from payment of duty, stamps, or fees of office or transfers: stamps how affixed and cancelled in payment of fee of office for entries and endorsement.

8. Nothing in this Act contained shall be deemed to relieve any person from any liability in respect of any duty, stamp, or fee of office which would have been payable upon such transfer, and for and in respect of the making of such entries and endorsement as aforesaid there shall be payable to the Registrar of Deeds a fee of one pound sterling, which shall be paid by way of stamps to be affixed before such endorsement to such mortgage bond as aforesaid, and to be cancelled in the manner required by any law for the cancellation of stamps upon mortgage bonds.

After completion of entries and endorsement seller absolved, and purchaser substituted for seller as debtor to Government.

9. Upon the completion of such entries and endorsement as aforesaid, the seller shall be deemed to be absolved from any obligation to the Government under such mortgage bond, and the purchaser shall, from and after the date of such completion, be substituted for the seller as the debtor to Government under such mortgage bond.

Penalty for making or transmitting notice or certificate known to be false in any material particular.

10. Any person who shall make or transmit to the Treasurer of the Colony any such notice or certificate as aforesaid which shall, to his knowledge, be false in any material particular, shall be liable, on conviction, to a fine not exceeding fifty pounds sterling, or in default of payment to imprisonment, with or without hard labour, for any term not exceeding six months, unless such fine be sooner paid.

Short title.

11. This Act shall be cited as the "Transfer Facilitation Act, 1890."

Digitised by the University of Pretoria, Library Services, 2016

No. 17—1890.

Schedule.

SCHEDULE.

NOTICE UNDER SECTION 1 OF ACT No. 16 OF 1890.

To the Honourable the Treasurer of the Colony :—

(a). Insert full name of seller.

WHEREAS I, the first undersigned, A.B.(a) am the registered owner, by virtue of a Title Deed, under the provisions of Act No. 15 of 1887, dated the day of , of a certain piece of land in the Division of , Field-cornetcy of , being Lot No. , called : and whereas a Mortgage Bond on the said land for the sum of £ was passed in favour of the Colonial Government on the day of , and there still remains due and owing on the said Bond the sum of £ : Now, therefore, I do hereby give notice that I have agreed to give transfer of the said land to C.D.(b), the second undersigned:

(b). Insert full name of purchaser.

And I, the said C.D., do hereby notify that I have agreed to take transfer of the said land, and that I am ready and willing to take over the liability to the Colonial Government under the Mortgage Bond aforesaid.

Dated at this day of

A.B.

C.D.

AS WITNESSES.

E.F.

G.H.

No 17—1890.] [Promulgated 22nd August, 1890

ACT

To provide for the Construction of certain Telegraph and other Public Works.

Preamble.

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

Governor may cause certain works to be constructed.

1. The Governor shall as soon as may seem to him expedient after the passing of this Act, cause to be constructed the several works set forth in the Schedules A B C D to this Act at a cost not exceeding the amounts set forth in the said Schedules.

It shall be lawful to apply certain unexpended balances of loans and to charge balance of certain loans with expenditure.

2. For the purposes of constructing the works set forth in Schedule A (Telegraphs) it shall be lawful to apply the unexpended balances of the loans raised under the following Acts : 15 of 1879; 21 of 1883, in respect to items 3 and 6 in the Schedule to said Act; 17 of 1884, in respect to item 3 in Schedule to said Act; 38 of 1885, in respect to that part of item 3 in

Digitised by the University of Pretoria, Library Services, 2016

Schedule to said Act "Public Offices at Port Elizabeth" and items 4 and 5; 6 of 1877; and 30 of 1882 in respect to that part of Schedule to said Act "For the Cradock Bridge." No. 18—1890.

3. For the purpose of constructing the works set forth in the Schedule B (Irrigation) the unexpended balances of loans raised under the following Acts for irrigation loans or works, viz.:—30 of 1882, 17 of 1884, 38 of 1885, shall be charged with the amount set forth in this Schedule. Unexpended balances of loans to be charged with certain expenditure.

4. For the purpose of constructing the works set forth in Schedules C and D, it shall be lawful for the Governor to apply a sum of £100,000 out of moneys authorised to be raised under the provisions of the Temporary Loans Act, being the Act No. 20 of 1883. It shall be lawful to borrow under temporary Loans Act for certain purposes.

5. This Act may be cited as the "Public Works and Telegraphs Act, 1890." Short title.

SCHEDULES. Schedules.

A. Telegraphs:

For telegraphic lines and additions to existing lines. Additional wires:—

Port Elizabeth to Alicedale, 2 wires Alicedale to Nauwpoort, 2 wires Nauwpoort to Kimberley, 1 wire	£8,000	
Kokstad to Matatiele	2,100	
Mount Stewart to Steytlerville ..	880	
Belmont to Douglas	2,650	
Clanwilliam to Springbok *via* Van Rhyn's Dorp	13,300	
Matjesfontein to Sutherland.. ..	3,850	
		£30,780
B. Irrigation Works:		
Completion Van Wijk's Vlei ..	1,375	
Douglas Irrigation Works	6,000	
		7,375
C. Harbour Works:		
Improvement East London Harbour		50,000
D. Bridges:		
Gouritz River Bridge		50,000

No. 18—1890.] [Not yet promulgated.

ACT

To add to the Provisions of the "Customs Union Tariff Act, 1889."

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

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1890.

Removal of goods under bond, without payment of duty, from this Colony to colony, &c., within Customs Union, subject to regulations.

1. With the authority of the proper officer of Customs, and subject to such regulations as are referred to in the next section of this Act, goods warehoused under bond in any bonded warehouse lawfully appointed at any free warehousing port in this Colony may, without the payment of duty before removal, be removed overland under bond from such warehouse to and into any colony, state, or territory within the Customs Union, which bond shall be in accordance with regulations made under the next succeeding section of this Act, and shall secure the due re-warehousing of the said goods in such colony, state or territory, whether such goods be or be not intended for consumption therein.

Regulations governing removal and conveyance of goods under bond, and providing for collection of duty.

2. The Governor may, by notice in the *Gazette*, from time to time, make and alter regulations governing the removal and conveyance under bond of such goods as are referred to in the last preceding section of this Act, and providing for the due collection on behalf of the Colonial Treasury by any colony, state or territory within the Customs Union to which such goods are removed of the duties of Customs to which this Colony is lawfully entitled in respect of such goods, to all which regulations the provisions of the eighth section of the Act No. 1 of 1889, commonly called the "Customs Union Tariff Act, 1889," shall apply.

Effect and short title.

3. This Act shall be read and construed as one with the last mentioned Act, and may be cited as the "Customs Union Tariff Act, 1890."

No. 19—1890.] [Promulgated 22nd August, 1890.

ACT

For rendering valid certain Transfers of Land in Griqualand East.

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

Validity of certain transfers of land in Griqualand East established.

1. All Deeds of Transfer of Immovable Property which have heretofore been passed and enregistered by the Registrar of Deeds of the Colony in pursuance of orders purporting to have been issued by the Chief Magistrate of Griqualand East under the provisions of the "Titles Registration and Derelict Lands Act, 1881," shall be judged of and considered to be as valid and effectual as if the said orders had been issued by a Judge of the Supreme Court.

Short title.

2. This Act may be cited for all purposes as "The Griqualand East Transfers Act, 1890."

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1890.] [Promulgated 22nd August, 1890

ACT

To regulate the Sale of Spirits Compounded of Spirits of different classes.

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:— Preamble.

1. Every person who shall knowingly sell or dispose of or attempt to sell or dispose of any spirits distilled in the Colony from grapes, wine, or any produce of the vine, compounded with spirits distilled from any other thing or substance, shall be guilty of contravening this section, and shall be liable upon conviction to a fine not exceeding ten pounds, or to imprisonment with or without hard labour for any term not exceeding three months, or to both such fine and such imprisonment, unless such person shall before the completion of such sale or before such attempted sale clearly notify that the spirits so sold, disposed of, or which he attempted to sell or dispose of, are so compounded. Seller of compounded spirits to give notice to purchaser that spirits are compounded: penalty for failure to give notice.

2. "Wine," for the purposes of this Act, and of the Excise Spirits Act, 1884, and the Excise Law Amendment Act, 1886, shall, anything in any other Act or Acts to the contrary notwithstanding, be held to mean fermented liquor produced from grapes, the husks or stalks of grapes, and raisins, the produce of this Colony, without the addition of any foreign substance other than water. Definition of "Wine."

3. This Act shall be read as one with the Excise Spirits Acts of 1884 and the Excise Law Amendment Act of 1886. Act to be read with Spirits Acts 1884 and 1886.

4. This Act may be cited as the "Compounded Spirits Regulation Act, 1890." Short title.

No. 21—1890.] [Not yet promulgated.

ACT

To Prohibit the Introduction of Rabbits into, and to Restrict the Breeding of them in, this Colony.

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:— Preamble.

1. From and after the passing of this Act no live rabbit shall be introduced into this Colony from any place beyond the boundaries thereof, and no master or owner of any vessel, or owner, driver or person in charge of any conveyance by land, or any other person whatever, shall carry or bring, or allow to be carried or brought by any such vessel or conveyance, or by any Introduction of rabbits into this Colony probibited.

Digitised by the University of Pretoria, Library Services, 2016

No. 21—1890.

other means, any live rabbit to any place within this Colony from any place beyond the colonial boundaries, or from any island within the limits of this Colony to the main land thereof.

Restrictions on the manner of keeping rabbits already in this Colony: power of Governor to make regulations as to keeping of rabbits.

2. No person shall have in his possession or keep on his premises any live rabbits, unless they are securely confined within such hutches or boxes, to be constructed of such material and in such manner and with such provisions against the escape of the rabbits as may be prescribed by regulations framed by the Governor for the purposes of this Act, and proclaimed in the *Gazette*.

Provision for destruction of rabbits found on private property of any person, or on Crown land or in public place.

3. It shall be lawful for any person to destroy any rabbit found upon his land or premises, or upon any unalienated Crown lands, not being islands along the coast, in which case the existing law shall apply, or any public road or place dedicated to public uses, and the owner of any rabbit so destroyed shall not be entitled to recover any sum by way of compensation for any loss or damage that he may have sustained by the destruction of such rabbit.

Liabilitie of persons turning loose any rabbit, or negligently allowing it to run loose, for damage done by rabbit, also for penalties: informer to receive half of penalty.

4. Any person who turns loose any rabbit, or negligently suffers any rabbit to run loose, shall be liable for all loss and damage occasioned by such rabbit to any person, as well as to the penalties imposed by this Act, and any person giving information whereby any other person is convicted of allowing any rabbit to run loose, shall be entitled to receive half of the fine inflicted upon such other person.

Returns to be made of number of rabbits bred and kept.

5. Every person keeping rabbits within this Colony shall, within one week after the first day of January and July respectively in each year, render to the Civil Commissioner of the division a return of the numbers and descriptions of rabbits bred by him, for the six months immediately preceding the said first day of January or July as the case may be, and of the number in his possession at such date.

Penalties for contravening Act or regulations thereunder.

6. Any person offending against any of the provisions of this Act, or of any regulation proclaimed for the purposes of this Act, shall, for every such offence, on a first conviction be liable to a fine not exceeding five pounds, and on every second or subsequent conviction to a fine not exceeding ten pounds. In default of payment of any fine as aforesaid, such offender shall be liable to imprisonment with or without hard labour for any period not exceeding three months unless such fine be sooner paid.

Repugnant laws repealed.

7. So much of the "Game Law Amendment Act, 1886," or of any other law as may be inconsistent with the provisions of this Act, shall be and the same is hereby repealed.

Short title.

8. This Act may be cited as the "Rabbit Act, 1890."

Digitised by the University of Pretoria, Library Services, 2016

No. 22—1890.] [Promulgated 22nd August, 1890.

ACT

To apply a Sum not exceeding Thirty-eight Thousand Two Hundred and Ninety-five Pounds Four Shillings and Three Pence Sterling for the purpose of meeting and covering certain Unauthorised Expenditure and Excess Expenditure upon certain Loan Acts.

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

Charge on revenue of certain unauthorised and excess expenditure.

1. The public revenue of this Colony is hereby charged with a sum not exceeding thirty-eight thousand and thirty-seven pounds five shillings and fivepence sterling, which sum shall be paid for unauthorised expenditure beyond the amounts voted or appropriated for the service of the financial year ended the 30th June, 1889, as described at page xxiii of the "Report of the Controller and Auditor-General, with Statements of the Revenue and Expenditure and Appropriation Accounts of the Colony of the Cape of Good Hope, for the financial year 1888-89" (G. 2—'90), presented to both Houses of Parliament by command of the Governor; and with a sum of two hundred and fifty-seven pounds eighteen shillings and tenpence sterling, the balance of excess expenditure upon certain Loan Acts, as detailed on page 275 of the Annexures to the said Report.

Short title.

2. This Act may be cited as the "Unauthorised Expenditure Act, 1890."

No. 23—1890.] [Promulgated 22nd August, 1890.

ACT

To authorise the Raising of a further Sum of One Hundred Thousand Pounds sterling for carrying out certain further works necessary for the improvement of the Harbour of Port Elizabeth.

Preamble.

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

Power to raise public loan of £100,000 for harbour of Port Elizabeth.

1. It shall be lawful for the Governor to raise a further sum, not exceeding One Hundred Thousand Pounds sterling, from time to time as occasion may require, and all moneys so raised shall be applied to the purpose of carrying out certain further works necessary for the improvement of the Harbour of Port Elizabeth.

Application of moneys entrusted to Port Elizabeth Harbour Board.

2. The application of the moneys to be raised as aforesaid shall be entrusted to the Port Elizabeth Harbour Board, appointed or to be appointed under the provisions of any law relating to the

Digitised by the University of Pretoria, Library Services, 2016

No. 24—1890.

management of the Harbour of Port Elizabeth, and the said Harbour Board shall, in respect of such application, have and exercise all the powers conferred upon such board by any such law

Short title.

3. This Act may be cited as the "Port Elizabeth Harbour Loan Act, 1890."

No. 24—1890.] [Promulgated 22nd August, 1890.

ACT

For constituting an additional Fiscal Division.

Preamble.

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

Repeal of repugnant laws.

1. So much of the Ordinance for constituting a Parliament in this Colony and commonly called the "Constitution Ordinance," and so much of any other law as may be repugnant to or inconsistent with the provisions of this Act, are hereby repealed.

District of Kenhardt may be proclaimed a fiscal division.

2. The district of Kenhardt shall, from and after the date of any Proclamation to be issued for that purpose by the Governor and published in the *Gazette*, become and be a division for fiscal purposes.

Boundaries to be defined by the same Proclamation.

3. The Proclamation provided for in the last preceding section shall define the several boundaries of the division of Kenhardt, and the boundaries so proclaimed shall be the boundaries of the said division.

Effect of Act on divisions and Divisional Councils affected by Proclamation: new division to be a division for purposes of Act No. 40 of 1889 and other relative laws.

4. From and after the date of any Proclamation issued by the Governor in that behalf and published in the *Gazette*, the Divisional Council for the time being of every division, to which the whole or any part of the division of Kenhardt, so constituted for fiscal purposes only and named in such Proclamation, belonged, shall stand dissolved, and the provisions of Act No. 40 of 1889, commonly called "The Divisional Councils Act, 1889," and of every other law relating to Divisional Councils, shall apply to the division of Kenhardt constituted under this Act, and to the divisions to which the said division or any part thereof previously belonged, and such former divisions shall then be limited and bounded precisely as if no Divisional Council in or for such divisions had ever been elected: Provided that the persons who shall be registered as voters for the Divisional Council of any such former division which down to the date of such Proclamation comprised the whole or any part of the new division of Kenhardt, and who in accordance with the Act No. 40 of 1889, are duly qualified to be registered as voters for the Divisional Council of the new division of Kenhardt shall be entitled to vote at the election of Councillors for the Divisional Council of such new division.

Digitised by the University of Pretoria, Library Services, 2016

5. The provisions of the Act No. 24 of 1858, entitled "An Act to regulate the respective rights of certain divisions in regard to certain road rates," shall so far as applicable *mutatis mutandis*, as soon as any Proclamation under this Act shall have been issued, apply to the new division of Kenhardt, and to the divisions to which the said new division in whole or in part belonged before the issuing of such Proclamation, just as though such new division of Kenhardt were named in the Schedule to the Act No. 12 of 1857. No. 25—1890. Provisions of Act No. 24 of 1858 to apply to division of Kenhardt.

6. Notwithstanding the creation of the new divisions of Kenhardt by virtue of any Proclamation under this Act, such new division and every part thereof shall, for electoral purposes, continue to form part of whatever electoral division such new division or part thereof belonged to before the date of such Proclamation, precisely as if this Act had not been passed. No change of electoral divisions.

7. This Act may be cited as the "Fiscal Divisions Extension Act, 1890." Short title.

No. 25—1890.] [Promulgated 22nd August, 1890.

ACT

To apply a Sum of Money for the Service of the Year ending the 30th day of June, 1891.

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:— Preamble.

1. The public revenue of the Colony is hereby charged towards the service of the year ending the 30th day of June, 1891, with a sum of two millions three hundred and eighty-eight thousand three hundred and sixty-six pounds sterling, in addition to the sum of four hundred thousand pounds sterling provided for by Act No. 2 of 1890, and the sum of two hundred thousand pounds provided by Act No. 6 of 1890. Public revenue to be charged with £2,388,366.

2. The money granted by this Act shall be applied to the purposes and services expressed in the schedule annexed hereto, and more particularly specified and set forth in the estimates and supplementary estimates of the expenditure for the year ending 30th June, 1891, with the notes to such estimates, submitted to and approved by Parliament. How to be applied.

3. The said aids and supplies shall not be issued or applied to any use, intent or purpose other than the particular services to which the said amounts have been granted respectively by this Act, and the aforesaid schedule, estimates, and supplementary estimates. Not to be applied except as granted.

4. This Act may be cited for all purposes as the "Appropriation Act, 1890." Short title.

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1890.

SCHEDULE.

Summary of Recapitulations of Estimates and Supplementary Estimates.	Establishments.	Services exclusive of Establishments.	Total.	Required to be provided for.
	£	£	£	£
I. Prime Minister's Department ..	32,052	20,915	52,967	40,537
II. Ministerial Department of Colonial Secretary	568,477	565,344	1,133,821	1,041,832
III. Ministerial Department of Treasurer of the Colony	46,940	1,235,672	1,282,612	148,087
IV. Ministerial Department of Attorney-General	113,110	84,989	198,099	183,544
V. Ministerial Department of Commissioner of Crown Lands and Public Works	54,164	1,472,491	1,526,655	1,519,965
VI. Ministerial Department of Secretary for Native Affairs ..	65,965	5,550	71,515	54,401
Grand Totals	880,708	3,384,961	4,265,669	2,988,366
Less amount provided for by Acts Nos. 2 and 6 of 1890 ..				600,000
Total required to be voted				2,388,366

No. 26—1890.] [Promulgated 22nd August, 1890.

ACT

To abolish the Tenants' Rate levied by the Municipality of Cape Town, and to make other provision in lieu thereof, and to authorise the Town Council of Cape Town to contribute a certain sum towards the maintenance of the South African Public Library and the New Somerset Hospital.

Preamble.

WHEREAS it is expedient to abolish the tenants' rate hitherto made payable by certain ratepayers of the City of Cape Town under and by virtue of the provisions of Act No. 44 of 1882, entitled "The Cape Town Municipality Act, 1882,"

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1890.

and Section 1 of Act No. 28 of 1885, entitled "The Cape Town Municipality Act, 1882, Amendment Act, 1885," and to grant the Town Council of Cape Town power and authority to levy another rate in lieu thereof, and to make provision for the appropriation of the said rate, and to make better provision for securing the said rate, and whereas it is necessary to make provision for the qualification of voters, to provide for a list of registered voters, and to define who shall be eligible for election as a Town Councillor; and whereas it is expedient and desirable that the said Town Council should be authorised and empowered to contribute a certain sum of money for the maintenance of the New Somerset Hospital and the South African Public Library: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Sections 6, 7, 29, 42, 43, Act 42, 1882, section 1 Act 28, 1885, and other repugnant provisions of these Acts repealed.

1. The sixth, seventh, twenty-ninth, forty-second and forty-third sections of the said Act No. 44 of 1882, and the first section of the said Act 28 of 1885, and all other provisions in said Acts repugnant to or inconsistent with the provisions of this Act, are hereby repealed.

Landlords' rate.

2. It shall be lawful and competent for the Town Council of Cape Town to impose and levy a rate—to be called a landlords' rate—of not more than fourpence in the pound in any one year on the value of all rateable immovable property, and which rate shall be payable by the owners of the said property, the same to be made and levied on the estimate of the value of said property, to be made and imposed as in said Act 44 of 1882 is provided.

For what services landlords' rate to be applied.

3. The rate in the last preceding section mentioned shall be voted and levied for all municipal objects, purposes and services, including water supply and water works, sewerage, drainage, improving, cleaning, repairing, and maintaining streets and squares, the construction and repairs of municipal buildings, payment of municipal servants, and all and every other municipal object or purpose necessary in such manner as the Town Council shall deem advisable and expedient, and at the time of making the said levy it shall be determined how the amount to be so raised shall be apportioned and appropriated.

Who liable for rate.

4. The person or persons in whom shall be vested on the first day of January in each year the legal title to any immovable property on which rates shall be assessed shall be the person or persons liable for the rate for that year.

Who qualified to vote.

5. Every person who is the owner of any immovable property within the said Municipality of the assessed municipal value of not less than one hundred pounds sterling, and every occupier or tenant when there is not more than one occupier or tenant of such property of such value of one hundred pounds sterling, and whose name shall appear on the list of registered voters in the sixth

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1890.

section of this Act mentioned, shall be entitled and qualified to vote at all and any meetings of householders called in virtue of any of the provisions of the Act No. 44 of 1882, as amended by the provisions of this Act, and where two or more persons shall be the joint owners or in joint occupation, or shall be tenants either jointly or of separate and distinct portions of any immovable property within the said Municipality, then and in that case if the assessed municipal value of such property when divided by the number of joint owners, or of joint occupiers, or of such tenants shall be equal to not less than one hundred pounds sterling for each person, each of such joint owners, joint occupiers, or of such tenants, whose name shall appear on the list of registered voters in the sixth section of this Act mentioned shall be entitled and qualified to vote at all and any of such said meetings as beforementioned in this section.

List of qualified voters provided for.

6. The list of qualified voters mentioned and provided by the twenty-sixth section of Act 44 of 1882, when settled and amended, shall be the list of registered voters for the Municipality of Cape Town for the then ensuing year, and until the next annual list shall in like manner be completed, and such list shall be deemed and taken to be conclusive proof of the right of any person whose name shall be inserted to act and vote as a registered voter.

Who eligible for election as Town Councillor.

7. Every person registered as a householder and qualified to vote under the last preceding section, shall be eligible to be elected a Town Councillor.

Contribution to the South African Public Library authorised.

8. It shall and may be competent and lawful for the said Town Council, and they are hereby authorised and empowered to contribute annually from time to time out of the municipal revenue, other than rates, a sum not exceeding three hundred and fifty pounds sterling towards the expense of keeping the South African Public Library open during the evening for the benefit of the public, under such conditions as the Town Council shall impose.

Contribution to the New Somerset Hospital authorised.

9. It shall and may also be competent and lawful for the said Town Council, and they are hereby further authorised and empowered to contribute annually, and from time to time, out of the revenues of the Municipality, other than rates, a further sum not exceeding the sum of two hundred and fifty pounds sterling in aid of the purposes and objects of the New Somerset Hospital of Cape Town, in such manner and under such conditions as the Town Council shall deem advisable; provided always that the Mayor of Cape Town for the time being shall have a seat and vote at any Board appointed to manage the affairs and interests of the said Hospital.

Short title.

10. This Act may be cited as "The Cape Town Municipality Act Amendment Act, 1890."

Digitised by the University of Pretoria, Library Services, 2016

No. 27—1890.] [Promulgated 22nd August, 1890.

ACT

To amend "The Vineyards Protection Act Amendment Act, 1886," and to continue for another year the Fourth Section of the Act.

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

Section 4 of "The Vineyards Protection Act Amendment Act, 1886," extended for another year; calculation of yield.

1. The provisions of the fourth section of "The Vineyards Protection Act Amendment Act, 1886," shall continue and be in force until the 30th June, 1891, and no longer, anything in the tenth section of the said Act to the contrary notwithstanding; provided however:—

That the term upon which shall be calculated the value of the net yield for which compensation shall be given in regard to any loss sustained by any person and in respect of any claim accruing after the first day of July, 1890, by reason of any destruction or prohibition under the provisions of the Vineyards Protection Act Amendment Act, 1886, shall not exceed three years in lieu of the term of two years provided by the said fourth section.

No. 28—1890.] [Promulgated 22nd August, 1890.

ACT

For the Expropriation for public purposes of the Land and Buildings thereon, situated at Cape Town, and commonly called the "Commercial Exchange."

Preamble.

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

Effect and short title of Act.

1. This Act shall take effect from and after a day to be fixed by the Governor by Proclamation in the *Gazette*, and may be cited as the "Commercial Exchange Expropriation Act, 1890."

Property granted by deed of 22nd March, 1819, set forth in Schedule, together with buildings, &c., vested in Colonial Government for purposes of this Act.

2. From and after the taking effect of this Act, the ownership of the landed property ceded and granted from the Crown on the 22nd day of March, 1819, to a certain Committee in manner and subject to the terms and conditions detailed in a deed of grant of the said date, which is set forth in full in the Schedule to this Act shall, together with all buildings, erections and structures thereon, and all fixtures thereto, be vested in the Colonial Government in full and free ownership for the purposes of this Act; and from and after the said date the said deed shall be considered as cancelled.

Digitised by the University of Pretoria, Library Services, 2016

No 28—1890.

Proprietors of shares to be compensated.

3. Every person who is the lawful proprietor of any share or shares in the property in the preceding section mentioned shall be entitled to receive from the Colonial Government the just value thereof by way of compensation, and it shall be lawful for the Commissioner of Crown Lands and Public Works to treat and agree with every such proprietor for the amount so to be paid; provided always that the committee and subscribers in the said deed mentioned shall be provided by the said Commissioner with such reasonable accommodation in the said building or elsewhere, as to the Governor may seem fit and upon such terms as may to him seem reasonable, in lieu of the accommodation at present enjoyed by them.

Committee and subscribers to receive other accommodation.

Amount of compensation, how to be determined.

4. In case such proprietor and the said Commissioner shall not agree upon the amount of such compensation, then such amount shall be determined by arbitration in accordance with the provisions of the "Lands and Arbitrations Clauses Act of 1882."

How as to proprietors of shares absent from Colony, or unknown.

5. In case the lawful proprietor of any share as aforesaid shall be absent from the Colony, and not represented therein by any agent duly accredited, or shall not be discoverable, the said Commissioner of Crown Lands and Public Works shall cause a notice to be inserted in the *Government Gazette* at least once a week for three successive months, calling upon such proprietor by name, if known, or if not known, upon such proprietor, whoever he may be, to take notice that the said Commissioner is ready and willing to treat and agree with him, or any person duly authorised by him for the amount of compensation to be paid to him in respect of his said share, and requiring such proprietor to apply within six months from the day of the first publication of such notice to the said Commissioner, stating the compensation claimed; and if such proprietor shall so apply within the said period, the like proceedings in regard to the agreeing for or otherwise determining the compensation to be paid shall be had and taken as are hereinbefore described; and if the said proprietor shall not apply to the said Commissioner within the said period, the said Commissioner shall pay or cause to be paid to the Master of the Supreme Court, administering the Guardian's Fund, who is hereby authorised to receive the same, and to place the same to the credit of such proprietor, a sum of money for and in respect of each share of such proprietor equal to the highest sum which shall have been paid or agreed to be paid for any other share under this Act: and if any sum or sums so paid to the said Master shall not have been claimed by any person having a just and lawful right thereto for a period of eight years from the date of such payment to the Master, every such sum of money and every right thereto shall become and be forfeited to the Crown, and shall be paid by the said Master to the Treasurer of the Colony.

How property to be used.

6. The Colonial Government shall devote the property expropriated by this Act to such purposes as the Governor may from time to time approve.

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE.

No. 29—1890.
Schedule.

By His Excellency the Right Honourable General Lord CHARLES HENRY SOMERSET, one of His Majesty's Most Honourable Privy Council, Colonel of His Majesty's 1st West India Regiment, Governor and Commander-in-Chief of His Majesty's Castle, Town and Settlement of the Cape of Good Hope in South Africa, and of the Territories and Dependencies thereof, and Ordinary and Vice-Admiral of the same, Commander of the Forces, &c., &c., &c.

I do hereby cede and grant unto Messrs. Abraham Faure, John Bardwell Ebden, Anthony Chiappini, Andries Brink, Stephen Twycross, Daniel Dixon, and John Collison; forming the Committee for the erection and management of an intended Mercantile Exchange, for themselves and subscribers thereto, a certain piece of land situate within this Table Valley on the Grand Parade, for the purpose of building thereupon an Exchange, with suitable offices, for the accommodation and resort of all persons engaged in the trade and commerce of this settlement, according to the diagram and plan transmitted to me with their memorial of the 25th January, 1819, and registered herewith, measuring two hundred Rhinland feet in length, and one hundred and ninety Rhine feet and nine inches in breadth, extending N.W. to the Heere Gragt, N.E. towards Strand-street, S.E. towards the Castle, and S.W. towards the Keizer's Gragt, and with full power and authority to them, or the Committee to be from time to time chosen by the subscribers to the said Exchange, to possess said piece of land for the above purposes solely, but not to be appropriated to any other purpose or purposes whatsoever without my special permission or that of the Governor of this Colony for the time being. And for the greater security and convenience of the several proprietors I have authorized and directed a certificate to be granted to each holder of a share (the number of shares being two hundred) which certificate will be transferable by endorsement, and the property in the said land and buildings thereby vested in the endorser, provided such endorsement be first registered in the Colonial Office, and that the usual duties of transfer be previously paid thereon.

Given under my Hand and Seal, at the Cape of Good Hope, the 22nd March, 1819.

CHARLES H. SOMERSET.

By His Excellency's command,
C. BIRD.

No. 29—1890.] [Promulgated 22nd August, 1890.

ACT

For the Protection of Fish in the Territorial Waters of this Colony.

Preamble.

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

No person to assist in using nets for fishing more than 15 feet broad.

1. No person shall use, or assist, or take part in the using, or in the rowing, or navigation of any boat, ship, or other vessel employed in connection with the using of any net or nets for the catching or taking of any fish in any of the territorial waters of the sea surrounding the coasts of this Colony and under the

Digitised by the University of Pretoria, Library Services, 2016

No. 30—1890.

jurisdiction and control of Her Majesty the Queen in Her Colonial Government, unless such net or nets shall be at the broadest not more than fifteen feet in width when stretched for use.

No dynamite, &c., to be exploded in territorial waters, or rivers, or lakes.

2. No person shall discharge or cause to explode, or attempt to discharge or cause to explode in any of the aforesaid waters, or in any rivers or lakes in this Colony any dynamite or other explosive substance: provided that this section shall not apply to the discharging or causing to explode of any such dynamite or other explosive substance in the course of any military practice duly authorised by a proper officer of Her Majesty's Military or Volunteer Forces in this Colony, or in the course of any duly authorised public work undertaken for the improvement of any bay, harbour, or creek in the said territorial waters.

Penalty.

3. Every person convicted of any contravention of any provision of this Act shall be liable to a fine not exceeding fifty pounds sterling, and, in default of payment of such fine, to imprisonment with or without hard labour for any term not exceeding six months.

Short title.

4. This Act shall take effect on or after a day to be appointed by the Governor by Proclamation in the *Gazette*, and may be cited as the "Fish Protection Act, 1890."

No. 30—1890.] [Promulgated 22nd August, 1890.

ACT

To amend certain provisions of Act No. 33 of 1889, known as "The Wild Ostriches Act, 1889."

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

Close season to be proclaimed by Governor in *Gazette*.

1. The Governor may by proclamation in the *Gazette*, fix and prescribe within any division of this Colony (whereof the Divisional Council shall by resolution in that behalf duly passed at a meeting of such Council so request), a close or fence season within which it shall not be lawful to kill, wound or shoot at any wild ostrich, either with or without a licence under Act No. 33 of 1889.

Penalty for killing, wounding or shooting at wild ostrich during close season.

2. Any person contravening the provisions of the last section by killing, wounding or shooting at any wild ostrich during such close or fence season in any division wherein such season shall be fixed and prescribed as aforesaid, shall be liable upon conviction to a fine not exceeding twenty pounds sterling, or in default of payment to imprisonment with or without hard labour for a period not exceeding three months, unless such fine be sooner paid.

Digitised by the University of Pretoria, Library Services, 2016

ACTS OF THE CAPE PARLIAMENT.

ACT 1—1891.] [Promulgated 30th June, 1891.

ACT

For Applying a further Sum not exceeding One Hundred and Ninety-one Thousand Six Hundred and Sixty-seven Pounds Sterling for the Service of the year ending the 30th June, 1891.

Preamble.

WHEREAS it is necessary to provide for certain expenditure necessarily incurred and to be incurred during the year ending on the 30th June, 1891, in addition to the sums provided by the Acts No. 2, 6 and 25 of 1890: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Public Revenue charged with £191,667.

1. The public revenue of the Colony of the Cape of Good Hope is hereby charged towards the service of the year ending on the 30th June, 1891, with a further sum of One Hundred and Ninety-one Thousand Six Hundred and Sixty-seven Pounds Sterling, in addition to the several sums provided for by the said Acts No. 2, 6 and 25 of 1890.

How to be applied.

2. The money granted by this Act shall be applied to the purposes and services expressed in the Schedule annexed hereto, and more particularly specified and set forth in the explanatory detailed Schedule to this Act submitted to Parliament.

Short title.

3. This Act may be cited for all purposes as the "Additional Appropriation 1890-'91 Act, 1891."

SCHEDULE.

Schedule.

Additional Appropriation, 1890-'91.	Establishments.	Services, exclusive of Establishments.	Total.	Required to be provided for.
	£	£	£	£
1. Prime Minister	131	..	131	131
2. Ministerial Department of Colonial Secretary	235	19,476	19,711	19,711
3. Ministerial Department of Treasurer of the Colony	1,550	191,554	193,104	144,966
4. Ministerial Department of Attorney-General	50	1,287	1,337	1,337
5. Ministerial Department of Commissioner of Crown Lands and Public Works ..	210	24,954	25,164	25,164
6. Ministerial Department of Secretary for Native Affairs	..	358	358	358
Grand Total	2,176	237,629	239,805	191,667

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1891.] [Promulgated 30th June, 1891.

ACT

To Apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1892.

Preamble.

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

Revenue charged with £400,000 towards service of year ending 30th June, 1892.

1. The public revenue of the Colony of the Cape of Good Hope is hereby charged towards the service of the year ending the 30th June, 1892, with a sum not exceeding Four Hundred Thousand Pounds Sterling (£400,000), which sum shall be applied towards the service of the year in conformity with the estimates of the expenditure for the said year which have been presented to Parliament.

Short title.

2. This Act may be cited for all purposes as "The Appropriation (part 1891-92) Act, 1891."

No. 3—1891.] [Promulgated 30th June, 1891.

ACT

To amend the Act No. 23 of 1888, commonly called the "Convict Stations and Prisons Management Act, 1888."

Preamble.

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

Repeal of Section 46 of Act No. 23 of 1888, except as to subsisting contracts or engagements.

1. The forty-sixth section of the Act No. 23 of 1888, commonly called the "Convict Stations and Prisons Management Act, 1888," is hereby repealed, but notwithstanding such repeal the said section shall be deemed to be and remain in force in respect of any contract or engagement of service by any officer therein referred to which shall subsist at the time of the passing of this Act, and every such contract or engagement, and the rights of any officer thereunder, shall be judged of as though this Act had not been passed.

Limitation of right of officer at convict station or prison to resign his office.

2. No subordinate officer belonging to any convict station or prison shall be at liberty to resign or withdraw himself from his office

(*a*) Unless expressly permitted so to do in writing signed by the Resident Magistrate of the district in which such

Digitised by the University of Pretoria, Library Services, 2016

convict station or prison shall be situate, or by the superintendent of such convict station,

or (*b*) until the expiration of the period during which such officer shall have elected to serve under any agreement duly entered into in accordance with regulations made by the Minister.

Penalties for desertion or unlawful withdrawal from office.

If any such officer shall desert from a convict station or prison, or shall withdraw himself from his office in violation of the provisions of this section, he shall, on conviction before a Resident Magistrate, be liable to imprisonment, with or without hard labour, for any period not exceeding three months, or to a fine not exceeding forty pounds, and in default of payment thereof to imprisonment as aforesaid, unless such fine be sooner paid; and shall, in addition, be liable to forfeit all arrears of pay due to him.

Where offences of officers, convicts or prisoners may be tried.

3. In the case of the trial of any officer, or convict or prisoner, for any offence under Act No. 23 of 1888, or this Act, it shall be lawful for a Resident Magistrate to try the case

(*a*) At the convict station or prison where or in respect of which the offence was committed;

or (*b*) At the convict station or prison to which the officer was attached when the offence was committed;

or (*c*) At any convict station or prison in which the convict or prisoner may at any time be confined when brought to trial.

Liability of convicts and prisoners with respect to unlawful possession of property.

4. In any case in which a convict or prisoner shall be convicted of the unlawful or unauthorised possession, within any convict station or prison, of money or any other article, it shall be lawful for the Court, in addition to any other competent sentence, to direct that the said money or other article shall be forfeited to the Crown.

Certain Visiting Magistrates empowered to exercise jurisdiction conferred on Resident Magistrates.

5. All power and jurisdiction conferred upon or possessed by any Resident Magistrate under Act No. 23 of 1888, or this Act, may in regard to offences by officers and convicts be exercised by any Visiting Magistrate who is also an Assistant Resident Magistrate or an Additional Resident Magistrate.

Power of Governor to make rules respecting money and other articles of convicts or prisoners.

6. It shall be lawful for the Governor from time to time to frame rules regulating the receipt and custody by officers of convict stations and prisons of money, valuables, or other articles belonging to any convict or prisoner, and defining the conditions and circumstances under which payment or delivery of such money, valuables, or other articles shall be made during the term of imprisonment of such convict or prisoner.

Meaning of "subordinate officer."

7. The words "subordinate officer" mean and include every officer attached to a prison or convict station, not being a Resident Magistrate, Visiting Magistrate, superintendent, assistant superintendent, chaplain, or medical officer.

Effect and short title of Act.

8. This Act shall be read as one with the Act No. 23 of 1888, and may be cited as the "Convict Stations and Prisons Management Amendment Act, 1891."

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1891.] [Promulgated 30th June, 1891.

ACT

To provide for the Regulation of Dairies, Cowsheds, and Milkshops.

Preamble.

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

Governor may frame regulations.

1. The Governor may from time to time frame regulations for the following purposes, or any of them:—

(1) The registration with the local authority of all persons carrying on the trade of cowkeepers, dairymen, or purveyors of milk, within any municipality, corporate town, borough, or area under the operation of the "Villages Management Act, 1881."

(2) The inspection of the grazing ground of cattle used for dairy purposes by such persons, and the dealing with and prohibiting, if necessary, the use of such ground for such grazing.

(3) The inspection of cattle used for dairy purposes by such persons, and the prevention or regulation of the use of the milk of such cattle, if suffering from any disease which would cause their milk to be prejudicial to health.

(4) The inspection of cowsheds, dairies, and houses used for dairy purposes by such persons; and the regulation of the lighting, ventilation, drainage, cleansing, and water supply thereof.

(5) For inspecting and securing the cleanliness of milkstores, milkshops, and vessels used by such persons for holding milk.

(6) For inspecting milk exposed for sale or deposited in any place for the purpose of sale and dealing with such milk if found unfit for food, and prescribing precautions to be taken for protecting milk against infection or contamination.

(7) For providing against the sale or the use of any milk presenting any marked deviation from ordinary appearances as regards colour, odour, taste or general condition.

(8) For obtaining from any such dairyman or milkvendor the names and addresses of persons supplied by him with milk, if such information is required for preventing the spread of any infectious disease.

Regulations published in *Gazette*.

2. Every regulation so framed by the Governor, from time to time, shall be published in the *Gazette*.

Local authority may adopt regulations.

3. Any local authority may, by resolution carried at any meeting, adopt the regulations so framed by the Governor and published in the *Gazette*; but no such resolution shall be so adopted, unless three weeks notice of an intention to propose such a resolution has

Digitised by the University of Pretoria, Library Services, 2016

been published in some newspaper circulating in the district, and unless a printed copy of the regulations aforesaid shall have been deposited at the office of the local authority, and remained there open to public inspection at all reasonable times for a period of one week.

If adopted have force of law.

4. Upon the adoption of the said regulations so framed and published as aforesaid, the local authority shall, by notice in the *Gazette*, notify such adoption, and from and after the publication of such notice, the said regulations shall have the force of law within the area under the jurisdiction of such local authority.

What penalties may be imposed by regulations.

5. Any regulation framed in pursuance of the provisions of this Act may impose a penalty for any breach thereof, and may also impose different penalties in case of successive breaches, but no penalty shall exceed twenty-five pounds, and every person guilty of an offence against any regulation framed, published, adopted and proclaimed under the provisions of this Act shall, for every offence, be liable to the penalty expressly imposed by such regulations, and if no other penalty be imposed to a penalty not exceeding five pounds.

Penalty for offences against regulations.

Local authority may order proceedings against offenders under this Act.

6. The local authority of any place where the said regulations have been duly adopted, and their adoption notified in manner aforesaid, may order proceedings to be taken for the recovery of any penalties due under and for the punishment of any person offending against such regulations, and may order the expenses of such prosecution or other proceeding to be paid out of any fund at its disposal, and all penalties so recovered shall be paid to the local authority of the place where the offence for the commission of which such penalty is so recovered was committed.

Penalties paid into Municipal fund.

How penalties recoverable.

7. All penalties payable in respect of any offence under this Act may be recovered in the Court of the Resident Magistrate of the district or in any Periodical Court having jurisdiction, and when any penalty shall be imposed for any offence under this Act, or the regulations made thereunder, and the person convicted shall not forthwith pay the same, the Court may direct that such person be imprisoned with or without hard labour for a period not exceeding three months, unless he shall sooner pay the penalty.

Regulations may be repealed by Governor.

8. Any regulation framed under the provisions of this Act may be repealed by the Governor.

Meaning of "local authority."

9. Local authority as used in this Act shall mean the Council of any Municipality, Borough, or Corporate Town, or the Board of Management of any place where the "Villages Management Act. 1881," is in force.

Short title.

10. This Act shall be cited for all purposes as "The Dairy Act, 1891."

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1891.] [Not yet Promulgated.

ACT

To make further provision with regard to the Establishment of a Widows' Pension Fund, and to provide for the Commutation of certain Pensions.

Preamble.

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

Widows' Pension Fund to form a deposit account in the Treasury.

1. From and after the taking effect of this Act, all contributions to the Widows' Pension Fund, constituted by "The Public Service Widows' Pension Act, 1879," and the balance of the said fund at that date shall be paid into or transferred in the Colonial Treasury to the credit of a separate account, to be called the "Widows' Pension Deposit Account," and all pensions payable under the provisions of the said Act, or any Act amending the said Act, shall be charged to such account, anything in the third and fourth sections of the Act aforesaid to the contrary notwithstanding.

Interest at 5 per cent. to be allowed on uninvested balance of fund.

2. Interest at the rate of five per centum per annum on the uninvested balance of the said fund from time to time in the Treasury, shall be paid into the said fund out of the general revenue on the thirtieth day of June in each year.

Treasurer may invest balance in Government debentures or stock.

3. It shall be lawful for the Treasurer of the Colony to invest any portion of the balance to the credit of the said fund in Government Debentures or Stock, and to sell any such Debentures or Stock which may have been previously purchased, and a statement of all Investments and Sales under the provisions of this section shall be laid before both Houses of Parliament annually: Provided that if the income from such investment shall cause a deficiency in the funds applicable to pensions under the Public Service Widows' Pension Act, 1879, or any Act amending such Act, such deficiency shall be made up out of the public revenue.

Pension not exceeding £6 per annum may be commuted.

4. Whenever any pension due under the provisions of the "Public Service Widows' Pension Act, 1879," or any Act amending the same, shall not exceed the sum of six pounds per annum, it shall be lawful for the Minister to commute such pension by the payment of a capital sum of money calculated according to the estimated duration of the life of the pension-holder.

Rules to be observed in calculating amount payable in respect of commutation.

5. In calculating the amount payable in respect of the commutation under this Act of any pension, the following rules shall be observed:—

(*a*) The age of the pension holder shall be reckoned at the age she will attain on the birthday next succeeding the date of her becoming entitled to such pension.

(*b*) Interest shall be calculated at the rate of four per centum per annum.

Digitised by the University of Pretoria, Library Services, 2016

(*c*) The duration of life of persons whose pensions it is proposed to commute shall for the purposes of this Act be calculated according to tables approved of by the Governor. No. 5—1891.

6. The word "Minister" in this Act shall be taken to mean the Minister for the time being charged with the administration of the fund constituted by this Act. Interpretation clause.

7. This Act may be cited for all purposes as the "Widows' Pension Fund Amendment Act, 1891." Short title.

No 6—1891.] [Reserved.

ACT

To Consolidate and Amend the Law relating to Banking and to Secure and Regulate the Circulation of Bank Notes.

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

1. The laws mentioned in the first Schedule to this Act, to the extent therein stated, and so much of any other law as may be inconsistent with the provisions of this Act, are hereby repealed. Laws repealed.

2. In this Act, unless the context otherwise requires, the following words in inverted commas shall have the meaning set opposite them respectively:— Interpretation of terms.

"Bank": Every foreign banking company and every joint stock company engaged in the ordinary business of banking by receiving moneys on deposit and by issuing in this Colony or elsewhere bills or notes payable at sight or on demand.

"Bank Note": Any bill, draft, or note issued by any bank for the payment of money to the bearer on demand, or entitling or being intended to entitle the holder without endorsement, or without any further endorsement than may exist thereon at the time of issue, to the payment of any sum of money on demand, whether the same shall be so expressed or not.

"Cheque": a bill of exchange drawn on a bank and payable on demand.

"Issue": the delivery of any bill or note complete in form to a person who takes it as holder.

"Treasurer": The Treasurer of the Colony for the time being.

"Government Securities": Any bonds, scrip, certificates, stock or debentures of the Colony of the Cape of Good Hope.

"Coin": Gold, silver and bronze coin of British coinage current in the Colony, and all gold coin coined by lawful authority in any of the Colonies of the Crown, and such other coin as the Governor may by proclamation from time to time determine.

For the purposes of this Act every bank-note not in the possession of the bank which issued it or any of its branches shall be deemed to be in circulation. Bank notes, when to be deemed in circulation.

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1891.

Bank to transmit copy of Deed of Settlement to Treasurer and Registrar of Deeds. Also document containing certain particulars.

3. Every bank hereafter constituted shall before commencing business in this Colony, and every bank already carrying on business in the Colony shall, within sixty days after the taking effect of this Act, transmit to the Treasurer and to the Registrar of Deeds at Cape Town, a true copy of the deed of settlement or agreement under which such bank has been constituted, and a document giving the names of the chairman and directors of the bank, and full particulars with regard to its capital, each copy and document to be signed and certified—

Copy of Deed and Document, how to be signed.

(*a*) If the head office of the bank be within the Colony, by two directors.

(*b*) If the head office be outside the Colony, by the chief colonial agent of the bank.

Alteration in Deed of Settlement, &c., to be notified to Treasurer and Registrar of Deeds.

4. Every bank having its head office within the Colony shall, within fourteen days, and every bank having its head office outside the Colony shall, within sixty days, after the date of any alteration or amendment of its deed of settlement or agreement, or after the date of any increase or diminution of its nominal capital, transmit and lodge as aforesaid a copy of such alteration or amendment, or a document setting forth the particulars of each increase or diminution, signed and certified as in the last section provided.

Penalty for failure to comply with provisions of sections 3 and 4.

5. Every bank which shall fail to comply with any of the provisions of the third and fourth sections of this Act, shall be liable to a penalty of not exceeding one hundred pounds for each day during which it shall so make default.

Duty of Treasurer in laying before Parliament copies of such documents.

6. The Treasurer shall lay before Parliament within fourteen days after its first meeting, after the receipt of the same, a copy of every instrument or document transmitted to him as hereinbefore provided, together with any further information respecting the same which may seem to him desirable.

Power of Attorney appointing Agent in the Colony shall be lodged with Treasurer by Bank having head-office outside Colony.

7. Every bank having its head office outside the Colony shall, before commencing business therein, lodge with the Treasurer a power of attorney appointing a chief agent in the Colony for the purposes hereinafter mentioned. Such power of attorney shall be executed and authenticated in accordance with the law of the country where the head office of the said bank is situated, and shall

Particulars to be contained in Power of Attorney.

(*a*) State the place in this Colony at which the chief colonial office or agency of the bank is to be established;

(*b*) Expressly authorise the agent so appointed to accept service of process in all suits and proceedings against the bank in this Colony, and to accept service of all legal notices which the Treasury or any officer of the Government may desire to serve upon such bank;

(*c*) Declare that service of such process or such notices upon the agent so appointed shall be legal and binding and be good service upon such bank in all respects;

Digitised by the University of Pretoria, Library Services, 2016

Provided that:

Proviso with regard to existing Banks.

(1) Any bank such as is in this section referred to which is carrying on business in this Colony at the date of the passing of this Act shall lodge the power of attorney aforesaid within sixty days after the taking effect of the Act;

To what firms or individuals the terms of this section and of section 8 to apply.

(2) The terms of this and of the two following sections shall apply to any firm or individual desirous of carrying on banking business in this Colony but whose head office is outside this Colony.

Fresh power to be filed on change of Agent or chief Agency.

8. Whenever any such bank, as aforesaid, shall change its chief agent or chief agency in the Colony, it shall file a fresh power of attorney as hereinbefore mentioned, containing any such change or changes and containing a similar declaration as to service of process and notices to that in the last section mentioned, and every such bank shall, at the time of making the yearly return required by the tenth section of this Act, declare that no change has been made in its chief agent or chief agency without such change having been duly notified.

Penalty for not complying with preceding sections.

9. Any bank which shall make default in complying with the terms of the preceding sections shall incur a penalty of not exceeding one hundred pounds for each day during which such default shall continue, and any agent who shall act in contravention thereof shall be liable, in addition, to a penalty of not exceeding ten pounds for each day during which he may have so acted.

Returns of Shareholders, Chairman, and Directors to be made annually to Registrar Deeds.

10. Every bank having its head office within this Colony shall, within thirty days after the 31st December in each year, and every bank having its head office outside the Colony shall, within sixty days after the said date in each year, file, at the office of the Registrar of Deeds, a list of shareholders and of its chairman and directors on the 31st December preceding.

Particulars required to be furnished in such annual returns.

Such list shall also state the names, addresses, and occupations of all the members appearing therein and the number of shares held by each of them, and shall contain a summary specifying the following particulars:—

(1) The amount of the capital of the bank, and the number of shares into which it is divided.

(2) The number of shares issued.

(3) The total amount paid on each share.

(4) The names, and last known addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares formerly held by each of them. The above list shall be signed by two directors if the chief office be within the Colony, and by the chief agent if the head office be without the Colony, and

Penalty for non-compliance with this section.

Any bank making default in complying with provisions of this section, by not forwarding such list and summary, shall incur a penalty not exceeding ten pounds for each day during which such default continues.

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1891.

Copy of Register of Shareholders to be kept by every bank.

11. Every bank shall keep at its head office or chief agency in the Colony, a copy of the register of the shareholders in such bank, containing the following particulars:—

(1) The name, address, and occupation of every shareholder, together with the number of shares held by him.

(2) The date at which the name of any person was entered in the register as a shareholder.

(3) The date at which any person ceased to be a shareholder

Penalty if register not kept.

and any bank acting in contravention of this section shall incur a penalty of not exceeding five pounds for every day during which such default continues, and every director or manager who shall knowingly and willingly permit such contravention, shall incur a like penalty.

Inspection of Register of Shareholders by Shareholders and other persons.

12. The register of shareholders shall be open to the inspection of any shareholder of the bank, gratis, and to the inspection of any other person on the payment of one shilling during business hours on every day on which such bank shall be open for the transaction of business, and every shareholder or other person may require a copy of such register or any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of sixpence for every hundred words required to be

Penalty for refusing inspection.

copied, and if such inspection or copy be refused, the bank shall incur for each refusal a penalty not exceeding two pounds for every day during which such refusal continues, and, in addition to the above penalty, any Judge sitting in Chambers may, by order, compel the bank to allow an immediate inspection of the register.

Quarterly statement of assets and liabilities to be published.

13. Every bank shall publish in manner hereinafter provided a quarterly statement of the assets and liabilities of its colonial head office (if any) and its branches within the Colony at the close of business on the 31st March, the 30th June, the 30th September, and 31st of December in each year; or if either of these days should fall on a Sunday or a public holiday, then on the day next preceding, and a like statement of the assets and liabilities of its branches outside the Colony and of its head office if such head office is at any place outside this Colony. Every such statement shall be in the form set forth in the schedule B to this Act.

Mode of publication of statement.

14. Every such statement shall be published in the *Gazette* of this Colony within thirty days after the day to which such statement relates, and shall be transmitted to the Treasurer within the said period; and it shall also be posted in some conspicuous place in the office of every branch of the bank within the Colony.

Statement, by whom to be signed.

15. Every such statement shall be signed as follows:—

In the case of a bank having its head office within the Colony:

(*a*) If the statement relates to the colonial head office and branches, it shall be signed by the chairman and at least one other director, and by the accountant.

Digitised by the University of Pretoria, Library Services, 2016

(*b*) If it relates to the branches of the bank in Africa outside the Colony, it shall be signed by the chairman and at least one other director, and by the manager or accountant.

In the case of a bank having its head office outside the Colony, the statement shall in every case be signed by the chief agent appointed in terms of section seven of this Act.

Additional statements required by Treasurer of assets and liabilities.

16. In addition to the aforesaid quarterly returns, every bank shall furnish to the Treasurer at least twice in every year, on such dates as may be fixed by him by notice duly given, a statement in the form set forth in the said schedule, showing the assets and liabilities of the bank within the Colony and of the head office (if any) and branches of the said bank in Africa outside the Colony at the close of business on any past Saturday by him specified in the notice calling for such return, and such statement shall be transmitted to the Treasurer within fourteen days after the receipt of a requisition from him therefor, and shall be published in the *Gazette* in the form in which it is made to him.

Bank having head office outside Colony to publish in *Gazette* and transmit to Treasurer copy of statement submitted to shareholders.

17. Every bank not having its head office in the Colony shall publish in the *Gazette*, and transmit to the Treasurer within thirty days after the presentation thereof, a copy of the annual or half-yearly statement of its affairs submitted to the shareholders of such bank, and such statement shall specify the dividend declared and the amount carried forward (if any). Every copy of such statement shall be certified by the chief agent of the bank in this Colony, who shall be responsible for its correctness as a copy.

Penalties for not publishing and transmitting statements required by preceding sections.

18. Every bank which shall fail to publish or to transmit the statements required in the preceding sections shall be liable to a penalty of not exceeding fifty pounds for every day during which it may be in default after the day fixed for the publication or transmission of the same, and any director, agent, manager, or other officer of any bank or branch bank who shall sign any statement as aforesaid, containing any item which such director, agent, manager, or other officer knows to be false and erroneous, shall, upon conviction, be liable to the penalties of the crime of fraud, and any director, agent, manager or other officer of any bank or branch bank who shall sign any statement as aforesaid containing any item which is false and erroneous, and which he ought to know to be false and erroneous, shall be liable to imprisonment, with or without hard labour, for any period not exceeding two years, or to a fine not exceeding five hundred pounds, with the alternative, in default of payment, of imprisonment, with or without hard labour, for any period not exceeding twelve months unless such fine be sooner paid, or to both such imprisonment and fine.

Penalty for fa statement.

Treasurer may appoint inspectors on application by shareholders or depositors.

19. The Treasurer shall have power to appoint one or more competent inspectors to examine into the affairs of any bank, on the application of shareholders holding not less than one-fourth of the total number of shares in such bank for the time being issued, or on the application of depositors holding deposits of the value of

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1891.

not less than one-half of the gross value of the total deposits, within the Colony, shown in the last quarterly statement of any such bank.

Good grounds to be shown for application.

20. The application shall be supported by such evidence as the Treasurer may require for the purpose of showing that the applicants have good reason for requiring such investigation, and that they are not actuated by malicious motives in instituting the same. The Treasurer may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Security for costs may be required.

Duties and powers of such inspectors.

21. It shall be the duty of all officers and agents of the bank to produce, for the examination of the inspectors, all books or documents in their custody or power. Any inspector may examine the officers and agents of the bank in relation to its business, and if any officer or agent refuses to produce any book or document hereby directed to be produced or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding fifty pounds in respect of each offence.

Inspectors shall report to Treasurer.

22. Upon the conclusion of the examination the inspectors shall report their opinion to the Treasurer, who shall forward a copy thereof to the chief office of the bank, and shall, at the request of the members upon whose application the inspection was made, deliver to them, or to any one of them, a copy of the report.

Expenses of inspection, how to be borne

All expenses of and incidental to any examination as aforesaid shall be defrayed by the persons upon whose application the inspectors were appointed, unless the Treasurer shall direct the same to be paid out of the assets of the bank, which he is hereby authorised to do.

Treasurer may appoint inspectors should bank suspend payment or forfeit penalty prescribed by section 18.

23. In the event of any bank suspending payment, or in the event of any bank being by the judgment of any competent court sentenced to pay the penalty prescribed by section eighteen of this Act, then it shall be lawful for the Treasurer-General to appoint one or more competent inspectors to examine into the affairs of such bank; and every inspector so appointed shall have all the powers conferred upon inspectors under section twenty-one of this Act; and all officers and agents of the bank shall be liable to the duties and subject to the penalties prescribed in the said section.

Powers and duties of inspectors.

Bank notes not to be issued except under this Act.

24. From and after the taking effect of this Act no bank, save as hereinafter in the thirtieth section provided, shall issue or cause to be issued bank notes within this Colony except under the provisions of this Act. And no bank which shall at the said date have an issue of notes outstanding shall re-issue the same after a date to be fixed by notice in the *Gazette*, signed by the Treasurer, calling in the existing note circulation.

Bank notes outstanding not to be re-issued after called in by Treasurer.

Penalty for non-compliance with preceding section.

25. Any bank which shall after such notice as aforesaid issue within this Colony any bank note or other instrument intended to circulate as money, except under the provisions of this Act, shall be liable to a penalty of ten pounds for each offence, to be recover-

Digitised by the University of Pretoria, Library Services, 2016

able in any court of competent jurisdiction, at the suit of any person. One-half of such penalty shall go to the person so suing, and such action shall be against the chief manager or the manager of the bank or branch bank where such issue shall have been made.

Appointment and duties of auditors.

26. Every bank registered in the Colony shall appoint annually by nomination or election two persons, subject to the approval of the Treasurer in respect to their competency, who shall act as auditors, whose duty it shall be to make a report twice a year to the shareholders of such bank upon the balance sheet and accounts, and in every such report they shall state, after careful examination of accounts, vouchers and securities, whether in their opinion the balance sheet is a full and fair balance sheet and properly drawn up, whether it exhibits a true and correct statement of the bank's affairs, and in case the auditors shall have called for explanation or information from directors or officers of the bank, whether they have been satisfactory, and such report shall be read, together with the report of the directors at the ordinary meeting of shareholders, and a copy of such report shall be sent to the Treasurer of the Colony, and also be published in the *Gazette*, within eight days after the same has been submitted to the meeting of shareholders; provided, that in case such bank shall fail or neglect to appoint such auditors, or shall appoint only one such auditor, it shall be lawful for the Treasurer, and he is hereby required to appoint such auditor or auditors according as the bank has appointed one auditor or none; provided further that the remuneration to such auditors shall be paid by the bank, and, in the case of an auditor or auditors appointed by the Treasurer under the provisions of this section, shall be fixed by the Treasurer.

If no auditors appointed by bank.

Remuneration of auditors.

Re-election of auditors.

27. Every auditor shall be eligible for re-election, and in case any vacancy or vacancies occur in the office of auditor, whether by reason of the expiration of the period of service of any auditor or auditors, or by any other reason, such vacancy or vacancies shall forthwith be filled by the appointment of another auditor or auditors by the bank; or, if the bank shall fail to do so, by the Treasurer.

Persons not eligible as auditors.

28. No person having an interest in any bank otherwise than as a shareholder, and no officer of any bank, shall be eligible for appointment as auditor by and for such bank, and any person appointed auditor to any bank, who shall after such appointment acquire such interest in or become an officer of such bank shall, *ipso facto*, cease to be such auditor.

Information to be supplied to auditors.

29. Every auditor shall have delivered to him, on his appointment as auditor, a list of all books kept by the bank to which he is appointed, and shall at all times have access to the books and accounts of such bank; and any bank which, or the manager, or any director, of which shall fail to deliver such list, or refuse to allow such access, shall be liable in a penalty not exceeding ten pounds for every day during which such failure or refusal shall continue.

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1891.

Government securities to be deposited with Treasurer by banks desirous of issuing bank notes.

Security to one-fifth of issue may be n Treasury Bills.

Banks excepted.

30. Every bank desirous of issuing bank notes within this Colony shall deposit with and transfer to the name of the Treasurer, Government securities to the amount of the intended issue; provided that it shall be optional for any such bank to deposit Treasury Bills of the Government of the Cape Colony in proportion of such securities to the amount of not more than one-fifth of the intended issue, and provided further that no bank registered and having its head office in this Colony on the 1st January, 1891, shall be subject to the provisions of this section except at the option of such bank.

Stock certificates to be delivered to bank by Treasurer.

31. To facilitate a compliance with the preceding section, the Treasurer is authorised to deliver to any bank desirous of issuing bank notes, under section thirty of this Act, stock certificates in any loan already authorised, or that may hereafter be authorised by Parliament, at a price to be fixed by him, not being less than the average value realised by the last loan raised by the Colonial Government in London.

Such securities transferred to Treasurer in trust for the bank.

32. All transfers of Government securities made by any bank as security for the issue of bank notes shall be made to the Treasurer in trust for the bank depositing the same, and a receipt shall be given by the Treasurer therefor, setting forth the number and nominal value of the Government securities deposited with him, and stating that such securities are held in trust for the said bank, and as security for the redemption and payment of any bank notes issued by such bank, and such securities shall be held exclusively for such purpose until such bank notes are redeemed, or until they shall be dealt with as hereinafter provided.

Interest to be paid on securities.

33. The interest on the securities so deposited shall be paid to the bank depositing the same, as and when it falls due, so long as the said bank shall continue to redeem the bank notes issued by it, and the Treasurer may from time to time permit an exchange to be made of any of the securities deposited for other securities of a like value, and he may permit a return of any of the securities deposited in sums of not less than one thousand pounds upon the surrender to him and cancellation of a proportionate amount of bank notes issued against such securities.

Exchange of securities may be effected.

Return of securities to banks upon surrender of proportionate amount of bank notes.

On deposit of securities bank to receive bank notes from Treasurer.

34. Upon a deposit of Government securities as prescribed by section thirty the bank depositing the same shall be entitled to receive from the Treasurer bank notes of different denominations, in such proportions as the bank may require, registered and countersigned as hereinafter provided, equal in amount to the par value of the securities deposited with the Treasurer: Provided that no bank shall be entitled to issue bank notes to an amount greater in value than the paid-up capital and reserve of such bank.

Amount of bank notes which can be issued.

Treasurer to have bank notes prepared.

35. In order to provide bank notes for issue, the Treasurer shall cause to be prepared a sufficient number of bank notes of the denominations of twenty pounds, ten pounds, five pounds, and one pound, for delivery to any bank entitled to receive the same.

Digitised by the University of Pretoria, Library Services, 2016

Treasurer to secure safe-keeping of plates, &c.

36. The plates, dies and bed plates required and used for the printing of bank notes shall be and remain under the direction of the Treasurer, who shall take such steps as may be necessary to secure the proper inspection, custody and safe-keeping of the same.

What to be expressed on the bank notes.

37. Such bank notes shall express upon their face that they are secured by Government securities deposited with the Treasurer by the written engraved or lithographed signature of the Assistant Treasurer, and shall also express upon their face the promise of the bank issuing the same, to pay the full value thereof in gold at its chief place of business in the Colony, and at such other place or places as it may elect, attested by the signature of the officers of the bank authorised to sign such bank notes, and shall bear such devices and be in such form as the Treasurer may from time to time direct.

When banks have signed bank notes they may issue and circulate them as money.

38. After any bank receiving bank notes as above provided, has caused its promise to pay such bank notes on demand in gold to be duly signed in such manner as to make them obligatory promissory notes, payable on demand at its chief place of business and such other place or places within the Colony as may be specified on the face of such bank notes, such bank may issue and circulate the same as money, and the same shall be received at par in all parts of the Colony, in discharge of all debts and obligations whatsoever, except at the chief place of business, or other place or places which shall be specified for the payment in gold of the said bank notes.

Proviso.

Expense of providing bank notes, how borne.

Half-penny stamp on each bank note.

39. The expense of providing such bank notes shall be borne by the revenues of the Colony, and every bank shall pay to the Treasurer one halfpenny in respect of every note delivered to it for the purpose of issue.

Bank failing to redeem notes, holder may cause same to be protested by notary, unless protest waived.

40. Whenever any bank which has issued bank notes under section thirty of this Act shall fail to redeem in gold any of the said notes upon legal demand of payment, the holder may cause the same to be protested in one package by a notary public, unless the manager or chief agent of the bank at the place or places where they are redeemable offers to waive demand and notice of the protest, and in pursuance of such offer signs and delivers to the party making such demand an admission, in writing, stating the time of the demand, the amount demanded and the fact of the non-payment thereof. The notary public on making such protest or on receiving such admission shall forthwith forward such admission or notice of protest to the Treasurer, retaining a copy thereof. If however satisfactory proof is produced to the notary public that the payment of the notes demanded is restrained by order of any court of competent jurisdiction he shall not protest the same.

Notaries' duties.

Treasurer on receiving notice of such non-payment by bank to appoint special agent to make inquiries.

41. On receiving notice that any bank has failed to redeem any of its bank notes as specified in the preceding section, the Treasurer may appoint a special agent, of whose appointment immediate notice shall be given to such bank, who shall thereon proceed to ascertain whether the bank has refused to pay its bank notes in gold when demanded, and shall report to the Treasurer the fact so

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1891.

ascertained. If from such protest, and the report so made, the Treasurer is satisfied that any bank has refused to pay its bank notes and is in default, he shall give notice by publication in the *Gazette*, and in such other manner as may to him seem fit, to the holders of the bank notes of such bank, to present them for payment at such place as he may in the said notice direct, and the same shall be paid in gold as presented by and for the account of the Government.

Duty of Treasurer where bank has refused to pay notes and is in default.

Powers of Treasurer upon non-payment of notes by bank.

42. Whenever any bank shall have made default as hereinbefore mentioned by refusing to redeem the bank notes issued by it, under section thirty of this Act, the Treasurer may, after due notice to such bank, cause so many of the Government securities deposited by it to be sold by public tender in the Colony or in England as may suffice to redeem its bank notes, and to pay the interest and other expenses attending such redemption, and for any deficiency in the proceeds of the Government securities deposited with the Treasurer when thus sold, to reimburse the Government the amount expended in paying the bank notes of any bank, which may have made default, and the expenses incident to such repayment, the Government shall have a first lien upon all assets of the said bank, and such deficiency shall be made good out of such assets in preference to any and all other claims whatsoever, except the necessary costs and expenses of administering the same.

Government to have first lien on assets of bank.

Provisions of sections 24 to 42 inclusive shall apply to individuals and firms carrying on banking.

43. The provisions of sections twenty-four to forty-two inclusive shall apply in all respects to any individual or firm carrying on banking business in this Colony and desirous of issuing notes herein; provided that in the case of every such individual or firm, the Treasurer shall satisfy himself of the amount of capital employed in such business by such individual or firm before delivering bank notes to him or them for the purpose of issue.

Proviso.

Worn out or mutilated notes to be replaced.

44. It shall be the duty of the Treasurer to receive worn out or mutilated notes issued by any bank under the provisions of this Act, and also on due proof of the destruction of any such notes to deliver in place thereof to the individual firm or bank issuing such bank notes, other bank notes to an equal amount, and such worn out or mutilated notes, after a memorandum has been entered in the proper books in accordance with such regulations as may be framed by the said Treasurer, as well as all notes which shall have been surrendered to be cancelled, shall be destroyed in such manner as the Treasurer may direct, in the presence of three persons, two of whom shall be appointed by him and the third by the bank which issued the said notes, and a certificate of such destruction signed by the persons so appointed shall be made in the books of the Treasurer and a duplicate thereof forwarded to the individual firm or bank whose notes are thus cancelled.

Old notes and cancelled notes to be destroyed.

No advertisement, notice, &c., to be executed or issued in the likeness of a bank note issued under this Act.

45. It shall not be lawful to design, engrave, print or in any way make or execute, or to utter, issue, distribute, circulate or use any business or professional card, notice, placard, circular, handbill or advertisement in the likeness or similitude of any bank note

Digitised by the University of Pretoria, Library Services, 2016

which shall have been issued under the provisions of this Act, or to write, print or otherwise impress upon any such bank note any business or professional card, notice or advertisement, or any notice or advertisement of any matter or thing whatever, and every person who violates this clause shall be liable to a penalty not exceeding five pounds.

Penalty.

46. Every person who mutilates, cuts, defaces, disfigures or perforates with holes, or does any other thing to any bank note issued under the provisions of this Act, or who causes or procures the same to be done with intent to render such bank note unfit to be re-issued, shall be liable to a penalty not exceeding five pounds, recoverable by the bank issuing such bank note.

Penalty for mutilating, &c., bank notes.

47. Every bank shall pay to the legal holder of any half-note or mutilated note on presentation thereof, the full value of such note, provided satisfactory proof be given that such holder was the lawful holder of the entire note and that it was so mutilated, or that the other half was lost after the entire note came into his possession; provided further that such holder before being paid the full value of such note shall give satisfactory security to refund the amount should it be subsequently found that he was not entitled to receive it.

How holder may recover value of half or mutilated notes.

Proviso.

48. Every individual firm or bank issuing bank notes under the provisions of this Act shall be bound and obliged to transmit to the Treasurer monthly returns of all bank notes issued by it in circulation on the last day of the month, and such return shall be in the form and shall contain such particulars as the Treasurer may prescribe, and shall be signed by the individual or firm making the same, or by two directors or the chief agent of any bank and by the accountant in each case respectively. In the case of banks having an issue of bank notes outstanding at the date of the taking effect of the Act, the return shall include all such notes in circulation on the last day of the month to which it relates. And any person signing such return knowing the same to be false or incorrect shall be liable to a penalty not exceeding one hundred pounds sterling.

Monthly returns of bank notes to be made.

Penalty for false returns.

49. If any individual firm or bank shall fail to lodge with the Treasurer the return mentioned in the last preceding section within one month next after the expiration of the month to which such return relates, then and in that case for the purpose of calculating the duty to be paid the circulation of such individual firm or bank for the period in default shall be taken to be the whole amount of notes delivered by the Treasurer to such individual firm or bank for the purpose of issue.

How duty to be calculated if no return be made.

50. In the months of January and July in each year every individual firm or bank issuing bank notes shall pay to the Treasurer on a demand from him, in writing, a duty of ten shillings per centum upon the average amount of bank notes in circulation for the half-year next preceding, and such average shall be

What duty to be paid on bank notes in circulation.

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1891.

calculated by adding together the monthly returns during the half-year for which such duty is levied, and by dividing the gross sum by the number of months for which such returns are made, and in the event of such duty remaining unpaid it shall be lawful for the Treasurer to deduct the amount thereof from the interest accruing to the individual firm or bank who shall be in default, on the securities deposited by them under this Act.

Statement of notes in circulation and gold held to be published monthly.

51. Every bank issuing notes under the provisions of this Act, shall publish monthly in the *Gazette*, on or before the tenth day of each month, a certified statement of the notes in circulation on the last day of the preceding month, and the amount of coin in the Colony held by such bank on the same date. The statement shall be certified by the chairman or manager of such bank.

Statement of unclaimed trust moneys to be published.

52. Every bank, or company, firm, or individual, trading as bankers within the meaning of this Act, holding deposits, or trust moneys from the public, shall, in the month of January in each year publish in the *Gazette* a detailed statement of all moneys in their hands, or in the hands of any of their branches, or agents within the Colony, as at the 31st December last past; whether dividends on shares, or debentures of such bank or company, amounts to credit of depositors in trust or otherwise, or any other moneys not the property of such bank, or company, and on which no valid lien exists, and which moneys shall at date of publication have remained unclaimed by the respective owners thereof for a period of five years or more; and such statement shall, so far as practicable, set forth the full names, and last known addresses of such owners: Provided, however, that nothing in this section contained shall be held to apply to any such dividends, deposits or other moneys of an amount not exceeding ten pounds.

Proviso.

What constitutes legal acceptance by Bank.

53. Any collateral writing promising to pay, or any promise to that effect made by telegraph, or any mark such as initials placed on a cheque by any one authorised in that behalf, the well understood meaning of which is a promise to pay, shall be held to be a legal acceptance by any bank upon which such cheque may be drawn.

Penalties, how recovered.

54. All penalties mentioned in this Act except where otherwise provided, may be recovered at the suit of the Treasurer in any court of competent jurisdiction.

Banking licence to be taken out.

55. Every individual or firm carrying on the business of bankers within this Colony, shall annually take out a licence for which there shall be payable one shilling for every one hundred pounds of capital employed by such individual or firm in such banking business, such amount to be declared by him or them when applying for the said licence.

Short title.

56. This Act may be cited as the "Bank Act, 1891."

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE A.

No. 6—1891.
Schedule A.

ENACTMENTS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Act 6 of 1864	The Bank Notes Duty Act, 1864 .	The whole.
Act 6 of 1875	Bank Notes Act, 1875	The whole.
Act 11 of 1879	Joint Stock Banking Companies Limited Liability Act, 1879 ..	Sections 3 & 4.
Act 19 of 1865	Joint Stock Banks Statements Act, 1865	The whole.

SCHEDULE B.

Schedule B.

Statement of Assets and Liabilities of the Bank, on the day of

Liabilities.

1. Subscribed Capital. Paid-up Capital. Reserve Fund.
2. Legal Tender. Notes in Circulation. Other Notes in Circulation.
3. Post Bills.
4. Deposits payable after notice or on a fixed day.
5. Deposits on Current Account.
6. Balances due on current account to other Banks.
7. Balances due to Head Office or to Branches of Bank in Africa.
8. Balances due to Head Office not in Africa.
9. Special advances by other Banks.
10. Bills payable.
11. Bills received for Collection.
12. Liabilities other than foregoing.

Assets.

1. Coin in Bank Coffers.
2. Coin in transit.
3. Bullion in hand or in transit.
4. Drafts on Colonial Treasury. Cape Government Securities. Other Government Securities.
5. Notes in hand of other Banks.
6. Cheques in hand on other Banks.
7. Balances due from other Banks.
8. Do. Branches and Agencies of Bank.
9. Bills under Discount covered by Bonds, Shares and other Securities.
10. Bills under Discount covered by Bonds, Shares and other Securities overdue and unpaid.

s 2

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1891.

11. Bills under discount unsecured.
12. Do. do. do. overdue and unpaid..
13. Loans and advances other than bills.
    Do. secured.
    Do. unsecured.
14. Overdrawn Accounts Unsecured.
15. Loans to Government.
    Do. to Public Bodies.
    Do. to Public Companies other than Banks.
16. Advances to other Banks.
17. Landed Property other than Bank Premises.
18. Bank Premises.
19. Other Assets not included in foregoing.

Aggregate Amount of Loans to and liabilities direct and indirect of directors, or Officers of Bank, and of any firms or partnerships in which they or any of them have any interest.

We declare that the foregoing return is made up from the books of the Bank, and that to the best of our knowledge and belief it is correct, and shows truly and clearly the financial position of the Bank.

A. B. } Directors.
C. D. }
E. F., Accountant

or A. B., Manager or Chief Agent.
C. D., Accountant.

No. 7—1891.] [Promulgated 30th July, 1891.

ACT

To Apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1892.

Preamble.

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

Revenue charged with £400,000 towards service of year ending 30th June, 1892.

1. The public revenue of the Colony of the Cape of Good Hope is hereby charged towards the service of the year ending the 30th June, 1892, with a sum not exceeding Four Hundred Thousand Pounds Sterling (£400,000), which sum shall be applied towards the service of the year in conformity with the estimates of the expenditure for the said year which have been presented to Parliament.

Short title.

2. This Act may be cited for all purposes as "The Second Appropriation (part 1891-92) Act, 1891."

Digitised by the University of Pretoria, Library Services, 2016

No. 8—1891.] [Promulgated 11th August, 1891.

ACT

To enable the Graham's Town Municipal Council to obtain Advances from Banks by Overdraft of its Current Account, or from any Person, Institution or Company.

Preamble.

WHEREAS it is expedient that the Graham's Town Municipal Council should possess increased facilities for obtaining monetary advances for municipal purposes: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows, viz.:—

Repugnant legislative enactments repealed.

1. All legislative enactments repugnant to or inconsistent with this Act shall be and the same are hereby repealed.

Council authorised to obtain advances on credit of municipality. Proviso.

2. For the temporary accommodation of the Municipal Council of Graham's Town, it shall be lawful for the said Council to obtain advances from time to time from any bank, person, institution or company by overdraft of the current account, or otherwise, upon the credit of the Municipality, but no such overdraft or accommodation shall at any time under any circumstances exceed one quarter of the prior year's income of the Municipality.

Short title.

3. This Act may be cited for all purposes as the "Graham's Town Municipality Monetary Advances Act, 1891."

No. 9—1891.] [Promulgated 11th August, 1891.

ACT

To Repeal the Ordinance No. 6 of 1833, and to make other provision in lieu thereof.

Preamble.

WHEREAS some of the provisions imposed by the Ordinance No. 6 of 1833 are now unnecessary and need to be repealed, and others are not in unison with the usages and requirements of the Church of England as by law established, and consequently require amendment.

Now, therefore, be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Ordinance 6 of 1833 repealed.

1. The Ordinance No. 6 of 1833, commonly known as the Wynberg English Church Ordinance, shall be and the same is hereby repealed.

Providing for continuation of Divine Service and other customs according to rites of Church of England.

2. The celebration of Divine Service according to the rites and ceremonies of the Church of England as by law established, now in force in the said Church at Wynberg, shall be continued and maintained, and the customs and usages of the said Church of England, so far as the same may be applicable to this Colony, in regard to the Vestry and appointment of Churchwardens, and the regulation of their duties, shall in like manner be exercised in the said Church at Wynberg.

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1891.

Regulating rites and ceremonies in accordance with letters patent establishing See of Cape Town and providing for exercise of episcopal jurisdiction or canonical functions by Bishop of Cape Town.

3. All such rites and ceremonies and the customs and usages in the previous section mentioned shall be regulated under and in accordance with the provisions of Her Majesty's Letters Patent of the 25th June, 1847, and the 8th of December, 1853 (or either of them), establishing and erecting the See or Diocese of Cape Town; and the exercise of any episcopal jurisdiction or canonical function recognizable by the Church of England shall and may be lawfully exercised in the said Church at Wynberg by the Bishop of Cape Town for the time being.

Continuation of existing contracts.

4. All contracts already entered into under the said Ordinance No. 6 of 1833, and existing at the time of the passing of this Act, shall continue and remain in force until the termination thereof, precisely as if the said Ordinance had not been repealed.

Powers of Vestry and Churchwardens to frame rules and regulations for control of Church and grounds.

5. The Vestry of Wynberg Church constituted as hereinafter set forth and the Churchwardens thereof to be appointed in accordance with the practice of the Church of England, shall from time to time, with the Officiating Minister, who shall preside at and be *ex officio* a member of said Vestry, regulate and direct the arrangements connected with the Church, burial grounds and parsonage; and they may from time to time frame rules (and repeal and amend such rules whenever necessary) for the proper control and preservation of such Church and burial grounds, provided such rules be not opposed to or inconsistent with the customs and usages of the Church of England, as far as applicable to this Colony.

Election of chairman in absence of officiating minister.

6. In case of the absence, death or resignation of the Officiating Minister, any Vestry meeting shall elect its own chairman.

Churchwardens may enter into contracts, sue, arbitrate and defend any action with consent of Vestry.

7. The Churchwardens may enter into contracts and agreements, and may sue or recover, in any competent court of law, any claim, demand, rent or debt owing to the said Church at Wynberg or the Churchwardens of the said Church, and also defend any claim, demand or suit brought against them, or arbitrate on any claim due to or owing by them, as they may deem best: provided, however, that the authority and sanction of the Vestry be obtained thereto.

Name under which suits are to be instituted or defended.

8. All suits or actions by or against the Churchwardens in regard to any debt, rents, damage, contract or other matter or thing shall be prosecuted or defended by them in their official capacity, and they shall be known and styled the "Churchwardens of St. John's Church, Wynberg."

Constitution of Vestry and how governed.

9. The Vestry named in this Act shall for all purposes hereinbefore set forth be taken to mean a meeting of such communicants and other habitual worshippers in St. John's Church, Wynberg, as are not prevented by reason of age or sex according to the laws of the Church of England from being members of the said Vestry, and such Vestry meeting of the congregation shall in all respects be governed by the rules and practices of the Church of England in that behalf provided.

Digitised by the University of Pretoria, Library Services, 2016

No. 10—1891.] [Promulgated 11th August, 1891.

ACT

To authorise the Repeal of Certain Ordinances hereinafter mentioned.

Preamble.

WHEREAS the certain Ordinances in the Schedule set forth were enacted before the creation of the Sees of Cape Town and Graham's Town: Whereas the said Ordinances differ from one another and do not prescribe uniform methods for conducting Parochial business: Whereas the said Ordinances are not altogether in agreement with the laws of the Church of England as by law established, and as administered in England in the conduct and management of Vestry meetings and other Parochial business: And whereas it is desirable that the Parishes named in the Schedule hereto annexed may, when they so desire it, claim the permissive rights hereinafter set forth:

Now therefore be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Parishes may ask for repeal of Ordinances.

1. In case any parishes, at present affected by any of the said Ordinances, hereinafter named in the Schedule, should desire to repeal their respective Ordinances, they shall be entitled to do so upon the provisions hereinafter mentioned, and thereupon it shall be lawful for the Governor, by proclamation, to repeal any such Ordinance: Provided, however, that the repeal of the aforesaid Ordinances or any of them shall not impair or invalidate any rights of property or the privileges connected with membership of the Church of England expressed or implied in one or more of the said Ordinances.

Proviso.

Meeting to repeal Ordinances.

2. The Minister and Churchwardens, or Minister and Vestry for the time being of any Parish wishing to avail themselves of the preceding clause shall convene a meeting of all persons entitled to vote under the provisions of any such Ordinance, and of seat holders or habitual worshippers in the Church, of which meeting thirty days' previous notice shall be given in the *Gazette*, also in the Church in the usual manner, and by posting a notice on the Church doors.

Two-thirds may resolve upon repeal.

3. At any such meeting, at which the Minister, or in his absence the acting Minister, shall preside, it shall be competent and lawful for a majority of two-thirds of those present and entitled to vote to decide and resolve that the said Ordinance by which they are affected shall be repealed: Provided, however, that no contract existing at the time of such repeal shall be affected thereby.

Decision of the meeting to be conveyed to Governor.

4. The decision of such meeting shall be notified by the Minister of the Parish, within twenty days thereafter, to the Colonial Secretary, who shall thereupon lay the same before the Governor for his proclamation as aforesaid.

Digitised by the University of Pretoria, Library Services, 2016

[No. 10—1891

Short title.

5. This Act may be cited as the "English Church Ordinance Repeal Act, 1891."

Schedule

SCHEDULE.

No. 4 of 1829, known as the Cape Town English Church Ordinance.
No. 5 of 1832, known as the Bathurst English Church Ordinance.
No. 2 of 1839, known as the Graham's Town English Church Ordinance.
No. 1 of 1842, known as the Port Elizabeth English Church Ordinance.
No. 2 of 1842, known as the Sidbury English Church Ordinance.
No. 5 of 1845, known as the Rondebosch English Church Ordinance.
No. 7 of 1845, known as the Fort Beaufort English Church Ordinance.
No. 8 of 1846 known as the Graaff-Reinet English Church Ordinance.

No. 11—1891.] [Promulgated 11th August, 1891.

ACT

To Incorporate the Diocesan College Council, Rondebosch, and for other purposes.

Preamble.

WHEREAS certain educational establishments styled the Diocesan College, and the Diocesan College School, being a preparatory school for the said College, have been established and exist at Rondebosch and at Claremont respectively, in the neighbourhood of Cape Town: and whereas the control, direction and general management of the said institutions are now vested in a Council consisting of the Lord Bishop of Cape Town and twelve members: and whereas certain of the property held for the use and purposes of the said institutions is now vested in trustees who are not members of the said Council, whereby difficulties have arisen impeding the efficient control, management, and direction of the said institutions: and whereas it is expedient to provide for the incorporation of the said Council by Act of Parliament, and to enable the said Council to hold all such property as aforesaid, and to control, direct and manage any institution that may hereafter be established in connection with the said College or School, and to represent the said College in all legal proceedings: and whereas a certain Deed set forth in the Schedule hereunto annexed has been duly entered into between the Lord Bishop of Cape Town, the members of the said Council and the said trustees, providing for the future constitution of the said Council and the conditions upon which the said property is vested in the said Council:

Digitised by the University of Pretoria, Library Services, 2016

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

College to include Diocesan College and Diocesan College School as well as future Colleges or Schools.

1. The word "College" in any section of this Act shall be taken to include as well the Diocesan College at Woodlands, Rondebosch, and the Diocesan College School at the Grove, Claremont, referred to in the Trust Deed in the Schedule to this Act set forth, as any other College or School that may hereafter be established in connection therewith, in accordance with the provisions of this Act.

Management of College vested in Council.

2. The general direction and management of the College shall, subject to the limitations in section six of this Act set forth, be vested in a Council consisting of the Lord Bishop of Cape Town for the time being, and twelve members who shall be from time to time appointed or elected as in the third section of this Act is prescribed; provided every member of the present Council shall be a member of the Council incorporated by this Act until he ceases so to be from one of the causes in the said section specified.

How vacancies in Council are to be filled up and providing for a Trust Deed.

3. In case any member of the Council shall die, or resign, or be absent from the Colony for upwards of three months without the leave of the Council, or shall be called upon to resign by a resolution adopted by at least two-thirds of the members of the Council, he shall cease to be a member of the Council, and every vacancy so caused shall, within three months after such vacancy has arisen, be filled up and supplied in accordance with the provisions of a certain trust deed entered into between the Lord Bishop of Cape Town, the members of the present Council and the trustees aforementioned, and dated 11th June, 1891; the said trust deed is set forth as a schedule to this Act.

Making Council corporate body with perpetual succession

4. The Council for the time being shall, for the purposes of this Act, be a corporation under the name or style of the "Council of the Diocesan College," and shall have perpetual succession, and shall be capable of doing and performing all matters or things incidental or appertaining to a person or body corporate.

Vesting funds and property in Council.

5. The several funds already existing, and all moneys, assets, and other property, movable and immovable, of whatsoever nature and description, now belonging and which shall hereafter accrue to, or become due and payable to, or be devised and vested in the said College, shall be vested in and administered by the said Council for the purposes of the said College.

Vesting management of College in Council with power to frame regulations.

6. The said Council shall, subject to the provisions of the said trust deed, have full power and authority in respect of the management and direction of the affairs of the said College, and the disposition of the property and moneys now or hereafter appertaining to the same, and shall, subject to the provisions of the said trust deed, make rules and regulations for the management and direction of the said College, and for the meetings and transaction of business by the said Council, and may from time to time alter

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1891.

and amend the said regulations, and shall have power to appoint and remove the principal, warden, professors, teachers, and any other officers for the said College or for the said Council, as may be from time to time necessary, and may define and regulate the duties of the said officers.

Giving Council authority to establish other Colleges and Schools.

7. The said Council shall have full power and authority to establish any other colleges or schools in connection with the Diocesan College, and shall have the same powers with regard to such colleges and schools as have been provided by this Act, and the said trust deed, with regard to the Diocesan College and Diocesan College School.

Alterations or additions in trust deed to be filed with Registrar of Deeds.

8. Any alterations in or additions to the said trust deed, which may from time to time be made in conformity with the provisions therein contained, shall be embodied in a further deed or deeds duly drawn up between the Lord Bishop of Cape Town, the aforesaid trustees, and the members of the Council for the time being, and a copy of every such deed shall, within three months of the date of execution of the same, be filed in the office of the Registrar of Deeds of this Colony.

All property to be transferred to Council with power to mortgage, sell or lease.

9. All property, movable or immovable, in the said trust deed referred to, and now standing registered otherwise than in the name of the said Council, and all property that may in any manner be subsequently acquired by or on behalf of the said College, shall be transferred into the name of the said Council, and the said Council for the time being shall have the power of purchasing and holding property, movable and immovable, and of selling, mortgaging, leasing or otherwise disposing of the same as if they were the owners thereof, but subject to the provisions of the said trust deed and any amendments thereto made in accordance with the provisions of this Act.

All such transfers free of duty.

All transfers of property in the said trust deed referred to, effected as aforesaid by persons in whose names the said property is at present registered, shall be free of any transfer dues which, but for this provision, might be payable thereon and be legally claimable by the Government of this Colony.

Council may be sued in corporate name.

10. The Council shall sue and be sued by the name or style of the "Council of the Diocesan College," and may in all legal proceedings be referred to by that name or style.

Warrant to sue or defend to be signed by Secretary.

11. The warrant to sue or to defend any legal proceedings shall be signed by the Secretary, and no proof need be given in any Court that the Secretary in so doing acted under the authority of the Council; provided that no such legal proceeding, whether criminal or civil, shall be brought or defended in the name of the Council unless the consent of the said Council shall first have been obtained thereto.

Proviso.

Other powers to be signed by two members of Council and ecretary.

12. All powers of attorney necessary for the transfer of property or performance by the Council of any legal act or proceeding in accordance with the provisions of this Act, shall be signed by two

Digitised by the University of Pretoria, Library Services, 2016

members of the Council and the Secretary; provided no such power of attorney shall be signed or legal act performed unless the consent of the said Council shall first have been obtained thereto. Proviso.

13. This Act may be cited for all purposes as the "Diocesan College Council, Rondebosch, Incorporation Act, 1891." Short title.

SCHEDULE. Schedule.

KNOW ALL MEN BY THESE PRESENTS:

That whereas in or about the year 1849 the Right Reverend Robert Gray, then Bishop of Cape Town, founded and established a certain college at Rondebosch, in the Colony of the Cape of Good Hope, called the Diocesan College, and thereafter, in or about the year 1885, the trustees of the Diocese of Cape Town purchased certain property at Claremont and established a school there, called the Diocesan College School, with the object of supplying a liberal education with religious instruction in accordance with the principles of the Church of England.

And whereas the management of the said College was originally vested in the Principal thereof, subject to the supervision of the Bishop of Cape Town, for the time being, and that of the said school, in a Committee of persons nominated by the Bishop, who thereafter undertook the management of both institutions, and the succession of such committee was continued by appointment made from time to time.

And whereas the administration of the funds of the said College, amounting to a sum of £4,800 or thereabouts, and known as the Diocesan College Endowment Fund, is vested in the Trustees of the Diocese and the immovable property belonging to the said College and School is registered in the names of certain persons in trust, to wit,

The Diocesan College at Rondebosch, in the name as aforesaid, of the Right Reverend Robert Gray, then Bishop of Cape Town, and his successors in the see of Cape Town.

And the Diocesan College School at Claremont, in the names of the Trustees, or Trustees for the time being, of the Diocese of Cape Town in trust for Educational Purposes in connection with the Church of the Province of South Africa.

And whereas it is deemed advisable that the said scheme of management should be incorporated in a trust deed; that the funds and landed property belonging to the said College and School should be transferred to certain persons constituting the Council of the Diocesan College, who should hold the property and funds in trust, subject to the conditions hereinafter contained. And further, that the Council should do all other matters and things necessary for the administration of the funds and conduct of the said school and college.

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1891.

NOW, THEREFORE, THESE PRESENTS WITNESS:

That the Right Reverend William West Jones, Lord Bishop of Cape Town, as Successor in the See of Cape Town to the Right Reverend Robert Gray, in whom the Diocesan College property at Rondebosch is registered by Deed of Transfer bearing date the 1st day of September, 1849,

Charles William Barnett-Clarke, Dean of Cape Town, as the duly appointed agent of the Trustees of the Diocese of Cape Town, in whose names the Diocesan College School property at Claremont is registered by Deed of Transfer bearing date the 31st day of August, 1885; the said Charles William Barnett-Clarke, being duly appointed such special agent by resolution of a meeting of the said Trustees bearing date the 8th day of June, 1891,

And Charles Abercrombie Smith, in his capacity as the duly authorised agent of the members of the present Diocesan College Council, appointed thereto by resolution of the said Council, bearing date the 29th day of May, 1891, have contracted and agreed, as they do by these presents contract and agree, as follows, to wit:—

(1) That the Bishop of the Diocese for the time being (or in the case of his decease, or absence from the Diocese, the Vicar-General,) shall appoint to every alternate vacancy that may occur in the College Council, and that the other members be elected as the College Council shall from time to time determine.

(2) That the Bishop of the Diocese for the time being (or in the case of his decease or absence from the Diocese, the Vicar-General,) remain as heretofore visitor of both college and school, and as such have control over the religious teaching of both institutions.

(3) That the Principal of the College be always as heretofore a clergyman in priest's orders, and hold the licence of the Bishop of the Diocese.

(4) That the terms of the Trust under which the property, whether in land or in endowment, is at present held be binding for all time on the College Council.

(5) That in the event of any one of the above conditions being violated, the property and funds shall *ipso facto* revert to the Trustees of the Diocese, or to the Bishop thereof respectively.

(6) Notwithstanding anything contained in the fifth or any other condition of this Deed, the first condition of this Deed may be from time to time amended, provided that no such amendment be made except with the mutual consent and agreement of the Diocesan Trustees and members of the College Council for the time being.

(7) That this Deed of Agreement be duly registered and annexed to the Deed of Transfer of the landed property, which Transfer shall specially refer to the above conditions as forming the Trust under which the College Council shall hereafter hold the property now to be transferred to them by the Trustees and the Bishop.

Digitised by the University of Pretoria, Library Services, 2016

No. 12—1891

Thus done, contracted and agreed at Cape Town this Eleventh day of the month of June, in the Year of our Lord One thousand Eight hundred and Ninety-one.

As Witnesses to the Signature of Bishop JONES:
EMILY F. JONES, W.W. CAPE TOWN.
M. BRAMLEY.

As Witnesses to the Signature of CHARLES WILLIAM BARNETT CLARKE:
1. F. BOLUS, C. W. BARNETT CLARKE.
2. M. C. SONNENBERG.

As Witnesses to the Signature of CHARLES ABERCROMBIE SMITH:
1. C. C. LONG, C. ABERCROMBIE SMITH.
2. M. C. SONNENBERG.

No. 12—1891.] [Promulgated 11th August, 1891.

ACT

To Amend the Act No. 14 of 1870, commonly called "The Cattle Removal Act, 1870."

Preamble.

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

Section 13 of Act 14 of 1870 amended by striking out words "stock under saddle or pack saddle."

1. The words "stock under saddle or pack saddle," in the proviso to section thirteen of the Act No. 14 of 1870, commonly called "The Cattle Removal Act, 1870," are hereby expunged.

Definition of "driving" for purposes of Act 14 of 1870, and Act 20 of 1889.

2. For the purpose of the "Cattle Removal Act, 1870," and of the "Cattle Removal Amendment Act, 1889," any person who is riding or leading any stock, whether under saddle or pack-saddle, or not, shall be deemed to be driving and to be in custody and possession of such stock.

Short title and effect of Act.

3. This Act may be cited for all purposes as "The Cattle Removal Amendment Act, 1891," and shall be read as one with "The Cattle Removal Act, 1870," and "The Cattle Removal Amendment Act, 1889," which with this Act may be cited collectively as "The Cattle Removal Acts 1870 to 1891."

No. 13—1891.] [Promulgated 21st August, 1891.

ACT

To Amend the Law relating to Life Assurance Companies, with a view to encouraging persons to Insure, and to protecting persons Assured.

Preamble.

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

Short title.

1. This Act may be cited as "The Life Assurance Act, 1891."

Interpretation of terms.

2. In the interpretation of this Act, unless inconsistent with the context, the term "Company" means any person or persons or

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1891.

association, who issue or are liable under policies of assurance, upon human life within this Colony, or who grant annuities upon human life within this Colony, whether the head office or principal place of business of such person or persons or association is in this Colony or elsewhere, and includes associations on the mutual principle.

The term "Foreign Company" means a company established or having its head office or place of business out of this Colony.

The term "Policy" includes a contract for securing a life assurance, endowment, or annuity.

The term "The Court" means the Supreme Court of the Cape of Good Hope.

Company to prepare revenue account and balance sheet annually.

3. Every company transacting Life Assurance business only, or such business concurrently with any other kind of Assurance or other business, shall at the expiration of each financial year of such company prepare in the forms prescribed a Revenue Account for such year and of its Balance Sheet at the close of such year.

Company to prepare annual statement of policies in force at close of year.

4. Every company shall at the expiration of each financial year of such company, in addition to any other statements required by this Act, prepare in the form prescribed in the schedule to this Act a statement of all its Policies in force at the close of such year.

Investigation into financial condition of company to be made every five years.

5. Every company shall once in five years or at such interval as may be prescribed by the deed constituting the company or by its articles of association, regulations or bye-laws, cause an investigation to be made into its financial condition by a duly qualified actuary, and shall cause an abstract of the report of such actuary (in the prescribed form) to be deposited as by this Act is provided.

Forms of statements, &c., can be prescribed and altered by Governor.

6. The Governor may from time to time prescribe or vary the forms of statements, abstracts, accounts, or returns to be made by any company, and may direct with whom or at which office all statements, abstracts, accounts, or returns to be prepared under the provisions of this Act shall be deposited.

Certain rules to be made by Governor for custody of documents.

The Governor may also make rules prescribing the duties of such person as may be charged with the custody of such documents as aforesaid, and for the better administration of this Act

Statements, abstracts, &c., of company how to be dealt with.

7. Every statement, abstract, account, or other document by this Act required to be made by any company shall be in such form as the Governor shall prescribe, shall be signed by the principal officer thereof managing the Life Assurance business in this Colony, and shall be printed; and the original so signed as aforesaid, together with three printed copies, shall be deposited with such officer, or at such office as the Governor may direct, within six months of the dates respectively prescribed as the dates at which the same are to be prepared.

Company not incorporated in Colony or registered under Joint Stock Act, 1861, to lodge copy of deed under which constituted.

8. Every company which shall not be incorporated by an Act of the Colonial Legislature, or registered in this Colony under the Joint Stock Companies Limited Liability Act, 1861, shall lodge at such office as the Governor may in terms of this Act appoint, a

Digitised by the University of Pretoria, Library Services, 2016

copy of its Charter of Incorporation, Articles of Association, or other Deed under which it is constituted, and of any amendment thereof, as follows :—

(1) If a company already carrying on business in this Colony, within three months after the passing of this Act.

(2) If a company hereafter established before such company shall commence business.

(3) In case of an amendment of any such charter, articles or other deed as aforesaid within six months after such amending instrument shall come into operation.

Foreign company to notify in *Gazette* name of principal officer or agent and address of office in the Colony.

9. Every foreign company transacting life assurance business in this Colony shall within three months after the coming into operation of this Act, or after commencing business, as the case may be, notify in the *Gazette* the name of its principal officer, manager, secretary, or agent, and the address of the principal office of the company in this Colony.

The person whose name is so notified can sue and be sued.

10. Every such principal officer, manager, secretary, or agent, of whose appointment notice shall be given in the *Gazette* as aforesaid, may sue, and be sued on behalf of the company he represents, and service of all notices, summonses, or other legal process, shall be effectual against such company if served upon such principal officer, manager, secretary, or agent, or left at such principal office with any officer or servant of the company.

Penalty for false statement, abstract, account, &c.

11. If any statement, abstract, account, or other document required by or under the provisions of this Act is false in any material particular, the person who signed or deposited the same shall be liable on conviction to a penalty not exceeding one hundred pounds for each offence, or to imprisonment with hard labour, for a term not exceeding twelve months.

Penalty for default in furnishing returns.

12. Every company which makes default in the furnishing of its statements or returns, or otherwise complying with any of the provisions of this Act for a period of three months or upwards may, upon the application of the Attorney-General, be interdicted by the Court from transacting business within this Colony either absolutely or for a time as the Court may see fit to order.

Statements, &c., open to inspection on payment of fees.

13. Any person may, upon payment of such fees as the Governor may direct, inspect any statement or other document deposited as required by this Act, and procure copies thereof.

Statements and certified copies of statements, &c., receivable in evidence.

14. Every statement, abstract, account or other document, deposited in terms of this Act, shall be receivable in evidence, and every document purporting to be certified by the officer or person having the custody thereof to be a true copy of such deposited document shall be deemed to be such copy, and receivable in evidence as such, unless some variation between it and the original shall be proved.

Minister to lay statements, &c., before Parliament.

15. It shall be the duty of the Minister to whom the Governor shall assign the management of this Act, to secure the due observance by every company of its provisions, and such Minister

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1891.

shall lay annually before Parliament the statements and abstracts of reports deposited in accordance with the provisions thereof during the preceding year.

Under certain conditions the interest under policy of assurance which shall have endured for not less than three years, not liable to execution.

16. The property and interest of every person under any policy of assurance upon his own life, and which shall have endured for not less than three years from the date of the payment of the first premium thereon, or in any moneys payable thereunder, shall not be seized or taken in execution under any process of court, or in the event of the sequestration of the estate of such person as insolvent shall not vest in the trustee, or otherwise, for the benefit of the creditors of his estate, subject, however, to the conditions or limitations following:—

Conditions.

(1) If such assurance shall have endured for three years or upwards, it shall be protected as aforesaid to the extent of three hundred pounds; and in addition thereto one hundred pounds for each additional year or part of a year not exceeding in any case the sum of two thousand pounds.

(2) The sums of money aforesaid shall mean sums assured by one policy or several policies, irrespective of any bonus or other additions thereto;

(3) If the assured can by the terms of his policy, surrender the same to the company, and agrees with the company to surrender the policy, then the money which shall be payable upon such surrender shall not be protected as hereinbefore provided; but nothing herein contained shall be construed to prevent the assured from agreeing with the company, for the surrender or exchange of his existing policy, for a fully paid up policy, equivalent to its value, which latter policy shall have the protection afforded by this section.

Woman married in community may insure her own or her husband's life.

17. A woman married in community of property may effect a policy of assurance upon her own life, or upon the life of her husband, and every such policy, and every policy effected by any woman upon her own life before marriage in community, and the moneys payable in respect of every such policy, shall be deemed to be her sole and separate property, excluded from community, and shall not be subject to the control of her husband, nor after three years from the date of the payment of the first premium thereon, be liable for his debts, subject however to the provisions, and the conditions and the limitations contained in the last preceding section.

Husband may cede policy on own or wife's life to wife.

18. Notwithstanding any law to the contrary, a husband being the holder of a policy of assurance upon his own life, or upon the life of his wife, may lawfully cede such policy to his wife, whether married in community of property or not, or to some person in trust for her, for her benefit, or for the benefit of herself and her children, or some or one of them, subject to the following conditions or limitations:

Digitised by the University of Pretoria, Library Services, 2016

(1) Such policy shall have the protection provided by the sixteenth section of this Act, to the extent therein mentioned, but not further or otherwise. Proviso.

(2) Any such policy ceded as aforesaid to a woman married in community of property, or in trust for her benefit, shall be deemed to be her sole and separate property excluded from community.

Policy ceded to intended wife, to whom he is afterwards married in community of property, not to fall in community.

19. A policy of assurance effected or ceded by an intended husband for the benefit of an intended wife, to whom he shall afterwards be married in community of property, shall be deemed to be the sole and separate property of such wife excluded from community.

When policy so protected exceeds amount for which protected, substituted policies may be issued.

20. When any policy so protected as aforesaid exceeds the amount for which protection is provided, the person who, but for such protection, would be entitled to the policy, or to the disposal thereof, may require the company by whom such policy was issued to cancel the same, and to issue substituted policies of equal standing with the former policy; and such company shall thereupon issue such substituted policies, at the expense of the persons applying for the same, one for the amount protected for the benefit of the assured, or whoever shall be thereto entitled, and the other for the unprotected residue.

Moneys payable in respect of protected policies not available for debts before certain claims are met.

21. The moneys payable in respect of any policy by this Act protected or exempted from execution or sequestration to the extent to which such protection or exemption is granted, during the life of the assured, shall not upon his death be available for the payment of his debts as against the claims of

(1) The widow of the deceased in respect of any interest acquired by her by virtue of a marriage in community of property, or devolving upon her by testamentary or other lawful disposition.

(2) Any child of the deceased claiming by succession *ab intestato*, or under any testamentary disposition.

If policy effected with intent to defraud, court may order sum equal to amount of premiums paid, to be a charge on policy.

22. Notwithstanding anything contained in this Act, if in any case it shall be proved that any policy was effected, or the premiums upon any policy were paid, with intent to defraud the creditors of the assured, or in the case of a policy effected by a husband upon the life of his wife or by a wife upon the life of her husband with intent to defraud the creditors of either of them, the Court (or the Court of the Eastern Districts, the High Court of Griqualand, or any Circuit Court within the jurisdiction of such Courts respectively) may order a sum equal to the premiums so paid, with interest thereon, to be a charge upon the policy, and to be payable out of the sum assured.

Provision in case a policy lawfully ceded to wife cannot be kept up.

23. If any person who has effected, or who, by marriage settlement or otherwise, has lawfully ceded a policy of assurance for the benefit his wife, or of his wife and his or her children or some of them, or if any trustee holding any policy under any such settle-

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1891.

ment or otherwise is unable to continue to provide for the payment of the premiums, such person or trustee may either:

Agreement may be made with company.

(1) Agree with the company which granted the policy to surrender the same, and to accept in lieu thereof a paid-up policy for such sum as, according to the rules of the company, may be its equivalent in value, payable at the time and in the manner, and for the benefit of the persons entitled to the sum assured by the original policy; or

Or money may be borrowed to be first charge on policy.

(2) Borrow such sum as may be necessary to keep the policy in force, and any sum so borrowed and applied for keeping up the policy shall be a first charge upon such policy, and be repaid with interest out of the sum assured; or

Profits may be applied to reduction of premiums.

(3) Agree with the company to apply any accumulated profits in reduction of future premiums.

Court may order winding-up of company.

24. The Court may order the winding-up of any company, in accordance with the "Winding-up Act, 1868," upon the petition of twenty or more policy-holders or shareholders, upon its being proved to the satisfaction of the Court that the company is insolvent; and in determining whether or not the company is insolvent, the Court shall take into account its contingent or prospective liability under policies or annuity, or other existing contracts.

Proceedings in lieu of winding up may be ordered by court.

25. The Court may in the case of a company which has been proved to be insolvent, reduce the amount of the contracts of such company upon such terms and subject to such conditions as to the Court may seem fit, instead of granting a winding-up order.

Law and rules to prevail when company ordered to be wound up.

26. Where application is made to the Court to wind up a company, or in the case of a company ordered by the Court to be wound up, the rules for estimating the value of a policy or life annuity, and generally the law as administered by the High Court of Justice in England, and the practice of the said High Court, shall respectively be the rules to be adopted, the law to be administered and the practice to be observed by the Court, so far as the same shall not be repugnant to or inconsistent with any law in force in this Colony; provided that the rate of mortality shall be computed on the basis of the tables known as the Institute of Actuaries Experience H^{M} Tables.

Proviso.

Notice of assignment of policy to be given before company can be sued by assignee.

27. No assignment of a policy shall confer on the assignee therein named, his executors, administrators, or assigns, any right to sue the company for the amount of such policy, or the moneys assured or secured thereby until a written notice of the date and purport of such assignment shall have been given to the company at its principal place of business, and the date on which such notice shall be received shall regulate the priority of all claims under any assignment, and any advance or payment *bona fide* made upon or in respect of any policy by the company before the date upon which such notice shall have been received shall be valid and effectual against the assignee giving such notice.

Digitised by the University of Pretoria, Library Services, 2016

Receipt of executor or administrator of estate, sufficient discharge.

28. The receipt of the executor, testamentary or dative, or of the administrator duly authorised or appointed to administer the estate and effects of a deceased policy holder, by any Court or lawful authority exercising jurisdiction in the country where such deceased policy holder was domiciled at the time of his death, shall be a valid discharge for any moneys payable under any policy held by him.

Saving clause with regard to claim existing at date of coming into effect of Act.

29. Nothing in this Act contained shall be deemed to affect or prejudice the rights of any creditor whose claim or demand shall exist at the date of the coming into operation thereof, which rights shall be judged and determined as if this Act had not been passed.

SCHEDULE.

Schedule I.

I. New Policies issued by the during the year ending 189

	No. of Policies.	Sum Assured.	Single Premium.	Annual Premiums.
Assurance				
Endowment		per annum		
Annuity				
Total .. .				

II. Policies discontinued in the during the year ending the 189

How Discontinued.	Assurance Policies.			Endowment Policies.			Annuity Policies.		
	No.	Sum Assured.	Annual Premiums.	No.	Sum Assured.	Annual Premiums.	No.	Annuity per an.	Annual Premiums.
By death or Maturity ..									
By Surrender ..									
By Forfeiture									
Total ..									

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1891.

III. Policies of the existing on the 189

	In the Cape Colony.		Elsewhere.	
	No. of Policies.	Sum Assured.	No. of Policies.	Sum Assured.
Assurance				
Endowment				
Annuity				
Total ..				

No. 14—1891.] [Promulgated 18th August, 1891.

ACT

To Extend the Provisions of the Eighteenth, Nineteenth, Twentieth and Twenty-First Sections of "The Crown Lands Disposal Act, 1887," to Lessees of Land under and by virtue of the Ordinance No. 3 of 1874, of Griqualand West.

Preamble. BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Sections 18 and 21 of Act 15 of 1887, amended by insertion of words "or the Ordinance No 3 of 1874, of Griqualand West." **1.** After the words "Act No. 19 of 1864" in the eighteenth and twenty-first sections of the Act No. 15 of 1887, commonly called "The Crown Lands Disposal Act, 1887," shall be inserted the words "or the Ordinance No. 3 of 1874 of Griqualand West."

Short title. **2.** This Act may be cited for all purposes as "The Crown Lands Disposal Extension Act, 1891."

No. 15 of 1891.] [Promulgated 18th August, 1891.

ACT

To Amend the Law with regard to the Erection and Maintenance of Dividing Fences.

Preamble. BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Effect and short title of Act. **1.** This Act shall be read as one with the Act No. 30 of 1883, commonly called "The Fencing Act, 1883," and hereinafter

Digitised by the University of Pretoria, Library Services, 2016

referred to in this Act as "the said Act," and may be cited for all purposes as "The Fencing Law Amendment Act, 1891."

Meaning of "occupier" under Fencing Acts.

2. The term "occupier" shall, for the purposes of the said Act, and of this Act, and notwithstanding anything in the second section of the said Act contained, include

(*a*) Any person, company, co-partnership, or public body in actual occupation of or entitled as owner to occupy any land alienated from the Crown.

(*b*) The Colonial Government in respect of Native Locations situated on Crown land;

(*c*) The council, board of commissioners, or other governing body of any municipality or corporate town, and the board of management of any place wherein "The Villages Management Act, 1881," is in force, in respect of all lands to which, or to the use of which, the inhabitants of such municipality, corporate town, or place, have acquired or may hereafter acquire a common right.

(*d*) The divisional council of every division, in respect of every public outspan or baiting place, duly surveyed or marked off by beacons, and situated upon or near any public road within such division.

Liability of divisional council as to fencing of public outspans, &c., in its occupation.

3. Every divisional council shall, in respect of any public outspan or baiting place whereof it shall be an occupier in accordance with the last preceding section of this Act, be liable to join in or contribute to the construction of fences dividing such outspan or baiting place from other land; provided that

(*a*) the amount which such divisional council shall contribute shall in all cases, and notwithstanding anything to the contrary contained in the said Act, be one half of the cost of construction of any such fences, to be paid in manner provided by the said Act and this Act;

and (*b*) such divisional council shall be liable to all the obligations of an occupier in respect of the maintenance and repair of any such fence when constructed.

Advances for fencing to divisional councils or municipalities, or village managemen boards

4. It shall be lawful for the Governor, on the application of the council, board of commissioners, or other governing body of any municipality or corporate town, the board of management of any place wherein "The Villages Management Act, 1881," is in force, or the divisional council of any division, to grant, subject to the provisions of "The Local Works Loan Act, 1882," and out of such funds as Parliament shall have provided or may hereafter provide for the purposes of that Act, loans to such council, board or other body as above, for the purpose of fencing required to be done by such body under the provisions of the said Act and this Act, and every loan so granted shall be taken to be a loan granted under "The Local Works Loan Act, 1882," and as though it were a loan granted for all or any of the purposes specified in the second section of that Act; provided that no such application as

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1891.

aforesaid shall be made unless in pursuance of the vote or decision of a majority of voters registered within the limits of such municipality, place, or division, for the election respectively of members of such council, board of management, or divisional council as the case may be, present at a meeting to be called for the purpose of considering such application, and of which meeting and of its object not less than three weeks notice shall have been given by advertisement in any newspaper circulating in the division.

Occupier of land not in area to contribute to cost of fence.

5. If the occupier of any land situated within any division or field-cornetcy wherein the provisions of Part I of the said Act are, or shall hereafter be, in force, shall erect a fence on the boundary of his land, the occupier of any land not within any such division or field-cornetcy, but adjoining the first-mentioned land and separated therefrom by such fence, shall, anything to the contrary in the eighteenth and nineteenth sections of "the said Act" notwithstanding, be liable to pay to the occupier of such first-mentioned land a reasonable portion, not exceeding one-half of the cost of erection of so much of the said fence as shall separate such adjoining land from such first-mentioned land: and if any difference shall arise as to the amount to be paid, such difference shall be settled by arbitration.

When and how contributions fixed after the passing of this Act, may be paid by instalments.

6. If any occupier shall, under the provisions of the said Act or of this Act, be liable to contribute to the construction of any dividing fence any amount fixed after the passing of this Act, the equal yearly instalments of such amount, together with interest thereon at the rate of six per cent. per annum, which shall be payable by such occupier as provided by the ninth section of the said Act in case he be unable or unwilling sooner or otherwise to pay the whole or any part of such amount, shall, notwithstanding anything to the contrary contained in the said last-mentioned section of the said Act, be so calculated and fixed that the capital amount and interest shall be wholly paid off in a period of five years, if such capital amount do not exceed one hundred pounds sterling, and of ten years if it do exceed the sum of one hundred pounds sterling, which period shall be calculated from the date of the notice given as provided in the aforesaid section; and the said instalments shall be payable in manner more particularly set forth in the first and second schedules to this Act: Provided that notwithstanding such notice, and the payment of any instalment as aforesaid, it shall be lawful for such occupier at any time during the said period of five or ten years, as the case may be, to pay the value at that time of the unpaid instalments in one sum, as shown in the second schedule to "the Fencing Act, 1883."

Occupier of land fenced to pass mortgage bond.

7. It shall be lawful for any occupier to whom any amount shall be owing by way of contribution by any person to the construction of any dividing fence, under the provisions of the said Act or of this Act, to call upon such person to pass a mortgage bond upon the land owned by such person, and separated from the

Digitised by the University of Pretoria, Library Services, 2016

land of the said occupier by the dividing fence in respect of which the said amount is owing, such bond being conditioned to secure payment of the amount so owing or such portion of it as may from time to time be due, whether the amount be payable by instalments or otherwise.

If mortgage not passed, amount due to be entered on Register of Debt.

8. If the said person shall refuse or fail to pass such mortgage bond, it shall be lawful for the said occupier to notify to the Registrar of Deeds the fact that the amount referred to in the preceding section is owing by the person aforesaid, and that no mortgage bond has been passed to secure the same. The Registrar, upon receipt of the said notification, shall by letter notify to the person named therein the fact of the receipt of the said notification and the particulars contained in it, and shall inform the said person that unless the said amount is objected to within three weeks from the date of the said letter an entry thereof will be made in the Register of Debts in terms of this section. If no such objection is received within the said period, then the Registrar shall enter the said amount in the Register of Debts against the name of the said person, and shall deliver to the party to whom the said debt is owing a certificate thereof, setting forth the amount, the date, and the schedule under which payment thereof is regulated; but if any such objection is received within the said period, no such entry shall be made except with the consent of the said person, or upon the order of some competent court; and from and after date of the said entry it shall not be lawful without the order of a competent court, to transfer or mortgage the land owned by the said person and separated from the land of the said occupier by the dividing fence referred to in the preceding section unless and until the bond in the said section referred to shall have been duly passed.

Notification to secure such entry.

9. Every such notification to the Registrar of Deeds shall as far as possible set forth:

(*a*) The full name of the person owing the money, and the amount owed;

(*b*) The fact that the said amount has been agreed upon, or ascertained according to law;

(*c*) The fact that the person owing the money has been called upon to pass a mortgage bond of the nature referred to in section six of this Act, and has failed to do so;

(*d*) The situation and name of the property in respect of which the said mortgage bond was demanded;

(*e*) The date of the grant or transfer of the said property to the said person.

Amendment of thirteenth and fourteenth Sections of Act of 1883.

10. Notwithstanding anything to the contrary in the sixteenth section of the said Act the word "fence" in the thirteenth and fourteenth sections thereof, shall apply to any fence, whether constructed under the provisions of the said Act or not, and the said thirteenth and fourteenth sections are hereby amended as follows:

(*a*) In the thirteenth section all the words after "such fence" are struck out, and the words "in equal proportions" inserted in place thereof.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1891.

(*b*) In the fourteenth section the words "as provided for construction" are struck out, and the words "in manner provided in the next succeeding section" inserted in place thereof.

Government to recover any sums paid under Act in respect of native locations on Crown lands.

11. As often as the Colonial Government shall have paid any sum or incurred any expense under this Act for and in respect of the fencing of any Native Location on Crown land, the occupiers of huts in such locations shall be jointly liable to contribute to the sum or expense so paid or incurred, and the Governor may by Proclamation direct whether such sum or expense shall be payable in one or more years, and if in more years than one then in what instalments in any year, and on such date as the Governor shall appoint for any year the amount by such Proclamation fixed and determined shall be payable by the occupier or occupiers, on that date, of every hut in such location, and may be recovered in case of default as though the said amount were a hut-tax due and payable under the provisions of "The Native Locations Act, 1884," on such date for the said year.

First Schedule.

THE FIRST SCHEDULE.

Table of equal instalments payable at the end of each year for five years, corresponding to amounts payable under the Sixth Section of this Act.

Amount payable.	Equivalent amounts payable at the end of each year for 5 years.
£	£ s. d.
1	0 4 9
2	0 9 6
3	0 14 3
4	0 19 0
5	1 3 9
6	1 8 6
7	1 13 3
8	1 18 0
9	2 2 9
10	2 7 6
20	4 15 0
30	7 2 5
40	9 9 11
50	11 17 5
60	14 4 11
70	16 12 4
80	18 19 10
90	21 7 4
100	23 14 10

Yearly instalments for any sum not mentioned in this table, such as £89 6s. 8d., may be obtained as follows:—

£80 gives	£18	19 10
9 ,, ...	2	2 9
0 6s. 8d. or ⅓ of £1 ..	0	1 7
Therefore £89 6s. 8d. gives	£21	4 2

Digitised by the University of Pretoria, Library Services, 2016

THE SECOND SCHEDULE.

Table of equal instalments payable at the end of each year for ten years, corresponding to amounts payable under the Sixth Section of this Act.

Amount payable.	Equivalent amounts payable at the end of each year for ten years.
£1	£0 2 9
2	0 5 6
3	0 8 2
4	0 10 11
5	0 13 7
6	0 16 4
7	0 19 0
8	1 1 9
9	1 4 6
10	1 7 2
20	2 14 4
30	4 1 6
40	5 8 8
50	6 15 11
60	8 3 1
70	9 10 3
80	10 17 5
90	12 4 7
100	13 11 9
200	27 3 6
300	40 15 3
400	54 7 0
500	67 18 8
600	81 10 5
700	95 2 2
800	108 13 11
900	122 5 8
1,000	135 17 4
2,000	271 14 9
3,000	407 12 1
4,000	543 9 5
5,000	679 6 10

Yearly instalments for any sum not mentioned in this table, such as £1,274 5s., may be obtained as follows:—

£1,000 gives	£135 17 4
200 ,,	27 3 6
70 ,,	9 10 3
4 ,,	0 10 11
And 5s. or ¼ of £1 ,,	0 0 8
Therefore £1,274 5s. gives	£173 2 8

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1891.] [Promulgated 18th August, 1891.

ACT

To prohibit the Native Dances known as the "Abakweta" and "Intonjane" Dances.

Preamble.

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

Abakweta and Intonjane dances prohibited in districts proclaimed under Act.

1. From and after the coming into operation of this Act, the native dances known as and commonly called "Abakweta Dances," and the native dances known as and commonly called "Intonjane Dances," shall be prohibited upon any land within any district wherein this Act shall be proclaimed in force.

Penalty for consenting to, permitting or tolerating the holding of prohibited dances.

2. Every owner, occupier or lessee of any land who shall give his consent to, permit, or knowingly tolerate the holding or celebration of any such dance on any such land shall be liable, on conviction, to a fine not exceeding ten pounds sterling, or three months' imprisonment; provided that no such owner, occupier or lessee shall be convicted of a contravention of this section if he shall prove to the satisfaction of the court before which he is tried

Proviso.

(*a*) That he was in truth ignorant of the fact that such prohibited dance was held or celebrated on his land or ground, or

(*b*) That so soon as he became aware of the fact that such dance was in contemplation, he took immediate steps to communicate the fact to the nearest police constable, field-cornet, justice of the peace, or resident magistrate.

Power and duty of police, field-cornets, justices of the peace and resident magistrates to prevent prohibited dances.

3. Every police constable, field-cornet, justice of the peace, and resident magistrate shall and may, upon receiving notice that it is contemplated to hold or celebrate any dance prohibited under this Act, take such lawful steps as may be expedient to prevent the holding or celebration of any such dance.

Penalty on person taking part in prohibited dances after warning.

4 If any person shall take part in the holding or celebration of any dance prohibited by this Act, after such person shall have been warned by or on behalf of any owner, occupier, or lessee, or by or on behalf of any police constable, field-cornet, justice of the peace, or resident magistrate that such dance is prohibited, and will not be permitted, such person shall on conviction be liable to a fine not exceeding forty shillings or to imprisonment with or without hard labour for any term not exceeding one month.

Date of coming into operation, and short title of Act.

5. This Act shall come into operation in such districts of the Colony and upon such day as the Governor shall by Proclamation in the *Gazette* declare and appoint, and may be cited as "The Abakweta and Intonjane Dances Prohibition Act, 1891."

Digitised by the University of Pretoria, Library Services, 2016

No. 17—1891]. [Promulgated 18th August, 1891.

ACT

To Provide for Constructing, Equipping and Working certain Lines of Railway, including a Bridge over the Orange River.

Preamble.

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

Government authorised to construct certain lines of Railway set forth in Schedules A and B.

1. The Governor shall, as soon as may seem to him expedient after the passing of this Act, cause to be constructed and equipped the lines of railway set forth in Schedules A and B to this Act, and shall cause the same to be maintained and worked respectively, and shall appoint such engineers and other officers, and do and perform all such acts, matters and things as he may deem necessary or expedient for such purposes respectively in accordance with a certain Convention entered into between the Governor of the Cape of Good Hope and the President of the Orange Free State, with a view to the construction and equipment of the line of railway set forth in Schedule A, and so much of the line of railway set forth in Schedule B as is situated in the Orange Free State, copies of which Convention were presented to both Houses of Parliament by command of the Governor on the 26th day of May, 1891.

Authority to expend for above purposes, the sums of £1,375,000 and £580,000 respectively or £1,955,000 in all.

2. For the purposes of constructing and equipping the line of railway set forth in Schedule A, the Governor may expend a sum not exceeding one million three hundred and seventy-five thousand pounds sterling (£1,375,000), and for the purpose of constructing and equipping the line of railway and bridge set forth in Schedule B, the Governor may expend a sum not exceeding five hundred and eighty thousand pounds sterling (£580,000).

Authority to raise a sum of £1,955,000 in debentures or stock.

3. For the several purposes aforesaid, the Governor may from time to time as he may deem expedient raise a sum of one million nine hundred and fifty-five thousand pounds sterling (£1,955,000), either by debentures or stock, or partly by debentures and partly by stock, and the costs necessarily incurred in raising the said loan, including discount, commission and other incidental charges, shall be a first charge against the amount thereof.

Sections 2, 3, 4 and 5 of Act No. 19 of 1874, to apply *mutatis mutandis*.

4. For the purposes of this Act the provisions of the second to the fifth sections inclusive of the "Railway Act, 1874," in so far as the same may be applicable thereto, shall be deemed *mutatis mutandis* to be in this Act re-enacted.

£225,000 authorised under Act No. 28 of 1889, Section 2, to be a charge against general revenue.

5. So much of section three of Act No. 28 of 1889 as deals with the amount of two hundred and twenty-five thousand pounds (£225,000), authorised under section two of the said Act, is hereby repealed, and the said sum of two hundred and twenty-five thousand pounds (£225,000) is made a charge against the general revenue of the Colony.

Digitised by the University of Pretoria, Library Services, 2016

No. 18—1891.

Short title.

6. This Act may be cited as the "Railways Extension Act, 1891."

Schedule A.

SCHEDULE A.

Description.	Amount.
	£ s. d.
A line of Railway from Bloemfontein to Viljoen's Drift, on the Vaal River, in the Orange Free State	1,375,000 0 0

Schedule B.

SCHEDULE B.

Description.	Amount.
	£ s. d.
A line of Railway from a point near Burghersdorp, in the Cape Colony, to Springfontein, in the Orange Free State, including a Bridge over the Orange River	580,000 0 0

No. 18—1891.] [Promulgated 18th August, 1891.

ACT

To Consolidate and Amend the Law relating to Oaths, Affidavits, Affirmations, and Solemn Declarations.

Preamble.

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

Repeal of laws.

1. The Ordinance No. 6, 1845, the seventh section of Ordinance No. 72 of 1830, the seventh section of Ordinance No. 14 of 1846, the tenth section of Act No. 4 of 1861, so much of the sixty-first section of the Constitution Ordinance and so much of any other law as shall be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed.

Of Oaths.

Extra-judicial oaths not to be administered by Magistrate, Justice of Peace, or other person authorised to administer oaths.

2. It shall not be lawful for any Magistrate, Justice of the Peace, or other person authorised to administer an oath to administer or cause or allow to be administered any oath, affidavit, or affirmation touching any matter or thing whereof such Magistrate, Justice of the Peace, or other person has not or does not, believe himself to have jurisdiction, cognizance, or authority under or by virtue of some law in force at the time being.

Digitised by the University of Pretoria, Library Services, 2016

Justice of the Peace may within his jurisdiction administer oaths, or swear any deponent to the truth of an affidavit in the following cases.

3. Any Justice of the Peace may within the district in which jurisdiction is conferred on him, administer an oath or swear any deponent to the truth of an affidavit in any of the cases or proceedings following :—

(1) In any action or proceeding pending or about to be brought in any Court of Law within this Colony or elsewhere.

(2) In any proceeding before Arbitrators.

(3) In any proceeding in the nature of a judicial proceeding under the Insolvent Ordinance No. 6, 1843.

(4) For the proof of the due execution of any will, or other document, required by the law, usage, or practice of any other country to be proved or authenticated by affidavit.

(5) In any enquiry or proceeding in which by this Act or any other law the taking of an oath or affidavit is directed, authorised, or permitted.

Of the Oath of Allegiance.

Omission of certain words in the oath prescribed to be taken by members of Parliament.

4. From the oath prescribed by the sixty-first section of the Constitution Ordinance to be taken by Members of the Legislative Council and House of Assembly respectively there shall be omitted all the words commencing " and that I will defend her," to the end of the form of oath.

Form of oath of allegiance.

5. Wherever by any law or usage it shall be required of any person to take the Oath of Allegiance, such Oath shall be taken as nearly as is material in the form following :—" I do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law."

Of Affirmations in lieu of Oaths.

Affirmation substituted for oath, in case any person objects to taking oath.

6. In all cases where any person who is or may be required to take an oath, shall object to do so, it shall be lawful for such person to make an affirmation in the words following:—" I do truly affirm and declare that " (*here insert the matter to be affirmed or declared*), which affirmation or declaration shall be of the same force and effect as if such person had taken such oath. And every person authorised, required, or qualified by law to take or administer an oath shall accept in lieu thereof an affirmation or declaration as aforesaid.

Effect of affirmation.

Penalties for refusal, &c., to take oath or for taking false oath to apply to refusal, &c., to make affirmation and to false affirmation.

7. The same penalties, punishment, and disability which are respectively in force, and are attached to any neglect, refusal, and false or corrupt taking or subscribing of any such oath as aforesaid shall apply and attach in like manner in respect of the neglect, refusal, and false or corrupt making or subscribing respectively of any such affirmation or declaration as is in the last preceding section mentioned.

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1891.

OF SOLEMN DECLARATIONS.

Amendment in Interpretation Act, 1883, substituting Oaths and Declarations Act, 1891, for "Ordinance No. 6 of 1845," in definition of "Solemn Declaration."

8. The third section of "The Interpretation Act, 1883," is hereby amended by the omission of the words, "Ordinance No. 6, 1845," and the definition therein of "Solemn Declaration" shall read "Solemn Declaration,—A declaration made under and by virtue of the provisions of the Oaths and Declarations Act, 1891."

Form of declaration.

9. Whenever by any law now in force a solemn declaration is directed, permitted, or authorised to be made, it shall be sufficient, in case such declaration be made and subscribed in the form (as nearly as material) to this Act annexed.

Penalty for making false declaration before Justice of the Peace.

10. Any Justice of the Peace may take and receive the declaration of any person voluntarily making the same before him in the form mentioned in the last preceding section, and if any declaration so made shall be false or untrue in any material particular, the person wilfully making such false or untrue declaration shall be guilty of the offence of making a false declaration, and shall upon conviction be liable to a penalty not exceeding fifty pounds, or to imprisonment with or without hard labour for a period not exceeding six months, but nothing herein contained shall prevent the prosecution of such person for fraud or any other crime or offence of which he may be chargeable, provided that he shall not be liable to prosecution for making a false declaration, and also for fraud or such other crime or offence.

Act not to apply to declarations under Transfer Duty Act, 1884.

11. Nothing in this Act contained shall extend or apply to any declaration referred to in, or made under the provisions of, the "Transfer Duty Act, 1884."

Short title of Act.

12. This Act may be cited as "The Oaths and Declarations Act, 1891."

Schedule.

SCHEDULE.

SOLEMN DECLARATION.

I, A.B., of ————————, do solemnly and sincerely declare (*here insert the matter to be declared*). And I make this solemn declaration, conscientiously believing the same to be true.

Declared at this day of 18 .

Before me,

No. 19—1891.] [Promulgated 21st August, 1891.

ACT

To regulate the Deeds Office, and to amend the Law relating to the Registration of Deeds.

Preamble.

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

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1891.

Short title: repeal of repugnant laws.

1. This Act may be cited for all purposes as "The Deeds Registry Act, 1891," and so much of any law as may be inconsistent with its provisions is hereby repealed.

This Act to apply only to Deeds Registry at Cape Town; the term Registrar to mean Registrar of Deeds for Colony.

2. Unless otherwise expressed, the provisions of this Act shall apply only to the Deeds Registry at Cape Town, and the term "Registrar," wherever it occurs herein, shall mean the Registrar of Deeds for the Colony; provided however that it shall be lawful for the Governor by proclamation to extend the whole or any part of this Act, to the Deeds Registries at King William's Town and Kimberley, and thereupon the term "Registrar," in the part or parts of the Act so extended, shall include the Registrars of Deeds at King William's Town and Kimberley, and the term Master of the Supreme Court shall include the Master of the High Court at Kimberley.

Governor may extend Act to Deeds Registries at King William's Town and Kimberley.

Appointment of Assistant Registrar.

3. It shall be lawful for the Governor to appoint an Assistant Registrar, who shall, subject to such directions as the Attorney-General may from time to time issue, have power and authority to do any act or thing which may lawfully be done by the Registrar; provided that nothing herein contained shall be taken to prevent the Governor from appointing an Acting Registrar, whenever he shall think fit, in terms of section two of Ordinance No. 2 of 1836.

Provision for appointing an Acting Registrar.

Rules and Regulations for Land and Debt Registries, and working of Registrar's Office.

4. It shall be lawful for the judges of the Supreme Court from time to time to frame rules and regulations for the good order and management of the Land and Debt Registries, and for better carrying into effect the object with which those Registries were established, and generally for the working of the Registrar's Office and the preservation of the records therein, and more especially to prescribe:—

Fees.

(1) The fees if any to be taken in respect of any act, matter, or thing required to be done in the said office.

Preparation of Deeds.

(2) The manner and form in which Deeds of Transfer, Mortgage Bonds and other deeds or documents required to be registered, acted upon or preserved of record in the said office shall be prepared and executed.

Recording information.

(3) The manner and form in which any information required by law to be furnished to the Registrar shall be recorded or noted in his office.

Copies of lost deeds.

(4) The conditions under which copies of lost deeds may be issued.

Cancellation of bonds.

(5) The manner and form in which consent to the cancellation of bonds shall be signified, and the conditions under which lost bonds may be cancelled.

Authentication of powers of attorney.

(6) The manner and form in which powers of attorney executed outside the Colony are to be authenticated.

Rules framed to be published in *Gazette*.

But no rules framed under this section shall be of any force or effect unless and until approved by the Governor and published in the *Gazette*.

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1891.

Solemn declaration in support of acts to be performed in Deeds Registry.

5. The Registrar may require and any person may tender, proof by solemn declaration of any fact which he may consider necessary to be established in connection with any act, matter, or thing sought to be done in the Deeds Registry Office.

Form of declaration.

Every such declaration shall set forth that it is made under the provisions of this section, and it shall be executed before such persons respectively as are or shall be by law authorised to administer oaths; and any person who shall make any such declaration knowing the same to be untrue in any material particular, shall be deemed to be guilty of the crime of perjury, and shall upon conviction thereof suffer such punishment as shall be by law provided for the said crime.

Penalty for false declaration.

Master to notify payments on account of registered debts to Registrar who shall write off same.

6. When and as often as it shall appear from the liquidation account of any insolvent estate and from the vouchers annexed thereto, that a payment has been made to any creditor on account of a registered obligation of debt, the Master of the Supreme Court shall notify such payment to the Registrar who shall thereupon write off the same in the Public Debt Register, and also, if possible, on such obligation of debt.

Master to notify rehabilitations to Registrar, who may thereupon write off debts registered against insolvent.

7. The Master of the Supreme Court shall furnish the Registrar with returns of all insolvents who may from time to time obtain their discharge or rehabilitation, and such returns shall specify the landed property and registered obligations of debt appearing in the insolvent's schedules or in the liquidation account of his estate; and the Registrar shall on receipt of such returns write off in the Debt Register all debts registered against any such insolvent prior to his insolvency.

Certain Native Territories to form part of Eastern Districts for purposes of Ordinance 27 of 1846.

8. For the purposes of the first section of the Ordinance No. 27 of 1846, entitled "Ordinance for Amending the Law relative to Conventional Hypothecations," the territories mentioned in the first section of "The Native Territories Penal Code" shall be deemed to be part of the Eastern Districts of this Colony.

Duplicate general or notarial bonds and Kinderbewyzen to be filed.

9. Every general or notarial bond and every deed of kinderbewys which shall hereafter be tendered for registration at the Deeds Registry shall be accompanied by a duplicate or notarial copy to be filed of record.

Two or more persons cannot hold by one transfer unless they are partners.

10. It shall not henceforth be lawful to convey land to two or more persons by one and the same deed of transfer, unless such persons be partners carrying on business under some particular name, firm, or style. In all other cases where land is acquired jointly by two or more persons in undivided shares, the following provisions shall apply—

Provisions if land acquired jointly in undivided shares.

Separate transfer deed for each owner.

(*a*) A separate deed of transfer shall be necessary in order to convey the share of each owner.

Stamps to be affixed to one only such deeds.

(*b*) The Registrar shall require to be affixed to one of such separate deeds stamps of the value which would in law be necessary if the land had been transferred by one and the same deed.

Digitised by the University of Pretoria, Library Services, 2016

(*c*) No further or other stamps or fees shall be payable; but the Registrar shall endorse upon each of the other separate deeds a note that the said deed has been passed in terms of this section. And thereupon each such deed so endorsed shall be regarded as fully and completely stamped according to law.

Those deeds remaining unstamped to bear Registrar's endorsement in lieu of stamps.

11. The Registrar may refuse to pass transfer of any fractional part or share of land until solemn declarations made under the provisions of the fifth section of this Act by the seller and purchaser shall be produced, to the effect that no understanding or arrangement exists that the purchaser is to acquire any particular or defined portion of such land, represented in extent by such fractional part, but that he is actually and *bonâ fide* to acquire an undivided or undefined part or share therein.

Transfer of fractional parts or shares of land.

12. If it shall happen in any case of the partition of immovable property held in undivided shares, that the share of any owner in such property is hypothecated under any mortgage bond, it shall be lawful for the Registrar, upon production of the consent in writing of the legal holder of such bond, to allow transfer to be passed to such owner of the divided share awarded to him on partition, notwithstanding that such bond remains uncancelled; but in every such case the Registrar shall, at the time of allowing such transfer to pass,

If any undivided share of property is hypothecated, transfer of divided share can on partition be passed under certain conditions.

(*a*) Endorse on such bond that such divided share is in terms of this section substituted for the undivided share previously held by such owner.

(*b*) Make an entry of such substitution in the Debt Register.

(*c*) Endorse on the transfer of such divided share that in terms of this section it is mortgaged by such bond.

The consent of the bondholder shall set forth that it is given under the provisions of this section.

13. From and after the completion of the entry and endorsements aforesaid, the divided share of such immovable property so transferred shall be deemed to be hypothecated as fully and effectually as if it had been originally hypothecated by such bond instead of such undivided share as aforesaid.

When conditions fulfilled divided share taken to have been originally hypothecated.

14. Nothing in this Act contained shall be deemed to relieve any such owner as aforesaid from any liability in respect of any duty, stamp, or fee which would have been payable upon such partition transfer; and in respect of the making of such entry and endorsements as aforesaid, there shall be payable to the Registrar a fee of one pound sterling, which shall be paid by means of stamps to be affixed to such bond before endorsement.

Liability for duties, stamps, &c., not removed.

Fee to Registrar.

15. The examiners referred to in the eighth section of the Act No. 12 of 1858, entitled "An Act for Regulating the Admission of Barristers, Attorneys, Notaries, and Conveyancers," shall henceforth be the Registrar and two other persons, who shall be

Appointment of examiners under Section 8, Act 12 of 1858.

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1891.

appointed by the Supreme Court from time to time, and who must be either advocates of the said Court or duly admitted conveyancers.

Registered owner of contiguous pieces of land represented by different diagrams, may apply to Registrar of Deeds for "Certificate of Registered Title."

16. Any person being the registered owner of two or more pieces of land contiguous to each other represented by separate diagrams (hereinafter styled the applicant) may apply in writing to the Registrar of Deeds respectively in Cape Town, King William's Town, or Kimberley, as the case may be, for a "Certificate of Registered Title" stating that such person is the registered owner of the land to be therein described according to a diagram to be annexed, framed by a surveyor, which diagram shall include, and indicate the aggregate extent of, the several pieces of land so held by such person.

Deeds of grant, diagrams, &c., to be submitted in support of application.

17. The applicant shall with his application submit the several deeds of grant or of transfer, under which he holds, with the diagrams belonging thereto (or in the event of their loss or destruction shall satisfy the Registrar of Deeds of the fact) and a diagram in duplicate framed by a qualified Government surveyor showing the position and extent of the land held by the applicant under separate diagrams which he desires to have consolidated and registered under one title.

Registrar on being satisfied as to correctness of diagram, may grant certificate according to form in Schedule.

18. The Registrar of Deeds receiving such application shall cause the diagram accompanying it proposed to be registered to be examined by any surveyor attached to the department of the Registrar of Deeds, and if it shall appear to him that such diagram correctly represents the land held by the applicant under two or more separate diagrams, he may grant and issue to the applicant a Certificate of Registered Title, which shall be as nearly as is material in the form contained in the Schedule.

If Registrar refuses Certificate, application may be made to Court.

19. In case the Registrar of Deeds shall refuse or decline to issue such Certificate of Registered Title as aforesaid, the applicant may apply to the Supreme Court, or to the Court of the Eastern Districts, or the High Court of Griqualand respectively, within the jurisdiction of such last-mentioned Courts, for an order to authorise or direct the Registrar to issue such Certificate. And the said Courts respectively shall, upon the hearing of any such application, make such order thereon as may be deemed fitting.

Upon order of Court Registrar to issue Certificate.

20. The Registrar of Deeds upon receiving any such order of Court as aforesaid shall issue a Certificate of Registered Title to the applicant in obedience thereto.

When Certificate granted, Registrar to make necessary endorsements on deeds and in Registers.

21. At the time of granting any such Certificate as aforesaid the Registrar of Deeds issuing the same shall cause all necessary endorsements or entries to be made upon the existing Deeds of Transfer, and in the Registers in his office showing the consolidation of the applicant's title, and shall retain the deeds previously in the possession of the applicant.

If land mortgaged the consent of bondholder necessary. Fact of issue of Certificate to be endorsed on bond.

22. In case the land of the applicant shall be mortgaged, the consent in writing of the holder of the Bond shall be necessary

Digitised by the University of Pretoria, Library Services, 2016

before such Certificate as aforesaid shall be granted. The Registrar of Deeds, upon production of such consent, and the Bond or Deed hypothecating the land, shall endorse upon such Bond or Deed the fact of the issue of the Certificate aforesaid, in the place of the Deeds of Transfer previously held by the applicant, and shall cause all usual and proper entries necessary to record the hypothecation of the land mentioned in such certificate to be made in the Deeds Registry before the delivery thereof.

Certificate to stand in place of grants, deeds of transfer and diagrams previously held by applicant.

23. The Certificate of Registered Title when issued by the Registrar of Deeds under the provisions of this Act, and the diagram attached thereto, shall stand in the place of the grants, deeds of transfer and diagrams previously held by the applicant in respect of the land therein mentioned or described, but no such certificate or diagram shall be deemed to confer upon the applicant any greater or other right than such as he had or possessed under such grants, deeds, or diagrams.

SCHEDULE.

Schedule.

CERTIFICATE OF REGISTERED TITLE.

Granted pursuant to the provisions of "The Deeds Registry Act, 1891."

Know all men whom it may concern :—

That having applied for the issue to him of a Certificate of Registered Title under the provisions of the "Deeds Registry Act, 1891," and it appearing that he is the registered owner of the land hereinafter described held under certain (*here describe the grants, deeds of transfer under which the applicant holds the land.*)

Now, therefore, in pursuance of the provisions of the said recited Act, I, the Registrar of Deeds, do hereby certify that the said is registered as the owner of (*describe the property*) extending (*describe the boundaries indicated by the diagram*) as will more fully appear by the annexed diagram framed by the Surveyor, Mr. subject to such conditions as are mentioned or referred to in the said (*describe the grants or deeds of transfer.*)

And that by virtue of these presents the said his heirs, executors, administrators, and assigns, now is, and henceforth shall be, entitled thereto, conformably to local custom, Government however reserving its right.

In witness whereof I, the said Registrar, have subscribed to these presents and caused the seal of the office to be affixed hereto.

Thus done and executed at the office of the Registrar of Deeds in Cape Town, Cape of Good Hope, on the day of the month of in the year of our Lord One Thousand Eight Hundred and

Registrar of Deeds.

NOTE.—*When the certificate is issued under an order of Court the necessary recital of the order is to be made.*

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1891.] [Promulgated 18th August, 1891.

ACT

To Amend the Act No. 27 of 1889, commonly known as the "Vagrancy Law Amendment Act."

Preamble.

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

Governing body to appoint inspector of locations.

1. It shall be lawful for the governing body of any corporate town, municipality, or area under the operation of the "Village Management Act, 1881," to appoint some person to be inspector of any native location situated within the jurisdiction of such governing body, and not under the inspection and control of any lawfully appointed Government officer.

Person appointed to have right to grant permission to settle in location.

2. The person so appointed shall have the sole right, subject to the lawful directions of the said governing body, to grant permission to any person to settle in such locations.

Inspector to have rights and powers conferred by Vagrancy Acts on owner of farm.

3. In regard to any such location as aforesaid, the inspector appointed by the governing body shall have all the rights and powers conferred by the Vagrancy Act, 1879, or the Vagrancy Law Amendment Act, 1889, upon the owner of a farm in respect of the farm owned by him, and of any hut or building thereon.

Short title and effect of Bill.

4. This Act may be cited as "The Vagrancy Act Amendment Act, 1891," and shall be read as one with "The Vagrancy Act, 1879," and the "Vagrancy Law Amendment Act, 1889."

No. 21—1891.] [Promulgated 18th August, 1891.

ACT

To Incorporate the Cape Town Chamber of Commerce.

Preamble.

WHEREAS there exists an association of merchants and others at Cape Town, called and known as the "Cape Town Chamber of Commerce," formed for the purpose of promoting and protecting the trade of that place: And whereas it is expedient to incorporate such association in order the better and more effectually to carry out its objects: Be it therefore enacted by the Governor of the Cape of GoodHope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

What persons to form the body corporate.

1. The several persons who are or who may from time to time, become shareholders in or subscribers to the association in the preamble to this Act mentioned, shall be and are hereby united into one body corporate, under the name and title of the "Cape Town Chamber of Commerce," for the purpose of promoting, encouraging, and protecting the trade of that port.

The Association incorporated to have perpetual succession and a common seal.

2. The association hereby incorporated by the name of the "Cape Town Chamber of Commerce" shall have perpetual succession and a common seal, and by such name shall and may from time to

Digitised by the University of Pretoria, Library Services, 2016

time sue and be sued in any competent court, and shall have power to take, purchase, and hold landed and other property, and such landed or other property, subject to any engagements affecting the same, shall be vested in the association in its corporate name, and without the necessity of each individual member being mentioned in the deed or deeds of transfer, grant or grants, or conveyances thereof. No. 22—1891. Its name, power to hold landed property, &c.

3. Every member of the said Chamber shall be liable in respect of debts incurred during his membership, for a sum of ten pounds sterling, and no more; and such sum shall be additional to the subscription payable by him in respect to the current year. Liability of members.

4. The said corporation hereby created shall have power from time to time to make, rescind or alter rules or regulations as to the admission of its members, or the expulsion of any such members, and for the general good management and guidance of the association and the furtherance of its objects. Power to make, rescind or alter regulations.

5. Until any new rules and regulations, as in the last preceding section mentioned, shall have been framed by the corporation hereby created, the existing rules and regulations of the association shall be and continue in force; and all persons now holding office shall continue to hold office in accordance with and subject to the provisions of such rules and regulations. Till when existing regulations to continue in force, and office holders in office.

6. This Act may be cited as the "Cape Town Chamber of Commerce Act, 1891." Short title.

No. 22—1891.] [Not yet Promulgated.

ACT

To Consolidate and Amend the Law relating to Juries.

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :— Preamble.

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

Qualification of Jurors.

2. Every man residing within the Colony between the ages of twenty-one years and sixty years who shall possess the qualification in this Act provided, and not therein declared disqualified or exempted, shall be qualified and liable to serve as a juror. Age limit for jurors.

3. Every man between the ages aforesaid who shall be the owner or occupier of any immovable property of the value of not less than three hundred pounds according to the valuation roll of any Divisional Council or Municipality, or shall be in the receipt of salary or wages amounting to not less than one hundred and fifty pounds per annum, and who shall not be disqualified or Qualification of jurors.

Digitised by the University of Pretoria, Library Services, 2016

No. 22—1891.

exempted by the terms of this Act, shall be qualified and liable to serve as a juror on any jury empanelled for any trial or enquiry within the jury district in which such person shall reside.

Joint owners of property when qualified.

4. When any such property shall be jointly occupied by more persons than one, each of such joint occupiers, if otherwise qualified or liable, shall be qualified and liable to serve as a juror as aforesaid in case the value of such property when divided by the number of such joint occupiers, shall give a sum not less than three hundred pounds for each such occupier.

When no Divisional Council valuation roll, valuation to be made by person making the jury lists.

5. If in any jury district there shall not be any valuation roll of a Divisional Council or Municipality, the field-cornet or other person making the lists of men qualified and liable to serve as jurors shall estimate the value of the properties owned or occupied in such jury district to the best of his judgment.

Special Jurors.

Qualifications of "special juror."

6. Every man qualified and liable to serve as a juror shall also be qualified and liable to serve as a "special juror" in case he shall be

(1) The owner of landed property of the assessed value of one thousand pounds; or

(2) The occupier of such property as tenant of the assessed value of one thousand five hundred pounds; or

(3) Although neither the owner nor occupier of landed property of such assessed values as aforesaid, if he shall be described in the jury lists as an architect, a civil engineer, a broker, manager of a bank, manager or secretary of a fire or life assurance company or society, or of any company for the administration of estates or be in the receipt of salary amounting to five hundred pounds per annum.

Special juror not exempt from serving on petit jury.

7. No person qualified as a "special juror" shall (unless otherwise exempted) be on that account exempted from serving on a petit jury.

Disqualification of Jurors.

Disqualifications of jurors.

8. The following persons shall not be qualified to serve as jurors in any court or on any occasion:—

(1) Anyone who is not a natural-born or naturalized subject of Her Majesty;

(2) Anyone who has been convicted of and sentenced for treason, murder, rape, theft, fraud, perjury, forgery, fraudulent insolvency or contravention of the diamond trade laws, unless he shall have received a free pardon.

(3) Anyone who cannot read and write.

Exemptions.

Exemptions from serving on juries.

9. The following persons shall be exempt from serving as jurors, and their names shall not be inserted in any jury list:—

(1) Judges of the supreme court;

Digitised by the University of Pretoria, Library Services, 2016

No. 22—

(2) All ministers of the gospel or persons who shall preach or teach in any religious congregation, and who shall not follow any secular occupation;
(3) All advocates and attorneys duly admitted and actually practising, articled or managing clerks to attorneys, and enrolled agents in the magistrates' courts;
(4) All medical practitioners, dentists, and chemists and druggists legally qualified and actually practising;
(5) All persons in the military or naval or civil service, or holding any paid office under Her Majesty;
(6) All deputy sheriffs and sheriff's officers;
(7) All school masters and school inspectors;
(8) All masters of vessels and pilots;
(9) All persons continuously employed in the working of any railway or tramway;
(10) All persons actually engaged as editors of, or reporters for, newspapers.

JURY DISTRICTS.

"Jury districts" defined.

10. Every area within a radius of thirty-six miles from the court-house of the Resident Magistrates respectively of Graham's Town, Kimberley, and every other town where a circuit court is to be held, and within the judicial district in which such town is situated, shall be deemed to be a "jury district." And in regard to Cape Town, an area within a radius of twenty miles from the court-house of the Resident Magistrate of Cape Town, shall be deemed to be a "jury district" although such area shall include portions of more judicial districts than one.

Jury districts to be extended in case not 54 qualified persons.

11. If within a radius of thirty-six miles mentioned in the last preceding section there shall not be found in any such jury district fifty-four men qualified and liable to serve as jurors, such radius shall be extended to forty-eight miles, and such extended area shall be a jury district until the said number shall at any subsequent taking of a jury list be found within thirty-six miles.

JURY LISTS.

Present jury lists to remain in force until new ones under Act made.

12. The jury lists in use at the taking effect of this Act shall continue in force and be used until new jury lists are made and revised as in this Act is provided.

Magistrates shall annually require lists to be framed of persons qualified to serve as jurors.

13. On or before the first day of January in the next and every succeeding year, the Resident Magistrates respectively of every district which includes any such "jury district" as aforesaid, shall, by written order, require the field-cornets or any members of the police force who may be assigned for such duty, to prepare in alphabetical order a true list or return of all men residing within the limits mentioned in such order, qualified and liable to serve as jurors or special jurors.

Field-cornet or member of police to frame list.

14. Each such field-cornet or member of the police shall, after the receipt of such order, without delay, make out such list or return

Digitised by the University of Pretoria, Library Services, 2016

No. 22—1891.

as aforesaid, giving the names and surnames written at full length, and with the place of abode, title, calling, or business of all the persons residing within the limits mentioned in such order, qualified and liable to serve as jurors, in such form as may be prescribed or required, and shall deliver such list or return to the Resident Magistrate not later than the 20th January.

Copies of previous year's list to be supplied each year.

15. In every year after the first ensuing year, the field-cornets or other persons required to make out the lists of persons qualified and liable to serve as jurors shall respectively be supplied with copies of the lists made up for the previous year, from which they shall strike out the names of persons who have since died, removed, or become disqualified or exempted by reason of age or other cause, and shall add the names of persons not on such lists who are qualified or liable to serve.

Powers of field-cornets and others making lists.

16. For the purpose of preparing such lists the field-cornets or other persons engaged in their preparation may put such questions as they think proper, relating to the said lists, and to the name and surname, place of abode, calling, business, occupation, qualification, or age of any man residing in any jury district.

Access to valuation roll of Divisional Council or Municipality.

17. Every such field-cornet or member of the police shall for the purposes of framing his return have free access to the valuation and voters' rolls respectively of any Divisional Council or Municipality, and may make copies or extracts from such rolls.

Duty of Magistrate on receiving lists.

18. The Resident Magistrate receiving such lists or returns as aforesaid shall cause to be prepared and made out a true list of the persons qualified and liable to serve as jurors within the "jury district" of which his court-house is the centre; and shall in such list mark the word "special" against the names of such persons as are qualified and liable to serve as special jurors.

Copy of list and notice to be affixed on door of court-house.

19. A copy of such list shall be affixed on or near the principal door of the court-house, with a notice in the English and Dutch languages, stating that a court will be held on a day to be stated, not being less than fourteen days after the day on which such notice is posted, to revise such list. Such notice shall also be published once at least in the newspaper, if any, circulating in the town where the court is to be held, wherein Government Notices are usually inserted.

If no jury list for the year jury list of previous year to be used.

20. If at any time it shall happen that no jury list shall have been made for the current year for any jury district, the jury list for the preceding year shall be deemed to be the proper jury list, and used as such.

Court of Revision of Jury Lists.

Constitution and composition of court of revision of jury list.

21. On the day and at the place appointed in the notice aforesaid, the Resident Magistrate shall hold a court, consisting of himself as president, and such members of the Divisional Council (if any) as may attend, for revising the jurors lists, but if after fifteen minutes of the time appointed no member of the Divisional Council is in attendance the Resident Magistrate may act alone.

Digitised by the University of Pretoria, Library Services, 2016

22. The decisions of the said court shall be by majority of the votes of those attending, and if there be an equality of votes, the Resident Magistrate presiding shall have a casting vote in addition to his vote as a member of the court. When no member of the Divisional Council attends, the decision of the Resident Magistrate shall be the decision of the said court.

Decision by majority of votes.

23. The said court may be adjourned from time to time, and all field-cornets or policemen as aforesaid shall produce the lists prepared or made out by them as in this Act directed, and shall answer on oath such questions as may be put to them by any member of the said court.

Lists to be produced at court.

24. If the name of any man not qualified and liable to serve as aforesaid is inserted in any such list, the said court, if satisfied upon the oath of any person objecting or by other proof, or upon the knowledge of any member of the said court that he is not qualified and liable to serve as a juror, shall strike his name out of such list, and shall also strike out the names of men disabled by deafness, blindness, or other permanent infirmity of mind or body, for service on juries.

Court may strike out names on list.

25. The said court may reform any errors or omissions which shall appear to have been committed in respect of the name, place of abode, calling, or otherwise, of any one included in such list.

Court may correct errors in lists.

26. When any such list shall be revised and completed, the Resident Magistrate presiding shall certify the allowance thereof by the said court and transmit the same to the Sheriff of the Colony.

After lists revised transmitted to Sheriff.

Jurors Books.

27. The Sheriff receiving such lists from the Resident Magistrates shall cause the same respectively to be fairly and truly copied in a book to be called "The Jurors Book of the district of " [inserting the district], and shall prefix to every name its proper number, beginning the numbers from the first name and continuing them in regular arithmetical series down to the last name, and insert in a proper column the word "special" opposite to the name of every person qualified and liable to serve as a special juror.

Sheriff to record lists in "Jurors Book."

Special Jury in Criminal Cases.

28. The Supreme Court, Court of the Eastern Districts, or High Court of Griqualand, within the jurisdiction of such courts respectively, may on application made on behalf of Her Majesty, or by any private prosecutor entitled to prosecute, or by or on behalf of any defendant or person committed for trial for any indictable offence (whether the indictment or information shall have been served upon the accused or not), order that the trial of the accused named in such order shall be by a special jury in such courts, respectively, or in any Circuit Court.

Court may order criminal case to be tried by special jury.

Digitised by the University of Pretoria, Library Services, 2016

No. 22—1891.

Registrars to give notice to Sheriff of special jury ordered.

29. Whenever a criminal case has been ordered to be tried before a special jury, the Registrar of the court granting such order shall forward a notice to the Sheriff, or his deputy in the district in which the trial is to be held, informing him thereof.

Sheriff to make list of 27 special jurors.

30. The Sheriff, or his deputy, receiving such notice of a special jury trial, shall without delay draw the names of twenty-seven special jurors as by this Act directed, and make a list thereof. If in any case it shall happen that the whole number of special jurors cannot be obtained from the jurors book, such number of names as shall be required to make up the proper number shall be drawn from the remaining or petit jurors on the jurors list.

List to be settled and reduced to 19 on day appointed by Sheriff.

31. When the list in the last preceding section shall be prepared the Sheriff or his deputy shall by notice in writing appoint a time for settling such list. At the time appointed the names contained in such list shall be reduced to nineteen by the prosecutor or his agent, and the defendant or his attorney, each striking out alternately four names in the presence of the said Sheriff or his deputy.

Sheriff to reduce list to 19 himself, if no appearance for parties.

32. In the absence of the prosecutor or the defendant, or the representative or attorney of either, and upon proof that due notice of the appointment was given, or in case the parties attending decline to strike out four names each, the Sheriff or his deputy shall strike out so many names as shall reduce the list to nineteen.

Persons not struck out summoned for he trial.

33. The persons whose names are not struck out shall be summoned to attend for the trial.

Summoning Jurors.

Sheriff to summon juries for criminal sessions.

34. Ten days at the least before the holding of a session for the trial of criminal cases in the Supreme Court, Court of the Eastern Districts, High Court of Griqualand, or in any Circuit Court, and seven days at the least before the trial of any civil suit or action in any court in which civil suits or actions may be tried by a jury, the Sheriff or his lawful deputy shall summon such number of qualified jurors, taken from the jurors book of the jury district wherein such courts shall respectively be held, not exceeding twenty-seven, as shall be required by this or any other Act, or prescribed by any rule of court in that behalf, to serve on juries in the said courts.

Mode of summoning juries.

35. The Sheriff or his deputy shall summon or cause to be summoned, each of such jurors, by leaving with the man to be summoned, or in case he shall be absent from his usual place of abode, by leaving with some person there inhabiting, a notice under the hand of the Sheriff or his deputy, requiring such juror's attendance in such court, and at a place and on a day and hour to be therein stated.

Return of services made to Registrar.

36. The officer summoning such jurors shall make a return under his hand to the Registrars of the said courts respectively of the manner of serving every such summons; or shall attend before the court and verify the same by oath.

Digitised by the University of Pretoria, Library Services, 2016

DRAWING NAMES OF JURORS FOR SERVICE.

Mode of drawing names of jurors to be summoned and directions to be observed.

37. In drawing names of jurors to be summoned for service, the Sheriff or his deputy shall observe the following directions :

(1) He shall place in a box cards of equal size, having written or printed thereon the numbers corresponding to the numbers opposite to the names of jurors on the jurors list.

(2) He shall, after shaking the box to distribute the cards therein, draw out of the box, singly, as many cards as are equal to the number of jurors required to be summoned.

(3) After the cards are drawn he shall refer to the corresponding numbers in the jurors book, and if it be found that the names of two or more persons nearly related or connected or residing upon the same property, or engaged or employed in the same house of business, are both or all drawn, or if the name of any person be drawn whom he shall know to be absent or who shall be labouring under any sickness or infirmity, or who shall have served as a juror within the period of twelve months before the date of such drawing, he shall lay aside the cards corresponding to the names of each of such persons, and draw out others, and shall so proceed until the requisite number of jurors be obtained.

(4) If, after the issue or service of notices requiring the persons drawn to attend as jurors, he shall discover that any person whose name has been so drawn is dead, absent or unable from sickness or any infirmity or other sufficient cause to attend, he shall draw other cards to make up the deficiency, and summon the jurors whose numbers have been drawn; provided such lastmentioned jurors shall have the requisite number of days notice.

(5) He shall make out and return a list of the names of the persons so drawn and summoned, to the Registrar of the court in which the jurors are to serve.

(6) The cards bearing the numbers corresponding to the names of the persons who have served as jurors at successive criminal sessions shall be kept separate, until all the cards bearing the numbers corresponding to the names of persons who have not been drawn for service, or being drawn have not served, are drawn out of the jurors box.

(7) When all the cards have been drawn out of the jurors box, the cards bearing the numbers corresponding to the names of persons who have performed their rota of service as jurors shall be returned to the jurors box, to be again drawn from and returned in like manner.

(8) When any special jury is required in any case, civil or criminal, he shall on each occasion place in the jury box, all the numbers corresponding to the names of special jurors (whether such jurors have had respectively their rota of

Digitised by the University of Pretoria, Library Services, 2016

No. 22—1891.

service or not) and draw therefrom, and otherwise proceed, as in this or any other Act or by any rule of court is or may be directed.

Sheriff to give notice of drawing, which is to be done publicly under certain conditions.

38. When such drawing of names of jurors as aforesaid shall be made by a Deputy Sheriff, the following provisions shall apply:

(1) The Deputy Sheriff shall, by notice posted on or near the principal door of the court-room of the Resident Magistrate, appoint a day, not less than four days after the date of posting thereof, on which he will attend in the court-room aforesaid, at some hour to be stated, between the hours of nine a.m. and noon, for drawing the names of jurors for service.

(2) Such drawing shall take place publicly in the presence of the Resident Magistrate, Assistant Magistrate, or any clerk to the Resident Magistrate, or any Justice of the Peace.

(3) As each card is drawn the Deputy Sheriff shall refer to the corresponding number in the jurors book, and read aloud the name designated by such number, and shall make a list of the names so drawn.

(4) Such list shall be signed by the Deputy Sheriff, and by the Resident Magistrate, Assistant Magistrate, Magistrate's Clerk, or Justice of the Peace, in whose presence such list is made.

(5) Such list shall be preserved by the Deputy Sheriff until one month after the sitting of the court to which it has relation, and if the Sheriff of the Colony shall not during such month require it to be forwarded to him, the said list may then be destroyed.

Miscellaneous Provisions.

Verdict not invalid by reason of disqualification of juror, or error in jury lists.

39. No verdict in any case criminal or civil shall be capable of being objected to, or shall be in any way affected, by reason of want of qualification or disqualification of any juror, nor by reason of any juror being summoned from beyond the limits of the jury district, nor by reason of any error, informality, or omission with respect to the jury lists or jury books.

Jurors to be sworn.

40. After the Registrar or other officer of the court shall have called the names of the jurors, such of the jurors as shall then or thereafter have answered to their names may be sworn in open court, in due form, for the trial of all persons or all cases brought before them or any of them.

Need not be sworn for each trial.

41. Being once sworn for the trial of cases at any session or sitting of a court for the trial of cases by jury, the jurors need not be re-sworn in each trial unless the prosecutor or the accused, or any party in a civil suit, shall so require.

Court may allow affirmation to be made.

42. If any person called as a juror shall refuse or be unwilling to be sworn, the court may permit such person to make his solemn affirmation, which affirmation shall be of the same force and effect as if such person had taken an oath in the customary form.

Digitised by the University of Pretoria, Library Services, 2016

A *Tales* may be ordered by court, if insufficient number of jurors.

43. When it shall happen at any session of any court for the trial of criminal cases that nine men qualified and liable to serve as jurors in such court shall not have been summoned, or shall not appear, or shall not remain fair and indifferent after all just cause of challenge, then, in every such case the Sheriff or his deputy, when commanded so to do by any verbal order made or writ issued by such court shall summon and return so many men qualified and liable to serve as jurors from those present within the precincts of such court, or being at the time in the town or place in which it is held as shall be necessary to make up the lawful number of jurors.

Jury to be kept apart by themselves till judge has summed up, and if they then wish they can retire in charge of an officer of court.

44. After the jury in any case, civil or criminal, shall have been sworn they shall (unless the court shall otherwise order or permit) be kept in some convenient place, apart by themselves, until the judge who tries the case shall have summed up the evidence and left the case with the said jury; and if the jury shall desire to withdraw for the purpose of considering their verdict, then they shall be kept by an officer of the court in some convenient place, apart by themselves, until they are agreed upon their verdict, or be discharged therefrom by the court; and the said officer shall be sworn that he will suffer none to have access to them, or to speak to them, and that he will not speak to them himself, except to ask if they are agreed upon their verdict, or to communicate between them and the court.

Cases when a jury may be discharged and another empanelled.

45. Whenever it shall sufficiently appear to the court in any case, civil or criminal, that the jury, by reason of the death or mental or bodily infirmity of any of them, shall be unable to return a verdict, then the said court may discharge such jury, and shall cause another jury to be empanelled for the trial of the case; and the trial shall be had as if such first jury had not been empanelled.

Penalties.

Penalty for corruptly influencing or attempting to influence jurors.

46. Any person who shall corruptly influence, or attempt to corruptly influence, a juror, and any juror who shall consent to such influence, shall be liable on conviction to a penalty not exceeding five hundred pounds, or to imprisonment with or without hard labour for a period not exceeding three years.

Penalty for not obeying summons to serve as juror.

47. If any man, having been duly summoned to attend before any court to serve as a juror for the trial of cases, civil or criminal, shall not attend pursuant to such summons, or being thrice called shall not answer to his name, or after being called shall be present but not appear, or after his appearance shall wilfully absent himself during the sittings of the court, or after any adjournment thereof, before the court shall discharge the jury from attendance, the court shall set such fine upon every man so making default as it shall think meet. Any man who shall be called or peremptorily summoned to attend in obedience to an order made

Digitised by the University of Pretoria, Library Services, 2016

No. 22—1891.

or writ issued to supply a deficiency of jurors, shall for any default or refusal as aforesaid be liable to such fine as the court shall think meet.

Penalty for false claim of exemption.

48. If any person shall claim exemption from serving as a juror by means of any certificate or affidavit which he shall know to be false or which shall contain any false statement of fact, he shall be liable to a penalty not exceeding fifty pounds.

Penalty for illegally excusing of juror by sheriff.

49. If any deputy sheriff or sheriff's officer shall directly or indirectly take or receive any money, or reward, or promise of money or other reward to excuse any man from serving or being summoned to serve as a juror, he shall be liable to such penalty not exceeding one hundred pounds as the court enquiring into the offence in a summary way shall see fit to impose.

Penalty on field-cornets and others for various acts.

50. If any field-cornet or member of the police force assigned to the performance of any duty under this Act shall be guilty of any of the acts or omissions in this section mentioned, he shall be liable to a penalty not exceeding ten pounds:—

(1) Refusing or neglecting (unless prevented by sickness, the proof of which shall lie on the accused,) to make out any list required to be made by him under this Act.

(2) Wilfully omitting from such list the name of any man whose name ought to be inserted therein.

(3) Wilfully inserting in such list the name of any man who ought to be omitted.

(4) Taking any money or reward for omitting or inserting any name in such list.

(5) Neglecting or refusing to answer upon oath such questions as may be put to him by the revising court touching his list, or the making thereof, or refusing to be sworn.

Penalty for removing or defacing jury list posted on door of court.

51. Any person who shall remove or deface any list of jurors or notice posted at or near the door of the court-house referred to in the nineteenth section of this Act shall be liable to a penalty not exceeding five pounds.

Penalty for refusing to answer questions allowed by 16th section.

52. Any person who shall refuse to answer or falsely answer any question lawfully put by any field-cornet or other person for the purposes mentioned in the sixteenth section of this Act shall be liable on conviction to a penalty not exceeding two pounds.

Judge may remit fines.

53. The judge presiding at any trial before a jury may at any time during the sessions, at which any such trial shall take place, remit any fine or penalty imposed upon a juror for any default.

If fine or penalty not paid registrar shall issue writ.

54. If any fine or penalty imposed by the court and not remitted shall not be paid forthwith, then a writ shall be issued by the Registrar of the court for the recovery of such fine or penalty, as if the order imposing the same were a judgment of the court.

Short title.

55. This Act may be cited for all purposes as the "Jury Act, 1891."

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE.

LAWS REPEALED.

No. and Year.	Title of Law.
Ordinance No. 84, 1831..	"For altering and amending the Law relative to the qualification of persons liable to serve on Grand and Petit Juries, and to the mode of making out and returning lists of the same."
Ordinance No. 1, 1843 ..	"For amending the Law relative to the qualification of Jurors."
Act No. 7, 1861 . ..	An Act to amend the Law relating to Grand and Petit Jurors.
Act No. 2, 1876	An Act to amend the Law relating to the making out of lists of Jurors.
Act No. 17, 1885	Act to amend the Law relating to Jurors.
Ordinance No. 14, 1876..	Ordinance to amend the Laws regulating the qualifications of Jurors in the Province of Griqualand West.
The Rules of Court numbered respectively, 43, 44, 45, 46, 49, 51, 52, 275, 350, 360.	

No. 23— 1891.] [Not yet Promulgated.

ACT

To Amend the Law relating to Trial by Jury in Civil Cases.

Preamble.

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

Laws repealed.

1. The Act No. 7, 1854, entituled "An Act for extending Trial by Jury to Civil Cases;" the Act No. 30, 1874, entituled "Act to amend the Act No. 7, 1854, entitled 'An Act for extending Trial by Jury to Civil Cases,'" the Rules of Court No. 215 and Nos. 227 to 234 inclusive, so much of the Charter of Justice, and so much of any other law as may be repugnant to or inconsistent with this Act, are hereby repealed.

Interpretation of terms.

2. In this Act, if not inconsistent with the context, the terms hereinafter set forth shall be read and taken to mean as follows:—

The "Court" means the court in which any civil suit or action is depending, and capable of being tried before a jury under this Act;

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1891.

The "Registrar" means the Registrar of such Court as aforesaid;

The "Sheriff" means the Sheriff of the Colony and includes his lawful Deputy;

"Verdict" means the finding or findings of the jury upon any issue or issues tried by such jury, and includes any statement of facts as found by the jury to have been proved.

Purely questions of law not to be submitted to jury.

3. No question which shall be a pure and unmixed question of law shall in any case be referred or submitted to a jury, but every such question shall be reserved for the determination of the Court.

Proceedings in certain cases not affected.

4. Nothing in this Act contained shall be construed so as to alter or affect the practice or proceedings in provisional cases, or upon motions (other than those in this Act mentioned), or upon interdicts or in civil cases set down by default.

Questions of fact or of mixed law and fact to be tried by jury on election of either party to the suit.

5. Whenever an issue of fact, or of mixed law and fact, except as aforesaid, shall have been joined in the Supreme Court, the Court of the Eastern Districts or the High Court of Griqualand, in any civil cause or action wherein the sum or matter in dispute or the amount of damages demanded, shall exceed the amount or value of one hundred pounds, such issue may, at the election of either or any party to the suit, be tried by a jury as in this Act is provided.

Notice of such election to be given to other party.

6. Any party to a civil case depending in any such court as aforesaid may, by notice in writing to the other party or parties to the suit, or his or their attorneys, delivered within two days after issue joined, demand a trial by jury in such case.

Although no election and although value under £100 either party may apply to court for a jury.

7. Although no such demand for a trial by jury as aforesaid shall have been made, or although the matter in dispute, or the damages demanded, shall not exceed the amount or value of one hundred pounds, any party to the suit may apply to the court for leave to try such case by jury, and the court shall order thereon as it may deem fit.

Written consent of both parties required to change trial by jury once demanded or obtained.

8. In case such demand be made, or leave be obtained, the trial shall not take place otherwise than before a jury, unless by written consent of the parties to the suit.

Court or judge can order parties to prepare issues to be settled by judge in chambers.

9. When in any suit to be tried before a jury it shall appear to the court or to a judge in chambers, on the application of any party thereto, that the pleadings do not sufficiently define the issues of fact in dispute between the parties, the court, or such judge, may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by a judge in chambers.

In cases of damages jury shall assess damages.

10. When in any action tried by a jury, either party shall claim that the other may be condemned in damages, then the jury in case they shall find for the party claiming damages shall assess such damages.

Jury trials to be before a judge and a jury of nine men.

11. All trials by jury in the said court shall be had before one of the judges of the Supreme Court and a jury of nine men.

Jury cases to be set down not less than 14 days before day of trial.

12. Cases to be tried by a jury shall be set down by notice to the Registrar not less than fourteen days before the day of trial.

Digitised by the University of Pretoria, Library Services, 2016

Days for jury cases to be fixed.

13. Jury trials shall take place on such days as shall be appointed by any general rule, or on such day as the court shall in any case on application of any party, after notice to the other, see fit to order either in or out of term.

Registrar to give notice to sheriff when jury required.

14. When any case shall be set down for trial by jury, the Registrar shall without delay give notice in writing to the Sheriff that a jury will be required for the dispatch of civil business on the day on which the trial is to be held.

Sheriff to draw names of 27 special jurors.

15. The Sheriff receiving such notice as aforesaid from the Registrar shall without delay draw the names of twenty-seven "special jurors" in the manner provided and directed in the "Jury Act, 1891," and make a list thereof.

If several cases for trial, sheriff shall summon 27 jurors 7 days at least before first trial.

16. If two or more civil cases shall be entered for trial before a jury on one day or on days in immediate succession, the Sheriff shall seven days at least before the day appointed for the trial of the first of such cases, summon the twenty-seven men whose names have been drawn as aforesaid.

Parties to each case may each strike off nine jurors from the whole list.

17. The names of the men so summoned who shall appear shall be placed in a list, and from such list each of the parties to the first case standing for trial may in presence of the Registrar or Sheriff strike off, if so minded, the names of four men. The parties to the second or succeeding cases may, in each successive case, strike off in manner aforesaid the names of four men.

If one case to be tried list shall be reduced to 19 by sheriff himself if parties do not appear.

18. But if only one such case shall be entered for trial before a jury as aforesaid, the Sheriff shall by notice in writing to the parties or their attorneys appoint a time for settling the list of jurors. At the time appointed the twenty-seven names drawn as aforesaid shall be reduced to nineteen by the plaintiff and defendant, or their respective attorneys, each striking out alternately not more than four names, in the presence of the Sheriff. In the absence of any of the parties or their attorneys, upon proof that due notice of the appointment was given, or if the parties attending decline to strike out names as aforesaid, the Sheriff shall strike out so many names as shall reduce the number on the list to nineteen.

The 19 jurors retained shall be summoned.

19. The nineteen men, whose names remain as aforesaid, shall be summoned to attend the trial.

Mode of drawing for jurors out of the 19 summoned.

20. The names of the men remaining after names shall have been struck off as aforesaid, shall be written upon pieces of paper (being all as nearly as may be of equal size), and put together in a box, and the Registrar shall draw out nine of the said pieces of paper in succession ; and if any of the men whose names shall be so drawn shall not appear, or shall be challenged and set aside, then a further number of names shall be drawn out until the names of nine men be drawn who shall appear, and after all just challenge allowed, shall remain as fair and indifferent between the parties.

Second jury may be drawn during absence of first.

21. If while one jury shall be absent considering their verdict, the parties in any remaining case entered for trial shall consent to

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1891.

take the list of jurors then remaining unsworn, and from it to strike off so many names as shall leave not less than nine men free from challenge and objection who shall appear to serve, then the names so left shall be placed in a box and be thence drawn out as aforesaid, and the trial in such case shall proceed.

Juror when one case finished, liable to serve on jury for next case.

22. As soon as any jury shall have given their verdict, or shall have been discharged by the court without having given a verdict, the jurors who composed such jury shall be competent and liable (should they be left upon the reduced list remaining for the purpose of forming therefrom a jury, for the trial of any other case set down for trial on the same day) to have their names, as belonging to such reduced list, placed in the box aforesaid, thence to be drawn, in manner aforesaid, so as to form a jury for the trial of such other case, precisely as if such jurors had not served in any previous case.

Causes for which challenge of jurors allowed.

23. No challenge to any juror shall be allowed, except a challenge for cause, and the causes for which such juror may be challenged may be any of the following:—

(1) Want of qualification;

(2) Consanguinity or affinity within the fourth degree to the plaintiff or defendant, or to any person who has an interest in the result of the case;

(3) For having directly or indirectly an interest in the result of the case;

(4) For having previously deliberately expressed an opinion as to the merits of the case;

And any other causes for which any juror may be challenged, and the manner and form of trying any cause of challenge alleged against a juror, shall be the same in all respects as would by law be permitted in a civil case depending and about to be tried in the High Court of Justice in England.

Verdict must be unanimous, but after an hour's deliberation only necessary for 6 to concur.

24. Not fewer than six jurors of the nine jurors composing the jury must concur in every verdict of such jury, and every verdict in which not fewer than six jurors of the nine jurors composing the jury shall concur, shall be received and regarded as the verdict of such jury; provided that no verdict except one in which the whole of the jurors composing the jury shall concur, shall be capable of being delivered or received until after the jury shall have been in deliberation upon their verdict for not less than one hour.

Case may be adjourned by Court.

25. When any case set down for trial by jury shall not or cannot conveniently be disposed of on the day appointed, the judge may adjourn the court from time to time, and may proceed with any such trial after any such adjournment. And every juror bound to attend on the day of such adjournment shall also be bound to appear again in the said court upon the day and at the hour to which the court shall have been adjourned.

Jury may find general or special verdict.

26. The verdict of every jury in every civil case may be either a general verdict or a special verdict. The jury instead of finding

Digitised by the University of Pretoria, Library Services, 2016

a verdict for either party may state the facts as they find them to have been proved.

Manner of proceeding in receiving verdict of jury.

27. The verdict of every such jury shall be received by the Registrar of the court, who shall, before recording the same, ask the jury if they are all agreed upon their verdict; and in case they shall answer in the negative, shall then ask the jury how many of them are agreed upon their verdict, and the said Registrar shall record the verdict that shall have been given, and whether the same was an unanimous verdict or verdict by a majority; provided that it shall be competent for the jury, in case they shall not have quitted their places, to reconsider or amend any of their findings.

When jury may be discharged without giving verdict.

28. No jury empanelled to try any such issue as aforesaid shall be discharged until they shall have delivered their verdict, unless both the parties to the case shall consent to their discharge, or unless the court shall, upon being satisfied that the jurors in any case are unable to agree, see fit to discharge them.

If jury discharged without giving verdict case may be again set down for trial with or without jury.

29. In every case in which a jury shall be discharged without delivering a verdict, such case may be again set down for trial by jury on some future day appointed for trials by jury, or, should both parties so elect, the case may be set down for trial before the court adjudicating without a jury.

Pay of jurors.

30. Every juror serving on a jury shall be paid a sum of ten shillings for each day during which such trial shall continue.

Attorney of party demanding jury liable for pay of jurors.

31. The attorney for the party who shall have demanded a trial before a jury shall be personally liable for the payment of whatever sum the jury shall be entitled to receive.

Jury's pay to be included in costs.

32. As often as any party shall be awarded costs against the opposite party, he shall recover as part of such costs whatever sum shall have been lawfully paid to the jury.

Proceeding of judge after verdict of jury.

33. After receiving the verdict of the jury, the judge may, at or after the trial, either:

(1) Give judgment for any or either party, or

(2) Adjourn the case for further consideration, or

(3) Leave any party to move for judgment.

Case may be set down for judgment.

34. When at the trial the judge abstains from giving judgment, either of the parties may set down the case on motion for judgment before the court, and the court taking and adopting as final and conclusive the facts as found by the jury, shall give such judgment upon the entire case as shall be by law required.

Party may apply to court to set aside judgment of judge for certain reasons.

35. When at or after the trial of an action by a jury, the judge has given any judgment, any party may without leave reserved apply to the Supreme Court, on motion, to set aside such judgment, and enter any other judgment on the ground that the judgment given is wrong, by reason of the judge having caused the finding of the jury upon the question or questions submitted to them to be wrongly entered, or upon the ground that upon the finding of the jury as entered the judgment given is wrong.

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1891.

Grounds on which motion for a new trial may be made.

36. Any party to a case tried by jury, who shall be dissatisfied with the finding or findings of the jury, may apply to the Supreme Court on motion for a new trial on any of the following grounds:—

(1) That the judge has misdirected the jury on any material point of law;

(2) That the judge admitted improper evidence or rejected evidence which ought to have been admitted;

(3) When the damages are excessive or too small;

(4) That the verdict has been obtained by unfair or improper practice of the successful party to the prejudice of the opposing party;

(5) That material evidence has been discovered since the trial which could not have been foreseen or known at the trial;

(6) That the jury or any juror has been guilty of misconduct;

(7) That any witness has been guilty of such misconduct as to affect the result of the trial;

(8) That a special verdict or other finding of the jury is so defective that the judge cannot give judgment upon it;

(9) that the verdict is against the weight of evidence;

or upon any other ground not herein set forth upon which a new trial may be granted or grantable according to the law and practice of the High Court of Justice in England.

Grounds on which a new trial will be refused.

37. A new trial will not be granted on the ground of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the court to which application is made, some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such court that such wrong or miscarriage affects part only of the matter in controversy, the said court may give final judgment as to part thereof, and direct a new trial as to the other part only.

New trial may be granted as against some of the parties to a suit.

38. A new trial may be granted on any question, or as to one or more of several parties in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question, or as against the other or others of the parties.

Proceeding of court on motion for new trial.

39. Upon a motion for judgment or for a new trial, the court to which such motion is made, if satisfied that it has before it all the material necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, may give judgment accordingly, or, if it should be of opinion that it has not sufficient materials before it to enable it to give judgment, may direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and enquiries to be taken and made as it may think fit.

Proceedings when new trial ordered.

40. When a new trial has been granted, or ordered, or when any issue or question of fact has been ordered to be tried, the case or such issue or question may be set down for trial in like manner

Digitised by the University of Pretoria, Library Services, 2016

as if such case had not previously been set down and tried; or should all parties so agree in writing such case or such question or issue may be set down for trial without a jury in the court in which the action was commenced, or in case the record shall have been ordered to be removed for trial or enquiry into any other court than in such lastmentioned court.

If no new trial and no appeal jury's verdict final.

41. If a new trial shall not be applied for, or shall be refused, or if a motion to set aside a judgment shall be refused, and no appeal from any such refusal shall be prayed for, the finding of the jury shall be final and conclusive as to the facts so found, and shall not be liable to be brought into further question.

Saving appeal to Supreme Court.

42. Nothing in this Act contained shall be construed so as to prevent any party to any civil suit tried before a jury in which the Court of the Eastern Districts or the High Court of Griqualand, respectively, shall have given judgment, under the provisions of the thirty-fourth section of this Act from appealing to the Supreme Court against such judgment as being erroneous in point of law.

And to Privy Council, from Supreme Court.

43. Nothing in this Act contained shall be construed so as to prevent any party from appealing to Her Majesty in Her Privy Council, as in the Charter of Justice is provided, against any judgment of the Supreme Court as being erroneous in point of law.

Rights, &c, of judge and jury and questions under Act to be determined according to practice of High Court of Justice, England.

44. As often as any question shall arise as to the respective rights, powers, functions and duties of the judge presiding at any trial before a jury, and of the jury, or in regard to any other question, matter or thing not in this Act or by any other law expressly provided or governed, such question or such other matter or thing shall be determined according to the practice and usage of the High Court of Justice in England.

Judges of Supreme Court may make rules.

45. The judges of the Supreme Court, acting in pursuance of any law regulating the making of general rules of court, may from time to time make and alter rules and orders for all matters relating to trials by jury in civil cases.

Short title and date of taking effect of Act.

46. This Act may be cited for all purposes as the "Jury Trials Act (Civil Cases), 1891," and shall come into operation on the first day of February, 1892.

No. 24—1891.] [Promulgated 21st August, 1891.

ACT

For Constituting an additional Fiscal Division.

Preamble.

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

Repeal of repugnant laws.

1. So much of the Ordinance for constituting a Parliament in this Colony and commonly called the "Constitution Ordinance," and so much of any other law as may be repugnant to or inconsistent with the provisions of this Act, are hereby repealed.

Digitised by the University of Pretoria, Library Services, 2016

No. 24—1891.

District of Van Rhyn's Dorp may be proclaimed a fiscal division.

2. The district of Van Rhyn's Dorp shall, from and after date of any Proclamation to be issued for that purpose by the Governor and published in the *Gazette*, become and be a division for fiscal purposes.

Boundaries to be defined by the same Proclamation.

3. The Proclamation provided for in the last preceding section shall define the several boundaries of the division of Van Rhyn's Dorp, and the boundaries so proclaimed shall be the boundaries of the said division.

Effect of Act on divisions and Divisional Councils affected by Proclamation: new division to be a division for purposes of Act No. 40 of 1889 and other relative laws.

4. From and after the date of any Proclamation issued by the Governor in that behalf and published in the *Gazette*, the Divisional Council for the time being of every division, to which the whole or any part of the division of Van Rhyn's Dorp, so constituted for fiscal purposes only and named in such Proclamation, belonged, shall stand dissolved, and the provisions of Act No. 40 of 1889, commonly called "The Divisional Councils Act, 1889," and of every other law relating to Divisional Councils, shall apply to the division of Van Rhyn's Dorp, constituted under this Act, and to the divisions to which the said division or any part thereof previously belonged, and such former divisions shall then be limited and bounded precisely as if no Divisional Council in or for such divisions had ever been elected: Provided that the persons who shall be registered as voters for the Divisional Council of any such former division which down to the date of such Proclamation comprised the whole or any part of the new division of Van Rhyn's Dorp, and who, in accordance with the Act No. 40 of 1889, are duly qualified to be registered as voters for the Divisional Council of the new division of Van Rhyn's Dorp, shall be entitled to vote at the election of Councillors for the Divisional Council of such new division.

Provisions of Act No. 54 of 1858 to apply to division of Van Rhyn's Dorp.

5. The provisions of the Act No. 24 of 1858, entitled "An Act to regulate the respective rights of certain divisions in regard to certain road rates," shall so far as applicable, *mutatis mutandis*, as soon as any Proclamation under this Act shall have been issued, apply to the new division of Van Rhyn's Dorp, and to the divisions to which the said new division in whole or in part belonged before the issuing of such Proclamation, just as though such new division of Van Rhyn's Dorp were named in the Schedule to the Act No. 12 of 1857.

No change of electoral divisions.

6. Notwithstanding the creation of the new division of Van Rhyn's Dorp by virtue of any Proclamation under this Act, such new division and every part thereof shall, for electoral purposes, continue to form part of whatever electoral division such new division or part thereof belonged to before the date of such Proclamation, precisely as if this Act had not been passed.

Short title.

7. This Act may be cited as the "Fiscal Divisions Extension Act, 1891."

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1891.] [Promulgated 21st August, 1891.

ACT

To Amend the Law regulating the Sale of Intoxicating Liquors.

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

LICENCES.

Repeal of enactments.

1. Sub-section three of section seven of the Liquor Licensing Act, 1883, and section three of the Liquor Licensing Act Amendment Act, 1885, are hereby repealed.

Definition of and provisions as to bottle licences.

A bottle licence shall authorise the sale on the premises therein specified but not elsewhere of liquor in bottles properly and securely corked, and not to be drunk in or upon the premises for which the licence is granted.

With regard to every bottle licence, the following provisions shall apply:

(1) Not less than one reputed pint bottle of liquor shall be sold at one time to one person.

(2) Upon Sunday, Christmas Day and Good Friday no sales shall take place.

(3) Upon other days, sales may take place only during the hours fixed by the Licensing Court in respect of each licence, not being earlier than eight o'clock in the morning nor later than eight o'clock at night.

The provisions of this section shall not apply to any bottle licence in existence at the date of the taking effect of this Act; the rights and liabilities of the holder of every such licence, during the currency thereof, shall be judged of as if this Act had not been passed.

Penalty for consumption on the premises, of liquor bought from holder of bottle licence.

2. If any purchaser of liquor from the holder of a bottle licence drinks such liquor on the licensed premises, or in any road, street, or public place, adjoining or near such premises, then such holder shall, if it shall appear that the drinking aforesaid was with his privity and consent,

(*a*) For the first offence be liable to a penalty not exceeding five pounds.

(*b*) For any subsequent offence be liable to a penalty not exceeding ten pounds.

Meaning of "licensed premises."

For the purposes of this section, the expression "licensed premises" shall include any premises or place adjoining or near the premises actually licensed if belonging to the said holder of the bottle licence, or under his control, or used by his permission.

What considered privity and consent of holder of bottle licence.

3. In any proceeding under the second section of this Act, the drinking of any liquor shall be taken to have been done with the privity and consent of any holder of a bottle licence who shall be

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1891.

proved to have uncorked or opened any bottle containing such liquor or to have directly or indirectly assisted any person to uncork or open it.

What hours may be fixed by Licensing Court.

4. Notwithstanding anything contained in sub-section two, section seven, of the Liquor Licensing Act, 1883, it shall be lawful for any Licensing Court to fix any hours between seven in the morning and nine at night for the sale of liquor under any retail licence.

Repeal of enactments.

5. The following portions of the Liquor Licensing Act, 1883, are hereby repealed:—

(*a*) Section forty-two, in the fifth paragraph, the words, "other than a licence in respect of which notice is not by this Act required to be given."

(*b*) Sections fifty and fifty-one, the whole.

Inspector of Licences.

Appointment of inspectors of licences.

6. The Governor may, from time to time, appoint in and for any district of the Colony, an inspector of licences and such sub-inspectors as he may think fit, and may remove any person so appointed.

Powers of inspectors.

7. Any inspector or sub-inspector of licences, or any person authorised in writing by an inspector, may enter upon any licensed premises during the hours for which such premises are licensed, and may examine every room or part of such premises.

Duties of inspectors.

8. It shall be the duty of every inspector of licences, in whose district any premises are situated in respect of which previous notice of any application for any licence or for the renewal of any licence under this Act is given, to furnish to the Resident Magistrate seven clear days before the application is to be heard a report, which shall at all reasonable times be open to public inspection, containing the following particulars:—

Licence for New Premises.

(1) A description of the house, premises and furniture.

(2) A statement whether the applicant is a fit and proper person to have the licence applied for, and is known to be of good character and repute.

3) A statement whether the bestowal of the licence sought for is or is not in the opinion of the inspector required for public convenience.

(4) A statement whether the applicant appears to be or not to be the true owner of the business or the premises proposed to be licensed.

Renewal of existing Licence.

(5) If the application be for a renewal by a person who has held a licence during the whole or any part of the preceding year, a statement as to the manner in which the house has been conducted during such year or part thereof. If any

Digitised by the University of Pretoria, Library Services, 2016

convictions have been recorded against the licensee the particulars of the convictions shall be stated. The report shall also contain a statement as to the character of the persons frequenting the house.

Facts upon which report is based to be set forth.

The statement or report referred to in this section shall set forth in detail the facts upon which any conclusion or expression of opinion is based, and if the inspector is unable to supply any of the foregoing particulars he shall specially state in his report the reason of his inability.

Report to be laid before Licensing Court.

And the Resident Magistrate shall lay the said report before the Licensing Court at every meeting called to consider the applications therein referred to.

Sections 70, 71 and 72 of Liquor Licensing Act, 1883, how affected by this Act.

9. The provisions of sections seventy, seventy-one and seventy-two of the Liquor Licensing Act, 1883, shall not apply to any district for which an inspector of licences may be appointed during the term of such appointment, but the said provisions shall remain and be in full force in every district where there is no such inspector.

Inspectors to attend meetings of Licensing Court.

10. It shall be the duty of an inspector to attend every meeting of the Licensing Court for his district in order to afford information and assistance to the court in matters connected with the working of this Act, and every inspector so attending may be cross-examined on oath as to the matters contained in his report by any person, or the agent of any person, who is interested in the grant or renewal of the licence dealt with in the said report.

Powers of inspectors.

11. Every inspector or sub-inspector of licences shall have the same power and authority which are conferred upon a Justice of the Peace by sections thirteen and fourteen of "The Sale of Foods and Drugs and Seeds Act, 1890," in regard to entering upon licensed premises and searching for and seizing and carrying away any liquor found therein, and also in regard to the purchase of liquor for purposes of analysis.

Illegal payments to inspectors.

12. Any inspector or sub-inspector of licences who directly or indirectly receives or agrees to receive from any person any fee, advantage or reward, whether pecuniary or of any other kind, on account of anything done or to be done by him in connection with his office or employment, or on account of omitting to perform his duties under this Act, shall be dismissed from his office, and shall also be liable, on conviction by a competent court, to imprisonment with or without hard labour for a period not exceeding twelve months. And any person who directly or indirectly gives, offers or promises to give any such fee, advantage or reward, shall for every such offence be liable to a fine not exceeding one hundred pounds.

Proviso.

But nothing in this section shall apply to any payment or salary received from Government by an inspector or sub-inspector for the performance of his duty.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1891.

Local Option.

Local option.

13. The following provisions shall apply in regard to the granting and renewal of licences after the taking effect of this Act:

New licence.

(1) If the application is for a new licence, it shall not be lawful for the Licensing Court to grant the same unless there shall be lodged with the Resident Magistrate of the district at least four days before the meeting of the Licensing Court to consider the said application, a memorial or memorials signed by a majority of the voters registered for the election of members of the Divisional Council within the limits of the Divisional Council district, the municipality or (where a municipality is divided into wards) the ward or district of the municipality or the place where the Villages Management Act of 1881 is in operation, in which district, municipality, ward, or place the premises proposed to be licensed are situated, approving of the issue of the said licence.

Renewal of existing licence.

(2) If the application is for the renewal of an existing licence, it shall not be lawful for the Licensing Court to grant the said renewal, in case there shall have been lodged with the said Resident Magistrate, within the period aforesaid, a memorial or memorials signed by two-thirds of the voters, registered as aforesaid within the said district, municipality, ward or place respectively, objecting to the said renewal, and in case it shall also be proved that written notice of an intention to lodge such a memorial was given to the holder or person entitled to the benefit of the existing licence and to the owner of the licensed premises —if resident in this Colony—by some person signing the same at least one month before the day fixed by law as the day upon or before which any application for a renewal of the licence in question should be made to the Resident Magistrate.

Signature by same person of memorial objecting to and approving of licence.

(3) If upon any memorial approving of the issue or renewal of any licence, andupon any memorial objecting to the issue or renewal of the same licence the name of the same person shall appear, then the said name shall be of no effect, and shall be considered as if struck out of both memorials.

Cases in which memorial under first sub-section hereof not necessary.

(4) It shall not be necessary for any person to whom a licence has been transferred in terms of section fifty-six of Act 28 of 1883, or who has been authorised to remove his licence under the provisions of section fifty-seven of the said Act, or for any person who has been authorised to carry on business in any licensed premises for the unexpired term of any licence under section eight of Act 44 of 1885, to lodge before applying for a renewal of his licence, the

Digitised by the University of Pretoria, Library Services, 2016

memorial referred to in the first sub-section hereof; but every such application shall be dealt with by the Licensing Court as if the said sub-section had not existed.

Absence of memorial objecting to renewal of licence.

(5) The absence of a memorial objecting to the renewal of any licence, or the fact that such memorial is signed by less than two-thirds of the said voters, shall not render it imperative upon the Licensing Court to grant the renewal.

How voters who cannot write to sign memorial.

(6) Any memorial lodged for the consideration of any Licensing Court may, in the case of voters who are unable to write, be signed by such voters placing their cross or mark upon the same; but no such cross or mark shall be of any effect unless duly attested by the signature of at least one witness who is a registered elector for the Divisional Council.

Municipal districts of Cape Town to be treated as "wards."

(7) For the purposes of this and the two next succeeding sections, the several districts of the Cape Town Municipality defined in pursuance of the fifth section of the Cape Town Municipality Act, 1882, shall be taken to be wards of the said municipality.

Secs. 24, 25 and 26 of Liquor Licensing Act, 1883, to apply to memorial under preceding section.

14. With respect to every memorial lodged under the last preceding section, the provisions of sections twenty-four, twenty-five and twenty-six of the Liquor Licensing Act, 1883, shall *mutatis mutandis* apply as if the same were fully set out herein.

Duty of Secretary of Divisional Council in making out Voters' Roll.

15. From and after the taking effect of this Act, the Secretary of every Divisional Council shall, in making out the "Voters' Roll," as required by section nineteen of Act 40 of 1889, observe the following directions:—

(1) He shall distinguish by grouping together upon the said roll the names of all voters who are registered within any area which falls within the limits of any municipality, or corporate town, or within any area in which the Villages Management Act of 1881 is in operation.

(2) In the case of any municipality or corporate town divided into wards or districts he shall similarly distinguish the names of all voters who are registered in each such separate ward or district.

MISCELLANEOUS.

Importer or general dealer.

16. No importer or general dealer who is not also the holder of a wholesale or a bottle licence shall give or supply any liquor to any customer or other person in the room or rooms in which he carries on his business, as such importer or general dealer.

Provision where holder of retail licence is also an importer or general dealer.

17. No holder of a retail liquor licence, who is at the same time an importer or general dealer, shall sell, deal in, or dispose of any liquor in any room or place which is not entirely separated by substantial walls or partitions from the room or rooms in which such person carries on his importer's or general dealer's business, such walls or partitions to contain no door or other opening.

Penalty.

18. Any contravention of the provisions of either of the two preceding sections of this Act shall subject the offender to the

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1891.

penalties provided by law, in the case of persons selling, dealing in, or disposing of intoxicating liquor without a licence.

Amendment in "Liquor Licensing Act, 1883."

19. In sub-section six of section seventy-three of the Liquor Licensing Act, 1883, the word "spirits" wherever it occurs shall be expunged, and the word "liquor" substituted.

Payment of wages to workmen, servants, or labourers.

20. Any master or other person employing workmen, servants, or labourers, who pays or causes any payment to be made to any such workman, servant, or labourer in or at any premises licensed for the sale of liquor, or where liquor is sold, shall for every such offence be liable to a penalty not exceeding ten pounds. But nothing herein contained shall extend to any holder of any liquor licence who pays upon his own licensed premises the workmen, servants, or labourers employed in his licensed business.

What to be *prima facie* evidence of illegal sale.

21. If any person, other than the licence holder, his agent or servant, or a person lodging in the licensed house, be found in any bar on the premises of the holder of a retail licence during the hours in which the sale or disposal of liquor to the public is prohibited, it shall be taken to be *prima facie* evidence of a sale of liquor during such hours. The licence holder on whose premises any such person is found during such hours shall be liable to a penalty of not more than five pounds; but nothing in this section contained shall apply in the case of persons passing through any bar in any licensed premises for the sole purpose of obtaining access to any other part of such premises.

Penalty.

Proviso.

Repeal of Secs. 79 and 80 of Liquor Act, 1883, save as to existing licences.

22. Save in the case of licences already in existence at the taking effect of this Act, the seventy-ninth and eightieth sections of the Liquor Licensing Act, 1883, are hereby repealed.

Lodgers.

23. Nothing in this Act contained shall preclude any person who is licensed to sell liquor to be consumed on the premises from selling such liquor at any time to any person lodging in his house.

Sale of liquor at railway station refreshment rooms.

24. The fifth sub-section of section seventeen of the Liquor Licensing Act, 1883, is hereby repealed. With regard to retail licences for the sale of liquor at railway station refreshment rooms, the following provisions shall apply:—

(1) Upon week days, liquor shall be sold only within a reasonable time before and after the arrival or departure of any passenger or mixed train at a station, such time to be fixed by the Commissioner in the certificate authorising the grant of the licence.

(2) Upon Sunday, Christmas Day, or Good Friday, liquor shall be sold at any station which is not a terminal station only during the time that a passenger or mixed train is drawn up at such station.

(3) No liquor shall be sold on Sunday, Christmas Day, or Good Friday, at any terminal station.

(4) It shall be lawful for the Commissioner to insert in any certificate authorising the grant of such licence such conditions with regard to the class of persons to be supplied

Digitised by the University of Pretoria, Library Services, 2016

with liquor on Sundays, Christmas Day, or Good Friday, as to him may seem fit; and all such conditions may be incorporated in any licence granted by virtue of such certificate and shall be deemed to be conditions legally inserted therein.

Penalty for false representations.

25. Every person who, by falsely representing himself to be a lodger, buys or obtains or attempts to buy or obtain at any premises any liquor during the period for which such premises are to be closed under this Act or otherwise, shall upon conviction be liable to a penalty not exceeding five pounds.

Sunday dealing.

26. The Licensing Court may, if it shall be satisfied of its being for the benefit and convenience of the public so to do, at any licensing meeting, grant authority to the holder of any retail licence to supply on Sunday to any person who takes and pays for a *bonâ fide* lunch or dinner a reasonable quantity of liquor to be consumed at such meal.

Repeal of Sec. 13 Act 44 of 1885, and re-enactment of Sub-sec. 3, sec. 2 of Act 28 of 1883.

27. The thirteenth section of the Liquor Licensing Act Amendment Act, 1885, is hereby repealed. Sub-section three of section two of the Liquor Licensing Act, 1883, is hereby expressly re-enacted.

Habitual drunkards.

28. If it shall be proved to the satisfaction of any Resident Magistrate that any person charged before him and found guilty of contravening section nine of the "Police Offences Act, 1882," has been during the twelve months preceding the date of such finding, four times convicted of drunkenness by a competent court, then it shall be lawful for such magistrate to inflict a punishment of imprisonment with hard labour for any period not exceeding twelve months.

Governor may define areas for closing purposes.

29. It shall be lawful for the Governor by proclamation, when desired by any municipality or Village Management Board, to define areas in the neighbourhood of mines, manufactories, or other centres of labour, within which areas all bottle stores and canteens shall be closed at noon on Saturday or such other one day of the week as the Governor may determine; any holder of a retail or bottle licence within any such area who shall sell or dispose of liquor contrary to the terms of such proclamation after the hour of noon upon a day so determined shall, upon conviction, be liable to all the penalties provided for selling, dealing in, or disposing of intoxicating liquor without a licence.

Costs incurred by Licensing Courts.

30. The costs incurred by the members of any Licensing Court in connection with legal proceedings instituted against them in their official capacity shall, unless the Court before which the proceedings are taken shall order the said costs to be borne by the opposite party or by the said members *de bonis propriis*, be paid to them out of the Colonial Treasury.

Kaffir beer

31. For the purposes of the Liquor Licensing Act, 1883, the Liquor Licensing Act Amendment Act, 1885, and for the purposes

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1891.

of this Act, the article known as Kaffir beer shall in all cases be regarded as and taken to be an intoxicating liquor.

Short title and effect of Act.

32. This Act shall be read as one with the Liquor Licensing Act, 1883, and the Liquor Licensing Act Amendment Act, 1885, and may be cited as the Liquor Act, 1891.

No. 26—1891.] [Promulgated 21st August, 1891.

ACT

To amend the Law with regard to the Leasing of Crown Lands, and the disposal of Land, other than Crown Lands, the property of the Colonial Government.

Preamble.

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

Short title.

1. This Act may be cited as the "Crown Lands Leasing Act, 1891," and shall be read as one with the Crown Lands Disposal Act, 1887.

Description of land to which this Act and Crown Lands Disposal Act, 1887, shall not apply.

2. For the purposes of the Crown Lands Disposal Act, 1887, and of this Act, the term Crown land shall not include

(*a*) Land which has been acquired by the Colonial Government from a private owner;

(*b*) Land which has been reclaimed from the sea;

(*c*) Land upon which the Colonial Government has erected buildings or constructed permanent works.

Repeal of certain words in Section 13 of Crown Lands Disposal Act, 1887.

3. In the thirteenth section of the "Crown Lands Disposal Act, 1887," the following words are hereby repealed:

(1) The words "as hereinafter mentioned" where they first occur.

(2) The words of all the provisos to the said section.

Leasing of Crown Lands.

4. When any land has been put up for auction under the Crown Lands Disposal Act, 1887, and the minimum upset price has not been obtained, or

when the Commissioner deems it inexpedient to dispose of any land by sale under the said Act,

then such land may be let on lease for any term not exceeding five years at the highest rent obtainable at public auction, on such terms and conditions as may be imposed.

Sale of land to lessee during currency of lease.

5. Any lessee of land previously offered for sale under the second section of the Crown Lands Disposal Act, 1887, may make written application during the currency of his lease for the purchase of the said land; and if he shall fulfil the conditions required by the said Act, the Commissioner shall accept the said lessee as a purchaser at the upset price at which the said land was offered for sale, in the same manner as if he had become a purchaser at public auction under the said Act.

Digitised by the University of Pretoria, Library Services, 2016

6. All land, the property of the Colonial Government, which does not fall within the term Crown lands for the purposes of the Crown Lands Disposal Act, 1887, and whether situated within the Colony or not, may be disposed of on such terms and conditions as may be thought expedient by the Government with the concurrence of the Legislative Council and the House of Assembly.

No. 27—1891.

Government lands may be disposed of by Government with the concurrence of Legislative Council and House of Assembly.

No. 27—1891.] [Promulgated 21st August, 1891.

ACT

To Amend the "Trade Marks Registration Act, 1877."

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

Preamble.

1. For the purposes of the "Trade Marks Registration Act, 1877," a trade mark must henceforth consist of, or contain at least one of the following essential particulars:

Definition of the term "Trade Mark."

(*a*) A name of an individual or firm printed, impressed or woven in some particular and distinctive manner; or

(*b*) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

(*c*) A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.

And there may be added to any one or more of these particulars any letters, words or figures, or combination of letters, words or figures, or any of them: Provided also that any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures used as a trade mark before the eighth day of August, one thousand eight hundred and seventy-seven, may be registered as a trade mark under the said Act.

2. This Act may be cited as "The Trade Marks Registration Amendment Act, 1891," and so much of the "Trade Marks Registration Act, 1877," or any other law as may be repugnant to or inconsistent with this Act is hereby repealed.

Short title and repeal of repugnant laws.

No. 28—1891.] [Promulgated 21st August, 1891.

ACT

To Amend "The Vineyards Protection Act Amendment Act, 1886," and to continue for another year the Fourth Section of the Act.

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

Preamble.

1. The provisions of the fourth section of "The Vineyards Protection Act Amendment Act, 1886," shall continue and be in force until the 30th June, 1892, and no longer, anything in

Section 4 of "The Vineyards Protection Act Amendment Act, 1886," extended for another year; calculation of yield,

Digitised by the University of Pretoria, Library Services, 2016

No. 29—1891.

the tenth section of the said Act to the contrary notwithstanding; provided however:—

That the term upon which shall be calculated the value of the net yield for which compensation in regard to any loss sustained by any person and in respect of any claim accruing after the first day of July, 1891, by reason of any destruction or prohibition under the provisions of the Vineyards Protection Act Amendment Act, 1886, shall not exceed three years in lieu of the term of two years provided by the said fourth section.

No. 29—1891.] [Promulgated 21st August, 1891.

ACT

To Authorise (in so far as Colonial Territory is concerned) certain persons or a Company formed by them or acquiring their Rights to Construct, Maintain, and Work a Line of Railway from the Mouth of the St. John's River to the District of Maclear, in East Griqualand.

Preamble.

WHEREAS it is desirable that there should be Railway communication between the Mouth of St. John's River and the District of Maclear, in East Griqualand: And whereas a provisional Agreement has been entered into between the Colonial Government of the one part, and William Peter Taylor and David Symons of the other part, for the construction, maintenance, and working of a line of railway as above mentioned: And whereas it is necessary that powers should be given to the said William Peter Taylor and David Symons, or to a Company formed by them, or acquiring their rights in the premises to construct, maintain, and work (in so far as Colonial Territory is concerned) a line of railway as aforesaid from the said Mouth of the St. John's River to the said District of Maclear, in East Griqualand, through and across the land shown and delineated upon the plan hereinafter in this Act referred to.

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

Authority to construct, equip, maintain, and work the line of railway.

1. The said William Peter Taylor and David Symons, or any Company formed by them, or acquiring their rights under the said Agreement set forth in the Schedule hereto (hereinafter styled "The Promoters," respectively), are authorised and empowered to construct, equip, maintain, and work a line of railway from the mouth of the St. John's River through Western Pondoland, and thence to a point in the district of Maclear to be determined by agreement between the promoters and the Commissioner of Crown Lands and Public Works, through and across the land

Digitised by the University of Pretoria, Library Services, 2016

shown and delineated upon the plan deposited with the Clerk of the House of Assembly, in so far as such land may fall within the boundary of this Colony, which plan for the purposes of this Act shall be deemed to be sufficient: Provided always that the route of the said line of railway where it passes through or across any private property, shall be subject to the approval of the Commissioner of Crown Lands and Public Works: provided further that for the protection of Crown lands and of the interests of private proprietors the said Commissioner of Crown Lands and Public Works shall have full power and authority from time to time to require the promoters to confine works of construction and maintenance under this Act within such limits as may be deemed necessary or desirable.

Powers of entry, &c.

2. The promoters, or any person thereto duly authorised in writing by them, may enter upon any land through or across which the said line of railway is hereby authorised to be made, for the purpose of surveying the land and of setting out the said line of railway.

Power to take Crown lands.

3. The promoters may from time to time as occasion may require, enter upon any waste Crown land lying convenient to the said railway, and dig for, excavate and carry away all stones, clay or other material required for the purposes of the said railway free of charge: Provided that nothing in this Act contained shall establish any servitude in favour of the promoters upon any such land, not being land reasonably required for the actual working of the said railway, which may hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.

Rights of contractor to have land and road-making material.

4. For the purposes of the said railway the contractor is hereby invested with all and singular the legal rights, if any, belonging to the Colonial Government, in respect of the taking of any land, and the raising and carrying away materials for making and repairing public roads, whether such rights have been preserved to the said Government by the proclamation of Sir John Francis Cradock, bearing date the 6th day of August, 1813, permitting the conversion of lands on loan into places on perpetual quitrent, or have been created by express stipulation or condition in any grant of freehold property, or exist in any other way; provided that no land be taken or materials be raised or carried away without previous notice to the proprietor thereof, and provided that the extent of land taken for the railway shall not exceed in width fifty feet for the formation line, and sufficient additional width required for the slopes, drainage, stations, approach roads, and all other works, matters, and things which may be requisite or necessary for the efficient construction, maintenance, and working of the said railway.

Notice to proprietor. Extent of land which may be taken.

In absence of agreement, compensation for land or materials to be by arbitration.

5. If the contractor shall for the purposes of the said railway require to take and use any land, or to dig, get, or carry away any materials from any land belonging to any person who may not

Digitised by the University of Pretoria, Library Services, 2016

No. 29—1891.

be bound by law to allow such contractor exercising the powers of the said Government so to do, without requiring any recompense or payment, and who may think proper to require compensation from the contractor; or if the contractor shall require to use any land, or to take any materials from any land that he in the exercise of such powers, may have a legal right to use, but which has been improved by cultivation, irrigation, or otherwise, the amount of compensation to be paid to the owner shall, in the absence of any agreement, be settled by arbitration.

In case of railway crossing street or road.

6. At all places where the said line of railway shall intersect or cross any street or road, it shall be lawful for the promoters to make and carry the said line of railway across such street or road either by means of a level crossing or by means of a convenient and sufficient bridge or viaduct over or under the said street or road: And such promoters shall be bound to make such cuttings, embankments and approaches, with all such culverts and drains, and all such repairs, as may be requisite to make good the street or road across or over or under the said railway, at gradients not exceeding one foot in twenty feet; and shall also be bound to maintain and keep in repair all such crossings, bridges, viaducts, cuttings, embankments, approaches, culverts and drains as aforesaid.

Streets or roads may cross railway.

7. Nothing in this Act contained shall prevent any street or public road hereafter to be constructed under lawful authority from being made and carried across the said line of railway at all requisite and convenient places: Provided that the Government, corporation, body, or person lawfully constructing as aforesaid any such street or road, shall be liable to make good all damage occasioned to the said railway by such works.

Proviso.

Railway to be opened when certificate of Government officer obtained.

8. The said line of railway, or any portion thereof, shall not be opened for traffic until it shall have been certified to the Governor by some officer to be by him appointed, that the same is sufficiently completed for the safe conveyance of passengers: and the cost of obtaining such a certificate shall be borne by the promoters.

"Regulation of Railways Act, 1861," to apply.

9. Upon the completion of the said railway, or any portion thereof as aforesaid, the promoters shall enjoy all the privileges, and be subject to all the liabilities contained in Act No. 19, 1861, entitled "The Regulation of Railways Act, 1861," or any amendment thereof.

Power to construct telegraph and telephone for purposes of railway.

10. The promoters are hereby authorised and empowered to construct, erect and work for the purposes of the said railway and no other, a telegraph and telephone, or either, along or near the line of railway, subject to the provisions of the Act No. 20 of 1861, entitled "An Act for the Regulation of Electric Telegraphs."

Lands and Arbitration Clauses Act incorporated.

11. For the purposes of any land taken, or any arbitration under this Act, the provisions of the "Lands and Arbitrations Clauses Act, 1882," are hereby incorporated and shall apply.

Digitised by the University of Pretoria, Library Services, 2016

Promoters may act by agents.

12. It shall be lawful for the promoters to exercise all and singular the powers by this Act conferred upon them by or through an agent or agents, duly appointed in writing.

Provisions of this Act to apply to any extension.

13. In the event of any extension of the said line of railway, all and singular the provisions of this Act shall apply to such extension.

Promoters to commence and complete line within certain period.

14. The promoters or their assignees shall be bound to commence the said railway within three years from and after the taking effect of this Act, and shall further be bound and are hereby required to finish and complete the same within five years from the same period: provided that unless they shall do so, all and singular the powers and authorities conferred by this Act shall cease and determine.

How any company formed to sue and be sued.

15. If any Company shall be formed by the said William Peter Taylor and David Symons, for the purpose of constructing, equipping, maintaining and working the said line of railway or acquiring their rights, such Company may sue or be sued by the name or style which it has assumed, and service of process upon any agent of the said Company at his office or place of business in this Colony shall be good service of such process.

Description of line of Railway.

16. The said line of railway shall be of one or other of the following descriptions:—

(*a*) A line of the gauge of 3 feet 6 inches, similar to the existing lines in the Cape Colony; or

(*b*) A light "Pioneer" railway, having a minimum gauge of 2 feet; provided that if a "Pioneer" line be built in the first instance, it shall be lawful for the promoters at a future time, and subject to the approval of the Governor, to replace it with a line of 3 feet 6 inch gauge of the description aforesaid.

Construction subject to approval of Governor and inspection of General Manager of Railways.

17. The construction, including the curves, gradients, gauge, and equipment of the railway shall be subject from time to time to the approval of the Governor, and to inspection by the General Manager of Railways of the Cape Colony, or such other officer as he may appoint to represent him.

Tariff of charges.

18. The tariff for the conveyance of goods and passengers over the railway, or any part thereof, shall be the same as that in force, for the time being, upon the Government Railways of the Cape Colony; but it shall be lawful for the promoters at any time to vary the said tariff, if, after thirty days' notice thereof shall have been published in the *Gazette* by the said promoters, the consent of the Governor be first given to such variation.

Government to have right to take over railway.

19. The Governor shall have the right, at any time after the expiration of twenty years from the date of the opening of the said railway, or any section of it for public traffic, to take over the said line upon terms to be settled by agreement with the proprietors of the same, or failing such agreement, at a price to be settled by arbitration.

Digitised by the University of Pretoria, Library Services, 2016

No. 29—1891.

Rights of promoters as to land and water belonging to Government.

20. The Governor shall give, and the promoters shall be entitled to demand free of charge, the land actually required for the construction and equipment of the said line of railway, and the right to use so much water as may be necessary for the construction and working thereof, if such land and water are at the date of construction the property of the Colonial Government, and situated along the route to be taken by the said line of railway; and to enter upon any land, the property of the Crown, lying convenient to the said railway, and to dig for, excavate, and carry away all stones, clay, or other material required for the purposes of the said railway, free of charge.

The Government may under certain conditions take temporary possession of line, should urgent State purposes necessitate.

21. Should urgent State purposes necessitate, of which Government shall be the sole judge, the Government shall have the right to take temporary possession of the whole or any part of the said railway, including rolling stock, buildings, and everything connected therewith; but in such case the Government shall be bound and obliged to make good the ordinary cost of maintenance, and also any damages resulting to the property or article so taken possession of through negligence of the servants of the Government, or from ordinary working risks, as well as interest at a rate not exceeding five per cent. upon the cost of such railway or section of railway taken possession of as aforesaid for the period of the said railway being so held in possession; but nothing herein stated shall be taken to place any liability upon the Government in respect of injury sustained by, or inflicted upon any property or article taken possession of as aforesaid, owing to any cause other than the negligence of the Government servants in charge of the said property or article, or injury from ordinary working risks.

Disputes between Government and promoters to be referred to arbitration.

22. Any dispute between the Colonial Government and the promoters arising out of the construction, working, or maintenance of the railway, shall be settled by arbitration in manner provided by section eleven of this Act.

Government officer to certify completion of line.

23. No section of the said line of railway shall be opened for traffic until it shall have been certified to the Governor, by some officer by him appointed, that such section is sufficiently completed for the safe conveyance of passengers.

Line not to be extended beyond point mentioned in Section I, except with consent of Parliament.

24. It shall not be lawful to extend the said line of railway, under any circumstances, beyond the terminal point referred to in section one of this Act, except with the consent, and subject to the approval of Parliament.

Company acquiring rights of promoters to be subject to provisions of this Act.

25. Any Company acquiring the right of the said Taylor, and the said Symons under this Act, shall be entitled to exercise all the rights, and shall be liable to all the obligations conferred or imposed upon the promoters by this Act, and the word "Promoters" in the Act shall include any such Company.

Short title.

26. This Act may be cited as "The Port St. John's and Maclear Railway Act, 1891."

Digitised by the University of Pretoria, Library Services, 2016

No. 30—1891.] [Promulgated 21st August, 1891.

ACT

To Apply a Sum of Money for the Service of the Year ending the 30th day of June, 1892.

Preamble.

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

Public Revenue to be charged with £2,005,931.

1. The public revenue of the Colony is hereby charged towards the service of the year ending the 30th day of June, 1892, with a sum of two millions and five thousand nine hundred and thirty-one pounds sterling, in addition to the sum of four hundred thousand pounds sterling provided for by Act No. 2 of 1891, and the sum of four hundred thousand pounds provided by Act No. 7 of 1891.

How to be applied.

2. The money granted by this Act shall be applied to the purposes and services expressed in the schedule annexed hereto, and more particularly specified and set forth in the estimates and supplementary estimates of the expenditure for the year ending 30th June, 1892, with the notes to such estimates, submitted to and approved by Parliament.

Not to be applied except as granted.

3. The said aids and supplies shall not be issued or applied to any use, intent or purpose other than the particular services to which the said amounts have been granted respectively by this Act, and the aforesaid schedule, estimates, and supplementary estimates.

Short title.

4. This Act may be cited for all purposes as the "Appropriation Act, 1891."

SCHEDULE.

Summary of Recapitulations of Estimates and Supplementary Estimates.	Establishments.	Services exclusive of Establishments.	Total.	Required to be provided for.
	£	£	£	£
I. Ministerial Department of Colonial Secretary	607,202	555,598	1,162,800	1,058,381
II. Ministerial Department of Treasurer of the Colony ..	46,920	1,355,478	1,402,398	51,328
III. Ministerial Department of Attorney-General	109,781	82,340	192,121	177,566
IV. Ministerial Department of Commissioner of Crown Lands and Public Works	53,123	1,420,535	1,473,658	1,466,968
V. Ministerial Department of Secretary for Native Affairs ..	63,322	5,480	68,802	51,688
Grand Totals	880,348	3,419,431	4,299,779	2,805,931
Less amount provided for by Acts Nos. 2 and 7 of 1891				800,000
Total required to be voted				2,005,931

Digitised by the University of Pretoria, Library Services, 2016

No. 31—1891.] [Promulgated 21st August, 1891.

ACT

To apply a Sum not exceeding Twenty-seven Thousand Two Hundred and Twenty-seven Pounds Five Shillings and Sixpence Sterling for the purpose of meeting and covering certain Unauthorised Expenditure.

Preamble.

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

Charge on revenue of certain unauthorised expenditure.

1. The public revenue of this Colony is hereby charged with a sum not exceeding twenty-seven thousand two hundred and twenty-seven pounds five shillings and six pence sterling, which sum shall be paid for unauthorised expenditure beyond the amounts voted or appropriated for the service of the financial year ended the 30th June, 1890, as described at page xxv of the "Report of the Controller and Auditor-General, with Statements of the Revenue and Expenditure and Appropriation Accounts of the Colony of the Cape of Good Hope for the financial year 1889-90" [G. 3—91], presented to both Houses of Parliament by command of the Governor.

Short title.

2. This Act may be cited as the "Unauthorised Expenditure Act, 1891."

No. 32—1891.] [Promulgated 21st August, 1891.

ACT

To provide for the Construction of certain Public Works.

Preamble.

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

It shall be lawful to borrow under Temporary Loans Act for certain purposes.

1. For the purpose of constructing the works set forth in the Schedules A, B, and C to this Act, it shall be lawful for the Governor to apply a sum of Two Hundred and Sixty-two Thousand Pounds out of moneys authorised to be raised under the provisions of the Temporary Loans Act, being the Act No. 20 of 1883.

Short title.

2. This Act may be cited as the Public Works Act, 1891.

Schedules.

SCHEDULES.

A. Relaying existing Railway Lines	..	£182,000
B. Fencing Lines	..	20,000
C. Erection of General Post Office	..	60,000
		£262,000

Digitised by the University of Pretoria, Library Services, 2016

No. 33—1891.] [Promulgated 21st August, 1891.

ACT

To Provide for the better Repression of Theft of Stock and Produce.

Preamble.

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

Definition of terms.

1. For the purposes of this Act, the word "stock" shall include any horse, gelding, mare, colt, filly, mule, or ass; any bull, ox, cow, heifer, or calf; any sheep or goat, and any ostrich.

The word "produce" shall include all skins, hides, mohair, wool and ostrich feathers.

"Sufficient fence" when applied to wire fences shall mean a fence of four wires and not less than four feet high; in other cases any fence, wall or hedge of the said height, through which no animal could pass without breaking.

Penalty on purchase or receipt of stolen stock or produce without reasonable belief that vendor had right to sell.

2. Any person who shall, by way of purchase, bargain, exchange or gift, acquire or receive into his possession, from any other person, any stolen stock, or stolen produce, without having reasonable cause, proof of which shall lie on such first-mentioned person, for believing, at the time of such requisition or receipt, that such stock or produce was the property of the person from whom he received it, or that such person was duly authorised by the rightful owner to part with it, shall be deemed guilty of contravening this section, and shall be liable on conviction to a fine not exceeding one hundred pounds, or to imprisonment, with or without hard labour, for a period not exceeding twelve months, or to both such fine and such imprisonment.

Transactions exempted from operation of Act.

3. The provisions of this Act shall not apply to stock or produce purchased—

(*a*) On any public market.

(*b*) At any sale held by a duly licensed auctioneer, or held in pursuance of the order of a court of competent jurisdiction.

Penalty for entry upon enclosed place with intent to steal stock.

4. Any person who enters any farm, or part of a farm enclosed on all sides with a sufficient fence, and whether such entry shall be effected by breaking through such fence or not, or any kraal, with intent to steal any stock which is in or upon such kraal, farm, or part of a farm, shall be liable upon conviction to imprisonment with or without hard labour for a period not exceeding one year, or to a fine not exceeding one hundred pounds, or to both such fine and such imprisonment.

Presumptive evidence of intent to steal.

5. Any person found within any farm, or part of a farm enclosed on all sides with a sufficient fence, or within any kraal, and who when so found was not proceeding along some road or thoroughfare traversing such farm or part of a farm, shall, if charged with a contravention of section four of this Act, have the

Digitised by the University of Pretoria, Library Services, 2016

No. 33—1891.

burden imposed upon him of proving that he did not enter such kraal, farm, or part of a farm with intent to steal the stock, if any, kept therein.

Theft of stock and entry upon enclosed place with intent to steal, may be charged in same indictment.

6. Any person charged with the theft of stock from any such kraal, farm, or part of a farm, may in the same indictment be charged with a contravention of the fourth section of this Act; and upon conviction shall be separately sentenced in regard to each offence.

Persons authorised to search buildings, &c., for stolen stock or produce.

7. Notwithstanding the provisions of section forty-two of Ordinance No. 40 of 1828, it shall be lawful for any Justice of the Peace, Field-cornet, Assistant Field-cornet, or for any Police Officer of such rank as the Governor may from time to time designate, upon being satisfied that there is reason to suspect that any stolen stock or stolen produce is concealed in any building, hut, kraal or enclosure, to search or to grant written authority to any person applying for the same, to search such building, hut, kraal or enclosure at any time during the day or night: Provided that any landowner shall in respect of buildings or huts upon his own land be entitled to exercise all the powers conferred by this section upon the officers hereinbefore mentioned.

Penalty for malicious exercise of authority to search.

8. Any person who shall, under colour of this Act, wrongfully and maliciously, or without probable cause, apply for, obtain, and act upon such written authority as aforesaid, or wrongfully and maliciously, or without probable cause exercise the powers of search conferred by the last preceding section, shall be liable to a fine not exceeding twenty pounds, or in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months; and shall also be liable to pay to the person in occupation of the building, hut, kraal or enclosure in question, when the same was searched, such sum not exceeding fifty pounds for damages as any competent Court may award.

Damages.

Resident Magistrate to impose penalty and award damages.

9. The Resident Magistrate of the district in which any building, hut, kraal or enclosure wrongfully searched as aforesaid is situated shall have jurisdiction to impose the penalty and to award the damages in the last preceding section provided. But nothing in this Act contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy allowed by law in lieu of the remedy herein given.

Proviso.

Short title.

10. This Act may be cited as the "Stock and Produce Thefts Repression Act, 1891."

Digitised by the University of Pretoria, Library Services, 2016

No. 34—1891.] [Promulgated 21st August, 1891.

ACT

To Repeal Ordinance No. 82 of 1830, and to make provision for the Licensing and Registration of Medical Practitioners, Apothecaries, Dentists, Chemists and Druggists, Midwives and Nurses.

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:— Preamble.

PART I.

PRELIMINARY.

1. This Act may be cited as the "Medical and Pharmacy Act, 1891." Short title.

2. This Act shall take effect on such day as the Governor shall appoint by Proclamation in the *Gazette*, but the eighth section hereof shall take effect forthwith after the passing of this Act. Act to take effect when proclaimed by Governor. Section 8 to take effect at once after passing of Act.

3. In this Act the following terms shall bear the following meanings:— Interpretation of terms.

"Medical Practitioner" means every person duly admitted and lawfully entitled to practise in this Colony as a physician, surgeon or accoucheur, on the day before the taking effect of this Act, and also every person duly qualified by licence and registration under this Act to practise as a physician and surgeon within this Colony;

"Chemist and Druggist" means every person duly licensed in this Colony on the day before the taking effect of this Act as an apothecary or chemist and druggist, and also every person duly licensed under this Act as a chemist and druggist and holding an annual licence as a chemist and druggist under Tariff 15 of the Act No. 20 of 1884;

"Dentist" means every person duly licensed and *bona fide* engaged on or before the 1st June, 1891, in the practice of dentistry or dental surgery in this Colony, either separately or in addition to his practice as a physician, surgeon, accoucheur, apothecary, or chemist and druggist, and also every person duly qualified by licence and registration under this Act to practise as a dentist within this Colony;

"Council" means the Colonial Medical Council established under this Act;

"Board" means the Colonial Pharmacy Board established under this Act.

4. The Ordinance No. 82 of 1830 shall be repealed from and after the day appointed in terms of the second section of this Act, and the Act No. 15 of 1877, and any other law shall be read and construed as though this Act or the Colonial Medical Council were referred to in place and stead of the said Ordinance or the Colonial Repeal of enactments. Construction of Act 15 of 1877.

Digitised by the University of Pretoria, Library Services, 2016

No. 34—1891.

Medical Committee respectively, wherever the said Ordinance or Committee is referred to in the said Act or such other law.

PART II.

CONSTITUTION AND GENERAL POWERS OF COLONIAL MEDICAL COUNCIL AND COLONIAL PHARMACY BOARD.

Establishment of a Colonial Medical Council and a Colonial Pharmacy Board.

5. On the day of the taking effect of this Act the Colonial Medical Committee now established shall cease to exist, and on and after the said day there shall be established in this Colony

(*a*) a body to be styled the Colonial Medical Council, and

(*b*) a body to be styled the Colonial Pharmacy Board.

The Council to consist of seven medical practitioners and one dentist.

6. The Council shall consist of seven medical practitioners and one dentist, of whom three medical practitioners and the dentist shall be nominated by the Governor; and four medical practitioners shall be elected by the medical practitioners of the Colony, in manner hereafter provided.

The Board to consist of one member of Council and five chemists and druggists.

7. The Board shall consist of a member of the Council who may from time to time be deputed by the Council to act upon the Board, and five chemists and druggists, of whom two chemists and druggists shall be nominated by the Governor and three chemists and druggists shall be elected by the chemists and druggists of the Colony in manner hereafter provided.

Mode of election of members of first Council or first Board.

8. Members of the first Council or first Board, as the case may be, shall be elected in manner following:

(*a*) On or before a date or dates, to be fixed by notice in the *Gazette*, every person then duly licensed and registered as a physician, surgeon, or accoucheur (in respect of the election of members of the Council), or as chemist and druggist (in respect of the election of members of the Board), as the case may be, may sign and deliver to such person as may be appointed for the purpose by such notice a written paper to the following effect:—

On the day fixed the voting papers shall be signed and delivered to the person appointed.

day of 18 .

Election of Member [or members, as the case may be,] of the Colonial Medical Council [or, Colonial Pharmacy Board, as the case may be,]

I vote for of

and of

to be Members of the Colonial Medical Council [or, Colonial Pharmacy Board, as the case may be,] for the period expiring on the day of 18

Signed

Voting papers may be sent per post; cannot be accepted after four o'clock p.m.; signature must be attested by a J. P.

(*b*) The said written paper may be delivered through the post, but no paper shall be accepted or counted which has not been delivered at the place appointed by such notice as aforesaid before four o'clock in the afternoon of the day fixed by that notice, or unless the signature to such paper is attested as genuine by some Justice of the Peace.

Digitised by the University of Pretoria, Library Services, 2016

(*c*) Any person entitled to vote at such election may vote for as many candidates as there are members to be elected.

Number of votes.

(*d*) Such person as is in sub-section (*a*) mentioned shall open and count the said written papers and the duly qualified person or persons, who shall have the greatest number of votes, shall upon his certificate addressed to the Colonial Secretary be, by notice in the *Gazette*, appointed members of the Council or Board as the case may be.

Person having majority of votes to be elected; person appointed to open and count votes shall certify number to Colonial Secretary.

(*e*) In case of an equality of votes the Colonial Secretary shall have a casting vote.

In case of equality Colonial Secretary to have casting vote.

9. The members of the Council or Board shall be nominated or elected as the case may be for such term not exceeding five years as the Governor shall think fit and shall specify in such notice as is provided in the last preceding section, and the Governor may at will, by notice in the *Gazette*, remove any nominated member and, at the request of the Council or Board, as the case may be, may, if satisfied that due cause exists for such removal, by like notice remove any elected member, and any member may resign by letter addressed to the President of the Council, or Board, as the case may be, and upon the removal, death or resignation of any member, some other qualified person shall be nominated or elected in manner hereinbefore provided for the residue of the said term, but it shall be lawful for the Council, or Board, as the case may be, during such vacancy, to exercise the powers hereinafter mentioned.

Term of office of members of the Council or Board to be fixed by Governor.

Governor may remove any member or any member may resign.

Mode of procedure in case of removal, death or resignation of any member.

10. The first meeting of the first Council and the first meeting of the first Board shall take place upon a day or days to be fixed by the Governor in the notice appointing the elected members as aforesaid, and at such meetings or any adjournment thereof, the members of the Council and of the Board respectively then present shall elect from among themselves a President of the Colonial Medical Council and a President of the Colonial Pharmacy Board, and the person elected to either of the said offices shall hold the same during the continuance of his membership of the Council or Board, as the case may be.

Governor to fix day of first meeting of first Council and first Board.

At such meeting members present shall elect a president of the Council and a president of the Board who shall hold office during membership.

11. The dentist appointed as a member of the Council as aforesaid shall be entitled to be present at all meetings of the Council, but unless such dentist be also a qualified medical practitioner shall not be entitled to take part in the discussion of or to vote upon any question or matter brought before the Council unless it be by resolution of the majority determined to be a question or matter relating to dentistry or dental surgery; provided that such dentist shall, however, be qualified to vote for the election of some other member as President of the Council.

Rights and powers of dentist member at meetings of Council.

12. The Council and Board respectively may, from time to time, make such rules and regulations, to be approved of and published as in this Act is provided, as to the times and places of the meetings of the Council or Board, the mode of summoning the same,

Council and Board to make rules and regulations for the conduct of the business of its meetings.

Digitised by the University of Pretoria, Library Services, 2016

No. 34—1891.

and the general regulation of business as shall seem expedient, and in the absence of any rule or regulation as to the summoning of meetings, the President may summon a meeting of the Council or Board, as the case may be, at such time and place as to him shall seem expedient by letter addressed to each member.

Proceedings of meetings of Council or Board.

13. At every meeting in the absence of the President some other member present shall be chosen to act as President, and all acts of the Council or Board shall be decided by the votes of the majority of the members present at any meeting, the whole number present being not less than four in the case of the Council, and three in the case of the Board, and at all meetings the President for the time being shall, in addition to his vote as a member, have a casting vote in case of an equality of votes.

Council or Board may appoint executive committee.

14. The Council or Board shall have power to appoint an executive committee out of their own body of which the quorum shall not be less than three, and to delegate to such committee such powers and duties vested in the Council or Board as the Council or Board shall think fit.

Council or Board may appoint a Secretary; and may by resolution remove him.

15. The Council or Board may respectively from time to time appoint a Secretary at a reasonable salary, and may by resolution remove such Secretary from his office.

All future elections (after the first) shall be regulated by section 8, but medical practitioners, etc., entitled to vote shall be those defined by this Act.

16. After the first election of members of the Council or Board respectively, the provisions of the eighth section of this Act shall *mutatis mutandis*, regulate all future elections of a member or members of the Council or Board, as the case may be, but the persons entitled to vote at any such future election shall be medical practitioners or chemists and druggists, as the case may be, as defined by this Act, the Secretary of the Council or Board, as the case may be, may attest as genuine the signature of any elector, and the provisions of this Act shall apply to the Council or Board and the members thereof respectively who may hereafter be appointed or elected after such first election.

Secretary to attest elector's signature.

Act to apply also to Council or Board appointed after first election.

PART III.

Licences for Medical Practitioners, Dentists, and Chemists and Druggists, Certificates for Midwives.

Subject to the proviso hereinafter mentioned practitioners admitted qualified and licensed on the day before this Act takes effect shall be entitled to continue to practise without taking out licence required by this Act.

17. Every person who, on the day before the taking effect of this Act, shall be in this Colony

(*a*) duly admitted and lawfully qualified to practise as a physician, surgeon, or accoucheur,

or (*b*) duly licensed as an apothecary, or chemist and druggist,

and (*c*) every person whosoever on or before the 1st June, 1891, shall have been in this Colony duly licensed as a dentist and *bona fide* engaged in the practice of dentistry or dental surgery, either separately or in addition to his practice as a physician, surgeon, accoucheur, apothecary, or chemist and druggist,

Digitised by the University of Pretoria, Library Services, 2016

shall notwithstanding the passing of this Act, be entitled to continue to practise or carry on his calling as aforesaid without obtaining the licence referred to in the eighteenth and twenty-third sections, as the case may be, provided that

Provided

(1) The names, addresses, and qualifications of all such persons shall as soon as may be after the day appointed as aforesaid be entered in the register referred to in this Act.

That their names addresses and qualifications shall be registered as here provided.

(2) Every such person shall on and after the said day be amenable to all the provisions of this Act or of any law relating to physicians, doctors, surgeons, dentists, apothecaries, or chemists and druggists, as the case may be;

That they shall become amenable to the provisions of this Act.

(3) Every such dentist as aforesaid shall be placed upon the aforesaid register, upon production to the Secretary of the Council within two months after the aforesaid day of a declaration in the form in Schedule A to this Act, signed by him and setting forth his name and address, and his qualification, if any, for the practice of dentistry or dental surgery;

That dentists shall be placed on the register upon production of a declaration setting forth his name, address and qualification.

(4) No omission of or mistake in any entry which should be made in the aforesaid register in accordance with paragraph (1) of this section shall be deemed to prejudice the right of the person, in respect of whose name, address, or qualifications such omission or mistake has occurred, to practise as aforesaid if duly licensed and lawfully entitled.

That no omission or mistake in register shall prejudice any person's right to practise if duly licensed and lawfully entitled.

18. On and after the day on which this Act takes effect, no person shall be admitted to practise or be registered as a medical practitioner, or dentist, unless he has obtained a licence signed by the Colonial Secretary on the recommendation of the Council; and previously to obtaining such licence, such person shall submit his diploma or other certificate of his being duly qualified to practise as a physician and surgeon, or as a dentist, as the case may be, for the examination and approval of the Council, who may require by sworn declaration before a justice of the peace or by other evidence such proof of identity and good character of such person, of the authenticity of such diploma or certificate, and of the right of the holder to practise elsewhere under such diploma or certificate, as they shall deem fit, and any person wilfully making a false statement in such declaration shall be liable to the penalties by law provided for the crime of perjury: Provided that the Governor may at any time within three months from the date of the taking effect of this Act, anything in this Act or any other law to the contrary notwithstanding, grant a licence to be admitted as a medical or dental practitioner to any person with whose qualification and experience he is satisfied, and who in the case of a medical practitioner before the said date, shall for a period of twenty years, and in the case of a dentist for a period of three years and upwards have been continuously practising as a physician, surgeon, accoucheur or dentist in this Colony, and the names of

After this Act takes effect no person shall be admitted or registered as medical practitioner or dentist, unless he obtains the Colonial Secretary's licence on Council's recommendation, to whom the necessary diplomas and proof have been submitted.

Penalty for false declaration.

Governor may within three months of taking effect of Act grant a medical practitioner's licence to person who has for 20 years continuously practised and with whose qualification he is satisfied.

Digitised by the University of Pretoria, Library Services, 2016

No. 34—1891.

such persons shall thereupon be entered in the register referred to in this Act.

Supreme Court may order issue of licence refused by Council.

19. Where the Council have refused to approve of the diploma or certificate submitted in terms of the last preceding section by any person desirous of being registered as a medical practitioner or dentist, the Supreme Court, on application made to them by such person, may, after communicating with the Council, order that a licence be issued to the applicant, in case the Supreme Court shall be of opinion the Council have not adhered to the regulations in the next section mentioned, and the name of such applicant shall thereupon be entered in the register referred to in this Act.

Council shall make regulations prescribing what diplomas or certificates will be entertained in any application for a licence as a medical practitioner or dentist.

20. The Council shall by regulations approved of by the Governor and published as in this Act is provided, from time to time prescribe and define what diplomas or certificates will be entertained by the Council in any application by any person to obtain a licence as a medical practitioner or dentist under this Act, and no diploma or certificate shall be included by the Council in such regulations which does not furnish in the opinion of the Council a sufficient guarantee of the possession by the holder of the requisite knowledge and skill for efficient practice as a medical practitioner or dentist, as the case may be.

Military or naval medical officer may exercise his profession in such service without licence under this Act.

21. Notwithstanding anything to the contrary contained in this Act, any medical officer of Her Majesty's land or sea service, may exercise his profession in such service, but not otherwise, without taking out such licence as aforesaid.

Medical practitioner may practise as an accoucheur, and may compound and dispense medicines.

22. Every medical practitioner shall be entitled to practise as an accoucheur and may compound and dispense medicines prescribed by himself or any other medical practitioner with whom he is in partnership upon payment of the annual licence fee required by law to be paid by a chemist and druggist.

Who may obtain a licence to practise as chemist and druggist; the qualifications required, and the examination to be passed.

23. Any person who has attained the age of twenty-one years, and has been duly indentured and served as an apprentice for a period not less than four years to any regularly licensed apothecary, or chemist and druggist, in this Colony, or elsewhere, or who can produce satisfactory proof that he has been practically engaged in the compounding and dispensing of medicines on medical prescriptions under a duly licensed chemist and druggist for a period of not less than four years then last past, may obtain a licence to practise as a chemist and druggist, on passing an examination to the satisfaction of the Board, in any subjects fixed by the Board with the approval of the Governor, and such examination may be held before the Board or any members thereof appointed for the purpose by the Board, or before one or more members of the Board, or such other persons as the Board may appoint as examiners in accordance with regulations relative to such examinations to be made by the Board, and to be approved of and published as in this Act is provided; provided that the Board may, in accordance with such regulations,

Digitised by the University of Pretoria, Library Services, 2016

accept as sufficient proof of proficiency in any subject a certificate from the Secretary of the University Council that the person referred to in such certificate has satisfactorily passed a University exmination in such subject.

Candidate to satisfy Board he is entitled to be examined, and to pay a fee not exceeding £5.

24. No person shall be admitted as a candidate at such examination unless he shall have satisfied the Board that he is entitled to be examined, and unless he shall have paid such fee for such examination, not exceeding five pounds, as may be prescribed by such rules and regulations as aforesaid.

Certain duly qualified pharmaceutical chemists, chemists and druggists, may on complying with provisions of this Act, without further examination, obtain a chemist's and druggist's licence.

25. Any person who holds a certificate or diploma of competency as a pharmaceutical chemist or as a chemist and druggist from the Pharmaceutical Society of Great Britain, or from any college, society, or board recognised by the Board under such regulations, made, approved, and published as aforesaid, may, if otherwise complying with the provisions of this Act and of such regulations, without further examination, obtain a licence of admission to practise as a chemist and druggist in this Colony.

Colonial Secretary to sign all chemists' and druggists' licences upon recommendation of Board.

26. All licences aforesaid issued to chemists and druggists shall be signed by the Colonial Secretary upon the recommendation of the Board.

Council may grant certificates of competence in midwifery to females holding certificate or diploma, or if satisfied of her competence, skill and fitness.

27. The Council may in accordance with regulations, approved of by the Governor, grant certificates of competence in midwifery

(*a*) To any female who is the holder of a certificate or diploma as a midwife granted by any one of such examining bodies as the Council may from time to time prescribe and define.

(*b*) To any female who shall satisfy the examiners thereto appointed by the Council of her competence, skill and fitness in and for the practice of a midwife's calling.

Midwifery certificates to be signed by President and Secretary, and registered.

Every such certificate shall entitle the holder to practise midwifery according to regulations to be framed by the Council from time to time, and shall be signed by the President and Secretary of the Council, and shall be entered in a register to be kept for that purpose, in connection with and as part of the register provided for in this Act.

Council may frame rules for preventing spread of puerperal fever or similar disease. Midwives to have copy of rules.

28. The Council may from time to time frame rules and directions regulating the steps to be taken by medical practitioners and certificated midwives, for preventing the spread of puerperal fever, or any other similar disease. A copy of such rules shall from time to time be supplied by the Council, to all medical practitioners, certificated midwives, and to all persons applying for the same. And if it be proved that the holder of any certificate issued in terms of the last section, has wilfully disobeyed or disregarded the said rules and directions, or is grossly incompetent, or has been guilty of such improper conduct as, in the opinion of the Council, renders it inadvisable that she should continue to practise as a certificated midwife, then it shall be lawful for the Council to withdraw and cancel such certificate. Any medical practitioner or certificated midwife, who shall contravene any of such rules and directions as aforesaid,

Under what circumstances Council may withdraw and cancel midwives' certificates.

Digitised by the University of Pretoria, Library Services, 2016

No. 34—1891.

shall be liable on conviction to pay a fine not exceeding thirty pounds, or failing payment of such fine to imprisonment with or without hard labour for a period not exceeding three months.

Penalty for falsely pretending to be a certificated midwife.

29. Any female who shall falsely pretend to be a certificated midwife, or who shall falsely use or adopt any name, title, or description implying that she is a certificated midwife, under this Act, shall be liable to a fine not exceeding twenty-five pounds, or in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months.

Council may grant certificates of competence as trained nurses

30. The Council may, in accordance with regulations approved of by the Governor, grant certificates of competence as trained nurses

To holder of certificate as a trained nurse.

(*a*) To any person who is the holder of a certificate as a trained nurse, granted by any one of such examining or other bodies as the Council may from time to time prescribe and define.

To any person who shall otherwise satisfy the Council as to her competence, skill and fitness.

(*b*) To any person who shall satisfy the examiners thereto appointed by the Council of his or her competence, skill and fitness in and for the occupation of nursing, and who shall in addition produce proof by certificate or otherwise of having had sufficient training in nursing work, under competent supervision.

Certificates to be granted and signed and registered in same way as midwifery certificates.

Every such certificate shall be granted and signed in manner hereinbefore provided in the case of midwifery certificates, and shall be entered in a register to be kept for that purpose, in connection with and as part of the register provided for in this Act.

Council may withdraw or cancel trained nurse's certificate if holder grossly incompetent or guilty of improper conduct.

31. The Council may at any time withdraw or cancel a certificate granted to a trained nurse, if it shall be proved that the holder is grossly incompetent, or has been guilty of such improper conduct as, in the opinion of the Council, renders it inadvisable that he or she should continue to practise as a trained nurse.

Penalty for falsely pretending to be a trained nurse.

And any person who shall falsely pretend to be a trained nurse, registered under this Act, or who shall falsely use or adopt any name, title, or description, implying that he or she is such a registered trained nurse, shall be liable to all the penalties set forth in section twenty-nine of this Act.

Council shall publish in January in each year list of certified midwives and trained nurses, with addresses.

32. The Council shall, in the month of January in each year, publish in the *Gazette*, a list showing:—

(*a*) The names of all holders of certificates as certificated midwives on the 31st December last preceding.

(*b*) The names of all holders of certificates as trained nurses on the said date. And such list shall, wherever possible, state the addresses of such holders.

Females not disqualified from admission as medical practitioners, etc., etc.

33. No person shall be deemed to be disqualified to be duly admitted, licensed, and registered to practise as a medical practitioner, dentist, or chemist and druggist, merely by reason that such person is a female.

Digitised by the University of Pretoria, Library Services, 2016

34. Any person who shall wilfully procure or attempt to procure himself or any other person to be licensed and registered under this Act, by making or producing or causing to be made or produced any false or fraudulent representation, either verbally or in writing, not amounting to the crime of perjury, and every person aiding and assisting him therein, shall on conviction thereof, be liable to be imprisoned with or without hard labour for any term not exceeding twelve months.

Person licensed or registered under false or fraudulent representation, and person aiding him, liable to imprisonment.

35. Any person who shall wilfully and falsely pretend to be or take or use the name or title of a physician, doctor of medicine, licentiate in medicine or surgery, bachelor of medicine, surgeon, general practitioner, or apothecary, or dentist, or chemist and druggist, or any name, title, addition, or description implying that he is licensed or registered under this Act or that he is duly qualified to practise as a physician, or surgeon, or licentiate in medicine and surgery, or a practitioner in medicine, or an apothecary, or a dentist, or a chemist and druggist, and any person who shall practise as a medical practitioner, dentist, or chemist and druggist, without such licence as aforesaid, shall be liable to a fine of not exceeding one hundred pounds for each offence, and in default of payment, he shall be liable to be imprisoned with or without hard labour for a period not exceeding six months, unless such fine be sooner paid.

Any person falsely using professional titles, or implying that he is licensed or registered, or qualified; and any person practising without a licence as medical practitioner, dentist or chemist and druggist shall be liable to certain penalties.

And no person who is charged with a contravention of this section for practising as a dentist or a chemist and druggist without a licence shall be acquitted, by reason of the fact that he is in the employ of, or is agent for, a person duly licensed to practise as aforesaid, unless he is under the actual personal supervision and control of some duly licensed dentist, or chemist and druggist, as the case may be.

PART IV.

Register of Medical Practitioners, Dentists, Chemists and Druggists, and Certificated Midwives.

36. There shall be kept in the Office of the Colonial Secretary a correct register of the names, addresses, date of admission, licence, or certificate, and qualifications of all

(1) Medical Practitioners,
(2) Dentists,
(3) Chemists and Druggists,
(4) Certificated Midwives,

and (5) Trained Nurses in this Colony; which register shall be kept in five corresponding parts,

and the person appointed by the Colonial Secretary to keep such register shall make entries therein in accordance with information to be from time to time supplied by the Secretary of the Council in respect of medical practitioners, dentists, certificated midwives and trained nurses, and by the Secretary of the Board in respect

Register to be kept in the Colonial Secretary's Office.

Manner in which register is to be kept, and duty of person keeping it.

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1891.

of chemists and druggists, and shall from time to time erase the names of all registered persons reported to him by the Secretary to the Council or Board, or known to him to have died, and shall from time to time make necessary alterations in the addresses or statements of qualification of the persons registered under this Act: and to enable the register to be properly kept, it shall be lawful for the Secretary to the Council or Board to write and forward a duly registered letter to any registered person addressed to him according to his address on the register, to inquire whether he has ceased to practise or has changed his residence, and if no answer shall be returned to such letter within the period of six months from the sending of the letter, it shall be lawful to erase the name of such person from the register: provided, always, that the same may be restored at the request of the Council or Board, as the case may be, and that the erasure of his name under this section shall not be deemed to disqualify any person duly licensed or certified from practising the profession or carrying on the calling in respect of which such person is duly licensed or certified.

In case of [six months delay in replying to a letter from the Secretary name to be erased.

Registered person who may have obtained any other degree or qualification may have the same inserted in the register on paying a fee.

37. Every person registered under this Act, who may have obtained any degree or qualification other than the degree or qualification in respect of which he may be registered, may have such other degree or qualification inserted in the register in substitution for or in addition to the degree or qualification already registered at the request of the Council or Board, as the case may be, and on payment of such fee as may be prescribed by regulations made by the Council or Board, as the case may be and approved of and published as in this Act is provided.

No degree or qualification whatever shall be entered in register unless Council or Board be satisfied that the person claiming is entitled to it.

38. No degree or qualification shall be entered on the register, either on the first registration or by way of addition to a registered name or as in the last section mentioned, unless the Council or Board, as the case may be, be satisfied by the proper evidence that the person claiming is entitled to it, and any entry which shall be proved to the satisfaction of the Council or Board, to have been fraudulently or incorrectly made may be erased from the register: provided that a record of the reason for every such erasure shall be signed by the Under Colonial Secretary and kept in the Office of the Colonial Secretary.

The name of any person who has become or is disqualified, or whose name has been struck off the Hospital, University, or College roll, may be erased from the register.

39. The Colonial Secretary shall at the request of the Council or Board, as the case may be, cause to be erased from the register the name of any person who either before or after the passing of this Act may have been declared disqualified for practice by or whose name may have been struck off the roll, register or record of the Hospital, University, College or other body in this Colony or elsewhere from which such person received any diploma, degree, certificate, or other instrument upon the faith of which such person was admitted to practise or obtained a licence in this Colony, and thereupon such person shall no longer be deemed to be a medical practitioner, dentist, or chemist and druggist as the case may be;

Digitised by the University of Pretoria, Library Services, 2016

provided that the Colonial Secretary, before causing the name of such person to be erased, shall be satisfied that such person has, if possible, had an opportunity of showing cause before the Council or Board, as the case may be, why his name should not be erased from such register.

Person guilty of infamous or disgraceful conduct may be struck off the register and have his licence withdrawn and cancelled by the Governor.

40. If any person licensed or certified under this Act shall, after due enquiry, at which he shall have an opportunity for being heard, be judged by the Council or Board, as the case may be, to have been guilty of infamous or disgraceful conduct in any professional or other respect, the Governor may, if he see fit, direct that the name of such person be erased from the register, and that his licence be withdrawn and cancelled, and the Council or Board, as the case may be, shall make such enquiry upon information or complaint laid by any member of the public; provided that the name of such person may be restored thereafter to the register on the request of the Council or Board, as the case may be, and provided that no person whose name shall be erased from the register under this or the last preceding section shall be deemed, merely by reason that such person shall remain in possession of a licence or certificate, to be qualified, licensed, or certified, to practise the profession or carry on the calling to which such licence or certificate relates.

Name of such person may be restored.

No person erased from register shall be qualified to practise merely by possession of licence or certificate.

Licence fraudulently obtained to be void.

41. Any licence or certificate obtained either before or after the taking effect of this Act by means of any false or fraudulent representation or by personation, shall be void, and any person holding or practising by virtue of any such licence or certificate shall be liable to the penalties provided by the thirty-fourth section of this Act, for practising without a licence.

Penalty.

PART V.

Keeping and Sale of Poisons.

The articles named and described in Schedule B deemed to be poisons.

42. The several articles named and described in Schedule B to this Act shall be deemed to be poisons within the meaning of this Act, and the Council or Board may from time to time, by resolution, declare that any article in such resolution named ought to be deemed a poison within the meaning of Division I or Division II of the said Schedule of this Act, and thereupon such resolution shall be submitted through the Colonial Secretary for the approval of the Governor, and if such approval shall be given then such resolution and approval shall be published in the *Gazette*, and on the expiration of one month from such publication the article named shall be deemed to be a poison accordingly within the meaning of this Act.

Council or Board may from time to time declare other poisons.

All poisons to be labelled "Poison" and due care and caution exercised in their custody

43. All medical practitioners, chemists and druggists shall label all vessels, boxes, bottles, wrappers, or packages in their possession and containing poisons, as enumerated in Schedule B to this Act, with the word "Poison" and shall exercise due care and caution in the custody of the same.

Digitised by the University of Pretoria, Library Services, 2016

No. 34—1891.

Penalties on chemist and druggist failing to exercise due care, and for selling or keeping for sale drugs of a bad quality.

44. If any medical practitioner or chemist and druggist shall suffer such poisons as aforesaid to be kept without due care or shall sell or keep for sale by himself or any apprentice, servant or agent, any medicines or drugs of bad quality, he shall be liable to a fine not exceeding twenty pounds, or in default of payment to be imprisoned with or without hard labour for any period not exceeding three months, unless such fine be sooner paid, and the person convicted shall further become liable to withdrawal and cancellation of his licence if the Governor shall deem it fit to withdraw or cancel the same.

Poisons shall only be sold by licensed apothecary, chemist and druggist, or by their indentured apprentice or paid assistant.

45. Poisons, within the meaning of this Act, shall not be sold by any person other than a duly licensed apothecary, or chemist and druggist, or the indentured apprentice or *bona fide* paid assistant of such apothecary or chemist and druggist: provided that nothing herein contained shall be deemed to limit the operation of the twenty-second section of this Act. But nothing in this section contained shall prevent the sale of any poison by an importer or general dealer to any other importer or general dealer, or to any medical practitioner or chemist and druggist.

Exception.

Certificate to importer or general dealer to sell certain poisons

46. Notwithstanding anything in the last preceding section contained it shall be lawful for any importer or general dealer upon obtaining a certificate from the Resident Magistrate of the district in which he carries on his business as such importer or general dealer to the effect that in the opinion of the said magistrate he is a fit and proper person to deal in poisons under the terms of this section, to keep for sale and to sell arsenic or any compounds thereof in quantities of not less than one pound weight, and strychnine, or any compounds thereof in unbroken vials properly corked and sealed, and labelled with the name of the article, and bearing the name of the person or persons by whom such article was in the first instance made up for sale.

Poisons to be sold only if required for certain purposes.

47. No such importer or general dealer, as is in the last section mentioned, shall sell or dispose of any poison therein specified, unless he is satisfied that the person obtaining the same requires it for the destruction of wild animals or vermin, or for the treatment of scab or other disease in animals.

Book of sale of poisons to be kept.

48. Every such importer or general dealer as aforesaid shall, in regard to every such sale or disposal, enter in a book to be kept for that purpose:

(*a*) The date of the sale or disposal;
(*b*) The nature and the quantity of the poison disposed of;
(*c*) The name of the purchaser;
(*d*) The purpose for which the poison was required;

and shall allow the said book to be at any time inspected by the Resident Magistrate of the district, or any person authorised by the said magistrate in writing. And any importer or general dealer contravening the provisions of this or the last preceding section, shall be liable to a fine not exceeding fifty pounds.

Digitised by the University of Pretoria, Library Services, 2016

Penalty.

49. If any person not being a medical practitioner, or chemist and druggist, shall keep in his possession, or under his control, any poison, without exercising all due care and caution in the custody of the same, he shall be liable to a fine of not exceeding £10, or in default of payment to imprisonment for any period not exceeding one month.

Conditions under which poisons may be sold.

50. Every chemist and druggist, and the indentured apprentice or *bona fide* paid assistant of such chemist and druggist, may sell poisons, within the meaning of this Act, under the following conditions, but no other:

Labelled with name and address of chemist and druggist and "Poison."

(*a*) If the box, bottle, vessel, wrapper or cover in which any poison is contained on delivery to the purchaser be, in every case of sale of any such poison, distinctly labelled with the name and address of such chemist and druggist, with the name of the article and with the word "Poison;"

If wholesale on written order of purchaser.

(*b*) If the sale be by wholesale in the ordinary course of trade or business, on an order in writing signed by the purchaser;

On production of prescription of a medical practitioner.

(*c*) If the sale be to a person producing the prescription of a medical practitioner prescribing any poison now enumerated or hereafter added to the list of poisons named in Division I of Schedule B to this Act, in manner provided by the forty-second section of this Act, and if an entry be made in a book, called the Prescription Book, to be kept for that purpose, setting forth in separate columns the date of sale, the name and address of the purchaser, and the ingredients and quantities of the prescription;

Entry to be made in a book called Prescription Book, giving full particulars.

In absence of prescription entry to be made in Poisons Book to state quantity sold, purpose for which acquired; and shall be signed, if purchaser unknown to seller by purchaser and some person known to seller who has introduced purchaser to seller.

(*d*) If no such prescription by a medical practitioner be produced, if an entry be made in a book called the Poisons Book to be kept for that purpose, in lieu of the ingredients and quantities aforesaid, a statement of the quantity sold and the purpose for which such poison is stated to be required, and if such entry shall, in case the purchaser be not known to the seller, and in case the poison sold be a poison now enumerated or hereafter added as aforesaid to the list of poisons named in Division I of Schedule B to this Act, be, before delivery of the poison, signed by the purchaser, and also by some person, known to the seller, who shall have introduced the purchaser to the seller.

Correspondence to be kept and all particulars entered in book.

(*e*) If the contract for the sale of any poison now enumerated or hereafter added as aforesaid to the list of poisons named in Division I of Schedule B to this Act, and if the seller shall keep the correspondence from the purchaser relative to such sale, shall make such entry of all particulars as aforesaid in the aforesaid book, and shall either be acquainted with the signature of the purchaser or shall receive and keep a written attestation by some Resident Magistrate, Justice of the Peace, or Minister of Religion of the genuineness of such signature.

Must be acquainted with purchaser's signature or have attestation as to genuineness.

Digitised by the University of Pretoria, Library Services, 2016

No. 34—1891.

Penalty for contravening sections 45 or 50.

51. Any person convicted of a contravention of any provision of the forty-fifth or fiftieth sections of this Act shall be liable to a fine not exceeding fifty pounds sterling, or in default of payment to imprisonment with or without hard labour for any term not exceeding three months, and every chemist and druggist shall be responsible for every act or default of any apprentice, clerk, servant, or agent in his employment other than a person entitled to take out an annual licence as a chemist and druggist, in respect of the improper sale of any poison in breach of any provision of either of the said sections, in case the said act or default was due to negligence on the part of such chemist or druggist in supervising the conduct of such apprentice, clerk, servant or agent.

Chemist and druggist responsible for every act or default of those in his employment due to negligent supervision in respect of improper sale of poisons.

Poisons book to be submitted on demand for inspection of Secretary of Board, failing which a penalty will be imposed.

52. The book kept by every chemist and druggist in manner provided in sub-section *(d)* of the fiftieth section of this Act shall be submitted forthwith upon demand for the inspection of the Secretary of the Board or of any person authorised by him in writing under his hand, and any such apothecary or chemist and druggist who personally or by any apprentice, clerk, servant or agent employed by him shall fail forthwith upon demand to produce such book for inspection, shall be liable upon conviction to a fine not exceeding twenty pounds sterling, and in default of payment to imprisonment with or without hard labour for any period not exceeding three months unless such fine be sooner paid.

Penalty on purchaser of poison giving false information; signing as a witness to an unknown person, or failing to comply with provisions of this Act.

53. If any person purchasing any poison, within the meaning of this Act, shall give false information to the seller in relation to the particulars which the seller is authorised to require, or if any person sign as witness to the sale of any such poison to a person unknown to such witness, or if any person fail to comply with any provision of this part of this Act for which no specific penalty is provided, every such person shall on conviction be liable to a fine not exceeding twenty pounds sterling, and, in default of payment of such fine, to imprisonment with or without hard labour for any term not exceeding three months.

Certain sales of poison exempted from this part of this Act.

54. The preceding provisions of this part of this Act shall not apply to the sale of:

(*a*) Any poison in the form of homœopathic medicine unless in the crude state, mother tincture, or of a greater strength than the third decimal potency;

(*b*) Patent or Dutch medicines;

(*c*) Photographic materials for the purpose of photography;

(*d*) Medicines dispensed by veterinary surgeons or farriers for animals under their treatment;

(*e*) Fly poison papers when duly marked as such;

(*f*) Any poison supplied by the chairman or secretary of any poisoning club to any member of a poisoning club for the purpose of destroying wild animals or vermin;

Proviso.

Provided that particulars of all such sales shall be entered in a book by the seller, and that the box, bottle, vessel, wrapper or

Digitised by the University of Pretoria, Library Services, 2016

cover in which such poison is immediately contained, shall be labelled in manner provided by the forty-third section of this Act.

PART VI.

MISCELLANEOUS.

Institution of legal proceedings, either civil or criminal.

55. It shall be lawful for the Secretary of the Council or Board, as the case may be, or any person duly authorised in writing under the hand of the President, to take and institute any proceedings, civil and criminal, on behalf of the Council or Board, but nothing herein contained shall be deemed to deprive any person of any right which, but for this section, he would have to institute any proceedings, civil or criminal, against any other person.

Certificate of Under Colonial Secretary *primâ facie* proof of licence and registration under this Act.

56. If in any proceedings, civil or criminal, it shall be material to determine whether any person be or be not in any capacity duly licensed or certified under this Act, a certificate, under the hand of the Under Colonial Secretary, to the effect that such person is or is not, as the case may be, duly licensed and registered in such capacity, shall be deemed and taken to be sufficient *primâ facie* proof of the fact alleged in such certificate.

Council concerned with medical practitioners and dentists.

57. The Council shall be deemed to be concerned with and interested in matters arising out of or in connection with so much of this Act as deals with medical practitioners and dentists, and the Board shall be deemed to be concerned with and interested in matters arising out of or in connection with so much of this Act as deals with apothecaries and chemists and druggists.

Board concerned with apothecaries and chemists and druggists.

Rules and regulations shall be of legal validity, only when approved and published by the Governor.

58. All rules or regulations by this Act authorised to be made by the Council or the Board shall be of legal validity only when approved of, and published by the Governor by notice in the *Gazette* and by such regulations, penalties for the breach thereof may be prescribed not exceeding in any case a fine of ten pounds sterling.

For purposes of any inquiry the President of Council or Board may administer the oath; false testimony punished as perjury.

59. For the purposes of any inquiry by the Council or Board authorised by this Act, it shall be lawful for the President for the time being of the Council or Board to administer an oath to any person testifying before the Council or Board, and any person who shall wilfully give false testimony on oath as to any matter material to any such inquiry, shall be guilty of a contravention of this section, and be liable to the punishments by law provided for the crime of perjury.

Only licensed registered persons entitled to recover any charge in any court of law for medical advice and medicines, etc.

60. No person shall be entitled to recover any charge in any court of law for any medical or surgical advice, attendance, or for the performance of any operation as a medical practitioner or dentist, or commonly performed only by a medical practitioner or dentist, or for any medicine which he shall have prescribed or supplied, unless he shall prove upon the trial that he is licensed under this Act.

Digitised by the University of Pretoria, Library Services, 2016

No. 34—1891.

Only licensed registered persons to be medical officer or apothecary in any hospital or other public establishment or society.

61. No person shall hold any appointment as a physician, surgeon, or other medical officer, or as an apothecary or compounder of any medicines in any hospital, or in any lunatic asylum, convict station, house of correction, or other public establishment, or institution, or to any friendly or other society for affording mutual relief in sickness, infirmity, or old age, or as a medical officer of health, unless he be licensed and registered under this Act as a medical practitioner, or as a chemist and druggist, as the case may be.

No certificate required by law from medical practitioner valid unless signed by licensed registered person.

62. No certificate required by any law, now or hereafter in force, from any medical practitioner shall be valid unless the person signing the same be licensed and registered under this Act.

Fees for admission or licensing to be paid to Council and Board, who shall administer the fund.

63. The Council and the Board shall respectively administer for the purposes of this Act such funds as may be derived from fees or charges payable under this Act or any law or under any regulations made under this Act, in respect of the admission or licensing of medical practitioners, dentists, and chemists and druggists, which fees or charges shall be paid over to the Council and the Board respectively; and the administration of such funds shall be duly accounted for and audited in manner by law provided in respect of the administration of further funds, as the case may be.

All regulations to be approved by Governor and published in *Gazette*.

64. All regulations framed under the provisions of this Act shall be approved by the Governor and published thereafter in the *Gazette*, and shall take effect only after such approval and publication.

Schedule A.

SCHEDULE A.

I, residing at , and holding the qualification of , hereby declare that I was *bona fide* engaged in the practice of dentistry at at the date of the taking effect of the "Medical and Pharmacy Act, 1891."

Dated at this day of 18 .

(Signed)
(Witness)

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE B.

LIST OF POISONS WITHIN THE MEANING OF THE ACT.

DIVISION I.

Not to be sold unless *on medical prescription or the purchaser is known or is introduced by some person known, to the seller;*

ALSO

Entry to be made in Poison-Book

OF

1. *Date of Sale;*
2. *Name and address of purchaser;*
3. *Ingredients of prescription, if any;*
4. *Name and quantity of article; and, if no prescription, also*
5. *Purposes for which it is wanted; and*
6. *Attestation by signature of purchaser and person introducing him.*

AND

Must, in every case of sale, be labelled with

1. *Name of article.*
2. *The word "Poison."*
3. *Name and address of seller.*

- ARSENIC, and its preparations.
- ACONITE, and its preparations;
- ALKALOIDS: — All poisonous vegetable alkaloids and their salts;
- ATROPINE, and its preparations;
- CANTHARIDES;
- CORROSIVE SUBLIMATE;
- CYANIDE OF POTASSIUM, and all metallic cyanides and their preparations;
- EMETIC TARTAR;
- ERGOT OF RYE, and its preparations;
- PRUSSIC ACID, and its preparations;
- SAVIN, and its oil;
- STRYCHNINE, and its preparations;
- VERMIN KILLERS, if preparations of poisons the preparations of which are in Division I of this Schedule.

DIVISION II.

Must, in every case of sale, be labelled with

1. *Name of article.*
2. *The word "Poison."*
3. *Name and address of seller.*

- CARBOLIC ACID;
- ALMONDS, ESSENTIAL OIL OF (*unless deprived of Prussic Acid.*)
- BELLADONNA, and its preparations;
- CANTHARIDES, Tincture, and all vesicating liquid, preparations of;
- CHLOROFORM;
- CHLORAL HYDRATE, and its preparations.
- CORROSIVE SUBLIMATE, preparations of;
- MORPHIA, preparations of;
- NUX VOMICA, and its preparations;
- OPIUM, and its preparations; and preparations of Poppies;
- OXALIC ACID;
- PRECIPITATE, RED (Red Oxide of Mercury);
- PRECIPITATE, WHITE (Ammoniated Mercury);
- VERMIN KILLERS (see Division I). Compounds containing "Poisons," prepared for the destruction of vermin, if not subject to the provisions of Division I are in Division II.

Digitised by the University of Pretoria, Library Services, 2016

No. 35—1891.] [Not yet Promulgated.

ACT

To Amend the Law relating to Lunatics.

Preamble.

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

Repeal of Act No. 20, 1879, and repugnant laws.

1. The Act No. 20, 1879, intituled "An Act to provide for the safe custody of persons dangerously insane, and for the care and custody of persons of unsound mind," and so much of any other law as may be repugnant to or inconsistent with the provisions of the Act, are hereby repealed; but this repeal shall not affect any warrant issued, or thing done in pursuance of any such repealed law.

Short title of Act.

2. This Act may be cited for all purposes as "The Lunacy Act, 1891."

Interpretation of terms.

3. In the construction of this Act the following terms shall have the meanings herein assigned to them unless there is something in the context repugnant to such construction :—

"Asylum" means an asylum for lunatics now existing or which may hereafter be declared by the Governor as an asylum or place for the reception or detention of lunatics.

"Court" means the Supreme Court of the Cape of Good Hope, and the Court of the Eastern Districts, the High Court of Griqualand, and any Circuit Court, within the limits of the jurisdiction of such Courts respectively.

"Criminal Lunatic" means any person for whose safe custody during the Governor's pleasure, the Governor is authorised to give order, and any prisoner whom the Governor has in pursuance of this or any other law directed to be removed to an asylum or other place for the reception of insane persons.

"Judge." Any judge of the Supreme Court.

"Constable" includes members of the police force, and field-cornets.

"Lunatic" includes any idiot or person of unsound mind incapable of managing himself or his affairs.

"Magistrate" means a resident magistrate, and includes an acting resident magistrate and an assistant magistrate.

"Medical Practitioner" means a legally qualified medical practitioner, in actual practice, within the meaning of any law now or hereafter in force.

"Prison" means any prison or place of confinement to which a person may be committed, whether on remand or for trial, safe custody, punishment or otherwise, under any other than civil process; and

"Prisoner" means any person so committed.

Act to apply to persons detained in asylum at time of taking effect thereof.

4. The provisions of this Act shall apply to every person who, at the taking effect thereof, is detained in an asylum or place of confinement for lunatics, and every warrant or order granted for

Digitised by the University of Pretoria, Library Services, 2016

the detention of any such person, shall be deemed to have been legally granted until set aside or varied under the provisions of this Act.

Constable may under certain circumstances remove alleged lunatic to prison or hospital.

5. If a constable is satisfied that it is necessary for the public safety or the welfare of an alleged lunatic with regard to whom it is his duty to take any proceedings under this Act, that the alleged lunatic should, before any such proceedings are taken, be placed under care and control, the constable may apprehend and convey the alleged lunatic to a prison or hospital, and the gaoler or keeper of the hospital shall, unless there is no proper accommodation in such prison or hospital for the alleged lunatic, receive, relieve and detain the alleged lunatic therein, but no person shall be so detained for more than forty-eight hours without the knowledge or authority of a Magistrate.

PART I.

Proceedings for Restraining Dangerous Lunatics.

Proceedings to be taken by Magistrate if supposed dangerous lunatic brought before him.

6. When any person shall be discovered under circumstances indicating derangement of mind, and a purpose of committing suicide, or some crime or offence for which such person would be liable to be prosecuted, any Magistrate before whom such person shall be brought, may call to his assistance any two medical practitioners (one of whom shall if practicable be the District Surgeon) and shall examine such practitioners and any other witnesses upon oath.

Proceedings if magistrate is satisfied that person is a dangerous lunatic.

7. If on view and examination of the person apprehended or brought before the Magistrate, and on the evidence of such medical practitioners and others, the Magistrate is satisfied that such person is a dangerous lunatic, and that his case cannot be adequately dealt with under the provisions of Part III of this Act, then he may by order under his hand direct that such person shall be removed to and detained in some hospital or other place of safe confinement, until such person shall be lawfully discharged, or removed to some asylum by order of the Governor.

Magistrate or J.P. may issue order to apprehend person deemed to be dangerous lunatic and wandering at large.

8. Any Magistrate or Justice of the Peace, upon its being made to appear to him on oath, that any person wandering at large is deemed to be a dangerous lunatic, may, by order under his hand, require any constable to apprehend and bring such person before any Magistrate having jurisdiction.

Constables to obey such order.

9. Any constable receiving any order from a Magistrate or Justice of the Peace, shall forthwith act as therein directed, either in apprehending or removing such lunatic or supposed lunatic therein named. And any person who may by any order of a Magistrate be directed to receive and detain any such lunatic or supposed lunatic, shall act in obedience to such order.

Governor may order discharge of person so apprehended if it appears he is not a dangerous lunatic.

10. If at any time after the granting of any order or warrant for the detention of a person as a dangerous lunatic, it shall be made to appear to the Governor that such person has ceased to be, or is not a dangerous lunatic, and that he may be suffered to

Digitised by the University of Pretoria, Library Services, 2016

No. 35—1891.

go at large with safety, the Governer may order the discharge of such person from custody, unless he be lawfully detained for some other cause.

Sections 29 to 36 to apply to orders for the detention of dangerous lunatics.

11. The provisions of the twenty-ninth to the thirty-sixth sections, inclusive, of this Act, shall respectively extend and apply to every order for the detention of a dangerous lunatic granted by any Magistrate in pursuance of this part of this Act.

PART II.

Provisions relating to Criminal Lunatics.

Procedure where persons charged with offences are found to be insane by a jury.

12. When in any indictment or other criminal process any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible according to law for his actions at the time when the act was done or the omission made, then if it appears to the jury before whom, or the court (where there is no jury) before which such person is tried, that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury or such court shall return a special verdict or finding to the effect that the accused was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or made the omission.

Such persons to be kept in custody as criminal lunatics.

13. Whenever such special verdict or finding shall be returned, the presiding judge or court shall order the accused to be kept in custody as a criminal lunatic in such place and in such manner as the court shall direct till the Governor's pleasure shall be known; and it shall be lawful for the Governor thereupon, and from time to time, to give such order for the safe custody of the said person in such place and in such manner as to the Governor may seem fit.

Prisoners not under sentence of death who may appear insane, to be examined by two medical men by order of Colonial Secretary or a magistrate.

14. Where it appears to the Colonial Secretary or a Magistrate that a prisoner, not being under sentence of death, is insane, such Secretary or Magistrate shall direct two medical practitioners (one of whom shall, if practicable, be the district surgeon) to examine such person and inquire as to his sanity, and after such examination and inquiry the said medical practitioners may certify, in writing, that he is insane.

If under sentence of death to be examined by two or more medical men by order of Governor.

15. In the case of a prisoner under sentence of death, if it shall be made to appear to the Governor that there is reason to believe such prisoner to be insane, the Governor may appoint two or more medical practitioners, who shall forthwith examine such prisoner and inquire as to his insanity, and after such examination and inquiry such practitioners shall make a report, in writing, to the Governor as to the sanity of the prisoner, and they, or the majority of them, may certify that he is insane.

If prisoner certified insane, to be removed under warrant of Governor to some asylum and detained there as a criminal lunatic.

16. When a prisoner is certified as aforesaid to be insane the Governor may, if he thinks fit, direct such prisoner to be removed to an asylum named in the warrant, and thereupon such prisoner shall be removed to and received in such asylum, and, subject to

Digitised by the University of Pretoria, Library Services, 2016

the provisions of this Act relating to discharge and otherwise, shall be detained therein, or in any other asylum to which he may be transferred, as a criminal lunatic, until he ceases to be a criminal lunatic.

When it is certified that a criminal lunatic (other than one in respect to whom a special verdict was returned) is sane, the Colonial Secretary may order him to be remitted to prison.

17. When it is certified by two medical practitioners that a person being a criminal lunatic (not being a person with respect to whom a special finding or verdict, has been returned that he was guilty of the act or omission charged against him, but was insane at the time when he committed the act or made the omission) is sane, the Colonial Secretary if satisfied that it is proper to do so, may by warrant direct such person to be remitted to prison, to be dealt with according to law.

Superintendent of asylum or other place in which criminal lunatic is detained, to report to Colonial Secretary at least once a year.

18. The superintendent of an asylum or other place in which a criminal lunatic is detained, shall make a report to the Colonial Secretary at such times (not being less than once a year), and containing such particulars as the Colonial Secretary may require, of the condition and circumstances of every criminal lunatic in such asylum or place; and the Colonial Secretary shall at least once in every two years during which a criminal lunatic is detained, take into consideration the condition, history, and circumstances of such lunatic, for the purpose of determining whether he ought to be discharged or otherwise dealt with.

Colonial Secretary may order transfer of criminal lunatic.

19. The Colonial Secretary may, from to time, order the transfer to an asylum of any criminal lunatic detained in any other asylum or in any other place, and such criminal lunatic shall accordingly be received and detained in the asylum to which he is so transferred.

Governor may discharge criminal lunatic, absolutely or conditionally.

20. The Governor may discharge any criminal lunatic absolutely, or conditionally, that is to say, on such conditions as to the duration of such discharge, and otherwise as the Governor may think fit.

Conditions to be observed in conditional discharge.

21. Where a criminal lunatic is conditionally discharged in pursuance of this Act:

(1) A report of his condition shall be made to the Colonial Secretary by such person and at such times and containing such particulars as may be required by the warrant of discharge, or directed by the Governor, or by any general rules and regulations;

(2) If any of the conditions of such discharge appear to the Governor to be broken, or the conditional discharge is revoked, the Governor may direct him to be taken into custody, and removed to some asylum or place named in the warrant; and he may thereupon be taken, and shall be received and detained in such asylum or place as if he had been removed thereto under the provisions of this Act.

Governor may make regulations for dealing with prisoners who appear from imbecility to be unfit for penal discipline.

22. The Governor may make, revoke, and vary regulations for the treatment of persons sentenced to imprisonment who appear, in accordance with the said regulations, to be from imbecility of mind, either unfit for penal discipline, or unfit for the same penal discipline as other prisoners.

Digitised by the University of Pretoria, Library Services, 2016

No. 35—1891.

PART III.

PROVISIONS RELATING TO LUNATICS NOT BEING DANGEROUS NOR CRIMINAL.

Magistrate may order apprehension of person wandering at large and deemed to be a lunatic but not criminal nor dangerous.

23. Any Magistrate, upon the information on oath of any person, that a person wandering at large is deemed to be a lunatic, may by order require a constable to apprehend the alleged lunatic and bring him before the Magistrate making the order, or before any Magistrate having jurisdiction where the alleged lunatic is.

Magistrate may examine such person

24. When under this Act notice has been given to, or an information on oath laid before a Magistrate, that a person wandering at large is deemed to be a lunatic, such Magistrate may examine the alleged lunatic at his own house, or elsewhere, and may proceed in all respects as if the alleged lunatic had been brought before him.

Constables to report to Magistrate cases of lunatics not under proper care, though not wandering abroad.

25. Every constable who has knowledge that any person not wandering at large is deemed to be a lunatic and is not under proper care and control, or is cruelly treated, or neglected by any relative or other person having the care or charge of him shall without delay give information thereof on oath before the nearest Magistrate.

Upon information of cases under Section 25, Magistrate may order person to be examined by medical practitioner.

26. Upon the affidavit or information on oath of any person that a person is deemed to be a lunatic, or that such a person is not under proper care, treatment and control, or is cruelly treated or neglected as aforesaid, any Magistrate may himself, visit the alleged lunatic, and shall, whether making such visit or not, direct and authorise any two medical practitioners whom he thinks fit (one of whom shall, if practicable, be the District Surgeon) to visit and examine the alleged lunatic, and to report their opinion of his mental state. In case the services of two medical practitioners shall not be available, or immediately available, the Magistrate may direct one medical practitioner to perform such duty.

"Summary Reception Order." If Magistrate satisfied that person is lunatic and not under proper care, he may order person to be detained.

27. If upon the report of the medical practitioners or practitioner who examined the alleged lunatic, or after such further or other enquiry as the Magistrate thinks necessary, he is satisfied that the alleged lunatic is a lunatic, and is not under proper care, treatment and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, and that he is a proper person to be taken charge of and detained under care and treatment, or if the person having the care, treatment or control of the alleged lunatic consents to the issue of the order hereinafter mentioned, the Magistrate may by order (in this Act termed a Summary Reception order) direct the lunatic to be received and detained in some asylum or other place to be named in such order, and any constable whom the Magistrate may require so to do shall forthwith convey the lunatic to the place named in the order.

Such order shall authorise detention for one month.

28. A summary reception order shall authorise the detention of the person named therein for a period not exceeding one month.

Digitised by the University of Pretoria, Library Services, 2016

Magistrate granting such order to send copy of order, report and medical practitioner's report, to the Attorney-General, Solicitor-General or Crown Prosecutor.

29. A Magistrate granting any order for the detention of any alleged lunatic under this Act shall, without delay, transmit a copy thereof with copies of the depositions and medical reports upon which he acted in granting such order, and his own report to the Attorney-General, or in case the lunatic shall be within the districts over which the Court of the Eastern Districts, or the High Court of Griqualand respectively have jurisdiction, to the Solicitor-General, or Crown Prosecutor as the case may be. The Magistrate shall also within ten days transmit as aforesaid the report of the District Surgeon or such medical practitioner as shall have been in attendance upon the lunatic, as to his mental and bodily condition during his detention. Such Magistrate shall also make such report (if any) to the Colonial Secretary as may be prescribed by any general regulations, and otherwise conform thereto.

Proviso as to lunatics being taken charge of by relatives or friends.

30. In the case of a lunatic as to whom a summary reception order may be made, nothing in this Act shall prevent a relative or friend from retaining or taking the lunatic under his own care, if the Magistrate having jurisdiction to make the order shall be satisfied that proper care will be taken of the lunatic.

The Attorney-General, Solicitor-General and Crown Prosecutor *ex officio curators ad litem* of such lunatics within their jurisdictions.

31. The Attorney-General, and the Solicitor-General and Crown Prosecutor, of Griqualand West, within the limits of the districts respectively in which the latter exercise their functions, shall be *ex officio curators ad litem* of such persons as may be detained under any order granted by a Magistrate under this Act, or further detained under a Judge's order.

Curator ad litem receiving above reports, &c., to lay the same before Judge in chambers.

32. A *curator ad litem* receiving any such order, depositions and reports as aforesaid from a Magistrate, shall, within the said period of one month, lay the same with any further reports, depositions, or statements which he may have deemed necessary to call for, before a Judge in chambers for his consideration.

The Judge, may:—

33. The Judge upon consideration of such order, reports and evidence of lunacy therein appearing, may order as follows :—

Order further detention of alleged lunatic.

(1) If satisfied that an order for the further detention of the alleged lunatic may be made forthwith, make such order accordingly, and for such period as he may deem necessary.

Call upon *curator ad litem* and lunatic to appear before an appointed court.

(2) Direct that a summons be issued and served upon the alleged lunatic and the *curator ad litem*, to appear in the court to be therein named to show cause why the alleged lunatic shall not be declared lunatic, and a curator appointed for the care of his person, and if necessary, for the care or administration of his property.

Appoint *curator bonis*.

(3) Appoint a *curator bonis* for the temporary care or custody of any property of the alleged lunatic, and where it appears to the Judge desirable that temporary provision should be made for the maintenance or other necessary purposes or requirements of the alleged lunatic, or any member of his family out of any cash, or available securities belonging to him in the hands of his bankers or of any other person, the

Digitised by the University of Pretoria, Library Services, 2016

Judge may authorise any such banker or other person to pay to the *curator bonis* such sums as may be deemed necessary, and may give directions as to the application thereof for the alleged lunatic's benefit, or the relief of his family.

Direct discharge of alleged lunatic.

(4) Direct that the alleged lunatic be immediately discharged.

Direct as to issue, service, &c., of summons.

(5) Direct that any summons or other process be issued, and the proceedings in the case be continued, free of any stamp duty or office fee; and order that service of any process under this section be made in such manner as may seem expedient.

Generally give necessary directions.

(6) Generally give such directions as may appear necessary and proper.

Husband, wife, friend, or relative of person deemed to be lunatic may apply directly to any court or judge for enquiry.

34. Nothing in this Act contained shall prevent any husband, wife, or other relative of any person deemed to be a lunatic, or any friend of such person who has no husband, wife, or near relative at or near the place where such person is residing from applying by petition directly to any court or judge for an enquiry into such person's mental condition, whether a summary reception order shall previously have been granted or not, and such court or judge may order therein as may be deemed fitting.

Any person detained under a summary reception order may apply to court for an enquiry.

35. Any person detained under the order of a Magistrate under this Act, or under a Judge's order for further detention, granted as aforesaid, may apply to the court, directly or through a *curator ad litem*, for an enquiry into the cause and grounds of such person's detention, and such court may order therein as may be deemed fitting.

Where a person is ordered to be further detained or is declared a lunatic, the Under Colonial Secretary may order his removal to asylum.

36. When any judge has granted an order for the further detention of a lunatic, or when a court has declared a person lunatic, the Under Colonial Secretary may by warrant under his hand authorise the removal of such lunatic to some asylum, hospital, or other safe place of confinement, there to be detained until legally discharged or legally removed to some other asylum or place.

PART IV.

Provisions for the Care and Administration of Lunatic's Property.

Court may appoint curator over property of lunatic.

37. The court may appoint a curator for the care or administration of the property of any person declared lunatic, or of a person lawfully detained as a criminal lunatic or dangerous lunatic, with or without security, as the court may direct, and may confer upon such curator authority to do any specified act, or exercise any specified power, or may confer a general authority to exercise on behalf of the lunatic, until further order, all or any of such powers without further application to the court.

Court may under certain circumstances appoint curator over property without appointing curator over person.

38. Where upon an enquiry the court shall be of opinion that the person to whom it relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others,

Digitised by the University of Pretoria, Library Services, 2016

such court may make such order as it thinks fit for the care or administration of the property of the lunatic, including all proper provisions for his maintenance, but it shall not be necessary, unless the court shall think proper to do so, to make any order as to the custody of his person.

Court may dissolve a partnership if member thereof declared a lunatic.

39. When any person being a member of a partnership is declared a lunatic by the court, the court may by the same order, or by any order subsequently granted, dissolve the partnership.

Copy of order appointing curator over property, to be lodged with Master.

40. When a court has granted an order for appointing a curator for the care or administration of the property of a lunatic, an office copy of such order shall forthwith be lodged with the Master of the Supreme Court.

Master to grant certificate of appointment to curator.

41. The Master shall grant to such curator a certificate that he has been so appointed, and is authorised as such to have the custody and administration of the lunatic's estate.

Curator to file inventory, &c., with Master.

42. Every such curator shall be under the like duty and obligation as an executor appointed for the administration of the estate of a deceased person, to lodge with the said Master an inventory, or additional inventory of the property of a lunatic and accounts of his administration, and in respect of any such inventory or account the like stamps and fees shall be payable as in the case of the estate of a deceased person.

Curator to be allowed same remuneration as executor.

43. Every such curator shall be allowed the like remuneration, to be taxed by the said Master, as in the case of an executor.

If lunatic die intestate, or has no executor, curator bonis to act as executor.

44. When any lunatic for the care or administration of whose estate a curator has been appointed shall die intestate, or having left a will there shall be no executor, or none willing to act, such curator shall continue the administration of the estate of such lunatic, and distribute the assets thereof as if he had been appointed an executor dative.

Court may authorise curator to do following Acts.

45. The court may authorise and direct any curator appointed as aforesaid to do all or any of the following things :—

(1) Sell any property belonging to the lunatic.
(2) Make exchange or partition of any property belonging to the lunatic, or in which he is interested, and give or receive any money for equality of exchange or partition.
(3) Carry on or discontinue any trade or business of the lunatic.
(4) Grant leases of any property of the lunatic.
(5) Perform any contract relating to the property of the lunatic entered into by the lunatic before his lunacy.
(6) Exercise any power or give any consent required for the exercise of any power where the power is vested in the lunatic for his own benefit, or the power is in the nature of a beneficial interest in the lunatic.
(7) Raise money on mortgage of the lunatic's property for payment of his debts, or payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit, or payment of, or provision for, the expenses of his future maintenance.

Digitised by the University of Pretoria, Library Services, 2016

No. 35—1891.

(8) Apply any money for or towards the maintenance or the benefit of the lunatic.

(9) Make such reports concerning the lunatic's estate to the court or to the Master as such court shall deem fit.

Act not to be taken to limit power of Court as to declaring persons insane, or appointing curators.

46. Nothing in this Act contained shall be deemed to limit or abridge the power by law possessed by the court in regard to declaring persons of unsound mind, or to the appointment of curators to the person or property of any lunatic.

PART V.

Offences and Penalties.

Penalty for detaining alleged lunatic except under provisions of this Act.

47. Every person who, except under the provisions of this Act, receives or detains a lunatic, or alleged lunatic in an asylum, or for payment takes charge of, receives to board and lodge, or detains a lunatic or alleged lunatic, shall, upon conviction, be liable to a penalty of fifty pounds.

Penalties for false statements, &c.

48. Every person guilty of any of the following acts or offences shall, upon conviction, be liable to a penalty not exceeding one hundred pounds, or to imprisonment, with or without hard labour, for any period not exceeding twelve months.

(1) Making any wilful misstatement of any material fact in any petition, application, statement of particulars, report, or reception order under this Act.

(2) Making a wilful misstatement of any material fact in any medical certificate, or other certificate, or in any statement or report of bodily or mental condition under this Act.

(3) Knowingly making in any book, statement, or return, any false entry as to any matter as to which he is by this Act or by any rules or regulations made under this Act, required to make an entry.

(4) Wilfully obstructing any magistrate, curator, curator *ad litem*, visitor, medical practitioner, constable, or other person specially authorised by the Governor, or under any order of court, in the exercise of any of the powers conferred by this Act, or by any rules or regulations made under this Act.

Penalty where no special penalty provided.

49. Every person who shall contravene any of the provisions of this Act in respect of which no other penalty or punishment is by this Act or by any law otherwise provided, or who shall contravene any of the provisions of any rules or regulations made by the Governor under this Act, shall, upon conviction, be liable to a penalty not exceeding twenty pounds.

Penalty if nurses, &c., or persons in charge illtreat lunatic.

50. Any officer, nurse, attendant, servant, or other person employed in any asylum or other place, or any person having the care or charge of a lunatic, or alleged lunatic, whether by reason of any contract, or any tie of relationship, or marriage, or otherwise, who shall illtreat or wilfully neglect any such lunatic or alleged lunatic shall, upon conviction, be liable to a penalty not exceeding

Digitised by the University of Pretoria, Library Services, 2016

fifty pounds, or to imprisonment, with or without hard labour, for any period not exceeding six months.

Penalty for conniving at escape of lunatic.

51. Any officer, attendant, servant, or other person employed in any asylum or other place, who shall wilfully permit, or assist, or connive at the escape or attempted escape of any lunatic, or secretes a lunatic shall, upon conviction, be liable to a penalty not exceeding twenty pounds, and to instant dismissal from any position such convicted person may then occupy.

Male persons not to be employed in personal custody of female patient.

52. It shall not be lawful to employ any male person in any asylum in the personal custody or restraint of any female patient, and any person employing a male person contrary to this section shall be liable to a penalty not exceeding twenty pounds: Provided that this section shall not extend to prohibit or impose a penalty on the employment of male persons on such occasions of urgency as may in the judgment of the superintendent of the institution render such employment necessary, but the employment shall be reported to the Colonial Secretary.

Proviso.

Penalty on person having charge of lunatic, for carnally knowing female patient.

53. If any officer, attendant, or any other person employed in any asylum, or any person having the care or charge of or attending upon any single patient, carnally knows, or attempts to have carnal knowledge of any female under care or treatment as a lunatic, he shall, upon conviction, be liable to imprisonment with or without hard labour for any period not exceeding five years; and no consent or alleged consent of such female thereto shall be a defence in any prosecution for such offence.

PART VI.

Miscellaneous Provisions.

No person to be detained in asylum who is not a criminal, dangerous or declared lunatic, unless under order of Court or Judge.

54. Subject to any exception in this Act mentioned, a person not being a dangerous lunatic, a criminal lunatic, or a lunatic so declared by a Court, shall not be received or detained in any asylum, hospital or other place, or as a single patient, unless under an order made by a Court or Judge.

Every person receiving a patient into his house to transmit a notice thereof to the Colonial Secretary.

55. Every person who shall receive to board and lodge in his house, or shall take care or charge for payment or valuable consideration of any person as a lunatic shall, within twenty-four hours after so receiving or taking such person, transmit through the post a notice of such admission to the Colonial Secretary with true copies of the order, statement and medical certificates upon which such person shall have been so received.

Also a report of patient's mental state, &c., signed by medical attendant.

56. The person so receiving or taking charge of such lunatic shall also, after the second, and before the end of the tenth day from such admission, transmit to the Colonial Secretary a statement to be signed by the medical practitioner visiting the lunatic, of his mental state, and his bodily health and condition.

Every such patient to be visited by independent medical practitioner.

57. Every such lunatic shall, as often as may be provided by regulations under this Act, or as may be directed by the Colonial Secretary, be visited by a medical practitioner not deriving, and

Digitised by the University of Pretoria, Library Services, 2016

No. 35—1891.

not having a partner, father, son, brother or other relative who derives any profit from the care and charge of such lunatic.

Notice to Colonial Secretary if patient detained for more than 3 months in private house without an order under Act.

58. If any occupier or inmate of any house shall keep or detain therein any person as a lunatic, except under some order authorised by this Act, although one of his family or a relative, beyond the period of three months after his lunacy shall have become apparent, and when it shall be such as to require during any part of such period coercion or restraint, such occupier or inmate, or the medical practitioner attending such person, shall intimate such detention to the Colonial Secretary, and shall transmit to the Colonial Secretary a certificate signed by at least one medical practitioner of the condition of the person so detained, and shall state therein the reasons (if any) which render it desirable that such person shall remain under private care.

Colonial Secretary may order enquiry as to lunatics detained in any private house.

59. If the Colonial Secretary shall have information or reason to believe or suspect that any lunatic, or any person treated as a lunatic, of whose condition no such intimation as aforesaid has been made is detained or kept, or is dwelling in any house, and that the lunacy of such person has endured for three months after the same became apparent, and is such as to have required coercion or restraint, or if such intimation shall have been made as in the last section provided, and the reason stated appear to be insufficient, and he is of opinion that enquiry should be made, he may order such enquiry to be made as he shall think fit.

Requirements of medical certificates under Act.

60. Every medical certificate or report under this Act shall be signed by a medical practitioner, and shall state the facts upon which the certifying medical practitioner has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others; and no order made under this Act shall be made upon a certificate founded only upon facts communicated by others.

Medical certificate evidence of certain facts.

61. Every medical certificate or report made under, and for purposes of this Act, shall be evidence of the facts therein appearing so far as they may be facts within the knowledge of the person making the certificate, and of the judgment therein stated to have been formed by the certifying medical practitioners on such facts, as if the matters therein appearing had been verified on oath.

Medical certificates not to be signed by person related to alleged lunatic within fourth degree.

62. The medical certificates or reports under this Act shall not be received or acted upon if made by any person related to the supposed lunatic within the fourth degree of consanguinity or affinity, or the partner or assistant of a person so related; and neither of the persons signing such certificates or reports shall be so related to, or the partner or the assistant of, the other of them.

Under what circumstances mechanical means of bodily restraint allowed.

63. Mechanical means of bodily restraint shall not be applied to any lunatic unless the restraint is necessary for the purposes of surgical or medical treatment, or to prevent the lunatic from injuring himself or others; and in every such case

Digitised by the University of Pretoria, Library Services, 2016

(1) A medical certificate shall, as soon as it can be obtained, be signed, describing the mechanical means used, and stating the grounds upon which the certificate is founded.

(2) The certificate shall be signed, in the case of a lunatic in an asylum or other place of confinement, by the medical officer thereof, and in the case of a private patient, by his medical attendant.

(3) A full record of every case of restraint by mechanical means shall be kept from day to day.

(4) A copy of the certificates and records under this section shall be sent to the Colonial Secretary at the end of every quarter.

(5) In the application of this section "mechanical means" shall be such instruments as the Governor may, by regulations, determine.

Any person appointed under this Act to make enquiry may examine on oath and summon witnesses.

64. Any magistrate, or any commissioner, or person appointed by any competent court, or by the Governor, to make any enquiry under this Act, or in respect of any lunatic, may, if he deems it necessary so to do, summon any person to appear before him to testify on oath touching any matter respecting which such magistrate, commissioner or other person is under this Act, or by any commission or order issued by any such court, or by the Governor, authorised to enquire (which oath such magistrate, commissioner or other person is hereby empowered to administer).

Penalty for not obeying such summons.

65. Every person who does not appear pursuant to any such summons as is in the last section mentioned, or does not assign some reasonable excuse for not appearing, or who appears and refuses to be sworn or examined, shall, on conviction in the court of any Resident Magistrate having jurisdiction, be liable to a penalty not exceeding twenty pounds.

Expenses of witnesses.

66. Every person so summoned as aforesaid shall be entitled to be paid his expenses as if a witness summoned to attend upon a trial in a criminal case.

Requirements and execution of warrant under this Act.

67. A warrant of the Governor under this Act may be under the hand of the Colonial Secretary or of the Under Colonial Secretary, and where any warrant is authorised or required to be granted by the Colonial Secretary, such warrant may be under the hand of the Under Colonial Secretary. Every such warrant may be executed by the person to whom it is addressed or by any constable, and when it relates to a person not in custody may be executed in like manner as if it were a warrant for the arrest of a person charged with an offence, and it shall be the duty of every constable to aid in the execution of every warrant under this Act.

Powers of Colonial Secretary under Act may be exercised by another person appointed by Governor.

68. The Governor may, from time to time, direct that all or any of the powers, duties and authorities by this Act vested in or required to be performed by the Colonial Secretary, shall be exercised and performed by any person the Governor shall think fit, subject to any restrictions or limitations he may impose, or

Digitised by the University of Pretoria, Library Services, 2016

No. 35—1891

that such powers, duties, and authorities may, as to certain parts of the Colony, be exercised by the Colonial Secretary, and as to certain other parts by some person or persons other than the Colonial Secretary.

Escaped lunatic may be recaptured.

69. If any person escapes while being conveyed to an asylum or place in pursuance of this Act, or if any person lawfully detained in an asylum or other place for lunatics escapes, he may be retaken by the superintendent of such asylum, or any officer or servant belonging thereto, or by any person assisting such superintendent, officer or servant, or by any constable, and conveyed to and received and detained in such asylum.

Action by lunatic limitation of.

70. Any action brought by any person who has been detained as a lunatic against any person for anything done under this Act shall be commenced within three months next after the release of the person bringing the action.

Governor may make, &c., regulations.

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

(1) For the discharge of lunatics on the application of relatives or friends, or on probation.

(2) For the removal or transfer of lunatics from one asylum or place to another asylum or place.

(3) For the guidance of visitors and as to the reports to be made to or by them.

(4) For prescribing the books to be kept in asylums or otherwise in reference to any lunatic, and the entries to be made therein, and the accounts, returns, reports, extracts, copies, statements, notices, documents and information to be sent to the Colonial Secretary, or other authority or person as the Governor may direct.

(5) As to the persons by whom, the times when, and the manner in which such entries, accounts, returns, reports, extracts, copies, statements, notices, documents and information are to be made and sent, in regard to any asylum, or any lunatic or alleged lunatic.

(6) As to the terms of payment and accommodation for paying patients in any asylum.

(7) For prescribing forms for the purposes of this Act, in addition to, or in substitution for, any forms mentioned in the Schedule.

(8) Generally for the due administration and efficient working of this Act, and the care and comfort of lunatics.

Forms in Schedules may be used.

72. Subject to rules made under this Act the forms in the Schedule may be used, wherever applicable, with such modifications as circumstances may require, and if used shall be deemed to be sufficient.

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE.

No. 35—1891.

FORMS FOR USE UNDER "THE LUNACY ACT, 1891."

No. 1.—Order for the reception of a Lunatic.

I, A. B., Resident Magistrate for the District of , having called to my assistance B. C., and D. E., medical practitioners, and having personally examined F. G., of , and being satisfied that the said F. G. is a dangerous lunatic, hereby direct you, H. I., keeper of the hospital (or other place to be stated) to receive the said F. G. as a patient in the said hospital (or other place) and detain him until he shall be lawfully discharged or removed. Section 7.

Given under my hand at , this day of , 18 .

Resident Magistrate.

To H. I.
Keeper of the hospital
(or other description).

No. 2.—Order for the apprehension of a Lunatic wandering at large.

Whereas it has been made to appear to me, , Resident Magistrate of the District of , by information upon oath, that a person wandering at large within the said District, is deemed to be a dangerous lunatic (or a lunatic—*Vide* Section 23). Now, therefore, these are to require you to apprehend the said and bring him before me (or before the Resident Magistrate of) Sections 8 and 23.

Given under my hand at , this day of 18 .

Resident Magistrate.

To

Constable (or otherwise as the case may be.)

NOTE.—In the case of a dangerous lunatic this order may be granted by a justice of the peace, and the form may be altered accordingly.

No. 3. Medical Certificate that a person is a lunatic.

[a] Name in full.
[b] Town or place.
[c] District, &c.
[d] Residence.
[e] Occupation.

I, the undersigned[a].....being a duly licensed medical practitioner in this Colony, and in actual practice, hereby certify that I, on the....day of ..... 18.., at[b] ...., in[c]....., separately from any other medical practitioner, personally examined....of[d].... a[e]...., and that the said.....is a person of unsound mind, and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz.:— Sections 14, 15, 17, 26.

[f] 1. Appearance.
2. Conduct.
3. Conversation.

1st. Facts indicating insanity or idiocy observed by myself.[f]

[g] State the information, and from whom.

2nd. Facts indicating insanity or idiocy communicated to me by others.[g]

(Signed) .....

Dated this....day of....., 18...., at.....

Digitised by the University of Pretoria, Library Services, 2016

No. 35–1891.

NOTE.—The medical gentlemen certifying must not be assistant one to the other, nor in partnership with each other, and should state the facts upon which their opinion has been formed; *e.g.*, delusions (specifying the nature of the delusions), incoherence, imbecility, fatuity, alteration of conduct and affections, dirty habits, &c.

These certificates should be as complete as possible, and should contain all information obtainable in regard to the patient's malady.

No. 4. Form of statement to accompany Medical Certificates.

Form of Magistrate's Statement.

Section 29.

Name of patient with Christian name at length.....Sex and age.....Nation: if European, to what country belonging, how long in the Colony.....If coloured, to what tribe or race belonging.....Married, single or widowed.....Condition of life and previous occupation (if any).....The religious persuasion, as far as known....Previous place of abode, and district.....Whether first attack, and if not, how many previous attacks.....Age, if known, on first attack.....When and where previously under care and treatment.....Duration of existing attack..... Whether subject to epilepsy.:..... Whether suicidal.....Whether dangerous to others..... Cause of insanity, and whether hereditary.....Whether friends and relatives are able to pay for maintenance in an asylum, and if so, to what extent.....Name and address of relative to whom notice of death to be sent.....Special circumstances, if any, preventing the patient being examined separately by two medical men.....

Dated this .....day of.....18....

(Signed).....Resident Magistrate.

No. 5. Order for the conveyance of a Lunatic not wandering at large to some place of safe keeping.

Section 27.

Whereas it has been made to appear to me Resident Magistrate of the District of by information on oath that of , a person not wandering at large, is deemed to be a lunatic, and is not under proper care, treatment or control (or is cruelly treated, or neglected by C.D., a relative, or a person having the care and charge of him, as the case may be).

And whereas it appears to me upon a personal visit to and examination of the said , and enquiry made into the matter appearing upon such information (or upon the report of and , medical practitioners, directed and authorised by me to visit and examine the said , and report their opinion of his mental state) that the said is a lunatic, and is not under proper care, treatment and control (or is cruelly treated or neglected by the said C.D., a relative, or otherwise, as the case may be).

Now, therefore, I authorise and require you to take the said , and convey him to (the place appointed for his reception and detention), there to be received by ,

Digitised by the University of Pretoria, Library Services, 2016

and detained in accordance with a Summary Reception order of even date.

Given under my hand at , this day of 18 .

Resident Magistrate.

No. 6.—Summary Reception Order.

Section 27.

Whereas it has been made to appear to me Resident Magistrate of the district of by information on oath, that of is deemed to be a lunatic, and having directed and , medical practitioners, to visit and examine the said and report their opinion upon his mental state. And whereas upon consideration of the report of the said medical practitioners, and having personally visited and examined the said , and made such enquiry as I have deemed necessary, I am satisfied that he is a lunatic, and is not under proper care, treatment, or control (or is cruelly treated, or neglected, as the case may be), and that he is a proper person to be taken charge of and detained under care and treatment, do hereby direct you to receive the said and to detain him in (state the place), for a period not exceeding one month, subject to such further order as may be made in regard to him.

Given under my hand at this day of 18 .

Resident Magistrate.

NOTE.—No person may be detained under a Summary Reception Order for a period exceeding one month, without an order for further detention from a Judge.

No. 36—1891.] [Promulgated 21st August, 1891.

ACT

To Abolish the Exemption from Certain Rates in respect of Certain Immovable Property vested in Her Majesty the Queen in Her Colonial Government, or occupied by the said Government for public purposes.

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

Repeal of repugnant laws.

1. So much of section one hundred and fifteen of "The Municipal Act, 1882," or of any other law as is repugnant to or inconsistent with the provisions of this Act, is hereby repealed.

Immovable property belonging to Colonial Government situated in municipalities, to be rateable for municipal purposes.

2. From and after the taking effect of this Act any immovable property which is situated within the limits of any municipality or corporate town, and which is vested in Her Majesty the Queen in Her Colonial Government, or occupied by the Colonial Government for public purposes, shall, subject to the provisions hereafter contained, be liable to be rated for municipal purposes, by the

Digitised by the University of Pretoria, Library Services, 2016

No. 36 1891.

council of such municipality, or town, to the same extent, and in the same manner, as if the said property had been owned or occupied, as the case might be, by a private person.

Property exempt from municipal rates on other grounds than mere ownership by Government to remain exempt.

3. Nothing in this Act contained shall render liable to any municipal rate any immovable property vested in Her Majesty as aforesaid, or occupied by the Colonial Government, which at the date of the taking effect of the Act may be exempt from municipal rates on other grounds than the mere ground of such ownership or occupation.

Lands and other property exempt from the provisions of the 2nd section of this Act.

4. Notwithstanding the provisions of the second section of this Act, no rates save and except such rates as may be imposed and may be payable under the terms of any Act regulating the Municipal Government of any corporate town, shall be levied by or be payable to the Council of any Municipality or corporate town in respect of

(*a*) Any land which has not been built upon, or upon which permanent works or improvements have not been effected.

(*b*) Any dock, breakwater, wharf, pier, retaining wall, or immovable property of any kind (not being a dwelling house or a store or building from which revenue is derived by any harbour authority), which forms part of or is used for the purpose of any harbour works.

(*c*) Any line of railway and railway buildings, situated in any part of the Colony.

(*d*) Any gaol or convict station.

(*e*) Any land or buildings the property of the Colonial Government, but occupied by Her Majesty the Queen in Her Imperial Government for Naval or Military purposes.

Rates not to be levied on Houses of Parliament and certain immovable property under control of Harbour Board.

5. No rates shall be levied by or be payable to the Town Council of Cape Town upon

(1) The building and grounds situate at Cape Town and known as the Houses of Parliament.

(2) Any immovable property, other than dwelling houses erected after the promulgation of this Act, which is under the control of the Table Bay Harbour Board, and is situated within the Dock area as enclosed for Customs purposes, and any land reclaimed from the sea which is under similar control and upon which no dwelling house has been erected.

Rates levied under this Act to be paid out of Treasury.

6. The amount of any rates duly imposed hereafter upon any such immovable property as is mentioned in the second section shall be paid to the council entitled to receive the same out of the Colonial Treasury.

Short title.

7. This Act may be cited for all purposes as the "Crown Property Rating Act, 1891."

Digitised by the University of Pretoria, Library Services, 2016

No. 37—1891.] [Promulgated 21st August, 1891.

ACT

To Amend "The Scab Act, 1886."

Preamble.

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

Upon petition, Scab Act may be declared in force in division not adjoining area where the Act is already in force.

1. Notwithstanding anything to the contrary contained in Act No. 28 of 1886, commonly called "The Scab Act, 1886," it shall be lawful for the Governor to proclaim the said Act in any division, not adjoining any area or district where the Act is in force, upon receiving a petition to that effect from a majority of persons whose names appear upon the Divisional Council Voters' Roll for such division, outside the limits of any municipality, or area where the Village Management Act is in force.

Operation of Acts may be suspended upon request of Divisional Council.

2. If the Divisional Council of any division in which, or in any area in which the Scab Acts are in force, shall request the Governor to suspend the operation of the said Acts in such division or area, as the case may be, the Governor shall suspend their operation accordingly by proclamation in the *Gazette*; provided that no such request shall be made, save at the instance of two-thirds of the persons whose names appear on the Divisional Council Voters' Roll for such division, outside the limits of any municipality or any area where the Villages Management Act, No. 29 of 1881, is in force.

Proviso.

Six weeks' notice to be given of intention to request suspension.

3. It shall not be lawful for the Governor to grant such request as in the preceding sections mentioned, unless at least six weeks' previous notice shall have been given by such Divisional Council of its intention to make such request; such notice to be by advertisement, to be published twice in the English and Dutch languages in some newspaper published in such division or area, or if there shall be no newspaper published in such division or area, then twice in some newspaper circulating in such division or area.

Publication of notice.

Names of persons signing petitions both for and against suspension of Acts, to be struck out of both petitions.

4. If upon any petition or memorial praying for the suspension of the operation, as in the second section provided, of the Scab Acts in any area or division in which the said Acts are in force, there shall appear the name of any person whose name shall also appear upon any petition or memorial which may be presented to the Governor objecting to such suspension, then the said name shall be of no effect and shall be considered as if struck out of both petitions or memorials.

Governor may make regulations for direction of inspectors, &c.

5. The Governor may from time to time issue, alter and rescind regulations and instructions for the direction of inspectors and other persons appointed under the Scab Acts, and may by such regulations or instructions authorise the delegation by inspectors to subordinates of any powers granted to such inspectors under the provisions of the Scab Acts.

Digitised by the University of Pretoria, Library Services, 2016

No. 38—1891.

Amendment of Sec. 12 of The Scab Act, 1886.

6. Section twelve of "The Scab Act, 1886," shall be read as if the following words were inserted after the word "farm;" "or any number of sheep together."

Sec. 2 of Act 33 of 1888, repealed and new section substituted.

7. Section two of Act 33 of 1888 is hereby repealed, and the following substituted: "No person shall during any period for which a licence under the fifth section of the Scab Act, 1886, is granted, remove, or cause to be removed, or aid in removing from the place which may be therein specified, all or any of the sheep for which such licence is given, except with the written permission of an inspector duly appointed for the area or district wherein such place is situated, and for every contravention of this section the person contravening shall be liable to the penalties prescribed in the sixth section of the said Act; provided, however, that if any such owner shall upon the demand by the inspector granting such licence show satisfactory or reasonable grounds for the removal of such sheep, he shall not be deemed to have contravened this section."

Governor may proclaim Scab Acts in force in any area not within limits of any division.

8. The Governor may, by Proclamation in the *Gazette*, declare the Scab Acts to be in force and operation in any extent of country in this Colony or the Transkeian Territories thereof, which extent does not lie within the limits in which any Divisional Council has authority.

Amendment of Sec. 8 of Act 33 of 1888.

9. The following shall be added to section eight of Act 33 of 1888: "Or to the nearest pound outside such Scab area in a district not a proclaimed Scab area."

Short title, and effect of Act.

10. This Act may be cited as "The Scab Act Amendment Act, 1891," and shall be read as one with the said Act No. 28 of 1886.

No. 38—1891.] [Promulgated 21st August, 1891.

ACT

To Amend the Act No. 36 of 1886, commonly called "The Game Law Amendment Act, 1886."

Preamble.

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

Penalty in Section 4 of Act 36 of 1886 expunged and different penalty inserted.

1. All the words after "Governor" in the fourth section of the Act No. 36 of 1886, commonly called "The Game Law Amendment Act, 1886," are hereby expunged, and the following inserted in their stead, "under penalty for the first conviction of a fine not exceeding twenty-five pounds or, in default of payment thereof, imprisonment with or without hard labour, not exceeding three months, and for a second or any subsequent conviction, a fine of £50, or in default of payment thereof to imprisonment with or without hard labour for a period not exceeding six months; provided, however, that landed proprietors and persons authorised by them shall, without having such special permission, be at liberty to shoot elephant upon the property of such landed proprietors."

Digitised by the University of Pretoria, Library Services, 2016

Licence of £3 for persons selling, hawking, or exposing game for sale.

2. From and after the passing of this Act, no person shall, anything to the contrary in the fourth section of the "Game Law Amendment Act, 1886," or any other law notwithstanding, sell, barter, hawk, or expose for sale any game, without having previously taken out a licence, to be duly issued by any Distributor of Stamps or any other authorised officer, which licence shall be in addition to the licence to kill, catch, capture, pursue, hunt, or shoot at game required by the said section of the said Act, and shall be issued subject to the following conditions :

Conditions of licence.

(*a*) No such licence shall be issued by any Distributor of Stamps or any other authorised officer, without a certificate from the Resident Magistrate of the district, that the applicant for such licence is to the best of his knowledge and belief a fit and proper person to sell game.

(*b*) Every such licence shall, no matter at what period of the year the same be taken out, expire on the 31st December following; provided that when any such licence shall be taken out from or after the first of July, there shall be payable only one half of the sum appointed in respect of such licence.

(*c*) The sum of three pounds sterling shall be payable in respect of every such licence

Every person who shall sell, barter, hawk or expose for sale any game, without having previously taken out such licence, shall be liable to a penalty not exceeding ten pounds, or, in default of payment, to imprisonment, with or without hard labour, for a period not exceeding one month, unless the fine be sooner paid: Provided that nothing in this section contained shall apply to the selling, bartering, hawking or exposing for sale by the owner or occupier of land of any game killed upon the land owned or occupied by him.

Not to apply to owners or occupiers of land.

Amendment of section 7 of Act 36 of 1886.

3. After the words "shoot at any game" in the seventh section of the said Act, there shall be inserted the following words, "or with gun or dog trespass." And there shall be added to the said section the following: "For the purposes of this section the word 'owner' shall be taken to include the occupier or the person entitled to the right to shoot game on the lands in question."

Section 5 of Act 36 of 1886 not to apply to possession of game transmitted from district in which at time of transmission there was no close season.

4. Nothing in the fifth section of Act No. 36 of 1886 contained shall render it illegal to possess game in any district during the close time of such district if such game shall have been transmitted into such district from some other district in which at the time of such transmission there shall not have been a close season for such game.

5. All fines and penalties under this Act shall be recoverable in the court of the Resident Magistrate of the district in which the offence shall have been committed.

Short title and effect of Act.

6. This Act may be cited as "The Game Law Amendment, Act, 1891," and shall be read as one with "The Game Law Amendment Act, 1886."

Digitised by the University of Pretoria, Library Services, 2016

Digitised by the University of Pretoria, Library Services, 2016

ACTS OF THE CAPE PARLIAMENT.

No. 1—1892.] [Promulgated 24th June, 1892.

ACT

To Apply a further Sum not exceeding Eighty-seven Thousand One Hundred and Forty-three Pounds Sterling for the Service of the year ending the 30th June, 1892.

Preamble.

WHEREAS it is necessary to provide for certain expenditure necessarily incurred and to be incurred during the year ending on the 30th June, 1892, in addition to the sums provided by the Acts No. 2 and 30 of 1891: Be it therefore enacted, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Public Revenue charged with £87,143.

1. The public revenue of the Colony of the Cape of Good Hope is hereby charged towards the service of the year ending on the 30th June, 1892, with a further sum of Eighty-seven Thousand One Hundred and Forty-three Pounds Sterling, in addition to the several sums provided for by the said Acts No. 2 and 30 of 1891.

How to be applied.

2. The money granted by this Act shall be applied to the purposes and services expressed in the Schedule annexed hereto, and more particularly specified and set forth in the explanatory detailed Schedule to this Act submitted to Parliament.

Short title.

3. This Act may be cited for all purposes as the "Additional Appropriation 1891-'92 Act, 1892."

SCHEDULE.

Schedule.

Additional Appropriation, 1891-'92.	Establishments.	Services, exclusive of Establishments.	Total.	Required to be provided for.
	£	£	£	£
1. Ministerial Department of Colonial Secretary	2,173	23,231	25,404	17,547
2. Ministerial Department of Treasurer of the Colony	1,244	17,580	18,824	5,877
3. Ministerial Department of Attorney-General	572	750	1,322	1,322
4. Ministerial Department of Commissioner of Crown Lands and Public Works ..	1,002	59,635	60,637	60,637
5. Ministerial Department of Secretary for Native Affairs	113	1,899	2,012	1,760
Grand Total	5,104	103,095	108,199	87,143

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1892.] [Promulgated 24th June, 1892.

ACT

To Apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1893.

Preamble.

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

Revenue charged with £400,000 towards service of year ending 30th June, 1893.

1. The public revenue of the Colony of the Cape of Good Hope is hereby charged towards the service of the year ending the 30th June, 1893, with a sum not exceeding Four Hundred Thousand Pounds Sterling (£400,000), which sum shall be applied towards the service of the year in conformity with the estimates of the expenditure for the said year which have been presented to Parliament.

Short title.

2. This Act may be cited for all purposes as "The Appropriation (part 1892 93) Act, 1892."

No. 3—1892.] [Promulgated 24th June, 1892.

ACT

To Amend the Cape of Good Hope General Loans Acts, 1881 and 1883.

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

Repeal of sub-section (1) of section 9 of Act 16 of 1881.

1. Sub-section (1) of Section 9 of Act 16 of 1881 is hereby repealed, and the second section of this Act shall be read in lieu thereof; but such repeal shall not affect any act done, any right acquired, or any liability incurred heretofore under the terms of the said sub-section.

Governor may declare any loan of the Colony to be convertible into Colonial Stock or Consolidated Stock.

2. The Governor may from time to time declare any loan of this Colony, whether already issued or about to be issued at the time of such declaration in the form of Debentures or Consolidated Stock or Colonial Stock, to be convertible into Colonial Stock or Consolidated Stock, as the case may be, of such denominations and on such conditions as he may, before the creation of the stock issued in exchange, see fit to prescribe: Provided that the holder of any Colonial Stock converted into Consolidated Stock shall be required to pay any amount payable under the hundred and fourteenth Section of Act 54 and 55 Viet. Ch. 39, or other Act in force in the United Kingdom at the date of conversion, as composition for Stamp duty chargeable on transfers of Stock.

Digitised by the University of Pretoria, Library Services, 2016

Loans converted under this Act chargeable on Colonial revenue.

3. All loans converted under the authority of this Act, and all charges and expenses incurred in carrying out the provisions hereof, shall be chargeable upon and payable out of the revenues of this Colony.

Interest on Colonial Stock, bearing interest at 3½ per cent. per annum, when payable.

4. The interest on all Colonial Stock bearing interest at the rate of three-and-a-half per cent. per annum, whether such stock has been already issued, or may be issued hereafter, shall, from and after the taking effect of this Act, be payable on the first day of January, and the first day of July in each and every year, anything in the Cape of Good Hope General Loans Acts, 1881, 1883 and 1888, to the contrary notwithstanding.

First payment of such interest on such existing Colonial Stock.

5. The first payment of interest after the taking effect of this Act on Colonial Stock of the denomination in the preceding section mentioned, and in existence at the date of the said taking effect, shall become due on the first half-yearly date prescribed in the said preceding section, which shall happen after the promulgation of this Act.

Governor may frame regulations for carrying into effect conversions.

6. The Governor may, from time to time, frame or approve of regulations, not inconsistent with this Act, for carrying into effect the conversions hereby authorised, and for the adjustment and alteration of the dates upon which interest upon any stock converted shall become payable.

Governor may raise money authorised to be raised by issue in Colony of Cape of Good Hope Consolidated Stock.

7. From and after the taking effect of this Act, it shall be lawful for the Governor, anything in the Cape of Good Hope General Loans Acts, 1881, 1883 and 1888 to the contrary notwithstanding, to raise the whole or part of any sum of money authorised by Parliament by the issue in this Colony of Cape of Good Hope Consolidated Stock; such stock so issued shall be registered in the stock books of the treasury, and while so registered shall be subject to all the provisions of the law as to transfer in the said books which affect Colonial Stock, but it may be transferred to the register of Consolidated Stock in England in accordance with such regulations, not inconsistent with this Act, as the Governor may from time to time approve.

Nominal amount of debentures or stock issued not to exceed amount authorised by Parliament.

Loan raised at a premium.

8. In the case of any loan hereafter raised under any authority granted or to be granted by Parliament, the nominal amount of debentures or stock issued shall not exceed the amount authorised by Parliament to be borrowed for the work or service, and in the event of the loan being raised at a premium, any premium accruing over and above the amount so authorised, shall after deducting the expenses incurred in raising such loan be paid to the Commissioners of the Sinking Fund to be by them applied in reduction of the Debt of the Colony, in manner provided by law.

Effect and short title of Act.

9. This Act shall be construed as one with "The Cape of Good Hope General Loans Acts, 1881, 1883 and 1888," and may be cited as "The Cape of Good Hope General Loans Act, 1892."

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1892.] [Promulgated 14th July, 1892.

ACT

To make better Provision for the Management of Reformatory Institutions and the Apprenticeship of Juvenile Offenders in Custody in such Institutions.

Preamble.

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

Effect and short title.

1. This Act shall be read as one with the "Reformatory Institutions Act, 1879," and may be cited as the "Reformatory Institutions Act, 1892."

Meaning of "The Minister."

2. "The Minister" for the purposes of this Act means the Minister to whom the management of Reformatory Institutions shall be assigned by the Governor.

Removal by Minister's warrant of Juvenile Offenders from prison to Reformatory Institution, and apprenticeship of such offenders.

3. The Minister may by warrant under his hand remove to any Reformatory Institution any child under the age of sixteen years who is in custody under sentence in any prison, and such warrant shall authorise the detention of such child in such Institution or his apprenticeship under the provisions of the "Reformatory Institutions Act, 1879," and of this Act; provided that

(*a*) Such child may be detained under apprenticeship until the expiration of such sentence, notwithstanding that he may before that time reach the age of sixteen years;

(*b*) The Minister may, at any time, by warrant under his hand, remove such child from the Reformatory Institution to any prison, there to undergo the remainder of his sentence.

Destitute children, not apprenticed by Resident Magistrates made inmates of Industrial Home or Reformatory Institution by warrant of Minister.

4. The Minister may by warrant under his hand transfer any destitute child to an industrial home, or if that be found impracticable to a Reformatory Institution, if he shall be satisfied on information received from any Resident Magistrate that after the lapse of a reasonable time and the exercise of reasonable endeavours such Resident Magistrate has been unable to apprentice such child to any relative or any fit and proper person under the provisions of the Masters and Servants Acts, 1856 to 1889, and such child if so transferred to a Reformatory Institution shall, until he attain the age of sixteen years, or until he be apprenticed, be an inmate of such Reformatory Institution within the meaning of the Act No. 7 of 1879 and of this Act: Provided that the Minister may at any time order the discharge of such child if not lawfully apprenticed.

Age to which inmate may be detained or apprenticed.

5. Notwithstanding anything to the contrary contained in the "Reformatory Institutions Act, 1879," or in this Act, any child being an inmate of any Reformatory Institution may, with the consent of the Minister, be there detained as an inmate until he shall have attained the age of eighteen years; or may be apprenticed to any useful calling or occupation in manner provided by

Digitised by the University of Pretoria, Library Services, 2016

the Act No. 7 of 1879 and this Act, until he shall have attained the age of twenty-one years; if in either case such child when of the full age of fifteen years shall in writing signed by or bearing the mark of such child and executed before a Resident Magistrate, intimate his full and free consent to such detention or apprenticeship beyond the age of sixteen years: Provided that such consent shall not be required from any child apprenticed until the expiration of the period for which he was sentenced under section three of this Act.

Application of Masters and Servants Acts.

6. The provisions of the Masters and Servants Acts, 1856 to 1889, relating to apprentices, save in so far as they may be inconsistent with any provision of the "Reformatory Institutions Act, 1879," or of this Act, shall, so far as they are applicable, be of full force with regard to every child apprenticed under the last named Acts throughout the term of the apprenticeship of such child.

Minister's consent sufficient for apprenticeship.

7. Notwithstanding the refusal or failure on the part of any parent or guardian to consent to the apprenticeship of any inmate of a Reformatory Institution, such apprenticeship may take place with the consent of the Minister, after due inquiry by him into the circumstances of the case.

Jurisdiction of Resident Magistrates in respect of contract of apprentices.

8. Every Resident Magistrate shall have jurisdiction in any case brought against any person being at the time within his district, for any offence or any breach of duty, or obligation under any contract of apprenticeship under the "Reformatory Institutions Act, 1879," or this Act, and may in the exercise of such jurisdiction enforce the performance by every master and every apprentice of the duties and obligations imposed on them respectively by law, whether the offence, or breach of duty, or failure to observe any obligation in the contract shall have occurred within the area of his jurisdiction or not.

Persons who may enforce the duties and obligations of masters.

9. The duties and obligations of any master referred to in the last preceding section of this Act may be enforced at the instance of the apprentice, or of his parent or guardian, or of any person authorised in writing by the Attorney-General (or by the Solicitor-General and Crown Prosecutor within their respective jurisdictions), or by the Superintendent of the Reformatory Institution from which the child was apprenticed.

Cancellation of contract by Court of Resident Magistrate on breach by apprentice or master.

10. If it be proved to the satisfaction of the Court of the Resident Magistrate that any master or any apprentice has broken a material condition of any contract of apprenticeship, such Court may direct the said contract to be cancelled, and shall thereupon by warrant under the hand of the Resident Magistrate either return the child to the Reformatory Institution from which he was apprenticed, or by writing under the hand of the said Resident Magistrate transfer the said contract to some fit and proper person ready and willing to undertake the duties and obligations of the master under such contract for the unexpired period thereof:

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1892.

Provided that

(*a*) Any Resident Magistrate who may authorise any such person to become the master of such apprentice for such period, shall forthwith give notice in writing, setting forth the full name and address of such person to the Superintendent of the Reformatory Institution from which such child was apprenticed;

(*b*) The cancellation of any contract shall not be deemed to deprive any master or apprentice of any right or remedy which had accrued to him before the cancellation of such contract;

(*c*) Any child returned under warrant under this section to any Reformatory Institution may be dealt with as though he had not been apprenticed under the cancelled contract, but had continued to be an inmate of such Reformatory Institution;

(*d*) No apprentice shall without his consent given in manner provided by the fifth section of this Act, be detained after his return by warrant under this section in any Reformatory Institution, if he had reached the age of sixteen years at the time of the cancellation of his contract of apprenticeship, unless he shall have been apprenticed under the provisions of section three of this Act, and unless any portion of the period of his sentence has not yet expired, in which case he may be there detained until his removal is authorised by warrant of the Minister in accordance with the said section to undergo in any prison the remainder of such sentence.

Section 22 of Act No. 7 of 1879 repealed. Offences in relation to the inmates and premises defined, and penalties enacted.

11. The twenty-second section of the Reformatory Institutions Act, 1879, is hereby repealed, and from and after the taking effect of this Act any person who, without authority under regulations duly framed in terms of the last named Act or of this Act, shall

(*a*) Hold communication with any inmate of any Reformatory Institution; or

(*b*) Give to or receive from any such inmate any article or thing whatsoever; or

(*c*) Enter any Reformatory Institution or any building, yard, or ground attached or belonging thereto and refuse when ordered by any duly authorised officer of such institution to depart therefrom,

shall be liable on conviction to a fine not exceeding ten pounds sterling, or in default of payment of such fine to imprisonment with or without hard labour for any term not exceeding three months, or, in the case of an offender under the age of sixteen years, to twelve cuts with a cane.

Punishment of breach of duty by subordinate officers of Reformatory Institutions.

12. Any officer of any Reformatory Institution not being a superintendent, assistant superintendent, schoolmaster, or medical officer, who shall be guilty of deserting from the institution, or of

Digitised by the University of Pretoria, Library Services, 2016

any neglect or violation of duty or of contravening any of the rules or regulations made by the Governor, shall, upon conviction before any Resident Magistrate having jurisdiction, be liable, unless any other penalty is by any law specially provided for his offence, to a fine not exceeding ten pounds sterling, or in default of payment, to imprisonment with or without hard labour for any term not exceeding three months.

Sections 16 and 26 of Act No. 7 of 1879 repealed. Power of Governor to make regulations.

13. The sixteenth and twenty-sixth sections of the Act No. 7 of 1879, together with all rules and regulations made and published under the last mentioned section shall be repealed from and after the date of a notice in the *Gazette*, publishing rules and regulations made under this section, and the Governor may from time to time by notice in the *Gazette* make, repeal, or amend rules and regulations for all or any of the following objects or purposes:

(*a*) For the general government, management, and inspection of Reformatory Institutions and their officers and inmates;

(*b*) For the regulation of the periods of service and the duties and conduct of officers and inmates of Reformatory Institutions;

(*c*) For the mode of supplying food, the scales of diet, and the clothing and necessaries to such officers and inmates;

(*d*) For the safe custody of inmates of Reformatory Institutions when at labour or otherwise;

(*e*) For rewards by mitigation or remission of sentence or otherwise to well conducted inmates;

(*f*) For the granting and withdrawing of indulgences to inmates;

(*g*) For preventing the supply to inmates and the introduction into Reformatory Institutions of any article of food or drink, or any other article, without proper authority;

(*h*) For assigning to certain officers of Reformatory Institutions power and jurisdiction to try and punish inmates who may be found guilty of any breach of any rule or regulation;

(*i*) For the visiting and inspection of children apprenticed under the provisions of the Reformatory Institutions Act, 1879, or of this Act.

By such rules and regulations the Governor may impose a penalty at his discretion for any breach of any such rule or regulation, or different penalties in case of successive breaches.

Repeal of sections 16 and 26 of Act No. 7 of 1879 not to affect acts committed before date of repeal.

14. The repeal of the sixteenth and twenty-sixth sections of the Act No. 7 of 1879 shall not alter the liability of any person in respect of any act or omission or of any matter or thing done or occurring before the date of the notice in the *Gazette* in the last preceding section mentioned, but such acts, omissions, matters, and things shall be judged of as though this Act had not been passed.

Repeal of section 12 of Native Territories Penal Code.

15. From and after a date notified by the Governor in the *Gazette*, section twelve of the "Native Territories Penal Code" shall stand repealed.

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1892.] [Promulgated 14th October, 1892.

ACT

To Repeal the Act No. 7 of 1882, commonly called "The Friendly Societies Act, 1882," and to make other provisions in lieu thereof.

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

Repeal of the Act No. 7 of 1882.

1. The Act No. 7 of 1882, commonly called "The Friendly Societies Act, 1882," is hereby repealed, but this repeal or anything in this Act contained shall not affect the past operation of the said Act, or the force or operation, validity or invalidity of anything done or suffered, or any bond or security given, right, title, obligation or liability accrued, contract entered into, or proceedings taken under the said Act, or under the rules of any society registered thereunder, before the taking effect of this Act.

Definitions.

2. In the interpretation of this Act the following terms shall bear the meanings respectively set opposite them:

"Friendly Society."—Every Friendly Society or affiliated Branch thereof established under the provisions of this Act, as well as every Friendly Society established under the Friendly Societies Act, 1882, and in existence at the taking effect of this Act.

"Registrar."—The Registrar of Friendly Societies appointed under this Act.

"Treasurer."—The officer appointed by the Society to act in that capacity.

"Minister."—The Minister for the time being charged by the Governor with the administration of this Act.

"Committee of Management."—The body of persons appointed to manage and direct the affairs of a Friendly Society, by whatever name such body may be called.

"The Court"—shall mean the Supreme Court, the Court of the Eastern Districts, the High Court of Griqualand West, or any Circuit Court, in their respective jurisdictions.

Friendly Societies may be instituted under this Act.

3. It shall be lawful for any number of persons, not being less than ten, to form and establish under the provisions of this Act a Friendly Society for the purpose of raising by the voluntary subscription of the members thereof, with or without the aid of donations, a fund for any of the following purposes:

Purposes of such societies.

(*a*) The relief or maintenance of members, their husbands, wives, children, fathers, mothers, brothers, sisters, nephews, nieces, or kindred, in infancy, old age, widowhood, sickness or other infirmity, bodily or mental, or the endowment of members or nominees of members at any age.

Digitised by the University of Pretoria, Library Services, 2016

(*b*) Providing medical attendance and procuring medicines for the persons mentioned in the foregoing clause (*a*), or any of them.

(*c*) Insuring a sum of money to be paid on the birth of a member's child, or on the death of a member or for the funeral expenses of the husband, wife or child of a member.

(*d*) Any purpose which shall be authorised by the Governor as a purpose to which the facilities and powers of this Act ought to be extended; provided that no member shall contract for an annuity exceeding £30 per annum, except with the special consent of the Registrar, who may allow an annuity not exceeding £60 per annum to be contracted for, or any other contingency exceeding £200.

Societies remaining under operation of Act No. 7 of 1882.

4. Any Friendly Society may at any time hereafter register itself, in manner and subject to the conditions hereinafter prescribed, as a Friendly Society under the provisions of this Act; provided that until so registered, every Friendly Society registered under "The Friendly Societies Act, 1882," shall remain under the operation of that Act as if the same had not been repealed.

Appointment of Registrar.

5. The Governor may from time to time appoint an officer to be known as the Registrar of Friendly Societies, who shall be charged with the registration of Friendly Societies in manner provided by this Act, and shall have the custody of all returns and documents required by this Act.

Rules to be framed before society established under this Act.

6. Before any Friendly Society shall be established under this Act, the persons intending to establish the same shall agree upon and frame a set of rules for the regulation, government, and management of such society; and in such rules they may, amongst other things, make provision for appointing a general committee of management of such society, and delegating to such committee all or any of the powers given by this Act to the members of Friendly Societies formed, established, or registered under or by virtue of the same; and such rules shall set forth:

(1) The name of the society, and place of meeting for the business of the society.

(2) The whole of the objects for which the society is to be established, or for which it exists, the purposes for which the funds thereof shall be applicable; and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such society.

(3) The manner of making, altering, and rescinding rules.

(4) A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.

(5) A provision for the investment of the funds, and for periodical audit of accounts to be conducted at least once in every year.

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1892.

(6) The manner in which disputes between the society and any of its members, or any persons claiming by or through any member, or under the rules, shall be settled.

And the rules of every such society shall provide that all moneys received or paid on account of each and every particular fund or benefit assured to the members thereof, their husbands, wives, children, fathers, mothers, brothers, sisters, nephews, nieces, or kindred, for which a separate table of contributions payable shall have been adopted, shall be entered in a separate account, distinct from the moneys received and paid on account of any other benefit or fund; and also that a contribution shall be made to defray the necessary expenses of management and the medical expenses, if any, and an account of such contributions and such management and medical expenses shall be kept separate and distinct from the account of any other benefit or fund. The moneys belonging to any one such benefit or fund shall not be used in any manner for the advantage of any other benefit or fund: Provided, always, that it shall be lawful to apply any savings out of moneys applicable for management and medical expenses, in aid of any of the funds and benefits of the society.

Provisions with respect to registration.

7. With respect to the registration of Friendly Societies under this Act, the following provisions shall have effect:

(1) No Friendly Society shall be registered which does not consist of ten persons at least.

(2) For the purpose of registration, an application to register the society, signed by seven members and the secretary, or other officer, and written or printed copies of the rules, together with a list of the names of the secretary and of every trustee or other officer authorised to sue and be sued on behalf of such society, shall be sent to the Registrar.

(3) Along with the application for registration, a copy of the proposed tables of contributions and benefits shall be forwarded to the Registrar: such tables shall in every case provide for the payment by the members of a contribution for management and medical expenses, separate and distinct from the contributions of the sick and funeral and other benefits. On receipt of such tables the Registrar shall test the adequacy of the contributions for the proposed sick and funeral or other benefits (without reference to the management and medical expenses) by the aid of standard tables of sickness and mortality. After having done so the Registrar shall, if in his opinion such contributions are insufficient to provide for the promised benefits, report to that effect to the Minister, and shall embody in such report a table of higher contributions which he considers sufficient, and no society shall be allowed to register unless it be shown to the satisfaction of the Registrar that the contri-

Digitised by the University of Pretoria, Library Services, 2016

butions which it proposes to charge are adequate to provide for the benefits which it undertakes to grant.

(4) No society shall be registered under a name identical with that under which any other existing society is registered or so nearly resembling such name as to be likely, or in any name likely, in the opinion of the Registrar, to deceive the members of the public as to its nature and its identity, and no society shall change its name without the sanction of the Registrar.

Certificate of registration.

8. The Registrar on being satisfied that a Friendly Society has complied with the provisions as to registration required by this Act, and that the rules of such society are in accordance with the provisions of this Act, shall, subject to the approval of the Minister, issue to such society a formal certificate of registration in the form set forth in the Schedule A to this Act.

Appeals from refusal to register.

9. If the Registrar shall refuse to register any society or the rules or amended rules of any society, such society may apply to the court for an order compelling him so to register the said society, rules or amendments, and the court may make such order and give such directions as may be necessary and the circumstances of the case may require.

Cancelling and suspending of registration.

10. With respect to the cancelling of the registration of Friendly Societies the following provisions shall have effect :

(1) The Registrar may cancel the registration of a Friendly Society by writing under his hand (*a*) at the request of such society, evidenced in the manner provided in sub-section three of this section, (*b*) with the approval of the Minister, on proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that a society exists for an illegal purpose and has wilfully and after notice from the Registrar violated any of the provisions of this Act or has ceased to exist.

(2) The Registrar, in any case in which he might, with the approval of the Minister, cancel the registration of a society, may suspend the same by writing under his hand for any term not exceeding three months, and may, with the approval of the Minister, renew such suspensions from time to time for the like period.

(3) Not less than three months previous notice in writing, specifying the ground of any proposed cancellation or suspension of registration, shall be given by the Registrar to a society before the registration of the same can be cancelled (except at its request expressed by a majority of not less than three-fourths of the members of such society at a meeting specially called for that purpose) or suspended; and notice of every cancellation or suspension shall be published in the *Gazette*, and in some newspaper circulating in the district in which the registered office of

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1892.

the society is situated, as soon as practicable after the same takes place.

(4) Any society whose registration has been cancelled, or has been suspended for a period of six consecutive months, may apply to the court for an order compelling the Registrar to place the society again upon the register, or to rescind the suspension, as the case may be.

(5) A society whose registration has been suspended or cancelled shall from the time of such suspension or cancelling (but if suspended, only whilst such suspension lasts) absolutely cease to enjoy, as such, the privileges of a registered society but without prejudice to any liability previously incurred by such society which may be enforced against the same as if such suspension or cancellation had not taken place.

Power to amend rules.

11. It shall be lawful for any Friendly Society, by a resolution at a meeting specially called for that purpose to alter, amend or rescind any of its rules or to make new rules, but no amendment of a rule or new rule made by a registered society shall be valid unless the same has been registered under this Act, for which purpose copies of the same, signed by three members and the secretary, shall be sent to the Registrar, who shall, if satisfied that such amendment or new rule is not contrary to the provisions of this Act, issue to the society a certificate of registration in the form set forth in the Schedule B to this Act, which shall be conclusive evidence that the same has been duly registered.

Registered office.

12. Every registered Friendly Society shall:

(1) Have a registered office to which all communications and notices may be addressed, and send to the Registrar notice of the situation of such office and of every change of such situation.

Copies of rules to be delivered on demand.

(2) Deliver to any person demanding the same, a copy of the rules of the society, on payment of a sum not exceeding one shilling for each copy so delivered, and if any person shall, with intent to mislead or defraud, give to any other person a copy of any rules, laws, regulations or other documents, other than the rules for the time being registered under this Act, on the pretence that the same are existing rules of a registered society, or that there are no rules of such society, or give to any person a copy of any rules on the pretence that such rules are the rules of a registered society, when the society to which such rules apply is not registered, the person so offending shall be deemed guilty of the crime of fraud.

Trustees to be appointed.

13. Every Friendly Society registered under this Act shall from time to time at a meeting called for that purpose and by a resolution of a majority of the members present and entitled to vote, appoint one or more trustees of the society, and send

Digitised by the University of Pretoria, Library Services, 2016

to the Registrar a copy of every resolution appointing a trustee or trustees signed by the trustee or trustees so appointed and by the secretary of the society.

Property to be vested in Trustees.

14. All property whatsoever, movable and immovable, including books and papers belonging to any Friendly Society registered under this Act, shall be vested in such trustee or trustees for the time being, for the use and benefit of such society and the members thereof; and the movable or immovable property of any branch of such society shall be vested in the trustees of such branch and be under the control of such trustee or trustees, and, upon the removal, resignation, or death of any such trustee or trustees, the same shall vest in the succeeding trustee or trustees for the same estate and interest as the former trustee or trustees had therein, without any cession, transfer, or assignment whatsoever; and in all actions or suits or indictments in any court, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in his or their proper name or names as trustees of such society without any further description.

Trustees to bring and defend actions.

15. The trustee or trustees of any such society are hereby authorised to bring or defend, or cause to be brought and defended, any action, suit, or prosecution, in any court, touching or concerning the property, right, or claim to property of the society for which he or they are such trustee or trustees as aforesaid. And such trustee or trustees shall or may, in all cases concerning the immovable and movable property of such society, sue and be sued in any court, in his or their proper name or names as trustee or trustees without any other description; and no such action, suit, or prosecution shall abate or be discontinued by the death of such person, or his resignation or removal from office of trustee, but the same shall and may be proceeded in, by, or against the succeeding trustee or trustees, as if such death, resignation, or removal had not taken place: Provided that every such prosecution shall be commenced under and subject to the law in force respecting private prosecutions.

Liability of Trustees.

16. No trustee or trustees of any such society shall be liable to make good any deficiency which may arise or happen in the funds of such society, but shall be liable only for the moneys which shall be actually received by him or them on account of such society.

Investment of society's funds.

17. The trustee or trustees of every Friendly Society established under this Act shall, from time to time, with the consent of the committee of management of such society, or of a majority of the members of such society, present at a general or special meeting thereof, or in accordance with the rules of such society, invest the funds of such society or any part thereof to any account in any bank on deposit, or in Government or municipal securities, or in the Post Office Savings Bank, or in first mortgage upon immovable property, or on such security as the rules of such

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1892.

society may direct, not being the purchase of immovable property except where a society may have a mortgage on such property and not being personal security. A society may, however (if the rules thereof so provide), for the purpose of holding the meetings and transacting the business of such society hold, purchase or take on lease, in the names of the trustees for the time being of such society, any land, and may sell, exchange, mortgage, lease or build upon the same with power to alter and pull down buildings and again rebuild, and no purchaser, assignee, mortgagee or tenant shall be bound to enquire as to the authority for any sale, exchange, mortgage or lease by the trustees, and the receipt of the trustees shall be a discharge for all moneys arising from or in connection with such sale, mortgage or lease; provided that no moneys shall be expended in the purchase as aforesaid of any land, or in building, pulling down, altering or rebuilding any building forming part of any fund that was not specially contributed for that purpose unless out of a clear surplus of such fund over and above the sum of ten pounds for every person interested therein, or forming part of any fund applicable for any of the purposes of section three, sub-section (*c*) of this Act, unless out of a clear surplus of such fund over and above the sum of one pound for every two pounds payable on the death of all the persons for the time being interested therein: Provided, further, that the provisions of this section shall not affect or apply to any funds of any Friendly Society already invested at the time of the taking effect of this Act, unless and until such funds shall again be uninvested.

Treasurer to give security.

18. The treasurer of every Friendly Society established under this Act, or any other officer who is required by the rules to give security, shall, before he take upon himself the execution of his office, become bound, with one or more sufficient sureties, in a bond as near as may be to the form set forth in schedule C to this Act, in such penal sum as the society or committee of management shall direct and appoint; and every such bond shall be given to the trustee or trustees of the said society for the time being, and shall be, by him or them, duly registered. And if the said bond shall become forfeited, it shall be lawful for such trustee or trustees to sue upon such bond for the use of such society.

Treasurer to render accounts to Trustees.

19. Every such treasurer or other officer, at such time as, by the rules of such society, he should render such account as is hereinafter mentioned, or upon being required so to do by the trustee or trustees of such society, or by a majority of the said committee of management, or by a majority of the members present at a meeting of the said society, called for that purpose within seven days after such requisition, shall render to the trustee or trustees of the society, or the said committee of management, or to the members of such society at a meeting of the society, a just and true account of all moneys received and paid by him since his appointment, or

Digitised by the University of Pretoria, Library Services, 2016

since he last rendered an account, and of the balance then remaining in his hands, and of all bonds or securities of such society, which account the said trustee or trustees, or committee of management, shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer, thereunto required, upon said accounts being audited shall forthwith hand over to the said trustee or trustees the balance which, on such audit, shall appear to be due from him; and shall also, if required, hand over to such trustee or trustees, all securities and effects, books, papers, and property of the said society in his possession or custody; and if he fail to do so, the trustee or trustees of the said society may sue upon the bond aforesaid, or may sue such treasurer in any court having jurisdiction, for the balance appearing to have been due from him, and for all moneys received by him on account of said society and not paid over, and for the securities and effects, books, papers, and properties in his possession or custody, leaving him to set off in such action the sums, if any, which he may have paid on account of said society, and in such action, the trustee or trustees shall be entitled to recover their full cost of suit, to be taxed as between attorney and client.

20. Every Friendly Society registered under this Act shall—

Audit.

(1) Once every year submit its accounts for audit to two or more persons appointed as the rules of the society provide, such auditors to have access to all the books and accounts of the society and to examine the general statement of the receipts and expenditure, funds and effects of the society, and verify the same with the accounts and vouchers relating thereto, and either to sign the same as found by them to be correct, duly vouched and in accordance with law, or specially report to the society in what respects they find it incorrect, unvouched or not in accordance with law. Such audit in every case where practicable to include an examination and comparison of the entries on the pence cards of the members with the corresponding entries in the receipt or cash book of the society, and the auditors to state in their report whether such examination and comparison have been made, and with what result.

Annual Returns.

(2) At least once in every year before the 1st day of June send to the Registrar a general statement (to be called the annual return) of the receipts and expenditure, funds and effects of the society as audited, which shall show separately the expenditure in respect of the several objects of the society, and shall be made out to the 31st December, then last inclusively, and a copy of the auditors' report shall accompany such annual return, and such annual return shall state the name, address and calling or profession of the auditors and the manner in which and the authority under which they were respectively appointed: and there shall also be sent

Digitised by the University of Pretoria, Library Services, 2016

with such general statement a list of the members of the society, together with the age of each, and the periods of sickness, the deaths and other contingencies in respect of which benefits are given by the society, experienced by the society during the year ending as aforesaid, specifying the members in respect of whom such sickness, deaths, or contingencies have been experienced, and such other information as the Registrar, with the approval of the Minister, may from time to time prescribe.

Quinquennial valuation.

(3) Once at least in every five years furnish to the Registrar full statistical information, to enable him to make or cause to be made an actuarial valuation of the liabilities and assets of the society. After such valuation has been made the Registrar shall send a statement of the results with a full report thereon to be circulated by the officers of the society amongst its members.

Inspection of books.

(4) Allow any member or person having an interest in the funds of the society to inspect the books during business hours at the registered office of the society or at any place where the same are kept.

Supplying copies of Annual Returns.

(5) Supply gratuitously every member or person interested in the funds of the society, on his application, with a copy of the last annual returns of the society for the time being.

Copies of returns o be kept.

(6) Keep a copy of the last annual balance sheet for the time being, and of the last quinquennial valuation for the time being, together with a report of the auditors, if any, always hung up in a conspicuous place at the registered office of the society.

Returns to be in prescribed form.

21. Every annual, quinquennial or other return, abstract of valuation and other document required for the purposes of this Act shall be made in such form and shall contain such particulars as the Registrar shall, subject to the approval of the Minister, from time to time prescribe.

Minors may be members of society.

22. A person under the age of twenty-one may be elected and admitted a member of any society established under this Act, the rules of which do not prohibit such election, and may, and he is hereby empowered, to execute all necessary instruments, and to give all necessary acquittances: Provided that, during minority, he shall not be competent to hold any office of trustee or treasurer of such society.

Funeral expenses of child under 10, medical certificate required before payment of.

23. In any society in which a sum of money may be insured, payable on the death of a child under ten years of age, it shall not be lawful to pay any sum for the funeral expenses of such child, except upon production of a certificate signed by a qualified medical practitioner, stating the probable cause of death; and no trustee or officer of any society upon an insurance of a sum for the funeral expenses of any child shall knowingly pay a sum which shall raise the whole amount receivable from one or more

Digitised by the University of Pretoria, Library Services, 2016

than one society for the funeral expenses of a child under ten years to a sum exceeding six pounds: and any such trustee or officer who shall make any payment otherwise than as aforesaid, shall be liable to a penalty not exceeding ten pounds upon the conviction thereof before the Resident Magistrate of the district in which such death shall have taken place.

Power of trustees to subscribe to hospitals, &c.

24. The trustee or trustees of any Friendly Society registered under this Act may, out of the funds thereof, subscribe to any hospital, infirmary, charitable or other provident institution, such annual or other sum as may be agreed upon by the committee of management, or by a majority of the members at a meeting called for that purpose, in consideration of any member of such society, his wife, child, or other persons nominated, being eligible to receive the benefits of such hospital or other institution, according to the rules thereof.

Decision of disputes between members and officers of society.

25. Every dispute between any member or members of any society registered under this Act, or any person claiming through or under a member, or under the rules of such society, and the trustee, treasurer, or other officer, or the committee thereof, shall be decided in manner directed by the rules of such society; but an appeal from any such decision may be made to the Court or to the Resident Magistrate's Court of the district within which the usual or principal place of business of the society in this Colony shall be situated.

Application in certain cases to the Court.

26. Application for the removal of any trustee, or for any other relief, order, or direction, or for the settlement of disputes that may have arisen in any society, the rules of which do not prescribe any other mode of settling such disputes, or to enforce the decision of any arbitrators, or to hear or determine any dispute, if no arbitrator shall have been appointed, or if no decision shall have been made by the said arbitrator within forty days after application has been made by the member or person claiming through or under a member, or under the rules of the society, may be made to the Court or to the Resident Magistrate's Court of the district within which the usual or principal place of business of the society in this Colony shall be situated; and the Court, or Resident Magistrate's Court, shall, upon the application of any person interested in the matter entertain such application; and either of the said courts, as the case may be, may give such relief, and make such order and direction in relation to the matter of such application as may be necessary, and the circumstances of the case may require.

Dissolution of society—Powers of members for.

27. It shall be lawful for the members of any Friendly Society established under this Act at some meeting of such society to be specially called in that behalf, to dissolve and determine the said society by consent: Provided that no society established under this Act shall be dissolved or determined, without obtaining the votes of five-sixths in value of the then existing members,

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1892.

and, for the purpose of ascertaining the votes of five-sixths in value of the members as aforesaid, every member shall be entitled to one vote, and an additional vote for every five years that he may have been a member of said society; but no one member shall have more than five votes in the whole; and such society shall not be determined and dissolved, unless all persons then receiving or entitled to receive any relief, annuity, or other benefit from the funds thereof, shall first have testified under their hands that such claim is duly satisfied to the satisfaction of the Registrar, or unless adequate provision is made for satisfying such claim. And the intended appropriation or division of the funds or other property shall be fairly and distinctly stated in the agreement for dissolution, prior to such consent being given: and the agreement for such dissolution, accompanied with a declaration by one of the trustees, that the provisions of the Act have been complied with, shall be transmitted to the Registrar to be by him filed with the rules: and such agreement shall thereupon be an effectual discharge to the trustees, treasurer, and other officers of such society, and operate as a release from all the members of the society to such trustees, treasurers and other officers: and it shall not be lawful in any society to direct a division or appropriation of any part of the stock thereof, except for the purpose of carrying out the general objects declared in the rules, as originally certified, unless the claim of every member is duly satisfied, or adequate provision be made for satisfying such claim, and in case any member of any such society shall be dissatisfied with such provision, it shall be lawful for him to apply to the court, upon motion for relief or other order, and such court shall make such order or direction, in relation thereto as the nature of the case may require.

Prosecution of person misappropriating society's funds.

28. If any officer, member, or other person representing himself to be a member of any Friendly Society established under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition, shall obtain possession of any moneys, securities, books, papers, or other effects of such society, or, having the same in his possession, shall withhold or misapply the same, or shall wilfully apply any part of the same to purposes other than those expressed or directed in the rules of the society, or any part thereof, the person so complained of may upon the complaint or information of the trustees, or any officer or member of the society, be prosecuted before the Resident Magistrate's Court having jurisdiction over the locality where the offence may have been committed: and if the Magistrate presiding shall determine the said complaint proved against such person, he shall order such person to deliver up all such moneys, securities, books, papers, or other effects to the society, or to repay the amount of money applied improperly, and to pay, if he should think fit, a further

Digitised by the University of Pretoria, Library Services, 2016

sum of money, not exceeding twenty pounds sterling, together with necessary costs, and in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs, the person so convicted may be imprisoned with or without hard labour, for any period not exceeding three months: Provided that nothing herein contained shall prevent the said party from being proceeded against by indictment: Provided, also, that no person shall be proceeded against by indictment, if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

Penalties.

29. If any Friendly Society registered under this Act shall

(*a*) Fail to give any notice, send any return or document, or do or allow to be done any act or thing which the society is by this Act required to give, send, do, or allow to be done;

(*b*) Wilfully neglect or refuse to do any act or thing, or to furnish any information required for the purposes of this Act, by the Registrar or other person authorised under this Act, or do any act or thing forbidden by this Act;

(*c*) Make a return or wilfully furnish information in any respect false or insufficient;

such society shall be liable to a fine of not less than one pound and not more than five pounds, recoverable at the suit of the Registrar.

30. For the purpose of carrying out the provisions of this Act the Registrar shall from time to time, with the approval of the Minister,

Preparation of model forms.

(1) Prepare or cause to be prepared, and cause to be circulated for the use of Friendly Societies, model forms of accounts, balance sheets, and valuations.

Circulation of information.

(2) Collect from the returns under this Act and from other sources, and publish and circulate either generally or in any particular district, or otherwise make known such information on the subject of the statistics of life and sickness, and the application thereof to the business of Friendly Societies, and from time to time publish generally or in particular districts such particulars of their returns and valuations and such other information useful to the members of and the persons interested in Friendly Societies, whether registered or not, as the Registrar shall from time to time think fit.

Construction of tables.

(3) Cause to be constructed and published tables for the payment of sums of money on death, in sickness or old age, or on any other contingency forming the subject of an assurance authorised under this Act, which may appear to be calculable. Such tables shall be calculated so as to show the minimum contributions which should be charged for the various kinds of benefits, and no society shall be admitted to registration unless it adopts such tables or

Digitised by the University of Pretoria, Library Services, 2016

some other tables which do not show lower rates of contribution, in the case of all members admitted subsequent to the date of registration.

Rules, &c., under Act of 1882 to be transferred to Registrar.

31. All rules, documents, &c., which have been lodged with the Registrar of Deeds by societies registered under the Act of 1882 shall, as soon as practicable, after the registration under this Act of the societies to which they relate, be transferred to the custody of the Registrar appointed under this Act.

No fee for registration.

32. There shall not be paid by any Friendly Society registered under this Act, any fee for such registration or for anything done by the Registrar in pursuance of this Act.

Short title.

33. This Act may be cited as "The Friendly Societies Act, 1892."

SCHEDULE A.

FORM OF CERTIFICATE OF REGISTRATION OF SOCIETY.

The ———— Society is registered as a Friendly Society under the Friendly Societies Act, 1892, this ———— day of ————

A.B.,
Registrar of Friendly Societies.

SCHEDULE B.

FORM OF CERTIFICATE OF REGISTRATION OF AMENDMENTS OF RULES.

The foregoing amendment of the rules of the ———— Society is registered under the Friendly Societies Act, 1892, this ———— day of ————

A.B.,
Registrar of Friendly Societies.

SCHEDULE C.

FORM OF BOND.

Know all men by these presents, that we, A.B., of ——— treasurer (or other officer) of the ———— society established at ————, in the district of ————, and C.D., of ———— (as surety on behalf of the said A.B.) are jointly and severally held and firmly bound to E.F., of ————, and G.H., of ————, the trustees of the said society, in the sum of —————— to be paid to the said E.F. and G.H. as such trustees, or their successors, trustees for the time being, or their certain attorney, for which payment to be well and truly

Digitised by the University of Pretoria, Library Services, 2016

made we jointly and severally bind ourselves, and each of us, our heirs, executors, and administrators as well as our and each of our property according to law, renouncing as we hereby renounce all and every exception which may by any law or custom be made by sureties or otherwise.

This done at ————, this ——— day of————, 18 ———.

A. B.
C. D.

WITNESSES:
I. K.
L. M.

Whereas the above bounden A.B. has been duly appointed treasurer (or other officer) of the ————— society, established as aforesaid, and he, together with the above bounden C.D., as surety and co-principal debtor, have entered into the above-written bond, subject to the conditions hereinafter contained.

Now, therefore, the condition of the above-written bond is such that if the said A.B. shall do and faithfully execute his office of treasurer (or other officer) of the said society, established as aforesaid, and shall make and render a just and true account of the moneys received and paid by him, and shall and do pay over all the moneys remaining in his hands, and assign and transfer or deliver all securities and effects, books, papers and property of or belonging to the said society, in his hands or custody, to such person or persons as the said society shall appoint, according to the rules of the said society, together with the proper or legal receipts or vouchers for such payments; and likewise shall and do in all respects well and truly perform and fulfil his office of treasurer (or other officer) to the said society according to the rules thereof, then the above-written bond shall be void and of no effect, but otherwise shall be in full force and effect.

A. B.
C. D.

WITNESSES:
I. K.
L. M.

No. 6—1892.] [Promulgated 2nd August, 1892.

ACT

For Regulating the Frere Hospital at East London.

Preamble.

WHEREAS grants of land have at various times been made to the Commissioners of the Municipality of the Town of East London, and to the Mayor, Councillors, and Townsmen of East London, respectively, in trust for the purpose of erecting and endowing an Hospital:

And whereas the said Mayor, Councillors and Townsmen are the successors in title and office of the said Commissioners of the said Municipality:

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1892.

And whereas an Hospital has been erected out of the proceeds of the sale of portion of the said land, upon land granted for that purpose, and the remaining portion sold upon quitrent for the endowment thereof:

And whereas it is expedient that the management of the Hospital should be vested in a Board of Managers, and that the said Board should be incorporated, and that certain matters in connection with the land granted for endowment purposes, and other matters and things likely to promote the welfare of the said Hospital, should be provided for by Parliament:

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

Designation of Hospital.

1. The Hospital aforesaid shall be called the "Frere Hospital at East London," and shall be managed by a Board of Managers.

Constitution of Board of Management.

2. The Mayor and Seven Councillors of the Municipality of East London, chosen from time to time for the special purpose by the Council of East London, the Civil Commissioner of East London, and two gentlemen to be nominated by the Governor, together with the Life Governors hereinafter mentioned, and three elective members, which members shall be elected as hereinafter provided, shall form a Board for the management of the said Hospital, of which Board the Mayor for the time being shall be the Chairman: Provided, always, however, that when the Mayor is not present, then the managers present shall choose their own Chairman and, in case of an equality of votes upon any matter or question submitted to the said Board, the Mayor or the Chairman for the time being shall, besides a deliberative vote, possess a casting vote.

Chairman.

Board to be a corporation: Style.

3. For the purposes of this Act the said Board of Managers for the time being shall be a corporation by the name or style of "The Board of Managers of the Frere Hospital at East London," and shall have perpetual succession, and shall and may sue and be sued in all courts, places, and proceedings, by the name or style aforesaid.

Elective members.

4. The elective members of the said Board shall be elected by the Life Governors of, and the annual subscribers to, the said Hospital as is hereinafter provided.

Life Governors.

5. Any person making a donation to the funds of the said Hospital of not less than twenty pounds shall become a Life Governor of the said Hospital, and shall have a seat on the said Board, and be entitled to elect the aforesaid members thereof.

Donor to funds entitled to elect.

6. Any person making a donation to the funds of the said Hospital of not less than twenty-five pounds shall be entitled to nominate some other person as a Life Governor in his place who shall have a seat on the said Board, and be entitled to elect the aforesaid members thereof.

Digitised by the University of Pretoria, Library Services, 2016

Donor of one guinea entitled to elect and be elected.

7. Any person who shall have subscribed, during the period of twelve months immediately before any election, a sum of not less than one guinea, shall be entitled to elect the aforesaid members of the said Board and be elected as a member thereof.

Donor of half a guinea entitled to elect.

8. Any person who shall have subscribed, as in the last preceding clause is provided, a sum of not less than half a guinea, shall be entitled to elect the aforesaid members of the said Board, but not to be elected as a member thereof.

First election.

9. As soon as there shall be twenty persons entitled to vote at the election of the elective members of the said Board but not sooner, the Mayor aforesaid shall, by a notice to be published in one or more of the local newspapers, for not less than twenty-one days before the day appointed, call a meeting of the Life Governors and subscribers to the said Hospital, to be held in some place in East London, to be specified in such notice, for the purpose of electing so many members of the said Board as there shall then be vacancies.

Who shall preside at meeting, manner of voting, number of votes.

10. At the meeting last mentioned the Mayor, or, in his absence a chairman to be elected by a majority of the voters present, shall preside, and the votes shall be given in writing, and signed by the voters; each voter shall have so many votes as there shall be vacancies to be filled up, but shall not be entitled to give more than one vote to any one candidate; the Mayor shall transmit the names of the members elected to the Colonial Secretary, who shall cause the same to be published in the *Gazette;* provided that at such meeting all persons entitled to vote, who shall be females, or who shall reside beyond the limits of the municipality of East London, but no other person, shall be entitled to appoint, by any writing under their hands respectively, some other person being himself a person entitled to vote, to be the proxy of or for the person by whom he shall have been so appointed, and to vote in such person's behalf.

Publication of result.

Proxies.

Elective members to hold office for one year.

11. The elective members elected at the first meeting, held for the election of elective members, shall hold office for one year, at the expiration of which time such first elected members shall go out of office, and be succeeded by others to be then elected, and so on for ever: Provided that all outgoing elective members, if duly qualified, shall be eligible to be re-elected.

Election of members.

12. On the Monday next before the day on which the elective members are appointed to go out of office, as aforesaid, a meeting shall be holden of the Life Governors and subscribers to the said Hospital, for the election of elective members for the year next ensuing, of which meeting a notice of not less than twenty-one days shall be given by the Mayor aforesaid in one or more of the local newspapers.

Casual vacancies and proceedings to fill up same.

13. If any elective member of the said Board shall die or resign, or shall cease to reside in the division of East London, or shall become incapacitated for fulfilling the duties of his office by

Digitised by the University of Pretoria, Library Services, 2016

mental or bodily infirmity or disease, he shall *ipso facto* vacate his office, and the said Board shall give notice of such vacancy to the Mayor aforesaid, who shall, upon the like notice as that in the last preceding section mentioned, call a meeting of Life Governors and subscribers for the purpose of filling up such vacancy, and the person elected to fill such vacancy shall be entitled to continue in office until the next annual election, but no longer: Provided that every such person, if duly qualified, shall be eligible to be re-elected.

Proceedings in case of omission to hold meeting at due time or failure to elect.

14. Should it happen by reason of any failure or neglect or other cause that any such meeting, as in the twelfth section mentioned, shall not have been duly holden, or that at such meeting the number of elective members which were then to be elected shall not have been duly elected, then the Mayor aforesaid upon being informed by the said Board of such non-election shall forthwith, upon the like notice as is in the said twelfth section mentioned, call a meeting of Life Governors and subscribers in order thereat to elect the members necessary to be elected: Provided that the elective members in office at the time of such non-election of new members shall remain in office until such new members shall be elected, and provided that the new members elected at any such meeting, as in this section mentioned, shall remain in office as long as members elected at such regular meeting as in the twelfth section mentioned would have remained in office, and no longer.

First members of Board.

15. Until elective members of the Board of Managers shall be elected, the following gentlemen shall be deemed and taken to form the said Board, and shall possess all and singular the powers and authorities of the said Board as fully as if elective members had been elected, viz.:—David Rees, Mayor, Chairman; J. T. Stacey, J. McGrath, J. Gately, F. Kelland, E. J. Carroll, G. Wetzler, and T. A. King, Councillors; the Civil Commissioner; J. O. Paterson, Charles D. Griffith, Government Nominees; George McKay, William Smale, and Henry N. Willetts, in the place and stead of elective members, and John Dircks, W. H. Fuller, C. E. Nicholls, J. Bowers Janion, Life Governors, and no vacancy or vacancies at any time occurring amongst the members of the said Board for the time being shall be deemed or taken to render the said Board incomplete, or to suspend or impair any of its powers.

Landed or other property vested in Board.

16. The said Board shall stand and be possessed of all lands, and remaining portion of lands, which have been granted to the Commissioners of the Municipality of the town of East London and to the Mayor, Councillors and Townsmen of East London respectively, in trust for the purposes aforesaid as set forth in Schedule A to this Act, and of all the buildings and erections thereon, including the furniture and of all moneys and other things appertaining to the said Hospital, and of all the quitrents due, or which may hereafter become due and payable in respect of land already disposed of, and of all lands which may be granted to the

Digitised by the University of Pretoria, Library Services, 2016

said Board by the Governor, or by any private person, for the use and benefit of the Hospital aforesaid, and of all lands and buildings which may be purchased, erected, or in any manner acquired by the said Board for the purposes of the said Hospital, and of all funds and moneys granted to the said Board from and out of the public revenue of this Colony, or given, bequeathed, subscribed, paid, or in any manner coming to the said Board, for the use and benefit of the said Hospital, and generally of all property, moveable and immoveable, belonging to the said Hospital.

Surrender and cancellation of quitrent titles.

17. Whenever any holder of land referred to in Schedule A, shall desire to surrender his land, it shall be lawful for the said Board, if they shall deem fit, to accept such surrender, and to cause the title to such land to be cancelled, on condition that the quitrent due up to the date of such acceptance be paid, or payment thereof secured by two good and sufficient sureties to their satisfaction; provided, however, that when any such person shall satisfy the said Board of his inability either to pay such quitrent or to secure its payment as aforesaid, it shall be lawful for the said Board to remit such quitrent, or to grant such relief in regard to such payment as may to them seem expedient.

If quitrent tenant in arrear, power of Board to cancel titles.

18. In case any holder of land as aforesaid shall be in arrear with the payment of his quitrent for two or more years, it shall be lawful for the said Board to give notice to such holder of the intention of the Board to resume possession of such land, and to cancel the title thereof, and if the quitrent, in arrear as aforesaid, shall remain unpaid for a period of three months from the date of such notice, it shall be lawful for the said Board to cause the title deed to be cancelled, and to resume possession of the land; provided that the notice herein referred to shall be in writing and be delivered to the holder aforesaid in person, if he reside within the Municipality of East London, or otherwise be posted to his last known address.

Reduction of quitrents.

19. Any holder of land as aforesaid not being in arrear with payment of quitrent who shall consider the annual quitrent payable by him to be in excess of the true annual value of such land may, at any time within six months from the date of the promulgation of this Act, apply for reduction of such quitrent to the said Board, and thereupon the said Board shall enquire into and investigate the circumstances of each case and if, upon such investigation, it shall appear to the said Board that good and sufficient reason has been shown why the relief sought for should be granted, it shall be lawful for the said Board to reduce the quitrent set forth in the original title, and to substitute in its stead the amount determined upon by the said Board to be paid from and after the day when quitrent next becomes due and payable: Provided that every application for relief under this clause shall be considered at a special meeting of the said Board to be called for the purpose at which not less than nine members shall be present.

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1892.

Sales of landed property on quitrent.

20. It shall be lawful for the said Board with the sanction of the Governor, first had and obtained, but not otherwise, to sell by public sale upon quitrent, but not otherwise, any portion or portions of any land which may have been granted to the said Board by the Governor, which land it may be found expedient to alienate, and the said Board may, in case the sanction aforesaid shall have been obtained, lease any of the said last mentioned lands at the best rent that can be obtained: Provided, however, that it shall not be necessary to obtain the sanction of the Governor to the public sale on quitrent of any erf or erven which may revert to the Board, being a portion of the land the sale of which has already been sanctioned.

Execution of legal and other documents.

21. All transfers, leases, contracts, powers to sue or defend, or other instruments to be executed by the said Board for any of the purposes of this Act or of the said Hospital, shall be executed by three members of the said Board, acting for and on behalf of the Board, of which three members the chairman of the said Board for the time being shall be one.

Persons in poor circumstances to be treated free of charge.

22. The Hospital at East London shall be at all times open, so far as its funds and accommodation will permit, to receive all persons standing in need of medical or surgical aid or treatment, and to supply such aid and treatment to all persons in poor or indigent circumstances, free of any fee or charge whatever.

Treatment of paying patients.

23. It shall be the duty of the said Board to make provision for the reception and treatment of a certain number of patients able and willing to pay for the same, and to frame in regard to such paying patients, a scale or tariff of the charges to be made by or on behalf of the said Hospital.

Appointment and discharge of medical officers.

24. It shall be lawful for the said Board to appoint all such medical officers as may be required for the said Hospital at such salaries as the said Board shall deem expedient, and to discharge any such medical officer when a majority of the members of the Board at a meeting specially called shall consider it to be in the interest of the Hospital to do so, or for immoral or improper conduct, or for non-fulfilment of his engagements with the said Board: Provided that no such medical officer shall be discharged upon any of the grounds in this section mentioned until he shall have been furnished in writing by the said Board with a statement of the charges against him or reasons alleged for his dismissal, and shall have had an opportunity of making his defence, or until the majority of the members present at a meeting, specially convened for the purpose, shall have resolved that such medical officer be so discharged.

Board to engage other officers.

25. All persons other than medical officers employed in or about the said Hospital shall be engaged and shall hold their situations at the pleasure of the said Board.

Regulations for management of Hospital to be framed.

26. It shall be the duty of the said Board to frame, and from time to time, if need be, to amend all such rules and regulations, as to the said Board shall seem necessary, touching and concerning

Digitised by the University of Pretoria, Library Services, 2016

the times of meeting, and mode of summoning of the members of the said Board, how many members shall form a quorum, the recording of the proceedings of every such meeting, the officers of such Board and their salaries, if any, the mode in which the moneys belonging to the said Board shall be collected, kept, and paid out, the mode in which the accounts of the said Hospital shall be kept and audited, the number and duties of the officers, hospital attendants, and other persons employed in or about the said Hospital, the length of notice to be given or received by each medical officer employed in the said Hospital, before it shall be lawful for him without mutual consent to vacate his office, or for the said Board to dispense with his services, unless for some cause in the twenty-fourth section specified, the regulations under which ministers of religion or others desirous of visiting patients for the purpose of religious counsel or consolation, shall be permitted to do so, the fees or charges to be paid by the paying patients heretofore in the twenty-third section mentioned, and generally any subject connected with the management and conduct of the said Hospital.

Regulations to be submitted to Governor.

27. The Board of Managers shall submit to the Governor a copy of the rules and regulations aforesaid for the time being for approval, and shall regularly report to the Governor all amendments thereof and additions thereto: Provided that no such regulations shall have any force and effect until the same shall have been approved of by the Governor.

Board may purchase or hire lands and buildings: contracts.

28. It shall be lawful for the said Board to purchase or rent all such lands or buildings as shall be necessary for the purposes of the said Hospital, and when it shall be desirable so to do, to sell again by public sale, but not otherwise, any lands or buildings which the said Board shall have purchased and shall no longer require, and the said Board may also contract for the erection, maintenance and repair of any buildings, or the purchase of any furniture, apparatus, medicines, supplies and necessaries, which shall be required for such Hospital. No contract for any purpose which shall require an expenditure above twenty pounds shall be entered into unless tenders for the same shall have been called for by an advertisement to be published in some one or more of the local newspapers for not less than eight days.

Accounts to be framed and audited, and laid before Parliament.

29. The said Board shall cause detailed accounts in writing of all sums of money received by them for any of the purposes of this Act, and of all sums expended by them for any purpose thereof, to be made up to the thirty-first day of December in every year and to be properly audited, and the said Board shall also frame a full report of the state and proceedings of the Hospital up to the same day in each year, and shall cause a copy of such accounts and of such report to be transmitted to the Colonial Secretary not later than the first day of March in the next succeeding year, and the Colonial Secretary shall lay copies of such report and of such accounts before both Houses of Parliament as soon as possible after receipt of the same.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1892.

Taking effect of Act.

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

Short title.

31. This Act may be cited for all purposes as "The Frere Hospital (East London) Act, 1892."

Schedule to Act.

SCHEDULE A.

Freehold Grant to the Commissioners of the Muncipality of the Town of East London of Lot H, situated within the Commonage of East London, as a site for a Hospital, dated 17th December, 1880.

Freehold Grant to the Commissioners of the Municipality of the Town of East London of Block W, situate within the Township of East London, proceeds to be devoted to the erection of a Public Hospital, dated 17th December, 1880.

Freehold Grant to the Commissioners of the Municipality of the Town of East London of Blocks CC and DD, situate within the Township of East London, proceeds to be devoted to the endowment of a Public Hospital, dated 17th December, 1880.

Freehold Grant to the Mayor, Councillors and Townsmen of East London of Blocks C and D, situate in the Division of East London, on the West Bank of the Buffalo River, proceeds to be devoted to the endowment of the Public Hospital, dated 22nd November, 1882.

Freehold Grant to the Mayor, Councillors and Townsmen of East London of Block H, situate in Ward 2, within the Township of East London, proceeds to be devoted to Hospital Building purposes, dated 2nd July, 1883.

No. 7—1892.] [Promulgated 2nd August, 1892.

ACT

To Apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1893.

Preamble.

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

Revenue charged with £400,000 towards service of year ending 30th June, 1893

1. The public revenue of the Colony of the Cape of Good Hope is hereby charged towards the service of the year ending the 30th June, 1893, with a sum not exceeding Four Hundred Thousand Pounds Sterling (£400,000), which sum shall be applied towards the service of the year in conformity with the estimates of the expenditure for the said year which have been presented to Parliament.

Short title.

2. This Act may be cited for all purposes as "The Second Appropriation (part 1892-93) Act, 1892."

Digitised by the University of Pretoria, Library Services, 2016

No. 8—1892.] [Promulgated 16th August, 1892.

ACT

To Authorise the Application of certain Unexpended Balances of Sums appropriated for the Construction and Equipment of certain Railways to meet Deficiencies in the Appropriations for the Construction and Equipment of certain other Railways.

Preamble.

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows: –

Application of unexpended balances.

1. It shall be lawful to apply the unexpended balance remaining over under the Railway Construction Balances Act of 1885, to meet the deficiencies incurred in the construction, completion and equipment of the following lines:

Kalk Bay and Simon's Town.
Eerste River and Sir Lowry's Pass.
Colesberg and Norval's Pont.
Norval's Pont and Bloemfontein.

And it shall be lawful to apply to the same purpose and to carry to the Railway Construction Balances Accounts the balances which may remain over on the appropriations for the following lines after the completion thereof:

Kimberley and Vryburg.
Midland and Eastern Junction.
Burghersdorp and Springfontein *via* Bethulie.

Balances to be carried to Railway Construction Balances Account.

2. It shall be lawful hereafter to carry to the said Railway Construction Balances Account the balance of any appropriation for any railway line or work authorised by Parliament, whether surplus or deficiency, on a resolution to that effect being agreed to by Parliament.

Short title.

3. This Act may be called "The Railway Construction Balances Account Act, 1892."

No. 9—1892.] [Promulgated 16th August, 1892.

ACT

To Amend the Law with regard to the Qualification of Voters for Members of Parliament, and to make provision for taking Votes by Ballot at Parliamentary Elections.

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

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1892.

Repeal of repugnant laws.

1. So much of any law as shall be repugnant to or inconsistent with the provisions of this Act is hereby repealed; but nothing herein contained shall affect the validity of any roll of parliamentary voters in force at the date of the taking effect of this Act in any Electoral Division of the Colony.

Interpretation of terms.

2. In this Act, unless the context otherwise requires, the following words in inverted commas shall have the meaning set opposite to them respectively:

"Election"—Any election of a member or members of the Legislative Council or of the House of Assembly.

"Polling Officer"—The person appointed by law to take the poll at any election.

"Returning Officer"—The person appointed to act as returning officer at any election according to law.

"Competent Witness"—Any Field-cornet or Justice of the Peace, and any person who is registered as a parliamentary voter in the fiscal division in respect of which the claimant whose signature he attests claims to be registered; provided that a Registering Officer shall in all cases be a competent witness.

Certain sections of Act not to apply to voters already registered so long as they continue to reside in place in respect of which they are registered.

3. The provisions of the fourth, fifth, sixth, seventh, seventeenth, twenty-ninth, thirtieth and thirty-first sections of this Act as hereinafter set forth, shall not apply to any person who at the date of the taking effect of this Act was registered as a parliamentary voter in any Fiscal Division of this Colony, so long as such person continues to reside in the division in which he was registered as a voter at the said date. The qualification of all such persons to be registered thereafter as parliamentary voters shall be judged of while they so continue to reside in all respects as if this Act had not been passed.

Amendments in Constitution Ordinance, and Act 14 of 1887.

4. Subject to the provisions in the third section contained

(*a*) The words "twenty-five" where they first occur in the eighth section of the Constitution Ordinance shall be expunged, and the words seventy-five inserted in their stead.

(*b*) The words, "or who having been in the receipt for the "space aforesaid of salary or wages at and after the rate "of not less than twenty-five pounds by the year shall, in "addition to such salary or wages, have been supplied with "board and lodging," where they occur in the said eighth section of the said Ordinance, shall be expunged.

(*c*) The words "twenty-five" wherever they occur in the ninth section of the said Ordinance, or in the seventeenth section of the Act 14 of 1887, or wherever they are used in any statute to denote the value of property required to be occupied in connection with the qualification of a parliamentary voter, shall be expunged, and the words seventy-five inserted in their stead.

Digitised by the University of Pretoria, Library Services, 2016

Repeal of 7th, 8th and 9th sections of Griqualand West Proclamation No. 24 of 1873.

5. Subject to the proviso in this section contained the seventh, eighth and ninth sections of Griqualand West Proclamation No. 24 of 1873, are hereby repealed, and the qualification of parliamentary voters in that part of this Colony which formerly comprised the Province of Griqualand West, shall, from and after the passing of this Act, be in all respects identical with the qualification required by law in the other portions of the Colony save and except that every person not otherwise disqualified by law who shall in any Electoral Division formerly comprised in the said Province for the space of six months immediately preceding the day when any registration of voters shall commence, have been the duly registered holder of a licence to dig and search for diamonds in any claim or portion of a claim shall be entitled to be registered as a parliamentary voter: Provided always that the qualification of any such person as is in the third section of this Act exempted from the provisions of this section, if such person was at the date of the taking effect hereof, registered in any Fiscal Division formerly comprised in the said Province, shall be judged of in all respects as if the seventh, eighth and ninth sections of the said Proclamation were still unrepealed.

Qualification of voters in Griqualand West.

Proviso.

Education Test.

6. Subject to the exemptions in the third and fifth sections contained, no person shall, from and after the taking effect of this Act, be entitled to be registered as a parliamentary voter for any Electoral Division in this Colony, unless such person is able to sign his name and to write his address and occupation.

Duty of registering officer with regard to education test.

7. In framing the provisional list of persons entitled to vote at parliamentary elections as required by the fourth section of the Parliamentary Voters' Registration Act No. 14 of 1887, no Registering Officer shall insert in the said list the name of any person though qualified in every other respect, unless he is satisfied that such person is able to sign his name and to write his address and occupation; unless such person is one exempted by the third or fifth sections of this Act from the operation hereof.

Fifth section of Act 14 of '87 amended. seventh to twelfth sections repealed.

8. The fifth section of the Act 14 of 1887, called the Parliamentary Voters' Registration Act, 1887, is hereby amended by adding the words "as amended by the Franchise and Ballot Act, 1892," at the end of the said section; and the seventh, eighth, ninth, tenth, eleventh and twelfth sections of the said Act are hereby repealed.

Substitution of sections of this Act for repealed sections.

9. The provisions of sections ten to twenty-seven inclusive of this Act are hereby substituted for the sections of the Act 14 of 1887, repealed as aforesaid.

Provisional lists, framing, posting, and requirements of.

10. Every provisional list, framed and posted or affixed by any Registering Officer in terms of the fifth and sixth sections of the Act No. 14 of 1887, shall remain so posted or affixed between the hours of seven in the morning and five in the afternoon daily, for a period of not less than five weeks, which period shall be considered as substituted for the period of fourteen days mentioned in the said

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1892.

sixth section; and subjoined or annexed to every such list shall be a notice signed by the Registering Officer, which notice shall be both in the English and Dutch languages, and shall be in substance as follows:—

Form of notice.

"Notice is hereby given that if any person whose name is not inserted in the above list shall claim to be entitled to have his name inserted therein, then any such claimant may, at any time before the day of (here name a date twenty-one days from the date when the notice was signed), lodge with the Registering Officer at (here insert the address or residence of the Registering Officer) either by transmission through the post or in some other manner, his claim to be registered as a voter, which claim shall be in substance in the form hereunto annexed, in order that such claim may be considered and dealt with as the law directs.

"And if any person shall object to the right of any other person whose name is inserted in the above list to have his name so inserted, then every such objector may attend personally or by an agent authorised in writing at (here name some convenient place within the field-cornetcy), on the day of (here name some date not less than fourteen days from the date fixed above as the limit of time for sending in written claims), and lodge his objection, which shall be in substance in the form hereunto annexed, in order that such objection may be considered and dealt with as the law directs.

"Blank forms of claim and of objection may be obtained upon application to the undersigned or to the Civil Commissioner of the division.

"Given under my hand this day of 189 ."

Forms of claim and objection.

11. The form of claim and the form of objection to be annexed to the notice in the last preceding section mentioned shall be in substance the forms set out in Schedule A to this Act.

Registering officer's duty with regard to claims.

12. It shall be the duty of the Registering Officer to receive, and deal as directed by this Act, with all claims to be registered as a voter which are lodged with him within the period prescribed for lodging claims as aforesaid, whether such claims are transmitted through the post or delivered or sent to him in any other manner. Immediately upon the expiration of the period prescribed as aforesaid for lodging claims the Registering Officer shall frame an alphabetical list of all claimants whose claims have been lodged with him, which list shall be in the form prescribed in Schedule B to this Act.

Lists of claimants to be posted up.

13. The Registering Officer shall forthwith post or affix the said list of claimants in the same place or places where the provisional list of voters, already framed by him, has been posted or affixed, and as close as possible to the said provisional list. The said list of claimants shall remain so posted or affixed between the hours of seven in the morning and five in the afternoon daily until the date fixed for the hearing of objections by the Registering Officer.

Digitised by the University of Pretoria, Library Services, 2016

Notice annexed to each list of claimants.

14. Subjoined or annexed to every such list of claimants, posted or affixed as aforesaid, a notice shall be written, signed by the Registering Officer, which notice shall be written both in the English and Dutch languages, and shall be in substance as follows:—

"Notice is hereby given that if any person shall object to the right of any other person whose name appears in the above list of claimants, or whose name is inserted in the provisional list of voters posted by the Registering Officer, to have his name registered as a parliamentary voter for the division of , then every such objector may attend personally, or by an agent authorised in writing, at (here name the place already fixed as the place for hearing objections), on the day of (here insert the date already fixed by notice as the date for hearing objections), and lodge his objection, which shall be in substance in the form hereunto annexed, in order that such objection may be considered and dealt with as the law directs.

"Blank forms of objection may be obtained upon application to the undersigned or to the Civil Commissioner of the division.

"Given under my hand this day of 189 ."

The form of objection to be annexed to the above notice shall be the following:—

"To the Registering Officer appointed to make out the list of voters in the Field-cornetcy of in the division of .

"Please take notice that I object to the name of being placed on the list of parliamentary voters in the above Field-cornetcy, and that I shall support my objection at the time fixed by law for that purpose, the ground of my objection being (here state the ground of objection).

"Dated the day of .

(Signed) A. B.,
of (here state place of residence.)"

Registering Officer's duty, as to objections.

15. At the time and place fixed by the notice in the last preceding section the Registering Officer shall inquire into and decide upon all objections made to him on the said day by the objectors personally or by their duly authorised agents.

Registering Officer's duty after claim received

16. With regard to any claim lodged with the Registering Officer as aforesaid, either by transmission through the post or in any other manner, if the Registering Officer is satisfied that such claim has been duly signed, filled in, and witnessed as in the seventeenth section of this Act required, he shall add the name of the claimant to his provisional list; unless he has allowed in manner aforesaid any objection lodged with him against such claim or unless he is not satisfied that the claimant possesses the qualification required by law. If not so signed, filled in and witnessed, or if he has allowed an objection lodged against such claim, or if he is not satisfied that the claimant possesses the said qualification he shall disallow such claim.

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1892.

Form of claim.

17. Every claim lodged with or handed in to the Registering Officer under the provisions of this Act shall be substantially in the form set out in Schedule A hereto. Save in the case of persons exempted by the provisions of the third or fifth sections of this Act, every such claim shall be personally signed, and the claimant's occupation and address shall be written by the claimant himself, without his hand being guided in any way by any person, and the fact that such signature and writing have been duly made shall be attested by a competent witness. But in the case of any person who is exempted by the provisions of the third or fifth sections of this Act, such person shall not be required to personally sign his claim or to write his address and occupation; but the claim may be filled in for him, and he may affix his mark thereto which shall be witnessed by a competent witness. In every such case, the declarations of the claimant and of the witness shall be amended by leaving out all such portions thereof as refer to the personal writing of his name, address, and occupation by the claimant.

Printed forms of claims and objections to be distributed.

18. The Colonial Secretary shall, a sufficient time before the preparation of the provisional lists as aforesaid, cause to be supplied to the Civil Commissioner of every division an adequate number of printed forms of claim and objection as required by this Act. The Civil Commissioner shall cause so many of the said forms to be sent to each Registering Officer as are likely to be required, and it shall be the duty of the Civil Commissioner and of every Registering Officer to supply a reasonable number of such forms to any resident of the division who applies for them.

Duties of Registering Officer after claims and objections dealt with.

19. As soon as the Registering Officer shall have dealt with and decided upon the claims and objections as aforesaid, and shall or shall not have added names to or expunged names from the provisional list in accordance with such dealing or decision, he shall:

(*a*) Frame a complete alphabetical list of persons who shall in his judgment be entitled to be registered as voters within the Field-cornetcy. This list shall be in the form prescribed in Schedule C to this Act.

(*b*) Frame an alphabetical list of persons whose names have been removed from the provisional list by reason of the allowance of objections lodged against them, and of persons whose claims to have their names inserted in the list of voters have been lodged or handed in but have been disallowed. This list shall be in the form prescribed in Schedule D to this Act.

(*c*) Transmit to the Civil Commissioner of his division the said two last mentioned lists, and also transmit to him all the original claims and objections lodged with or handed in to him, whether such claims and objections have been allowed by him or not.

Digitised by the University of Pretoria, Library Services, 2016

20. When transmitting the said lists, and the said claims and objections to the Civil Commissioner, the Registering Officer shall cause copies of the said lists to be posted and affixed to the door of, or in some conspicuous place near to his office or dwelling-house, or in some other public place or places within the Field-cornetcy, there to remain for general information, between the hours of seven in the morning and five in the afternoon daily, during not less than fourteen days. And if any person shall during that time wilfully tear down, cover over, deface or obliterate either wholly or in part any such list or any such notice as is hereafter required to be annexed to it, such person shall on conviction be liable to be imprisoned with or without hard labour for any period not less than one month, and not exceeding three months.

Copies of lists fixed to door of office.

21. Subjoined or annexed to every such list so framed, posted or affixed, a notice shall be written signed by the Registering Officer, which notice shall be both in the English and Dutch languages and shall be in substance as follows :—

Notice subjoined to lists so posted or affixed.

"Notice is hereby given that the Civil Commissioner will attend in the court room on a day to be notified by publication in the *Gazette* and in a local newspaper, for the purpose of finally revising, amending, and settling the voters' lists for the division of . All persons whose claims have been disallowed by the Registering Officer, or whose names have been removed from the provisional list by reason of the allowance of objections made to them ; and all persons who have objected in writing to the right of any person inserted in the said provisional list to be so inserted, or to the right of any person claiming to have his name registered as a parliamentary voter to be so registered, and all persons who have been so objected to may appear before the Civil Commissioner on the day and place aforesaid for the purpose of establishing their said claims or objections. All claimants and objectors must appear either personally or by an agent specially authorised in writing.

"Dated the day of , 189 ."

22. On receipt of the two lists aforesaid, and of the original claims and objections, the Civil Commissioner shall by notice in the *Gazette* and in some paper circulating in the division, appoint a day on which he will attend in his court room for the purpose of revising, amending and settling the list of voters in his division ; the day so appointed shall not be less than fourteen days from the date of the first publication of such notice.

Duty of Civil Commissioner on receipt of lists.

23. Such notice shall be published as often as the Civil Commissioner may deem to be necessary ; and it shall in substance correspond with the notice in the twenty-first section mentioned, save that the date fixed for the attendance of the Civil Commissioner in his court room shall be expressly inserted. The Civil Commissioner shall post copies of the said lists and of the said notice in some conspicuous position at or near the door of his court room, there to remain until the date fixed as aforesaid.

Notice in the *Gazette* fixing day for revising and settling lists.

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1892.

Notice to persons whose names have been disallowed by Registering Officer.

24. The Civil Commissioner shall also forthwith give notice by letter, posted through the Post Office, to all persons whose claims have been disallowed by the Registering Officer, or whose names have been removed from the provisional list by reason of the allowance of objections made to them, and also to all persons who have objected, in writing, to the right of any person inserted in the said list to be so inserted, or to the right of any person claiming to have his name registered as a parliamentary voter to be so registered, notifying the fact of such rejection or removal in the case of claimants, and in all cases notifying the date fixed for the holding of the court of revision aforesaid.

Procedure on hearing claims and objections and settling lists.

25. Upon the day so notified the Civil Commissioner shall attend in his court, and it shall be lawful for any person whose claim has been disallowed by the Registering Officer, or whose name has been removed from the provisional list by reason of the allowance of an objection made to it, and for every person who has objected in writing to the right of any person inserted in the said list to be so inserted, or to the right of any person claiming to have his name registered as a parliamentary voter to be so registered, and for any person who shall have been so objected to, to appear before the Civil Commissioner, who shall hear them, and if he thinks fit take the evidence upon oath. The Civil Commissioner may, if he thinks fit, summon before him and examine upon oath any person, including the attesting witness to any claim, whom he shall in the course of such inquiry deem it necessary to examine, and may impose a fine not exceeding ten pounds on any person duly summoned who shall, without lawful cause, refuse or neglect to attend, and he shall finally determine all questions brought before him, and revise and amend the voters' lists according to law. The Civil Commissioner may, if necessary, adjourn his sitting from time to time.

Person whose name has been removed or claim disallowed on objection to it must prove his qualification.

26. Every person whose claim has been disallowed by the Registering Officer, or whose name has been removed from the provisional list by reason of the allowance of an objection made to it, shall be bound to prove his qualification to the satisfaction of the Civil Commissioner; and should he not appear, either in person or by an agent specially authorised in writing, then the claim of such person shall be dismissed.

When objector does not appear.

27. If a person who has lodged a written objection with the Registering Officer, which objection has not been allowed, shall not, either in person or by an agent specially authorised in writing, appear to make good his objection, then such objection shall, without requiring any appearance or proof on the part of the person objected to, be dismissed. If such objector shall appear, and if the person objected to shall not appear in person, then in case the objector, or should he have appeared by agent, his agent, shall make oath that to the belief of the deponent such ground of objection does really exist, or that the person whose name has

If person objected to does not appear.

Digitised by the University of Pretoria, Library Services, 2016

been so inserted by the Registering Officer does not possess the qualification required by law, as the case may be, then the Civil Commissioner may, after forthwith enquiring into the grounds for such belief, either at once allow the objection or dismiss it or make such further inquiry on a subsequent day as shall appear just, giving notice in every case of a further inquiry to the person objected to, of the date when such inquiry will be held.

Repeal of Schedule E to the Election Law Amendment Act 1874 repealed, and Schedule E to this Act substituted.

28. The Schedule to the Election Law Amendment Act 14 of 1874 is hereby repealed, and Schedule E to this Act shall be read as substituted for it; and wherever in the first mentioned Act reference is made to the printed papers required to be filled in by claimants for registration, such reference shall be taken as referring to the form of claim set forth in the said Schedule E to this Act.

Claimant to sign his name and write his address and occupation with his own hand.

29. Notwithstanding anything contained in the eighth section of the Election Law Amendment Act No. 14 of 1874 it shall not be lawful for any person, not being a person exempted by the third section of this Act from the operation of this section, to affix his mark to any such printed paper as is in the said eighth section referred to; every such paper shall, from and after the taking effect of this Act, and save in so far as the aforesaid exempted persons are concerned, be personally signed, and the claimant's address and occupation shall be written by the claimant himself without his hand being guided in any way by any person, and the fact that such signature and writing has been duly made shall be attested by a witness. But a person who falls within the provisions of the third section of this Act shall not be required to personally sign his claim, or to write his address and occupation; the claim may be filled in for him, and he may affix his mark thereto, which shall be witnessed by a witness. In every such case the declarations of the claimant and of the witness shall be amended by leaving out all such portions thereof as refer to the personal writing of his name, address, and occupation by the claimant.

Registering officer for Cape Town to be satisfied as to Educational and other qualification of claimant.

30. The Registering Officer for the Electoral Division of Cape Town shall not take down in terms of the twelfth, thirteenth and fourteenth sections of Act 14 of 1874 the name of any claimant for registration not being a person exempted by the third section of this Act from the operation hereof, unless he is satisfied that such claimant is able to sign his name and to write his address and occupation. He may examine any claimant—not exempted as aforesaid—in order to ascertain whether such claimant is able to sign his name and to write his address and occupation, and whether he possesses the qualification required by law for a parliamentary voter. And any wilfully false averment, in respect to the said matters, and any refusal to answer a proper and reasonable question put by the Registering Officer in connection therewith shall subject the person making the averment or refusing an answer to the respective penalties and consequences set forth in the fifteenth section of the said Act.

Penalty for false averment.

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1892.

Written claim under section 20 of Act 14 of 1874 must be signed by claimant himself, and his occupation and address written with his own hand.

31. Every person not exempted by the third section of this Act from the operation of this section and who shall hereafter claim to have his name inserted in the list referred to in section nineteen of the Act 14 of 1874 shall himself, without his hand being guided in any way by any person, sign his name to the written claim required to be sent in to the Registering Officer aforesaid in terms of the twentieth section of the last mentioned Act; and underneath his name or in some other part of the claim shall, in a similar manner, write his address and occupation, and his signature and writing shall be duly witnessed by at least one witness.

Penalty for allowing another person to write claimant's name, address, occupation, or to guide claimant's hand, &c.

32. Every person not exempted by the third or fifth sections of this Act from the operation hereof who knowingly allows his name, address, or occupation, to be written for him on any such claim as is in the seventeenth, twenty-eighth, twenty-ninth or thirty-first sections of this Act referred to, or who in writing the said particulars allows his hand to be guided by any other person; and any person knowingly writing on any such claim the name, address, or occupation of a claimant who is not exempted as aforesaid, or guiding the hand of such claimant in order to assist him in writing the said particulars, and any person falsely witnessing the signature and the writing of the address and occupation on any such claim, shall be liable on conviction to a fine not exceeding fifty pounds, or to imprisonment with or without hard labour for any period not exceeding six months, or to both such fine and such imprisonment.

Printed copy of list to be supplied to Civil Commissioners.

33. The Colonial Secretary shall cause to be supplied to every Civil Commissioner an accurate printed copy of the list of registered parliamentary voters for his division as such list existed at the date of the taking effect of this Act; and every Civil Commissioner shall preserve such list in his office for purposes of reference. And any person who shall, in making or supporting any claim or application to be registered in terms of this Act, falsely and knowingly assert or pretend to any Registering Officer or any Civil Commissioner that he or any other person is entitled to the exemption granted by the third section hereof to those persons whose names appear on the list aforesaid shall be liable, upon conviction, to the penalties prescribed by the last preceding section.

Names of persons whose qualifications reserved to be underlined on list.

34. In every list of voters or claimants posted or affixed by any Registering Officer or transmitted by him to any Civil Commissioner or Resident Magistrate, whether in terms of Act 14 of 1874 or of Act 14 of 1887, or of this Act, it shall be the duty of such Registering Officer clearly and distinctly to underline the names of those persons who are inserted as voters or who claim to be voters by reason of the qualification reserved by the third or fifth sections of this Act to the persons in the said section specified.

Person convicted of crime entitled to be registered five years after expiration of sentence.

35. Notwithstanding anything to the contrary contained in the tenth section of the Constitution Ordinance, a person who has been convicted of, and sentenced for, any of the crimes therein men-

Digitised by the University of Pretoria, Library Services, 2016

tioned, not being the crimes of treason or murder, shall be entitled to be registered as a voter, and to vote at any time after the lapse of five years from the date of the expiration of such sentence, in all respects as if he had never committed such crime.

BALLOT.

Voting by ballot

36. From and after the 1st day of July, 1894, at every election for a member or members of the Legislative Council or the House of Assembly in this Colony, where a poll is taken, the votes shall be given by ballot in manner hereinafter in this Act provided.

MODE OF VOTING, AND PROCEDURE AT THE POLL.

Ballot paper

37. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall be in the form set out in Schedule F to the Act, shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark by the polling officer and delivered by him to the voter within the polling station, and the number of such voter on the list of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the polling officer of the polling place where the voter shall be entitled to vote, after having shown to him the official mark at the back.

Ballot paper void for lack of official mark, &c.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything except the said number on the back is written or marked by which the voter can be identified, shall be void and not counted.

Ballot boxes when poll closed in charge of returning officer; duties of returning officer with regard to ascertaining state of poll, &c.

After the close of the poll the ballot boxes shall be sealed up by the polling officer as hereinafter directed so as to prevent the introduction of additional ballot papers, and shall be delivered to, and taken charge of by the Returning Officer, and that officer shall, subject to the directions hereinafter contained, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall in case of elections of members of the Legislative Council make a return thereof forthwith under his hand to the Colonial Secretary or other person who may be appointed to receive the same, and such return shall be laid before the committees of scrutineers for the purpose of addition of the number of votes in such returns to be certified by such scrutineers; and in the case of elections of members of the House of Assembly the Returning Officer shall forthwith declare to be elected the candidate or candidates to whom the majority of votes have been given, and return their names, together with the number of votes received by each candidate, to the Colonial Secretary,

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1892.

to be by him communicated to the Governor. The decision of the Returning Officer as to any question arising in respect of any ballot paper shall be final, subject to the reversal on petition questioning the election or return.

Duty of returning officers subject to regulations by the Governor.

38. The Governor shall have power from time to time to make regulations for the purpose of more effectually carrying out the provisions of this Act, and not inconsistent with any of its terms, and, subject to such regulations as may be made in that behalf, every Returning Officer shall provide such polling stations, ballot boxes, ballot papers, stamping instruments, and other things, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by this Act.

Expenses incurred by returning officer.

All expenses properly incurred by any Returning Officer in carrying into effect the provisions of this Act, in the case of any election, shall be payable in the same manner as expenses of a poll are now by law payable. He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the same official mark at elections for the same Electoral Division.

Compartments for voting.

39. Each polling place shall be furnished with such number of compartments, in which the voters can mark their votes, screened from observation, as the Returning Officer thinks necessary, or as the regulation may prescribe.

No person shall be admitted to vote at any polling place except in the compartment or place allotted to him.

Polling officer to keep order.

40. The polling officer shall keep order at his polling place, shall regulate the number of voters to be admitted at a time, and shall exclude all other persons except his assistant or polling clerk, candidates, such agents of the candidates as the regulations may prescribe, and the constables on duty.

Contents of ballot paper.

41. Every ballot paper shall contain a list of the candidates with their descriptions arranged alphabetically in order of their surnames, and (if there are two or more candidates with the same surname) of their other names, it shall be in the form set forth in Schedule F to this Act, or as near thereto as circumstances admit, and shall be capable of being folded up.

Description of ballot box.

42. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The polling officer at any polling place, just before the commencement of the poll shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

Digitised by the University of Pretoria, Library Services, 2016

43. Immediately before a ballot paper is delivered to a voter, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the voter as stated in the copy of the list of voters shall be called out, and the number of such voter shall be marked on the counterfoil, and a mark shall be placed in the list of voters against the number of the voter to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

Mode of delivery of ballot paper to voter.

44. The voter, on receiving the ballot paper, shall forthwith proceed into the compartment of the polling place allotted to him, and there mark his paper, and fold it up so as to conceal his vote, and shall then after exhibiting the official mark on the back thereof to the polling officer put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling place as soon as he has put his ballot paper into the ballot box.

Voter to conceal his vote.

45. Subject to the provisions of the next section the polling officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned, that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the list of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this Act called "the list of votes marked by the polling officer."

When voter incapacitated from voting in manner required by this Act.

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the polling officer, who shall attest it in the form hereinafter in Schedule F mentioned, and no fee, stamp or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the polling officer at the time of voting.

Form of declaration of inability to read.

46. Only such persons as are referred to in the third section of this Act, and who comply with the conditions of that section, and such persons as are incapacitated through blindness, shall be allowed to make a declaration of inability to read; no other persons shall be entitled to have their votes marked in manner provided by the last preceding section on the ground that they are unable to read.

Who may make declaration.

47. If a person, representing himself to be a particular voter named on the list, applies for a ballot paper after another person has voted as such voter, the applicant shall upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of

"Tendered votes list."

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1892.

polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the list of voters, and set aside in a separate packet, and shall not be counted by the Returning Officer. And the name of the voter and his number on the list shall be entered on a list, in this Act called the tendered votes list.

"Spoilt ballot paper."

48. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper may, on delivering to the polling officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the polling officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled, and the fact of such cancellation shall be noted upon the counterfoil.

Duty of polling officers after close of poll.

49. The polling officer of each polling place shall, as soon as practicable after the close of the poll, make up into separate packets, sealed with his own seal:

(1) Each ballot box in use at his station unopened; and

(2) The unused and spoilt ballot papers placed together; and

(3) The tendered ballot papers; and

(4) The marked copies of the list of voters, and the counterfoils of the ballot papers; and

(5) The tendered votes list, and the list of votes marked by the polling officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity" and "unable to read," and the declarations of inability to read;

and shall deliver or cause to be delivered such packets to the Returning Officer.

Statement by polling officer.

50. The packets shall be accompanied by a statement made by such polling officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

Counting Votes.

Agents for candidates.

51. The candidates at any election may respectively appoint in writing such number of agents as the regulations may prescribe to attend the counting of the votes.

Digitised by the University of Pretoria, Library Services, 2016

Counting of votes.

52. The Returning Officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the receipt by him of all the ballot boxes, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

Who may be present at counting of votes.

53. The Returning Officer, his assistants and clerks, and the agents of the candidates, and no other person, may be present at the counting of the votes.

Duty of returning officer before counting votes.

54. Before the Returning Officer proceeds to count the votes he shall, in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, shall count and record the number of such papers in each box separately and then mix together the whole of the ballot papers contained in the ballot boxes. The Returning Officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

Counting to proceed continuously as far as practicable.

55. The Returning Officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree or as the regulations may provide) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the Returning Officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

Endorsements on ballot paper by returning officer, and report.

56. The Returning Officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The Returning Officer shall report to the Colonial Secretary the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark;
2. Giving more votes than entitled to;
3. Writing or mark by which voter could be identified;
4. Unmarked or void for uncertainty;

and shall, on request, allow any agents of the candidates, before such report is sent, to copy it.

Duty of returning officer on completion of counting.

57. Upon the completion of the counting, the Returning Officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the list of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each polling officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination.

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1892.

Report of result.

The Returning Officer shall report to the Colonial Secretary the result of such verification, and shall, on request, allow any agents of the candidates, before such report is sent, to copy it.

Ballot papers, accounts, &c., forwarded to Colonial Secretary.

58. The Returning Officer shall forward to the Colonial Secretary all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the polling officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of voters' lists sent by each polling officer, endorsing on each packet a description of its contents and the date of the election to which they relate.

Retained by Colonial Secretary for a year.

59. The Colonial Secretary shall retain for a year all documents relating to an election forwarded to him in pursuance of this Act by a Returning Officer, and then, unless otherwise directed by an order of the Legislative Council or the House of Assembly, or of the Supreme Court, shall cause them to be destroyed.

Rejected ballot papers not open to inspection unless by order.

60. No person shall be allowed to inspect any rejected ballot papers in the custody of the Colonial Secretary except under the order of the Legislative Council or the House of Assembly, or under the order of the Supreme Court, the Court of the Eastern Districts, or the High Court of Griqualand West respectively, to be granted by the Court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the Council, House, or Court making the same may think expedient. Any power given to the Court by this section may be exercised by any judge of such Court in Chambers.

Requisites and conditions under which counterfoils may be allowed to be opened and ballot papers inspected.

61. No person shall, except by order of the Legislative Council or the House of Assembly or any Court having cognizance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the Colonial Secretary; such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the Council, House or Court making the order may think expedient: Provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent Court to be invalid.

Documents other than ballot papers and counterfoils open to public inspection subject to regulations by Governor.

62. All documents forwarded by a Returning Officer in pursuance of this Act to the Colonial Secretary other than ballot papers and counterfoils, shall be open to public inspection at such time

Digitised by the University of Pretoria, Library Services, 2016

and under such regulations as may be prescribed by the Governor, and the Colonial Secretary shall supply copies of, or extracts from, the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may be sanctioned by the Governor.

Evidence of documents relating to elections on production by Colonial Secretary.

63. Where an order is made for the production by the Colonial Secretary of any document in his possession relating to any specified election, the production by him or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of the Court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such Colonial Secretary, or his agent, shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number, and having a number marked thereon in writing, shall be *prima facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the list of voters at such election the same number as the number written on such counterfoil.

Misbehaviour and misconduct at polling station.

64. If any person misconducts himself in any polling station, or fails to obey the lawful orders of the polling officer, he may immediately, by order of the polling officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the Returning Officer to remove him; and the person so removed shall not, unless with the permission of the polling officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before the Resident Magistrate of the district.

Provided that the powers conferred by this section shall not be exercised so as to prevent any voter who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

Penalties on polling officers, returning officers &c., for contravention of provisions.

65. Every Returning Officer, polling officer, assistant or clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission, a penal sum not exceeding one hundred pounds.

Mode of giving public notice.

66. Where the Returning Officer is required or authorised by this Act to give any public notice, he shall, in addition to such publication as is by this Act or the regulations directed, carry such requirement into effect by such other practicable means as he thinks best calculated to afford information to the voters.

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1892.

Returning officer may be polling officer.

67. The Returning Officer may, if he think fit, and if the regulations allow it, preside at any polling station, and the provisions of this Act relating to a polling officer shall apply to such Returning Officer with the necessary modifications as to things to be done by the Returning Officer to the polling officer, or the polling officer to the Returning Officer.

Returning officer may appoint assistants.

68. The Returning Officer may with the sanction of the Colonial Secretary appoint competent persons to assist him in counting the votes.

No one employed in or about election to be so appointed.

69. No person shall be appointed by a Returning Officer for the purposes of an election who has been employed by another person in or about the election.

Candidate may act as his own agent or assist his agent.

70. A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this Act, attend.

Name and address of agents to be notified to returning officer.

71. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be communicated to the Returning Officer or to the polling officer as may be directed by the regulations, and subject to such conditions as the regulations may prescribe; and the Returning Officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so communicated notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the Returning Officer may be delivered at or sent by post to such address.

Candidate may appoint fresh agent on notice.

72. If any person appointed an agent by a candidate for the purposes of attending at the polling place or at the counting of the votes dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place and shall forthwith give notice thereof to the person and in the manner prescribed by the regulations.

Declaration of secrecy by officers.

73. Every Returning Officer, and every officer, clerk or agent, authorised to attend at a polling place, or at the counting of the votes, shall, before the opening of the poll, make a declaration of secrecy, in the presence, if he is the Returning Officer, of a Justice of the Peace, and if he is any other officer or an agent, in the presence of a Justice of the Peace or of the Returning Officer; but no such Returning Officer, clerk, or agent as aforesaid shall, save as aforesaid, be required as such to make any declaration or take any oath on the occasion of any election.

Non-attendance of agent not to invalidate anything duly done.

74. Where in this Act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the

Digitised by the University of Pretoria, Library Services, 2016

non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

OFFENCES AT ELECTIONS.

Offences at elections.

75. Every person who—

(1) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or

(2) Without due authority supplies any ballot paper to any person; or

(3) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or

(4) Fraudulently takes out of the polling station any ballot paper; or

(5) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election;

shall upon conviction be liable, if he is a Returning Officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding nine months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes and instruments, as well as the property in the counterfoils, may be stated to be in the Returning Officer at such election. In case the prosecution or indictment be brought against any Returning Officer, then such property may be stated to be in the Colonial Secretary.

Duties of officers, clerks and agents in attendance at polling station.

76. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting at such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the list of voters of any elector who has or has not applied for a ballot paper or voted at that station or as to the official mark, and no such officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain at the polling station information as to the candidate for whom any voter at such station is about to vote or has voted, or communicate at any time to any person any information obtained at a polling station as to the candidate for whom any voter at such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1892.

station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain, at such counting, the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Penalty.

Every person who acts in contravention of the provisions of this section shall be liable on conviction before the Resident Magistrate of the district to imprisonment for any term not exceeding six months, with or without hard labour.

Miscellaneous.

Agents may seal ballot boxes.

77. Whenever any polling officer is by this Act or by the regulations framed thereunder directed to seal any ballot box, packet or parcel, it shall be lawful for an agent or agents of any candidate lawfully present at the time to affix his or their seal or seals to the box, packet or parcel aforesaid, in addition to the seal of the polling officer, but subject always to such conditions as the regulations may impose.

Voter not to be required in any legal proceeding to disclose his vote.

78. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

Mistake in use of forms in schedule not to invalidate election if immaterial to result.

79. No election shall be declared invalid by reason of any mistake in the use of the forms in the schedule to this Act if it appears to the court having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election.

Effect of applying for ballot paper.

80. A person applying for a ballot paper under this Act shall for the purposes of any law relating to elections or voting at elections be deemed "to tender his vote," or "to assume to vote," or "to attempt to vote."

Definition of "personation" under this Act.

81. A person shall be deemed to be guilty of the offence of personation who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

Penalty for personation.

82. Any person convicted of the offence of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, shall be punishable in manner provided by the forty-third section of Act No. 14 of 1874, and the provisions of the forty-fourth section of the said Act shall be applicable to voting by ballot under this Act.

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1892.

83. When on the trial of an election petition, praying the court to determine that some other person than the respondent is entitled to be declared duly elected under the provisions of this Act in the place of the respondent, it is proved that any person who voted at such election was bribed, or treated, or subjected to undue influence by anyone on behalf of the respondent, or that such person was guilty of personation, there shall be struck off from the number of votes appearing to have been given to such respondent, the number of votes which were given at the election for the respondent candidate by any such person who voted at such election and shall be proved to have been so bribed, treated, or unduly influenced, or to have been guilty of personation as aforesaid.

On trial of election petition respondent to lose the vote or votes of every voter bribed, treated, unduly influenced or guilty of personation.

84. No written authority given in terms of any section of this Act shall require to be stamped as a power of attorney, anything in any Act to the contrary notwithstanding.

Written authority need not be stamped.

85. This Act may be cited as the Franchise and Ballot Act, 1892.

Short title.

SCHEDULE A.

Schedule A.

Claim to be Registered as a Parliamentary Voter.

Form of claim paper.

Electoral Division.

Ward or Field-cornetcy .....Fiscal Division.....

Name in Full.†	Residence or Address.*	Occupation, Trade, Profession or other description.*	Qualification.†

I, the undersigned, hereby declare that I am to the best of my knowledge and belief entitled to be registered as a voter in virtue of the qualification set opposite my name as above; that I have myself, and without allowing my hand to be guided by any person, filled in my occupation and address, and that I attach my signature to this declaration without any such aid.

Signature of Claimant.....

I, the undersigned, being a competent‡ witness, resident at ——————— within the division of————do hereby declare that————has in my presence himself, and without his hand being guided by any other person, filled in his occupation and address and attached his signature to the above declaration.

Signature of Witness.....

Dated this ——— day of ——— 18 .

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1892.

Form of Objection to the Registration of a Voter.

Form of "objection."

To the Registering Officer appointed to make out the List of Voters in the Field-cornetcy of ———— in the Division of————————

Please take notice that I object to the name of ———————— being retained on the List of Voters in the above Field-cornetcy, and that I shall support my objection at the time fixed by law for that purpose, the ground of my objection being (here state the ground of objection).

Dated the ——— day of ———————

(Signed) A.B.,
of (here state place of residence.)

† These columns need not necessarily be filled in by the claimant personally.
* These columns must be filled in by the claimant himself.

NOTE.—Persons who were registered as Parliamentary Voters in this Fiscal Division on the 1st January, 1893, and who have since continued to reside in the said division need not necessarily fill in the above claim or sign it personally. The claim may be filled in for them and their signature may be affixed by a mark duly witnessed; in such a case the portions of the declarations both of the claimant and the witness which refer to the personal signature and writing of the claimant may be omitted.

‡ NOTE.—The witness must be either a Justice of the Peace, a Field-cornet, a Registering Officer, or a person who is registered as a parliamentary voter in the same Fiscal Division in which the claimant resides. In case he is a Justice of the Peace, a Field-cornet, or a Registering Officer, it is desirable that the fact be stated below his signature.

Schedule B.

SCHEDULE B.

WARD OR FIELD-CORNETCY.....DIVISION OF.....

List of persons not included in the provisional list of voters as already framed who have lodged their claims to be placed upon the list of Parliamentary Voters in the above Field-cornetcy.

Dated this.....day of.....

A.B.,
Registering Officer.

Christian name (if any) and surname in full.	Occupation, trade, profession or other description.	Residence or address.	Qualification claimed.

All persons whose names are underlined in the above list claim under the third or fifth sections of the Franchise and Ballot Act, 1892.

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE C.

No. 9—1892.
Schedule C.

ELECTORAL LIST.

List of persons appearing to be qualified to vote at the Election of Members of the Legislative Council and House of Assembly in the Field-cornetcy of .....in the Division of .....
Dated this ..... day of .....

A. B.,
Registering Officer.

Christian name (if any) and surname in full.	Occupation, trade, profession, or other description.	Qualification.	Situation of Property in respect of which qualification exists, or present address if qualification be not in respect of property.
A. B. ..	Farmer ..	Householder	
C. D. ..	Storekeeper	Householder	
E. F. ..	Clerk ..	Salary ..	
G. H. ..	Farmlabourer	Wages ..	

All names underlined in the above list are inserted under the third or fifth sections of the Franchise and Ballot Act, 1892.

SCHEDULE D.

Schedule D.

ELECTORAL DIVISION OF .....

List of persons whose names have been removed from the provisional list of voters by reason of the allowance of objections lodged against them; and of persons whose claims to be placed upon the list of voters have been lodged or handed in but not allowed.
Dated this ..... day of .....

A. B.,
Registering Officer.

Christian name (if any) and surname in full.	Occupation, trade, profession or other description.	Residence or address.	Reason for allowing the objection or disallowing the claim.
A. B. ..	Farmer ..		(Here state reason as above, *e. g.*, "not resided in district for twelve months." "Property not of required value." "Wages insufficient." "Writing qualification not proved." &c.)
C. D. ..	Storekeeper		
E. F. ..	Clerk ..		
G. H. ..	Farmlabourer		

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1892.

Schedule E.

SCHEDULE E.

CLAIM TO BE REGISTERED AS A VOTER IN THE ELECTORAL DIVISION OF CAPE TOWN.

District No.

The qualifications entitling persons to be registered are detailed in the eighth and ninth sections of the Constitution Ordinance as amended by the fourth section of the "Franchise and Ballot Act, 1892." The following is an abstract of the qualifications entitling to registration :—

1. Every male person of twenty-one years of age who is and has been for not less than twelve months the occupier of a house, warehouse, shop or other building of the value of seventy-five pounds (*but see clause six.*)

2. Every male person of twenty-one years of age who is and has been for not less than twelve months in the receipt of salary or wages at a rate of not less than fifty pounds per annum.

3. Every male person of twenty-one years of age who on 1st January, 1893, was registered as a parliamentary voter for the Electoral Division of Cape Town who has since that date continued to reside in Cape Town or Cape Division, and who is and has been for not less than twelve months in the receipt of salary or wages at a rate of not less than twenty-five pounds per annum, and who besides has been and is supplied with board and lodging.

4. Every joint occupier being a male person of twenty-one years of age whose share in any house, warehouse, shop, or other building, is of the value of not less than seventy-five pounds (*but see clause six*).

5. No persons who were not upon the roll of parliamentary voters for the Electoral Division of Cape Town on the 1st January, 1893, and who have not continued since that date to reside in Cape Town, or Cape Division, shall be qualified to be registered unless they are able to sign their names and write their occupations and addresses.

6. Persons who upon 1st January, 1893, were registered as parliamentary voters for the Electoral Division of Cape Town, and whilst they continue to reside in Cape Town or Cape Division are qualified, if the property they occupy or the share of the property which they jointly occupy is of the value of twenty-five pounds only.

7. No person is entitled to vote who is not either a natural born or a duly naturalised subject of Her Majesty the Queen, or who is of unsound mind, or who has been convicted of and sentenced for treason, murder, rape, theft, fraud, perjury, or forgery, and has not received a free pardon. But this disqualification does not extend to any person convicted of any of the above crimes—not being the crimes of treason or murder—in case a period of five years has elapsed since the expiration of his sentence.

Directions to be observed in filling up this Paper.

1. "Name."—The claimant must be careful to write or cause to be written all his names at full length ; and if he be known by more Christian names or more surnames than one, all such names must be written at full length, and his signature must be witnessed by at least one witness.

Digitised by the University of Pretoria, Library Services, 2016

2. "Residence."—Insert the name of the street and the number of the house, warehouse, &c., in virtue of occupying which the claimant seeks to be registered. Should the street have no name, or the house, warehouse, &c., no number, describe the premises by reference to some adjoining street or other object marking the locality.

3. "Trade, Profession, &c."—The claimant must state his trade, profession, or occupation when he has any. Persons who have retired from any trade, business or calling will style themselves accordingly, such as "retired merchant," or the like.

4. "Qualification."—The claimant must describe the nature of his qualification, such as "resident householder," "salary," "wages."

5. Should there be more persons than one residing in or occupying the house, &c., where this paper has been left, each may apply to the Registering Officer for a separate paper, or all may sign this paper one under another.

6. The claimant will sign the "declaration" at foot, but need not there sign his name in full. If there be more claimants than one, the form of declaration will be understood as referring to each claimant separately:

Name.†	Residence.*	Trade, Profession, &c.*	Qualification.†

† These columns need not necessarily be filled in by the claimant personally.
*These columns must be filled in by the claimant himself.

NOTE.—Persons who were registered as parliamentary voters for the Electoral Division of Cape Town on 1st January, 1893, and who have since continued to reside in Cape Town, need not necessarily fill in the above claim, nor sign it personally. The claim may be filled in for them, and their signature may be affixed by a mark duly witnessed: in such a case the portions of the declarations both of the claimant and the witness which refer to the personal signature and writing of the claimant may be omitted.

I, the undersigned, hereby declare that I am, to the best of my knowledge and belief entitled to be registered as a voter in virtue of the qualifications set opposite my name as above; that I have myself, and without allowing my hand to be guided by any person, filled in my occupation and address, and that I attach my signature to this declaration without any such aid.

Signature of Claimant.....

I, the undersigned, resident at.....Street, Cape Town, do hereby declare that .... has in my presence himself, and without his hand being guided by any other person, filled in his occupation and address or residence, and attached his signature to the above declaration.

Signature of Witness.....

Dated this.....day of.....18....

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1892.

Schedule F.

Form of ballot paper.

SCHEDULE F.

Form of Ballot Paper.

Form of Front of Ballot Paper.

ELECTION OF MEMBERS of (Legislative Council or House of Assembly, as case may be.)

Counterfoil No.		BROWN	
	1	(John Brown, of 52, Adderley Street, Cape Town, merchant.)	
NOTE: *The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.*		JONES	
	2	(William David Jones, of Wynberg, Esq.)	
		SMITH	
No. of Voter on list.	3	(Henry Sydney Smith, of 72, St. George's Street, Cape Town, attorney.)	

Form of Back of Ballot Paper.

No.

Election for the Electoral Division of Electoral Province, as the case may be.

18 .

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

Directions as to Printing Ballot Paper.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname their other names, shall be printed in large characters as shown in the form, and the names, addresses, and descriptions, and the number on the back of the paper shall be printed in small characters.

Form of directions for guidance of voters.

Form of Directions for the Guidance of the Voter in voting, which shall be printed in conspicuous Characters, and placarded outside every Polling place and in every Compartment of every Polling place. These directions may be varied in manner prescribed by the regulations.

The voter may vote for candidate .

The voter will go into one of the compartments, and, with the pen or pencil provided in the compartment, place a cross on the right hand side, opposite the name of each candidate for whom he votes, thus x.

Digitised by the University of Pretoria, Library Services, 2016

A vote recorded in any other manner will be rejected.

If the voter be entitled to give more than one vote for any candidate, he shall place opposite the names of the candidate for whom he votes, the number of votes given for such candidate, thus x x x x or x x x, or x x, as the case may be.

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the polling officer, and then, in the presence of the polling officer, put the paper into the ballot box and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter gives more votes than he is entitled to, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a contravention of the Franchise and Ballot Act, 1892, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Note.—These directions shall be illustrated by examples of the ballot paper.

Form of Declaration of Secrecy.

Form of declaration of secrecy.

I solemnly promise and declare, that I will not at this election for do anything forbidden by section seventy-five of the Franchise and Ballot Act, 1892, which has been read to me.

Note.—The section must be read to the declarant by the person taking the declaration.

Form of Declaration of inability to read.

Form of declaration of inability to read.

I, *A.B.*, of , being numbered on the Register of Voters for do hereby declare that I am unable to read. *A.B.*, his mark.
day of

I, the undersigned, being the presiding officer for the polling place of , do hereby certify that the above declaration having been first read to the above-named *A.B.*, was signed by him in my presence with his mark.

Signed *C.D.*

Presiding Officer for the polling place of .....

this.....day of.....18

Digitised by the University of Pretoria, Library Services, 2016

No. 10—1892.] [Promulgated 26th August, 1892.

ACT

To provide for the Advance of a Certain Sum of Money to the Netherlands South African Railway Company for the purpose of the Construction of a Certain Line of Railway, and further to provide in certain respects for the Working of the said Line.

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

Advance to Netherlands South African Railway Company.

1. It shall be lawful for the Governor to advance to the Netherlands South African Railway Company a sum not exceeding in the whole the sum of six hundred and fifty thousand pounds in accordance with and for the purpose of carrying out the provisions of certain three agreements bearing date the 10th day of December, 1891, and entered into between the Government of this Colony and the said Netherlands South African Railway Company; which said agreements have been formally approved by the Government of the South African Republic, and copies of which were presented to both Houses of Parliament by command of the Governor on the 3rd day of June, 1892.

Money advanced, how to be raised.

2. For the purpose of making the said advance it shall be lawful for the Governor from time to time, as he may deem expedient, to raise the said sum of six hundred and fifty thousand pounds either by debentures or stock, or partly by debentures and partly by stock.

Treasurer to receive debentures from the Company in exchange for money advanced.

3. It shall be lawful for the Treasurer of the Colony, or for any person authorised by him to receive from the said company, in exchange for the moneys advanced as aforesaid, debentures of the said company guaranteed in the manner, bearing interest at the rate, and calculated upon the scale, in the said contracts provided; all debentures so received shall be held and dealt with by the Treasurer, or subject to his directions, in trust for public purposes; and the proceeds of or arising from the said debentures shall be applied in manner directed by the fourth and fifth sections hereof.

Interest in respect of debentures paid to general revenue.

4. Subject to the provisions of the said contracts, the interest from time to time received in respect of the said debentures shall be paid into the general revenue of the Colony.

Proceeds of sale or redemption of debentures to be paid to the Sinking Fund Commissioners.

5. The proceeds arising from the sale or redemption of the said debentures, or of any of them, shall be paid by the Treasurer to the Sinking Fund Commissioners appointed by the Governor in terms of the Cape of Good Hope General Loans Act, 1883, for the purpose of being applied by them in reducing the debt of the Colony according to law.

Digitised by the University of Pretoria, Library Services, 2016

6. The Treasurer shall cause to be laid before both Houses of Parliament, in every year, a statement of account showing the amount of debentures held as aforesaid, the interest received thereon during the year, and the charge within the year for interest on the money raised in respect of the advances aforesaid, and secured by the said debentures.

Statement of account of debentures, &c., to be laid before Parliament.

7. It shall be lawful for the Governor to appoint all such engineers and other officers or servants, and to do and perform all such acts, matters and things, as he may deem necessary or expedient for the purpose of carrying out all the duties and obligations, and obtaining the benefit of all the rights and privileges of the Government of this Colony, in respect of the equipment and working of the railways mentioned in the said agreements, so far as such duties, obligations, rights and privileges are provided for by the said agreements, or by any additions or alterations duly made as therein provided,—and so long as the said agreements, additions or alterations, remain in force.

Governor may appoint officers and engineers, &c.

8. This Act may be cited as the "Transvaal Railways Loan Act, 1892."

Short title.

No. 11—1892.] [Promulgated 26th August, 1892.

ACT

To apply a Sum not exceeding One Hundred and Seventy Thousand Nine Hundred and Fifteen Pounds sterling for the Construction of Certain Public Works, and for other Purposes.

Preamble.

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

Construction of certain public works.

1. For the purpose of constructing the public works set forth in the Schedule hereto annexed, it shall be lawful to apply the sum of One Hundred and Fifty-four Thousand Four Hundred and Forty Pounds sterling out of the revenues of the Colony.

Buildings for school purposes.

2. In aid of buildings for school purposes already erected or to be erected or acquired, it shall be lawful to apply a sum of Sixteen Thousand Four Hundred and Seventy-five Pounds sterling out of the revenues of the Colony, in accordance with a detailed statement of special grants in aid of buildings for school purposes [G. 58—'92] presented to Parliament.

Short title.

3. This Act may be cited as the "Public Works Act, 1892."

Digitised by the University of Pretoria, Library Services, 2016

No. 12 – 1892.

Schedule.

SCHEDULE.

South African Museum	£20,000
Breede River Bridge at a point near Worcester	10,000
Gamtoos River Bridge	20,000
Keiskama River Line Drift Bridge	18,240
Olifant's River East Bridge	20,000
Kaffir Kuils River Bridge	8,500
Stormberg Spruit Bridge	8,500
Breede River Bridge, Swellendam	16,500
Umtata River Bridge	8,000
Kraai River Bridge (to complete)	9,000
Bashee River Bridge do.	15,700
	£154,440

No. 12—1892.] [Promulgated 26th August, 1892.

ACT

For Constituting an Additional Fiscal Division.

Preamble.

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

Repeal of repugnant laws.

1. So much of the Ordinance for constituting a Parliament in this Colony, and commonly called the "Constitution Ordinance," and so much of any other law as may be repugnant to or inconsistent with the provisions of this Act, are hereby repealed.

District of Britstown may be proclaimed fiscal division of Britstown.

2. The district of Britstown shall, from and after date of any Proclamation to be issued for that purpose by the Governor and published in the *Gazette*, become and be a division for fiscal purposes, and be styled the division of Britstown.

Boundaries to be defined by the same Proclamation.

3. The Proclamation provided for in the last preceding section shall define the several boundaries of the division of Britstown, and the boundaries so proclaimed shall be the boundaries of the said division.

Effect of Act on divisions and Divisional Councils affected by Proclamation: new division to be a division for purposes of Act No. 40 of 1889 and other relative laws.

4. From and after the date of any Proclamation issued by the Governor in that behalf and published in the *Gazette*, the Divisional Council for the time being of every division, to which the whole or any part of the division of Britstown, so constituted for fiscal purposes only and named in such Proclamation, belonged, shall stand dissolved, and the provisions of Act No. 40 of 1889, commonly called "The Divisional Councils Act, 1889," and of every other law relating to Divisional Councils, shall apply to the division of Britstown constituted under this Act, and to the divisions to which the said division or any part thereof previously belonged, and such former divisions shall then be limited and bounded precisely as if no Divisional Council in or for such divisions had ever been elected: Provided that the persons who shall be registered as voters for the Divisional Council of any such former division which down to the date of such Proclamation comprised the whole or any part of the new division of Britstown,

Digitised by the University of Pretoria, Library Services, 2016

and who, in accordance with the Act No. 40 of 1889, are duly qualified to be registered as voters for the Divisional Council of the new division of Britstown shall be entitled to vote at the election of Councillors for the Divisional Council of such new division.

Provisions of Act No. 24 of 1858 to apply to division of Britstown.

5. The provisions of the Act No. 24 of 1858, entitled "An Act to regulate the respective rights of certain divisions in regard to certain road rates," shall so far as applicable, *mutatis mutandis*, as soon as any Proclamation under this Act shall have been issued, apply to the new division of Britstown, and to the divisions to which the said new division in whole or in part belonged before the issuing of such Proclamation, just as though such new division of Britstown were named in the Schedule to the Act No. 12 of 1857.

No change of electoral divisions.

6. Notwithstanding the creation of the new division of Britstown by virtue of any Proclamation under this Act, such new division and every part thereof shall, for electoral purposes, continue to form part of whatever electoral division such new division or part thereof belonged to before the date of such Proclamation, precisely as if this Act had not been passed.

Short title.

7. This Act may be cited as the "Fiscal Divisions Extension Act, 1892."

No. 13—1892.] [Promulgated 26th August, 1892.

ACT

For Enabling the Municipality of Green Point and Sea Point to borrow a further sum of Money not exceeding £30,000 on Debentures or otherwise, on the credit of the Rates of the Municipality; and to appropriate the Money as follows: £23,000 for a Drainage Scheme, £3,000 for the purchase or building of a Town Hall and Grounds, £4,000 for the opening up and construction of Roads, Side-walks, Surface Drains and General Improvements.

Preamble.

WHEREAS it is expedient to provide the inhabitants of the Municipality of Green Point and Sea Point with a Drainage Scheme, and to purchase or build a Town Hall and grounds, and to open up and construct certain Roads, Side-walks, Surface Drains, and General Improvements:

And whereas at a public meeting of ratepayers, specially convened for the purpose, held on the 29th of April, 1892, it was unanimously resolved that the Commissioners of the said Municipality be authorised to introduce into Parliament a Private Bill enabling them to raise a further loan of not exceeding the sum

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1887.

of £30,000, on debentures or otherwise, on the credit of the rates of this Municipality, and to appropriate the money as follows:—

£23,000 for a Drainage Scheme.
£3,000 for the purchase or building of a Town Hall and grounds.
£4,000 for the opening up and construction of Roads, Side-walks, Surface Drains, and General Improvements.

Provided that no amount be expended on any Drainage Scheme or expenditure incurred for the purchase of a Town Hall, or the opening up of any road without the concurrence of a majority of the ratepayers at a meeting duly convened, and that this proviso be introduced as a clause in the said Bill:

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

Lawful to borrow money not exceeding £30,000.

1. It shall be lawful for the Commissioners for the time being of the Municipality of Green Point and Sea Point to borrow from time to time such sum or sums of money as may necessarily be required for the purposes hereinafter named but not to exceed in the whole the sum of £30,000, viz.:

£23,000 for a Drainage Scheme.
£3,000 for the purchase or building of a Town Hall and grounds,
£4,000 for the opening up and construction of Roads, Side-walks, Surface Drains and General Improvements.

Provided with consent of ratepayers.

Provided that no portion of any of the said specified sums shall be incurred or expended on any of the objects named without the previous approval of a majority of the ratepayers of the said Municipality present and entitled to vote at any meeting of ratepayers specially called for that purpose in the manner meetings of ratepayers are convened by the present private Act of the said Municipality, No. 14 of 1859.

Commissioners may impose a tax.

2. It shall be lawful for the Commissioners of the said Municipality to impose, if necessary, for the purpose of providing for the repayment of the capital and of the payment of the annual or half-yearly interest thereon, a certain rate or tax upon all present and future rateable property within the said Municipality, and every rate so imposed shall be of the same force and effect, and be levied in the same manner as rates or taxes are now imposed or levied under the provisions of the said Act No. 14 of 1859.

Payment out of other funds.

Provided that it shall be lawful for the said Commissioners to apply to the payment of capital and interest, or either, any funds or moneys accruing to the said Commissioners from any source whatever and not specially appropriated for any other object.

Debentures or acknowledgments.

3. The Commissioners shall grant to the party or parties, or company, society, or co-partnership from whom they shall borrow such moneys as aforesaid, a debenture or written acknowledgment of or for the moneys borrowed by them for the purposes aforesaid, not exceeding in the whole the said sum of £30,000, which deben-

Digitised by the University of Pretoria, Library Services, 2016

ture or acknowledgment shall be as near as may be in the form in the Schedule annexed to this Act; and shall be signed by two of the Commissioners for the time being appointed for that purpose by a resolution of the Board of Commissioners of the said Municipality. No. 14—1892.

4. The said Commissioners shall cause to be kept a separate account of all moneys borrowed under this Act and of the interest paid thereon, and of the expenditure of such moneys, and shall at their annual meetings under their Act 14 of 1859, exhibit for the inspection of the ratepayers an account showing the particulars aforesaid, and give such other information as shall be necessary and lawful. Separate accounts to be kept.

5. It shall be lawful for the Commissioners to pay the expenses for obtaining this Act, and carrying the provisions thereof into effect, out of the present general revenue of the Municipality. Expenses of this Act.

6. This Act may be cited for all purposes as "The Municipality of Green Point and Sea Point Loan Act, 1892." Short title.

SCHEDULE.

Schedule.

We, the undersigned Commissioners of the Municipality of Green Point and Sea Point, duly authorised thereto by the Board of Commissioners of the said Municipality, do hereby acknowledge that the said Commissioners in their said capacity are indebted to in the sum of for so much money borrowed by the said Commissioners for the purposes set forth in "The Municipality of Green Point and Sea Point Loan Act, 1892," and certify that the said sum is secured by the said Act in such manner and form as by the said Act provided.

And we further covenant and engage in our said capacity that the principal and interest of the said debt shall be payable and paid in manner following, that is to say :—

Given under our hands at Sea Point, this day of 189 .

WITNESSES :

No. 14—1892.] [Promulgated 14th October, 1892.

ACT

To Establish a "Contingencies Account."

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

1. To enable the Executive Government from time to time to incur expenditure on such unforeseen services as cannot be postponed without serious injury to the public interests, until adequate provision can be made therefor by Parliament, an account shall be opened in the books of the Paymaster-General, entitled the Contingencies Account may be opened in books of Paymaster-General.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1892.

"Contingencies Account," to which temporary advances to meet such expenditure may be charged on warrants of the Governor: Provided that such advances shall not be available for expenditure on any new department or office, unless Parliament shall have made provision for the same: Provided, also, that no such warrant shall be granted until the Controller and Auditor-General shall have certified that the proposed advance may be made according to law.

Limit of liabilities incurred on emergency without authority of Parliament.

2. Any liabilities thus incurred on emergency without the previous authority of Parliament shall in no case exceed the sum of one hundred thousand pounds, together with the excess if any of the railway revenue actually collected within any portion of the financial year then current, over the estimated railway revenue for such portion: unless in respect of any financial year some larger sum shall have been prescribed in resolutions of both Houses of Parliament as a maximum limit thereof: Provided that such excess of the actual over the estimated railway revenue shall be available only for any insufficiency of the Votes for the Working and Maintenance of Railways, to cover expenditure properly chargeable as ordinary Working and Maintenance Services, and shall not be available for any unauthorised work or service properly or usually regarded as belonging to Railway Capital Account, which may have been included in such Votes, or for any other unauthorised service.

Advances, how repaid.

3. Such advances may be repaid out of moneys appropriated by Parliament for that purpose, but the aggregate unadjusted balance of such advances shall in no case exceed the sum of one hundred thousand pounds, together with such excess of the actual over the estimated Railway Revenue, or such larger sum as may have been prescribed in the aforementioned resolutions of both Houses of Parliament.

Auditor-General may authorise issue of sums for enabling such advances to be made.

4. It shall be lawful for the Controller and Auditor-General, on the requisition of the Treasurer of the Colony, to authorise and allow the issue from the Exchequer account of such sums as may from time to time be necessary to enable such advances to be made: Provided that the aggregate amount of such issues unadjusted shall in no case exceed the sum of one hundred thousand pounds, together with such excess of the actual over the estimated Railway Revenue, or such larger sum as may have been prescribed in the aforementioned resolutions of both Houses of Parliament.

When payment made not covered by advances under this Act, duty of Auditor-General.

5. Should any Accounting Officer pay or authorise payment from public funds for any service which is unauthorised according to Regulations framed under the provisions of this Act or of the sixth section of the "Audit Act, 1875," and which is not covered by advances authorised by the Governor under the provisions of this Act, it shall be the duty of the Controller and Auditor-General to surcharge such Accounting Officer personally in the amount so paid, and also to surcharge in a like sum every other officer who

Digitised by the University of Pretoria, Library Services, 2016

may have directed the payment to be made or the service to be performed, notwithstanding that he knew, or with the exercise of reasonable diligence ought to have known, that the payment or service had not been authorised by Parliament, or that the provision made by Parliament had been exhausted, and that it had not been covered by advances made under the provisions of this Act; and the amount of every such surcharge in so far as it is not duly covered by advances made under the provisions of this Act, shall be recovered from such Accounting Officer, and any such other officer or officers, by deductions from their salaries under the provisions of the fourteenth section of Act 32 of 1888, or in such other manner as the Governor may direct: Provided that the total amount thus recovered from all the officers surcharged shall not exceed the amount of the surcharge: Provided further that the provisions of the twenty-fifth section of the "Audit Act, 1875," shall apply to every such surcharge.

How advances for which Parliament refuses to make provision, recovered.

6. Any advance from the Contingencies Account for which Parliament may refuse to make provision during the ordinary session next after the date on which such advance shall have been made, shall be recovered from such persons and in such manner as may be directed in resolutions of both Houses of Parliament.

Sixth section "Audit Act, 1875," to apply.

7. The provisions of the sixth section of the "Audit Act, 1875," shall apply to this Act precisely as if the said section were repeated herein.

Short title.

8. This Act may be cited for all purposes as the "Contingencies Account Act, 1892."

No. 15—1892.] [Promulgated 2nd September, 1892.

ACT

To Consolidate and Amend the Law with regard to Pounds.

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

PRELIMINARY.

Short title.

1. This Act may be cited as "The Pounds and Trespasses Act, 1892."

Laws repealed.

2. The laws mentioned in Schedule A to the extent therein set forth, and so much of any other law as may be inconsistent with any of the provisions of this Act, are hereby repealed, except as to acts done, rights acquired, liabilities incurred, offences committed, or proceedings taken before the passing of this Act.

Interpretation of terms.

3. For the purposes of this Act, the following terms shall, unless the context otherwise indicate, have the meanings set against them respectively:—

"Cattle," bulls, cows, oxen, heifers, steers and calves.

"Horses," horses, mares, geldings, colts, fillies, asses and mules.

"Sheep," rams, ewes, wethers, lambs.

"Goats," rams, ewes, wethers and kids.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1892.

"Ostriches," domesticated male and female ostriches and ostrich chicks.

"Animals" shall include horses, cattle, sheep, goats, ostriches and pigs.

"Stallion," male horse, ass or mule not castrated.

"Flock," any number of sheep or goats more than one, which are in one lot, or under the charge of one person.

"Proprietor," any owner, lessee, or occupier of land.

"Owner," the proprietor of any animal or the agent or caretaker for the proprietor.

"Sufficient fence," when applied to wire fences, shall mean a fence of so many wires and of such construction as the Divisional Council of the division in which the fence is situated shall from time to time decide; in other cases a wall, fence or barrier at least four feet six inches high and through which no animal could pass without breaking.

"Field-cornet" shall include assistant field-cornet.

"Division," fiscal division.

"Council," the divisional council of any division.

Establishment of Divisional Pounds and Appointment of Poundmasters.

Management and control of all pounds not in a Municipality, vested in Divisional Council.

4. The management and control of every pound which is not situated in a municipality or corporate town shall be vested in the council of the division in which such pound is situate. And every such pound lawfully established at the date of the taking effect of this Act shall continue thereafter to be a lawful pound, within the meaning of this Act.

Governor may at request of Council proclaim or abolish pounds.

5. The Governor may, at the request of the council of any division, establish, by proclamation in the *Gazette*, a pound at any spot desired by such council; and may similarly abolish any existing pound. But nothing herein contained shall prejudice any legal rights vested in any person lawfully interested in the continuance of any pound which may hereafter be abolished, or deprive such person of any legal remedy arising out of any contract with any council.

Council may appoint and dismiss poundmasters.

6. The council of any division may appoint and dismiss any poundmaster in the division, subject to the terms of the contract entered into between such council and such poundmaster: Provided that

(1) No person shall, at the same time, be poundmaster of more than one pound; and

(2) No person shall be appointed or continued as poundmaster who is a licensed dealer in intoxicating liquor.

Duties of Poundmaster.

Poundmaster to receive animals tendered as having trespassed.

7. It shall be the duty of every poundmaster to receive into his charge all animals tendered at his pound, between sunrise and sunset, by any proprietor, or by the caretaker for any proprietor,

Digitised by the University of Pretoria, Library Services, 2016

or by any person authorised in writing thereto by such proprietor or caretaker, in order to be impounded as having been found trespassing upon the land of such proprietor.

Penalty for refusal.

And any poundmaster who refuses or neglects to receive animals tendered as aforesaid shall be liable on each occasion to a fine not exceeding five pounds. And he shall, in addition, be liable for any damage caused to the owner of the said animals, or to any other person, by reason of such refusal or neglect.

Proviso.

Provided that in case any horse or cattle suffering from any contagious disease shall be sent to the pound, such horse or cattle shall be kept separate from all other impounded stock, and the poundmaster shall cause the same to be destroyed under the provisions of section fourteen of this Act.

Receipt for impounded animals.

8. Every poundmaster shall give to the person delivering animals into his charge a written receipt, setting forth the number and description of the animals so delivered, and specifying the trespass for which the said animals are reported to be impounded.

Number of enclosures to be kept.

9. Every poundmaster shall maintain in good repair, and as far as possible free from all infection, not less than three separate enclosures, for ostriches and horses; for cattle; and for sheep, goats and pigs.

But any council may, in regard to any pound in its division, give permission to the poundmaster to maintain in manner aforesaid a lesser number of such enclosures.

Scabby sheep, how to be dealt with.

10. Every poundmaster shall, with regard to sheep or goats which are infected with scab when received at his pound, or which become infected during their detention, keep such sheep or goats entirely separate, at all times, from other impounded animals not so infected.

And he shall dip or dress, with one or other of the recognized dips, every such infected sheep or goat as often as may be reasonably necessary.

And the owner of every such infected sheep or goat shall be bound to pay to the poundmaster, in respect of such dipping or dressing, such sum as may be due under a tariff which shall be framed for that purpose by the council of the division.

Poundmasters answerable to owner for injury by neglect.

11. Every poundmaster shall take proper care of any animal impounded, and shall be responsible to the owner of any such animal for any damage or injury sustained by reason of any neglect or default on the part of himself or any person acting for him or on his behalf.

Penalty for using impounded animal.

12. Any poundmaster who shall ride, or otherwise work or use any impounded animal shall be liable for every such offence to a penalty of not exceeding five pounds.

Record of death of or injury to animal to be kept.

13. In case of the death or injury of any impounded animal the poundmaster shall enter in his pound book a description of such animal and the cause of its death or injury; and the absence of

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1892.

any such entry, or its falsity in any material respect shall be held to be *prima facie* proof of the fact that the death or injury in question was due to the default of the poundmaster.

Poundmaster may in certain cases destroy animals suffering from contagious disease or dangerous.

14. It shall be lawful for any poundmaster to destroy, subject to the exceptions hereinafter stated, any impounded animal suffering from a contagious disease, or likely to prove dangerous to human life, or destructive to other animals impounded. Provided that

(1) No such animal shall be destroyed until a justice of the peace, a field-cornet, or two disinterested landowners shall have examined it, and shall agree with the poundmaster as to the necessity for its destruction.

(2) The poundmaster shall summon the owner of such animal, if known, to attend the examination aforesaid. Such summons may be by letter duly sent through the post.

(3) If the owner of the animal object to its destruction, he may release it, if he do so forthwith, and if he release at the same time all other animals belonging to him which may have been impounded on the same occasion as the animal proposed to be destroyed.

(4) Every justice of the peace, field-cornet or landowner attending for the purpose of the inspection aforesaid, shall be paid by the poundmaster the sum of seven shillings and sixpence, together with horse-hire at the rate of one shilling and sixpence per hour. The amount so paid may be recovered by the poundmaster from the owner of the animal if it be destroyed; if the animal be not destroyed, or the owner unknown, or if it be impossible to recover from the owner the whole or any part of such amount, then the said amount, or the portion of it unrecovered as the case may be, shall be paid to the poundmaster by the said council.

(5) Nothing in this section shall apply to sheep or goats suffering merely from scab.

Animals trespassing on poundmaster's own property.

15. No poundmaster who is in charge of a pound situated within a distance of nine miles from any other pound, in the same division, shall confine in his own pound any animals found trespassing upon property belonging to himself; but such animals shall be sent to such other pound in the same division as may be nearest to his own pound by a practicable road or thoroughfare.

And any poundmaster sending such animals to another pound shall enter in his pound book the number and description of the animals sent.

Penalty.

For a contravention of any of the provisions of this section, a poundmaster shall be liable to a penalty of not exceeding ten pounds.

Digitised by the University of Pretoria, Library Services, 2016

Poundmasters to give notice to owner of impounded animals.

16. Every poundmaster who knows the name of the owner of any animals impounded in his pound shall forthwith send through the post or otherwise a written notice addressed to such owner at his place of residence, informing him of the fact that the said animals have been impounded.

Copy of Act to be kept at every pound.

17. Every poundmaster shall have and preserve at or near his pound, a copy of this Act, in English and Dutch, and such Act shall at all reasonable times be open for reference to the public.

Board with rates of fees, &c., posted thereon to be erected at every pound.

And he shall erect and maintain at or near the pound, a board upon which shall be printed, painted, or written in legible characters, the rates of fees and damages fixed by the Schedules B, C, D, E, F, and G to this Act; or such other rates as the council of the division may authorise in their place.

Pound book to be kept.

18. Every poundmaster shall keep a pound book, the entries in which shall be made in the English or the Dutch language, or in both, according as the council of the division may direct. The following particulars shall be legibly entered by every poundmaster in his pound book:—

(1) The date when, and the cause for which, all animals received by him are impounded;
(2) The number and description of such animals;
(3) The name and residence of the person impounding such animals, and the name and residence of the owner or supposed owner;
(4) The date and particulars of the release or sale of the animals, as the case may be;
(5) Any other matters which he may be directed by the council of the division to ascertain and record; and the particulars of any notice sent to him in terms of section twenty-nine of this Act.

The said entries shall be made at the time the acts recorded were done, or so soon thereafter as possible; but not after any dispute concerning them has arisen.

And, generally, in regard to the forms in which entries in the pound book are to be made, the poundmaster shall follow such directions as he may receive from the council of the division.

Inspection of pound book.

19. Every pound book shall be kept at the residence of the poundmaster, and shall at all reasonable times be open for the inspection of the secretary or any member of the council for the district, and of any member of the police force, free of charge; and shall be similarly open to every other person upon payment of a fee of sixpence for each inspection.

Extracts from pound book to be granted.

And every poundmaster shall grant extracts, signed by himself, from his pound book to any person demanding the same, upon payment of one shilling for every such extract, not exceeding one hundred words; and sixpence for every subsequent hundred or part of one hundred words.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1892.

Copy of pound book to be sent to Secretary of Divisional Council after every pound sale.

20. Every poundmaster shall within a fortnight after the date of each pound sale forward to the secretary of the council of his division a copy of all entries in his pound book made since the date of the preceding transmission; provided that the first copy so forwarded, after the taking effect of this Act, shall be a copy of all entries made after a date to be fixed by the council. And the secretary shall preserve all such copies in his office for the inspection of any person desirous of seeing them.

Penalties for contravening certain provisions.

21. Every poundmaster who shall

(*a*) Refuse to allow his pound book or copy of this Act to be inspected by any person having a lawful right to inspect it, or

(*b*) Neglect in any respect to comply with the provisions of sections sixty-four to sixty-nine inclusive of this Act; or

(*c*) Neglect or refuse to forward to the secretary of the council the copies of entries referred to in the preceding section, shall be liable on each occasion to a penalty of not exceeding five pounds.

Penalties for false entries, &c.

22. Every poundmaster who shall

(1) Knowingly make a false entry in his pound book,

(2) Fraudulently destroy or erase any entry already made, or

(3) Wilfully deliver to the secretary aforesaid, a false copy or extract from his pound book, shall be liable for each offence, to a penalty not exceeding twenty-five pounds.

Inspection of pound book at place of sale.

23. Every poundmaster shall take his pound book with him to every sale of animals impounded in his pound, and such book shall be open, at the place of sale, free of charge, to all persons desirous of inspecting it.

Saving clause with regard to functions and duties imposed by other laws.

24. Nothing in this Act contained shall be deemed to alter in any way the powers, functions, and duties, conferred or imposed upon poundmasters, by any of the following laws, or by any other law not repealed by this Act:—

The Ordinance 9 of 1846, sections fourteen and fifteen.

The Act 14 of 1870, sections five, six, seven and eight, commonly called "The Cattle Removal Act, 1870."

The Act 37 of 1884, section sixteen, commonly called "The Native Locations Act, 1884."

The Act 28 of 1886, section eight, commonly called "The Scab Act, 1886."

The Act 33 of 1888, sections eight, twelve and fifteen, commonly called "The Scab Act, 1888."

The Act 12 of 1890, sections twenty-one, twenty-two and twenty-three, commonly called "The Brands Registration Act, 1890."

Trespass on Private Property.

Pound to which animals are to be sent.

25. Any proprietor upon whose land any animals are found trespassing may send such animals to that pound which is the nearest, by a practicable road or thoroughfare, to the land trespassed

Digitised by the University of Pretoria, Library Services, 2016

upon, and to no other pound. Provided that upon the application of the Divisional Council of any division, it shall be lawful for the Governor, by Proclamation in the *Gazette*, to direct that from and after a date to be notified in such Proclamation, any animals found trespassing on any land shall be sent to that pound in such division which is nearest by a practicable road or thoroughfare to the land trespassed upon, and to no other pound. And from and after the date aforesaid, this section shall, for the purpose of its operation in such division, be read as if the words " in the same division " had been inserted after the word " pound " where it first occurs in the said section.

Destruction of pigs, poultry, and pigeons.

26. All pigs, poultry or pigeons found trespassing in or upon

(*a*) Any garden, vineyard or orchard;

(*b*) Any place upon which any species of cultivated crop is growing, or upon which such crop having been gathered is still lying;

(*c*) Any place containing grain;

may be destroyed by the proprietor, or any person acting in his authority.

Destruction of dogs.

And any dog found trespassing between the first day of December and the first day of May in any vineyard or raisin floor, and doing damage therein, may be similarly destroyed.

Provided that any dog found trespassing at any time in a fenced camp or enclosed place in which there are game or animals may be destroyed; and provided further that the owner of any dog, or any person having a dog in his possession or under his control, shall be liable to make good any damage done by such dog to any game, ostriches or animals in any fenced camp or enclosed place.

Tender by owner before animals are impounded.

27. The owner of any animals liable to impoundment for trespass may, before the animals have been removed from the property trespassed upon, tender to the person complaining of the trespass a sum of money to cover the damage suffered by him, or the trespass money lawfully claimable under any section of this Act in connection with such trespass; such tender to be made to the complainant himself or his caretaker. If such animals as aforesaid are in course of being conveyed to the pound, then their owner may tender a sum of money to cover the damage or trespass money aforesaid, and also the mileage to which the complainant would be entitled under this Act if the animals had actually been impounded; such tender may be made either to the complainant himself or to his servant or agent charged with the duty of conveying the animals to the pound. And if the said tender be refused, the complainant shall pay the cost of all legal proceedings which he may thereafter institute, and shall be liable for all damages sustained by the owner of the animals by reason of their detention after the date of tender, unless the tender is found to be insufficient by a competent Court; or unless, in the opinion of such Court, the tender was refused by

Digitised by the University of Pretoria, Library Services, 2016

the complainant or person in charge of the animals in the *bona fide* belief that the person making the tender was not the owner or the duly authorised agent of the owner.

Penalty for selling animal found trespassing.

28. No proprietor shall sell or dispose of any animal found trespassing upon his property, under a penalty not exceeding ten pounds, recoverable at the suit of the owner of the animal so sold or disposed of.

But the enforcement of the penalty shall not deprive the owner of any legal right he may have to recover from such proprietor the value of such animal and any damage sustained by reason of its detention or sale.

Use and detention of animals found trespassing.

29. No proprietor shall ride, work, or use any animal found trespassing upon his land, or detain such animal for any space of time longer than twenty-four hours.

No proprietor shall knowingly allow any stray animal to remain upon his property for a period longer than two weeks unless he shall have forwarded to the owner of the animal, if known to him, or to the nearest poundmaster, a notice of the presence of such animal upon his property. Such notice shall be sent by letter delivered or duly posted, and shall set forth, as nearly as possible, the species, marks, and distinguishing peculiarities of the animal in question, and in regard to horses and cattle their colour also.

Furious driving and illtreatment.

And no person shall furiously drive, worry, or wantonly illtreat any animal found trespassing, or conduct the same to the pound by any except the shortest available road or thoroughfare, unless some other shall be more desirable for the animal itself, or send any number of animals found trespassing at the same time and place in separate lots to the pound with the object of obtaining additional mileage.

Penalty.

Any person contravening this section shall be liable to a penalty not exceeding five pounds; and shall make good to the owner of such animal or animals any damage sustained by reason of such infringement.

Rescue and penalty therefor.

30. No person shall rescue, or incite or assist any other person to rescue, any animals lawfully impounded, or lawfully seized for the purpose of being impounded, under a penalty of not exceeding ten pounds for each offence.

Mileage payable to person delivering animals to be impounded.

31. Every person who delivers any animal to a poundmaster to be impounded, shall be entitled to receive from such poundmaster mileage at the rate set forth in Schedule B to this Act: Provided that

(1) When the person so delivering the said animals is not himself the proprietor of the land trespassed upon, or the caretaker for the proprietor, then he shall produce a written memorandum signed by such proprietor or caretaker giving a description of the animals, and authorising the bearer to convey them to the pound, and every such memorandum shall be preserved by the poundmaster as a voucher;

Digitised by the University of Pretoria, Library Services, 2016

(2) When more persons than one have been necessarily employed in conveying the said animals to the pound, mileage shall only be paid by the poundmaster to one of such persons; but the person impounding the animals may recover from the owner, in any competent court, similar mileage in respect of every other of such persons so employed. No. 15—1892.

Provided that when ostriches are impounded the poundmaster shall pay mileage for as many drivers as are necessarily employed.

32. The owner of any animal lawfully impounded for trespass upon: Trespass upon gardens, vineyards, &c.

(*a*) Any garden, vineyard or orchard;

(*b*) Any place upon which a cultivated crop is growing, or upon which such a crop, having been gathered, is still lying;

(*c*) Any yard, floor or place containing grain or dried fruit;

shall, subject to the provisions hereinafter contained, be liable to pay trespass money to the proprietor of the property trespassed upon, calculated according to the rates set forth in Schedule C to this Act.

Provided that:

(1) Any proprietor, or the caretaker for any proprietor, sending animals to the pound for a trespass under this section shall at the same time send a signed memorandum to the poundmaster, setting forth the number and description of the animals and the species of place or property upon which they have trespassed.

(2) When the person impounding elects to claim damages calculated according to Schedule C to this Act, the memorandum shall state the amount so claimed.

But if he elects to refer the amount of damage to the award of the field-cornet and landowners as hereinafter provided, or if he elects to proceed for damages by action, the memorandum shall state such election on the part of the person signing it.

(3) If the memorandum delivered with the animals does not state the species of place or property upon which they have trespassed, then they shall be considered as impounded for trespass under section thirty-three of this Act.

(4) When such animals are taken to the pound by the proprietor or caretaker aforesaid in person, then the verbal statement of such proprietor or caretaker upon the matters referred to in the preceding sub-sections of this section shall be taken and recorded by the poundmaster.

33. The owner of any animals lawfully impounded for trespass upon any uncultivated ground or any place not of the description in the last section given, shall be liable to pay trespass money to the proprietor of the property trespassed upon at the rate set forth in Schedule D to this Act. Trespass upon uncultivated ground.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1892.

Penalty for repetition of trespass.

34. In case any property shall be trespassed upon twice within the space of one fortnight by the same cattle or horses belonging to the same owner, then the said owner shall be liable in respect of the second trespass to pay twice the amount of trespass money which would have been payable under this Act had such second trespass not been a repeated trespass.

Liability of poundmasters on releasing animals without payment of damages due.

35. No poundmaster shall release any impounded animal until there shall have been paid to him, over and above all other fees and charges the amount of all damages or trespass money due and payable under either of the three last preceding sections, or under the thirty-eighth, thirty-ninth, forty-first, forty-fifth, fifty-first and fifty-second sections, in respect of such animals.

And in case of the release of any such animals, without payment of the damages or trespass money aforesaid, the poundmaster shall be liable for such damages or trespass money.

Assessment of damages when proprietor considers tariff inadequate.

36. If any proprietor shall consider the amount of trespass money claimable under this Act inadequate for the damage done to his property by animals trespassing thereon, he may demand that such damage shall be assessed by the nearest field-cornet or justice of the peace as umpire or referee, and two landowners as arbitrators. In every such case the following provisions shall apply:

(1) The proprietor intending to have the amount of damages assessed by arbitration under this section shall give notice to the owner of the animals (where he is known) and the nearest field-cornet within twenty-four hours after the trespass has been committed.

(2) The proprietor shall appoint one arbitrator and the owner of the animals (where he is known) the other. If the owner refuses to appoint an arbitrator then the arbitrator nominated by the proprietor shall proceed to assess the damage.

(3) If the nearest field-cornet or justice of the peace is absent from home or is unable or unwilling or fails to act, then the two arbitrators appointed shall select some other impartial landowner to act as referee in place of the field-cornet or justice of the peace.

(4) If the owner is unknown then the assessment shall not take place except in the presence of a field-cornet or justice of the peace, and the proprietor shall then obtain the services of the nearest available field-cornet or justice of the peace, who shall appoint two landowners as arbitrators and shall himself act as umpire or referee.

(5) The field-cornet, or justice of the peace, or referee shall appoint a convenient time for the inspection of the property trespassed upon; and the referee and arbitrators shall be entitled to receive from the complainant for their services the sum of seven shillings and sixpence each, together with horsehire at the rate of one shilling and sixpence per hour, which charge, as well as the damages assessed, shall be paid

Digitised by the University of Pretoria, Library Services, 2016

to the complainant by the owner, in case the damages assessed shall exceed the amount which would under any of the said schedules have been claimable.

(6) If any proprietor who demands arbitration under this section shall agree with the person from whom he claims damages to submit the matter to any single referee or to any arbitrators whom the parties may select, then such referee or arbitrators shall, unless the written agreement for arbitration shall otherwise provide, be bound to act in accordance with the provisions of this section; and their award shall be considered to be of the same effect as if it had been given by the field-cornet or justice of the peace and landowners herein mentioned.

Award to be in writing.

37. Every award made under the preceding section shall be in writing, and shall be signed by the arbitrators and by the field-cornet, justice of the peace, or referee, or in the case of a single landowner being lawfully entitled to make it, as hereinbefore provided, by such landowner; and it shall state the amount at which the damage has been assessed, and also whether the complainant or the owner of the animals is liable to pay the charge for the award; provided that if the field-cornet, justice of the peace, or referee, and landowner shall not agree in their assessment, then the amount agreed upon by any two of them shall be the amount awarded.

Complainant to receive award and send copy to poundmaster.

38. Every such award shall be handed to complainant, who shall send a true copy of such award to the poundmaster of the pound to which the animals have been sent, and thereupon the assessed damages and charges, if allowed, shall become a charge upon the animals impounded.

Trespass money due for scabby sheep or goats.

39. The owner of any sheep or goats infected with scab, and found trespassing upon any property, shall, if the said sheep or goats are not found mixed with other sheep or goats belonging to the proprietor, and free from the said disease, be liable to pay to the proprieter twice the amount of trespass money which would have been payable under the provisions of the thirty-second or thirty-third sections of this Act in regard to a similar trespass by sheep or goats not so infected.

And in case the trespassing sheep or goats are found so mixed, as aforesaid, then their owner shall be liable to pay to the proprietor four times the amount of trespass money which would have been payable under the aforesaid sections in regard to a similar trespass by sheep or goats not so infected.

And any person who shall wilfully drive any sheep or goats infected with the said disease into or upon the property of another person, upon which property there are at the time any sheep or goats not infected with the said disease, shall over and above any damage or trespass money payable under this Act or otherwise, be liable on conviction to be imprisoned, with or without hard labour, for any period not exceeding six months.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1892.

If one sheep or goat trespassing is infected whole flock deemed infected.

40. For the purposes of this Act if any sheep or goat found trespassing is infected with the disease in the last section mentioned, then all sheep or goats in the same flock, and found trespassing at the same time, shall be deemed to be similarly infected, and if any sheep or goat in any flock with which any other flock has become mixed is so infected then the entire mixed flock shall be deemed to be similarly infected.

Assessment of damages for trespass of infected sheep or goats.

41. Any proprietor who is entitled to claim damages under this Act for the trespass of any sheep or goats infected with the disease aforesaid upon his property, may require that the amount of damage shall be determined by a field-cornet, justice of the peace, or referee and two landowners: Provided that

(1) The provisions of the thirty-sixth, thirty-seventh and thirty-eighth sections of this Act shall be applicable to every such case;

(2) The field-cornet, justice of the peace, or referee, and the arbitrators shall, before awarding any damages, be satisfied that the trespassing sheep or goats are infected with scab, and shall ascertain whether or not the trespassing sheep or goats were found mixed with sheep or goats not trespassing, and free from such disease;

(3) No person claiming damages under this section shall be entitled to claim any sum by way of special damage under the provisions of the eighth section of "The Scab Act, 1886," or any similar provisions in any future Act.

Owner of stock alleged to be infected may deposit security and demand arbitration.

42. The owner of any sheep or goats alleged to be infected as aforesaid, and in respect to the trespass of which damages or trespass money are claimed under this Act, may upon depositing with the poundmaster the sum of twenty-two shillings and sixpence, demand that the question whether the said sheep or goats are so infected be submitted for decision to the award of the field-cornet, or justice of the peace, and the two arbitrators; and thereupon the provisions of the thirty-sixth section of this Act shall apply to every such case.

Trespass of stallions, bulls, sheep rams, and goat rams, when found amongst mares, cows, etc., etc.

43. The owner of any stallion, bull, sheep ram or goat ram, found trespassing upon the property of another person, and found to be in company with any mare, cow, heifer or ewe, respectively belonging to the proprietor or upon his property with his consent, shall be liable to pay to the proprietor, over and above all other pound fees or charges, a penalty calculated upon the following scale:—

(*a*) For every stallion so found, a sum of not exceeding ten pounds;

(*b*) For every bull so found, a sum not exceeding five pounds;

(*c*) For every sheep ram or goat ram so found, a sum not exceeding one pound.

Such penalty in every case may be recovered in any court of Resident Magistrate having jurisdiction.

Digitised by the University of Pretoria, Library Services, 2016

Trespass by stallions, bulls, etc., etc. under ordinary circumstances.

44. The provisions of the preceding section shall not apply to any stallions under the age of two years, to any bull under the age of one year, and to any sheep ram or goat ram under the age of nine months, and the trespass money payable in respect of any stallion, bull, sheep ram or goat ram, found trespassing, but not under the circumstances detailed in the preceding section, shall be the same amount that would have been payable in respect of a similar trespass by a gelding, ox, or wether, as the case may be.

Assessment of damages under 43rd section.

45. Any person who is entitled to claim damages under the forty-third section may require that the amount of damages shall be determined by a field-cornet, justice of the peace, or referee and two landowners; and in that case the provisions of the thirty-sixth, thirty-seventh and thirty-eighth sections of this Act shall apply to such determination and inquiry.

Stallions to be castrated before released or sold.

46. No stallion above the age of two years which shall hereafter be lawfully impounded shall be released by the owner thereof, or sold out of the pound, without being previously castrated, unless such stallion shall be released under the provisions of the forty-ninth section hereof.

Castration, and fee for.

47. Every such stallion not released under the provisions of the forty-ninth section hereof shall be castrated by the poundmaster, if competent to perform such operation, or by some other competent person employed by him at his own expense, and such poundmaster shall be allowed for the performance of this duty a fee of ten shillings, to be recovered from the owner of such stallion, if known, or deducted from the proceeds of sale should such animal be sold out of the pound: Provided, however, that no such fee as aforesaid shall be recoverable from the owner in respect of any animal which shall die while in the poundmaster's keeping in consequence of such castration. If the said proceeds be insufficient to pay the said fee, then the amount of such fee shall be paid to the poundmaster by the council.

Period to elapse prior to castration.

48. No stallion shall (except as hereinafter is provided) be castrated under the provisions of this Act until it shall have remained impounded for at least three weeks; and any stallion not sooner released by or on behalf of the owner thereof, shall, subject to such regulations as may be in force at the date of such sale, be sold at the first pound sale occurring after the expiration of thirty days from the date of such stallion having been impounded: Provided, however, that if the owner of such stallion shall give his consent, or shall decline to release it under the forty-ninth section hereof, such stallion may be castrated forthwith, and shall be castrated without unnecessary delay, should the owner thereof desire to release the same under the ordinary provisions of the law.

Conditions under which impounded stallion may be released without castration.

49. The owner of any stallion which may hereafter be impounded shall be entitled to release such stallion without its being castrated, upon payment of pound fees and other charges, and upon

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1892.

giving security, to the satisfaction of any Resident Magistrate or justice of the peace or field-cornet, for the payment of any fine or penalty and costs of suit recoverable under the forty-third section of this Act: Provided, always, that every such owner shall be entitled to tender to any person claiming any penalty under the sections aforesaid, such sum as he shall consider adequate to cover such fine or penalty as aforesaid; and in the event of such tender being refused, the person claiming any such fine or penalty shall be condemned in the costs of such legal proceedings as he may afterwards institute for the recovery thereof, unless the court in which the same shall be pending shall award such fine or penalty as shall exceed the amount so tendered.

TRESPASS ON OUTSPANS AND GOVERNMENT PROPERTY.

Who may impound for trespass on outspan.

50. Every justice of the peace, field-cornet, and member of the council, and every road inspector, and secretary in the service of the council in any division, and also any person authorised in writing by any of the said persons, may impound any animals found upon any outspan place or vacant Crown land in the said division.

But this section shall not apply to animals in the possession of travellers who have outspanned for a period not greater than twenty-four hours, or for any period during which they may be detained by stress of weather or other sufficient cause upon the said outspan place.

Pound to which such animals sent.

51. All animals impounded under the preceding section shall be sent to the same pound as would have been the case had the outspan or vacant Crown land been private property, and they had trespassed thereon; and the same mileage and trespass money shall be payable as if the said outspan were private property. But the mileage shall be paid to the person taking the animals to the pound, and the trespass money shall be paid to the secretary of the council of the division or to some person entitled to receive it for him.

Trespass upon dam or tank, the property of Government.

52. Any animal not belonging to, or in the possession of a traveller which is found trespassing upon any dam or tank belonging to the Government, or to some council, and intended for the use of travellers and their cattle only, may be impounded by any of the persons in the fiftieth section mentioned, or by any persons duly authorised to take charge of such dam or tank; and the person so impounding shall be entitled to the mileage as in the preceding section provided.

Penalty for repeated trespass.

53. If any animal belonging to any person shall trespass upon any such dam or tank as aforesaid, twice within the space of three months, then such person shall, over and above all other fees and charges, be liable to a penalty of not exceeding five pounds.

FEES RECEIVABLE BY POUNDMASTER.

Poundmaster's fees.

54. Every poundmaster shall be entitled to demand or retain (as the case may be) in respect of every animal impounded with

Digitised by the University of Pretoria, Library Services, 2016

him, under this Act, the fees enumerated in Schedule E to this Act; and no animal shall be considered to be impounded until it shall have been actually placed within the pound kraal.

Fees for herding or grazing.

55. Every poundmaster shall be entitled, over and above the fees in the last preceding section mentioned, to demand or retain (as the case may be) a further fee for every day during which any such animal shall be herded, grazed and fed by him; such fee to be in accordance with the Schedule F to this Act.

Fees for keeping and feeding animals separately.

56. Every stallion above the age of two years, every bull above the age of two years, every sheep ram, goat ram or boar, above the age of nine months, and every animal which, from contagious disease, dangerous vice, or other reason, shall be unfit to run with the remaining herd, shall be kept and fed separately; and the fees to be received or retained (as the case may be) by the poundmaster for the keeping and feeding of such animal, shall be those enumerated in Schedule G to this Act.

To whom fees to go.

57. The fees mentioned in the last three preceding sections shall be paid to the poundmaster, for his own use, by the owner of the animals impounded; and the said fees, together with the mileage paid by the poundmaster, in terms of this Act, shall be a charge upon such animals; and such animals may be detained by the poundmaster in security of the said fees and mileage: Provided that—

(1) If the value of the animals impounded is in excess of the total charges due thereon and ascertained under this Act, and if the owner is unable to pay the said charges, then the poundmaster shall only detain so many of the said animals as may be reasonably sufficient to secure the total charges due upon all the animals, and shall deliver the remainder of the animals to the said owner.

(2) Any poundmaster who shall retain, after demand, any greater number of such animals than is reasonably necessary to secure such charges as aforesaid, shall be liable to the owner thereof for any damages sustained by him on account of such retention.

Fees for attending pound sales.

58. Every poundmaster shall, for his attendance at every pound sale, as hereinafter provided, be allowed a fee of ten shillings, to be paid proportionately out of the proceeds of the animals sold at such sale. And if such proceeds be insufficient, then the council shall pay to the poundmaster such amount as, together with the sum received by him from the proceeds, shall amount to ten shillings.

Fees for animals not branded.

59. In addition to the fees hereinbefore provided, every poundmaster whose pound is situated in a division in which the "Registration of Brands Act, 1890," is in force, shall receive such fee for every horse, head of cattle or ostrich above the age of one year, impounded in his pound, and bearing no registered brand, as the council of the division may determine, but in no case to exceed three pence per head.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1892.

Alteration of Rates of Pound Fees, Mileage and Trespass Money.

Alteration of tariff by Divisional Councils.

60. It shall be lawful for the council of any division, from time to time to alter the tariff of fees and rates fixed in any of the Schedules B, C, D, E, F, and G to this Act, in respect of all pounds, other than municipal pounds, situate in such division.

Effect of alteration.

61. Every such alteration or amendment of any of the said schedules, when published as hereinafter provided, shall be of the same legal force as if it had formed part of the original schedule, and shall be taken to be included in any reference made in this Act to such schedule.

Publication of altered tariff.

62. No such altered tariff shall take effect until it has been published in the *Gazette* and in some newspaper circulating in the division, and until such published alteration by the council of any division, the rates fixed by the schedules to this Act shall be in force.

Council to furnish poundmasters with copy of tariff as altered.

63. So soon as the council of any division shall have framed and published an altered or amended schedule as hereinbefore provided, each poundmaster in the division shall be furnished by the secretary with a copy thereof.

Sale of Impounded Stock.

Advertisement to secretary divisional council before sale of animals.

64. Whenever any impounded animals shall not be released within ten days from the date of their impoundment, the poundmaster shall forward to the secretary of the council for the division in which the pound is situated, an advertisement setting forth the species, marks and distinguishing peculiarities (if any) of such animals; and in regard to horses and cattle their colour also. And such advertisement shall notify that the animals therein mentioned will be sold at the next sale of impounded cattle, and shall set forth the time and place of such sale.

Publication of advertisement.

65. Every advertisement or notice of the sale of impounded animals shall be published at least twice in succession in such paper or papers as the council for the division may direct, and the expense of such publication shall be borne by the said council.

Copy to be posted at or near pound and sent to other poundmasters in division.

66. Every poundmaster, upon sending such advertisement to the secretary of the council as aforesaid, shall post a copy of it in some conspicuous place at or near his pound, there to remain until the day of sale, and the secretary of the divisional council shall also send a copy by post to every other poundmaster in the division—including poundmasters of municipal pounds,—and every poundmaster receiving such a copy of an advertisement as aforesaid shall post the same in a conspicuous place at or near his pound, there to remain until the date of sale therein mentioned.

Time and place of sales.

67. The sales of animals impounded in the several pounds of each division shall take place, as nearly as may be, at intervals of one month; and shall be held at such towns, villages, or other places as the council may appoint: Provided that

Digitised by the University of Pretoria, Library Services, 2016

(1) The dates of the said sales shall, as far as possible, be so arranged as to cause each successive sale to be held in a different month, and to allow a notice of at least fifteen days to be given of the sale of any animals. Dates of sales and publication of notices.

(2) The secretary of every council shall transmit to the Colonial Secretary, for insertion in the *Gazette*, once in the month of January, and again in the month of July in each year, a notice setting forth the dates and places at which the several pound sales in the division are appointed to take place.

68. Every sale of impounded stock shall be held at the hour of ten in the morning on the day fixed; and at every such sale the poundmaster shall act as auctioneer,—no auctioneer's licence shall be necessary in order to enable a poundmaster so to act, nor shall auction duty be payable in respect of purchases at any such sale. But no poundmaster shall be directly or indirectly interested in any purchase at any sale so held by himself. Poundmaster to act as auctioneer.

69. No animal shall be put up at any such sale unless it has been impounded for at least three weeks, except with the consent of the owner. Animal to be impounded 3 weeks before sale.

70. At every such sale, all animals, except sheep and goats, shall be sold singly. Sheep and goats shall be sold in lots of not more than ten. And in no case shall sheep and goats, or sheep or goats with different marks or brands, be sold together in the same lot. Animals to be sold singly, except sheep and goats.

71. At every such sale the animals shall be sold for cash; and the proceeds, less the amount of pound fees and other fees and charges properly payable in respect of such animals and less the amount of any damage due or assessed under this Act, shall be forthwith upon receipt, handed by the poundmaster to the secretary of the council, to be by him paid to the owners of the animals sold according to their respective rights: Provided that Sales shall be for cash.

(1) If in any case the animals sold shall not realize sufficient to satisfy all such fees, charges, and damages as aforesaid, the proceeds shall be first applied to the payment of the mileage due to the poundmaster; and if the said proceeds be insufficient to satisfy such mileage, then the balance of mileage shall be paid to the poundmaster by the council; and the balance of other fees, charges, or damages, shall be recoverable from the respective owners by action in any competent court. Proceeds of sale how to be dealt with.

(2) Any money, being the proceeds of the sale of any impounded animal sold as aforesaid, which shall remain in the hands of the secretary of the council for the division for a period of twelve months, without being claimed by the owner of such animal, shall become the property of such council.

(3) Every poundmaster shall be obliged, after the sale of any head of cattle, horse or ostrich, and before delivery to the

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1892.

purchaser to brand the same with such distinguishing mark as may be fixed upon by the council of his division, for which branding he shall be allowed a fee of one shilling and sixpence in each case. Every poundmaster contravening this section shall be liable to a fine of £2 in each case.

GENERAL.

Illegal impounding and penalties therefor.

72. Any person who illegally impounds any animal shall be liable to make good to the owner all damages, costs and charges arising out of such proceeding, together with two shillings for every horse or head of cattle, and one penny in respect of every other animal so illegally impounded.

When property trespassed on is in different division to that of the proper pound and the rates of the two divisions differ.

73. In case any property trespassed upon is situated in a different division from that in which the pound proper for the receipt of trespassing animals is situated,—and in case the rates of mileage and trespass money in the two divisions shall be different, then mileage and trespass money shall be payable according to the rate for the division in which the property trespassed upon is situated, but all rates payable upon the delivery of such animals to the poundmaster, and for herding, grazing and feeding the same, shall be payable according to the rate for the division in which the pound is situated.

Molestation of animals on owner's property.

74. Every person who shall wrongfully molest, drive, or scatter the animals of another person when upon the property of such last mentioned person; or take away such animals from off the land of their owner, shall be liable upon conviction to a penalty not exceeding ten pounds.

Reservation of action for trespass.

75. Nothing in this Act contained shall be construed so as to prevent any person complaining of trespass from seeking redress according to law in any competent court: Provided

(1) No person who shall once have claimed damages under sections thirty-two or thirty-three shall be competent afterwards to require an assessment by a field-cornet or a referee and arbitrators, nor shall any person who shall once have claimed either such damages or such assessment be competent afterwards to seek redress by legal process.

(2) Whenever any complainant shall decide to proceed at law for the recovery of damages for any alleged trespass, the owner of the animals impounded for such alleged trespass shall be entitled to release the same upon payment of pound fees, and upon giving security to the satisfaction of any resident magistrate or justice of the peace, for the payment of any damages and costs which the complainant may recover.

Recovery of fines and penalties.

76. All fines and penalties imposed by any of the provisions of this Act shall be recoverable in the court of the resident magistrate of the district in which the offence shall have been committed, and

Digitised by the University of Pretoria, Library Services, 2016

may be proceeded for by any person in regard to whose property the act or omission entailing any such fine or penalty shall have taken place.

And any fine or penalty which shall not be incurred by any act or omission affecting the property of any particular person may be proceeded for by any person whomsoever.

And all fines and penalties, when recovered, shall be paid to the person proceeding for the same.

Penalty for contravention where not specially prescribed.

77. Every person contravening any of the provisions of this Act, in regard to which no penalty is expressly herein provided, shall incur and be liable to a penalty not exceeding five pounds.

Costs of prosecution or defence.

78. It shall be lawful for any court of resident magistrate, and for any court to which an appeal from such resident magistrate's decision may be brought, to order that the costs of prosecution or defence, and the costs of such appeal, shall be paid either by the person proceeding for the recovery of a fine or penalty under this Act, or by the person accused of a contravention of any provision of the Act; or it shall be lawful to make no order as to costs. The costs referred to in this section to be such as would be taxed and allowed if the proceedings were in the nature of a civil action.

Imprisonment on non-payment fine.

79. When any person convicted of an offence against any provision of this Act shall not pay the penalty imposed, he may be sentenced to imprisonment with or without hard labour for any period not exceeding two months, unless any other term of imprisonment be hereinbefore provided in respect of the non-payment of such penalty.

Magistrate may impound and remove animals alleged to have been stolen.

80. Any magistrate or assistant magistrate may send to any pound in the district within his jurisdiction any animals alleged or proved to have been stolen, and may remove or authorise the removal of the same at his discretion. It shall be the duty of the poundmaster to receive any animals so sent to his pound. Such animals shall not be subject to the usual pound regulations for the sale of impounded animals, but shall be dealt with in such manner as the resident magistrate of the district may direct. No mileage shall be payable on said stock; and in the absence of any special agreement as to the charge to be made for keeping the said animals, the poundmaster may charge only the sustenance fees set forth in Schedule F. Any sum due in terms of this section for keeping or sustaining such animals shall be a first charge upon the said animals, and shall be paid before the poundmaster is bound to deliver the animals.

Municipal Pounds.

Application of Act to municipal pounds.

81. The provisions of this Act shall apply to every pound in any municipality constituted or brought under the provisions of the "Municipal Act, 1882."

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1892.

But the council of every such municipality shall in regard to every such pound respectively exercise all the powers by this Act given to the council of a division in regard to the pounds in that division.

Government of Municipal pound, where Municipality not under Municipal Act, 1882.

82. Every pound situated in any municipality or corporate town, not constituted or brought under the Act aforesaid, shall be regulated and governed by the provisions of the Act or Ordinance under which the said municipality or corporate town has been constituted, and by any rules or bye-laws lawfully framed thereunder.

Animal trespassing beyond limits of municipality.

83. All animals seized or detained for any trespass committed beyond the limits of a municipality shall be sent to any pound within the said limits, if that pound be the one nearest to the place of trespass and be in the same district; and the poundmaster shall be bound to receive the animals so sent.

Animals impounded in municipal pound subject to regulations of such pound.

84. All animals impounded in any municipal pound shall be subject to the regulations of such pound. But all questions respecting trespass committed beyond the limits of a municipality shall be determined, and the damages claimable therefrom shall be regulated by the provisions of this Act.

Schedule A. Laws repealed.

SCHEDULE A.

LAWS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Ordinance 16 of 1847 ..	Ordinance for the better regulation of Pounds, and prevention of Trespasses .. .	The whole.
Act 1 of 1869	Act to Amend the Ordinance No. 16 of 1847	The whole.
Act 31 of 1875.. ..	The Pounds Act, 1875.. ..	The whole.
Act 30 of 1886.. ..	The Pounds and Trespasses Amendment Act, 1886 .. .	The whole.
Act 29 of 1889 . ..	The Pounds Ordinance Amendment Act, 1889	The whole.

Schedule B. Mileage.

SCHEDULE B.

RATE OF MILEAGE.

	s.	d.
For all animals, whether one or more, per mile, going to the pound	0	6

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE C.

Schedule C. Trespass on cultivated land.

TRESPASS ON CULTIVATED LAND.

Description of Animal.	If Land enclosed with sufficient fence.	If Land not so enclosed.
	s. d.	s. d.
Horses, Cattle, Ostriches and Pigs, per head ..	1 6	0 9
Goats, per head	0 6	0 3
Sheep, per head	0 3	0 1

SCHEDULE D.

Schedule D. Trespass on uncultivated land.

TRESPASS ON UNCULTIVATED LAND.

Description of Animal.	If Land enclosed with sufficient fence.	If Land not so enclosed.
	s. d.	s. d.
Horses, Cattle, Ostriches and Pigs, per head ..	0 6	0 3
Goats and Sheep, per head, if under 300 in number, per head	0 1	0 0½
,, ,, if over 300 in number, then for every goat or sheep in excess of 300, per head	0 0½	0 0½

SCHEDULE E.

Schedule E. Pound fees.

POUND FEES.

	s. d.
Horses, Cattle, Pigs and Ostriches, per head	0 6
Sheep and Goats, per head	0 0½

SCHEDULE F.

Schedule F. Sustenance fees.

SUSTENANCE FEES.

	s. d.
Ostriches, per head, per diem	0 4½
Horses, Cattle and Pigs, per head	0 4½
Sheep and Goats	0 0½

SCHEDULE G.

Schedule G. Fee for animals separately herded.

FEES FOR ANIMALS TO BE SEPARATELY HERDED.

	s. d.
For every Stallion, per diem	1 6
For every Ostrich, per diem	1 6
For every Bull, ,, ...	1 0
For every Boar, ,, ...	0 9
For every Sheep Ram, Goat Ram, or other separated animal, per diem	0 3

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1892.] [Promulgated 2nd September, 1892.

ACT

To Apply a Sum not exceeding Twenty Thousand One Hundred and Sixty-three Pounds Twelve Shillings and Ninepence Sterling for the purpose of meeting and covering certain Unauthorised Expenditure.

Preamble.

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

Revenue charged with £20,163 12s. 9d.

1. The public revenue of this Colony is hereby charged with a sum not exceeding twenty thousand one hundred and sixty-three pounds twelve shillings and ninepence sterling, which sum shall be paid for unauthorised expenditure beyond the amounts voted or appropriated for the service of the financial year ended the 30th June, 1891, as described at page 238 of the "Report of the Controller and Auditor-General, with Statements of the Revenue and Expenditure and Appropriation Accounts of the Colony of the Cape of Good Hope for the financial year 1890-91" [G. No. 4, '92], presented to both Houses of Parliament by command of the Governor.

Short title.

2. This Act may be cited as the "Unauthorised Expenditure Act, 1892."

No. 17—1892.] [Promulgated 2nd September, 1892.

ACT

To Amend the Law regarding the Landing, Shipment and Removal of Firearms and Ammunition.

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

Interpretation of terms.

1. For the purposes of this Act the following terms shall have the meaning assigned to them by this section unless such meaning be inconsistent with the context:

"Firearms" means guns, pistols, and all parts thereof, and any other description of firearms, and all parts thereof, wherein any explosive is capable of being used;

"Ammunition" means any explosive capable of being used in the explosion of firearms, and includes cartridges, cartridge cases, shot, bullets, lead and percussion caps.

Repeal of existing laws.

2. The second, third, fourth and fifth sections of the Ordinance No. 7 of 1834, being an Ordinance for regulating the trade in gunpowder in this Colony, the second, third, fourth, fifth, sixth and seventh sections and first Schedule of the Ordinance No. 2 of

Digitised by the University of Pretoria, Library Services, 2016

1853, as perpetuated by Act No. 28 of 1864, and such other provisions in the said Ordinances, or any other law as may be repugnant to or inconsistent with the provisions of this Act, are hereby repealed.

Firearms and Ammunition, conditions for landing, shipment and removal.

3. From and after the taking effect of this Act, no firearms or ammunition shall be landed or removed from the landing place, or from any bonding warehouse, or shipped to any boat, craft or vessel, at any port in this Colony without the permission in writing of the Collector or other principal officer of Customs at such port, and under such regulations as may be prescribed by the Governor in that behalf: Provided that no firearms or ammunition shall be shipped to, landed or removed from the landing place or any bonding warehouse at Port St. John's or at Walfisch Bay, or at any such port as the Governor may determine and notify by proclamation in the *Gazette*, without the authority of His Excellency the Governor, or some person duly authorised thereto by him; and provided, further, that nothing in this Act contained shall extend to the removal by sea, of lead pipes, or sheet lead for building and such like purposes; nor shall anything in this Act be construed to extend to or affect firearms or ammunition the property of Her Majesty the Queen or the Colonial Government, or any such articles proved, to the satisfaction of the Collector or other officer of Customs, to be really and *bona fide* intended for the use of mariners or others navigating the ship or vessel on board of which such articles may be shipped or for the personal use of any passenger arriving or proceeding by sea.

Governor may make rules and regulations.

4. It shall be lawful for the Governor from time to time to make, alter, amend or revoke rules and regulations for the landing, removal, and shipment of firearms and ammunition at any port in this Colony, and for generally carrying out the provisions of this Act, and all such rules and regulations when made shall be published in the *Gazette*, and when so published shall have the force of law.

Penalties.

5. Any person who shall contravene any of the provisions of section three of this Act or any regulation made and published as provided for in section four, shall be liable to a fine not exceeding one hundred pounds, and in default of payment to imprisonment with or without hard labour for any period not exceeding three years or to both such fine and imprisonment, and all firearms or ammunition, landed, removed, or shipped in contravention of any such section or regulation, and all vehicles and animals made use of in the removal of such firearms or ammunition shall become forfeited to the Colonial Treasury.

Date of taking effect and short title

6. This Act shall come into operation upon a date to be fixed by the Governor by Proclamation in the *Gazette*, and may be cited as "The Firearms and Ammunition Act of 1892."

Digitised by the University of Pretoria, Library Services, 2016

No. 18—1892.] [Promulgated 2nd September, 1892.

ACT

To Amend the Act No. 12 of 1890, commonly called "The Brands Registration Act, 1890."

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

Repeal of certain words in Section 2 of Brands Registration Act, 1890.

1. The words "any portion of any boundary of which shall adjoin any portion of any boundary of any district or division in which the Act shall then already be in force" in Clause 2 of Act No. 12 of 1890, commonly called the "Brands Registration Act, 1890," are hereby repealed, and the said Clause shall be read as if the said words were not inserted therein.

Short title.

2. This Act may be cited as "The Brands Registration Act, 1890, Amendment Act, 1892."

No. 19—1892.] [Promulgated 2nd September, 1892.

ACT

To Exempt Public Libraries, Museums, and certain Railway Buildings from the payment of Municipal Rates and Taxes.

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

Repeal of repugnant laws.

1. So much of any Act regulating any Municipality within the Colony or of any other law as shall be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

Public Libraries & Museums to be exempt from municipal taxation.

2. All lands and buildings, or such portions thereof as are exclusively appropriated to the purposes of, and used as, Public Libraries or Museums of Natural History or Fine Arts within the Colony shall be, and the same are hereby, exempted from the payment of municipal rates or taxes.

Section 4 of Act 36 of 1891 amended.

3. The words "save and except such rates as may be imposed, and may be payable under the terms of any Act regulating the municipal government of any corporate town," in section four of Act No. 36 of 1891, shall be expunged, and the said section shall be read as if the said words had not been inserted therein; provided that the term "railway buildings" shall not apply to such buildings as are beneficially occupied by individuals in their private capacity.

Short title.

4. This Act may be cited for all purposes as "The Public Libraries and Museums Relief Act, 1892."

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1892.] [Promulgated 2nd September, 1892.

ACT

To Repeal in respect of certain districts, certain provisions of the law relating to Masters and Servants, contained in the Proclamation No. 14 of 1872, of Griqualand West, and to make other provisions in lieu thereof.

Preamble.

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

Certain Sections of G. W. Proclamation No. 14 of 1872 repealed as regards certain districts.

1. The provisions of sections four to twelve inclusive of the Proclamation No. 14 of 1872, of Griqualand West, shall be and are hereby repealed as regards their operation within the districts of Barkly West, Hay, and Herbert, and so much of "The Masters and Servants Act, 1856," as shall have been repealed by the said proclamation is hereby specially re-enacted as regards the said districts.

Short title.

2. This Act may be cited for all purposes as the "Griqualand West Proclamation No. 14 of 1872 Partial Repeal Act, 1892."

No. 21—1892.] [Promulgated 2nd September, 1892.

ACT

To provide for the Construction of Certain Additional Public Works.

Preamble.

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

It shall be lawful to borrow under Temporary Loans Act for certain purposes.

1. For the purpose of constructing the works set forth in Schedule A to this Act, it shall be lawful for the Governor to apply a Sum of Three Hundred and Twenty Thousand Pounds sterling out of moneys authorised to be raised under the provisions of the "Temporary Loans Act, 1883."

Revenue charged with the sum of £29,560.

2. It shall be lawful for the Governor to apply out of the revenues of the Colony for the works set forth in Schedule B to this Act the Sum of Twenty-nine Thousand Five Hundred and Sixty Pounds sterling.

Sums charged to Working Account of Railways in repayments of amounts borrowed to be deducted from borrowing power.

3. As soon as any expenditure on a work authorised by this or any other similar Act to be paid out of moneys raised under the provisions of the "Temporary Loans Act, 1883," is transferred to vote by being charged to any vote for the Working and Maintenance of Railways, the borrowing powers granted by this or such other Act as the case may be shall forthwith be reduced by an amount equal to the amount so transferred.

Digitised by the University of Pretoria, Library Services, 2016

No. 22—1892.

Controller and Auditor-General to furnish Parliament with an account of sums borrowed for Public Works under authority of the "Temporary Loans Act."

4. It shall be the duty of the Controller and Auditor-General to lay before Parliament within fourteen days of the commencement of each Session, an account showing at the close of the preceding financial year the amounts authorised by this or any other Act to be raised for the Construction of Public Works under the provisions of the "Temporary Loans Act, 1883," the amounts by which such powers had been reduced under the provisions of the third section hereof, the temporary loans actually raised under such authorities, and the amount of such loans repaid within such preceding financial year.

Short title.

5. This Act may be cited as the "Public Works Loans Act, 1892."

Schedule A.

SCHEDULE A.

Railways.

Rolling Stock	£100,000
Additional Fencing	40,000
Workshops and Accommodation for Employés ..	25,000
Station Extension and Office Accommodation, Cape Town	15,000
Water Supply	8,000
Additional Accommodation, Three Systems ..	10,000
Bridges and Culverts	4,000
Station and Sidings	15,000
Surveys in Western Districts	3,000
Bloemfontein to Viljoen's Drift, and Temporary Bridge and Station, North of Vaal River ..	100,000
	£320,000

Schedule B.

SCHEDULE B.

Relaying existing Lines with heavier Rails ..	£25,000
Telegraph Lines sanctioned by Act No. 17 of 1890 ..	4,560
	£29,560

No. 22—1892.] [Promulgated 2nd September, 1892.

ACT

To Authorise the raising of a Public Loan of One Hundred Thousand Pounds for the purpose of prosecuting and improving the Harbour Works of Table Bay, and providing greater facilities for the conduct of the Business of the Port.

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

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1892.

Power to raise loan of £100,000, for improvement of Table Bay Harbour Works, &c.

1. It shall be lawful for the Governor to raise by public loan a sum not exceeding one hundred thousand pounds sterling for the purpose of prosecuting and improving the harbour works of Table Bay, and of effecting improvements at the Docks in respect of the storage of goods and the landing and shipment of cargo.

Application of moneys by Harbour Board.

2. The application of the moneys to be raised as aforesaid for the above purposes shall be entrusted to the "Table Bay Harbour Board," appointed or to be appointed under the provisions of any Act relating to the management of the docks and breakwater in Table Bay, and the said Harbour Board shall in respect to such application have and exercise all the powers conferred upon such board by any law.

Capital and interest of loans chargeable upon Revenues of Table Bay Harbour Board.

3. Save in cases in which it may be expressly provided by law to the contrary, the capital and interest of all loans raised on the guarantee of the Public Revenue, for the purpose of prosecuting and improving the Harbour Works of Table Bay, shall, in the first instance, be chargeable upon the revenues of the Table Bay Harbour Board, and such Board shall out of such revenues indemnify the Governor for all moneys paid out of the General Revenue of the Colony on account of the capital or interest of such loans.

Short title.

4. This Act may be cited as "The Table Bay Harbour Loan Act, 1892."

No. 23—1892.] [Promulgated 2nd September, 1892.

ACT

To facilitate the Partition of Land Mortgaged under the "Crown Lands Disposal Act, 1887."

Preamble.

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

Treasurer may consent to partition of land held by joint owners and accept separate bond from each.

1. In every case of voluntary or compulsory partition between joint owners of land which has been mortgaged to the Government under the provisions of the "Crown Lands Disposal Act, 1887," it shall be lawful for the Treasurer of the Colony to consent to such partition and to the cancellation of the existing bond, and to accept in lieu thereof from every such joint owner a separate bond on his divided share of the said land for such proportionate part of the original bond as the said Treasurer shall determine, and subject to the same conditions as regards repayment.

Expenses incurred in carrying out the provisions of Section 1 to be borne by parties interested.

2. All expenses incurred by the Government in carrying out the provisions of the preceding section shall be borne by the parties applying for such partition, including all costs incurred in obtaining a true valuation of the respective shares, which costs, not exceeding twenty-five pounds sterling, shall be paid in advance by the said parties.

Digitised by the University of Pretoria, Library Services, 2016

No. 24—1892.

Short title and effect of Act and repeal of repugnant laws.

3. This Act may be cited as "The Partition Transfer Facilitation Act, 1892," and shall be read as one with the "Transfer Facilitation Act, 1890," and anything contained in the said Act or any other law which may be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

No. 24—1892.] [Promulgated 2nd September, 1892.

ACT

To amend "The Vineyards Protection Act Amendment Act, 1886," and to continue for another year the Fourth Section of the Act.

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

Section 4 of "The Vineyards Protection Act Amendment Act, 1886," extended for another year; calculation of yield.

1. The provisions of the fourth section of "The Vineyards Protection Act Amendment Act, 1886," shall continue and be in force until the 30th June, 1893, and no longer, anything in the tenth section of the said Act to the contrary notwithstanding; provided however:—

That the term upon which shall be calculated the value of the net yield for which compensation in regard to any loss sustained by any person and in respect of any claim accruing after the first day of July, 1892, by reason of any destruction or prohibition under the provisions of the Vineyards Protection Act Amendment Act, 1886, shall not exceed three years in lieu of the term of two years provided by the said fourth section.

No. 25—1892.] [Promulgated 27th September, 1892.

ACT

To Consolidate the Law relating to Companies.

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

Repeal of Laws.

1. The laws mentioned in the first schedule of this Act, and so much of any other law as may be repugnant to or inconsistent with the provisions of this Act, shall be, and the same are hereby repealed, subject to the exception hereinafter in the sixth section contained. But no such repeal shall affect anything duly done, or any right or privilege acquired, or any liability, penalty or forfeiture incurred in respect of any such laws; and where, previously to the taking effect of this Act an order has been made for winding-up a company under any Act hereby repealed, or a resolution has been passed for winding-up a company voluntarily, such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed; and for the purposes of such winding-up such repealed Act shall be deemed to remain in full force.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

Interpretation of terms.

2. In this Act, unless the context clearly otherwise directs, the following expressions in inverted commas shall bear the meaning respectively set opposite them.

"Limited Company."—A company, the liability of the members of which is by their registered memorandum of association limited to the amount, if any, unpaid in the shares respectively held by them or by the operation of any Act of Parliament.

"Unlimited Company."—A company formed on the principle of having no limit placed on the liability of its members.

"Court."—The Supreme Court, the Court of the Eastern Districts, or the High Court of Griqualand West, as the case may be.

"Treasurer."—The Treasurer of the Colony.

"Registrar."—The Registrar of Deeds at Cape Town.

"Company."—Every partnership whereof the capital is divided, or agreed to be divided, into shares, and so as to be transferable without express consent of all the partners; and also any partnership which at its formation or by subsequent admission shall consist, or have at any time consisted, of seven or more than seven members.

"Special Resolution."—A resolution of the members of a company which has been passed and confirmed in manner required by section one hundred and ten of this Act.

Divisions of Act.

3. This Act is divided into six parts relating to the following matters respectively:

Part I. The position of Companies in existence at the date of the taking effect of this Act, sections five to twenty-one.

Part II. The Constitution and Incorporation of Companies and Associations formed after the taking effect of this Act, sections twenty-two to seventy-two.

Part III. The Distribution of Capital and Liability of Members of Companies and Associations under this Act, sections seventy-three to ninety-seven.

Part IV. The management and administration of Companies and Associations under this Act, sections ninety-eight to one hundred and thirty.

Part V. The Winding up of Companies and Associations under this Act, sections one hundred and thirty-one to two hundred and fifteen.

Part VI. The application of this Act to unregistered Companies, sections two hundred and sixteen to two hundred and twenty-one.

Part VII. Miscellaneous provisions, sections two hundred and twenty-two to two hundred and twenty-eight.

Application of Act

4. Subject to the provisions of Part VI hereof nothing in this Act contained shall apply to any joint stock company, partnership, or association incorporated under its own special Ordinance or Act

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

of Parliament, whether in existence at the date of the taking effect hereof, or formed at any future time. But any such company, partnership or association may at any time hereafter register itself under this Act, with limited or unlimited liability as may be provided by its Ordinance or Act of Incorporation. And no such registration shall be invalid by reason that it has taken place with a view to the company, partnership or association being wound up. In the event of such registration the provisions of this Act shall apply, save in so far as they are inconsistent with the Ordinance or Act of Incorporation aforesaid.

PART I.

POSITION OF COMPANIES IN EXISTENCE AT THE TAKING EFFECT OF THIS ACT.

Registration of Company.

Registration under this Act of companies in existence at taking effect of Act.

5. Any company in existence at the taking effect of this Act, and registered with limited liability at the said date, under the "Joint Stock Companies Limited Liability Act, 1861," may at any time hereafter register itself without payment of any fees as a limited company under this Act; and any company in existence at the said date, with unlimited liability and not being such a company as is referred to in section four hereof, may upon payment of the fees prescribed in the second schedule at any time hereafter register itself as an unlimited company under this Act.

Effect of non-registration of such companies.

6. Every company in existence at the taking effect of this Act, and registered with limited liability as mentioned in the last preceding section shall, although it does not register itself under this Act, become and remain subject to the provisions of Part V hereof, and also to the provisions of the ninety-first, ninety-second, ninety-third, ninety-fourth, ninety-fifth, one hundred and sixteenth, one hundred and seventeenth, one hundred and eighteenth, one hundred and nineteenth, one hundred and twentieth, and one hundred and twenty-first sections of this Act, and all the provisions of the last mentioned sections shall also be applicable to all unlimited companies in existence at the taking effect of this Act, even though such companies be not registered under it. With regard to all such first mentioned companies so long as they are not registered under this Act, the provisions of the Joint Stock Companies Limited Liability Act, 1861, save in so far as they are inconsistent with the sections above mentioned shall apply as if the said Act had never been repealed.

Registration subject to assent of majority of members

7. No company, partnership or association shall register under the fourth and fifth sections of this Act, unless an assent to its so registering is given by a majority of such of its members as may be present personally or by proxy (in cases where proxies are allowed by the regulations of the company) at some general meeting duly summoned for the purpose.

Digitised by the University of Pretoria, Library Services, 2016

8. Previously to the registration, in pursuance of this part of this Act, of any company having a capital divided into shares, there shall be delivered to the Registrar the following documents: Requisites for registration by companies having a capital divided into shares.

(1) A list showing the names, addresses, and occupations of all persons resident in this Colony who on a day named in such list, and not being more than ten clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, and a list showing the same particulars with regard to persons resident outside the Colony who on a day not more than thirty clear days before the day of registration were members of the company.

(2) A copy of any Act of Parliament, deed of settlement, contract of partnership, or other instrument constituting or regulating the company.

(3) If any such joint stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars:

(*a*) The nominal capital of the company, and the number of shares into which it is divided:

(*b*) The number of shares taken, and the amount paid on each share:

(*c*) The name of the company, with the addition of the word "limited" as the last word thereof.

9. Previously to the registration, in pursuance of this part of this Act, of any company not having a capital divided into shares, there shall be delivered to the Registrar a list showing the names, addresses and occupations of the directors or other managers (if any) of the company; also a copy of any Act of Parliament, deed of settlement, contract of partnership, or other instrument constituting or regulating the company. Requisites for registration by companies not having a capital divided into shares.

10. Where a company authorised to register under this Act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than ten clear days before the day of registration in the case of persons resident in the Colony, and thirty clear days before the said day in the case of persons resident elsewhere. Power for existing company to register amount of stock instead of shares.

11. The list of members and directors, and any other particulars relating to the company hereby required to be delivered to the Registrar, shall be verified by a declaration of the directors of the company delivering the same, or any two of them, or of the principal officer of the company, made in pursuance of the "Oaths and Declarations Act, 1891." Authentication of statements of companies.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

Registrar may require evidence as to nature of company.

12. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or is not a company as hereinbefore defined.

Exemption of certain companies from payment of fees.

13. No fees shall be charged in respect of the registration in pursuance of this part of this Act of any company in cases where previously to its being registered as a limited company the liability of the shareholders was limited by some other Ordinance or Act of Parliament of this Colony.

Effect of Registration.

Certificate of registration.

14. Upon compliance with the requisitions in this part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable in terms of this Act, the Registrar shall certify under his hand that the company so applying for registration is incorporated, as a company under this Act, and in the case of a limited company, that it is limited, and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal.

Certificate to be evidence of compliance with Act.

15. Any such certificate shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorised to be registered under this Act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate, shall be deemed to be the date at which the company is incorporated under this Act.

Transfer of property to company.

16. All such property, movable and immovable, including all interests and rights in, to, and out of property, as may belong to or be vested in the company at the date of its registration under this Act, shall on registration pass to and vest in the company as incorporated under this Act.

Registration under this part of Act not to affect obligations incurred previously to registration.

17. The registration in pursuance of this part of this Act of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of such company previously to such registration.

Continuation of existing actions and suits.

18. All such actions, suits, and other legal proceedings as may at the time of the registration of any company registered in pursuance of this part of this Act have been commenced by or against such company or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless, execution shall not issue against the effects of any individual member of such company upon any judgment, decree, or order obtained in any action, suit, or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding up the company.

Effect of registration under Act.

19. When a company is registered under this Act in pursuance of this part thereof, all provisions contained in any Act of Parliament, deed of settlement, contract of partnership or other instru-

Digitised by the University of Pretoria, Library Services, 2016

ment constituting or regulating the company, shall be deemed to be conditions and regulations of the company, in the same manner, and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Act shall apply to such company and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following:

(1) That table A in the third schedule to this Act shall not, unless adopted by special resolution, apply to any company registered under this Act in pursuance of this part thereof.

(2) That no company shall have power to alter any provision contained in any Act of Parliament relating to the company.

(3) That no company shall have power, without the sanction of the Governor, to alter any provision contained in any letters patent or charter relating to the company.

(4) That in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted prior to registration, who is liable, at law, to pay or contribute to the payment of any such debts or liabilities, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debts or liabilities; or to pay or contribute to the payment of the costs, charges, and expenses of winding-up the company, so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any such contributory as last aforesaid, the provisions herein contained with respect to the representatives, heirs, and legatees of deceased contributories, and with reference to the trustees of insolvent contributories, shall apply.

(5) That nothing herein contained shall authorise any company to alter any such provisions contained in any deed of settlement, contract of partnership, or other instrument constituting or regulating the company as would, if such company had originally been formed under this Act, have been contained in the memorandum of association, and are not authorised to be altered by this Act:

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Act in pursuance of this part thereof by virtue of any Act of Parliament, deed of settlement, contract of partnership, or other instrument constituting or regulating the company.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

Power of Court to restrain further proceedings.

20. The court may, at any time after the presentation of a petition for winding-up a company registered in pursuance of this part of this Act, and before making an order for winding-up the company, upon the application by motion of any creditor of the company, restrain further proceedings in any action, suit, or legal proceeding against any contributory of the company as well as against the company as hereinbefore provided, upon such terms as the court thinks fit.

Effect of order for winding-up of company.

21. Where an order has been made for winding-up a company registered in pursuance of this part of the Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the court, and subject to such terms as the court may impose.

PART II.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS.

Prohibition of unregistered partnerships exceeding certain number.

22. No company, association or partnership consisting of more than ten persons, if it be for the purpose of carrying on the business of banking, or consisting of more than twenty persons, if it be for the purpose of carrying on any other business that has for its object the acquisition of gain to the company, association or partnership, or to the individual members thereof, shall be formed in this Colony after the taking effect of this Act, unless it is registered as a company under this part of this Act, or is formed in pursuance of some other part of this Act, or of some other Act of the Parliament of this Colony, or of letters patent or charter.

Memorandum of Association.

Mode of forming company.

23. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect to registration, form an incorporated company, with or without limited liability.

Limitation of liability of members

24. The liability of the members of a company formed under this Act may, in the memorandum of association, be limited to the amount, if any, unpaid on the shares respectively held by them.

Memorandum of association of limited company.

25. Where a limited company is formed the memorandum of association shall contain the following things:

(1) The name of the proposed company, with the addition of the word "limited" as the last word in such name:

(2) The place in this Colony where the registered office of the company is proposed to be situate:

(3) The objects for which the proposed company is to be established:

(4) A declaration that the liability of the members is limited:

Digitised by the University of Pretoria, Library Services, 2016

(5) The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount:

Subject to the following regulations:

(1) That no subscriber shall take less than one share.

(2) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Memorandum of association of unlimited company.

26. When an unlimited company is formed the memorandum of association shall contain the following things:

(1) The name of the proposed company;

(2) The place in this Colony where the registered office of the company is proposed to be situate;

(3) The objects for which the proposed company is to be established.

Signature and effect of memorandum of association.

27. The memorandum of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least: it shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

Alteration of Memorandum.

Alteration of memorandum of association.

28. A company registered under this Act may, subject to the provisions hereinafter mentioned, by special resolution passed in manner hereinafter provided, alter the provisions of its memorandum of association with respect to the objects of the company so far as may be required for any of the purposes hereinafter specified, but in no case shall any such alteration take effect until confirmed on petition by a court which has jurisdiction to make an order for winding up the company.

Confirmation of alteration by court.

29. Before confirming any such alteration the court must be satisfied

(*a*) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration, and

(*b*) That, with respect to every creditor who, in the opinion of the court, is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court.

Provided that the court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

Order of confirmation of alteration.

30. An order confirming any such alteration may be made in such terms and subject to such conditions as to the court seems fit, and the court may make such orders as to costs as it deems proper.

Objects for which alteration may be made.

31. The court may confirm, either wholly or in part, any such alteration as aforesaid with regard to the objects of the company if it appears that the alteration is required in order to enable the company

(*a*) To carry on its business more economically or more efficiently; or

(*b*) To attain its main purpose by new or improved means; or

(*c*) To enlarge or change the local area of its operations; or

(*d*) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(*e*) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

Court to have regard to interests and rights of members.

32. The court shall, in exercising its discretion under the above sections twenty-eight to thirty-one inclusive, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made, to the satisfaction of the court, for the purchase of the interest of dissentient members; and the court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always that it shall not be lawful to expend any part of the capital of the company in any such purchase.

Notice of alteration to be given to Registrar.

33. Where a company has altered the provisions of its memorandum of association with respect to the objects of the company, and such alteration has been confirmed by the court, an office copy of the order confirming such alteration, together with a printed copy of the memorandum of association so altered, shall be delivered by the company to the Registrar within twenty-one days from the date of the order, and the Registrar shall register the same and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration, and the confirmation thereof, have been complied with, and thenceforth the memorandum so altered shall be the memorandum of association of the company.

Penalty for default.

34. If a company make default in delivering to the Registrar any document required by the last preceding section to be delivered to him, the company shall be liable to a penalty not exceeding ten pounds for every day in which it is in default.

Reduction of Capital.

Power of company to reduce capital.

35. Any company under this Act limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations

Digitised by the University of Pretoria, Library Services, 2016

as originally framed or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the court is registered by the Registrar, as is hereinafter mentioned.

Construction of "capital" and reduction of paid-up capital.

36. The word capital as used in the last preceding section shall include paid-up capital; and the power to reduce capital conferred by the said section shall include a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved.

The company to add "and reduced," to its name, for limited period.

37. The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the court may fix, the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company within the meaning of this Act: provided that where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, it shall not be necessary before the presentation of the petition for confirming the reduction to add, and the court may, if it thinks competent so to do, dispense altogether with the addition of the said words "and reduced."

Company to apply to Court for an order confirming reduction.

38. A company which has passed a special resolution for reducing its capital, may apply to the court, by petition, for an order confirming the reduction, and on the hearing of the petition the court, if satisfied that with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Creditors may object to reduction and list of objecting creditors to be settled by the Court.

39. Where a company proposes to reduce its capital, every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

The court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered or to be

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

excluded from the right of objecting to the proposed reduction. Provided that when the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, the creditors of the company shall not, unless the court otherwise direct, be entitled to object or required to consent to the reduction.

Court may dispense with consent of creditor on security being given for his debt.

40. Where a creditor, whose name is entered on the list of creditors and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the court may, if it thinks fit, dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the court may direct, a sum of such amount as is hereinafter mentioned, that is to say:—

(1) If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company is willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.

(2) If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company is willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the court may, if it thinks fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the court, and the amount fixed by the court on such enquiry and adjudication shall be set apart and appropriated.

Order of confirmation and minute to be registered.

41. The Registrar, upon the production to him of an order of the court confirming the reduction of the capital of a company and the delivery to him of a copy of the order, and of a minute (approved by the court) showing with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares into which it is to be divided, and the amount of each share and the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the court may direct.

The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act, with respect to the reduction of capital, have been complied with and that the capital of the company is such as stated in the minute.

Digitised by the University of Pretoria, Library Services, 2016

Minute to form part of memorandum of association.

42. The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the company whether past or present shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Saving of rights of creditors who are ignorant of proceedings.

43. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after the reduction the company is unable within the meaning of the one hundred and thirty-sixth section of this Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute, for the payment of such debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration; and on the company being wound up, the court, on the application of such creditor and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and mature and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

Copy of registered minute.

44. A minute, when registered, shall be embodied in every copy of the memorandum of association issued after its registration; and if any company make default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Court may require company to publish reasons for reduction of capital.

45. In any case in which the court thinks it fit to do so it may require the company to publish in such manner as it thinks fit the reasons for the reduction of its capital or such other information in regard to the reduction of its capital as the court may think expedient with a view to the proper information to the public in relation to the reduction of its capital by a company, and, if the court thinks fit, the causes which led to such reductions.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

Penalty on concealment of name of creditor.

46. If any director or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or officer of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director or officer shall be liable to a penalty of not exceeding five hundred pounds.

Powers to make rules extended to this part of Act.

47. The powers of making rules concerning winding-up conferred by this Act shall respectively extend to making rules concerning matters in which jurisdiction is by this Act given to the court to authorise the reduction of capital, and until such rules are made the practice of the court in matters of the same nature shall, so far as the same is applicable, be followed.

Power to reduce capital by the cancellation of unissued shares.

48. Any company limited by shares may so far modify the conditions contained in its memorandum of association if authorised so to do by its regulations as originally framed or as altered by special resolution as to reduce its capital by cancelling any shares, which at the date of the passing of such resolution have not been taken or agreed to be taken by any person; and the provisions of the preceding sections shall not apply to any reduction of capital made in pursuance of this section.

Change of Name.

Power of companies to change name.

49. Any company under this Act, with the sanction of a special resolution of the company and with the approval of the Governor, may change its name, and upon notice in writing embodying the terms of such resolution being given to him, the Registrar shall enter the new name in its proper place on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall render the liquidation of the company necessary or affect any rights or obligations of the company or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced by or against the company by its new name that might have been continued or commenced by or against the company by its former name.

Subdivision of Shares.

Shares may be divided into shares of smaller amount.

50. Any limited company under this Act may by special resolution so far modify the conditions contained in its memorandum of association, (if authorised so to do by its regulations as originally framed or as altered by special resolution,) as by subdivision of its existing shares or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association: Provided that in the subdivision of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of

Digitised by the University of Pretoria, Library Services, 2016

reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Special resolution to be embodied in memorandum of association.

51. The statement of the number and amount of the shares into which the capital of the company is divided contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and officer of the company who knowingly or wilfully authorises or permits such default shall incur the like penalty.

Increase of Capital.

Power of company to increase capital.

52. Any limited company under this Act may by special resolution (if authorised so to do so by its regulations as originally framed, or as altered by special resolution) so far modify the conditions contained in its memorandum of association, as to increase its capital by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock; but save as in this part of the Act provided, no alteration shall be made by any company in the conditions contained in the memorandum of association.

Articles of Association.

Regulations to be expressed by articles of association.

53. The memorandum of association may, in the case of a limited company, and shall, in the case of an unlimited company, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient. The articles shall be expressed in separate paragraphs, numbered arithmetically: they may adopt all or any of the provisions contained in the table marked A in the third schedule hereto; they shall, in the case of an unlimited company, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of an unlimited company that has not a capital divided into shares, state the number of members with which the company proposes to be registered. In an unlimited company having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Application of table A.

54. In the case of a limited company under this Act if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations in the table marked A in the third schedule hereto, the last mentioned regulations shall so far as the same are

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

applicable, be deemed to be the regulations of the company, in the same manner, and to the same extent as if they had been inserted in the articles of association, and the articles had been duly registered.

Signature and effect of articles of association.

55. The articles of association shall be printed, they shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, when registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act; and all moneys payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company.

General Provisions.

Registration of memorandum and articles of association, with fees according to second schedule.

56. The memorandum of association and the articles of association, if any, shall be delivered to the Registrar, who shall, if they are in order, retain and register the same, and there shall be paid to the Registrar by the company the fees specified in the second schedule hereto.

Effect of registration.

57. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the Registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited: the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company, in the event of the same being wound up, as is hereinafter mentioned: a certificate of the incorporation of any company, given by the Registrar, shall be conclusive evidence that all the requisitions of this Act, in respect of registration, have been complied with.

Issue of shares.

58. After the issue of the certificate in the last preceding section mentioned, the shares of a company having a capital divided into shares shall be issued as follows, but subject always to the provisions of section ninety-seven hereof. The first issue shall be made in such manner as the memorandum or articles of association may provide, or in the absence of such provision in such manner as the directors may determine. All subsequent issues of shares shall be offered either by tender, or to such person upon such terms and under such conditions as the directors may decide. If the shares are offered by tender, the highest tenderer shall have the

Digitised by the University of Pretoria, Library Services, 2016

preference; in case two or more tenders are equal, the tender of a member shall be preferred to that of a non-member, but if the tenders of members should be equal, the shares tendered for shall be allotted in proportion to the existing holdings of the tenderers. Provided that no member shall be allotted more shares than he has tendered for. And provided that in case shares issued after the first issue are offered by the directors to any person who has not publicly tendered for them, then no contract relating to the shares so offered shall be binding upon the company until confirmed by a special resolution of the shareholders.

Inspection of documents kept by registrar.

59. Every person may inspect the documents kept by the Registrar relating to companies under this Act, and may require a certificate of the incorporation of the company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar: and there shall be paid for each such inspection one shilling, and for such certificate of incorporation five shillings, and for such copy or extract such fees as the Governor may from time to time appoint.

Copies of memorandum and articles to be given to members.

60. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of the sum of one shilling or such less sum as may be prescribed by the company for each copy; and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member, in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding one pound.

Prohibition against identity of names in companies.

61. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved and testifies its consent in such manner as the Registrar requires; and if any company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first mentioned company may, with the sanction of the Registrar, change its name, and upon such change being made the Registrar shall enter the new name on the register in the place of the former name, and shall publish a notice of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

Special provisions as to associations formed for purposes not of gain.

62. Where any association is about to be formed under this Act as a limited company, if it be proved to the Attorney-General that it is to be formed for the purpose of promoting commerce, art, science, religion, charity or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association in promoting its objects and to prohibit the payment of any dividend to the members of the association, the Attorney-General may by licence under his hand direct such association to be registered with limited liability without the addition of the word limited to its name; and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed upon limited companies, with the exception that none of the provisions of this Act that require a limited company to use the word limited as any part of its name, or to publish its name, or to send a list of its members, directors or managers to the Registrar, shall apply to an association so registered. The licence by the Attorney-General may be granted upon such conditions and subject to such regulations as he may think fit to impose; and such conditions and regulations shall be binding upon the association and may be inserted in the memorandum and articles of association, or in both or one of such documents.

Share Warrants to Bearer.

Share warrant to bearer.

63. In the case of a limited company registered under this Act or under the Act 23 of 1861, the company, if authorised so to do by its regulations as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified, and may provide by coupons or otherwise for the payment of the future dividends on the share or shares or stock included in such warrant, hereinafter referred to as a share warrant.

Effect of share warrant.

64. A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant.

Registration of bearer of share warrant in register.

65. The bearer of a share warrant shall, subject to the regulations of the company, be entitled on surrendering such warrant for cancellation to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the share or stock specified therein without the share warrant being surrendered and cancelled.

Digitised by the University of Pretoria, Library Services, 2016

Regulations of company may make the bearer of a share warrant a member.

66. The bearer of a share warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of this Act, or of the Act 23 of 1861, as the case may be, either to the full extent or for such purposes as may be prescribed by the regulations: Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

Entries in register where share warrant issued and surrendered.

67. On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars:

(1) The fact of the issue of the warrant;

(2) A statement of the shares or stock included in the warrant, distinguishing each share by its number;

(3) The date of the issue of the warrant;

And on the surrender of a share warrant the company shall enter in the register the following particulars:

(*a*) The fact of the surrender of the warrant.

(*b*) A statement of the shares or stock included in the surrendered warrant, distinguishing each share by its number.

(*c*) The date of the surrender of the warrant.

(*d*) The name of the person, if any, claiming to be registered as owner or holder of such shares or stock.

Return according to 4th Schedule.

68. After the issue by any company of any share warrant the directors of such company shall in the months of January and July, besides the returns required by them under any other section of this Act, or of the Act 23 of 1861, as the case may be, make or cause to be made to the Registrar a return attested by a declaration made by any two of the directors under the "Oaths and Declarations Act, 1891," according to the fourth schedule hereunto annexed and containing the particulars therein set forth. And if within any such period such return be not made, then every director of such company shall be liable to a fine not exceeding twenty pounds sterling.

Stamps on share warrants.

69. There shall be charged on every share warrant issued in place of shares or stock a stamp duty of an amount equal to twice the amount of the *ad valorem* stamp duty which would be chargeable on the issue of a certificate for the shares or stock specified in such warrant, and on every share warrant issued upon due re-delivery of shares or stock already issued a stamp duty of an amount equal to three times the amount of the *ad valorem* stamp duty which would be chargeable in a transfer of the share or shares or stock specified in the warrant.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

Penalties on persons forging share warrants or coupons.

70. Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act, or demands or endeavours to obtain or receive any share or interest of or in any company, or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered share warrant, coupon or document purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall upon being convicted be liable to be imprisoned for any term not exceeding five years, with or without hard labour.

Penalties for falsely personating owner of shares.

71. Whosoever falsely and deceitfully personates any owner of any share or interest of or in any company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if such offender were the true and lawful owner, shall on conviction be liable to be imprisoned for any term not exceeding two years, with or without hard labour.

Penalties on persons engraving plates &c.

72. Whosoever, without lawful authority or excuse, the proof whereof shall be on the party accused, engraves or makes upon any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company under and in pursuance of this Act, or to be a blank share warrant or coupon issued or made as aforesaid, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing any such share warrant or coupon, or any such blank share warrant or coupon or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, shall on conviction be liable to be imprisoned for any term not exceeding five years, with or without hard labour.

PART III.

THE DISTRIBUTION OF CAPITAL AND THE LIABILITY OF DIRECTORS AND MEMBERS OF COMPANIES AND ASSOCIATIONS.

Distribution of Capital.

Nature of interest in company.

73. The shares or other interest of any member in a company under this Act shall be capable of being transferred in manner provided by the regulations of the company; and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

Definition of member.

74. The subscribers of the memorandum of association of any company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every

Digitised by the University of Pretoria, Library Services, 2016

other person who has agreed to become a member of a company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company.

Transfer by personal representative.

75. Any transfer of the share or other interest of a deceased member of a company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Register of members.

76. Every company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars:

(1) The names and addresses of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number; and of the amount paid or agreed, subject to the provisions of this Act, to be considered as paid, on the shares of each member.

(2) The date at which the name of any person was entered in the register as a member.

(3) The date at which any person ceased to be a member.

Every company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues; and every director or manager who knowingly and wilfully authorises or permits such contravention shall incur the like penalty.

Annual list of members.

77. Every company under this Act having a capital divided into shares, shall make, once at least in every year a list of all persons who on the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings—is held, are members of the company; and such list shall state the names and addresses of all the members therein mentioned, and the number of shares held by each of them and shall contain a summary, specifying the following particulars:

(1) The amount of the capital of the company, and the number of shares into which it is divided.

(2) The number of shares taken from the commencement of the company up to the date of the summary.

(3) The amount of calls made on each share.

(4) The total amount of calls received.

(5) The total amount of calls unpaid.

(6) The total amount of shares forfeited.

(7) The names and addresses of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

The above list and summary shall be contained in a separate part of the register, and a copy shall be forwarded to the Registrar within seven days from the date of such meeting.

Penalty for not forwarding list to Registrar.

78. If any company under this Act, and having a capital divided into shares, makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar, such company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Company to give notice of consolidation or of conversion of capital into stock.

79. Every company under this Act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the Registrar, of such consolidation, division, or conversion, specifying the shares so consolidated, divided or converted.

Effect of conversion of shares into stock.

80. Where any company under this Act, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the Registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the Registrar shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

No entry of trust on register nor of minor or insolvent as member.

81. No notice of any trust, expressed or implied, shall be entered on the register, or be receivable by the Registrar, in the case of companies under this Act, nor shall any minor be registered as a shareholder, nor any person whose estate having been surrendered or sequestrated has not been released from the operation of the Insolvent Law of this Colony.

Certificate of shares or stock.

82. A certificate, under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be *primâ facie* evidence of the title of the member to the share or shares or stock therein specified.

Inspection of register.

83. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned: Except when closed as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe, for each inspection; and every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of mem-

Digitised by the University of Pretoria, Library Services, 2016

bers as is hereinbefore mentioned, on payment of sixpence for every hundred words required to be copied: If upon a written demand such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and every director and officer of the company who shall knowingly authorise or permit such refusal shall incur the like penalty; and in addition to the above penalty, any judge sitting in chambers may by order compel an immediate inspection of the register.

Power to close register.

84. Any company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole sixty days in each year.

Notice of increase of capital and of members to be given to Registrar.

85. Where a company under this Act, has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number shall be given to the Registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorised, and in the case of an increase of members, within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the Registrar shall forthwith record the amount of such increase of capital or members; if such notice is not given within the period aforesaid, the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues, and every director and officer of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Remedy for improper entry, or omission of entry in register.

86. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this Act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may, by motion in the court or by application to a judge sitting in chambers, apply for an order of the court that the register may be rectified, and the court or judge may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application or petition, and any damages the party aggrieved may have sustained; the court may, in any proceeding under this section, decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register; and the court may direct an issue to be tried, in which any question of law may be raised.

Notice to Registrar of rectification of register.

87. Whenever any order has been made rectifying the register, in the case of a company hereby required to send a list of its members to the Registrar, the court shall, by order, direct that due notice of such rectification be given to the Registrar.

Register to be evidence.

88. The register of members shall be its *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

Directors and Liability of Directors.

Directors of company.

89. No person shall be capable of being appointed, or of continuing to hold office as a director in any company under this Act unless he is and remains duly registered as a shareholder of the company, and unless he is and remains the registered owner of the lowest number of shares required by the articles of association to qualify for the office of a director. Every such director shall, after his election and before taking his seat, lodge with the principal officer, at the registered office of the company, the number of shares necessary to qualify as aforesaid. Such shares shall be kept by the company during the tenure of office of such director, and any such director withdrawing or receiving the said shares shall be held to have *ipso facto* vacated his seat as a director.

Prospectus, &c., to specify dates and names of parties to any contract made prior to issue of such prospectus, &c.

90. Every prospectus of a company and every notice inviting persons to subscribe for shares in any company, shall specify the dates of and the names of the parties to any contract entered into by the company or the promoters, directors or trustees thereof, before the issue of such prospectus or notice whether subject to adoption by the directors or otherwise, and the nature or tenour of such contract; and any prospectus or notice not specifying the above particulars shall be deemed fraudulent on the part of the promoters, directors and officers of the company, knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus unless he has had notice of such contract. Provided, however, that the terms of this section shall only apply to contracts

(*a*) Which are binding upon the company, or may be adopted or ratified by it, and

(*b*) Which would influence a reasonable person in determining whether or not he would become a shareholder in the company.

Liability of directors for false statement in prospectus.

91. Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person

Digitised by the University of Pretoria, Library Services, 2016

who, having authorised such naming of him, is named in the prospectus or notice as a director of the company or as having agreed to become a director of the company, either immediately or after an interval of time, and every promoter of the company and every person who has authorised the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved

(*a*) With respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures or debenture stock, as the case may be, believe, that the statement was true; and

(*b*) With respect to every such untrue statement, purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation: Provided always that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation, such director, person named, promoter or other person, who authorised the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid, if it be proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it; and

(*c*) With respect to every such untrue statement purporting to be a statement made by an official person, or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of or extract from such document;

or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

that after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.

Meaning of "promoter."

92. The word "promoter" in the last two preceding sections means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; the word "expert" includes any person whose profession gives authority to a statement made by him.

Further prospectus of company, directors liability for.

93. Where any company which has issued shares or debentures shall be desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorised the issue of such prospectus or notice, or have adopted or ratified the same.

Consequences of prospectus containing name as director of person not director.

94. Where any such prospectus or notice as aforesaid contains the name of a person as a director of the company, or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorised the issue of such prospectus or notice shall be liable to indemnify the person named as a director of the company, or as having agreed to become a director thereof as aforesaid, against all damages, costs, charges and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice or in defending himself against any action or legal proceedings brought against him in respect thereof.

Recovery of contribution to penalty, or payment by director.

95. Every person who by reason of his being a director, or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

Liability of Members.

Liability of present and past members of company.

96. In the event of a company under this Act being wound up every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following:

Digitised by the University of Pretoria, Library Services, 2016

(1) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to commencement of the winding-up.

(2) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member.

(3) No past member shall be liable to contribute to the assets of the company unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act

(4) The date when a shareholder who has parted with his shares shall cease to be a member of the company shall be the date when such shares are transferred from the name of such shareholder to the name of the transferee in the register of the company.

(5) In the case of a limited company, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member.

(6) Nothing in this Act contained shall invalidate any provision contained in any contract whereby the liability of individual members upon any such contract is restricted, or whereby the funds of the company are alone made liable in respect of such contract.

(7) No sum due to any member of a company in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributories amongst themselves.

Share to be deemed to be fully paid up.

97. Every share in any company under this Act shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash unless the same has been otherwise determined by a contract duly made in writing and filed with the Registrar at or before the issue of such share, and further unless such share in terms of such contract be issued in exchange for a consideration of valuable services rendered to the company in furtherance of its objects, or in exchange for or in consideration of valuable property rights or privileges acquired by the company in furtherance of its objects, in which case, though not actually fully paid up, such share shall be considered to be fully paid up, and shall entail no further responsibility or liability upon the members to whom it has been or shall be issued, or upon subsequent holders, than would have been entailed upon them if the share had been actually fully paid

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

up in money. Every director or other person who signs or issues or connives at the signing or issue of any document, entitling or purporting to entitle any person to a fully paid-up share in any company under this Act, when, as a fact, the whole amount of such share has not been paid in cash, shall be liable to make good to the *bonâ fide* holder of such share any damage which he may suffer by reason of the said share not having been fully paid up, and shall, in addition, be liable to a fine not exceeding one thousand pounds sterling, or to imprisonment with or without hard labour for any period not exceeding two years or to both such fine and such imprisonment, unless

(*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 of not exceeding one hundred pounds, in respect of each certificate so issued or signed.

PART IV.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for Protection of Creditors

Registered office of company.

98. Every company under this Act shall have a registered office, to which all communications and notices may be addressed. If any company under this Act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

Notice of situation of registered company.

99. Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him; until such notice is given the company shall not be deemed to have complied with the provisions of this Act, with respect to having a registered office.

Publication of name by a limited company.

100. Every limited company under this Act shall paint or affix and shall keep painted or affixed its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous place and in letters easily legible, and shall have its name engraved in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertise-

Digitised by the University of Pretoria, Library Services, 2016

ments and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

Penalties on non-publication of name.

101. If any limited company under this Act does not paint or affix and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding five pounds for every day during which such name is not so kept painted or affixed, and every director or officer of the company who shall knowingly and wilfully authorise or permit such default shall be liable to the like penalty; and if any director or officer of such company or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement or other official publication of such company, or signs or authorises to be signed on behalf of such company, any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the company.

Register of mortgages.

102. Every limited company under this Act shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge: if any property of the company is mortgaged or charged without such entry as aforesaid being made, every director or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding fifty pounds; the register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director or officer of the company authorising or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty, any judge sitting in chambers may by order compel an immediate inspection of the register.

List of directors to be sent to Registrar.

103. Every company under this Act, and not having a capital divided into shares, shall keep at its registered office a register containing the names and addresses of its directors or managers, and

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1909.

shall send to the Registrar a copy of such register, and shall from time to time notify to the Registrar any change that takes place in such directors or managers.

Penalty on company not keeping register of directors.

104. If any company under this Act, and not having a capital divided into shares, makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Promissory notes and bills of exchange

105. A promissory note, bill of exchange or other negotiable document, shall be deemed to have been made, accepted, or endorsed on behalf of any company under this Act, if made, accepted, or endorsed in the name of the company, by any person acting under the authority of the company, or if made, accepted, or endorsed by, or on behalf or on account of, the company, by any person acting under the authority of the company.

Prohibition against carrying on business with less than seven members.

106. If any company under this Act carries on business when the number of its members is less than seven, for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member.

First general meeting of company.

107. Every company under this Act shall hold a general meeting within six months after its memorandum of association is registered, and if such meeting is not held the company shall be liable to a penalty not exceeding five pounds a day for every day after the expiration of such six months until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association, who knowingly authorises or permits such default, shall be liable to the same penalty.

Provisions for Protection of Members.

Annual general meeting.

108. A general meeting of every company under this Act shall be held once at the least in every year.

Power to alter regulations by special resolution.

109. Subject to the provisions of this Act, and the conditions contained in the memorandum of association, any company formed under this Act may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in the table marked A in the third schedule, where such table is applicable to the company, or make new regulations to the exclusion of, or in addition to, all or any of the regulations of the

Digitised by the University of Pretoria, Library Services, 2016

company; and any regulations so made by special resolution shall be deemed to be regulations of the company, of the same validity as if they had been originally contained in the articles of association, and shall be subject, in like manner, to be altered or modified by any subsequent special resolution.

Definition of special resolution.

110. A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote, as may be present, in person or by proxy (in cases where, by the regulations of the company, proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote, as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than two months, from the date of the meeting at which such resolution was first passed. At any meeting mentioned in this section, unless a poll is immediately demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. Notice of any meeting shall, for the purpose of this section, be deemed to be duly given, and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company. In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

Provisions where no regulations as to voting and as to meetings.

111. In default of any regulations as to voting, every member shall have one vote; and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member, in manner in which notices are required to be served by the table marked A in the third schedule hereto; and in default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same; and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Registry of special resolutions.

112. A copy of any special resolution that is passed by any company under this Act shall be printed and forwarded to the Registrar and be recorded by him. If such copy is not so forwarded within twenty-one days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day, after the expiration of such twenty-one days, during which such copy is omitted to be forwarded; and every

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

director and manager of the company who shall knowingly and wilfully authorise or permit such default, shall incur the like penalty.

Copies of special resolutions.

113. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution: where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling, or such less sum as the company may direct; and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Execution of deeds abroad.

114. Any company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matter, as its attorney, to execute deeds on its behalf in any place not situate in the Colony, and every deed signed by such attorney, on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

Dividend payable only out of profits.

115. No dividend shall be payable to the shareholders of any company under this Act except out of the profits arising or accumulated from the business of such company. If any director of a company shall wilfully pay or permit to be paid any dividend other than out of such profits, he shall be liable to a penalty of not less than one hundred pounds, or exceeding five hundred pounds, and in default of payment thereof, to imprisonment, with or without hard labour, for a period of not less than three, nor exceeding six months, and shall also be liable to the creditors of the company for the amount of the debts due by the company to them respectively, to the extent that the dividend so paid shall have exceeded the profits, and such amount may be recovered by the creditors, or the liquidators suing on behalf of the creditors. If the whole be recovered from one director, he may recover contribution against any other director who shall have also made or permitted such payment.

Examination of affairs of company by inspectors.

116. The Governor may appoint one or more competent inspectors to examine into the affairs of any company and to report thereon, in such manner as the Governor may direct, upon the applications following:

(1) In the case of any company that has a capital divided into shares, upon the application of members holding not less than one-fourth part of the whole shares of the company for the time being issued:

Digitised by the University of Pretoria, Library Services, 2016

(2) In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fourth of the whole number of persons for the time being entered on the register of the company as members.

Application for inspection to be supported by evidence.

117. The application shall be supported by such evidence as the Governor may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; the Governor may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Inspection books.

118. It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power: any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly: if any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence.

Result of examination, how dealt with.

119. Upon the conclusion of the examination the inspectors shall report their opinion to the Governor: such report shall be written or printed, as he directs: a copy shall be forwarded by direction of the Governor to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them: all expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Governor shall direct the same to be paid out of the assets of the company.

Power of company to appoint inspectors.

120. Any company under this Act may by special resolution appoint inspectors for the purpose of examining into the affairs of the company: the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Governor with this exception, that, instead of making their report to the Governor they shall make the same in such manner and to such persons as the company in general meeting direct; and the officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Governor.

Report of inspectors to be evidence.

121. A duly authenticated copy of the report of any inspectors appointed under this Act, shall be admissible in any legal proceeding, as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

Notices.

Service of notices on companies.

122. Any notice, order, or other document required to be served upon the company, may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company, at their registered office.

Rules as to notices by letters.

123. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post office.

Authentication of notices of company.

124. Any notice, order, or proceeding requiring authentication by the company, may be signed by any director or officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Legal Proceedings.

Recovery of penalties.

125. All offences under this Act made punishable by any penalty may be prosecuted at the instance of the Treasurer or any person interested before any Resident Magistrate having jurisdiction over the person accused, or before the court, or before any circuit court within their respective jurisdictions; but no Resident Magistrate shall have power to impose for any such offence, any fine or any term of imprisonment beyond the limit of fine or imprisonment allowed under his ordinary jurisdiction.

Application of penalties.

126. The whole or any part of any penalty imposed under this Act may be applied in or towards payment of the costs of the proceedings or in or towards the rewarding the person upon whose information or at whose instance such penalty has been recovered.

Evidence of proceedings at meetings

127. Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company and of the directors or managers of the company, in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and, until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held or convened, and all resolutions passed thereat, or proceedings had, to have been duly passed and had; and all appointments of directors, managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

Digitised by the University of Pretoria, Library Services, 2016

Provision as to costs in actions brought by certain limited companies.

128. Where a limited company is plaintiff in any action, suit or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence, the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Declaration in actions against members.

129. In any action or suit brought by the company against any member to recover any call or other moneys due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other moneys due whereby an action or suit hath accrued to the company.

Alteration of Forms.

Forms in fifth schedule. Treasurer may alter forms.

130. The forms set forth in the fifth schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer: the Treasurer may from time to time make such alterations in or additions to the tables or forms in the third, fourth or fifth schedules, as he deems requisite: any such table or form, when altered, shall be published in the *Gazette*, and thereupon such table or form shall have the same force as if it were included in the schedules to this Act, but no alterations made by the Treasurer in the table marked A contained in the third schedule shall affect any company registered prior to the date of such alteration, or repeal, as respects such company, any portion of such table.

PART V.

WINDING UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Preliminary.

Meaning of "contributory."

131. The term "contributory" shall mean every person liable to contribute to the assets of a company in the event of the same being wound up under this Act: it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Nature of liability of contributory.

132. The liability of any person to contribute to the assets of a company, in the event of the same being wound up under this Act, shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the insolvency of any contributory to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

Contributories in case of death.

133. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs, and legatees shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory to the extent of the nett amount of the assets of the deceased contributory which have come into their hands, and such personal representatives, heirs and legatees shall be deemed to be contributories accordingly.

Contributories in case of insolvency.

134. If any contributory becomes insolvent, either before or after he has been placed on the list of contributories, his trustees shall be deemed to represent such insolvent for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such insolvent, or otherwise to allow to be paid out of his assets in due course of law, any moneys due from such insolvent in respect of his liability to contribute to the assets of the company being wound-up.

Winding-up by Court.

Circumstances under which company may be wound up by court.

135. A company may be wound up by the court under this part of the Act under the following circumstances:

(1) Whenever the company has passed a special resolution requiring the company to be wound up by the court.

(2) Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year.

(3) Whenever the members are reduced in number to less than seven.

(4) Whenever the company is unable to pay its debts.

(5) Whenever the court is of opinion that it is just and equitable that the company should be wound up.

Company, when deemed unable to pay its debts.

136. A company under this Act shall be deemed to be unable to pay its debts,

(1) Whenever any person shall have obtained any judgment, decree, or order of any court of competent jurisdiction for the payment of money against the company, or any person representing the company, and such judgment, decree or order shall remain unpaid or unsecured for a space of thirty days without the consent of the creditor.

(2) Whenever execution or other process issued on a judgment, decree or order obtained in any court in favour of any creditor, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part.

(3) Whenever it is proved to the satisfaction of the court that the company is unable to pay its debts.

Application for winding up to be made by petition.

137. Any application to the court for the winding-up of a company under this Act shall be by petition; it may be presented

Digitised by the University of Pretoria, Library Services, 2016

by the company, or by any one or more creditors or contributories of the company, or by all or any of the above parties, together or separately; and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

Commencement of winding up by court.

138. A winding-up of a company by the court shall be deemed to commence at the time of the presentation of the petition for winding-up on which any order for winding-up shall be made.

Court may grant injunction.

139. The court may, at any time after the presentation of a petition for winding-up a company under this Act, and before making an order for winding-up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceeding against the company, upon such terms as the court thinks fit; the court may also at any time after the presentation of such petition, and before the first appointment of liquidators, appoint a provisional liquidator of the estate and effects of the company, with all or such of the powers of a general official liquidator as the court may order.

Course to be pursued by court on hearing petition.

140. Upon hearing the petition the court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just.

Actions and suits to be stayed after order for winding up

141. When an order has been made for winding-up a company under this Act, no suit, action, or other proceeding shall be proceeded with or commenced against the company except with the leave of the court, and subject to such terms as the court may impose.

Copy of order to be forwarded to Registrar.

142. When an order has been made for winding-up a company under this Act, a copy of such order shall forthwith be forwarded by the company to the Registrar who shall make a minute thereof in his books relating to the company.

Power of court to stay proceedings.

143. The court shall at any time after an order has been made for winding-up a company, upon the application by motion of any liquidator, creditor or contributory of the company, and upon proof to the satisfactionof the court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Court may have regard to wishes of creditors or contributories.

144. The court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may regard the votes of such creditors and contributories, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held and conducted in such manner as the court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

result of such meeting to the court: in the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

Winding up may be referred to Master.

145. Where the court makes an order for winding up a company under this Act, it may if it thinks fit direct all or any subsequent proceedings for winding up the same to be had before the Master of the Supreme Court or any insolvency commissioner duly appointed; and upon such order being made the person therein named shall have the same jurisdiction and exercise the same powers with respect of winding-up such company as the court by which such order is made.

Official Liquidators.

Appointment of official liquidators.

146. For the purpose of conducting the proceedings in winding-up a company and assisting the court therein, the court may appoint a person or persons to be called an official liquidator or official liquidators; and the court may appoint such person or persons, for any time, and subject to any conditions which shall seem right. In all cases if more persons than one are appointed to the office of official liquidator, the court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons. The court may also determine whether any and what security is to be given by any official liquidator on his appointment; if no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the court; and in any indictment for theft thereof, under such circumstances or for any similar purpose, the property may be laid in the Master of the Supreme Court.

Resignations, removals, filling up vacancies and compensation.

147. Any official liquidator may resign or be removed by the court on due cause shown: and any vacancy in the office of an official liquidator appointed by the court shall be filled by the court: there shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the court may direct; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportion as the court directs.

Style and duty of official liquidators.

148. The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he or they shall be appointed, and not by his or their individual name or names; he or they shall take into his or their custody, or under his or their control, all the property, effects and things in actions to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the court.

Powers of official liquidator.

149. The official liquidator shall have power, with the sanction of the court, to do the following things:

Digitised by the University of Pretoria, Library Services, 2016

(1) To bring or defend any action, suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company:

(2) To carry on the business of the company, so far as may be necessary for the beneficial winding up of the same:

(3) To sell the movable and immovable property, effects and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels:

(4) To do all acts, and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal:

(5) To prove, rank, claim and draw a dividend in the matter of the insolvency or sequestration of any debtor or contributory, for any balance against the estate of such debtor or contributory, and to take and receive dividends in respect of such balance, in the matter of the insolvency as a separate debt due from such insolvent, and rateably with the other separate creditors: or with preference as the case may be.

(6) To draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such company in the course of carrying on the business thereof:

(7) To take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself:

(8) To do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Digitised by the University of Pretoria, Library Services, 2016

Discretion of official liquidator.

150. The court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the court, and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

Appointment of solicitor to official liquidator.

151. The official liquidator may, with the sanction of the court, appoint a solicitor or law agent to assist him in the performance of his duties.

Official liquidator may summon general meeting of creditors or contributories.

152. The official liquidator may, from time to time, summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it shall be his duty to summon such meetings whenever requested in writing to do so by one-twentieth in value of the creditors or contributories, as the case may be.

Official liquidator shall consider directions given at general meetings of creditors or contributories.

153. Subject to the provisions of this Act, the official liquidator shall, in the collection and administration of the property of the company, and in the distribution thereof among its creditors, and in applying for the sanction of the court to any compromise under and by virtue of section two hundred and three of this Act, take into consideration any directions that may be given by resolution of the creditors or of the contributories at any general meeting. If he does not act upon such directions he shall, from time to time, bring such directions to the notice of the court, and shall specially report to the court his reason for not acting upon them.

Public Examination after Report of Liquidator.

Reports of liquidators and public examination after reports.

154. (1) Where the court has made an order for winding up a company, the official liquidator shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the court:

(*a*) As to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and

(*b*) If the company has failed, as to the causes of the failure; and

(*c*) Whether in his opinion further enquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business thereof.

(2) The official liquidator shall also make a further report, or further reports, stating the manner in which the company was formed, and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) The court may, after consideration of any such report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the court on a day

Digitised by the University of Pretoria, Library Services, 2016

appointed by the court for that purpose, and be publicly examined as to the promotion or formation of the company, or as to the conduct of the business of the company, or as to his dealings as director or officer of the company. And if any such person refuses to come the court may, subject to the conditions detailed in the one hundred and seventy-third section of this Act, cause such person to be apprehended and brought before it for examination.

(4) The official liquidator and any creditor or contributory of the company may take part in the examination, either personally or by attorney, with or without counsel.

(5) The court may put such questions to the person examined as to the court may seem expedient.

(6) The person examined shall be examined on oath, and it shall be his duty to answer all such questions as the court may put or allow to be put to him. He shall, prior to such examination, be furnished with a copy of the official liquidator's report, and shall, also at his own cost, be entitled to employ at such examination an attorney with or without counsel, who shall be at liberty to put such questions to the person examined as the court may deem just, for the purpose of enabling that person to explain or qualify any answers given by him : Provided always that if such person is, in the opinion of the court, exempted from any charges made or suggested against him, the court may allow him such costs as the court in its discretion may deem fit. Notes of the examination shall be taken down in writing and shall be read over to or by and signed by the person examined, and may thereafter be used in evidence against him. They shall also be open to the inspection of any creditor or contributory of the company at all reasonable times.

(7) The court may, if it think fit, adjourn the examination from time to time.

(8) A public examination under this section may, if the court so directs, and subject to general rules, be held before any Judge of the Supreme Court or before the Master of the Supreme Court or any person appointed by the court, or commissioner, for the purpose ; and the powers of the court under sub-sections five, six and seven of this section may (except as to costs) be exercised by the person before whom the examination is held.

To apply to winding up, whether by the court or voluntary.

155. The provisions of the last preceding section shall apply in the winding up of any company under this Act whether the same is being wound up by the court or is being wound up voluntarily, and notwithstanding that the conduct or action in regard to which the person examined may be questioned, may be such as to entail criminal consequences.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

Person aggrieved by act of liquidator may apply to court.

156. If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up by the court, he may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

Ordinary Powers of Court.

Collection and application of assets.

157. As soon as may be, after making an order for winding-up the company, the court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.

Provision as to representative contributories.

158. In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right, and persons who are contributories as being representatives of or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or legatees of such contributory, nevertheless such heirs or legatees may be added, as and when the court thinks fit.

Power of court to require delivery of property.

159. The court may, at any time after making an order for winding up a company, require any contributory, for the time being settled on the list of contributories, trustee, receiver, banker, or agent, or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate or effects, which happen to be in his hands for the time being and to which the company is *prima facie* entitled.

Power of court to order payment of debts by contributory.

160. The court may, at any time after making an order for the winding-up of the company, make an order on any contributory, for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any moneys due from him, or from the estate of the person whom he represents to the company, exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute, by virtue of any call made, or to be made, by the court in pursuance of this part of this Act; and it may, in making such order, when the company is not limited, allow to such contributory by way of set-off, any moneys due to him or the estate which he represents from the company, on any independent dealing or contract with the company, but not any moneys due to him as a member of the company, in respect of any dividend or profit.

Provided that, when all the creditors of any company, whether limited or unlimited, are paid in full, any moneys due on any account whatever, to any contributory from the company, may be allowed to him by way of set-off against any subsequent call.

Digitised by the University of Pretoria, Library Services, 2016

Power of court to make calls.

161. The court may, at any time after making an order for winding-up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on, and order payment thereof by, all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and shall, in making any call, consider the rights of such contributories among themselves, and so make such call as to conduce to the ultimate adjustment of such rights, without prejudice to the paramount rights of creditors and others, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made, may partly or wholly fail to pay their respective portions of the same.

Power of court to order payment into bank.

162. The court may order any contributory, purchaser, or other person from whom money is due to the company, to pay the same into some bank to be named by the court, to the account of the official liquidator, instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator, and the liquidator may, in like manner, be ordered to pay into the like bank any sum or sums of money in his hands, or to come into his hands, on behalf of the company to the like account.

Regulation of account, with court.

163. All moneys, bills, notes, and other securities, paid and delivered into such bank as aforesaid, in the event of a company being wound up by the court, shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out of the same, as the court may direct.

Provision in case of representative contributory not paying moneys ordered.

164. If any person made a contributory as representative of a deceased contributory makes default in paying any sum ordered to be paid by him, the official liquidator shall be entitled to claim as a creditor in the estate of such deceased contributory in respect of the sum so ordered to be paid, and shall be entitled to take proceedings as creditor for the recovery of such sum.

Order, conclusive evidence.

165. Any order made by the court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are *prima facie* to be taken to be truly stated as against all persons and in all proceedings whatsoever.

Court may exclude creditors not proving within certain time.

166. The court may fix a certain day or days on or within which creditors of the company are to prove their debts or claims or be excluded from the benefit of any distribution made before such debts are proved.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

Court to adjust rights of contributories.

167. The court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Powers of court in event of assets being insufficient.

168. The court may, in the event of the assets being insufficient to satisfy the liabilities, make such order as to the priority and payment out of the estate of the company, of the costs, charges, and expenses incurred in winding-up any company as it thinks just.

Dissolution of company.

169. When the affairs of the company have been completely wound up, the court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

Registrar to make minute of dissolution of company.

170. Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such company.

Penalty on official liquidator for not reporting dissolution of company.

171. If the official liquidator makes default in reporting to the Registrar, in the case of a company being wound up by the court, the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default.

Publication of order of dissolution.

172. Every order so made shall be published in the *Gazette* and in such newspapers as the court may direct, within twenty-one days after the making of such order.

Extraordinary Powers of Court.

Power of court to summon persons before it suspected of having property of company.

173. The court may, after it has made an order for winding-up the company, summon before it any officer of the company or any person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the court may deem capable of giving information concerning the trade, dealings, estate or effects of the company; and the court may require any such officer or person to produce any books, papers, deeds, writings or other documents in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, having no lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause such person to be apprehended, and brought before the court for examination; nevertheless, in cases where any person claims any lien on papers, deeds or writings or documents produced by him, such production shall be without prejudice to such lien, and the court shall have jurisdiction in the winding up to determine all questions relating to such lien.

Examination of parties by court.

174. The court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it in manner aforesaid or whom it may be desired to examine concerning the affairs, dealings, estate or effects of the company, and may cause to be reduced into writing the answers of every such person, and require him to subscribe the same.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

Power to arrest contributory about to abscond or to remove or conceal any of his property.

175. The court may at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the Colony, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods and chattels to be seized, and him and them to be safely kept until such time as the court may order, and may give such directions and make such order for the release of such contributory from custody, and of his books, papers, money, securities, goods and chattels from seizure upon his entering into bail or depositing security as to the court may seem fit.

Powers of court cumulative.

176. Any powers by this Act conferred on the court shall be deemed to be in addition to and not in restriction of any other powers subsisting at law of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

Court may appoint Commissioners for taking evidence.

177. The court may appoint commissioners for the purpose of taking evidence under this Act in cases where any company is wound up by the court, and it shall be lawful for the court to refer the whole or any part of the examination of any witnesses under this Act to any person so appointed commissioner; and every such commissioner shall have, in the matter so referred to him, all the same powers of summoning and examining witnesses and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the court has; and the examination so taken shall be returned or reported to the court in such manner as it directs.

Voluntary Winding-up of Company.

Circumstances under which company may be wound up voluntarily.

178. A company under this Act may be wound up voluntarily—

(1) Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily:

(2) Whenever the company has passed a special resolution requiring the company to be wound up voluntarily:

(3) Whenever the company has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same:

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution, as hereinbefore defined.

Commencement of voluntary winding up.

179. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising such winding-up.

Effect of voluntary winding up on status of Company.

180. Whenever a company is wound up voluntarily, the company shall, from the date of the commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof: and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place after the commencement of such winding-up, shall be void, but its corporate state, and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.

Notice of resolution to wind up voluntarily.

181. Notice of any special resolution, or extraordinary resolution, passed for winding-up a company voluntarily shall be given by advertisement in the *Gazette*.

Consequences of voluntary winding up.

182. The following consequences shall ensue upon the voluntary winding-up of a company:—

(1) The property of the company shall be applied in satisfaction of its liabilities, in the legal order of their preference, and, subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members, according to their rights and interests in the company.

(2) Liquidators shall be appointed for the purpose of winding up the affairs of the company, and distributing the property.

(3) The company, in general meeting, shall appoint such person or persons as it thinks fit to be liquidators, and may fix the remuneration to be paid to them.

(4) If one person only is appointed, all the provisions herein contained, in reference to several liquidators, shall apply to him.

(5) Upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the company, in general meeting, or the liquidators, may sanction the continuance of such powers.

(6) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination, by any number not less than two.

(7) The liquidators may, without the sanction of the court, exercise all powers by this Act given to the official liquidator.

Digitised by the University of Pretoria, Library Services, 2016

(8) The liquidators may exercise the powers hereinbefore given to the court of settling the list of contributories of the company, and any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories:

(9) The liquidators may at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same:

(10) The liquidators shall pay the debts of the company, and adjust the rights of the contributories amongst themselves.

Power of company to delegate authority to appoint liquidators.

183. A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised; and any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the company.

Arrangement between company and creditors when binding on creditors.

184. Any arrangement entered into between a company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its creditors, shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by a majority in number and by three-fourths in value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Power of creditor or contributory to appeal.

185. Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the court against such arrangement, and the court may thereupon, as it thinks just, amend, vary or confirm the same.

Power for liquidators or contributories in voluntary winding up to apply to the Court.

186. Where a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the court to determine any question arising in the matter of such winding up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the

Digitised by the University of Pretoria, Library Services, 2016

court might exercise if the company were being wound up by the court; and the court, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede wholly or partially to such application on such terms and subject to such conditions as the court thinks fit, or it may make such other order or decree on such application as the court thinks just.

Power of liquidators to call general meeting.

187. Where a company is being wound up voluntarily the liquidators may from time to time, during the continuance of such winding up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purposes they think fit; and in the event of the winding up continuing for more than one year the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding up has been conducted during the preceding year.

Power to fill up vacancy in liquidators.

188. If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the court.

Power of Court to appoint liquidators.

189. If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the court may, on the application of a contributory, appoint a liquidator or liquidators. The court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up.

Liquidators on conclusion of winding up to make up an account.

190. As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators. The meeting shall be called by advertisement, specifying the time, place, and object of such meeting; and such advertisement shall be published in the *Gazette* one month at least previously to the meeting.

Digitised by the University of Pretoria, Library Services, 2016

Liquidators to report meeting to Registrar.

191. The liquidators shall make a return to the Registrar of such meeting having been held; and of the date at which the same was held; and on the expiration of three months from the date of the registration of such return, the company shall be deemed to be dissolved. If the liquidators make default in making such return to the Registrar, they shall incur a penalty not exceeding five pounds for every day during which such default continues.

Costs of voluntary liquidation.

192. All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

Saving of rights of creditors.

193. The voluntary winding-up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the court, if the court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Power of court to adopt proceedings of voluntary winding-up.

194. Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the court, the court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Supplemental Provisions.

Reviews and appeals.

195. Reviews of, and appeals from any order or decision made or given in the matter of the winding up of a company by the court, may be had in the same manner and subject to the same conditions in and subject to which reviews and appeals may be had respectively from any order or decision of the same court in cases within its ordinary jurisdiction.

Dispositions of property, &c., during winding-up void.

196. Where any company is being wound up by the court, all dispositions of the property, effects and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company, made between the commencement of the winding-up and the order for winding-up, shall, unless the court otherwise orders, be void.

Books of company to be evidence.

197. Where any company is being wound up, all books, accounts and documents of the company and of the liquidators shall, as between the contributories of the company, be *primâ facie* evidence of the truth of all matters purporting to be therein recorded.

Disposal of books, accounts and documents of company.

198. Where any company has been wound up under this Act, and is about to be dissolved, the books, accounts and documents of the company and of the liquidators may be disposed of in the following way: that is to say, where the company has been wound up by the court, in such way as the court directs; and where the company has been wound up voluntarily, in such way as the company by an extraordinary resolution directs; but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

company, or the liquidators, or anyone to whom the custody of such books, accounts and documents has been committed, by reason that the same, or any of them, cannot be made forthcoming to any party or parties claiming to be interested therein.

Inspection of books.

199. Where an order has been made for winding-up a company by the court, the court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors and contributories, in conformity with the order of the court, but not further or otherwise.

Debts of all descriptions to be proved.

200. In the event of any company being wound up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Principles regulating proof of claim of debts against company.

201. In the proof or claim, of debts against any company, or in the payment of debts by the liquidator of any company in course of being wound up under this Act, the principles regulating the proof, claim, and payment of debts in case of the judicial insolvency of any individual shall, save where it is herein otherwise provided, be followed and observed, so far as may be.

Power of liquidators to compromise with creditors or pay in full.

202. The liquidators may, with the sanction of the court, where the company is being wound up by the court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

Power of liquidators to compromise with debtors.

203. The liquidators may, with the sanction of the court, where the company is being wound up by the court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding-up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon, with power for the

Digitised by the University of Pretoria, Library Services, 2016

liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

Court may order meeting of creditors to consider compromise.

204. Where any compromise or arrangement shall be proposed between a company which is at the time of the passing of this Act or afterwards in the course of being wound up voluntarily, and the creditors of such company or any class of such creditors, it shall be lawful for the court in addition to any other of its powers on the application in a summary way of any creditor or the liquidator to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the court shall direct, and if a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy, at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company.

Power of liquidators to accept shares, &c., as a consideration for sale of property of company.

205. Where any company is proposed to be or is in the course of being wound up voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, receive, in compensation, or part compensation, for such transfer or sale, shares, policies or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up, may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution in writing, addressed to the liquidators or one of them, and left at the registered office of the company not later than twenty-one days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer; that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution: no special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if an order be made within a year for winding up the company by the court, such resolution shall not be of any validity unless it is sanctioned by the court.

Mode of determining price.

206. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of "The Lands and Arbitrations Clauses Act, 1882," shall *mutatis mutandis* apply.

Certain attachments, &c., to be void.

207. Where any company is being wound up by the court any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Undue preference.

208. Any alienation, transfer, cession, delivery, mortgage or pledge of any goods and effects, movable or immovable, personal or real, and any payment of money, which would, if made or done by or against any private person, in the event of his insolvency, be deemed to have been made or done by way of undue preference, under and by virtue of Ordinance No. 6 of 1843, shall, if made or done by, or against any company, be deemed, in the event of such company being wound up under this Act, to have been made or done by way of undue preference of the creditors of such company, and shall be invalid accordingly; and for the purpose of this section, the presentation of a petition for winding up a company shall be deemed to correspond with the order for the sequestration of the estate of a private person according to law. And any conveyance or assignment made by any company of all its estate and effects to trustees for the benefit of its creditors shall be void to all intents.

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

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

Digitised by the University of Pretoria, Library Services, 2016

which he has become liable or accountable, together with interest after such rate as the court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the court thinks just.

Penalty on falsification of books

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

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

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

Prosecution of delinquent directors, &c., in case of voluntary winding up.

212. Where a company is being wound up altogether voluntarily, if it appear to the liquidators conducting such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be the duty of the liquidators, with the previous sanction of the court, to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Penalty for perjury.

213. If any person, upon any examination upon oath or affirmation authorised under this Act, or in any affidavit, deposition, or solemn affirmation in or about the winding-up of any company under this Act, or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

Court may order meetings to be held.

214. In the course of any winding-up by the court under this Act, the court may direct that meetings shall be held, either of the creditors or contributories, or of both, and may direct that votes shall be taken either in person or by proxy, or in both ways, and may order that the majority be estimated either by number or value, or by both; and may generally direct what shall be submitted to any such meeting, and how the proceedings thereof shall be carried on, and who shall preside thereat; but shall not be bound by any such resolution of any such meeting.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

	£	s.	d.
fees regulated according to the amount of nominal capital; (that is to say)—			
For every £1,000 of nominal capital, or part of £1,000, after the first £2,000, up to £5,000	1	0	0
For every £1,000 of nominal capital, or part of £1,000, after the first £5,000, up to £100,000	0	5	0
For every £1,000 of nominal capital, or part of £1,000, after the first £100,000	0	1	0

For registration of any increase of capital made after the first registration of the company, the same fees per £1,000, or part of a £1,000, as would have been payable if such increased capital had formed part of the original capital at the time of registration.

Provided that no company shall be liable to pay in respect of nominal capital, on registration or afterwards, any greater amount of fees than £50, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.

For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act (*a*), the same fee as is charged for registering a new company.

Such other fees in respect of any services to be performed by the Registrar under this Act as the Governor may from time to time appoint, and all such fees shall be payable in stamps.

Third Schedule.

THIRD SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Shares.

1. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

2. Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.

3. If such certificate is worn out or is proved to the satisfaction of the directors to have been lost, it may be renewed, on payment of one shilling, or such less sum as the company in general meeting may prescribe.

Calls on Shares.

4. The directors may, from time to time, make such calls upon the members in respect of all monies unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

5. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

Digitised by the University of Pretoria, Library Services, 2016

6. If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

7. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the monies due upon the shares held by him beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

8. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

9. Shares in the company shall be transferred in the following or some other analagous form:—I, A. B., of , hereby transfer to C. D. the share [or shares], numbered , standing in my name in the books of the company, to hold unto the said C. D., his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; the day of . (Signed).

10. The company may decline to register any transfer of shares made by a member who is indebted to them.

11. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

12. The executors or administrators of a deceased member shall be the only persons recognised by the company as having any title to his share.

13. Any person becoming entitled to a share in consequence of the death, or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

14. Any person who has become entitled to a share in consequence of the death or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person, to be named by him, registered as a transferee of such share.

15. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

16. The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

Forfeiture of Shares.

17. If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such non-payment.

18. The notice shall name a further day, on or before which such call, and all interest and expenses that have accrued by reason of such non-payment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable). The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

19. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may, at any time thereafter, before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited, by a resolution of the directors of that effect.

20. Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

21. Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

22. A declaration in writing, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share, and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.

23. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

24. When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

25. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respec-

Digitised by the University of Pretoria, Library Services, 2016

tively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.

26. The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

27. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

28. The first general meeting shall be held at such time, not being more than six months after the registration of the company, and at such place, as the directors may determine.

29. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

30. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

31. The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

32. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

33. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meetings.

34. Seven days' notice at the least specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

Digitised by the University of Pretoria, Library Services, 2016

35. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance sheets, and the ordinary report of the directors.

36. No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business, and such quorum shall be ascertained as follows; that is to say, if the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

37. If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved: in any other case, it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*.

38. The chairman of the board of directors shall preside as chairman at every general meeting of the company.

39. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

40. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

41. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

42. If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of an equality of votes at any general meeting the chairman shall be entitled to a second or casting vote.

Votes of Members.

43. Every member shall have one vote for every share up to ten: he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

44. If any member is a lunatic or idiot he may vote by his curator *bonis*, or other legal curator.

Digitised by the University of Pretoria, Library Services, 2016

45. If two or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

46. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

47. Votes may be given either personally or by proxy.

48. The instrument appointing a proxy shall be in writing, under the hand of the appointer, or if such appointer is a corporation, under their common seal, and shall be attested by one or more witness or witnesses: no person shall be appointed a proxy who is not a member of the company.

49. The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

50. Any instrument appointing a proxy shall be substantially in the following form :—

Company Limited.

I of being a member of the Company Limited, and entitled to vote *or* votes, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of , and at any adjournment thereof [*or*, at any meeting of the company that may be held in the year].

As witness my hand, this day of .

Signed by the said in the presence of .

Directors.

51. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

52. Until directors are appointed the subscribers of the memorandum of association shall be deemed to be directors.

53. The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

Powers of Directors.

54. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the foregoing Act, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act,

Digitised by the University of Pretoria, Library Services, 2016

and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

55. The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

56. The office of director shall be vacated—

If he holds any other office or place of profit under the company:

If he becomes insolvent or compounds with his creditors:

If he is concerned in or participates in the profits of any contract with the company;

But the above rules shall be subject to the following exceptions: That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; nevertheless he shall not vote in respect of such contract or work; and if he does so vote his vote shall not be counted.

Rotation of Directors.

57. At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

58. The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot: in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

59. A retiring director shall be eligible for re-election.

60. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

61. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

62. The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

63. Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

64. The company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead:

Digitised by the University of Pretoria, Library Services, 2016

the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

65. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business: questions arising at any meeting shall be decided by a majority of votes: in case of an equality of votes the chairman shall have a second or casting vote: a director may at any time summon a meeting of the directors.

66. The directors may elect a chairman at their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

67. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

68. A committee may elect a chairman of their meetings; if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

69. A committee may meet and adjourn as they think proper; questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.

70. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

71. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

72. No dividend shall be payable except out of the profits arising from the business of the company.

73. The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

74. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1892.

75. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned, and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the company.

76. No dividend shall bear interest as against the company.

Accounts.

77. The directors shall cause true accounts to be kept,—

Of the stock in trade of the company;

Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place; and

Of the credits and liabilities of the company:

The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

78. Once at least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

79. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters: every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

80. A balance-sheet shall be made out in every year and laid before the company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the company, arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

81. A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served (*d*).

Audit.

82. Once at the least in every year the accounts of the company shall be examined, and the correctness of the balance-sheet ascertained, by one or more auditor or auditors.

83. The first auditors shall be appointed by the directors: subsequent auditors shall be appointed by the company in general meeting.

84. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

Digitised by the University of Pretoria, Library Services, 2016

85. The auditors may be members of the company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.

86. The election of auditors shall be made by the company at their ordinary meeting in each year.

87. The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

88. Any auditor shall be re-eligible on his quitting office.

89. If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

90. If no election of auditors is made in manner aforesaid the Governor may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

91. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

92. Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company: he may at the expense of the company employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company.

93. The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

94. A notice may be served by the company upon any member either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

95. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

96. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post-office.

Digitised by the University of Pretoria, Library Services, 2016

Dr. Balance Sheet of the.....Co., made up to..... **Cr.**

CAPITAL AND LIABILITIES.			£ s. d.	£ s. d.
		Showing:		
I. CAPITAL ..	1	The Number of Shares		
	2	The Amount paid per Share ..		
	3	If any Arrears of Calls, the Nature of the Arrear, and the Names of the Defaulters ..		
	4	The Particulars of any forfeited Shares		
		Showing:		
II. DEBTS AND LIABILITIES of the Company ..	5	The Amount of Loans on Mortgages or Debenture Bonds..		
	6	The Amount of Debts owing by the Company, distinguishing—		
		(*a.*) Debts for which Acceptances have been given..		
		(*b.*) Debts to Tradesmen for Supplies of Stock in Trade or other Articles ..		
		(*c.*) Debts for Law Expenses		
		(*d.*) Debts for Interest on Debentures or other Loans		
		(*e.*) Unclaimed Dividends ..		
		(*f.*) Debts not enumerated above		
		Showing:		
VI. RESERVE FUND		The Amount set aside from Profits to meet Contingencies ..		
		Showing:		
VII. PROFIT AND LOSS		The disposable Balance for Payment of Dividend, &c. ..		
CONTINGENT LIABILITIES		Claims against the Company not acknowledged as Debts ..		
		Monies for which the Company is contingently liable ..		

PROPERTY AND ASSETS.			£ s. d.	£ s. d.
		Showing:		
III. PROPERTY held by the Company	7	Immovable Property, distinguishing—		
		(*a.*) Freehold Land ..		
		(*b.*) ,, Buildings ..		
		(*c.*) Leasehold ,, ..		
	8	Movable Property, distinguishing—		
		(*d.*) Stock in Trade ..		
		(*e.*) Plant		
		The Cost to be stated with Deductions for Deterioration in Value as charged to the Reserve Fund or Profit and Loss ..		
		Showing:		
IV. DEBTS owing to the Company	9	Debts considered good for which the Company hold Bills or other Securities		
	10	Debts considered good for which the Company hold no Security		
	11	Debts considered doubtful and bad		
		Any Debt due from a Director or other Officer of the Company to be separately stated ..		
		Showing:		
V. CASH AND INVESTMENTS	12	The Nature of Investment and Rate of Interest		
	13	The Amount of Cash, where lodged, and if bearing Interest		

(*e*) See clauses 81 and 82 of the foregoing Table A.

Digitised by the University of Pretoria, Library Services, 2016

FOURTH SCHEDULE.

No. 25—1892.

Fourth Schedule.

Name of Company.	Business or Purpose.	Head Office.	Total amount of Shares or Stock for which Share Warrants are outstanding at the date of the return.	Names and places of abode of persons to whom Share Warrants have been issued since the preceding half-yearly return.	Distinctive numbers of Shares or Stock in respect of which Share Warrants have been issued since the preceding half-yearly return.

Dates of the issue of the several Share Warrants.	Total amount of Share Warrants which have been surrendered since the preceding half-yearly return.	Names and abodes of the persons who have surrendered Share Warrants since the preceding half-yearly return.	Distinctive numbers of the Shares or Stock in respect of which Share Warrants have been surrendered since the preceding half-yearly return.	Dates of the surrender of the several Share Warrants.

FIFTH SCHEDULE.

Fifth Schedule.

FORM A.

MEMORANDUM OF ASSOCIATION OF A LIMITED COMPANY.

1st. The name of the company is "The Cape Steam Packet Company, Limited."

2nd. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

3rd. The liability of the members is limited.

4th. The capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Digitised by the University of Pretoria, Library Services, 2016

Names, Addresses and Descriptions of Subscribers.			Number of Shares taken by each Subscriber.
"1. John Jones of	Merchant	..	200
"2. John Smith of	,,	..	25
"3. Thomas Green of	,,	..	30
"4. John Thompson of	,,	..	40
"5. Caleb White of	,,	..	15
"6. Andrew Brown of	,,	..	5
"7. Cæsar White of	,,	..	10
Total Shares taken ..	..	..	325

Dated the day of 18

Witness to the above signatures,

A.B., No. , Adderley-street, Cape Town.

Form B.

Memorandum and Articles of Association of an Unlimited Company having a Capital divided into Shares.

Memorandum of Association.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The objects for which the company is established are, "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of Cape Town, is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of	Merchant.
"2. John Smith of	,,
"3. Thomas Green of	,,
"4. John Thompson of	,,
"5. Caleb White of	,,
"6. Andrew Brown of	,,
"7. Abel Brown of	,,

Dated —— day of ————, 18—.

Witness to the above signatures,

A.B., No. 20, Adderley-street, Cape Town.

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

Digitised by the University of Pretoria, Library Services, 2016

Application of Table A.

All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of Shares taken by Subscribers.
"1. John Jones of Merchant ..	1
"2. John Smith of ,, ..	5
"3. Thomas Green of ,, ..	2
"4. John Thompson of ,, ..	2
"5. Caleb White of ,, ..	3
"6. Andrew Brown of ,, ..	4
"7. Abel Brown of ,, ..	1
Total Shares taken	18

Dated the day of , 18

Witness to the above signatures,
A.B., No. 20, Adderley-street, Cape Town.

FORM C.

(As required by of this Act.)

Summary of Capital and Shares of the Company made up to the day of

Nominal Capital £ divided into share of £ each.

Number of shares taken up to the day of .

There has been called up on each share £

Total amount of calls received £

Total amount of calls unpaid £

List of persons holding shares in the Company on the day of

and of persons who have held shares therein at any time during the year immediately preceding the said day of , showing their names and addresses and an account of the shares so held.

Folio in Register Ledger containing Particulars.	Names, Addresses and Occupations.				ACCOUNT OF SHARES.				
	Surname.	Christian Name.	Address.	Occupation.	Shares held by existing members on the day of	Additional shares held by existing members during preceding year.		Shares held by persons no longer members.	
						Number	Date of Transfer.	Number	Date of Transfer.

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1892.] [Promulgated 31st August, 1892.

ACT

To Regulate the holding of Exhibitions in this Colony.

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

Interpretation of terms.

1. In this Act the term "Exhibition" shall mean any Industrial or Art Exhibition which may be declared by the Governor, as hereinafter mentioned, to be an Exhibition to which this Act shall apply; the term "Committee" shall mean the General Executive Committee for the time being of the Exhibition, and the term "Trustees" shall mean the persons who shall be trustees for the time being of the Exhibition, and who shall be two in number, one to be appointed by the Governor and the other by the Committee.

Appointment of Exhibition Commissioners.

2. It shall be lawful for the Governor from time to time to approve of the holding of an Exhibition at such place within the Colony as he may think fit, and to appoint two persons to be Exhibition Commissioners, who shall be *ex officio* members of the Committee of the Exhibition, and from time to time to remove such persons and appoint others in their stead.

Legal proceedings.

3. All proceedings at law instituted on behalf of or against the Exhibition, or wherein the Exhibition may be concerned, shall be instituted by or against the Trustees by name, and in all indictments and informations it shall be sufficient to state the property of the Exhibition as being the property of the Trustees, and any offence committed with intent to injure or defraud the Exhibition may, in any prosecution for the same, be stated or laid to have been committed with intent to injure or defraud the said Trustees, and any offender or offenders may thereupon be lawfully convicted of any such offence, and the death, resignation or removal or other act of such Trustees or any of them, shall not abate any such action, suit or prosecution, but the same may be continued, prosecuted and concluded in the name of any person who may be or may become Trustee.

Appointment of Trustee.

4. Upon the election or appointment of any person to be Trustee, notice of such election or appointment shall be forthwith given in the *Gazette*, and such notice shall be sufficient proof of such election or appointment.

Effect of judgment against Trustees.

5. Every judgment and every decree or order which shall be at any time obtained against the Trustees, on behalf of the Exhibition, shall take effect and be enforced, and execution thereon be issued against the property and effects of the Exhibition.

Powers of Trustees.

6. It shall be lawful for the Trustees, for the time being, to purchase or to lease on behalf of the Exhibition any lands or buildings which may be required for the purposes of the Exhibition, and to sell or relet the same or any part thereof as occasion may require, and transfers or leases thereof shall be passed, or made, to or by the said Trustees on behalf of the said Exhibition.

Digitised by the University of Pretoria, Library Services, 2016

Committee may make bye-laws.

7. The members of the committee, or a majority of them, at any general meeting assembled, shall have power from time to time to make, repeal, or alter such bye-laws as they may think fit for the purpose of regulating:

(1) The conduct of their own proceedings;
(2) The due management of the affairs of the Exhibition in its several departments;
(3) The temporary admission or exclusion of the public or any individual to and from the Exhibition, or buildings, or grounds, or any part thereof, and the behaviour to be observed therein;
(4) The sum to be demanded and paid for admission to the Exhibition or buildings or grounds or any part thereof;
(5) The purposes of public instruction, enjoyment or entertainment for which any buildings or grounds or any part thereof may be used and applied:

Provided that it shall not be lawful, under authority of any such bye-law or otherwise, to keep open any refreshment bars on Sundays, or to permit the sale of refreshments of any description to the public on that day within any building or grounds forming part of the Exhibition, or used in connection therewith; and provided further that no machinery, except for the purpose of lighting the buildings and grounds, shall be worked on Sundays in demonstration of the various kinds of industry exhibited, and that no persons shall be employed about the Exhibition buildings or grounds except for the purpose of preserving order and for the safety of the buildings and their contents. But nothing herein contained shall be construed as prohibiting the members of the committee under the bye-laws aforesaid from permitting the performance of selections of sacred music within the buildings or grounds of the Exhibition on Sundays and from admitting the public to any part of the building during the hours not usually set apart for Divine service.

Force and effect of bye-laws.

8. All bye-laws made under the authority of this Act shall be signed by the Trustees and submitted for the approval of the Governor, and if approved, they shall be published in the *Gazette*, and upon such publication such bye-laws shall have the same force or effect as if they had been inserted in this Act.

Bye-laws repealed by proclamation.

9. The Governor may at any time by proclamation in the *Gazette* declare that from a time to be named in such proclamation any bye-law made under this Act shall be repealed, and from and after the time so named such bye-law shall unless previously repealed under the provisions in this Act contained be absolutely repealed and of no effect: Provided, always, that such repeal shall not affect any suit, prosecution, or other proceeding commenced before the time of such repeal but the same may be continued as if no such repeal had taken place.

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1892.

Proof of existence of bye-law.

10. The production of a copy of the *Gazette* containing any such bye-law and notice as aforesaid shall be conclusive evidence that such bye-law was duly made.

Copies of bye-laws posted at entrance to Exhibition grounds.

11. A copy of all bye-laws made under this Act for the time being in force shall be posted at or near the principal entrance to the said Exhibition grounds and also in a conspicuous place at or adjacent to the main building on the said grounds so as to give public notice thereof, and no penalty imposed by any such bye-law shall be recoverable unless the same shall have been posted in manner aforesaid.

Bye-laws when published binding on all persons.

12. Such bye-laws when so published as aforesaid shall be binding upon and be observed by all persons; and for proof of publication of any such bye-laws it shall be sufficient to prove that a painted board or a printed paper affixed to a board containing a copy of such bye-laws was hung up or otherwise posted in manner by this Act directed.

Penalty for contravention of bye-laws.

13. Any person contravening any bye-law made under this Act shall be liable on conviction before the Resident Magistrate of the district to a fine not exceeding ten pounds, and in default of payment to imprisonment with or without hard labour for any term not exceeding three months, and if the infraction or non-observance of any such bye-laws be attended with danger or annoyance to the public or hindrance to the committee or any of the officers of the said Exhibition or to the public in the lawful use of the said Exhibition, it shall be lawful for the committee or any member, officer, or servant thereof, summarily to interfere to remove such danger, annoyance or hindrance, and that without prejudice to the infliction of any penalty incurred by the infraction of any such bye-laws.

Penalty for obstruction of committee and officers and trespass or injury to property.

14. Whoever shall wilfully obstruct or impede any officer, servant or agent of the committee in the execution of his duty upon any land owned or leased by or in the lawful occupation of the Exhibition or upon or in any building or premises connected therewith, or wilfully trespass upon any such land, building or premises, or remove or wilfully injure any building, enclosure, post, fence, tree or shrub upon any such land shall, upon conviction thereof before the Resident Magistrate, be liable to a penalty of not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for any term not exceeding three months.

Officer of committee may seize offender.

15. Any member, officer or servant of the committee may seize and detain any person who shall have committed any offence against the provisions of this Act or of the bye-laws made under this Act, and give such offender in charge to a police officer or constable for the purpose of conveying him before the said Resident Magistrate, in order that the complaint against the offender may be dealt with according to law.

Digitised by the University of Pretoria, Library Services, 2016

16. Notwithstanding the liability of any person to any penalty under this Act, or the bye-laws made under this Act, he shall not be relieved from any other liability to which he would have been subject if this Act had not been passed. Liability under this Act shall not relieve from any other liability.

17. The Trustees may let for any particular class of show or for any other amusement or sport any portion of the land or buildings owned or leased as in this Act mentioned, and the lessee, his collectors, servants, or agents, shall have the same power of demanding, recovering, and receiving the said rates or charges as are hereby given to the committee. Trustees may lease any portion of land.

18. Notwithstanding anything to the contrary contained in any of the Acts regulating the sale of intoxicating liquors, upon production of a certificate signed by the Trustees, the Resident Magistrate of the district shall grant to the applicant producing such certificate a licence to be called a "Retail Exhibition Licence," and thereupon the person applying shall be authorised between such hours, not being earlier than eleven a.m. or later than eleven p.m. on any day other than Sunday, and during the period specified in such certificate, not being longer than three months, to sell intoxicating liquors at such places within the buildings and grounds of the Exhibition as the licence may specify. Retail Exhibition Licence.

Provided that every certificate shall specify and set forth:

(1) The name of the applicant.

(2) That the applicant is in the opinion of the Trustees a fit and proper person to receive and hold the licence required.

(3) The period during which the licence is recommended to be granted and the hours during which liquors may be sold.

Provided further that every licence issued under this section shall require the holder thereof between the hours specified, to keep on sale non-intoxicating drinks, under such regulations as shall be set forth in the said licence.

19. Any such retail Exhibition licence may at any time be cancelled by the Governor. May be cancelled by Governor.

20. Any such retail Exhibition licence granted under this Act shall be issued by the distributors of stamps respectively in the several districts of the Colony on payment for every such licence of a sum calculated at the rate of one pound sterling for each and every week during the period for which the same shall be granted. Licence, how issued.

21. A retail Exhibition licence and the holder thereof shall be subject to the provisions of all Acts now in force regulating the sale of intoxicating liquors under a retail licence except in so far as the same may be inconsistent with the provisions of this Act. Provisions of Liquor Laws to apply to holder of such licence when not inconsistent with this Act

22. This Act shall apply only to such Exhibition as the Governor may, by notice in the *Gazette* under the hand of the Colonial Secretary, declare to be an Exhibition to which this Act shall apply. Act only to apply to Exhibitions proclaimed as such.

23. This Act may be cited as the "Exhibition Act, 1892." Short title.

Digitised by the University of Pretoria, Library Services, 2016

No. 27—1892.] [Promulgated 2nd September, 1892

ACT

To make provision for the Permissive Adoption of taking Votes by Ballot at Elections of Members of Divisional Councils, Municipal, Borough and Town Councils, and Village Management Boards.

Preamble.

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

Governor to proclaim provisional Ballot Regulations.

1. It shall be lawful for the Governor to frame and issue by Proclamation in the *Gazette*, provisional Regulations by which Elections of Members of Divisional Councils, Municipal, Borough and Town Councils, and Village Management Boards may respectively be regulated under the provisions of this Act, notwithstanding anything to the contrary contained in the Divisional Councils Act, 1889, the Municipal Act, 1882, or the Village Management Board Act, 1881, or the provisions of any law.

Regulations to correspond *mutatis mutandis* with Ballot provisions of Franchise and Ballot Act.

2. The regulations issued under the provisions of the preceding section shall correspond substantially, as far as is practicable and *mutatis mutandis*, with the provisions of sections thirty-five to eighty-one inclusive of the Franchise and Ballot Act, 1892, and of the regulations made under the provisions of the said Act for the carrying out the said provisions with regard to Parliamentary Elections.

Mayor or chairman on receiving petition of majority of voters to convene meeting to consider adoption of provisional Ballot Regulations.

3. It shall be the duty of the Mayor or Chairman of any Municipal, Borough or Town Council, or Village Management Board, upon the receipt of a written petition thereto signed by a majority of the registered voters qualified to vote at elections of members of such Council or Board, to cause a meeting to be convened by public advertisement during at least three weeks, of all persons registered as qualified to vote at elections of members of such Council or Board for the purpose of deciding whether the elections of members of such Council or Board shall thereafter be conducted in accordance with the provisional regulations with regard to such elections issued by proclamation under authority of the first section of this Act.

Any decision of meeting in favour to be submitted to Governor.

4. If at a meeting convened in the manner provided in the last preceding section, a majority of the registered voters aforesaid then present resolve that the elections for members shall thereafter be conducted in accordance with the aforesaid proclaimed provisional regulations for such elections, it shall be the duty of the Mayor or Chairman to forward the requisition and the resolution of the meeting to the Colonial Secretary for submission to the Governor.

Governor thereupon to proclaim such regulations in force.

5. It shall be lawful for the Governor on receipt of the requisition and resolution aforesaid to proclaim that the aforesaid provisional regulations shall thereafter be in force with regard to elections of such Council or Board members.

Digitised by the University of Pretoria, Library Services, 2016

6. It shall be the duty of the Civil Commissioner or other chairman of any Divisional Council, on receipt for presentation at any monthly meeting of such Council of a petition or memorial or petitions or memorials thereto signed by a majority of voters registered as qualified to vote at elections of members of the said Council, to give notice at such meeting that at the following monthly meeting of the said Council the question shall be submitted whether application shall be made to the Governor that the provisional regulations issued by proclamation under authority of the first section of this Act shall be proclaimed in force with regard to such elections thereafter of members of such Divisional Council. And thereupon he shall submit the said question at such following monthly meeting, and if it be agreed to by a majority of the members then present he shall forthwith forward a copy of the resolution of the Council, with the petitions or memorials aforesaid, to the Colonial Secretary for submission to the Governor.

Civil Commissioner receiving petitions of majority of divisional council voters to give notice of consideration next meeting, and upon resolution for ballot this to be submitted to Governor.

7. It shall be lawful for the Governor, on receipt of such resolution, to proclaim that the aforesaid regulations shall thereafter be in force with regard to elections of members of such Divisional Council.

Governor thereupon to proclaim ballot regulations for Divisional Council elections in force.

8. Any person who shall contravene any of the regulations made and proclaimed in force in pursuance of this Act shall be liable to the penalty provided by the said Franchise and Ballot Act for the contravention of the corresponding provision of the said Act or of the corresponding provision of the regulations issued under the said Act as the case may be.

Persons contravening regulations liable to penalties provided by Franchise and Ballot Act.

9. This Act shall come into force from and after the promulgation thereof.

When to come in force.

10. This Act may be cited as the "Divisional and Municipal Councils Permissive Ballot Act, 1892."

Short title.

No. 28—1892.] [Promulgated 2nd September, 1892.

ACT

To Release certain Land vested in the London Missionary Society and forming portion of the Estate, commonly called the "Hankey Estate," from the operation of the last proviso of section three of the "London Missionary Society's Institutions Act, 1873," in consideration of the registration of a servitude of free outspan against the title of certain other neighbouring property also vested in the said Society.

Preamble.

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

Digitised by the University of Pretoria, Library Services, 2016

No. 28—1892.

Release by Proclamation of 300 morgen of land from outspan servitude under last proviso of Section 3 of Act No. 12 of 1873.

1. It shall be lawful for the Governor, by proclamation, in accordance with the provisions of this Act, to release from the operation of the last proviso of section three of the Act No. 12 of 1873, commonly called the "London Missionary Society's Institutions Act, 1873," and from the servitude or burden of free public outspan thereby established, three hundred morgen in all, being portion of the land therein referred to as theretofore used as commonage, and of the estate commonly called the Hankey Estate, vested in the said society and now held by title deed, issued to the agent of the said society on the 16th day of July, 1890, in accordance with the provisions of the Act No. 9 of 1879, and from and after the date of any such proclamation the land therein referred to shall be released from the servitude aforesaid.

What the 300 morgen shall comprise.

2. The said three hundred morgen of land shall comprise:

(*a*) Certain 247 morgen 319 square roods and 51½ square feet, already duly surveyed and shown by way of deduction, bounded by yellow lines upon the diagram annexed to the aforesaid title deed, dated the 16th day of July, 1890, and also upon a certain plan framed by the Surveyor, H. L. Spindler, bearing date the 17th day of February, 1892, and filed in the office of the Surveyor-General, on which plan it is bounded by green lines; and

(*b*) Such land in one or more lots as may be selected and duly surveyed and defined in accordance with the next succeeding section of this Act to complete the area aforesaid of three hundred morgen.

Land to be properly described; No Proclamation before survey, erection of beacons, &c.

3. Every such proclamation as aforesaid shall sufficiently indicate and describe the land therein referred to, and no such proclamation shall be published unless the land to which it relates shall have been selected by and duly surveyed on behalf of the said society, and unless such land shall have been defined by proper beacons and a deduction thereof duly shown for the purposes of this Act upon the plan or diagram of the said property forming the Hankey Estate, filed in the office of the Surveyor-General, as well as upon the diagram annexed to the aforesaid title deed, dated the 16th day of July, 1890.

No Proclamation until Society have duly registered outspan servitude against 500 morgen of land set forth in Schedule.

4. The said society shall not be entitled to require that any such proclamation shall be issued under the provisions of this Act unless and until there shall have been duly registered by the Registrar of Deeds against certain neighbouring land vested in the said society, and set forth in the schedule to this Act, in extent five hundred morgen or thereabouts, a servitude of public outspan free of charge, which servitude shall be registered in the said office against the respective title deeds of the land comprised in the said five hundred morgen so soon as the portion of the land referred to in paragraph (4) of the schedule shall have been duly surveyed to the satisfaction of the Surveyor-General, and defined by proper beacons and a deduction thereof shown for the

Digitised by the University of Pretoria, Library Services, 2016

purposes of this Act upon the diagram annexed to the title deed of the lot No. 2,632 known as "Boschbok Hoek," and referred to in the said paragraph (4) of the schedule. No. 29—1892.

5. This Act may be cited as the "Hankey Outspan Act, 1892." Short title.

SCHEDULE. Schedule.

Setting forth the areas comprising the 500 morgen of land to be subjected to a servitude of public outspan free of charge in consideration of the release from the operation of the last proviso of section 3 of the Act No. 12 of 1873, of 300 morgen forming part of the Hankey Estate, and heretofore subject to such operation.

	morgen.	square roods.
(1) Certain portion of sub-division B of the farm Gamtoos River Wagen Drift, transferred to the Agent of the London Missionary Society on the 4th December, 1888, measuring according to title 94 morgen 380·5 square roods, but according to true area as stated in the diagram thereof	105	564·50
(2) Certain portion of the divided quitrent place "Gamtoos River Wagen Drift," transferred to the Agent of the said Society on the 3rd April, 1888, measuring	255	81·04
(3) Certain other portion of the said divided quitrent farm "Gamtoos River Wagen Drift," transferred to the Agent of the said Society on the 16th October, 1888	15	230·76
(4) Portion of a certain piece of perpetual quitrent land being Lot No. 2,632, known as "Boschbok Hoek," transferred to the Agent of the said Society on the 15th March, 1888, the whole measuring 578 morgen and 238 square roods, the portion measuring..	123	323·70
	500	..

No. 29—1892.] [Promulgated 30th August, 1892.

ACT

To apply a Sum of Money for the Service of the Year ending the 30th day of June, 1893.

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:— Preamble.

1. The public revenue of the Colony is hereby charged towards the service of the year ending the 30th day of June, 1893, with a sum of two millions three hundred and seventeen thousand eight hundred and sixty-seven pounds sterling, in addition to the sum of four hundred thousand pounds sterling provided for by Act No. 2 of 1892, and the sum of four hundred thousand pounds provided by Act No. 7 of 1892. Public Revenue to be charged with £2,317,867.

Digitised by the University of Pretoria, Library Services, 2016

25—1892.

How to be applied.

2. The money granted by this Act shall be applied to the purposes and services expressed in the schedule annexed hereto, and more particularly specified and set forth in the estimates and supplementary estimates of the expenditure for the year ending 30th June, 1893, with the notes to such estimates, submitted to and approved by Parliament.

Not to be applied except as granted.

3. The said aids and supplies shall not be issued or applied to any use, intent or purpose other than the particular services to which the said amounts have been granted respectively by this Act, and the aforesaid schedule, estimates, and supplementary estimates.

Short title.

4. This Act may be cited for all purposes as the "Appropriation Act, 1892."

Schedule.

SCHEDULE.

Summary of Recapitulations of Estimates and Supplementary Estimates.	Establishments.	Services exclusive of Establishments.	Total.	Required to be provided for.
	£	£	£	£
I. Ministerial Department of Colonial Secretary	625,970	564,459	1,190,429	1,086,237
II. Ministerial Department of Treasurer of the Colony ..	51,246	1,442,131	1,493,377	57,638
III. Ministerial Department of Attorney-General	112,867	98,225	211,092	196,537
IV. Ministerial Department of Commissioner of Crown Lands and Public Works .	54,249	1,672,291	1,726,540	1,719,850
V. Ministerial Department of Secretary for Native Affairs	65,305	9,414	74,719	57,605
Grand Totals	909,637	3,786,520	4,696,157	3,117,867
Less amount provided for by Acts Nos. 2 and 7 of 1892				800,000
Total required to be voted				2,317,867

Digitised by the University of Pretoria, Library Services, 2016

No. 30—1892.] [Promulgated 2nd September, 1892.

ACT

To Amend the Law relating to the admission of Advocates and Attorneys of the Supreme Court.

Preamble.

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

Admission of Advocates.

1. In addition to the persons who may by the seventeenth section of the Charter of Justice, the second section of Act 12 of 1858, and the twenty-first section of Act 16 of 1873, be admitted and enrolled as Advocates of the Supreme Court of this Colony, it shall be lawful for the said Supreme Court to enrol and to admit to practise as an Advocate therein, any person who shall produce proof

(*a*) That he has been admitted as an Advocate in the Supreme or High Court, as the case may be, of Natal, the South African Republic, the Orange Free State, or such other State or Territory in Africa as the Governor may from time to time proclaim as included under the provisions of this section, and that at the date of his application for admission in this Colony, his name remains enrolled as an Advocate of such Supreme or High Court respectively;

(*b*) That he has passed an examination in Law which at the date of his application for admission is covered by a proclamation issued in terms of sub-section (*a*) of section four of this Act.

Provided that no person shall be enrolled or admitted to practise as an Advocate of the Supreme Court of this Colony, or after having been so enrolled or admitted shall continue to practise as aforesaid, who shall either himself be carrying on, directly or indirectly, the business of an Attorney, or be directly or indirectly interested in the business of any Attorney or firm of Attorneys practising within the borders of this Colony, or of any of the States or Territories aforesaid.

Admission of Attorneys.

2. In addition to the persons who may under the provisions of any existing Law be admitted and enrolled as attorneys in the Supreme Court of this Colony, it shall be lawful for the said Supreme Court to enrol and to admit to practise as an Attorney therein any person who shall produce proof;

(*a*) That he has been admitted as an Attorney in the Supreme or High Court of any of the territories in the last preceding section mentioned, and that at the date of his application for admission in this Colony his name remains enrolled as an Attorney of such Supreme or High Court as the case may be;

Digitised by the University of Pretoria, Library Services, 2016

No. 30—1892.

(*b*) That he has passed an examination in Law which at the date of his application for admission is covered by a proclamation issued in terms of sub-section (*b*) of section four of this Act;

(*c*) That for a period of three years immediately preceding the date of his admission or enrolment as an Attorney in the Supreme or High Court of one of the said territories he had been articled to serve and had served as a clerk to some enrolled Attorney in the said territory.

(*d*) That he has passed such an examination in the Statute Law of the Cape of Good Hope as the Governor shall from time to time specify.

Attorney applying for admission to obtain certificate from Council of Law Society.

3. No person applying to be admitted as an Attorney in the Supreme Court of this Colony, under the provisions of the last preceding section shall be subject to the terms of the fourteenth section of Act 27 of 1883. But every such person shall produce to, and register with the Council of the Law Society of the Cape of Good Hope, sufficient proof of the matters referred to in sub-sections (*a*) (*b*) (*c*) and (*d*) of the last preceding section, and shall upon payment of the fee provided for in the sixteenth section of the Act 27 of 1883, obtain a certificate from the said Council of his having complied with the terms of this section, and shall lodge such certificate with the Registrar of the Supreme Court in manner directed by the fifteenth section of the Act aforesaid.

The lodging of every such certificate shall be deemed to be, in all respects a compliance with the terms of the fifteenth section aforesaid.

Governor may by Proclamation notify certain Law examinations equivalent for purposes of this Act to certain University examinations.

4. Subject to the provisions of section five of this Act it shall be lawful for the Governor, after having consulted with and obtained the unanimous approval of the judges of the Supreme Court in Cape Town, and in case the proposed proclamation be one under sub-section (*b*), after consultation with the President of the Cape Law Society also, from time to time to notify by proclamation in the *Gazette*:

(*a*) That any examination in Law, specified in such proclamation, is to be deemed, for the purposes of this Act, equivalent to the examination for the degree of Bachelor of Laws in the University of the Cape of Good Hope;

(*b*) That any examination in Law specified as aforesaid is to be deemed, for the purposes of this Act, equivalent to the examination in law and jurisprudence of the University of the Cape of Good Hope referred to in the nineteenth section of the Act 16 of 1873.

Repeal of Proclamation and condition on which Proclamation to issue with regard to examinations in other States or Territories.

5. The Governor may, after like consultation and approval, repeal any such proclamation, and no such proclamation shall issue with regard to any examination in any of the States or Territories mentioned in the first section of this Act, unless by the law of such State or Territory, Advocates and Attorneys of the Supreme Court

Digitised by the University of Pretoria, Library Services, 2016

of this Colony are without further examination, other than, in the case of Attorneys only, an examination in the local Statute Law of the said State or Territory, admitted to practise as Advocates and Attorneys respectively, in the Courts of the said State or Territory. Every such proclamation may refer in its terms to a date from which the examination dealt with by it is to be considered so equivalent as aforesaid.

Service under articles in British Bechuanaland.

6. For the purposes of the third and fifth sections of Act 12 of 1858, and any other law regulating the admission of attorneys or notaries by the Supreme Court, service under articles with any attorney of the said Supreme Court or with any notary duly admitted by the said Supreme Court in the Territory of British Bechuanaland, shall be deemed to be equivalent to service with an attorney or a notary of the said Court in this Colony as the case may be. But the provisions of the fourteenth and fifteenth sections of the Act 27 of 1883 shall apply to all such articles.

Candidates for law certificate who have University degree, or passed Law examination in Scotland.

7. It shall be competent for the Council of the University of the Cape of Good Hope to admit as a candidate for a certificate of proficiency in law and jurisprudence, any person who shall have obtained or been admitted to any degree in the said University, or who shall have passed the examination prescribed by the Imperial Act 36 and 37 Vict., c. 63, for law agents practising in Scotland, anything in the 19th section of the University Incorporation Act No. 16 of 1873 to the contrary notwithstanding.

Short title.

8. This Act may be cited for all purposes as the Legal Practitioners Act, 1892.

No. 31—1892.] [Promulgated 2nd September, 1892.

ACT

To prevent the Sale or Exhibition of Indecent or Obscene Books, Pictures, Prints and other Articles.

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

Definition of "publication."

1. For the purposes of this Act the word "publication" shall include any book, paper, newspaper, pamphlet, magazine, periodical, letterpress, writing, print, picture, engraving, lithograph, photograph, drawing or other similar representation.

Penalty for selling, distributing or exposing indecent or obscene publications.

2. Every person who shall sell or distribute, or offer for sale or distribution, or who shall wilfully expose or cause to be exposed to public view any indecent or obscene publication, shall be guilty of a contravention of this section, and shall be liable on conviction to a penalty not exceeding ten pounds sterling, and in default of payment, to be imprisoned with or without hard labour for any period not exceeding three months, or to both such fine and such imprisonment.

Digitised by the University of Pretoria, Library Services, 2016

No. 31–1892.

Search of suspected premises for indecent and obscene publications.

3. It shall be lawful for any Resident Magistrate—If

(*a*) A complaint has been made before him upon oath that the complainant has reason to believe and does believe that any indecent or obscene publications are kept in any house, shop, room or other place within the limits of the jurisdiction of such Magistrate for the purpose of sale or distribution, or for exhibition for purposes of gain, lending upon hire, or publication in any other manner for purposes of gain; and

(*b*) The complainant also states upon oath that one or more publications of the like character have been sold or distributed, exhibited, lent, or otherwise published as aforesaid, at or in connection with such place; and

(*c*) The Magistrate is satisfied that the belief of the complainant is well founded, and that any of the publications so kept for any of the purposes aforesaid are of such a character and description that the sale, distribution or exposure of them would be an offence under the provisions of this Act and proper to be prosecuted as such,

to give authority by special warrant to any constable or police officer to enter in the daytime into such house, shop, room or other place, with such assistance as may be necessary, and if necessary to use force by breaking open doors or otherwise, and to search for and seize all such indecent and obscene publications as aforesaid found in any such house, shop, room or other place, and to carry all the articles so seized before the Resident Magistrate issuing the said warrant or some other Resident Magistrate exercising the same jurisdiction, and such Resident Magistrate shall thereupon cause a summons to issue calling upon the occupier of the house or other place which may have been so entered by virtue of the said warrant, to appear within seven days before any Resident Magistrate to show cause why the articles so seized should not be destroyed; and if such occupier or some other person claiming to be the owner of the said articles shall not appear within the time aforesaid, or shall appear, and such Resident Magistrate shall be satisfied that such articles or any of them are of the character stated in the warrant, and that such articles or any of them have been kept for any of the purposes aforesaid, it shall be lawful for the said Resident Magistrate, and he is hereby required, to order the articles so seized, or any of them, to be destroyed at the expiration of the time allowed by law for lodging an appeal against the decision of such Resident Magistrate, unless notice of appeal be given within such time, in which case all such articles shall be impounded pending the result of such appeal; and if such Resident Magistrate shall be satisfied that the articles seized are not of the character stated in the warrant or have not been kept for any of the purposes aforesaid, he shall forthwith direct them to be restored to the occupier of the house or other place in which they were seized.

Digitised by the University of Pretoria, Library Services, 2016

Penalty on occupier of house, owner of indecent and obscene publications, and other persons concerned.

4. Every such occupier of any house, shop, room, or other place wherein such publications shall have been seized, every owner and every person who in the opinion of the Resident Magistrate adjudicating thereon, appears to be the owner of such publications, and every person printing, photographing, lithographing, drawing, making, selling, publishing, distributing or exhibiting such obscene publications, or assisting therein, shall be liable on conviction for a first offence to a penalty not exceeding twenty pounds or imprisonment with or without hard labour not exceeding six months, and for any second or subsequent offence to a penalty not exceeding fifty pounds or to imprisonment with or without hard labour not exceeding twelve months.

Tender of amends by person committing irregularity in execution of this Act.

5. No person shall recover in any action for any irregularity, trespass or other wrongful proceeding made or committed in the execution of this Act, or in, under, or by virtue of any authority hereby given, if tender of sufficient amends shall have been made by or on behalf of the person who shall have committed such irregularity, trespass, or other wrongful proceeding before such action brought, and in case no tender shall have been made, it shall be lawful for the defendant in any such action by leave of the Court where such action shall depend at any time before issue joined to pay into Court such sum of money as he shall think fit, whereupon such proceeding, order or adjudication shall be had and made in and by such Court as in other actions where defendants are allowed to pay money into Court.

Limitation of actions.

6. No action, suit or information or any other proceeding of what nature soever shall be brought against any person for anything done or omitted to be done in pursuance of this Act or in the execution of the authorities under this Act, unless notice in writing shall be given by the party intending to prosecute such action, suit, information or other proceeding to the intended defendant one calendar month at least before prosecuting the same, nor unless such action, suit, information or other proceeding shall be brought or commenced within three calendar months next after the act or omission complained of, or in case there shall be a continuation of damage, then within three calendar months next after the doing such damage shall have ceased.

Penalty for sending indecent or obscene publication through the post.

7. Any person who shall send by post any indecent or obscene publication or post card, or any other indecent or obscene article, or any letter, publication, packet, or post card, having thereon, or on the covers thereof, any word, mark, or design of an indecent or obscene character, shall on conviction be liable to a penalty not exceeding twenty pounds sterling, and in default of payment to be imprisoned with or without hard labour for any period not exceeding six months, or to both such fine and such imprisonment.

Short title.

8. This Act may be cited for all purposes as "The Obscene Publications Act, 1892."

Digitised by the University of Pretoria, Library Services, 2016

No. 32—1892.] [Promulgated 2nd September, 1892.

ACT

To Consolidate and Amend the Law relating to Colonial Forces.

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

Repeal of laws.

1. Subject to the exceptions hereinafter contained, the Laws mentioned in the first Schedule of this Act, together with so much of any other Law as may be repugnant to, or inconsistent with, the provisions of this Act, shall be and the same are hereby repealed. But such repeal shall not invalidate anything lawfully done before the taking effect of this Act under the said Laws or any regulations duly framed thereunder, which regulations shall be in all respects as valid as if they had been framed under this Act; and shall not discharge any person enrolled under the provisions of any of the said Laws from any service which he may be liable to fulfil under such Laws respectively, nor shall such repeal infringe upon any rights acquired under the said Laws.

Interpretation of terms.

2. In this Act, unless the context clearly otherwise denotes, the following expressions shall bear the meanings respectively set opposite them:—

"Governor."—The Governor in Council.

"Minister."—The responsible Minister to whose department the Governor may from time to time assign the working of this Act; or any member of the Cabinet who may be acting for such Minister.

"Colonial Forces."—Shall include the Permanent Forces, as hereinafter defined, any Volunteer Corps, any Colonial Commissariat or Transport force, attached to a field force, any corps of native levies, and any other corps raised and enrolled under the provisions of this Act.

"Permanent Forces."—Officers and men of the Cape Mounted Riflemen, and any other officers and men who by the terms of their commission, appointment or enrolment, and from the date thereof, are liable to render continuous military service under this Act.

"Volunteers."—Officers and men of any Volunteer Corps enrolled under this Act or the "Volunteer Act, 1882."

"Officer."—A commissioned officer in the Colonial Forces.

"Non-commissioned Officer."—Includes an acting non-commissioned officer.

"Superior Officer."—When used in relation to any member of the Colonial Forces who is not an officer, includes a non-commissioned officer as above defined.

"Active Service."—Any portion of the Colonial Forces shall be deemed to be on Active Service when

Digitised by the University of Pretoria, Library Services, 2016

(1) It has been called out under this Act, for service against an enemy, or for service in a country or place wholly or partly occupied by an enemy.

(2) It is in military occupation of any place outside this Colony.

(3) A proclamation has been issued by the Governor, under the powers conferred on him by the eighty-fifth section of this Act, declaring that the whole or such portion of the Colonial Forces shall be deemed to be on Active Service, for the period mentioned in such proclamation.

"Military Service."—(*a*) The Permanent Forces shall be considered to be on Military Service during the whole period of their commission or enrolment;

(*b*) Volunteers shall be considered to be in Military Service—

(i) When being trained or exercised with any portion of Her Majesty's regular forces, or of the permanent forces,

(ii) When assembled in a camp of training or instruction.

(iii) When called out to aid the civil power in the protection of life and property by proclamation of the Governor, under the powers conferred on him by the eighty-fifth section of this Act.

"Corps."—Any military body, or any portion of the Colonial Forces which may be declared by regulation to be a corps for the purposes of this Act.

"Enemy."—The subject of any State at war with the Colony and offering armed opposition to its forces, and also any armed mutineer, armed rebel or armed rioter, and any pirate.

"Regulations."—Regulations made under the provisions of this Act.

"Prescribed."—Prescribed by this Act or the regulations.

"Military Custody."—Arrest or confinement in manner prescribed by the regulations.

"Superior Court."—The Supreme Court, the Eastern Districts Court, the High Court of Griqualand West, and any Circuit Court.

"Magistrate."—The Resident Magistrate of any district in this Colony.

3. This Act is divided into three parts, relating to the following matters respectively:— Divisions of Act

PART I.

Enrolment, sections four to forty-three.

PART II.

Discipline, sections forty-four to eighty-four.

PART III.

General Provisions, sections eighty-five to one hundred and six.

Digitised by the University of Pretoria, Library Services, 2016

No. 32—1892.

PART I.

ENROLMENT.

Permanent Forces.

Cape Mounted Riflemen.

Cape Mounted Riflemen.

4. The Governor shall cause such a sufficient number of men as Parliament shall from year to year make provision for, to be embodied to serve as an armed and mounted force, and to be called "The Cape Mounted Riflemen."

To be police force and military force.

5. The members of the said force shall be sworn before a Justice of the Peace to act as a Police Force throughout the Colony, and also as a Military Force for the defence of the Colony, and the Governor may direct the employment and distribution of the said force either within or without the Colonial boundary as to him shall seem meet.

Certain members of the C.M.R. to be deemed enrolled under this Act.

6. All members of the "Cape Mounted Riflemen" who shall

(*a*) Be enrolled after the taking effect of this Act;

(*b*) Accept promotion in the force after the taking effect of this Act, or re-engage for a further term of service;

(*c*) Consent in writing to come under the operation of this Act;

shall be deemed to have been enrolled under this Act, and shall, in all respects, be subject to its provisions.

Certain members to remain subject to Act 9 of 1878.

7. All members of the said force who were enrolled before the taking effect of this Act, and who have not accepted promotion, re-engaged, or consented, as in the last section provided, shall not come under the operation of this Act, but shall remain, subject to the provisions of Act 9 of 1878, as if this Act had not been passed.

Governor may constitute force one or two divisions.

8. The Governor may constitute the said force one division under the command of a Field Officer to be styled Lieutenant-Colonel, and other officers to be styled Major, Captain, and Lieutenant respectively, or two divisions each under the command of a Lieutenant-Colonel and such other officers as he may from time to time determine.

Senior officer of Colonial Forces.

9. All such officers shall be under the orders and subject to the command of such officer as shall for the time being be, or be by the Governor appointed to act as, Senior Officer of the Colonial Forces.

Governor to appoint officers.

10. The Governor shall, by warrant under his hand, appoint the Field Officer or Officers in the eighth section mentioned, and such other officers as he may deem expedient for the management of the said force; and may from time to time remove such officers and appoint others in their place, as to him shall seem meet.

Examination to be passed before promotion.

11. No officer in the force shall be promoted to any higher grade than that to which he was first nominated, without passing

Digitised by the University of Pretoria, Library Services, 2016

a satisfactory examination in such subject, and before such examiners, as the Governor may from time to time appoint and nominate respectively.

Duties of officers.

12. It shall be the duty of the Field and other officers of the said force to suppress all tumults, riots, affrays, or breaches of the peace, in any part of the Colony where they may be on duty, and to assist in the defence of the Colony, and to discharge military duties in connection therewith, when called upon so to do.

Powers and duties of members of force.

13. The members of the said force shall, subject to the provisions of this Act, have all the powers and privileges, and be liable to all the duties and responsibilities, which any police officers or constables may by law enjoy or be liable to; and they shall obey all lawful directions which they may from time to time receive from their officers.

Governor to make regulations.

14. The Governor shall from time to time make such regulations respecting the power of the Commanding Officer to dismiss any member of the corps, the training, arms and accoutrements, clothing and equipment of the said force, and respecting all other matters connected therewith as may be required for promoting the discipline and efficiency thereof; and may further make such regulations for the performance of such duties by the Senior Officer of the Colonial Forces, and for the furnishing of reports and returns by the Senior Officer aforesaid, or by other officers to him, as may be deemed necessary; and any regulations under this section may by the Governor be, from time to time repealed, altered, or amended.

Volunteers.

Governor may accept services of Volunteer Corps.

15. The Governor may accept the services of any persons desiring to be formed under this Act into a Volunteer Corps, whether naval or military. And on such acceptance, the proposed corps shall be deemed to be lawfully formed into a Volunteer Corps under this Act.

Volunteer Corps under "Volunteer Act, 1882."

16. Every Volunteer Corps whose services have been accepted under "The Volunteer Act, 1882," shall continue in existence as a corps under the provisions of this Act, in the same manner as if it had been formed under this Act, subject only to such conditions as to area of service as may have been specified in terms of section four of the first mentioned Act.

Muster Roll for every Volunteer Corps.

17. There shall be a muster roll for every Volunteer Corps, in which the name of every person who joins or withdraws, or is discharged or dismissed therefrom, and also the date of such joining, withdrawal, discharge or dismissal, shall be inserted. And every officer on appointment, and every man on joining, shall take an oath or declaration of allegiance, either before a Justice of the Peace or any Officer of the Corps if he has previously taken the oath or declaration before a Justice of the Peace.

Digitised by the University of Pretoria, Library Services, 2016

No. 32—1892.

Liability to service.

18. Every Volunteer Corps whose services are accepted after the taking effect of this Act, shall be liable to serve, subject to the provisions of this Act, for and during any period, and wherever the interest of the Colony may require, within the Colony or beyond its borders.

Corps may be disbanded by Governor.

19. The Governor may at any time discontinue the services of any Volunteer Corps, and cause the same to be disbanded; and he may dispense with the services of, or dismiss any member of any such corps.

Effect of Volunteer Corps being called out for active service

20. Any Volunteer Corps which has been called out for active or military service, or has been proclaimed to be in the position of being in active service shall assemble at any time notified, either in the proclamation calling out the said corps or in any Government Notice subsequently issued by the Minister, and shall be liable to march or embark on board ship and to render the active or military service required of it as the case may be; and every such corps so called out or proclaimed shall, so long as their services may be lawfully required by the Governor, be subject to all the provisions of Part II of this Act.

Command when on active service.

21. Whenever any Volunteer Corps is on active or military service, or is undergoing inspection, or is voluntarily doing any military duty, the Governor may place it under the command of such officer of the Imperial or Colonial Forces as he may appoint, provided that the officer so appointed shall be senior in rank to every officer of the corps so placed under his command, and that such corps shall be led by its own officers under such command as aforesaid.

Officers of Volunteer Corps.

22. Every Volunteer Corps shall be officered by persons appointed and commissioned by the Governor; and all persons so appointed may be required to pass an examination as to their fitness before such examiners as may from time to time be appointed by the Governor.

Payment when on active service.

23. All volunteers while on active service against an enemy, or in military service for the protection of life or property, shall be entitled to pay, at such rates, according to their respective ranks, as the Governor may determine.

Volunteer Corps Staff.

24. The Governor may from time to time constitute for any Volunteer Corps a permanent staff consisting of an Adjutant commissioned by the Governor, and of so many Sergeant-Instructors as may seem fit. For these purposes all such Adjutants shall be deemed officers of the respective corps, and all such Sergeant-Instructors shall be deemed to belong to the respective corps on the permanent staff whereof they serve; and shall be deemed respectively officers and non-commissioned officers of the Volunteer Permanent Staff, but nothing shall be taken to exempt any officer or non-commissioned officer of the permanent staff of a Volunteer Corps from being subject to the orders of the officers of the corps, according to their rank and the laws and usages of the Colonial Forces.

Digitised by the University of Pretoria, Library Services, 2016

Conditions on which Volunteer enrolled before taking effect of Act may quit corps.

25. Any volunteer enrolled before the taking effect of this Act may, at any time before the issue of any such proclamation as is in the eighty-fifth section mentioned, quit the corps upon compliance with the following conditions :—

(1) If he shall give to the Commanding Officer of his corps one month's notice, in writing, of his intention to quit the corps;

(2) If he shall deliver up in good order and condition, fair wear and tear only excepted, all arms, clothing and accoutrements, being the property of the Government or of the corps, issued to him or placed under his charge.

(3) If he shall pay all money due or becoming due by him under any regulations of the force, or rules of the corps, either before or at the time of, or by reason of his quitting the corps.

Conditions on which Volunteer enrolled under this Act may quit corps.

26. Every volunteer enrolled after the taking effect of this Act shall be enrolled for a minimum period of one year; and every such volunteer may, at any time before the issue of any such proclamation as aforesaid, quit the corps upon compliance with the following conditions :—

(1) If he shall have served for a period of at least one year from the date of his enrolment; or

(2) If, before he has served such period, he shall produce proof to the satisfaction of the Commanding Officer of his corps that he is about to remove from the district in which the head-quarters of his corps is situated, or that he is prevented by ill health from continuing to serve; or

(3) If, before he has served such period, he shall pay to the Commanding Office. for the benefit of the funds of the corps such sum of money by way of penalty as the Governor may by regulation determine; and in any case,

(4) If he shall also comply with the conditions set forth in sub-sections one, two and three of the last preceding section.

Appeal from Commanding Officer to Resident Magistrate

27. If any volunteer gives such notice, and the Commanding Officer refuses to strike him out of the muster roll, and the volunteer considers himself aggrieved thereby, the volunteer may appeal to the Resident Magistrate of the district in which the head-quarters of the corps are situate, who shall hear and determine the appeal, and may for the purpose thereof administer oaths and summon and examine any person as a witness, and if it appears to such Resident Magistrate that the arms, clothing, and accoutrements issued to the volunteer, being public property, or property of his corps, have been delivered up in good order (fair wear and tear only excepted), or that he has paid, or is ready to pay sufficient compensation for any damage that such articles may have sustained, and that all money due or becoming due by him under the rules of his corps, either before or at the time, or by reason of his quitting it, has been paid, such Magistrate may order the Commanding Officer forthwith to strike such volunteer out of the muster roll of his corps, and his determination shall be binding on all persons.

Digitised by the University of Pretoria Library Services, 2016

No. 32—1892.

Governor to make regulations.

28. The Governor may from time to time make regulations for all or any of the matters or things following, and may vary, alter, or repeal such regulations:—

(1) The mode of enrolment of volunteers and the disbandment of any volunteer corps.
(2) The appointment, promotion, and rank of volunteer officers.
(3) The appointment of non-commissioned officers.
(4) The relative rank of volunteer officers, with those of any Colonial Forces hereafter to be created.
(5) The requisites necessary to deem a volunteer an effective.
(6) The constitution, assembling, and mode of procedure of courts of enquiry to receive and examine evidence relating to, and report upon any matter connected with the government or discipline of any Volunteer Corps, or on any charge brought against any officer or member of any such corps.
(7) The power of arrest and maintenance of discipline, when not on active or military service.
(8) The power of a Commanding Officer to dismiss any member of the Corps.
(9) The payment and recovery of subscriptions, fines, and penalties.
(10) The general government and management of Volunteer Corps.

And all such regulations shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament be then sitting, and if Parliament be not sitting, then within fourteen days after the commencement of the next Session.

Liabilities of Volunteer after dismissal.

29. Every volunteer who has been dismissed by the Governor or by the Commanding Officer of his corps shall nevertheless be bound to deliver up in good order, fair wear and tear only excepted, all arms, clothing, and appointments which are public property, or the property of the corps and which have been issued to him,—and he shall be liable to pay all money due or becoming due by him, under the rules of his corps, either before, or at the time, or by reason of his dismissal.

Penalty for contravention of regulations.

30. Every volunteer who shall be guilty of contravening any of the regulations or orders made by the Governor shall upon conviction be liable to a penalty not exceeding ten pounds, which penalty may be recovered before any Court of Resident Magistrate having jurisdiction, at the instance of any officer of the corps to which the offender belongs.

Misconduct whilst on duty or in uniform.

31. If any volunteer, while under arms, or on march or duty, or while engaged in any military exercise or drill with his corps or any portion of it, or while wearing his uniform, and going to or returning from any place of exercise or assembly of his corps, disobeys any lawful order of any officer under whose command he then is, or is guilty of misconduct, the officer in command of his corps, or any superior officer under whose command the corps then

Digitised by the University of Pretoria, Library Services, 2016

is, may order the offender, if an officer, into arrest, and if not an officer, into the custody of any member of his corps, or of any volunteer non-commissioned officer: Provided that such arrest or custody shall not continue any longer than the time during which the corps or portion of a corps to which the offender belongs remains under arms, or on the march or duty; or continues to be engaged in the military exercise or drill as aforesaid.

Money, &c., of corps vested in commanding officer.

32. All money and other property belonging to or used by any Volunteer Corps, not being the property of Government, or of any individual, shall be vested in the Commanding Officer for the time being of such corps, for the purpose of all legal proceedings, whether civil or criminal, either before or after the disbanding of any such corps.

Temporary Corps.

Temporary corps.

33. The Governor may in case of emergency enrol such number of men as he may deem necessary to render military service in defence of the Colony; such men may by the Governor be formed into any number of corps, either mounted or not mounted, or partly mounted and partly not mounted, as may seem expedient.

Officers appointed by Governor.

34. Every such corps so enrolled shall be officered by persons appointed by the Governor, and the officers and men shall, during their period of service, be entitled to pay at such rates, according to their respective ranks, as the Governor may determine.

Corps subject to provisions of Part II of Act.

35. Every such corps shall be subject in all respects to the provisions of Part II of this Act; and it shall be disbanded so soon as, in the opinion of the Governor, the interests of Colonial Defence will permit.

Rifle Clubs.

Governor may sanction organisation of Rifle Clubs.

36. The Governor may sanction the organisation from time to time of mounted rifle clubs or associations for purposes of drill, under such conditions as may be prescribed, and may, under similar conditions, provide arms and ammunition for them.

Members of Rifle Clubs.

37. Every member of such club or association shall provide his own horse, saddle and bridle.

Governor may frame regulations.

38. The Governor may from time to time frame regulations for the discipline and efficiency of such rifle clubs or associations; such regulations may prescribe penalties for the breach of any regulation; such penalties shall not exceed in amount, and shall be recoverable in the same manner as, penalties imposed under any Volunteer Regulations framed under this Act.

Officers and non-commissioned officers may be appointed.

39. A sufficient number of officers and non-commissioned officers may be appointed by the Governor for every such rifle club or association, and shall be subject to removal in the same manner, and shall have the same relative rank, as officers and non-commissioned officers of the Volunteer Force; but shall always be reckoned as junior to officers of the Volunteer Force of the same rank.

Digitised by the University of Pretoria, Library Services, 2016

No. 32—1892.

Standard of efficiency may be prescribed.

40. The regulations may prescribe a standard of efficiency for the members of any such rifle club or association different from the standard prescribed for Volunteers.

Regulations to be laid before Parliament.

41. All such regulations as aforesaid shall be laid before Parliament in the same manner and within the same time as regulations framed under this Act in regard to Volunteer Corps.

Rules for management of civil affairs of club.

42. The management of the civil affairs of any such rifle club or association may be regulated by the rules adopted in the formation thereof, or subsequently amended in the prescribed manner. Such rules or amendments shall not have force unless and until approved by the Governor.

Club may be called out for active service.

43. Every such rifle club or association may be called out for military or active service, in the same manner and under the same circumstances as if it were a Volunteer Corps under this Act. And when so called out, every such club or association shall, in all respects, be subject to the provisions of Part II of this Act.

PART II.

DISCIPLINE.

Application of this part of Act.

44. This part of the Act shall apply to the following persons:

(*a*) The Permanent Forces, subject to the exception in section seven of this Act contained, and the officers and men of any temporary corps,

(*b*) Volunteers when on active or military service;

(*c*) Any portion of the Police Force of the Colony which is proclaimed under this Act as in section eighty-eight provided,

(*d*) Persons who are followers of, or who accompany any portions of the Forces of the Colony when employed, on active service.

Offences Tribunal and Punishment.

Liability to punishment for offences.

45. Every person subject to Part II of this Act who is guilty of any of the offences specified in the second Schedule of this Act, shall be liable, upon conviction in manner hereinafter set forth, to be punished for the extent herein provided.

Tribunals.

46. Every person subject to Part II of this Act may, subject to the provisions hereinafter contained, be tried and punished for offences under this Act—

(*a*) By a Military tribunal as follows:

(1) The Commanding Officer of the offender.

(2) An ordinary Court of Officers constituted as hereinafter provided.

(3) A special Court of Officers constituted as hereinafter provided.

(*b*) By a Civil Tribunal as follows:

(4) The Magistrate of the district in which the offence has been committed.

Digitised by the University of Pretoria, Library Services, 2016

(5) Any Superior Court having jurisdiction at the place where the offence was committed.

Jurisdiction of tribunals.

47. The tribunals in the last section mentioned shall have power to sentence and award punishment within the following limits :—

Commanding Officer.

(1) A Commanding Officer, whether the offender be on active service or on military service, may

(*a*) Award imprisonment with or without hard labour for any period not exceeding seven days;

(*b*) For the offence of drunkenness, order the offender to pay a fine not exceeding £1, either in addition to, or without imprisonment, with or without hard labour;

(*c*) In addition to, or without any other punishment, order the offender to suffer any deduction from his ordinary pay, to an amount not exceeding five days' pay: Provided always that an offender ordered by his Commanding Officer to suffer imprisonment or pay a fine, or to suffer any deduction from his ordinary pay shall, if he so request, have a right to be tried by an ordinary Court instead of submitting to such imprisonment, fine or deduction.

(*d*) In the case of a non-commissioned officer or private, instead of punishment under (*a*) (*b*) (*c*), sentence the offender to be reduced to any lower grade or to the ranks.

(*e*) In the case of a person subject to this Act not in receipt of ordinary Military pay, the Commanding Officer may inflict a fine not exceeding two pounds, or in default of payment, imprisonment with or without hard labour for a period not exceeding seven days.

Ordinary Court of Officers.

(2) An ordinary Court of Officers may, whether the offender is on active service or on military service,

(*a*) Inflict a fine not exceeding fifteen pounds, with the alternative of imprisonment, with or without hard labour, for any period not exceeding three months, if such fine be not paid, or

(*b*) Award imprisonment, with or without hard labour, for any period not exceeding six months;

(*c*) In the case of a non-commissioned officer or private, in addition to, or instead of punishment under (*a*) and (*b*), sentence the offender to be dismissed the service, or to be reduced to any lower grade or to the ranks.

Special Court o Officers.

(3) A special Court of Officers may in the case of an offender who is on military service

(*a*) Inflict a fine not exceeding twenty-five pounds, with the alternative of imprisonment, with or without hard labour, for any period not exceeding six months, if such fine be not paid; or

Digitised by the University of Pretoria, Library Services, 2016

(*b*) Award imprisonment, with or without hard labour, for any period not exceeding one year;

(*c*) In the case of a non-commissioned officer or private in addition to, or instead of punishment under (*a*) and (*b*), sentence the offender to be dismissed the service, or to be reduced to any lower grade or to the ranks;

(*d*) In the case of an officer, in addition to, or instead of punishment under (*a*) and (*b*), sentence the offender to be dismissed the service, or to forfeit his seniority in the Colonial Forces, or in his own corps, or in both.

And in the case of an offender who is on active service may

(*e*) Sentence the offender to death, or

(*f*) Award imprisonment, with or without hard labour, for any period not exceeding fifteen years; and also

(*g*) Award the punishment set forth in (*a*), (*c*) and (*d*) of this sub-section, under the conditions therein provided.

Resident Magistrate. (4) A Resident Magistrate may, upon conviction, sentence the offender, whether he be on active service or on military service,

(*a*) To be imprisoned, with or without hard labour, for any period not exceeding one year; or

(*b*) To pay a fine not exceeding twenty-five pounds, or in default of payment to be imprisoned, with or without hard labour, for six months; or

(*c*) To both such fine and such imprisonment.

Superior Court. (5) A Superior Court may sentence the offender if on military service to such punishment by way of fine or imprisonment, or both, as to the said Court shall seem meet; and if on active service to death, or to such punishment as aforesaid.

Proviso. (6) Provided always that no officer or man of the Colonial Forces shall be sentenced to death by any military tribunal, except for mutiny, desertion to the enemy, traitorously delivering up to the enemy any garrison, fortress, post, or guard, or for traitorous correspondence with the enemy.

Effect of imprisonment of Officer. (7) Every officer imprisoned in terms of this section shall be deemed to have been dismissed and shall at once cease to be a member of the Colonial Forces.

Effect of imprisonment of Non-commissioned Officer. (8) Every non-commissioned officer imprisoned or dismissed the service under this section shall be deemed to have been reduced to the ranks.

Arrest and Investigation.

Offender taken into military custody **48**. Every person subject to Part II of this Act may, when charged with an offence under this Act, be taken into military custody.

Who may order into military custody **49**. An officer of Colonial Forces may order into military custody any officer of the said forces of inferior rank, or any member who is not an officer, and any non-commissioned officer of the said

Digitised by the University of Pretoria, Library Services, 2016

forces may order into military custody any member who is not an officer. And an officer of the said forces may order into military custody any other such officer (though he be of higher rank) engaged in a quarrel, fray or disorder. And any such order shall be obeyed notwithstanding the person giving the order, and the person in respect of whom the order is given, do not belong to the same corps, or the same branch of the Colonial Forces.

Investigation of charge.

50. The charge made against every person taken into military custody under this Act shall, without unnecessary delay, be investigated by the proper authority; and, as soon as possible, either proceedings shall be taken for trying the accused and punishing the offence or such person shall be discharged from custody.

Duty of Commanding Officer in investigating charge.

51. When any person subject to Part II of this Act has been ordered into military custody as hereinbefore provided, or has been charged with the commission of an offence under this Act, it shall be the duty of the Commanding Officer of such person to investigate, with as little delay as possible, the charge against him, and upon such investigation such Commanding Officer shall

(*a*) Dismiss the charge; or

(*b*) In case the accused is not an officer or a non-commissioned officer, deal with the charge summarily, under the powers conferred upon him by section forty-seven of this Act; or

(*c*) Direct in writing that the charge be investigated and dealt with by an ordinary Court of Officers and take the prescribed steps to convene the said Court.

(*d*) If the charge is in his opinion too serious to be dealt with under his summary jurisdiction or by an ordinary Court of Officers, report the matter with a summary of the facts to superior authority.

Duty of superior authority upon report of Commanding Officer.

52. Any such superior authority as aforesaid to whom such report is made shall, having regard to the nature and gravity of the charge, direct in writing

(*a*) That the accused be released and the charge dismissed, or

(*b*) That the charge be remitted to be investigated and dealt with by an ordinary Court of Officers; or

(*c*) That the accused be brought to trial before the Resident Magistrate of the district in which the offence is alleged to have been committed, and take or cause to be taken the necessary steps according to law to bring the accused to trial; or

(*d*) That the charge be investigated and dealt with by a special Court of Officers, and take the prescribed steps to convene the said Court; or

(*e*) If the charge is in his opinion too serious to be dealt with by a special Court of Officers, or by a Resident Magistrate, he shall report the matter with a summary of facts received by him and with his own remarks thereon to the Officer Commanding the Colonial Forces, or in the absence of such appointment, the senior officer of such forces.

Digitised by the University of Pretoria, Library Services, 2016

No. 32—1892.

Duty of Officer Commanding Colonial Forces, upon report of superior authority.

53. The Officer Commanding the Colonial Forces or in the absence of such appointment, the senior officer of such forces, when any case has been submitted to him under section fifty-two of this Act, shall, after perusing the summary of facts and report, and considering the nature of the charge, direct in writing

(*a*) That the accused be released, and the charge dismissed; or

(*b*) That the charge be remitted to be investigated and dealt with by an ordinary or by a special Court of Officers or by the Magistrate of the District in which the offence is alleged to have been committed; or

(*c*) That the accused be brought to trial before any superior Court having jurisdiction at the place where the offence is alleged to have been committed, and take the necessary steps to bring the accused to trial.

Time within which investigation must take place.

54. It shall be the duty of every Commanding Officer to see that no person under his command, when charged with an offence under this Act, is detained in military custody for a longer period than forty-eight hours, without the charge against such person being duly investigated, unless such investigation is impracticable, due regard being had for the public service. Every case of detention beyond the said period, and the reason for such longer detention, shall be reported by the Commanding Officer to the Officer Commanding the district, garrison or station, as the case may be, where the accused is serving.

Power of Commanding Officer to award minor punishments, reserved.

55. Nothing in this Act shall prejudice the power of a Commanding Officer to award such minor punishments as he may be authorised by regulation to inflict.

Courts.

Composition of ordinary Court.

56. An ordinary Court may be convened by any Commanding Officer or by any officer authorised in pursuance of this Act to convene a special Court, and with regard to it the following provisions shall apply:—

(1) It shall consist of not less than three officers.

(2) The President of the Court shall be appointed by the convening officer, and he shall not be under the rank of Captain, unless in the opinion of the convening officer, such opinion to be expressed in the order convening the Court, and to be conclusive, a Captain is not, with due regard to the public service, available, in which case an officer of any rank may be President.

(3) An ordinary Court shall not try an officer.

Composition of special court.

57. A special Court may be convened by the Governor or by some officer authorised by warrant issued by the Governor to convene a special Court, and with regard to it the following provisions shall apply:—

(1) It shall consist of not less than five officers, unless the officer convening the Court is of opinion that five officers are not available, having due regard to the public service, in which case the Court may consist of three officers.

Digitised by the University of Pretoria, Library Services, 2016

(2) The President shall be appointed by the convening officer, and he shall not be under the rank of a Field Officer, unless in the opinion of the convening officer, to be expressed in the order convening the Court, and to be conclusive, a Field Officer is not, with due regard to the public service, available, in which case an officer not below the rank of Captain may be President.

(3) If the special Court be convened for the trial of an officer, the members of the Court shall not be of a rank inferior to that officer, unless in the opinion of the convening officer, to be stated in the order convening the Court, and to be conclusive, officers of the required rank are not, with due regard to the public service, available, but in no case shall an officer below the rank of Captain be a member of a special Court for the trial of a Field Officer.

One member of Court to belong to same branch as prisoner.

58. With regard to all Courts, unless the convening officer states in the order convening the Court that in his opinion it is not, having due regard to the public service, practicable, one member at least of the Court shall belong to the same branch of the Colonial Forces to which the prisoner belongs.

Disqualifications as members of court.

59. The following officers shall not, except where otherwise provided, form one of the Court for the trial of any prisoner:—

(1) The convening officer, except on active service.

(2) The prosecutor.

(3) A material witness for the prosecution.

(4) An officer having a personal interest in the case.

Prisoner may object to member of court, for cause.

60. A prisoner about to be tried by any Court may object for any reasonable cause to any member of the Court, including the President, whether appointed to serve thereon originally, or to fill a vacancy caused by the retirement of an officer objected to.

Mode of dealing with such objections.

61. With regard to objections under the last preceding section, the following provisions shall apply:—

(1) The names of the officers appointed to form the Court shall be read out in the hearing of the prisoner on their first assembling, and he shall be asked whether he objects to any of such officers; and a like question shall be repeated in respect of any officer appointed to serve in lieu of a retiring officer.

(2) Every objection made by a prisoner to any officer shall be submitted to the other officers appointed to form the Court.

(3) If an objection be allowed by one-half or more of the votes of the officers entitled to vote, then the officer objected to shall retire, and his vacancy shall be filled by another officer in the prescribed manner.

Oath to be taken by members of Court.

62. An oath shall be administered by the prescribed person, and in the prescribed form, to every member of every Court, before the commencement of the trial, and the proceedings at any trial by any Court shall be recorded in writing by the President or a member of the Court in such manner as may be prescribed.

Digitised by the University of Pretoria, Library Services, 2016

No. 32—1892.

Court to deliberate in closed court.

63. A Court shall deliberate on its finding and sentence in closed Court, and the opinion of each member of the Court shall be taken separately on each finding.

Majority's decision to hold good.

64. The decision of a majority of the members of a Court, including the President, shall be the decision of the Court. In the case of an equality of votes on the finding, the prisoner shall be acquitted; but in the case of an equality of votes on the sentence, or any question arising after the commencement of the trial, except the finding, the President shall have a second or casting vote.

Finding of "not guilty."

65. If the finding on the whole of the charges against a prisoner is "not guilty," the President shall date and sign the proceedings, and the findings shall be announced in open Court, and the prisoners shall be released in respect of these charges; and the proceedings shall be transmitted in like manner as is directed in the case where the findings and sentence require confirmation.

Finding of "guilty."

66. If the finding on any charge is "guilty" then the Court may, before deliberating on its sentence, take and record evidence of the prisoner's character, age, service and rank, previous convictions, and the length of time he has been under arrest or in confinement.

Sentence.

67. Upon the Court awarding the sentence, the President shall date and sign the sentence; and such signature shall authenticate the whole of the proceedings; and the proceedings shall be at once transmitted for confirmation to the confirming authority as hereinafter defined.

Witnesses to be examined on oath.

68. Every witness before a Court shall be examined on oath, which the President shall administer in the prescribed form.

Summons to give evidence.

69. Every person who may be required to give or produce evidence in any case pending before any ordinary or special Court may be summoned in writing by any officer of the Colonial Forces with which the offender shall be then serving, and all witnesses so duly summoned who shall not attend, or attending shall refuse to be sworn, or being sworn shall refuse to give evidence, or to produce the documents under their control required to be produced, or to answer all lawful questions, shall be liable to be dealt with by such Court in like manner as if such witness had been a witness duly summoned to appear before a Resident Magistrate in a criminal case pending in the Court of such Resident Magistrate.

Confirmation of Proceedings.

Finding of acquittal not subject to review.

70. The finding of acquittal, whether on all or some of the offences with which the prisoner is charged, shall not require confirmation, or be subject to be revised.

Otherwise, finding requires confirmation.

71. Subject to the provisions of the last preceding section, the finding and sentence of a Court of Officers shall not be valid, except in so far as they may be confirmed by an authority authorised to confirm the same.

Digitised by the University of Pretoria, Library Services, 2016

Authorities having power to confirm sentences.

72. The following authorities shall have power to confirm the findings and sentences of Courts, that is to say :—

(1) In the case of an ordinary Court, an officer authorised to convene the same or a special Court.

(2) In the case of a special Court the Governor, or some officer authorised by warrant issued by the Governor, to confirm such Courts.

President of Court to transmit proceedings to confirming authority.

73. As often as any ordinary or special Court shall sentence any offender under this Act, the President shall, after signing the proceedings as hereinbefore provided, transmit the original, together with such remarks, if any, as he may desire to append, to the confirming authority, who shall have power to confirm the same, or to send back the finding and sentence, or either of them, once, but not more than once, for revision.

Duty of confirming authority.

74. In confirming or refusing confirmation the confirming authority may add any remarks in the case which he may think fit; and such confirmation, refusal and remarks shall be entered in and form part of the proceedings, and such proceedings shall be promulgated in such manner as may be prescribed, and after promulgation, shall be forwarded to the officer in command of the Colonial Forces.

Where finding or sentence sent back to Court for revision.

75. When the finding or sentence of any Court has been sent back for revision it shall not be lawful for the Court to receive any additional evidence. Where the finding only is sent back for revision the Court shall have power to revise the sentence also. But in no case shall the confirming authority recommend the increase of a sentence, nor shall the Court in revisal have any power to increase the sentence.

Confirming authority may mitigate or remit punishment.

76. The confirming authority may, while confirming the sentence of any Court, mitigate or remit the punishment awarded, or substitute for the punishment any less punishment or punishments, which under this Act the Court would have had power to award.

Governor may at any time mitigate or remit punishment.

77. After a sentence passed by a Court has been confirmed, the Governor shall have full power, at any time, to mitigate or remit the punishment thereby awarded.

Imprisonment.

Imprisonment of offenders.

78. All offenders arrested for any offence under this Act, or sentenced to imprisonment by any Commanding Officer or Court as aforesaid, may be imprisoned in any building, tent or enclosure set apart by any Commanding Officer as a guard room or prison. But if found desirable such sentenced person may be removed to the nearest convenient public gaol under warrant signed by his Commanding Officer, there to undergo his sentence, and when so removed he shall be in the same plight and condition as if the sentence had been a sentence of one of the ordinary Courts of Law of this Colony.

Effect of imprisonment.

79. So long as any person shall be imprisoned in any guard room or prison in terms of this Act, the same shall, so far as

Digitised by the University of Pretoria, Library Services, 2016

o. 32—1892.

he is concerned, be deemed to be a public prison, and such man shall be deemed to be a prisoner confined therein within the meaning of any law regulating the management and condition of prisons and prisoners.

Visiting officer.

80. Any Commanding Officer may by writing under his hand specially appoint any officer under his command to be visiting officer for any guard room or prison set apart as such by himself under this Act, and every officer so appointed shall have the same jurisdiction and powers with regard to such guard room or prison, and the persons confined therein, as a Visiting Magistrate would have in regard to any prisoner or prisoners within his jurisdiction, with the exception of infliction of corporal punishment.

Reservation of liability to prosecution otherwise than under this Act.

81. Nothing in this Act contained shall prevent any offender from being prosecuted otherwise than under the provisions of this Act in all cases in which he would by law, without this Act, be liable to such prosecution; but no member of any of the said forces acquitted or convicted of any crime or offence under the provisions of this Act, shall be liable to be again tried for the same crime or offence: Provided that nothing herein contained shall prevent a member of any of the said forces who has been acquitted or convicted from being dismissed from the said force or reduced in rank therein.

Enforcement of orders, &c., in places beyond borders of Colony.

82. Whenever it shall be necessary to enforce enactments, provisions, and regulations in this Act mentioned, in any place situate beyond the borders of this Colony, the sentences, fines, and penalties which shall be pronounced and inflicted for the purpose of such enforcement, shall be as valid and effectual, and shall be carried into effect in the same manner as if the same had been pronounced or inflicted within this Colony.

Mode of procedure in regard to certain offences committed beyond borders of Colony.

83. If any member of the Colonial Forces is charged with having committed an offence under this Act at some place situate beyond the borders of this Colony, which offence is in the opinion of the officer commanding the Colonial Forces of too serious a nature to be dealt with either by an ordinary or by a special Court of Officers, it shall be competent for the said officer to direct that the Commanding Officer of the said member shall take evidence upon oath as to the said charge, and shall transmit the said evidence to the Attorney-General. When such evidence has been so transmitted, the said Commanding Officer may by warrant under his hand direct the removal of the person so charged, to the nearest convenient prison inside the borders of the Colony, there to await the decision of the Attorney-General with regard to the said evidence. And in every such case the Attorney-General may deal with the matter in every respect as if the offence had been charged within the Colony, and as if the taking of the said evidence had all the legal effect of a preliminary examination. And the Attorney-General may direct that the said member shall be either discharged or brought to trial before some superior Court, which Court shall

Digitised by the University of Pretoria, Library Services, 2016

have in all respects the same authority to try the said case as if the said offence had been charged at some place within the area of jurisdiction of the said Court.

Commencement of term of imprisonment.

84. Any term of imprisonment awarded under this Act shall begin on the day of award, and a term of imprisonment similarly awarded for a certain number of hours shall begin at the hour when the prisoner is received at the prison to which he is committed.

PART III.

GENERAL PROVISIONS.

Proclamation by Governor.

85. The Governor may, whenever in his opinion the interests of the Colony require it, issue a Proclamation

(*a*) Calling out any one or more Volunteer Corps for active service against an enemy; or

(*b*) Declaring that by reason of the imminence of active service against an enemy, it is necessary for the public safety that the whole or any portion of the Colonial Forces shall be subject to the provisions of Part II of this Act, as if on active service, or

(*c*) Calling out any one or more Volunteer Corps to aid the Civil Power in the protection of life and property.

Status of General of regular Forces under this Act.

86. Any General or Field Officer of Her Majesty's Regular Forces placed in command of any of the Colonial Forces by the Governor shall, while holding such command, have the same power to deal with all matters under this Act as if he had been an officer of Colonial Forces of the same rank.

Precedence of officers.

87. Officers of the Permanent Colonial Forces shall rank with officers of Her Majesty's Regular Forces according to the rank and date of their respective commissions, and officers of the Volunteer and other Forces herein mentioned shall, when serving with the officers of Her Majesty's Regular and officers of the Permanent Colonial Forces rank as juniors of their respective ranks.

Police Force on active service to be portion of Colonial Forces.

88. The members of any portion of the Police Force of the Colony while employed, in terms of the Act under which they are enrolled in rendering military or active service, shall be deemed to be portion of the Colonial Forces, and as such subject in all respects to the provisions of Part II of this Act.

Pensions and Gratuities.

Pensions and gratuities.

89. It shall be lawful for the Governor, and under the conditions hereinafter mentioned, to order that any member of the Permanent Forces, of whatever rank, shall be superannuated, and thereupon to authorise and direct that such member shall receive from and out of the public revenue of this Colony a gratuity or yearly pension as follows, that is to say, if such member shall have served for a period less than fifteen years, a gratuity equal to one month's pay for each year's service, the pay being taken to be that received by such member at the time of his superannuation, and

Digitised by the University of Pretoria, Library Services, 2016

No. 32—1892.

if such member shall have served for a period of fifteen years, an annual pension equal to fifteen-fiftieths of the yearly pay of such member, which pay shall be taken to be the average of his yearly pay for the three years next preceding his superannuation, and an additional one-fiftieth of such yearly pay for each year such member shall have served beyond the said period of fifteen years; but no such member shall receive a pension equal to more than thirty-fiftieths of his yearly pay as aforesaid, unless in the cases hereafter mentioned; and provided that no member of the said Forces who shall be under the age of fifty years shall be capable of receiving any such gratuity or pension, unless it shall be certified in writing by the surgeon of the said Forces, or some other competent medical officer, to be appointed by the Governor for the purpose, that such member from infirmity of mind or body is incapable of discharging the duties of his situation, and that such infirmity is likely to be a permanent one.

Penalty for false statement in order to obtain pension.

90. If any member of the Permanent Forces in receipt of a pension under this Act shall wilfully or knowingly have made, or caused to be made, any false statement or representation, in order to obtain such pension, he shall forfeit all right and claim to such pension, and no pension shall be claimable by any pensioner during the time he may be undergoing punishment for any crime.

Calculation of amount of pension.

91. In calculating the amount of any gratuity or pension payable under this Act to any member of the Permanent Forces, if the person to receive the same shall at the time of his superannuation have been obliged to keep a horse or horses out of his pay, the sum of twenty pounds for the keep of each such horse shall be deducted from such pay.

Keep of horse.

Pension for disabled member of Colonial Forces.

92. In case any member of the Colonial Forces shall be disabled for the performance of his duty by reason of any wound or injury received by him when in the field and engaged with an enemy, or in the actual execution of his duty, or any member of the said Force shall, in the opinion of the Governor, have merited the same, it shall be lawful for the Governor to award to such member, whatever may be his age or time of service, such gratuity or such yearly pension as to him may seem fit, but in the case of a member of the Permanent Forces, such gratuity shall not exceed an amount equal to three years' pay, and such pension shall not exceed the full pay of such member, and in the case of any other member of the Colonial Forces such pension shall not exceed one hundred pounds per annum: Provided that the reasons for giving any such gratuity or pension shall be set forth in the warrant or authority granting the same, and a return showing the amounts and particulars of any payments under this section shall be laid on the table of both Houses of Parliament at the then next ensuing session of Parliament.

Pension not transferable.

93. No pension payable under this Act shall be assignable or transferable, nor shall the same be attached, arrested, or levied

Digitised by the University of Pretoria, Library Services, 2016

upon, for or in respect of any debt or claim due by the recipient thereof, or his wife.

Pension not matter of right.

94. Nothing in this Act contained shall be construed so as to entitle any member of the Colonial Forces to claim as a matter of right any gratuity or pension as aforesaid.

Reward for diligence, and compensation for injuries.

95. It shall be lawful for the Governor to award to any of the men belonging to the said force, such sum of money as to him shall seem meet, as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of their duty, or as an allowance to such of them as shall be disabled by bodily injury received, or shall be worn out by length of service.

Widows or family of Volunteers, pension to.

96. It shall be lawful for the Governor, subject to the approval of Parliament, to assign to the widow or family of any volunteer who may be killed in action or in active service a pension or allowance of not exceeding seventy pounds per annum.

Privileges.

Exemption from payment of toll.

97. Every officer and man of the Colonial Forces when in uniform, whose duty it shall be, in proceeding to or from any place, to pass through any toll-bar, or over any ferry, at or in respect of which the payment of toll shall now be or may hereafter be lawfully demanded, shall be exempted from the payment of any such toll in respect of himself and of any animal and vehicle that may be required for the performance of the duty on which he may be employed.

Detention at ferries.

98. If any person duly authorised to collect tolls in respect of any ferry shall wilfully subject any officer or man of the said forces to unreasonable delay or detention in respect to the passage over such ferry, then such person shall be liable on conviction to a penalty not exceeding five pounds.

Penalty for impersonation.

99. If any person, not being an officer or man of the said forces, shall wilfully personate such officer or man, or if any such officer or man of the force, not then being on duty, shall falsely represent himself to be such officer or man on duty, with the intent to evade the payment of any toll legally payable by him, such person shall, on conviction, be liable to a penalty of not exceeding five pounds sterling, or in default thereof, to imprisonment for a period not exceeding one calendar month, unless such fine be sooner paid.

Exemption from service in Burgher forces or levies.

100. Every member of the Colonial Forces shall be exempt, while he remains such member, from service in the Burgher Forces or Levies.

Penalty for receiving arms, &c., from members of force contrary to regulations.

101. If any person shall, in consequence of the sale, pledge, or other disposition of any horse, arms, ammunition, accoutrements or equipment made by any member of the Colonial Forces in contravention of the regulations, knowingly receive or have any animal, article, matter, or thing in the said section mentioned, such person shall incur and be liable to a fine not exceeding twenty pounds, and, in default of payment thereof, shall be liable to be

Digitised by the University of Pretoria, Library Services, 2016

No. 32—1892.

imprisoned and kept at hard labour for any period not exceeding three months unless such fine be sooner paid.

Freedom from attachment of such animal, arms, &c.

102. No animal, article, matter, or thing mentioned in the last paragraph, and forbidden by the regulations to be sold, pledged, or otherwise disposed of, shall be capable of being seized or attached by or under any writ of execution which may be sued out against any member of the said force, nor shall the same pass by or under any order made for the sequestration of the estate of any such member.

Commencement of actions.

103. For the protection of persons acting in the execution of this Act, all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be commenced within four calendar months after the cause of action shall have arisen, or offence be committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month, at least, before the commencement of the action; and if a verdict shall be given for the defendant, or the plaintiff be non-suited, or discontinue any such action after issue joined, or if, upon exception, or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client.

Penalty for liquor dealers entertaining members of force when on duty.

104. If any licensed or unlicensed dealer in wines and spirits or any intoxicating liquors shall knowingly harbour or entertain any man belonging to the Colonial Forces, or permit such man to abide or remain in his house, shop, room, or other place during any part of the time appointed for his being on duty elsewhere, every such dealer shall, for a first offence, forfeit and pay any sum not exceeding ten pounds, to be recovered in a summary way; and for a second or subsequent offence shall be liable, besides such penalty, to imprisonment for any period not exceeding one month, with or without hard labour.

Governor may make regulations for billeting of Colonial forces when on active service.

105. The Governor may make regulations for the billeting and cantoning the Colonial Forces when on active service, for the furnishing of railway cars, engines, carriages, horses, boats and other conveyances for their transport and use, and for adequate compensation therefor; and may by such regulations impose fines not exceeding five pounds for breach thereof, and imprisonment in cases of default of payment of such fines. And all contraventions of any such regulations may be prosecuted before the Court of the Resident Magistrate in whose district the said contraventions have been committed.

Wilful obstruction of Forces on march or parade.

106. Any person who shall wilfully obstruct or impede any Corps or Detachment of Colonial Forces while on the march or upon parade, shall upon conviction before a Magistrate be liable to a penalty not exceeding five pounds, or in default to imprisonment for any period not exceeding one month, with or without hard labour.

Short title.

107. This Act may be cited for all purposes as "The Colonial Forces Act, 1892."

Digitised by the University of Pretoria, Library Services, 2016

No. 32—1892.

Laws repealed.

FIRST SCHEDULE.

LAWS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Act 9 of 1878	"Cape Mounted Riflemen Act, 1878" ..	The whole.
Act 16 of 1878	"Volunteer and Yeomanry Pension Act, 1878"	The whole.
Act 11 of 1880	"Colonial Forces Discipline Act, 1880" ..	The whole.
Act 10 of 1882	"Volunteer Act, 1882"	The whole.
Act 24 of 1883	"Colonial Forces Command Act, 1883" ..	The whole.
Act 18 of 1885	"Cape Mounted and Infantry Forces Amendment Act, 1885" ..	The whole.

Offences under Act.

SECOND SCHEDULE.

OFFENCES UNDER THE ACT.

1	Misbehaving or inducing others to misbehave before the enemy.
2	Treacherously holding correspondence with or giving intelligence to the enemy.
3	Leaving his Commanding Officer to go in search of plunder.
4	Without orders from his superior officer leaving his Guard, Piquet, Patrol or Post.
5	Forcing a safe-guard, guard, post, or sentry.
6	Doing violence to any person bringing provisions or supplies to the forces or committing any offence against the property or person of an inhabitant of or resident in the country in which he is serving.
7	Sleeping or being drunk on his post when acting as a sentinel.
8	Causing or conspiring with any person to cause any mutiny in any of the Colonial Forces.
9	Striking, using or offering violence to his superior officer.
10	Wilfully disobeying the lawful command of his superior officer.
11	Deserting or attempting to desert, or persuading or assisting any other person subject to this Act to desert, from the Colonial Forces.
12	Without due authority holding correspondence with or giving intelligence to the enemy.
13	Using threatening or insubordinate language to his superior officer.
14	Without orders wilfully destroying or damaging any property.
15	Stealing or embezzling or receiving, knowing them to be stolen or embezzled, any money or goods the property of a comrade or of an Officer or of any Regimental Institution, or any public money or goods, or conniving at or being concerned in such crimes.
16	Being guilty of any offence of a fraudulent nature or any disgraceful conduct of a cruel, indecent, or unnatural kind.
17	Being concerned in any quarrel or disorder, refusing to obey any officer (though of inferior rank) who orders him into arrest, or offering any violence to such officer.
18	Absenting himself without leave.
19	Being drunk whether on duty or not on duty.
20	Making away with, losing by neglect, or wilfully injuring his military equipment or that of any other person subject to this Act, or ill-treating a horse used in the Public Service.

Digitised by the University of Pretoria, Library Services, 2016

No. 33—1892.

SECOND SCHEDULE—(*Continued.*)

OFFENCES UNDER THE ACT.

21	Resisting or offering violence to any persons, whether subject to this Act or not, in whose custody he is placed, or resisting an escort whose duty it is to apprehend him or have him in charge.
22	Escaping or attempting to escape from Military custody.
23	Releasing or permitting to escape from Military custody any person over whom it is his duty to keep a guard.
24	In any report or return which it is his duty to make, knowingly making or being privy to the making of any false or fraudulent statement or of any omission with intent to defraud.
25	Being guilty of any act, conduct, disorder, or neglect to the prejudice of good order and discipline.

No. 33—1892.] [Promulgated 2nd September, 1892.

ACT

To Amend the Law with regard to Native Locations.

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

Governor may declare number necessary to constitute Native Location, by notice in *Gazette*.

1. It shall be lawful for the Governor, when requested so to do by the Divisional Council of any division, such Divisional Council having been previously petitioned thereto by a majority of the Divisional Council voters of any ward of such division, to declare by notice in the *Gazette* that the number of male native adults whose occupation of huts or dwellings on any one farm in such ward is necessary to constitute a Native Location shall be such number, greater than three, and not more than seven, as the said Council may have determined.

Construction of section 2 of "Native Locations Act, 1884."

2. From and after the date of publication of such notice the second section of the "Native Locations Act, 1884," shall, so far as the said ward in the division in question is concerned, be read as if the word "three" therein had been expunged, and the number determined and notified as aforesaid had been substituted in its place.

Governor may cancel or alter such notice.

3. The Governor may from time to time, upon a similar request and in a similar manner, cancel and repeal such notice, in which case the section of the Act aforesaid shall, so far as the said ward in the said division is concerned, be read as if the said notice had never been issued, or he may alter the number fixed by such notice, in which case the altered number shall be taken to have been substituted for and to have the same effect as the number originally notified.

Effect, if such cancellation or alteration constitutes Native Locations in division where no location previously existed.

4. If the effect of any such repeal or alteration as is in the last preceding section mentioned is to constitute in any ward of any division any one or more native locations where such location had not previously existed, then the person on whose land any location so constituted exists shall, within six months from the date of such

Digitised by the University of Pretoria, Library Services, 2016

repeal or alteration, the concurrence of the Divisional Council having been first secured, obtain a licence from the Governor for the establishment of such location, failing which he shall be liable to the penalty in the sixth section of the said Act provided.

Governor may revoke or suspend licence granted under "Native Locations Act, 1884."

5. The Governor shall, when requested so to do by the Divisional Council of any division, such Council, acting upon the application of two-thirds of those registered for Divisional Council elections in any ward in such division, revoke or suspend the licence granted, in terms of the fourth section of the "Native Locations Act, 1884," for the establishment of any Native Location in such ward, and he shall, when similarly requested, notify in the *Gazette* that any location which was in existence at the date of the passing of the said Act shall cease and be removed from a date named in such notification.

Notification of revocation of licence, or removal of location; reasonable time to be given to reap crops.

6. Whenever the Governor shall determine to revoke or suspend the licence for any location in manner provided by the last preceding section, and whenever he shall determine and notify in the *Gazette* as in the said section provided, that any location shall cease and be removed, the date of the revocation of the licence, or of the removal of the location, as the case may be, shall be so fixed so as to allow a reasonable period of time to elapse between the date when the inhabitants of the location are informed of the decision of the Governor and the date when they are called upon to remove. The duration of such reasonable period shall be in the discretion of the Governor, but in no case shall it be shorter than the time necessary to enable the said inhabitants to reap or gather any crops or produce which had been already planted at the date of the notification of the Governor's decision as aforesaid.

Annual licence to be taken out by owner of land.

7. Every owner of land on which a native location on private property is established at the taking effect of this Act, or on which such a location may be established or constituted hereafter, shall, in addition to the licence of the Governor required by the "Native Locations Act, 1884," be bound and obliged to take out an annual licence for such location, to be issued by the Distributor of Stamps for the district or some other duly authorised officer.

When licence be taken out.

8. In the case of locations in existence at the date of the taking effect of this Act such annual licence shall be taken out on or before the first day of January, 1893, and thereafter on or before the first of January in every succeeding year; and in the case of locations established hereafter on or before the first day of January following their establishment, and thereafter on or before the first day of the said month in each year.

Amount to paid for licence

9. There shall be paid for every such annual licence the sum of twenty shillings for every male adult; but, in regard to any location established after the taking effect of this Act, no licence shall authorise more than forty such male adults to be at any time in occupation of such location.

Digitised by the University of Pretoria, Library Services, 2016

No. 33—1892.

Penalty for allowing a greater number of male adults than licence allows.

10. Every owner of land on which a native location on private property is established who allows such location to be occupied by a greater number of male adults than is authorised by the terms of his licence shall be liable for every such offence to a penalty of not exceeding twenty pounds sterling.

Conditions under which licence issued.

11. No such licence as is in the seventh section mentioned shall be issued unless there is produced to the officer authorised to issue the same a certificate signed by the Civil Commissioner of the division, or by the Field-cornet of the field-cornetcy in which the location to which the licence refers is established, to the effect that the person signing the same is satisfied that the owner of the land or some European lessee or overseer for such owner is resident, and has for the six months immediately preceding the date of the certificate been resident, upon the farm on which the said location is situated.

Distributor of Stamps may issue licence for lesser period than a year, and in event of location being closed or removed, refund may be made,

12. If in consequence of the revocation of any licence, or the removal of any location by the Governor as hereinbefore provided, the owner of any land on which a native location on private property has been established is desirous of taking out such a licence as is referred to in section nine for any period less than a year, it shall be lawful for the Distributor of Stamps or other officer, if the other provisions of this Act have been complied with, to issue to such person a licence for such lesser period at a *pro rata* reduction in the price for a similar licence for a full year. And if any location is closed or removed by the Governor under the provisions of this Act during the currency of a yearly licence, a proportionate refund of the licence money for the unexpired portion of the year shall be made to the licensee by the Civil Commissioner of the division.

Penalty for continuing Native Location on property without taking out licence.

13. Every owner of land on which a native location on private property is established, who shall continue or knowingly allow such location to be continued without taking out his annual licence as aforesaid, shall be liable for every such offence to the penalty set forth in the sixth section of the "Native Locations Act, 1884."

Register to be kept of huts, occupants and stock.

14. The resident owner, lessee, or overseer, as the case may be, shall keep a true and correct register of the number of huts or dwellings within such location, together with the names and occupations of the male adults occupying such huts or dwellings, and the numbers, marks or other description of the horses, horned cattle, sheep and goats within the limits of such location. The said register shall be inspected from time to time by any location inspector or other officer appointed by Government, who shall certify therein the date on which it was inspected, and shall at the first inspection, and afterwards at intervals of not less than six months, ascertain if the said register is correct, and if the register be not written up to date, or if it be incorrect in any material particulars, the said owner, lessee, or overseer, as the case may be, shall be liable to a fine not exceeding twenty pounds sterling,

Inspection of register.

Digitised by the University of Pretoria, Library Services, 2016

or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

When police officers may act.

15. In any division where there is no inspector of native locations, any proceedings for contravention of this Act may be instituted and carried on by any police officer.

Hut tax of two shillings per annum to be paid.

16. From and after the passing of this Act, there shall be payable by the occupier of each hut in a native location on Crown land, or by the persons using or claiming such huts, an annual amount of two shillings.

In cases of default hut tax may be recovered as if payable under Locations Act of 1884.

17. The said amount may be recovered in case of default as if it were a hut tax payable under the provisions of the Native Locations Act, 1884; the first payment shall become due on the 1st day of July, 1893, and the subsequent payments on the first day of July in each successive year.

Amount so recovered to be paid by Civil Commissioner to Divisional Council and appropriated as recovered road rates.

18. The nett amount recovered in terms of the last two sections shall be annually paid by the Civil Commissioner in each division in which there is a native location on Crown land to the Divisional Council of such division, to be by it used and appropriated as if the said amount had been road rates recovered under the Divisional Councils Act of 1889.

Short title and effect.

19. This Act shall be read as one with the "Native Locations Act, 1884," and may be cited as the "Native Locations Act, 1892."

No. 34—1892.] [Promulgated 2nd September, 1892.

ACT

To amend the "Civil Service Act, 1885," and the "Civil Service and Pension Fund Acts Amendment Act, 1888."

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

Employés after 10 years service in certain departments eligible for any office in such department.

1. Notwithstanding anything to the contrary in the Act 42 of 1885, or in the Act 31 of 1888, any person who by reason of his falling within any of the definitions contained in sub-sections (*c*), (*d*), (*e*), or (*f*) of section two of Act 31 of 1888, is now or shall hereafter be on the Fixed Establishment of the Civil Service of the Colony shall be eligible for appointment to any office of or above the rank of a third-class clerk, in the Department of the General Manager of Railways, or in the Department of the Postmaster-General, or in the Field Establishment of the Department of the Chief Inspector of Public Works, or to the position of Conservator of Forests in the Forest Department; provided he shall have served at least ten years in the Department in which he is appointed to any such office as afore-

Digitised by the University of Pretoria, Library Services, 2016

No. 34—1892.

said; but the fact of any person having been appointed to any such office under the provisions of this section shall not make him eligible (if otherwise ineligible) to hold an office included in Schedule A to Act 31 of 1888, in any Department other than that in which he shall have served ten years or upwards.

Civil service candidates in temporary employment to remain on list of passed candidates.

2. Should a candidate who has passed the Civil Service Examination be appointed under the provisions of the third section of Act 31 of 1888 to any office not included in Schedule A to that Act, before he has attained the age of twenty-five years, his name shall not be removed from the official list of candidates so long as he serves continuously in such office or in any similar office, anything in the sixth section of Act 42 of 1885 to the contrary notwithstanding.

The Governor may frame pension rules in respect of services partly in Colony, and partly in other South African States.

3. In section thirteen of Act 31 of 1888, after the words "British Colony" the following words shall be inserted, "or in that of any State or Territory in South Africa."

Certain officers of Cape Mounted Riflemen eligible for Civil Service Examination

4. Any officer of the force called the "Cape Mounted Riflemen" of or above the rank of Lieutenant, may be accepted as a candidate for the Civil Service Examination, although he may be over twenty-five years of age; anything in section three of Act 42 of 1885 to the contrary notwithstanding.

Officers in the Cape Mounted Riflemen of ten years service eligible for offices in Schedule A to Act 31 of 1888.

5. Subject to the provisions of the fourteenth section of Act 42 of 1885, it shall be lawful for the Governor to appoint any officer of the force called the "Cape Mounted Riflemen," to any office mentioned in Schedule A to Act 31 of 1888, which may be vacant: provided that such officer shall have served in such force, or partly in such force and partly in the Cape Infantry or Cape Field Artillery, for at least ten years as an officer of or above the rank of a Lieutenant, and shall have passed the Civil Service Examination.

Clerks to be as far as possible selected from lists of passed Civil Service candidates, and certain half-yearly returns to be rendered to Controller and Auditor-General.

6. All persons appointed under the provisions of the third section of Act 31 of 1888 for the discharge of clerical or other like duties shall, as far as practicable, be selected from the lists of candidates who have passed the Civil Service Examination, and as soon as may be after the 30th of June and 31st of December in each year, every head of a department shall render to the Controller and Auditor-General a return of all appointments in his department, of persons who have not passed the Civil Service Examination, made during the preceding six months under the provisions of the said third section, for the discharge of clerical or such other duties as may be specified in regulations approved of by the Governor.

Such returns to be in prescribed form, and names of persons receiving more than a certain minimum salary to be laid before Parliament.

7. Such returns shall be rendered in such form and shall embrace such particulars as may be prescribed in such regulations, and the names and other necessary particulars respecting all persons mentioned in such returns whose emoluments exceed a minimum prescribed in such regulations, shall be submitted by the Controller and Auditor-General to Parliament, with his Report thereon, as an annexure to his Annual Report.

Digitised by the University of Pretoria, Library Services, 2016

8. Any person hereafter appointed under the provisions of the thirteenth section of Act 42 of 1885 to fill an office in any department included in Schedule A to Act 31 of 1888 shall be eligible to fill any other office in such department, but such appointment shall not render him eligible to hold an office in any other department included in such Schedule.

Persons appointed under Section 13 of Act 42 of 1885 eligible for promotion only in their own department.

9. This Act may be cited for all purposes as the "Civil Service Act, 1892," and shall be read as one with the "Civil Service Act, 1885," and the "Civil Service and Pension Fund Acts Amendment Act, 1888."

Short title and construction.

No. 35—1892.] [Promulgated 13th September, 1892.

ACT

To Amend the "Post Office Act, 1882," and to repeal the "Post Office Act Amendment Act, 1886."

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

Preamble.

1. The last twelve lines of section five of the Post Office Act, 1882, commencing with the word "Provided," so much of the second schedule to that Act as has not heretofore been repealed, and the whole of the Post Office Act Amendment Act, 1886, are hereby repealed, and in lieu of the rates of postage specified therein there shall be levied the rates of postage set forth in the first schedule to this Act.

Postage rates on letters forwarded by private ship and inland packets, &c., altered.

2. The fourth schedule to the Post Office Act, 1882, is hereby repealed, and in lieu of the form of declaration therein set forth, the form of declaration in the second schedule to this Act shall be taken and subscribed before a Justice of the Peace by every Postmaster and other officer of the Post Office before the exercise of the duties of his office, as required by the provisions of the forty-fourth section of the Post Office Act, 1882.

Post Office Declaration amended.

3. This Act shall come into operation on a date to be named by the Governor by proclamation in the *Gazette*, and shall be read as one with "The Post Office Act, 1882," and may be cited for all purposes as the "Post Office Act Amendment Act, 1892."

Commencement and effect of Act, and short title.

Digitised by the University of Pretoria, Library Services, 2016

No. 35—1892.

Schedule 1.

SCHEDULES.

FIRST SCHEDULE.

	Letters.	
Inland.	Posted for delivery within the Colony	One Penny.) For every half ounce or fraction of half an ounce.
Ship.	To be forwarded by private ship, vessel of war, or other ship (not being a mail packet), direct to any foreign country or British possession with which a convention for the exchange of such mail matter has not been concluded	Twopence
Shippers and Consignees.	For owners, charterers, or consignees of vessels arriving in any part of the Colony by such vessel ...	Half-penny. One Penny.
	Newspapers.	
Inland.	For each newspaper not exceeding four ounces in weight	One Half-penny.
Ship.	For each newspaper not exceeding four ounces in weight	One Penny.
	Postal Cards.	
Inland.	On each postal card	One Half-penny.
	Book Packets.	
Inland.	For every two ounces or fraction of two ounces	One Half-penny.
	Sample Packets.	
Inland.	For the first four ounces or fraction thereof	One Penny.
	For every additional two ounces or fraction thereof. . ..	One Half-penny.
	Packets.	
Ship.	To be forwarded by private ship, vessel of war, or other ship (not being a mail packet), direct to any foreign country or British possession with which a convention for the exchange of mail matter has not been concluded. For the first four ounces or fraction thereof	One Penny.
	For every additional two ounces or fraction thereof	One Half-penny.
	Parcel Post.	
Inland.	Each parcel not exceeding eight ounces	Fourpence.
	For each additional four ounces or thereof fraction	Twopence.
	Registration.	
	For the registration of every separate article	Fourpence.

Digitised by the University of Pretoria, Library Services, 2016

SECOND SCHEDULE.

DECLARATION.

(Made pursuant to the provisions of the forty-fourth section of the Post Office Act, 1882.)

I, ... do solemnly and sincerely declare that I will not wittingly, or willingly open or delay, or cause, or suffer to be opened or delayed, contrary to my duty, any letter or any thing sent by the Post which shall come into my hands, or custody, by reason of my employment relating to the Post Office, except by the consent of the person or persons to whom the same shall be directed, or except in such cases where the party or parties to whom such letter or any thing sent by the Post shall be directed, and who is, or are, chargeable with the payment of the postage thereof, shall refuse or neglect to pay the same; and except such letters or any thing sent by the Post, as shall be returned for want of true directions, or when the party or parties to whom the same shall be directed cannot be found; and that I will not in any way embezzle any such letter or any thing sent by the Post as aforesaid, and I make this solemn declaration conscientiously intending to fulfil and obey the same, and by virtue of the provision of the "Oaths and Declarations Act, 1891."

Signature .....

This Declaration was made before me, at ..... in the Division of ..... the day of 189

.....

Justice of the Peace.

No. 36—1892.] [Promulgated 2nd September, 1892.

ACT

For Enabling the Municipal Council of Woodstock to borrow a Further Sum of Money, not exceeding £25,000, in Debentures or otherwise, on the Credit of the Municipality, and to appropriate the same for a General Drainage Scheme, and further for enabling the said Council to effectually carry out the said Drainage Scheme.

Preamble

WHEREAS it is expedient to provide the inhabitants of the Municipality of Woodstock with a general Drainage Scheme:

And whereas at a public meeting of ratepayers, specially convened for the purpose, held on the 28th day of March, 1892, it was unanimously resolved that the Municipal Council of Woodstock be authorised to introduce into Parliament a Private Bill enabling them to raise a further loan of not exceeding the sum of £25,000 on Debentures or otherwise, on the credit of the rates of said Municipality, and to appropriate the said money or so much thereof as shall be required for the purpose of a general Drainage Scheme:

Digitised by the University of Pretoria, Library Services, 2016

No. 36—1892.

And whereas at a special meeting of ratepayers of the said Municipality, held on the 29th day of July, 1892, it was further unanimously resolved to apply to Parliament for powers to carry out such Drainage Scheme:

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

Lawful for Council to borrow money.

1. It shall be lawful for the Council for the time being of the Municipality of Woodstock to borrow from time to time such sum or sums of money as may necessarily be required for the purposes of a general drainage scheme, but not to exceed in the whole the sum of £25,000.

And to impose a tax.

2. It shall be lawful for the Council of the said Municipality to impose, if necessary, for the purpose of providing for the repayment of the capital and of the payment of the annual or half-yearly interest thereon, a certain rate or tax upon all present and future rateable property within the said Municipality, and every rate so imposed shall be of the same force and effect, and be levied in the same manner as rates or taxes are now imposed or levied under the provisions of Act No. 45 of 1882.

Payment out of other funds.

Provided that it shall be lawful for the said Council to apply to the payment of capital and interest, or either, any funds or moneys owing to the said Council from any source whatever and not specially appropriated for any other object.

Debentures or acknowledgments.

3. The Council shall grant to the party or parties, or company, society or co-partnership from whom they shall borrow such moneys as aforesaid, a debenture or written acknowledgment of or for the moneys borrowed by them for the purposes aforesaid, not exceeding in the whole the said sum of £25,000, which debenture or acknowledgment shall be as near as may be in the form in the Schedule annexed to this Act; and shall be signed by two of the councillors for the time being appointed for that purpose by a resolution of the Council of the said Municipality.

Separate accounts to be kept.

4. The said Council shall cause to be kept a separate account of all moneys borrowed under this Act and of the interest paid thereon, and of the expenditure of such moneys, and shall at their annual meetings under the Act 45 of 1882, exhibit for the inspection of the ratepayers an account showing the particulars aforesaid, and give such other information as it shall be reasonable or expedient to impart.

Drainage.

5. It shall be lawful for the Council from time to time to cause such sewers, drains and pipes to be made, laid, altered, deepened, covered over and maintained within the Municipality as shall be necessary for the effectual draining of the Municipality or any portion thereof, and from time to time to cause to be made and maintained all such reservoirs, sluices, engines and other works as shall be necessary for cleansing and ventilating such sewers, drains and pipes, and if needful they may carry such sewers,

Digitised by the University of Pretoria, Library Services, 2016

drains and pipes through and across private lands or beneath private buildings, making compensation for any damage done, which compensation shall, if not mutually agreed upon, be settled by arbitration; and the Council or any persons duly authorised by them shall have right of access for maintenance of such sewers and drains.

Regulations may be made, altered or revoked.

6. The Council may also from time to time make, alter, revoke or amend rules and regulations for all or any of the following purposes:—

(1) For regulating with regard to the level, width, direction and construction of new streets made by the Council or owners of private property and the sewerage or drainage thereof;

(2) For regulating with respect to the drainage and sewerage of buildings and for compelling the connection at the owner's expense of private drains with public drains, sewers or pipes;

(3) For regulating with respect to water-closets, earth-closets, privies, ash-pits and cesspools in connection with buildings, and to prohibit the use of such of them as the Council consider ought not to be allowed to continue.

Expenses of this Act.

7. It shall be lawful for the Council to pay the necessary expenses for obtaining this Act, and carrying the provisions thereof into effect, out of the present general revenue of the Municipality.

Short title.

8. This Act may be cited for all purposes as the "Municipality of Woodstock Loan and Drainage Act, 1892."

Schedule.

SCHEDULE.

We, the undersigned Councillors of the Municipality of Woodstock, duly authorised thereto by the Council of the said Municipality, do hereby acknowledge that the said Council is indebted to in the sum of for so much money borrowed by the said Councillors for the purposes set forth in "The Municipality of Woodstock Loan Act, 1892," and certify that the said sum is secured by the said Act in such manner and form as by the said Act provided.

And we further covenant and engage in our said capacity that the principal and interest of the said debt shall be payable and paid in manner following, that is to say:—

Given under our hands at Woodstock, this day of 189 .

WITNESSES:

No. 37—1892.] [Promulgated 2nd September, 1892.

ACT

To Amend and add to the Law regulating the Municipal Corporation and Government of Cape Town.

Preamble.

WHEREAS it is expedient to amend and add to the existing law regulating the Municipal Corporation and Government

Digitised by the University of Pretoria, Library Services, 2016

No. 37—1892.

of Cape Town, and with that object to confer upon the Town Council of Cape Town amended or increased rights, powers, and privileges with regard to municipal property, works and undertakings, and the acquisition of immovable property for municipal purposes, and with regard to the good, cleanly, and healthy order and condition of the Municipality of Cape Town and the inhabitants thereof, and with regard to maintaining and developing good municipal government therein by means of suitable rules and regulations made by the Council and approved of by the Governor:

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

Roads, &c., vested in Council.

1. The property of and in the streets, roads, thoroughfares, foot pavements, footpaths, sidewalks and squares, to which the inhabitants of the Municipality shall at any time have or acquire a common right, shall be vested in the Town Council of Cape Town, hereinafter styled the Council.

Lighting of streets, &c.

2. It shall be lawful for the Council to make provision for lighting in a suitable manner the whole streets, lanes, squares, public passages, thoroughfares and public places within the city, and to provide, erect and maintain, or grant leave to any person or persons, company or companies to provide, erect and maintain, under such conditions as they may see fit, such a number of lamps, lamp posts, lamp irons, and other appliances and appurtenances as may be necessary for that purpose, and to light or enter into contracts for lighting, and cause to be lighted such lamps by means of oil, gas, electricity or otherwise; and the Council are hereby authorised to order and require such lamp posts, lamp irons and other appliances and appurtenances to be put or fixed upon the sides of the pavements, footways, streets and roads, or upon or against the walls and palisades of buildings on the sides of the streets, without being liable to any claims for compensation. And the Council may also from time to time make such regulations on the aforesaid matter as they shall find necessary.

Drainage.

3. It shall be lawful for the Council from time to time to cause such sewers, drains and pipes to be made, laid, altered, deepened, covered over and maintained within the Municipality as shall be necessary for the effectual draining of the Municipality or any portion thereof, and from time to time to cause to be made and maintained all such reservoirs, sluices, engines, ventilating shafts and other works as shall be necessary for cleansing and ventilating such sewers, drains and pipes, and if needful they may carry such sewers, drains, pipes, and ventilating shafts through and across private lands or beneath or against private buildings, making compensation for any damage done, which compensation shall, if not mutually agreed upon, be settled by

Digitised by the University of Pretoria, Library Services, 2016

arbitration; and the Council or any persons duly authorised by them shall at all times have right of access for maintenance of such sewers and drains.

Power to carry sewer across public roads and streets and to expropriate vacant Crown Land.

4. The Council may, within the limits of the Cape division, carry any sewer through, across, or under any public road or street, or any place laid out as, or intended for a public street, and through, across or under any vacant or unimproved Crown land, and may expropriate any vacant or unimproved Crown land for a sewage farm, pumping station, or for other purposes connected with the drainage and sewage of Cape Town without paying compensation.

Sewage farms, &c.

5. The Council shall have power to take and expropriate at such price as may be fixed by arbitration any landed property which is not vacant Crown land within the Cape division required by them for the purpose of a sewage farm or farms and pumping stations, and generally for any purpose connected with the drainage and sewage of the city, and may carry their drains and sewers through or beneath any landed property lying within the Cape division along any proposed route for such sewers from the city to the said sewage farm or farms, paying such compensation for damage done as may be ascertained by arbitration, and the Council and its officers and servants shall have right of access to private property for maintenance and inspection of all such sewers and drains.

Council's power to deal with land held by it for purpose of sewerage.

6. The Council may deal with any land held by it for the purpose of receiving, storing, disinfecting or distributing sewage in such manner as it deems most profitable, either by leasing the same for a period not exceeding twenty years for agricultural purposes, or by contracting with some person to take the whole or a part of the produce of such land, or by farming such land and disposing of the produce thereof; provided, always, that in dealing with land for any of the above purposes, provision shall be made for effectually disposing of all the sewage brought to such land, without creating a nuisance.

Notice of any sewage works to be commenced or extended, to be given in local papers.

7. The Council shall at least one month before commencing the construction or extension of any sewer or other work for sewage purposes beyond the limits of the Municipality of Cape Town, give notice of the intended work by advertisement in one or more local newspapers circulating within the district where the work is to be done. Such notice shall describe the nature of the intended work, and shall state the intended terminus thereof, and particulars of the roads, streets, and other land (if any) through, across, under, or on which the work is to be done; and shall name a place where a plan of the intended work is open for inspection at all reasonable hours, and a copy of such notice shall be served on the owners or reputed owners, lessees or reputed lessees, and occupiers of the land and on the local authority (if any) having the care of such roads or streets.

Effect of objection of owner, occupier or lessee to projected work.

8. If any such owner, lessee, or occupier or any such local authority or any other person who would be affected by the

Digitised by the University of Pretoria, Library Services, 2016

No. 37—1892.

intended work objects to such work, and serves written notice on the Council of such objection at any time within the said period of one month, then the intended work shall not be commenced without the sanction of the Governor, unless such objection is withdrawn.

Governor may appoint Inspector to report.

9. The Governor may, on the application of the Council, appoint an Inspector to make enquiry on the spot into the propriety of the intended work, and the objections thereto, and to report to such Minister as the Government may direct, on the said matter. And on receiving the report of such Inspector, the Governor may make an order disallowing the intended work, or allowing it with such modifications (if any) as he may deem necessary.

Erection of houses over sewers.

10. No house or building shall be erected over any sewer or drain belonging to or vested in the Council without previous notice to them so that such works as they may deem necessary may be executed for the protection of the sewer or drain; and if any house or building be erected, without such notice, the Council may demolish the same, should its removal be necessary in the public interests, and the expense incurred thereby shall be recoverable by the Council from the person erecting such house or building.

Protection of sewers, &c., against damage.

11. Every person who without the written consent of the Council shall make or cause to be made any opening into any public sewers or drains, or who shall destroy or injure, or cause to be destroyed or injured, any of the said sewers or drains or any works in connection therewith, vested in or constructed under the authority of the Council, shall be liable to a penalty not exceeding ten pounds sterling over and above the expenses incurred by the Council in making good the damage thereby occasioned; and such penalty and expenses shall be recoverable in any court of competent jurisdiction, and upon failure to pay such penalty and expenses such person may by order of such court be imprisoned for a period not exceeding three months.

Agreement between Council and Woodstock Council as to drainage and sewerage.

12. It shall be lawful for the Council to enter into an agreement with the Council of the Municipality of Woodstock with a view to the drainage and sewerage of the two Municipalities being jointly carried out and dealt with to such extent and upon such terms as may be mutually agreed.

Matters upon which regulations may be made.

13. The Council may also from time to time make, alter, revoke or amend rules and regulations for all or any of the following purposes:—

(1) For regulating the duties of the Council's officers and servants;

(2) For regulating the level, width, direction and construction of new streets made by the Council or owners of private property and the sewerage or drainage thereof;

(3) For regulating the structure of walls, foundations, roofs and chimneys of new buildings; for securing stability, the observance of sanitary precautions, the prevention of fires, and for purposes of health;

Digitised by the University of Pretoria, Library Services, 2016

(4) For regulating the sufficiency of space about buildings to secure a free circulation of air, and the ventilation of buildings;

(5) For regulating the drainage and sewerage of buildings and for compelling the connection at the owner's expense of private drains with public drains, sewers or pipes;

(6) For regulating waterclosets, earthclosets, privies, ashpits and cesspools in connection with buildings, and to prohibit the use of such of them as the Council consider ought not to be allowed to continue;

(7) For regulating the closing of buildings or parts of buildings unfit for human habitation, and the prohibition of their use for such habitation;

(8) For prohibiting the overcrowding of houses, dwelling places and rooms and the erection of objectionable buildings;

(9) For securing the regularity of lines and levels of buildings, the class of architectural buildings, and the removal, alteration and prevention of projections or obstructions in front of buildings.

(10) For regulating the giving of notices, and the deposit for the Council's approval of plans and sections by persons intending to lay out streets or to construct or alter buildings; the inspection by the Council or its officers; and the power of the Council to prevent, remove, alter, or pull down at the expense of the owner any work begun or done in contravention of its regulations; also for preventing the owners of property which has been subdivided and sold in building lots from closing any streets or roads shown upon any plan which has been approved of by the Council.

(11) For compelling the pulling down, removing or rendering safe all buildings, walls, bridges, earthworks and stoeps of an unsafe or dangerous character or which have been allowed to fall into a dilapidated or ruinous condition, and for doing so at the cost of the owner;

(12) For the inspection of buildings and structures by the Council and its officers;

(13) To provide for the due and proper care of the common pasture and other municipal lands, and therein to specify and regulate the quantity. and kinds of live stock which each inhabitant shall be allowed to keep and depasture on the said lands;

(14) For preventing the spread of contagious or infectious diseases and for preserving the public health;

(15) For regulating and preserving public parks, walks, avenues, botanical gardens, public libraries, bleaching and drying greens and grounds, public washhouses, public baths, public places of recreation and open spaces, and preventing offences,

Digitised by the University of Pretoria, Library Services, 2016

nuisances and annoyances therein, and for regulating bathing and the hours of bathing near the public thoroughfares or near any of the quays and piers;

(16) For regulating the storing, carriage, removal and use of gunpowder, dynamite, petroleum, oils, fireworks and other combustibles and explosives, and for regulating the use of firearms;

(17) For regulating the removal of night soil, stable litter, filth and refuse from private premises and from all streets, roads and public places, and for regulating the time and mode of the removal of any offensive matter or thing;

(18) For imposing a tax upon the keeping of dogs, and providing with regard to the seizure, sale and destruction of ownerless dogs and those in respect of which the tax has not been paid;

(19) For the abatement of nuisances and causing vehicles to be kept under proper control; for preventing and removing obstructions in the streets, roads, public thoroughfares, squares, open spaces, foot pavements and sidewalks of the city; for dealing with diseased animals, and the burial of dead animals, and the driving of live stock through the streets, and as to live stock found straying in the streets;

(20) For regulating the naming from time to time of the streets, roads, thoroughfares, and open spaces in the Municipality, and the numbering and re-numbering the houses, buildings and places therein, and imposing duties and obligations upon the inhabitants in respect thereof.

(21) For regulating the killing of cattle and sale of butcher's meat, the establishment and locality of slaughter houses and the keeping of slaughter houses and meat shops in a cleanly and proper state, and for removing the filth therefrom, and requiring that all such places shall be provided with a sufficient supply of water;

(22) For providing that cattle, dogs, live stock and poultry shall not be kept in such places, or in such manner as to be a nuisance or annoyance to the inhabitants; for prescribing the situations or places in which swine may be kept, and for prohibiting, if deemed advisable, the keeping of swine;

(23) For regulating the beating or shaking of carpets, rugs or mats in streets or public places generally, and the hours within which carpets, rugs or mats may be beaten;

(24) For regulating the supply and distribution of any water under the control or management of the Council, the quantity of water to be supplied to and taken by the inhabitants, the price to be paid therefor, the time or times at which such supply is to be received, and for the purpose of preventing any waste of drinking water within the Municipality;

Digitised by the University of Pretoria, Library Services, 2016

(25) For establishing one or more pounds within the Municipality and for providing for the management of pounds, the appointment of poundmasters, and for making such pound regulations as may seem necessary or expedient;

(26) For preventing any person or persons from carrying any board, basket or burden so as to obstruct or incommode passengers on any sidewalk or foot pavement, and for preventing the wheeling of perambulators, wheelbarrows and similar vehicles on any sidewalk or foot pavement, except for the purpose of crossing the same to or from any house or building;

(27) For preventing persons from congregating with others and thus causing an obstruction in any footpath, foot pavement, sidewalk or crossing, and for preventing the flying of kites and playing of games in public streets, thoroughfares and open spaces, and for preventing the obstruction of public streets, thoroughfares and open spaces;

(28) For preventing the pollution of any water which the inhabitants have a right to use;

(29) For regulating the width, kerbing, paving, guttering, gravelling, cleansing and watering of roads and streets;

(30) For supervising and licensing pleasure boats and vessels, and prescribing the fees to be paid;

(31) For granting licences or permits for the making of bricks and for digging or removing sand, clay or gravel, and for quarrying stone, and for cutting firewood, brushwood or grass upon municipal lands, and to prescribe the fees (if any) to be paid for the same;

(32) For regulating traffic and processions;

(33) For regulating, supervising and licensing hackney carriages and cabs, for fixing the amount of licence fees to be paid, the number of passengers to be carried, the fares to be charged, amount of luggage allowed to passengers, for regulating disputes as to fares, the position of cabs on stands to be appointed by the Council, and for the safety and convenience of passengers and the public;

(34) For regulating, supervising and licensing wagons, carts and other conveyances or vehicles drawn by any horse, mule, donkey or ox kept or used within the Municipality or plying for hire or profit, and for fixing the licence fees to be paid;

(35) For regulating the supervising and licensing of tramcars and omnibuses and for fixing the licence fees to be paid, the number of passengers to be carried, precautions to be taken and provisions to be made against accidents, and regulating for the safety and convenience of the public;

(36) For regulating the keeping in repair and paving of tramway and railway lines running over public streets or roads and

Digitised by the University of Pretoria, Library Services, 2016

the keeping in repair and paving by tramway and railway companies and owners of tramcars and railways of the roadway between and adjacent to their rails;

(37) For regulating the use of bicycles, tricycles and velocipedes;

(38) For regulating or prohibiting the cleaning and training of animals, repairing and outspanning of vehicles in streets and public places;

(39) For restraining noisome and offensive trades;

(40) For planting and preserving trees and shrubs;

(41) For regulating and registering houses let or occupied as common lodging houses and sub-let tenement houses, and inspecting such houses and the keeping the same in a cleanly and wholesome state.

(42) For maintaining generally the good rule and government of the Municipality, and the safety, convenience and comfort of its inhabitants, and in framing regulations the Council may prescribe the time within which any works or things required to be done shall be executed, done or completed, and may provide in case of default for the execution, doing or completion by the Council of any such work or thing at the expense of the defaulter.

Penalties for breaches of regulations, may be imposed.

14. Any rule or regulation made under this Act may impose a penalty for any breach thereof and may also impose different penalties in case of successive breaches thereof, but no penalty shall exceed twenty pounds; and any such rule or regulation may provide that in addition to any such penalty and expense incurred by the Council in consequence of the breach of any such rule or regulation and in the execution of any work directed by any such rule or regulation to be executed by any person and not executed by him shall be paid by the person committing such breach or failing to execute such work.

Approval of regulations by Governor.

15. After any regulation has been passed by the Council a copy of the same shall be posted in the Town Hall and a notice published in one or more local newspapers at least once a week, which notice shall contain a copy of such regulation, and three weeks after such notice shall have been advertised it shall be submitted for the approval of the Governor, and, if approved, shall be published in the *Gazette* and thereupon shall have the force of law in the Municipality.

Production of *Gazette* to be evidence of Regulation.

16. A copy of the *Gazette* containing any bye-law or regulation shall be evidence of the due making of such bye-law or regulation and of the contents thereof.

Power of entry upon private property.

17. The Council shall for the purposes of this Act and its rules and regulations have power by themselves or their officers to enter at all reasonable hours in the daytime into and upon any building or land for the purpose of executing any work or making any inspection authorised to be executed or made by them under this Act or the Council's rules and regulations without being liable to any legal proceedings on account thereof.

Digitised by the University of Pretoria, Library Services, 2016

Penalty for obstructing Council.

18. Every person who shall at any time obstruct the Council or any of its officers in the performance of anything which they are respectively empowered or required to do by this or any other Act or by any municipal regulation, shall be liable in each case to a penalty not exceeding five pounds.

Penalties for contravention of Act or regulations.

19. Every person who shall contravene any provision of this Act or any rule or regulation in force in the Municipality, shall for every offence be liable to the penalty expressly imposed by this Act or any such rule or regulation, and if no other penalty be imposed to a penalty not exceeding ten pounds.

Prosecution of offences and recovery of penalties.

20. All offences committed in contravention of this Act, or of any municipal rule or regulation, may lawfully be prosecuted in the Court of the Resident Magistrate for Cape Town; and if any person shall be convicted of any such offence, and shall not pay or satisfy the amount of fine imposed on him, it shall be lawful, unless otherwise provided in this Act, for the said Resident Magistrate to sentence such offender to any period of imprisonment not exceeding three months, unless such fine shall be sooner paid; and the amount of all fines, forfeitures, and penalties, when recovered, shall be paid to the Treasurer of the Council for the purposes of this Act.

"Lands and Arbitrations Clauses Act, 1882," incorporated.

21. For the purposes of any arbitration under the provisions of this Act, when the mode of arbitration is not set forth, the provisions of the "Lands and Arbitration Clauses Act, 1882," are hereby incorporated.

Council's expenses

22. All costs, charges, and expenses incurred in and about the promotion and passing and carrying the provisions of this Act and of the Municipal Regulations into effect, shall be paid out of the money authorised to be received by the Council under the provisions of this Act.

Short title.

23. This Act may be cited as the "Cape Town Municipal Amendment and Drainage Act, 1892."

No. 38 of 1892.] [Promulgated 2nd September, 1892.

ACT

To Provide for assisting certain Divisional Councils in Maintaining and Repairing certain Roads and Passes.

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

Grant by Governor in aid of maintenance of certain roads and passes.

1. The provisions of any law to the contrary notwithstanding, it shall be lawful for the Governor to grant, from and out of the general revenue, such aid in maintaining the roads and passes in Schedule A to this Act mentioned, as may from time to time become due, under the conditions hereinafter set forth, to the Divisional Councils of the respective divisions in which the said roads and passes respectively fall.

Digitised by the University of Pretoria, Library Services, 2016

Council to receive amount actually and necessarily expended.

2. The Divisional Council of any division in which any portion of the roads or passes aforesaid is situated shall be entitled to receive during the year ending 30th June, 1893, from the general revenue the sum of money set forth in the first column of Schedule A hereto annexed, and thereafter, annually, such sum or sums of money as shall, during the year then past, have been expended by such Council in the maintenance and repair of any portion of such road or pass as aforesaid: Provided that the total amount paid in any subsequent year in respect of any such road or pass shall not exceed the amount allocated in the second column of Schedule A to this Act for such road or pass: and further, provided that such Divisional Council shall have levied a rate of not less than one half-penny in the pound on all the immovable property rateable within such division.

Minister to be satisfied of actual expenditure and due and satisfactory performance of the work.

3. No such payment as in the preceding section mentioned shall be made to any Divisional Council until such Council shall prove to the satisfaction of the Minister by proper vouchers and duly certified accounts that the amount for which payment is sought has been actually expended upon such road or pass or portion thereof as the case may be, and until the Minister shall have been satisfied from the report of the Inspecting Officer to be appointed by him for the purpose, that the work has been duly and satisfactorily performed.

Council to keep account of expenditure on such roads and passes.

4. The Divisional Council of every such division as aforesaid shall cause an exact and particular account to be kept of all moneys expended upon the maintenance and repair of the road or pass, or portion thereof, in its division, in respect of which aid may be given under this Act, and such account shall be kept in such manner as to show separately and correctly the expenditure really and *bona fide* made by such Council upon such road or pass, or portion thereof, as the case may be.

Certain contributions for maintenance of mountain passes determined.

5. Notwithstanding anything to the contrary in "The Road Act, 1864," or any other law, the several contributions payable and receivable by certain Divisional Councils in consideration of the maintenance of mountain passes, as set forth in Schedule B to this Act, shall, from and after the taking effect of this Act, cease and determine; but every right and liability in respect of such contributions, which was in existence at the said date, shall be judged of in all respects as if this Act had not been passed.

Responsibility of Divisional Councils for maintenance and repair of roads and passes.

6. Nothing contained in this Act shall be taken or construed so as to relieve any Divisional Council of the responsibility now resting upon it for the maintenance and repair of any road or pass in its division, nor shall the Colonial Government be held responsible in respect of any such road or pass by reason of anything contained in this Act.

Definition of word Minister.

7. In this Act the word "Minister" shall mean the responsible Minister to whom the Governor shall from time to time assign the working of this Act.

Digitised by the University of Pretoria, Library Services, 2016

8. This Act may be cited for all purposes as "The Roads and Passes Maintenance Act, 1892." Short title.

SCHEDULE A.

Schedule A.

Name of Pass.	Estimate for Repair and Maintenance, 1892-93.	Annual Contribution for subsequent Maintenance.	Division.
	£	£	
Bain's Pass ..	250	200	Paarl and Worcester.
Great Zwarteberg Pass	400	400	Oudtshoorn and Prince Albert.
Mitchell's Pass ..	300	300	Ceres and Tulbagh.
Montagu Pass ..	300	300	George.
Sir Lowry Pass ..	250	250	Stellenbosch and Caledon.
George to Storms River	1,000	850	George, Knysna and Humansdorp.
Garcia's Pass ..	1,500	250	Riversdale.
Southey's Pass ..	500	225	Swellendam.
Robinson's Pass ..	250	225	Mossel Bay and Oudtshoorn.
Prince Alfred's Pass ..	1,500	450	Knysna and Uniondale.
Meiring's Poort ..	250	250	Oudtshoorn and Prince Albert.
Barkly Pass	200	200	Barkly East.
Katberg Pass ..	100	100	Queen's Town.
Katberg Pass ..	100	100	Stockenstrom.
Zuurberg Pass ..	200	200	Alexandria.
Penhoek Pass ..	400	200	Wodehouse.
Pakhuis Pass ..	300	250	Clanwilliam and Calvinia.
Grey's Pass ..	300	250	Piquetberg and Clanwilliam.
	8,100	5,000	

SCHEDULE B.

Schedule B.

Road Maintenance Contributions.

Payable by the Divisional Council of	Receivable by the Divisional Council of		Amount.
1. Prince Albert	Beaufort West ..	(1)	£100
2. Victoria West		(2)	£100
3. Oudtshoorn		(3)	£100
Fraserburg	Ceres		£75
Caledon	Stellenbosch		£150
Port Elizabeth ..	Alexandria		£200
Bredasdorp	Caledon		£60

Digitised by the University of Pretoria, Library Services, 2016

No. 39—1892.] [Promulgated 2nd September, 1892.

ACT

To further amend in certain respects the "Imvani and Indwe Railway and Coal Mines Act," No. 3 of 1882.

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

Governor may contract with party willing to construct railway mentioned in Act 3 of 1882, Act 11 of 1886, and Act 26 of 1887.

1. Notwithstanding anything to the contrary contained in section one, sub-section (*c*) of the "Imvani and Indwe Railway and Coal Mines Act No. 3 of 1882," it shall and may be lawful for the Governor to agree with the individual, individuals or joint stock company, willing to construct the railway in the said Act, and in Acts Nos. 11 of 1886 and 26 of 1887 mentioned, for payments as follows in addition to the grants of land authorised by section one, sub-sections (*b*) and (*c*) of the said Act No. 3 of 1882; that is to say, either

(1) The full sum of fifty thousand pounds specified in section one, sub-section (*a*) of the said Act No. 3 of 1882, or

(2) A sum of money which, including the value of the aforementioned land at one pound per morgen, shall be equal to one-fifth of the total cost of the said line of railway, such payments being subject to the condition that the railway be constructed upon the standard gauge, and with the ruling gradient, viz.:—three feet six inches, and one in forty, of the Cape Government Railways:

Provided always that no such payments as are in this section provided for shall be agreed upon or shall be made unless the railway aforesaid be constructed so as to join the eastern line at a point at or near Sterkstroom.

Repeal of section 17, Act No. 3 of 1882.

2. The seventeenth section of Act No. 3 of 1882 shall be and the same is hereby repealed.

Right to purchase railway at any time after 20 years.

3. At any time after the expiration of twenty years from the date of opening for public traffic of the said railway or any section thereof, the Governor shall have the right to purchase the railway and also all buildings and plots of land acquired under Act No. 3 of 1882, and used in connection with the working of the said railway, together with all rolling stock, engines, carriages, plant, machinery, and every matter or thing belonging or connected with the said railway, as also the telegraph and apparatus, wire, instruments, and every matter or thing connected with the working thereof, upon terms to be settled by agreement with the proprietors, or, failing such settlement, upon terms to be arranged by arbitration, such arbitration to be conducted in accordance with the Lands and Arbitrations Clauses Act No. 6 of 1882.

Short title and effect of Act.

4. This Act shall be read as one with Act No. 3 of 1882, Act No. 11 of 1886, and Act No. 26 of 1887, and may be cited as the "Imvani and Indwe Railway and Coal Mines Act Amendment Act, 1892."

Digitised by the University of Pretoria, Library Services, 2016

No. 40—1892.] [Reserved.

ACT

To Amend the Law relating to Marriage.

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

Repugnant laws repealed.

1. So much of any law as may be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

Marriage with deceased wife's sister lawful.

2. It shall be lawful for any widower to marry the sister of his deceased wife, provided such sister be not the widow of a deceased brother of such widower, or to marry any female related to him in any more remote degree of affinity than the sister of his deceased wife, save and except any ancestor of or descendant from such deceased wife.

Such marriages already contracted, valid, if not declared dissolved or invalid by Court.

3. Any marriage contracted between persons both of whom shall now be living which would be void, or voidable, by reason of any law by this Act repealed, shall be deemed to be as valid as if duly solemnized after the taking effect hereof; provided such marriage shall not have been dissolved or declared invalid by the decree of any competent court.

Marriage with sister of wife divorced prohibited.

4. Nothing in this Act contained shall be deemed to legalise or render valid the marriage of a man with the sister of a wife from whom he has been divorced.

Short title

5. This Act may be cited for all purposes as "The Marriage Law Amendment Act, 1892."

Digitised by the University of Pretoria, Library Services, 2016

Digitised by the University of Pretoria, Library Services, 2016

ACTS OF THE CAPE PARLIAMENT.

No. 1—1893.] [Promulgated 29th June, 1893.

ACT

To Apply a further Sum not exceeding One Hundred and Thirty-six Thousand and Eighty-one Pounds Sterling for the service of the year ending the 30th June, 1893.

Preamble.

WHEREAS it is necessary to provide for certain expenditure necessarily incurred and to be incurred during the year ending the 30th June, 1893, in addition to the sums provided by the Acts No. 2 and 29 of 1892: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Public Revenue charged with £136,081.

1. The public revenue of the Colony of the Cape of Good Hope is hereby charged towards the service of the year ending on the 30th June, 1893, with a further sum of One Hundred and Thirty-six Thousand and Eighty-one Pounds Sterling in addition to the several sums provided for by the said Acts No. 2 and 29 of 1892.

How to be applied.

2. The money granted by this Act shall be applied to the purposes and services expressed in the Schedule annexed hereto, and more particularly specified and set forth in the explanatory detailed Schedule to this Act submitted to Parliament.

Short title.

3. This Act may be cited for all purposes as the "Additional Appropriation 1892-'93 Act, 1893."

SCHEDULE.

Schedule.

Additional Appropriation, 1892-'93.	Establishments.	Services, exclusive of Establishments.	Total.	Required to be provided for.
	£	£	£	£
1. Ministerial Department of Colonial Secretary	2,824	33,546	36,370	36,370
2. Ministerial Department of Treasurer of the Colony	..	38,898	38,898	13,001
3. Ministerial Department of Attorney-General	565	765	1,330	1,330
4. Ministerial Department of Commissioner of Crown Lands and Public Works ..	666	90,908	91,574	85,074
5. Ministerial Department of Secretary for Native Affairs	81	225	306	306
Grand Total	4,136	164,342	168,478	136,081

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1893.] [Promulgated 29th June, 1893.

ACT

To apply a Sum not exceeding Six Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1894.

Preamble.

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

Revenue charged with £600,000 towards service of year ending 30th June, 1894.

1. The public revenue of the Colony of the Cape of Good Hope is hereby charged towards the service of the year ending the 30th June, 1894, with a sum not exceeding Six Hundred Thousand Pounds Sterling (£600,000), which sum shall be applied towards the service of the year in conformity with the estimates of the expenditure for the said year which have been presented to Parliament.

Short title.

2. This Act may be cited for all purposes as "The Appropriation (part 1893-94) Act, 1893."

No. 3—1893.] [Promulgated 12th July, 1893.

ACT

To Provide for Prevention of the Spread of the Disease known as Rabies.

Preamble.

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

Governor may proclaim area under operation of this Act.

1. It shall be lawful for the Governor, whenever it shall be shown to him to be expedient so to do, to declare, by proclamation to be published in the *Gazette*, any district in this Colony, or any portion of such district, to be an area coming under the operation of this Act; and the Governor may, in and by such proclamation, issue rules and regulations to be of force and effect in the area proclaimed as aforesaid for preventing the spread of the disease known as Rabies, and may from time to time repeal, alter or amend any such proclamation, rule or regulation.

Rules and regulations under the Act.

2. The rules and regulations issued by virtue of the last preceding section may provide for all or any of the following matters:

(*a*) The appointment, control and duties of officers for carrying out the provisions of this Act.

(*b*) The mode of destruction of all dogs whose destruction may be necessary under this Act, and the disposition of the carcases of dogs so destroyed.

(*c*) The removal of any dogs from or their introduction into any such area.

Digitised by the University of Pretoria, Library Services, 2016

(*d*) The muzzling, control, detention or custody of dogs which it shall not be deemed necessary to destroy.

(*e*) Generally for carrying out the provisions of the Act and preventing the spread of Rabies.

Local Regulations.

3. Whenever in any municipality, borough or village, there shall be in force any local bye-laws, rules or regulations regarding the muzzling or destruction of dogs, the Governor may by proclamation suspend the operation of such bye-laws, rules or regulations for the period during which rules and regulations made under this Act shall be in force in such municipality, borough or village, but such suspension shall not affect anything done or any proceedings pending under the suspended bye-laws, rules or regulations at the time of the promulgation of such proclamation.

Meaning of word "dog."

4. The word "dog" shall, for the purposes of this Act, be taken to include female as well as male dogs, and shall also include any other animal subject to the disease known as Rabies which the Governor may specify under the rules and regulations issued under this Act.

Penalty clause.

5. Any person contravening any of the provisions of any proclamation, rule or regulation made under this Act, or wilfully obstructing any authorised person in the due execution of any of the said provisions, shall be deemed guilty of an offence against this Act, and shall, upon conviction thereof before the court of the Resident Magistrate of the district in which the offence shall have been committed, be liable to penalties to be provided by such regulations, which penalties shall not be greater than a fine not exceeding fifty pounds sterling, and in default of payment, imprisonment, with or without hard labour, for any period not exceeding three months, unless such fine be sooner paid.

Short title.

6. This Act may be cited for all purposes as "The Rabies Act, 1893."

No. 4—1893.] [Promulgated 18th August, 1893.

ACT

To Amend "The Colonial Forces Act, 1892."

Amendments in Colonial Forces Act, 1892.

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

1. "The Colonial Forces Act, 1892," is hereby amended as follows:

(*a*) In the forty-third section, at the end thereof, shall be inserted the following proviso: "Provided that every such club or association when so called out for active service may at its request be supplied with such distinctive uniform or badge as the Governor may from time to time by regulation direct."

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1893.

(*b*) In the eighty-seventh section, the words "with officers of Her Majesty's regular forces" and the words "officers of Her Majesty's regular and" shall be expunged.

(*c*) In the one hundred and fifth section, after the word "use," shall be inserted the words "and for the requisition from those who possess them of such buildings, wagons, horses, oxen and gear, together with such provisions, forage and other necessaries as shall be needed for the service of such forces."

Offences by members of colonial forces against members of regular forces.

2. Whenever Her Majesty's regular and colonial forces are associated together under one command, every act committed by members of the colonial forces which would be an offence under "The Colonial Forces Act, 1892," if directed against the officers, men, or institutions of the colonial forces, shall, if directed against the officers, men, or institutions of Her Majesty's regular forces, be deemed to be such offence, and shall involve the penalties prescribed for such offence by the said Act; provided that such member of the colonial forces shall be tried for such offence by the same court as if the offence had been committed against a member of the said colonial forces.

Short title and effect of Act.

3. This Act shall be read as one with "The Colonial Forces Act, 1892," and may be cited as "The Colonial Forces Act Amendment Act, 1893."

No. 5—1893.] [Promulgated 18th August, 1893.

ACT

To Repeal "The Exhibition Act, 1892."

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

Repeal of Act 26 of 1892.

1. The "Exhibition Act, 1892," is hereby repealed.

Rights and liabilities existing.

2. All rights and liabilities now existing shall, notwithstanding the repeal of the said Act, be determined under its provisions, as if still unrepealed.

No. 6—1893.] [Promulgated 18th August, 1893.

ACT

To Exempt Transfer of Certain Lands for School Purposes from Transfer Duty, Stamp Duty, and Fees of Office.

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

Transfers of school property to trustees exempt from transfer duty, stamp duty and fees of office.

1. As often as the Superintendent-General of Education shall, by writing under his hand, certify his desire that any land with

Digitised by the University of Pretoria, Library Services, 2016

or without buildings, used or to be used exclusively for the purposes of any Undenominational Government Aided School, or of any Aided Boarding Establishment or Teachers' Dwelling House in connection with such school, shall be transferred to trustees, no transfer duty, stamp duty, or fees of office, shall be paid or be leviable in respect of any such transfer, anything in "The Transfer Duty Consolidation and Amendment Act, 1884," "The Stamp and Office Fees Act, 1884," or any other law to the contrary notwithstanding. No. 8—1893.

No. 7—1893.] [Promulgated 15th August, 1893.

ACT

To Apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1894.

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:— Preamble.

1. The public revenue of the Colony of the Cape of Good Hope is hereby charged towards the service of the year ending the 30th June, 1894, with a sum not exceeding Four Hundred Thousand Pounds Sterling (£400,000), which sum shall be applied towards the service of the year in conformity with the estimates of the expenditure for the said year which have been presented to Parliament. Revenue charged with £400,000 towards service of year ending 30th June 1894.

2. This Act may be cited for all purposes as "The Second Appropriation (part 1893-94) Act, 1893." Short title.

No. 8—1893.] [Promulgated 18th August, 1893.

ACT

To Amend the "Fiscal Divisions Extension Act, 1888."

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:— Preamble.

1. The sixth section of Act No. 30 of 1888, commonly called the "Fiscal Divisions Extension Act, 1888," is hereby repealed. Repeal of section 6, Act 30, 1888.

2. From and after the 1st day of July, 1893, each of the two divisions referred to in section five of the said Act shall be bound to maintain at its own expense the sections of all main roads situate within the limits of each division. Maintenance of main roads

3. This Act may be cited as the "Fiscal Divisions Amendment Act, 1893." Short title.

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1893.] [Promulgated 29th August, 1893.

ACT

To Amend in certain respects the Act No. 22 of 1872, intituled "Table Bay Docks and Breakwater Management Act."

Preamble.

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

Power to remit dock dues on submarine cable and its appurtenances.

It shall be lawful for the Harbour Board of Table Bay, with the previous sanction of the Governor, to remit, in certain special cases in which it may from time to time be deemed expedient to do so, the dock dues leviable in terms of the Act No. 22 of 1872, upon submarine telegraph cable and the appurtenances thereof, under such rules, regulations and restrictions as may, with the like previous sanction, and after due notice in the *Gazette*, be imposed.

No. 10—1893.] [Promulgated 29th August, 1893.

ACT

To Amend the provisions under which Loans for Irrigation purposes are redeemed.

Preamble.

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

Annual payment in respect of Loans for Irrigation purposes.

1. In lieu of the annual rent charge prescribed by section sixty-five of "The Irrigation Act, 1877," and by the "Irrigation Act Amendment Act, 1880," for the redemption of loans granted under the provisions of those Acts and of "The Municipalities Irrigation Works Loan Act, 1879," there shall be payable in respect of all such loans the amount set forth in the Schedule to "Local Works Loans Act, 1882."

Act to apply to amounts remaining unpaid on account of loans issued under the Irrigation Acts.

2. The provisions of this Act shall extend and apply to all amounts remaining unpaid on account of loans already issued under the said Irrigation Acts No. 8 of 1877, 28 of 1879, and 7 of 1880.

Short title.

3. This Act may be cited for all purposes as "The Irrigation Act Amendment Act, 1893."

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1893.] [Promulgated 29th August, 1893.

ACT

To Exempt private land in respect of which there shall be Registered Servitudes of Outspan, from the provisions of certain Laws.

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

Repeal of repugnant laws.

1. So much of "The Divisional Councils Act, 1889," "The Fencing Act, 1883," "The Fencing Law Amendment Act, 1891," "The Pounds Act, 1892," or of any other Law as may be repugnant to or inconsistent with the provisions of this Act, is hereby repealed.

Meaning of occupier.

2. For the purposes of this Act the term "occupier" shall mean any person, company, or co-partnership in actual occupation, or entitled as owner, to occupy any land alienated from the Crown.

No lease of public outspan subject to servitude.

3. It shall not be lawful for any Divisional Council to let or lease any portion of any private land which shall be subject to a registered servitude of outspan.

Impounding of animals belonging to occupier of land subject to servitude of outspan.

4. The powers of impounding conferred by section fifty of "The Pounds Act, 1892," shall not extend to any animals belonging to or in the lawful custody or possession of the occupier of any land which is subject to a registered servitude of outspan.

Fencing of land in respect of which a servitude of outspan is registered.

5. Nothing in the "Fencing Law Amendment Act, 1891," contained shall be deemed to entitle any Divisional Council to require any occupier to join in or submit to the fencing of land in respect of which a servitude of outspan is registered.

Short title.

6. This Act may be cited as "The Public Outspans Act, 1893."

No. 12—1893.] [Promulgated 29th August, 1893.

ACT

To Give Municipal, Borough and Town Councils, and Village Management Boards further Power to make Bye-laws and Regulations.

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

Power to Municipalities and other local bodies to make regulations.

1. Notwithstanding anything to the contrary contained in any law, it shall be lawful for any Board or Council of any Municipality, Borough or Town, or for any Village Management Board

Digitised by the University of Pretoria, Library Services, 2016

No. 12—1893.

to frame bye-laws or regulations for all or any of the following purposes:

(*a*) For suppressing or preventing, or restricting and regulating the making, buying, selling, dealing in, conveying or delivering of the article known as Kaffir beer within such Municipality, Borough, Town or Village, as the case may be, or any part or parts thereof.

(*b*) For prohibiting or restricting and regulating the carrying, use and possession by natives, being Kaffirs, Fingoes, Basutos, Hottentots, Bushmen, and the like, save such as are entitled to the privileges conferred upon registered voters by the Act No. 39 of 1887, of knobkerries, cudgels, bludgeons or other weapons of any description within such Municipality, Borough, Town or Village as the case may be, or any part or parts thereof, and for the seizure and forfeiture of any such knobkerries, cudgels, bludgeons or other weapons carried, used or possessed contrary to the provisions of any such bye-law or regulation.

Right of search.

2. Every Board or Council aforesaid acting pursuant to such regulations by their servants or agents, and every police constable or officer of excise may upon reasonable suspicion that there is in any house or hut any Kaffir beer, in violation of such regulations, enter and search for such beer, and if any such beer be found the occupier of such house or hut shall be deemed *prima facie* to have contravened such regulations. Any beer found may be seized, and on conviction of such occupier may be declared forfeited and be destroyed.

Beer forfeited.

Powers of location inspectors.

3. The Inspector of any Native Location within such Municipality, Borough, Town, or Village shall have the powers in the last section conferred upon police constables.

Penalties for breach of regulations duly approved and published.

4. Every bye-law or regulation duly made under the provisions of this Act shall, when approved of by the Governor, be published in the *Gazette*, and any person who shall be convicted of a contravention of any such bye-law or regulation so approved of and published, and any person who shall interfere with or resist any duly appointed officer or person in the lawful execution of his duty under any such bye-law or regulation, shall be liable to a fine of not exceeding five pounds or in default of payment to imprisonment with or without hard labour for any period not exceeding three months unless such fine be sooner paid.

Short title.

5. This Act may be cited as "The Local Bodies' Increased Powers Act, 1893."

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1893.] [Promulgated 29th August, 1893.

ACT

To vest certain Lands in the Municipal Council of Woodstock.

WHEREAS it is expedient for the better management of the Municipality of Woodstock that all vacant Crown land situate within the said Municipality shall be vested in the said Municipality:

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

All vacant Crown land in Municipality to be vested in Council thereof.

1. From and after the passing of this Act all vacant Crown land, situate within the Municipality of Woodstock, and all right, title and interest in the same, shall be, and the same are hereby vested in the Council of the Municipality of Woodstock.

But not to be alienated, except under provisions of Municipal Act, 1882.

2. The provisions of clauses one hundred and sixty to one hundred and sixty-three of the Municipal Act, 1882, shall apply to the sale, alienation or lease of any of the said lands, and the said Council shall not be authorised or permitted to sell, lease or otherwise alienate the said land, or any portion thereof, without having first complied with the provisions of the said sections.

Governor to have right of resumption.

3. The Governor shall at all times have the right of resuming the whole or a portion of the said land, if required for public purposes, without compensation except for improvements to the said land: and the amount of such compensation shall be agreed upon by the parties concerned, or failing such agreement shall be determined by arbitration.

Rights of access reserved.

4. Nothing in this Act contained shall be deemed, construed or taken to deprive the owner of any property situate within the said Municipality of any right of access to such property over any portion of the said land which at the date of the taking effect of this Act was used as a public thoroughfare.

No. 14—1893.] [Promulgated 12th September, 1893.

ACT

To Create the Office of a Minister of Agriculture, to abolish the Office of Secretary for Native Affairs, and to amend the designation of and provide for the assignment of duties to certain Ministerial Officers.

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

Office of Secretary for Agriculture established.

1. From and after the taking effect of this Act there shall be in this Colony a certain office, to be called the office of "Secretary for Agriculture."

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1893.

Appointment made by Her Majesty to be held during pleasure.

2. The person to hold the said office shall be appointed by Her Majesty the Queen, and shall hold office during Her Majesty's pleasure, and shall be charged with such duties as Her Majesty shall from time to time assign to him.

Sections 3, 4 and 8 of Act No. 1 of 1872 and Section 8 of Act No. 18 of 1874, to apply to office and Secretary for Agriculture.

3. The provisions of sections 3, 4 and 8 of the Act No. 1 of 1872 and of section 8 of the Act No. 18 of 1874 shall apply to the said office and the Secretary for Agriculture as though the said office and the said Secretary had been therein specifically mentioned and referred to.

Salary of Secretary for Agriculture; he may be Prime Minister.

4. The Secretary for Agriculture shall from the date of his appointment receive salary at the same rate at which those officers receive salary who are named in section 2 of the Act No. 32 of 1879, which was revived under and by virtue of the provisions of Act No. 28 of 1887, and he may be the Prime Minister.

Alteration of designations of certain officers.

5. Notwithstanding anything to the contrary contained in the Act No. 1 of 1872, the officers therein styled "The Treasurer of the Colony" and "The Commissioner of Crown Lands and Public Works" shall be respectively styled "The Treasurer" and "The Commissioner of Public Works."

Office of Secretary for Native Affairs to be discharged by Prime Minister or other Minister.

6. The office of Secretary for Native Affairs constituted under the Act No. 1 of 1872 shall be and is hereby abolished, and the duties and functions hitherto assigned to and exercised by the Secretary for Native Affairs shall, from and after the taking effect of this Act, be discharged and performed by the Prime Minister of this Colony for the time being, or by any other Minister to whom the Governor may assign the same.

Meaning of the word "Minister" in the interpretation of any law.

7. In the interpretation of any law the word "Minister" shall mean that member of the Executive Council to whom the administration of that law is assigned, unless there be anything in the context inconsistent with or repugnant to such interpretation: Provided that whenever by any law the exercise of any power or the performance of any duty or function is conferred or imposed on or assigned to any Minister therein named, such power, duty, or function may legally be exercised or performed by any other Minister to whom the Governor may assign the exercise or performance of the same.

Prime Minister to have right of debate in either Council or Assembly.

8. The Prime Minister shall, notwithstanding that save as aforesaid he shall not hold one of the offices referred to in the third section of the Act No. 1 of 1872, be deemed to be included in the empowering provisions of the fourth section of that Act.

Short title.

9. This Act shall take effect upon the promulgation thereof, and may be cited as the "Minister of Agriculture Act, 1893."

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1893.] [Promulgated 29th August, 1893.

ACT

To Amend the "Fish Protection Act, 1890."

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

Repeal of first section of "Fish Protection Act, 1890."

1. The first section of "The Fish Protection Act, 1890," is hereby repealed.

Governor may make regulations for certain purposes.

2. The Governor may from time to time make, alter or revoke regulations for all or any of the following purposes, that is to say:

(1) To provide for the more effectual protection and improvement of fish, and the government and management of any public rivers, lakes or waters in which fishing may be carried on.

(2) For imposing and prescribing conditions and rules for the regulation of fishing.

(3) For the registering of all boats and nets employed in fishing.

(4) For determining the times and seasons at which the taking of any species of fish shall commence and cease.

(5) To provide for and regulate the description and form of nets to be used in fishing, the size of the meshes thereof, or the prohibition of any specified description or form of nets or meshes or any machine, instruments or appliances whatsoever tending to impede the lawful taking of fish or to be in any manner detrimental to the preservation or increase of fish.

(6) To provide for the protection of sea birds and seals by imposing conditions and rules regulating the catching, killing, or pursuing of the same, and the shooting at or disturbing of the same, and to provide for the management, government and protection of Seal and Guano Islands, being Crown land, by prescribing the time, mode and place of landing on such islands, by prescribing rules for the conduct of persons whilst on such islands, and by defining, limiting or withdrawing any public right in or on the foreshore of such islands.

And such regulations, when published in the *Gazette*, shall have the full force of law with regard to those rivers, lakes, or other waters which are described in the enacting proclamation, and any person who shall be guilty of a breach of any such regulations so published, shall be liable to a penalty not exceeding five pounds, and on default of payment thereof to imprisonment with or without hard labour for a period not exceeding one month.

Meaning of "fish."

3. "Fish" shall include crawfish.

Short title.

4. This Act may be cited as "The Fish Protection Act, 1893."

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1893.] [Promulgated 29th August, 1893.

ACT

To Amend the Constitution Ordinance.

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

Repeal of repugnant laws.

1. So much of the Constitution Ordinance, or of any other law as may be repugnant to or inconsistent with the provisions of this Act, is hereby repealed.

Cumulative voting abolished.

2. From and after the taking effect of this Act it shall not be lawful, at any election of members of the House of Assembly for the Electoral Division of Cape Town, for any voter in and for such Electoral Division to give to any one candidate for such election more votes than one.

Date of taking effect and short title of Act.

3. This Act shall take effect on a date to be proclaimed in the *Gazette* by the Governor, and may be cited for all purposes as "The Constitution Ordinance Amendment Act, 1893."

No. 17—1893.] [Promulgated 29th August, 1893.

ACT

To Apply a Sum not exceeding Thirty-three Thousand Nine Hundred and Thirteen Pounds Seventeen Shillings and Twopence Sterling for the purpose of meeting and covering certain Unauthorised Expenditure.

Preamble.

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

Revenue charged with £33,913 17s. 2d.

1. The public revenue of this Colony is hereby charged with a sum not exceeding thirty-three thousand nine hundred and thirteen pounds seventeen shillings and twopence sterling, which sum shall be paid for unauthorised expenditure beyond the amounts voted or appropriated for the service of the financial year ended the 30th June, 1892, as described at page 254 of the "Report of the Controller and Auditor-General, with Statements of the Revenue and Expenditure and Appropriation Accounts of the Colony of the Cape of Good Hope for the financial year 1891-92" [G. No. 1—'93], presented to both Houses of Parliament by command of the Governor.

Short title.

2. This Act may be cited as the "Unauthorised Expenditure Act, 1893."

Digitised by the University of Pretoria, Library Services, 2016

No. 18—1893.] [Promulgated 12th September, 1893.

ACT

To Provide for the Management of the Harbour of East London.

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

Repeal of repugnant laws.

1. So much of the Ordinance No. 21 of 1847, or of any other law as may be repugnant to or inconsistent with the provisions of this Act, is hereby repealed.

Management of Harbour and works vested in Board of Commissioners.

2. The management and control of the Harbour of East London, as well as of the wharves, quays, jetties and works of improvement, construction or maintenance connected with the said Harbour, and the said wharves, quays and jetties, whether such works already exist or may hereafter come into existence, and the management and control of the Port Office and officials of the said Harbour and all matters connected with the said Port Office and officials, other than matters relating to quarantine and the quarantine laws and regulations, shall be vested in a Board of Commissioners (hereinafter described as "the Board") to be appointed and elected under this Act, and the date of such vesting shall be the date of the first meeting of such Board.

Limit of jurisdiction of Board.

3. The local limits within which the Board shall have jurisdiction, management and control shall be defined by the Governor by Proclamation in the *Gazette*, and the Governor may by similar proclamation from time to time alter the definition of the said local limits as occasion may require.

Constitution of Board.

4. The Board shall consist of seven persons, one of whom shall be the Mayor of East London for the time being, two of whom shall be elected by the constituency established by this Act and in the manner hereinafter provided, and four of whom shall be appointed by the Governor; provided that of the persons so appointed no more than two shall be officers holding offices of profit under Her Majesty the Queen; provided further that in the event of the East London Chamber of Commerce being incorporated, then in regard to the future three persons shall be appointed by the Governor, and one shall be annually elected by the Chamber of Commerce; and provided further that every appointed Commissioner shall hold office for a period of three years from the date of his appointment, unless the Governor shall sooner revoke his appointment, or unless his office shall become vacant, but after the expiration of such period such Commissioner may be again nominated by the Governor or elected as a Commissioner, subject to the provisions of section seventeen of this Act.

List of those payers of wharfage dues to be made who are constituted the electors.

5. The Sub-Collector of Customs at East London or the officer for the time being acting as such shall, as soon as may be after the taking effect of this Act, and as soon as may be after the 30th day

Digitised by the University of Pretoria, Library Services, 2016

of June in every year thereafter, cause a true list to be made, in alphabetical order, of all persons being inhabitants of, or having their places of business in East London, who shall during the last preceding twelve months have paid, to the amount of not less than ten pounds sterling, such wharfage dues as are for the time being lawfully imposed, and setting forth the Christian and the surname of such person at full length, or the name of the firm (in case the said wharfage dues shall have been paid by a firm and not by a single individual), the place of his or their business and the amount of such wharfage dues which such person or firm shall have paid during the period aforesaid, and such person or persons shall be entitled to vote for the Commissioners to be elected under this Act, in proportion to the amount of wharfage dues paid by them severally, according to the Schedule of this Act.

Sub-Collector of Customs to post lists.

6. As soon as the list in the last preceding section shall be complete the Sub-Collector of Customs shall cause copies thereof to be posted in some convenient place, heading such list with the words "List of persons and firms entitled to vote at the election of Commissioners of the East London Harbour Board."

How lists may be corrected.

7. In case within one month after the posting of such list, as in the last preceding section mentioned, any complaint shall be made to the Sub-Collector of Customs of the omission therefrom of the name of any person or firm whose name ought to have appeared upon such list, or of the insertion therein of the name of any person or firm which name ought to be expunged from such list, it shall be the duty of the said Sub-Collector of Customs to investigate such complaint, and to add, or remove, any such name to or from such list as to him shall seem just.

When lists complete persons named therein to be voters.

8. The persons and firms named in such list, after the additions to or alterations of the same (if any) have been made by the said Sub-Collector of Customs as aforesaid, shall be the voters entitled to vote at the election of the Commissioners as hereinafter provided, and as often as a firm shall be named in such list of voters, such firm shall be entitled to vote by one member thereof, and any such person or firm may by authority, in writing, appoint some person to appear and vote for such person or firm as the case may be, and such person so appointed, provided he be the local representative or agent of such person or firm, shall be qualified to be elected as a Commissioner of the said Board as in the next succeeding section mentioned.

Qualification of a Commissioner.

9. Every person being a voter as in the last preceding section provided, and whether he be so individually or as a member, local representative or agent of a firm, shall be qualified to be elected a Commissioner of the said Board: Provided, however, that no such voter shall be competent to be a candidate for the said office unless he shall have received and accepted a requisition to become such candidate signed by not less than five duly qualified voters,

Digitised by the University of Pretoria, Library Services, 2016

and shall have transmitted such requisition, with his acceptance thereof, to the Sub-Collector of Customs at least ten days before any election is appointed to take place.

Lists of candidates and of requisitionists to be published.

10. The Sub-Collector of Customs shall, at least seven days before the day appointed for the election, cause the names of the candidates for election thereat, together with the names of the persons who have signed such requisitions, to be published in the *Gazette* and one or more newspapers published in East London.

Sub-Collector of Customs to be returning officer.

11. Every election under this Act shall take place before the Sub-Collector of Customs, who shall be the returning officer for that purpose, on such day and at such place as he shall appoint, and the poll shall be kept open from nine o'clock a.m. until one o'clock p.m.

How poll to be taken.

12. The poll shall be taken by some officer to be appointed for that purpose by the Sub-Collector of Customs, and the voting at such poll shall be by voting papers.

Scrutineers.

13. Every candidate may, if he thinks fit, appoint a scrutineer to see that the votes are fairly taken and recorded.

Who to be declared elected.

14. At the close of the election the returning officer shall ascertain the number of votes given for each candidate; and so many candidates being equal to the number of be chosen as shall have the greatest number of votes shall be declared by the returning officer to be duly elected.

When and how elected Commissioners to enter on office.

15. At the first election of Commissioners under this Act, the voters shall elect, in manner by this Act provided, three Commissioners, who shall be deemed to enter upon their office on the first Monday following, in conjunction with the Commissioners appointed by the Governor, and the Mayor of East London, for the time being.

How seats vacated by lapse of time.

16. Of the persons so elected as in the last preceding section mentioned, the Commissioner who shall have been elected by the smallest number of votes shall vacate his seat at the expiration of one year from the date of entering upon his office; and in case from any cause it shall be uncertain which of them shall vacate his seat, the returning officer shall cause such question to be determined by lot; and the remaining two elected Commissioners shall vacate their seats in like manner at the expiration of two years and three years respectively, and upon the retirement from office of such Commissioners respectively, they shall be succeeded by Commissioners who shall be elected as hereinbefore provided, so that at every annual election after the first there shall be elected one Commissioner, who shall enter upon his office on the first Monday after his election, and continue therein for three years, and every retiring Commissioner shall be eligible for re-election.

Resignation, &c., of Commissioners.

17. If any elected or appointed Commissioner shall die, resign, become insolvent, or assign his estate for the benefit of his creditors, or shall be absent from the ordinary meetings of the Board for a

Digitised by the University of Pretoria, Library Services, 2016

No. 18—1893.

period of three calendar months, or shall be absent from six consecutive meetings without the consent of the Board, his office shall become vacant and a Commissioner shall be elected or appointed in his place and stead, in manner hereinbefore provided, who shall hold office for the remainder of the term for which the Commissioner who has vacated office and whom he shall succeed would otherwise have remained in office: Provided that any appointed Commissioner whose seat may become vacant through absence, may be re-appointed by the Governor, for the remainder of his term of three years.

In case of equality of votes at election.

18. In case of an equality of votes at any election of a Commissioner under this Act, the returning officer shall determine by lot which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot be both elected.

Chairman to be chosen.

19. The Commissioners present at the first meeting of the Board constituted under the provisions of this Act, and at the first meeting held after every annual election, respectively, shall elect from amongst themselves a chairman, who shall hold such office for the space for one year, and who shall, when present, preside at all the meetings of the Board: Provided that if at any meeting such chairman shall not be present, the members attending such meeting shall elect from among themselves a chairman to preside at such meeting: and provided also, that in case at any election of a chairman under the provisions of this section any two or more Commissioners shall have an equal number of votes, it shall be decided by lot which of such Commissioners shall be the chairman.

In case of his absence.

Quorum.

20. At every meeting of the Board three Commissioners shall form a quorum; and in case the votes of the Commissioners upon any question before them shall be equally divided, the presiding member shall, in addition to his original or deliberative vote, have a casting vote: Provided, however, that no Commissioner shall vote on any question in which he shall have any personal or pecuniary interest, directly or indirectly, under a penalty not exceeding one hundred pounds sterling, to be sued for by the Attorney-General.

Payment to Commissioners.

21. Every Commissioner appointed or elected under the provisions of this Act shall be entitled to receive the sum of twenty shillings for each attendance at the meetings of the Board: Provided, however, that no Commissioner shall receive more than one hundred pounds sterling in any one year in respect of such attendances.

Provisions as to reclaimed land.

22. All land which may have been heretofore reclaimed or may be hereafter reclaimed from the sea or the Buffalo River within such limits as the Governor may define by proclamation, and all drift sands within the said limits, and all foreshore of the sea and Buffalo River within the said limits shall be vested in the

Digitised by the University of Pretoria, Library Services, 2016

Board, and may with the consent of the Governor, and subject to the approval of the Governor as to terms and conditions, be disposed of by sale or on lease: Provided that the Governor may reserve, or at any time, without compensation, save for improvements, resume so much of the land hereby vested in the Board as is or may be required for public purposes. Notice of intention to sell or lease any such land shall be advertised for three months in the *Gazette* and at least one local newspaper.

Legal name and powers of Board.

23. The Board constituted by this Act shall be a Board of Commissioners within the meaning of the Ordinance No. 21 of 1847, and shall be known for all legal purposes as "The East London Harbour Board," and shall be a corporation having power:—

(*a*) To acquire, take, hire, purchase and hold and to sell, lease, deliver, transfer or otherwise lawfully dispose of, for the purposes of this Act, all property, movable or immovable, subject always to the provisions of this Act and any other law and to any engagements or obligations lawfully imposed, or at any time in evidence affecting such property.

(*b*) To sue or prosecute and be sued or prosecuted in any legal proceedings under its corporate name.

(*c*) To make powers of attorney, contracts, deeds and other written documents or instruments for the purposes of this Act, signed on behalf of the Board by its Secretary or any Commissioner duly authorised thereto by the said Board.

(*d*) To regulate its meetings and the procedure thereat in any manner not inconsistent with or repugnant to any provisions of this Act.

(*e*) To frame (subject to the approval of the Governor) rules and regulations for the general management, control and good order of the said Harbour and the port office, wharves, quays and jetties connected therewith, for imposing charges upon steam tugs, steam launches, hulks, passenger, cargo and other boats plying for hire within the local limits of the said Harbour as defined by this Act; for the inspection of the tugs, launches and boats above mentioned, and the machinery and gear thereof, and for regulating the number of passengers that may be carried therein.

(*f*) To pay and discharge all costs, charges and expenses lawfully incurred in carrying out any of the provisions of this Act, subject to the provisions of Act No. 16 of 1857.

(*g*) To employ or dismiss, with the approval of the Governor, for the construction, maintenance and management of the said Harbour and other works in connection therewith,

Digitised by the University of Pretoria, Library Services, 2016

and for the conduct of the business thereof, so many officers, and to pay them such salaries and impose upon their appointments such conditions as may be deemed expedient, and it shall not be competent for any officer who may be employed under the authority of this Act, under pain of immediate dismissal, to be directly or indirectly connected or concerned in any business or trade whatsoever, nor shall any such officer accept any fees or emoluments other than his salary or allowance paid by the said Board without the previous sanction of the said Board and the approval of the Governor.

(*h*) To recommend the licensing of pilots for the Port of East London, subject to the provisions of Act 16 of 1857, and to make regulations for the control of such pilots, subject to the approval of the Governor and to the provisions of the said Act.

(*i*) To collect all revenues due to the Board under the provisions of this Act, and make regulations for that purpose, subject to the approval of the Governor.

Harbour dues may be imposed.

24. It shall be the duty of the Board and it is hereby empowered to demand and receive harbour dues, charges and duties at such rates as may from time to time be fixed by regulations to be promulgated by the Governor after consultation with the Board. The harbour dues and charges and duties upon the landing and shipping of goods at wharves, jetties and quays, to be imposed by the regulations aforesaid, and the rates of tonnage by measurement or weight of goods, shall be fixed by the Governor in consultation with the Harbour Board upon a scale estimated to yield, in conjunction with any other revenues accruing to the Board (after defraying all charges incurred by the Board in working the dredgers, in haulage, and for other necessary outlays), a clear total sum adequate to the payment of the interest upon the sum of £150,000, hereinafter in this Act mentioned, and upon any further loans for, or advances to, the said Board. The said harbour dues and charges may from time to time be increased or reduced subject to the adequacy of the nett yield to provide for the interest required as aforesaid: Provided that until such regulations shall be promulgated, all dues, charges and duties provided for by existing laws shall, notwithstanding the repeal of such laws by this Act, continue to be levied by the Governor or the Board, as the case may be.

Powers under Act 18 of 1869 vested in Board, and moneys payable under certain Acts to be paid to Board.

25. All powers vested in the Governor by the Act No. 18 of 1869 shall from and after the taking effect of this Act be vested in the said Board, and all sums of money received or recovered under the provisions of the said Act, the Act No. 7 of 1871, as amended by the Act No. 22 of 1878, and the Act No. 26 of 1875, shall be accounted for and paid over to the said Board for the purposes of this Act.

Digitised by the University of Pretoria, Library Services, 2016

Harbour master or port captain.

26. The Harbour Master or Port Captain of the Harbour of East London shall be appointed by and be under the control of and responsible to the said Board and shall have and exercise all powers and rights and be subject to all duties and obligations which he would have had and exercised or to which he would have been subject if this Act had not passed, provided that in all matters relating to quarantine laws and regulations and the carrying out of the same he shall, as heretofore, be under the control of and responsible to the Governor. Arrangements for the maintenance and repair of the life-boat and rocket brigade equipments with their appurtenances and apparatus shall be defined by agreement between the Government and the Board.

Moneys heretofore raised on loan for improvement of harbour to remain charge on general revenue except £150,000.

27. Except as hereinafter provided, all moneys heretofore raised by the Colonial Treasury on loan under the authority of any law for the purpose of improving the Harbour of East London shall remain a debt due by the Colonial Treasury, and the interest on any such loans shall remain a charge upon the general revenue of this Colony; provided, however, that of the moneys so raised the sum of £150,000 shall be a debt due by the said Board to the said Treasury, and the interest upon the said sum at the rate of four per centum per annum shall remain a charge upon the revenues of the said Board, the first payment of such interest being due six months after the date of the first meeting of the Board, and thereafter at the end of every six months. A complete and detailed list of all the works, jetties, wharves, buildings, lands and properties to be taken over by the Board, with a plan of the same, shall be framed, and no new works, nor any additions to such works, jetties, wharves, and buildings as shall be specified in the list, shall be undertaken by the Board when the cost thereof shall be estimated to exceed the sum of £500, without the previous sanction of the Governor had and obtained.

Audit of accounts.

28. The Board shall, and is hereby required to cause true, exact and particular accounts to be kept of all its receipts and payments, and such accounts shall be audited by the Controller and Auditor-General under the provisions of the "Audit Act, 1875," and of the "Audit Act Amendment Act, 1888."

Annual Report.

29. The Board is also required to render an Annual Report, made up to the 31st of December in each year, on every work which shall have been commenced, carried on, or completed during the year then ended: and such Report shall be laid before Parliament, together with an abstract for the year, of the accounts rendered to the Controller and Auditor-General under the preceding section.

Unexpended balances when Act takes effect to be paid to Board.

30. Any balances of money voted by Parliament out of the general revenue of the Colony, for the improvement of the Harbour of East London or the prosecution of harbour works at the said Harbour, which may remain unexpended at the time when this Act comes into operation, shall be placed at the disposal of and paid over to the Board for the purposes of this Act. The amount of such balances so paid over to the Board shall not exceed £10,000.

Digitised by the University of Pretoria, Library Services, 2016

No. 18–1893.

31. The following provisions shall apply to the landing, loading, unloading and shipment of goods at the Buffalo Harbour railway station and wharves:—

Board to do work now performed by Railway Department. Loading, &c.

(1) The Board shall do all work now performed by the Railway Department, including landing, sorting, invoicing and loading or unloading and shipment of goods, and shall make such charges for the same as the Board may think fit, subject to the approval of the Governor; provided that the loading of trucks shall be subject to the approval of the Railway Department, and that the load of any truck shall be increased or decreased, and any other adjustment and mode of securing and protecting goods shall be made which may be required by the Railway Department. The sum of one shilling per ton shall be paid by the Railway Department to the Board for the work hitherto performed by the said Department, which shall in future be performed by the Board, except upon goods forwarded to or from East London, in respect of which the sum of sixpence per ton shall be paid by the said Department.

Invoicing.

(2) In invoicing of traffic for conveyance by railway the railway tariff and regulations shall be conformed to, and any errors or inaccuracies shall be promptly rectified.

Loading notes and abels.

(3) Trucks shall not be despatched without being supplied with invoices, loading notes and labels.

Board responsible or railway freight.

(4) The Board shall be responsible for the railway freight on goods invoiced as "paid," from the wharf, or received at the wharf, invoiced "to pay," and shall pay such charges daily to the Railway Department.

Board responsible loss or damage.

(5) The Board shall repay to the Railway Department all claims for loss of or damage to goods loaded into trucks by the Board, which the Railway Department may be compelled to pay, unless there is satisfactory evidence that the goods were delivered in good condition to the Railway Department.

Board to unload trucks or pay demurrage.

(6) Trucks arriving at the wharf with goods from East London or other railway station, must be discharged and released within twenty-four hours of arrival, and if not so discharged and released within such time the Board shall be liable to pay to the Railway Department demurrage at the rate of 4s. per day (of twenty-four hours) or portion of day, for each short truck; 8s. per day for each bogie; and 1s. for every tarpaulin: provided that until the sheds to be authorised by Parliament during its present Session are completed, demurrage shall not be payable until after forty-eight hours of arrival of the trucks.

Digitised by the University of Pretoria, Library Services, 2016

(7) Trucks loaded for despatch shall be placed by the Board in the sidings appointed for the purpose by the Railway Department, and trucks arriving at the Harbour loaded or empty shall be delivered by the Railway Department to the Board on sidings appointed by the said Department for the purpose. Trucks to be taken and delivered at appointed sidings.

(8) The Railway Department shall at all times have the power to take the numbers of trucks standing in the Harbour Board yard and sidings and to examine the contents, labels and invoices attached to such trucks, and shall have access to and the right of examination of all goods and luggage in the Harbour Board sheds and warehouses, with a view to tracing any missing or over-carried goods or luggage; also the right of examination of all invoices, accounts and books, in which may be recorded railway charges, and the Board shall render to the Railway Department such daily, monthly, and other accounts, as the Railway Department may require. Railway department may examine trucks.

(9) The Board shall be responsible for Government property not vested in the Board whilst in their custody, and pay for all damage done to it, unless such damage shall be caused by fire, tempest, act of God, or Queen's enemies. Board responsible for Government property.

(10) The Board shall not allow goods to be conveyed to or from the wharf by horse, mule or ox wagon, without the consent of the Governor, excepting in the case of goods conveyed to East London for local use, or for the purpose of being stored there, or of produce of East London conveyed to the wharf, or of goods or produce conveyed from districts not connected by rail. Conveyance of goods to and from wharf.

32. Every rule or regulation made by the Board under this Act shall, on approval by the Governor, be published in the *Gazette*, and on such publication shall have the force of law, and any person contravening any such rule or regulation duly published as aforesaid, shall be liable to a fine not exceeding ten pounds, or in default of payment to imprisonment with or without hard labour for any period not exceeding three weeks unless such fine be sooner paid; and all fines under this Act may be recovered in the Court of the Resident Magistrate of East London, and shall be paid over and become the property of the Board, for the purposes of this Act. Penalties for contravention of rules and regulations.

33. Any Government officers on the fixed establishment, now employed about the Harbour of East London, being contributors to the Civil Service Widows' Pension Fund, who may enter the service of the Harbour Board, shall be entitled to continue their contributions to the said fund, and to participate in the benefits thereof to the same extent and in the same manner as they would have done if they had remained in the Civil Service, and the retiring Provisions for retiring pensions, &c.

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1893.

pensions of all Civil servants who may enter the service of the Harbour Board shall be paid partly out of the public revenue and partly by the Harbour Board, according to rules to be framed and approved by the Governor in like manner as is provided by Act 31, 1888, section thirteen, and the contributions now payable to the Civil Service Pension Fund by any of the said officers shall henceforth be paid to the Harbour Board.

Operation and Short title of Act.

34. This Act shall come into operation on a day to be fixed by the Governor by proclamation in the *Gazette*, and may be cited as "The East London Harbour Board Act, 1893."

Schedule.

SCHEDULE.

Votes according to dues paid in respect of every Commissioner to be elected:—

Not less than	£10	and not exceeding	£100,	one Vote.
Exceeding	£100	„	£200,	two Votes.
„	£200	„	£300,	three „
„	£300	„	£400,	four „
„	£400	„	£500,	five „
„	£500	„	£600,	six „
„	£600	„	£700,	seven „
„	£700	„	£800,	eight „
„	£800	„	£900,	nine „
„	£900	and upwards,		ten „

No. 19—1893.] [Promulgated 12th September, 1893.

ACT

To Consolidate, Amend and Declare the Law relating to Bills of Exchange, Cheques and Promissory Notes.

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

PART I.

PRELIMINARY.

Interpretation of terms.

1. In this Act, unless the context otherwise requires—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes a counter claim, claim in reconvention, and set off.

"Banker" includes a body of persons, whether incorporated or not, who carry on the business of banking.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

Digitised by the University of Pretoria, Library Services, 2016

"Bill" means bill of exchange, and
"Note" means promissory note.
"To note" is to make a notarial minute in accustomed form of the circumstances of dishonour and at the time of dishonour of a bill or note.
"Delivery" means transfer of possession, actual or constructive, from one person to another.
"Holder" means the payee or endorsee of a bill or note, who is in possession of it, or the bearer thereof.
"Indorsement" means an indorsement completed by delivery.
"Issue" means the first delivery of a bill or note, complete in form, to a person who takes it as a holder.
"Person" includes a body of persons, whether incorporated or not.
"Value" means valuable consideration.
"Written" includes printed, and
"Writing" includes print.
"Non-business days" include

(*a*) Sunday, New Year's Day, Good Friday, Easter Monday, Whit Monday, Ascension Day, Queen's Birthday, Christmas Day;

(*b*) Any day appointed by proclamation by the Governor as a solemn fast or day of thanksgiving, or as a public holiday under the "Public Holiday Act, 1889," or any other law.

"Payment in due course" means payment made at or after the maturity of a bill to the holder thereof in good faith and without notice that his title to the bill is defective.

"Month" means calendar month.

PART II.

BILLS OF EXCHANGE.—FORM AND INTERPRETATION.

Bill of Exchange defined.

2. (1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person, or to bearer.

(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

Digitised by the University of Pretoria, Library Services, 2016

(*a*) An indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount, or

(*b*) A statement of the transaction which gives rise to the bill, or

(*c*) A statement on the bill that it is drawn against specified documents attached thereto for delivery or acceptance or on payment of the bill as the case may be, or

(*d*) A statement on the bill that it is drawn under or against a specified letter of credit or other similar authority,

is unconditional.

(4) A bill is not invalid by reason

(*a*) That it is not dated;

(*b*) That it does not specify the value given, or that any value has been given therefor;

(*c*) That it does not specify the place where it is drawn, or the place where it is payable.

Effect where different parties to the bill are the same person.

3. (1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill, drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument at his option, either as a bill of exchange or as a promissory note.

Address to drawee.

4. (1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange.

Certainty required as to payee.

5. (1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3) Where the payee is a fictitious or non-existing person, or a person not having capacity to contract, the bill may be treated as payable to bearer.

What bills are negotiable.

6. (1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

Digitised by the University of Pretoria, Library Services, 2016

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sum payable.

7. (1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(*a*) With interest.

(*b*) By stated instalments.

(*c*) By stated instalments, with a provision that upon default in payment of any instalment, the whole shall become due.

(*d*) According to an indicated rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof.

Bill payable on demand.

8. (1) A bill is payable on demand—

(*a*) Which is expressed to be payable on demand, or at sight, or on presentation; or

(*b*) In which no time for payment is expressed.

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

Bill payable at a future time.

9. A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

(1) At a fixed period after date or sight.

(2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain. An instrument expressed to be payable on or after the occurrence of a specified

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1893.

event, which may or may not happen, is not a bill, and the happening of the event does not cure the defect.

Omission of date in bill payable after date.

10. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly: Provided that

(1) Where the holder in good faith and by mistake inserts a wrong date, and

(2) In every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Antedating and post-dating.

11. (1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance or indorsement, as the case may be.

(2) A bill is not invalid by reason only that it is antedated, or post-dated, or that it bears date on a Sunday.

Computation of time of payment.

12. Where a bill is not payable on demand the day on which it falls due is determined as follows:—

(1) The Act No. 3 of 1856 is repealed, and if the date on which any bill would fall due shall be a non-business day, the due date of the bill shall be the next business day.

(2) There are no days of grace in this Colony.

(3) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the day of payment.

(4) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest, if the bill be noted or protested for non-acceptance or for non-delivery.

Case of need.

13. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

Optional stipulations by drawer or indorser.

14. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(1) Negativing or limiting his own liability to the holder;

Digitised by the University of Pretoria, Library Services, 2016

(2) Waiving as regards himself some or all of the holders' duties.

Definition and requisites of acceptance.

15. (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 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 acceptance.

16. 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, 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.

General and qualified acceptances.

17. (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 varies the effect of the bill as drawn. In particular an acceptance is qualified which is—

(*a*) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated:

(*b*) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn:

(*c*) Local, that is to say, an acceptance to pay only at a particular specified place:

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to 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.

Inchoate instruments.

18. (1) Where a simple signature on a blank paper to which a stamp has been affixed by the signer is delivered by him in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount, such stamp

Digitised by the University of Pretoria, Library Services, 2016

will cover using the signature for that of the drawer, or the acceptor, or an indorser; and in like manner, when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within the time agreed on or if no time be agreed on then within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact:

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time, and strictly in accordance with the authority given.

Delivery.

19. (1) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto:

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(*a*) In order to be effectual must be made either by or under the authority of the party drawing, accepting or indorsing, as the case may be.

(*b*) May be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill. But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3) Where a bill is no longer in the possession of a party who has signed it as a drawer, acceptor or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Digitised by the University of Pretoria, Library Services, 2016

CAPACITY AND AUTHORITY OF PARTIES. No. 19—1893.

Capacity of parties.

20. (1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract: Provided that to the validity of a bill, accepted or indorsed by a woman, the renunciation of the benefits *senatus consulti vèllijani*, and *authentica si qua mulier*, shall not be requisite.

(2) Where a bill is drawn or indorsed by an infant or minor, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Signature essential to liability.

21. 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 and unauthorised signature.

22. Subject to the provisions of this law, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority: Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to forgery.

Procuration signature.

23. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

Person signing as agent or in representative capacity.

24. (1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon: provided that if such person had no authority to sign for and on behalf of such principal, or in a representative character, he shall be personally liable on the said Bill.

(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.

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1893.

THE CONSIDERATION OF A BILL.

Value and holder for value.

25. (1) Valuable consideration for a bill may be constituted by—

(*a*) Any cause sufficient to support an action founded on contract or agreement;

(*b*) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

Accommodation bill or party.

26. (1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2) An accommodation party is liable on 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.

Holder in due course.

27. (1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:

(*a*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;

(*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular, the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to fraud.

(3) A holder whether for value or not who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Digitised by the University of Pretoria, Library Services, 2016

Presumption of value and good faith

28. (1) Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value.

(2) Every holder of a bill is *primâ facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

Negotiation of Bills.

Negotiation of bill.

29. (1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without endorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the 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 negative personal liability.

Requisites of a valid indorsement.

30. An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

(1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself.

(2) It must be an indorsement of the entire bill. A partial 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.

Digitised by the University of Pretoria, Library Services, 2016

(5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

Conditional indorsement.

31. Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

Indorsement in blank and special indorsement.

32. (1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to, or to the order of, himself or some other person.

Restrictive indorsement.

33. (1) An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill be endorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay D. or order for collection."

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorise him to do so.

(3) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights, and subject to the same liabilities, as the first indorsee under the restrictive indorsement.

Negotiation of overdue or dishonoured bill.

34. (1) Where a bill is negotiable in its origin it continues to be negotiable until it has been—

(*a*) Restrictively indorsed, or

(*b*) Discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can require or give a better title than that which the person from whom he took it had.

Digitised by the University of Pretoria, Library Services, 2016

(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 *primâ facie* deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect 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.

Negotiation of bill to party already liable thereon.

35. Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this Act re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Rights of the holder.

36. The rights and powers of the holder of the bill are as follows:—

(1) He may sue on the bill in his own name.

(2) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill.

(3) Where 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.

37. (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the

Digitised by the University of Pretoria, Library Services, 2016

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.

38. (1) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

Rules as to presentment for acceptance and excuses for non-presentment.

39. (1) A bill is duly presented for acceptance which is presented in accordance with the following rules:—

(*a*) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue.

(*b*) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only.

(*c*) Where the drawee is dead, presentment may be made to his executor.

(*d*) Where the drawee is insolvent or has assigned his estate, presentment may be made to him or his trustee or assignee.

(*e*) A presentment through the post office, if in due course, is sufficient.

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(*a*) Where the drawee is dead or insolvent, or is a fictitious person, or a person not having capacity to contract by bill.

(*b*) Where after the exercise of reasonable diligence such presentment cannot be effected.

(*c*) Where although the presentment has been irregular, acceptance has been refused on some other ground.

Digitised by the University of Pretoria, Library Services, 2016

(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

Non-acceptance.

40. When a bill is duly presented for acceptance, and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

Dishonour by non-acceptance and its consequences.

41. (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 Act is refused or cannot be obtained; or

(*b*) When presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Duties as to qualified acceptances.

42. (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(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 indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance whereof due notice has been given. Where a bill has been accepted as to part it must be protested as to the balance.

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

Rules as to presentment for payment.

43. Subject to the provisions of this Act, a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged. A bill is duly presented for payment which is presented in accordance with the following rules:—

(1) Where the bill is not payable on demand, presentment must be made on the day it falls due.

(2) Where the bill is payable on demand, then, subject to the provisions of this Act presentment must be made within a reasonable time after its issue in order to render

Digitised by the University of Pretoria, Library Services, 2016

the drawer liable, and within a reasonable time after its indorsement in order to render an indorser liable. In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3) Presentment must be made by the holder, or by some person authorised to receive payment on his behalf, at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person can there be found.

(4) A bill is presented at the proper place:—

(*a*) Where a place of payment is specified in the bill, and the bill is there presented.

(*b*) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.

(*c*) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary residence, if known.

(*d*) In any other case, if presented to the drawee or acceptor 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 his executor, if such there be, and, with the exercise of reasonable diligence, he can be found.

(8) A presentment through the Post Office, if in due course, is sufficient.

Excuses for delay or non-presentment for payment.

44. (1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with—

(*a*) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be

Digitised by the University of Pretoria, Library Services, 2016

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 indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

(*e*) By waiver of presentment, express or implied.

(*f*) Where the drawee or acceptor is insolvent or has assigned his estate.

Dishonour by non-payment.

45. (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 Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and endorsers accrues to the holder.

Notice of dishonour and effect of non-notice.

46. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged: Provided that—

(1) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission.

(2) Where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

Rules as to notice of dishonour.

47. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:—

(1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(2) Notice of dishonour may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

Digitised by the University of Pretoria, Library Services, 2016

(3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

(6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

(7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is, in fact, misled thereby.

(8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself or to his agent in that behalf.

(9) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to an executor if such there be, and, with the exercise of reasonable diligence, he can be found.

(10) Where the drawer or indorser is insolvent notice may be given either to the person himself or to the person in whom his estate is by law vested.

(11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

(12) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter. In the absence of special circumstances, notice is not deemed to have been given within a reasonable time, unless—

(*a*) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.

(*b*) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the business day next after the dishonour of the bill, if there be a post at a convenient hour on that day; and if there be no such post on that day, then by the next post thereafter.

Digitised by the University of Pretoria, Library Services, 2016

(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.

48. (1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence.

When the cause of delay ceases to operate, the notice must be given with reasonable diligence.

(2) Notice of dishonour is dispensed with—

(*a*) When after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged.

(*b*) By waiver, express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice.

(*c*) As regards the drawer in the following cases, namely—

(1) Where drawer and drawee are the same person.

(2) Where the drawee is a fictitious person, or a person not having capacity to contract.

(3) Where the drawer is the person to whom the bill is presented for payment.

(4) Where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill.

(5) Where the drawer has countermanded payment.

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1893.

(*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.

49. (1) Where a bill has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not been previously dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment. If it be not so protested, the drawer and indorsers are discharged, with the exception of the drawer or payee of a cheque on a banker as hereinafter defined.

(2) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(3) Subject to the provisions of this Act, when a bill is noted or protested it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(4) Where the acceptor of a bill becomes insolvent, or assigns his estate, or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(5) A bill must be protested at the place where it is dishonoured: Provided that—

(*a*) When a bill is presented through the Post Office, and returned by post dishonoured, it may be protested at the place to which it is returned, and on the day of its return, if received during business hours, and if not received during business hours, then not later than the next business day.

(*b*) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must if protested be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary

Digitised by the University of Pretoria, Library Services, 2016

(6) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(*a*) The person at whose request the bill is protested.

(*b*) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(7) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(8) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested when necessary with reasonable diligence.

Duties of holder as regards drawee or acceptor.

50. (1) When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable.

(2) When by the terms of a qualified acceptance, presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonour should be given to him.

(4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties.

Funds in hands of drawee.

51. A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument.

Liability of acceptor.

52. 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:

(*a*) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill.

Digitised by the University of Pretoria, Library Services, 2016

(*b*) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his endorsement.

(*c*) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

Liability of drawer or indorser.

53. (1) The drawer of a bill, by drawing it—

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenour, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(*b*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill, by indorsing it—

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenour, and that if it be dishonoured he will compensate the holder or a subsequent indorser, who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(*b*) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;

(*c*) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

Stranger signing a bill liable as indorser.

54. Where a person signs a bill otherwise than as drawer or acceptor, he or she thereby incurs the liabilities of an indorser to a holder in due course.

Measure of damages against parties to dishonoured bill.

55. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:—

(1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(*a*) The amount of the bill.

(*b*) Interest thereon in accordance with the stipulation if any in the bill or from the time of presentment for payment if the bill is payable on demand, or from the maturity of the bill in any other case.

(*c*) The expenses of noting, and where the protest has been extended, the expenses of the protest.

Digitised by the University of Pretoria, Library Services, 2016

(2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer, or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange, with interest thereon until the time of payment.

(3) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

Transferor by delivery and transferee.

56. (1) Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it, he is called a transferor by delivery.

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a bill, thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

DISCHARGE OF BILL.

Payment in due course.

57. (1) A bill is discharged by payment in due course or *pro tanto* by payment of part notified by indorsement on the bill if such payment be made by or on behalf of the drawee or acceptor.

(2) Subject to the provisions hereinafter contained when a bill is paid by the drawer or an indorser it is not discharged; but

(*a*) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(*b*) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

Banker paying demand draft where indorsement is forged.

58. When a bill payable to order on demand is drawn on a banker, and the banker pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to

Digitised by the University of Pretoria, Library Services, 2016

show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority; provided such endorsement does not purport to be that of a person who is a customer of the banker at the branch on which the said bill is drawn.

Acceptor the holder at maturity.

59. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

Express waiver.

60. (1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged. The renunciation must be in writing on the bill, unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

Cancellation.

61. (1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any endorser who would have had a right of recourse against the party whose signature is cancelled is also discharged.

(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

Alteration of bill.

62. (1) Where a bill or acceptance is materially altered then the liability of all parties who were parties to the bill at the date of alteration, and who did not assent to it, must be regarded as if the alteration had not been made; but any party who has himself made, authorised, or assented to the alteration, and all subsequent indorsers are liable on the bill as altered.

(2) Amongst material alterations are the following:—Any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Digitised by the University of Pretoria, Library Services, 2016

ACCEPTANCE AND PAYMENT FOR HONOUR.

Acceptance for honour *supra* protest.

63. (1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill, *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3) An acceptance for honour, *supra* protest, in order to be valid must—

(*a*) Be written on the bill, and indicate that it is an acceptance for honour.

(*b*) Be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour its maturity is calculated from the date of noting for non-acceptance, and not from the date of acceptance for honour.

Liability of acceptor for honour.

64. (1) The acceptor for honour of a bill, by accepting it, engages that he will, on due presentment, pay the bill according to the tenour of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(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.

Presentment to acceptor for honour.

65. (1) Where a dishonoured bill has been accepted for honour, *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be posted or forwarded for presentment not later than the business day next following its maturity for presentment to him.

Digitised by the University of Pretoria, Library Services, 2016

(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.

Payment for honour *supra* protest.

66. (1) Where a bill has been protested for non-payment, any person not being a party already liable thereon, 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.

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honour *supra* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is substituted for, and succeeds to both the rights and duties of the holder, as regards the party for whose honour he pays, and all parties liable to that party.

(6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7) Where the holder of a bill refuses to receive payment *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments.

Holder's rights to duplicate of lost bill.

67. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenour, giving adequate security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so.

Digitised by the University of Pretoria, Library Services, 2016

Action on lost bill.

68. In any action or proceeding upon a bill other than a proceeding for provisional sentence, the court or a judge may order that the loss or non-production of the instrument shall not be set up by way of defence, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

Bill in a Set.

Rules as to set.

69. (1) Where a bill is drawn in a set, each part of a set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

(2) Where a holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders, in due course he is liable on every such part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course he is liable to the holder thereof.

(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws.

Rules where laws conflict.

70. Where a bill drawn in one country, colony, or state is negotiated, accepted, or payable in another, the rights, duties and liabilities of the parties thereto are determined as follows:—

(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of every supervening contract, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made.

Digitised by the University of Pretoria, Library Services, 2016

Provided—

(*a*) Where a bill is issued out of this Colony it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

(*b*) Where a bill, issued out of this Colony, conforms as regards requisites in form to the law of the Colony, it may for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in this Colony.

(2) Subject to the provisions of this Act, the interpretation of the contract of the drawer, indorser, acceptor, or acceptor *supra* protest of a bill, is determined by the law of the place where such contract is made:

Provided that where a bill drawn and payable in this Colony is indorsed elsewhere, the indorsement shall, as regards the payer, be interpreted according to the law of this Colony.

(3) The duties of the holder with respect to presentment for acceptance or payment, and the necessity for, or sufficiency of, a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

(4) Where a bill is drawn out of but payable in this Colony, and the sum payable is not expressed in currency of the Colony, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts, at the place of payment on the day the bill is payable.

(5) Where a bill is drawn in one country, colony, or state and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III.

CHEQUES ON A BANKER.

Cheque defined.

71. A cheque is a bill of exchange drawn on a banker payable on demand. Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

Presentment of cheque for payment.

72. Subject to the provisions of this Act—

(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

Digitised by the University of Pretoria, Library Services, 2016

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

Revocation of banker's authority.

73. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

(1) Countermand of payment;

(2) Notice of the customer's death;

(3) Notice of the customer having become insolvent.

Crossed Cheques.

General and special crossings defined.

74. (1) Where a cheque bears across its face an addition of—

(*a*) The words "and Company," or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or

(*b*) Two parallel transverse lines simply either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

Crossings by drawer or after issue.

75. (1) A cheque may be crossed generally or specially by the drawer.

(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3) Where a cheque is crossed generally the holder may cross it specially.

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5) Where the cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, he may cross it specially to himself.

Crossing a material part of cheque.

76. A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

Duties of bankers as to crossed cheques.

77. (1) Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Digitised by the University of Pretoria, Library Services, 2016

(2) Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or to his agent for collection, being a banker.

(3) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection, being a banker, the banker on whom it is drawn shall refuse payment thereof.

(4) Where the banker on whom the cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection, being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid :

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered, otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection, being a banker as the case may be.

Protection to banker and drawer where cheque is crossed.

78. Where the banker on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially to the banker to whom it is crossed, or his agent for collection, being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Effect of crossing on holder.

79. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Protection to collecting banker.

80. Where a banker in good faith, and without negligence, receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Digitised by the University of Pretoria, Library Services, 2016

81. Sections seventy-four to eighty of this Act shall extend to any document issued by a customer of any banker, and intended to enable any person to obtain payment on demand from such banker of the sum mentioned in such document, and shall so extend in like manner as if the said document were a cheque :

Sections 74 to 80 to extend to documents other than cheques; crossed for like object.

Provided that nothing herein contained shall be deemed to render any such document a negotiable instrument.

PART IV.

Promissory Notes.

82. (1) A note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay on demand or at a fixed or determinable future time, a sum certain in money, to or to the order of a specified person, or to bearer.

Promissory note defined.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

83. A note is inchoate and incomplete until delivery thereof to the payee or bearer.

Delivery necessary.

84. (1) A note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenour.

Joint and several notes.

(2) Where a note runs "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note, and any note signed by two or more persons is deemed to be their joint and several note in the absence of a contrary intention appearing upon the face of it.

85. (1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

Note payable on demand.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3) Where a note payable on demand is negotiated it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

86. (1) Where a note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable,

Presentment of note for payment.

Digitised by the University of Pretoria, Library Services, 2016

unless the particular place mentioned is the place of business of the payee, and the note remains in his hands. In any other case presentment for payment is not necessary in order to render the maker liable;

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable; but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

Liability of maker.

87. The maker of a note, by making it—

(1) Engages that he will pay it according to its tenour:

(2) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

Application of Part II to notes.

88. (1) Subject to the provisions in this part, and except as by this section provided, the provisions of this Act relating to bills of exchange, apply, with the necessary modifications, to notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes, namely, the provisions relating to—

(*a*) Presentment for acceptance;

(*b*) Acceptance;

(*c*) Acceptance *supra* protest;

(*d*) Bills in a set.

PART V.

SUPPLEMENTARY.

Good faith.

89. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not, and the authorised sealing with a corporate seal of a Corporation, or the authorised stamping with an official stamp of any Bank or Company, shall be deemed to be sufficient and equivalent to signature or endorsement of any such instrument or writing.

Signature.

90. Where, by this Act, any instrument or writing is required to be signed by any person it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person, by or under his authority.

Digitised by the University of Pretoria, Library Services, 2016

Computation time.

91. Where, by this Act, the reasonable or other time limited for doing any act or thing is less than four days, in reckoning such time, non-business days are excluded.

When noting equivalent to protest.

92. For the purposes of this Act, where a bill or note is required to be protested within a specified time, or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding, and the formal protest may be extended at any time thereafter as of the date of the noting.

Protest when notary not accessible.

93. Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured any landowner or householder of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill. The form given in the Schedule to this Act may be used with necessary modifications, and if used shall be sufficient.

Dividend warrants and coupon for interest may be crossed

94. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of a dividend, to a coupon for payment of interest, and to postal or money orders.

Laws not to be affected by this Law.

95. Nothing in this Act shall affect the provisions of or in any way restrict—

(1) The Stamp Acts or any law for the time being in force relating to the revenue.

(2) The Bank Act, 1891, and the Companies Act, 1892.

(3) The provisions of section nine of the Magistrates' Court Act of 1856.

(4) The procedure and practice in regard to the granting of provisional sentence in judicial proceedings. But all other laws inconsistent with the provisions of this Act shall be, and the same are hereby repealed.

Provision as to bills, &c., dated before Act comes into force.

96. Where a bill, note or other liquid document of debt of such a nature as to be capable of sustaining a claim for provisional sentence, whether dated before or after the taking effect of this Act, is payable on demand, the cause of action upon such bill, note or other liquid document as aforesaid shall for the purposes and provisions of Act No. 6 of 1861 and subject thereto, be deemed to have accrued upon the date of such bill, note, or other liquid document, but save as aforesaid nothing in this Act contained shall affect any bill, note, or cheque dated before the Act shall come into force.

Date of operation and Short title.

97. This Act shall come into force on a day to be fixed by Proclamation in the *Gazette* and shall be known, and may be cited, as the "Bills of Exchange Act, 1893."

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1893.

Schedule.

SCHEDULE.

Form of Protest which may be used when the services of a Notary cannot be obtained.

Know all men, that I, A.B., landowner or householder of , in the District of Cape Colony, at the request of C.D., there being no Notary Public available, did on the day of , 18 , at , demand payment [or acceptance] of the bill of exchange, hereunder written, from E.F., to which demand he made answer [state answer, if any], wherefore, I now, in the presence of G.H. and J.K., do protest the said bill of exchange.

(Signed) A.B.
G.H. } Witnesses.
J.K. }

N.B.—The bill itself should be annexed, or a copy of the bill, and all that is written thereon should be underwritten.

No. 20—1893.] [Promulgated 5th September, 1893.

ACT

To Authorise the raising of a Public Loan of One Hundred Thousand Pounds for the purpose of prosecuting and improving the Harbour Works of Table Bay, and providing greater facilities for the conduct of the Business of the Port.

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

Power to raise loan of £100,000, for improvement of Table Bay Harbour Works, &c.

1. It shall be lawful for the Governor to raise by public loan a sum not exceeding one hundred thousand pounds sterling for the purpose of prosecuting and improving the harbour works of Table Bay, and of effecting improvements at the Docks in respect of the storage of goods and the landing and shipment of cargo.

Application of moneys by Harbour Board.

2. The application of the moneys to be raised as aforesaid for the above purposes shall be entrusted to the Table Bay Harbour Board, and the said Harbour Board shall in respect to such application have and exercise all the powers conferred upon such board by any law.

Capital and interest of loans chargeable upon revenues of Table Bay Harbour Board.

3. Save in cases in which it may be expressly provided by law to the contrary, the capital and interest of all loans raised on the guarantee of the Public Revenue, for the purpose of prosecuting and improving the Harbour Works of Table Bay, shall in the first instance, be chargeable upon the Revenues of the Table Bay

Digitised by the University of Pretoria, Library Services, 2016

Harbour Board, and such Board shall out of such Revenues indemnify the Governor for all moneys paid out of the General Revenue of the Colony on account of the capital or interest of such loans. No. 22—1893.

4. This Act may be cited as "The Table Bay Harbour Loan Act, 1893." Short title.

No. 21—1893.] [Promulgated 5th September, 1893.

ACT

To Provide for the reducing of Gradients and the Relaying of certain portions of existing Railway Lines with Heavy Rails and Sleepers.

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:— Preamble.

1. For the purpose of reducing gradients and relaying the portions of existing railway lines set forth in the Schedule to this Act, it shall be lawful for the Governor to apply out of monies authorised to be raised under the provisions of the "Temporary Loans Act, 1883," the sum of Ninety-eight Thousand Seven Hundred and Fifty Pounds. £98,750 to be applied to reducing gradients and relaying railway lines.

2. This Act may be cited as the "Improvement of existing Railways Act, 1893." Short title.

SCHEDULE.

Reducing gradients between Port Elizabeth and Sandflats	£9,750
Relaying between Worcester and Beaufort West ..	45,000
Substitution of Transverse Sleepers for Iron "Pots," Midland System	30,000
Relaying between East London and Queen's Town ..	9,500
Relaying between Port Elizabeth and Uitenhage ..	4,500
Total ..	£98,750

No. 22—1893.] [Promulgated 5th September, 1893.

ACT

To Amend "The Municipal Act, 1882."

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

1. After the first election of Councillors for any Municipality under the provisions of Act 45 of 1882, no person shall be deemed Interpretation of section fifteen of Act 45 of 1882.

Digitised by the University of Pretoria, Library Services, 2016

No. 22—1893.

to be liable to be rated within the meaning of section fifteen of the said Act, unless he shall be the owner or occupier of immovable property actually assessed in the books of the Municipal Council for the sum of twenty pounds per annum or upwards: Provided that if any immovable property within the Municipality has been omitted from the valuation roll, the owner or occupier of such property may apply to the Council of the said Municipality to value the said property, and the said Council on receiving such application shall cause the said property to be valued at the cost of the said Municipality; and provided further that if after the valuation roll of the Council has been made any immovable buildings have been erected within the Municipality, the Council shall, on the application of the owner or occupier of the said buildings, make a valuation thereof at the cost of the applicant.

Power to Returning Officers to reject nomination of candidates at municipal elections.

2. The Returning Officer at any municipal election held under the provisions of Act 45 of 1882 shall have power to reject the nomination of any candidate not having the qualification under section fifteen of the said Act as interpreted by section one of this Act, or having any of the following disqualifications, viz.:—

(*a*) Having had his estate duly sequestrated as insolvent and not having been rehabilitated.

(*b*) Having been convicted of treason, or murder, or, until the lapse of five years from the date of release, any person convicted of rape, theft, perjury, bribery, of receiving a bribe or of any other corrupt practice at any election, or any infamous crime unless a free pardon shall have been granted.

Provided that it shall be competent for any voter in the Municipality to bring the action of the Returning Officer under this section by motion in review before any competent court.

Power to Mayor or Chairman to declare seat of Councillor vacant.

3. The Mayor or Chairman of any Municipality under Act 45 of 1882 shall have power to declare vacant the seat of any Councillor, on any of the grounds stated in sub-sections (one), (two), (five), of section twenty-two of the aforesaid Act, and also when any such Councillor ceases to possess the qualification under section fifteen of the said Act, as interpreted by section one of this Act, or becomes disqualified on any of the grounds stated in sub-sections (*a*) and (*b*) of section two of this Act, provided it shall be competent for any voter in the Municipality to bring the action of the Mayor or Chairman under this section in review by motion before any competent court.

Procedure in case of equality of votes at election of Mayor.

4. On the election of a Mayor or Chairman of the Municipality under section seventy-four of Act 45 of 1882, should the number of votes be found to be equal for any two or more Councillors, it shall by lot be determined which shall be elected.

Power of Council to make bye-laws for certain purposes.

5. The Council of any Municipality, under Act No. 45 of 1882, may from time to time make, alter, and revoke bye-laws or regulations for all or any of the following purposes:

Digitised by the University of Pretoria, Library Services, 2016

(*a*) For prohibiting brothels, the overcrowding of houses, dwelling-places and rooms, and the erection of objectionable buildings within such Municipality.

(*b*) For regulating the sanitary appliances of closets and privies in connection with buildings within such Municipality and for prohibiting the use of such of them as in the opinion of the Council should not be allowed to continue.

Every bye-law or regulation made under the provisions of this Act shall be deemed to be a bye-law or regulation made under section one hundred and nine of the said Act, No. 45 of 1882, and all the provisions of the said Act with regard to bye-laws or regulations made thereunder shall apply *mutatis mutandis* to bye-laws or regulations made under the provisions of this Act.

Short title of Act.

6. This Act may be cited as the "Municipal Amendment Act, 1893."

No. 23—1893.] [Promulgated 5th September, 1893.

ACT

To Amend the "Northern Railways Act, 1890," and provide for the disposition of Land comprised in the Railway Land Grant, situated in the Territory of British Bechuanaland.

Preamble.

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

Disposal of land of Railway Land Grant in British Bechuanaland.

1. Notwithstanding anything to the contrary contained in the "Northern Railways Act, 1890," or in either of the Agreements set forth in the Schedule to that Act, it shall be lawful for the Governor to dispose of the whole or any portion of the land known as the Railway Land Grant, situated in the territory of British Bechuanaland, upon terms and conditions framed in accordance with the certificate of ownership bearing date the 25th day of October, 1892, and set forth in Schedule A, and with the further agreement entered into between the Colonial Government and the British South Africa Company, bearing date the Eleventh day of August, 1893, and set forth in Schedule B to this Act, provided that the terms and conditions may, with the consent of the said Company, be varied in any particular in manner provided by section six of the Act No. 26 of 1891.

Effect and short title.

2. This Act shall be read as one with the "Northern Railways Act, 1890," and may be cited as the "Northern Railway Land Disposal Act, 1893."

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1893.

Schedule A.

SCHEDULE A.

BRITISH BECHUANALAND.

CERTIFICATE OF OWNERSHIP

Provisionally given for whole grant while ordinary certificates and titles for individual farms are being prepared.

THIS IS TO CERTIFY THAT THE GOVERNMENT OF THE COLONY OF THE CAPE OF GOOD HOPE is entitled to own certain pieces of land containing together six thousand square miles, more or less, situated in the Divisions of *Vryburg*, *Mafeking* and *Kuruman* in *British Bechuanaland*, and represented and described in the diagram hereunto annexed, subject, however, to the following conditions:—

I. That all roads and thoroughfares existing over the land hereby granted shall remain free and uninterrupted, unless the same be closed or altered by competent authority.

II. That the Government shall at all times have the right of entry on the land for such purposes as inspection and survey.

III. That this land is granted free from all mineral reservations in favour of the Crown, but subject to the condition that if under the provision of any existing law, or of any law in future to be passed, any quartz-reef digging, any alluvial digging, or any mine be duly proclaimed upon the said land, then the owner of the land for the time being shall contribute and pay to the Government of British Bechuanaland 10 per cent. of any licence moneys, rents or royalties received by him in respect of such digging or mine for the purpose of defraying the public expenditure necessary for the maintenance of order and good government and the protection of life and limb within the defined limits of such digging or mine or mining area; and shall keep proper books, showing the amount of all such moneys received by him as aforesaid: and in case no such books be kept by such owner, or such books be irregularly kept, then and in that event such owner shall pay such sums as may be necessary to defray the public expenditure as aforesaid, whether such owner shall have received out of the licence moneys, rents or royalties payable in respect of such claims sufficient to defray such expenditure or not: Provided always that if at any time there shall not be receivable by the owners of the said land any licence moneys, rents or royalties in respect of any such duly proclaimed quartz-reef, alluvial digging or mine, then and in that case there shall be payable by such owner to the Government of British Bechuanaland, for the purposes hereinbefore stated, such sum of money yearly as may be agreed upon between the said owner and the said Government, or failing such agreement, as may be decided by an arbitrator or arbitrators appointed in manner provided by the Lands and Arbitrations Clauses Act No. 6, 1882, of the Colony of the Cape of Good Hope.

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1893.

IV. That subject to the provisions of Clause 3 of the Agreement of the 23rd January, 1890, between His Excellency the High Commissioner and the Honourable C. J. Rhodes, so long as the said provisions remain unaltered and in full force, the Government, or any body corporate or person duly authorised by Government, shall at all times have the power, without compensation, of making roads, railways and railway stations, and of conducting telegraphs over, and of taking materials for making or repairing roads and railways from any land hereby granted which has not been improved by cultivation, irrigation or otherwise, and shall further have the power of making roads, railways and railways stations, and of conducting telegraphs over, and of taking material for making or repairing roads or railways from any land hereby granted which has been improved by cultivation, irrigation or otherwise; and of making aqueducts, dams, and drains for the benefit of the public, and of establishing convenient outspans for the use of travellers, on payment to the proprietor of such sum of money in compensation as may be mutually agreed upon by the parties concerned, or, failing such agreement, as three appraisers, one to be appointed by each side, and a third to be chosen by the two others before proceeding to act, or any two of them shall award.

V. That the Government does not undertake to point out the beacons of the land hereby granted, but the proprietor shall be bound to have the limits thereof properly traced and marked by conspicuous and permanent beacons to be by him erected and kept in proper repair at all angles of the said land.

VI. That the land hereby granted shall be further subject to all such duties and regulations as either are already, or shall in future be established respecting lands granted under similar tenure.

Given under my hand and Seal at Vryburg, this Twenty-fifth day of October, 1892.

F. J. NEWTON,
Acting Administrator.

Registered at the Deeds Registry Office
in Vryburg, British Bechuanaland,
this 29th day of October, 1892.
Prov. Reg C. Dec: Vol. iv.
Folio 18. No. 123.

M. C. GENIS,
Registrar.

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1893.

Schedule B.

SCHEDULE B.

MEMORANDUM OF AGREEMENT made in Cape Town, on the 11th day of August, 1893, between the Honourable Cecil John Rhodes, M.L.A., representing the British South Africa Company, of the one part, and the Honourable Sir John Gordon Sprigg, K.C.M.G., M.L.A., Treasurer of the Colony of the Cape of Good Hope, on behalf of the Colonial Government, of the other part.

Whereas under and by virtue of certain two Agreements entered into between His Excellency the High Commissioner, and the Honourable C. J. Rhodes, as representing the British South Africa Company, and the Honourable Sir John Gordon Sprigg, as representing the Government of the Colony of the Cape of Good Hope, both bearing date the 23rd day of January, 1890, certain six thousand square miles of land in British Bechuanaland, now known as the Railway Land Grant, are held by the Colonial Government for joint account in certain shares of itself and the British South Africa Company; and by section four of the second of the said Agreements such land must be sold subject to a substantial quitrent of not less than £1 (one pound sterling) per thousand acres:

And whereas it is expedient that the terms upon which the said land may be sold should be amended:

Now these presents witness as follows, that is to say:—

(1) All lands forming any portion of the Railway Land Grant aforesaid, disposed of at public auction, shall not be sold on quitrent but shall be sold for a capital sum, and every purchaser shall have the option of paying either the whole or a part of the purchase money on the day of sale: provided

(*a*) That if no payment be made on the day of sale, one-tenth of the purchase price shall be paid at six, and one-tenth at twelve months from the day of sale.

(*b*) That if less than one-tenth of the purchase price be paid on the day of sale, the balance of such one-tenth shall be paid at the expiration of six months and the remaining one-tenth at the expiration of twelve months from the day of sale.

(*c*) That if the amount paid on the day of sale be one-tenth or any sum between one-tenth and one-fifth of the purchase price the balance of one-fifth of the purchase price shall be paid at the expiration of twelve months from the day of sale.

(2) Interest on the instalments mentioned in section one shall be paid at the rate of four per centum per annum; and the payment of the instalments together with the interest thereon shall be secured on the day of sale by two good and sufficient sureties to the satisfaction of the Civil Commissioner of the district, or such

Digitised by the University of Pretoria, Library Services, 2016

person as the Colonial Government may approve, which sureties shall bind themselves in regard to such payment as sureties *in solidum* and co-principal debtors renouncing the exceptions of excussion and division.

(3) The expenses of survey, erection of beacons, and of the title and transfer deed, together with the transfer duty payable thereon shall be paid to the Civil Commissioner or other duly authorised person in that behalf on the day of sale.

(4) If the purchaser shall fail to fulfil the obligations mentioned in sections two and three he shall forfeit any payment that may have been made by him, and the land shall be declared not sold, and if deemed expedient shall be again immediately put up to auction.

(5) The purchaser shall be bound to pass a mortgage bond bearing interest at the rate of four per centum per annum in favour of the Colonial Government, for four-fifths of the purchase price, unless he shall have paid on the day of sale more than one-fifth thereof, in which case the amount of the bond shall be for the balance of the purchase price, the purchaser having the right to pay off the amount of the bond, or any portion thereof, not being less than fifty pounds at any time.

(6) If at any time it should appear to the Colonial Government upon petition of any adjacent or neighbouring proprietor that such adjacent or neighbouring proprietor requires a way or road of necessity to or from the land of such adjacent or neighbouring proprietor, the owner of land purchased hereunder, upon which such road is required, shall be bound to grant such way or road of necessity, and to point out the direction and width thereof: Provided that in case of a dispute or difference regarding such road, or its sufficiency, the direction and width of the road shall be decided upon by such body or person as the said Government shall appoint: Provided further that the said owner shall not be bound to allow such road or thoroughfare across land which shall at the time be in a state of cultivation or improvement, and that compensation for the right of way and any damage done shall be paid for by the person or persons for whose benefit and upon whose application the said road is made according to determination by arbitration.

(7) The Colonial Government shall at all times have the right of resuming the whole or a portion of the land if required for public purposes on payment to the proprietor of such sum of money in compensation as may be mutually agreed upon by the parties concerned, or, failing such agreement, as may be determined by arbitration in accordance with the Lands and Arbitration Clauses Act, 1882.

(8) All rights to gold, silver, and precious stones found or discovered at any time on or in lands sold hereunder shall be reserved

Digitised by the University of Pretoria, Library Services, 2016

No. 24—1893.

to the vendors together with a right of ingress to and egress from any mines or works undertaken for mining or prospecting purposes by any person or persons authorised by the Colonial Government. The further right shall be reserved to the vendors to resume proprietorship of any portion of such lands and of the water supply thereof as may be required for the convenient working of mines or works for gold, silver or precious stones, on payment of such sums of money in compensation as may be mutually agreed upon by the parties concerned, or failing such agreement, as may be determined by arbitration.

(9) All land shall be sold subject to the terms and conditions set forth in the Certificate of Ownership of the said Railway Land Grant dated the 25th day of October, 1892, save in so far as clause three of the said Certificate is modified by clause eight of this Agreement; and provided that the rights reserved to the Government of the Territory of British Bechuanaland in clauses four and five of the said Certificate shall also be reserved to the Colonial Government.

In witness whereof the parties hereto have hereunto affixed their respective signatures, at the time and place first above written.

J. GORDON SPRIGG,
Treasurer of the Colony of the Cape of Good Hope.

Witnesses:
THOS. E. FULLER.
D. C. DE WAAL.

C. J. RHODES.
For the British South Africa Company.

Witnesses:
THOS. E. FULLER.
D. C. DEWAAL.

No. 24—1893.] [Promulgated 12th September, 1893.

ACT

To Provide for the Construction of certain Additional Works in connection with Railways.

Preamble

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

Provision for construction of works and rolling stock.

1. For the purpose of constructing the works and providing the rolling stock set forth in the Schedule to this Act, it shall be lawful for the Governor to expend a sum not exceeding Four Hundred and Ninety-six Thousand Four Hundred and Forty-one Pounds Sterling.

Provision as to raising sum of £326,441.

2. For the purposes aforesaid it shall be lawful for the Governor to raise the sum of Three Hundred and Twenty-six Thousand

Digitised by the University of Pretoria, Library Services, 2016

Four Hundred and Forty-one Pounds Sterling from time to time as he may deem expedient either by debentures or stock, or partly by debentures and partly by stock, and the costs necessarily incurred in raising the said loan, including discount, commission, and other incidental charges, shall be a first charge against the amount thereof.

£170,000 to be applied out of available balance under Railway Construction Balances Account Act, 1892.

3. It shall further be lawful for the Governor to apply the sum of One Hundred and Seventy Thousand Pounds out of the available balance under the Railway Construction Balances Account Act of 1892 for the work set forth in the above mentioned Schedule.

Short title.

4. This Act may be cited as the "Railway Additional Works Act, 1893."

SCHEDULE.

		£	s.	d.
1	Additional Rolling Stock	200,000	0	0
2	Additional accommodation for Passenger Traffic and Shunting operations at Cape Town, including purchase of property East of Strand Street	50,000	0	0
3	Locomotive Workshops, Steam Sheds, Pits, &c.	20,000	0	0
4	Salt River—New Station	3,000	0	0
5	Electric Lighting of Trains	5,108	0	0
6	Electric Lighting of Port Elizabeth Stations	5,600	0	0
7	Water Supply	17,066	0	0
8	Additional Station accommodation ..	20,000	0	0
9	Additional Siding accommodation ..	5,850	0	0
10	Additional accommodation for Railway Employés	4,000	0	0
11	Stores, Warehouses and Offices ..	15,000	0	0
12	Bridges, Culverts and Waterways ..	4,347	0	0
13	Signals..	6,470	0	0
14	Postal and Telegraph accommodation ..	1,100	0	0
15	Additional Telegraph Wire, Port Elizabeth to Viljoen's Drift	6,100	0	0
16	Lewis and Marks' Siding and Weighbridge at Vereeniging, and Office and Stable accommodation for Cape Agent at Johannesburg (£62. 0s. 0d.) .	7,096	0	0
17	Orange Free State Collieries Syndicate Siding	3,719	0	0
18	New and Additional Works on Free State Lines	121,985	0	0
	Total	£496,441	0	0

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1893.] [Promulgated 12th September, 1893.

ACT

To Amend the Criminal Law, and to make further provision for the Protection of Women and Girls.

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

Defilement of girl between twelve and fourteen years of age or of female idiot or imbecile woman.

1. Any person who

(1) Unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any girl being of or above the age of twelve years, and under the age of fourteen years; or

(2) Unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any female idiot or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile;

shall be guilty of a contravention of this section, and upon conviction shall be liable to a fine not exceeding five hundred pounds, or to be imprisoned, with or without hard labour, for any period not exceeding five years:

Provided that it shall be a sufficient defence to any charge under sub-section one of this section if it shall be made to appear to the court or jury before whom the charge is brought that the girl at the time of the commission of the offence charged was a prostitute, or that the person so charged was at the said time under the age of sixteen years, or had reasonable cause to believe that the girl was of or above the age of fourteen years:

Provided, also, that nothing in this section contained shall be taken to alter or impair the present provisions of the law with regard to the crime of rape upon girls who are of or above the age of twelve years and under the age of fourteen years.

Householder, &c., permitting defilement of young girl on his premises.

2. Any person who, being the owner or occupier of any premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl of such age as is in this section mentioned to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, shall be guilty of a contravention of this section, and shall

(1) if such girl be under the age of twelve years, be liable upon conviction to be imprisoned, with or without hard labour, for any period not exceeding seven years;

(2) if such girl is of or above the age of twelve and under the age of fourteen years, be liable upon conviction to be imprisoned, with or without hard labour, for any period not exceeding four years:

Digitised by the University of Pretoria, Library Services, 2016

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury before whom the charge is brought, that the person so charged had reasonable cause to believe that the girl was of or above the age of fourteen years.

Unlawful detention with intent to have carnal knowledge.

3. Any person who detains any woman or girl against her will—

(1) In or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man or generally; or

(2) in any brothel;

shall be guilty of a contravention of this section, and shall be liable, upon conviction, to be imprisoned with or without hard labour, for any period not exceeding three years.

Where a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connection, or is in any brothel, a person shall be deemed to detain such woman or girl in or upon such premises, or in such brothel, if with intent to compel or induce her to remain therein such person withholds from such woman or girl, any property belonging to her, or any wearing apparel, or threatens such woman or girl with legal proceedings if she takes away with her such wearing apparel.

No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel.

Power of search.

4. If it appears to any Resident Magistrate on sworn information by any parent, relative or guardian of any woman or girl, or any other person who, in the opinion of the magistrate is *bona fide* acting in the interests of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such magistrate, then such magistrate may issue a warrant authorising any person named therein to search for and take to and detain in a place of safety, such woman or girl until she can be brought before him; and the magistrate before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may require.

The magistrate issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before him, to be dealt with according to law.

A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any man, whether any particular man or generally, and

(*a*) Either is under the age of fourteen years; or

Digitised by the University of Pretoria, Library Services, 2016

26—1893.

(*b*) If of or above the age of fourteen years and under the age of twenty-one years is so detained against her will, or against the will of her father or mother, or any person having the lawful care or charge of her.

(*c*) If of or above the age of twenty-one years is so detained against her will.

Any person authorised by warrant under this section to search for any woman or girl so detained as aforesaid, may enter (if need be by force) any house, building or other place specified in such warrant, and may remove any woman or girl therefrom:

Provided, always, that every warrant issued under this section shall be addressed to and executed by some inspector or other officer of police, who shall be accompanied by the person making the information, unless the magistrate otherwise direct.

Power on indictment for rape to convict of offence under section one.

5. If upon the trial of any person for rape, the jury shall be satisfied that the accused is guilty of an offence under section one of this Act, but are not satisfied that he is guilty of the crime of rape, or of an attempt to commit the same, then the jury may acquit the accused of rape, and find him guilty of such offence as aforesaid, and thereupon he shall be liable to be punished accordingly.

Short title.

6. This Act may be cited as the "Criminal Law Amendment Act, 1893."

No. 26—1893.] [Promulgated 12th September, 1893.

ACT

To Repeal the Acts No. 44 of 1882, No. 28 of 1885, No. 26 of 1890, and No. 37 of 1892, and to consolidate, amend and add to the law regulating the Municipal Corporation and Government of Cape Town..

Preamble.

WHEREAS it is expedient to consolidate, amend and add to the existing law regulating the Municipal Corporation and Government of Cape Town, and with that object to repeal the Acts No. 44 of 1882, No. 28 of 1885, No. 26 of 1890, and No. 37 of 1892, to amend the constitution of the Municipal Corporation and the mode of election of Councillors, and generally to confer upon the Town Council of the City of Cape Town amended or increased rights, powers, and privileges with regard to municipal property, works and undertakings, and the acquisition of immovable property for municipal purposes, with regard to the levying of certain rates for municipal purposes, with regard to municipal officers, and with regard to the good, cleanly, and healthy order and condition of the Municipality of Cape Town and the inhabitants thereof, and

Digitised by the University of Pretoria, Library Services, 2016

with regard to maintaining and developing good municipal government therein by means of suitable rules and regulations made by the Council and approved of by the Governor:

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

PRELIMINARY.

Repeal of former Acts.

1. The Act No. 44 of 1882, entitled the "Cape Town Municipality Act of 1882," the Act No. 28 of 1885, entitled the "Cape Town Municipality Act, 1882, Amendment Act, 1885," and Act No. 26 of 1890, entitled "The Cape Town Municipality Act Amendment Act, 1890," and the "Cape Town Municipal Amendment and Drainage Act, 1892," are hereby repealed: Provided that the Town Council of the City of Cape Town constituted under this Act shall be subject and liable to every contract, engagement, claim, debt and demand to which the Town Council of Cape Town, constituted under the Act 44 of 1882, is subject or liable at the time of the taking effect of this Act, and in like manner shall be vested with or entitled to all rates, assets, benefits, rights and claims which the last mentioned Town Council was at the time of the taking effect of this Act vested with or entitled to.

Limits of Cape Town Municipality.

2. The Municipality of Cape Town (hereinafter styled the Municipality) shall include the space of ground situated within the following limits, that is to say:—From the outside boundary of the military lines at Fort Knokke along the said lines to their termination at Zonnebloem; thence in a straight line to the summit of the Devil's Mountain; thence along the edge of the summit of Table Mountain to the point of the edge of the said mountain nearest the Lion's Head; thence in a straight line to the Government fountain in the kloof near the block-house; thence along the ravine through which the said fountain empties itself into the sea from the point where the said fountain empties itself into the sea along low water mark to where the western boundary line of the property formerly belonging to the late Mr. Frederick Liesching (called Botany Bay), prolonged northwards runs into the sea; thence along the last-mentioned boundary line to its southern extremity; thence, by a line running in a straight direction, to the Lion's Head; thence, eastwards along the ridge and on the line which divides the waters flowing therefrom to the north and south, to a point where the line of the west side of Strand-street, prolonged northwards, shall intersect the southern boundary line of the land now or heretofore belonging to Mr. Wessels (being Lot No. 1 of the Green Point lots), prolonged upwards and westwards; thence downward along the said boundary line, and by a prolongation of the said boundary line in a straight direction downward and eastward across the Somerset or Green Point Road, to a point twenty yards to the eastward of the said road; thence by a line running

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

parallel with and twenty yards to the eastward of the said road and of the cross road branching therefrom to Three Anchor Bay, to low water mark; thence along low water, to the point first mentioned.

Division of Town into six Districts.

3. The Municipality shall be divided into six separate districts which shall be proclaimed by the Governor in the *Gazette*, and any readjustment of or alteration in any of the said districts shall likewise be so proclaimed by publication in the *Gazette*, and the production of the *Gazette* shall be proof thereof in any proceeding or action: Provided, always, that until any such division, readjustment, or alteration shall have been made under this provision the existing districts into which the City of Cape Town is divided shall remain as at present constituted.

Incorporation of "Town Council of Cape Town."

4. There shall be in the Municipality a body corporate, which shall take and bear the name of "The Town Council of the City of Cape Town," and by that name have perpetual succession and which shall have a common seal, shall by that name sue and be sued, and shall do all acts, and have and enjoy all the rights and privileges which bodies corporate, as such, may in this Colony do and have.

Constitution thereof.

5. The Town Council of the City of Cape Town (hereinafter referred to as the Council) shall consist of eighteen councillors (one of whom shall be the Mayor), who shall be elected in manner hereinafter provided by the voters whose names shall appear in the voters' roll of the said Municipality voting as one constituency.

Municipal Council.

Qualification of Councillors.

6. Every male person of full age, who is qualified to vote at elections of Councillors under this Act, shall be eligible to be elected a Councillor and qualified to hold office as such, but so long only as he shall continue to possess such qualification and not be disqualified under the terms of this Act or otherwise: Provided, however, that the provisions of this Act shall not in any way affect the status of existing Councillors during their present terms of office.

Disqualifications.

7. No person who is a member of the Council or Board of any Municipality other than that of the City of Cape Town, or is a member of any Village Management Board, no person whose estate shall be in liquidation under assignment in trust for his creditors, no insolvent who shall not have obtained his rehabilitation, no alien who has not been naturalized, no person not qualified to vote at elections under this Act, no person of unsound mind, and no person who is disqualified by this Act, shall be capable of being elected or of continuing a Councillor.

Further disqualifications.

8. No person holding any office or place of profit under Government, or under or in the gift of the Council, or who is directly or indirectly by himself or his partner concerned in or participating in the profit of, any contract with the Council, or concerned in, or

Digitised by the University of Pretoria, Library Services, 2016

in the profit of, any contract with the Council, or concerned in, or in the profit of, any work to be done under the authority of the Council, shall be capable of being elected or continuing a Councillor: Provided that nothing in this section contained shall extend or apply to any contract entered into by any company, partnership or association consisting of seven or more persons, or any incorporated company, when such contract is entered into for the general benefit of such company, partnership or association; and provided that it shall be lawful for any Councillor to purchase at public sale any property or right which the Council shall offer to sell by public competition.

No Councillor to accept salary, &c.

9. No person elected a Councillor shall have or receive any salary, or shall exact, take or accept any fee or reward whatsoever, for or on account of anything done as such Councillor, nor shall he act as agent for any ratepayer at any meeting of the committee appointed and acting under section ninety-one of this Act.

Validity of Council's proceedings, notwithstanding certain defects in election.

10. All proceedings of the Council or of any person acting as Mayor, Deputy Mayor, Councillor or Town Clerk as the case may be, shall notwithstanding that it be discovered that there was some defect in the election or appointment of any Councillor, officer or person as aforesaid, or any disqualification, be as valid and effectual as if every such Councillor, officer or person had been duly elected and qualified.

In cases of disqualification of Councillors.

11. Any Councillor who shall cease to possess the qualification by this Act provided, or shall absent himself from meetings of the Council for four consecutive ordinary meetings without leave from the Council having been had and obtained, or who is a paid agent for a candidate at any municipal election under this Act, during his term of office shall, *ipso facto*, vacate his office, and the Mayor may at any meeting of the Council declare any such vacancy which may have occurred, subject to review, by motion, to the Supreme Court: and in case any person elected a Councillor shall die, or become disqualified under the terms of this Act, or cease to be qualified to be a Councillor, or shall resign, or shall refuse to accept the office of Councillor, or in case of any vacancy happening in any manner whatever, then such vacancy shall forthwith be filled up in the manner directed by this Act; but subject nevertheless to the provision hereinafter made as to vacancies occurring within three months of the annual election.

VOTERS.

Who to vote prior to preparation of Voters' Roll under this Act.

12. The list of persons qualified to vote at the election of Councillors in force at the time of the taking effect of this Act, shall remain conclusive evidence of the qualification of any person to vote at any election of members of the said Council or any meetings of voters, and upon the taking of a poll of the voters of the Municipality, until a Voters' Roll shall have been made in pursuance of the provisions of this Act.

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

Qualification of Voters.

13. Every person of full age not disqualified under the provisions of this Act, who on the fifteenth day of March in any year is the owner or occupier of any immovable property in the Municipality and who shall have paid all sums, if any, then payable by such person, in respect of any rates made three months or more before such day, shall be entitled to be enrolled on the Voters' Roll for the Municipality, according to the following scale:

(1) If the property liable to be rated be of the value of or exceeding one hundred pounds, and less then five hundred pounds, he shall have one vote.

(2) If such value amount to five hundred pounds, and be less than one thousand pounds, he shall have two votes.

(3) And if such value amount to or exceed one thousand pounds he shall have three votes.

Provisions in case of joint owners or occupiers of property.

14. When more persons than one are either as partners or otherwise jointly liable to be rated in respect of any property, or are joint occupiers of any property upon the assessed value of which being not less than one hundred pounds rates are assessed such persons shall be jointly and severally liable for all rates levied in respect of such property, and shall if not otherwise disqualified be entitled to be enrolled upon the Voters' Roll aforesaid; provided that

(*a*) The number of votes to which each shall be entitled shall be ascertained by dividing the assessed value of the property by the number of such persons;

(*b*) Unless the assessed value of the property when divided by the number of such persons is not less than one hundred pounds sterling only that one of such persons shall be entitled to vote in respect of such property who shall be named in writing by them all and enrolled in the Voters' Roll, in which case the number of votes the said person shall be entitled to give shall be calculated upon the whole value of the property;

(*c*) No person shall be entitled to be enrolled under this section by virtue of being a member of or shareholder in any joint stock company, society, or association, owning or occupying any property.

Companies as voters.

15. Every Society, Association or Company owning or occupying property in the Municipality shall be entitled to be enrolled on the Voters' Roll aforesaid with the same rights and subject to the same restrictions as are hereinbefore given to or imposed upon persons of full age, and shall be entitled to vote by a Director, Manager, Secretary or other official of the Society, Association or Company duly authorised to that end, whose name shall have been duly placed upon the said Voters' Roll as representative of the Society, Association or Company.

Digitised by the University of Pretoria, Library Services, 2016

Enrolment of voter in a single district.

16. Every person entitled to be registered as a voter and who shall be the owner or occupier, joint owner or joint occupier of immovable property in more than one of the districts of the Municipality, shall be entitled to elect the district in which he will vote, and should he decline or fail to make such election he shall be registered as a voter in such district as the Council may think proper; but his voting power shall be estimated with regard to his ownership or occupation in the whole Municipality and not merely in the particular district in which he is enrolled as a voter.

Persons disqualified as voters.

17. The following persons shall not be qualified to vote at any elections held under the provisions of this Act:—

(1) Persons who have not paid all sums due from them in respect of any rates due and payable three months or more before the day of voting.

(2) Persons at any time convicted of treason, or murder, or until the lapse of five years from the date of release of any person convicted of rape, theft, perjury, bribery, of receiving a bribe or of any other corrupt practice at any election, or any infamous crime, unless a free pardon shall have been granted.

(3) Persons whose names do not appear upon the Voters' Roll for the time being.

Making of Voters' Roll.

List of voters to be made biennially.

18. The Council shall forthwith, after the passing of this Act, and thereafter biennially in the month of April, cause a list to be made of all persons qualified to be enrolled on the Voters' Roll under the provisions of this Act, which list shall be subdivided into six parts so as to show the persons entitled to vote within the several districts in the Municipality, each of which parts shall respectively show the names of the voters of that district in alphabetical order, allot a certain number to each voter, and contain the full name, residence, qualification and occupation of each voter, and the number of votes to which he is entitled, and such list shall be and remain open to public inspection.

Notice of objections to List.

19. The Mayor or Town Clerk, forthwith after the making of such list, shall cause such list to be affixed in some conspicuous place in the Town Hall, and cause to be appended thereto and published in one or more local newspapers, a notice of not less than fourteen days, that all objections and claims to be enrolled will be heard and determined at some time and place to be therein stated.

Council a Court to determine on objections.

20. The Council shall hear and determine all claims and objections and may enrol the names of any voters which have been omitted, and strike out the names of all persons not entitled to be enrolled; provided that no name of any person shall be struck out until such person shall have had two clear days' notice of the investigation of his qualification, and shall be heard in regard

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

thereto should he so desire. The meetings of the Council for hearing and determining such claims and objections may be adjourned from time to time, and any decision may be brought on motion by petition under review of the Supreme Court if notice of review be given by any interested person within two clear days after the declaration of such decision.

Roll to be in force till new one framed.

21. The list when so settled and amended shall, subject to any addition which may from time to time be made in manner hereinafter provided, be the Voters' Roll for the Municipality of the City of Cape Town, until the next Roll shall in like manner be completed, and such Roll, with such additions as may be made thereto in due form, shall be deemed and taken to be the conclusive and only proof of the right of every person enrolled therein to act as a voter in the Municipality of Cape Town, and in respect of the number of votes for which he is enrolled.

Additions to Voters' Roll.

22. Any person who after such Roll shall have been completed shall make application in writing to the Council to be enrolled as a voter, and shall prove his qualification and not be disqualified under this Act, shall be entitled to be enrolled as a voter and have his name added to the said Roll; provided that no enrolment in pursuance of the terms of this section shall be made upon application made after the publication of the notice referred to in section twenty-eight until after such election, and that the non-enrolment of any voter upon any such application shall not invalidate any election made after the date of such application, and that any voter whose name has been omitted merely by reason of the non-payment of rates in accordance with section thirteen may make application under this section upon proof that such rates have been paid.

Election of Councillors.

Existing Councillors remain in office.

23. The Councillors in office at the time of the taking effect of this Act shall be the first Councillors under this Act, and each of them shall respectively remain in office for a period of one month longer than he would have done had the Act No. 44 of 1882 not been repealed, but only so long as he shall be duly qualified and not disqualified under the terms of the said Act No. 44 of 1882.

Annual election of Councillors.

24. An annual election of Councillors shall take place on the second Monday in the month of September of each and every year for the purpose of electing six Councillors to replace an equal number of retiring Councillors, and for the purpose of electing Councillors to fill up such casual vacancies as may require to be filled up under the provisions of this Act.

Duration of Councillors' terms of office.

25. The six candidates at such election who shall receive the highest number of votes shall hold office for a period of three years, and the casual vacancy or vacancies referred to in the following section shall be filled up by the candidate or candidates

Digitised by the University of Pretoria, Library Services, 2016

having the next highest number of votes or who shall lose election by lot under section forty-four. In the event of there being one Councillor to be elected to fill a casual vacancy, he shall hold office for the remainder of the term for which the Councillor who has vacated office, and whom he shall succeed, would otherwise have remained in office; and in the event of there being two or more candidates elected to fill casual vacancies, he of them who stands highest at the election shall hold office for the remainder of the term of the vacating Councillor who had the longest period to serve before his term of three years expired, and the next highest candidate shall take the place of the Councillor with the next longest unexpired term of office, and so on.

Casual vacancies.

26. When and as often as any casual vacancy shall occur in the Council, the Councillor or Councillors to be elected to fill such vacancy shall be elected in the manner provided for the election of candidates at the annual election. But if such vacancy or vacancies shall occur within three months of the ensuing annual election, then the vacancy or vacancies shall not be filled up at a special election, but shall remain until the holding of the annual election: Provided, always, that such vacancies do not exceed three in number, in which case they shall be filled up at a special election held for the purpose, and the Councillors so elected shall hold office for the remainder of the term for which the Councillors whom they succeed would otherwise have remained in office, the candidate receiving the highest number of votes succeeding the vacating Councillor with the longest term to serve, he with the next highest number of votes succeeding the Councillor with the next longest term to serve, and so on.

Returning officer.

27. The Mayor or in case there is no Mayor, or he be absent or incapable of acting, then the Deputy Mayor, and if there is no Deputy Mayor, or he be absent or incapable of acting, then the Town Clerk, and failing the Town Clerk, then such Councillor as the Council may appoint, shall be the returning officer at all municipal elections, and all such elections shall be held before such returning officer; provided, always, that no returning officer shall be or become a candidate for office at such election.

Nomination for Councillors.

28. The Town Clerk shall, not less than twenty-one days prior to any election of a Councillor or Councillors, publish a notice of such election in one or more local newspapers, and in such notice shall specify a day, not being less than ten or more than fourteen days from the date of giving of such notice, as the day of nomination, and shall require all candidates at such election to be nominated in manner hereinafter mentioned.

Manner of nomination.

29. No person shall be a candidate at any election or qualified to be elected a Councillor unless he shall have received a requisition signed by at least five enrolled voters, and shall have transmitted such requisition, with his acceptance thereof, given under his own

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

hand or that of his duly qualified agent, to the Town Clerk on or before the day appointed for receiving nominations: Provided that if any such voter shall sign more than one such requisition, the Town Clerk shall erase his name from all such requisitions as he shall have signed, which shall, for the purpose of nomination, be deemed never to have been signed by him. If the number of candidates who are nominated as aforesaid does not exceed the number of Councillors to be elected, such candidates shall be deemed and taken to be duly elected on the day of nomination. If, however, there shall be less than the required number of candidates nominated, then fresh nominations to fill the vacancies shall be called for in manner aforesaid.

Notice of election.

30. In the event of the number of nominations exceeding the number of Councillors to be elected, the Town Clerk shall, forthwith after the expiry of the nomination day, inform the returning officer by this Act appointed, of the necessity of an election being held, and such returning officer shall forthwith cause a notice to be published in one or more local newspapers, stating the names of the candidates nominated, the day upon which a poll will be taken for the election of Councillors, not being less than six days or more than fourteen days from the date of such notice, nor less than twenty-one days from the date of the notice calling for nominations, the number of vacancies to be filled, and the places where the poll will be taken. And the poll shall take place accordingly, and shall commence at nine o'clock in the forenoon and close at six o'clock in the afternoon.

Election; arrangements.

31. For the purposes of every election the polling station of the Municipality shall be at the Town Hall or such other place as the Council may determine. For all elections the returning officer shall provide such compartments, desks, ballot boxes, ballot papers, stamping instruments, copies of register of voters and other things; appoint presiding officers and polling officers, and do such other acts and things, and make such arrangements to facilitate the taking of the poll as he may deem advisable for effectually conducting the election; and everything done by the returning officer shall be at the expense of the Council.

Presiding officer.

32. The presiding officer and other officers at the polling station shall keep order thereat, shall regulate the number of voters to be admitted at a time, and shall exclude all other persons except the returning officer, the clerks, the candidates, the agents of the candidates, and the constables on duty.

In case candidate desires to retire from contest.

33. If after a poll has been appointed at any election any candidate nominated for election shall be desirous of retiring from the candidature, he may, not later than three days before the day of polling, sign and deliver a notice of his retirement to the Town Clerk, who shall forthwith hand the same to the returning officer, who on receipt of such notice shall, if the number of candidates is

Digitised by the University of Pretoria, Library Services, 2016

by such retirement reduced to the number of persons to be elected at such election, declare the remaining candidates to be on that day duly elected, and if the said number is not so reduced, shall omit the name of the person so retiring from the list of candidates, and such person shall not be capable of being elected at such election.

Candidate's agents.

34. Every candidate may, if he think fit, appoint by writing under his hand, a person to represent him at the polling station to see that the votes are fairly taken, and may also appoint in writing an agent to represent him at the counting of the votes by the returning officer.

Enquiries as to right to vote.

35. No inquiry shall be made at any election as to the right of any person to vote, except that the polling officer may himself, or at the request of the agent of any candidate, put to any voter the following questions, or any of them, and no other :—

1st. Are you the person whose name appears as A.B. on the voters' roll of voters in this district?

2nd. Have you already voted at this election?

3rd. Have all sums due and payable by you or for which you are liable in respect of rates payable three months or more before this date been paid?

And no person who shall refuse to answer any such question, or who shall not answer the first and third of such questions in the affirmative, and the second of such questions absolutely in the negative, shall be permitted to vote.

Penalty for false answers.

36. Any person who shall wilfully make a false answer to any of these questions shall be liable to a penalty not exceeding ten pounds, to be recovered in the court of the Resident Magistrate, or in default of payment to imprisonment for a term not exceeding three months.

Bribery at elections.

37. All the acts enumerated as acts of bribery and corruption, personation, or undue influence in any Act for the time being in force regulating or in respect of elections of members of Parliament, shall, *mutatis mutandis*, be deemed to be acts of bribery, corruption, personation, or undue influence with reference to all elections under this Act. And every person committing any act forbidden or made punishable by any such Act relating to elections of members of Parliament, in reference to any elections under this Act, shall upon conviction incur and be liable to such penalty or punishment as is by such Act provided.

Voter required to vote without delay at polling station.

38. Every voter coming to record his vote shall vote without undue delay, and any voter who delays unduly in recording his vote may, unless he shall forthwith proceed to vote upon being thereunto required by the presiding officer, be removed from the polling station, upon the instruction of the presiding officer, and shall not be entitled to vote at the election.

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

Manner of voting.

39. The voting at all elections held under the provisions of this Act shall be by ballot, which shall be conducted in substance and as nearly as is material as follows:—

(*a*) The polling officer shall ascertain that the name of the person coming to vote is a voter enrolled upon the Voters' Roll, and having ascertained that such person is so enrolled and his number on such Roll, shall enter his number and the number of his votes upon the counterfoil in the voting ticket book, and shall then tear out the ticket corresponding to such counterfoil, and having stamped the same with a perforating stamp provided for that purpose, shall hand it to the voter. And every voting ticket shall be in the form set forth in the Schedule, with such printed instructions as the Council may approve.

(*b*) When the voter has received such ticket, on which shall be printed in alphabetical order the names of all the duly nominated candidates at such election, he shall take the same to the compartment and desk provided for that purpose, and signify for whom he desires to vote by secretly placing a cross or crosses equal to the number of his votes, opposite the names of the candidate or candidates whom he wishes elected, not exceeding the number to be elected at such election. He shall then fold the ticket so that the perforated stamp may be visible, and having held up the ticket so that the polling officer can recognise the perforated mark, shall drop the ticket in the ballot box placed in front of the polling officer.

(*c*) Should the voter either sign his name on the ticket or make any mark or word by which his voting paper could become recognisable then such voting ticket shall be considered blank and not taken into account.

Spoilt ballot papers.

40. If a voter inadvertently spoils a ballot paper he may return it to the presiding officer, who will, if satisfied of such inadvertence, give him another paper, and retain the spoilt paper, and the spoilt ballot paper shall be immediately cancelled and the fact of such cancellation shall be noted upon the counterfoil.

Blind, &c., voters.

41. Any presiding officer on the application of any voter, who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, shall before such agents of the candidates as may be present cause the vote or votes of such voter to be marked on a ballot paper or papers in manner directed by such voter, and the ballot paper or papers to be placed in the ballot box and the name and number on the Voters' Roll of every voter whose vote is marked in pursuance of the terms of this section, and the reason why it is so marked shall be entered on a list in this Act called the "list of votes marked by the presiding officer."

Tendered ballot papers.

42. If a person representing himself to be a particular voter applies for a ballot paper after another person has voted as such elector the applicant shall, upon duly answering the questions,

Digitised by the University of Pretoria, Library Services, 2016

permitted by this Act to be asked of voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (hereinafter called a tendered ballot paper) shall not be put in the ballot box, but shall be given to the presiding officer appointed for that purpose by the Council, and endorsed by him with the name of the voter and his number in the Voters' Roll, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the Roll shall be entered in a list in this Act called the "tendered votes list."

Sealing up of ballot boxes, &c.

43. Every polling officer shall be subordinate to some presiding officer, and such presiding officer as soon as practicable after the close of the poll shall, before such agents of the candidates as shall be present receive from such polling officer and make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals,—

(1) Each ballot box entrusted to any polling officer under his direction unopened but with the key attached; and
(2) The unused and spoilt ballot papers placed together; and
(3) The tendered ballot papers; and
(4) The marked copies of the Voters' Roll and the counterfoils of the ballot papers; and
(5) The tendered votes list, and the list of votes marked by him as presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the head "physical incapacity," and shall deliver such packets to the returning officer.

The packets shall be accompanied by a statement made by each presiding officer showing the number of ballot papers entrusted to him and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers.

Declaration of poll.

44. Upon receipt of the aforesaid packets from such presiding officer by the returning officer, the latter shall take charge of the same, and shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare the candidate or candidates who are elected under the provisions of this Act according to the vacancies to be filled up. In the event of the number of votes being found to be equal for any two or more candidates all of whom cannot be declared elected to fill an ordinary or casual vacancy in the Council as the case may be, the returning officer shall by lot immediately determine the election. The decision of the returning officer shall be final subject to reversal on petition to or action in the Supreme Court questioning the election or return in like manner, *mutatis mutandis*, in which elections or returns of members of Parliament may by law be brought in question.

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

What ballot papers shall be rejected.

45. The returning officer shall reject and not count any ballot papers which,—

(*a*) Do not bear the official mark;

(*b*) Give votes to more candidates than the voter is entitled to vote for;

(*c*) Bear any writing or mark by which a voter can be identified otherwise than is in this Act prescribed;

(*d*) Are unmarked or void for uncertainty.

Marking of rejected ballot papers.

46. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to" if an objection be in fact made by any agent to his decision.

Sealing up of papers by returning officer.

47. The returning officer shall immediately after the declaration of the poll enclose in separate packets the counted and rejected ballot papers. He shall not open any sealed packet of tendered ballot papers or marked copy of the Voters' Roll and counterfoils, but shall proceed before such agents of the candidates as are present to reseal after examination each of the sealed packets received by him from the presiding officers. All the packets aforesaid, together with a certificate stating the names of the Councillors declared to be elected, shall be enclosed together in one sealed packet and delivered to the Town Clerk, who shall safely keep such sealed packet for six months, after the expiration whereof the said packet and all papers contained therein may be destroyed in the presence of two Councillors.

Sealed papers to remain unopened.

48. No such sealed packet as aforesaid shall be opened during the said period of six months unless by order and in presence of the Council or by order of the Resident Magistrate, the Supreme Court or any judge thereof; and if any person shall, contrary to the provisions hereof, wilfully break the seal or open any such packet he shall, upon conviction, be liable to a penalty not exceeding twenty pounds, which may be recovered in the Court of the Resident Magistrate.

Council may make regulations.

49. The Council shall have power from time to time to issue instructions and make regulations for the purpose of more effectually carrying out the provisions of this Act, as to the proceedings for election by ballot, provided that such instructions and regulations are not inconsistent with its terms.

Immaterial mistakes not to affect validity of election.

50. No election shall be declared invalid by reason of any mistake or non-compliance with the terms of this Act if it appears to the Court having cognisance of the question that the election was conducted in accordance with the principles laid down in this Act and that such mistake or non-compliance did not affect the result of the election.

Mayor and Deputy Mayor.

Appointment of Mayor.

51. At the first meeting of the Council held after every annual election of Councillors the Councillors present shall elect one

Digitised by the University of Pretoria, Library Services, 2016

Councillor to be Mayor, who shall be styled Mayor of the City of Cape Town, and who shall forthwith enter upon his office and continue therein until his successor be appointed after the next ensuing annual election of Councillors, unless his office be sooner vacated, and in case of such vacancy then a successor shall at the meeting next but one of the Council after such vacancy be chosen by the Councillors from amongst themselves, who shall forthwith enter upon his office, and serve as Mayor for the remainder of the period for which the vacating Mayor was elected: Provided, always, that should a Mayor for any reason not be elected at a meeting as herein prescribed, he may be elected at the first ordinary meeting of the Council held thereafter or at a special meeting called for the purpose.

Deputy Mayor.

52. That Councillor in office at the time of the election of a Mayor after the annual election aforesaid, who shall last have held the office of Mayor in the Council at any time prior to the then elected Mayor, and failing any such Councillor still in office, such other Councillor as the Council shall elect shall be Deputy Mayor, and shall during the absence or illness of the Mayor do all acts which the Mayor as such might do. The fact of the absence or illness of the Mayor shall be notified by the Town Clerk or his deputy to the first meeting of the Council after the illness or absence of the Mayor has happened, and be recorded in the Council's minutes. Such record shall be a sufficient authority for all acts done within the scope of this Act by the Deputy Mayor in lieu of the Mayor.

Proceedings of Council.

Ordinary meetings.

53. The Council shall hold ordinary meetings not less than once in each month for the transaction of business, on such days and at such hours as the Council shall from time to time appoint, and, when such appointment is made, the Town Clerk or his deputy shall give notice thereof to each of the Councillors, and they shall afterward, until the time of each ordinary meeting is changed and notice of the change given to the Councillors, be required to attend such ordinary meetings without notice.

Special meetings.

54. The Mayor or any three Councillors may at any time convene a special meeting of the Council for any day other than the ordinary day of meeting of the Council.

Notices of adjourned and special meetings.

55. All notices of any special meeting or adjourned meeting of the Council shall be in writing, and shall be delivered, or sent by post or otherwise, to the usual place of business within the Municipality, or to the residence of each of the Councillors, twenty-four hours at least previous to such meeting, and in case of a special meeting shall specify the object thereof, and no business shall be transacted at any special meeting except such as is stated in the notice thereof. But want of service of such notice on any member of the Council shall not affect the validity of a meeting.

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

Meetings may be adjourned.

56. The Councillors present at any meeting may from time to time adjourn such meeting; and if at any meeting of the Council a quorum be not present, the Councillors present or the major part of them voting, or any one Councillor, if only one be present, may adjourn such meeting.

Meetings to be open to public.

57. All meetings of the Council shall be open to the public.

Chairman of meetings.

58. At every meeting of the Council the Mayor if present shall be Chairman. If the Mayor be absent, then the Deputy Mayor shall be Chairman. If neither the Mayor nor Deputy Mayor be present such Councillor as the members of the Council then present choose shall be Chairman.

Quorum.

59. All acts of the Council and all questions coming or arising before the Council may be done and decided by the majority of such Councillors as are present and vote at a meeting held in pursuance of this Act; provided the whole number present at the meeting whether voting or not be not less than seven.

Casting vote of Chairman.

60. In case of an equality of votes the Chairman at any meeting of the Council or of a committee shall have a second or casting vote.

Minutes.

61. Minutes of the proceedings of every meeting of the Council, or any committee, shall be drawn up and entered in books kept for that purpose, which shall be signed at the same or the next ensuing meeting, by the Mayor, or by a member of the Council or of the committee, describing himself as, or appearing to be, chairman of the meeting at which the minute was signed, and such minutes so signed, or a copy of or an extract therefrom, attested by the Mayor and Town Clerk shall be received in evidence in proceedings criminal or civil without further proof.

Minutes, &c., in the English language.

62. All minutes of the proceedings of the Council, and all books, writings, accounts, and records thereof, shall be made and kept in the English language, it being left to the option of the members of the Council to address the Council either in English or Dutch.

Acts of Council unaffected by vacancy.

63. No act or proceeding of the Council shall be questioned on account of any vacancy in their body or any lack of qualification or any disqualification in regard to any Councillor taking part in such act or proceeding.

Committees.

64. The Council may from time to time appoint out of their own body an Executive Committee and such and so many committees, either of a general or special nature, and consisting of such number of persons as they think fit, for any purposes which in the opinion of the Council would be better regulated and managed by means of such committees and may also delegate to any committee such powers as they may think fit, and fix the quorum of every such committee; and every such committee may from time to time appoint one of the members to be chairman thereof.

Powers of Committees.

Council to approve acts of Committee.

65. The acts of a committee shall not be binding upon the Council until submitted to and approved by the Council, excepting in those cases in which the Council shall by resolution have authorised

Digitised by the University of Pretoria, Library Services, 2016

a committee to manage, regulate, or conclude any matter or matters without further reference to the Council.

Decision by majority of committee.

66. All questions brought before any committee shall, provided a quorum be present, be decided by a majority of the votes of the members present and voting.

Meetings to be presumed to be duly held.

67. Until the contrary be proved every meeting of the Council, or of a committee, in respect of the proceedings whereof a minute has been so made, shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are the proceedings of a committee, the committee shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes.

Rules of order.

68. The Council may from time to time make rules of order, not inconsistent with the terms of this Act, for the regulation of their proceedings and business, and may vary or revoke the same; and, until they do so, the existing rules of order shall be and remain in full force excepting in so far as they may be opposed to the provisions of this Act, and in the said Rules of Order, the Mayor, Deputy Mayor, or Chairman (as the case may be) shall have power to name a Councillor: and upon motion made and adopted by not less than two-thirds of the Councillors present and voting on the question, to suspend a Councillor for a period not exceeding the conclusion of the next succeeding ordinary meeting of the Council.

Accounts and Audit.

Auditors.

69. The Council shall annually, as soon as conveniently may be after the annual election of Councillors, elect an auditor, and the Governor shall appoint one, and there shall be paid to them out of the municipal funds such remuneration as the Council may deem fitting. Upon the occurrence of any vacancy in the office of auditor by death, removal, resignation or otherwise, the Council or the Governor, as the case may be, shall supply such vacancy forthwith, and all elections for auditors shall be conducted in manner similar to that employed in the election of officers of the Council.

Monthly return by treasurer, and auditors' duties.

70. The auditors shall within one week from the last day of every month examine and certify to a return prepared by the Treasurer, showing:—

(*a*) The amounts of moneys voted by the Council during the preceding month for specific objects which shall be mentioned, with the date of such votes, and whether the same are payable out of loan account or other revenue;

(*b*) The total amount expended to the last day of the preceding month in connection with all matters, objects or things contained in the Annual Estimates of Expenditure, and the balance remaining unexpended under each head of expenditure.

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

(*c*) The amounts recovered on account of revenue and the balances unrecovered under each particular head, inclusive not only of such items as were contemplated in the estimate of probable revenue prepared at the commencement of the year in terms of this Act, but also of sources of revenue which have occurred during the year.

Further duties of auditors.

71. The auditors on the occasion of each monthly audit shall, *inter alia*, certify that they have examined every voucher, that the books agree therewith, and that the amounts referred to therein have been correctly entered in the books in accordance with the votes of the Council. They shall further render an account of all unauthorised expenditure and set out in detail all the accounts in which the expenditure shall have exceeded the amount voted by the Council.

Instructions to auditors.

72. The auditors shall further conform to, and carry out, any instructions which from time to time they may receive from the Council: provided the same be not in conflict with the provisions of this Act; and as far as possible the system of audit which they pursue shall be in accordance with the system and manner of audit carried on in the office of the Controller and Auditor-General of the Colony.

Examination of cash by auditors.

73. The auditors shall further, not less than once in every three months, make an examination, without previous notice to any one, of the books and cash in the hands of the Treasurer and shall compare the cash with the books and personally check the various balances, the cash in hand and the bank account, and thereafter make a special confidential report to the Council of the result of such examination.

Account books to be kept.

74. The Council shall cause books to be provided and kept at the Town Hall in Cape Town, which shall not be taken thence, except by leave of the Council, or by process of some competent court, in which shall be entered true and regular accounts of all sums of money received and expended for or on account of the purposes of this Act, and of the several articles, matters and things for which such sums of money shall have been disbursed and paid; and such books shall at all reasonable times be open to the inspection of the Councillors, and of every enrolled voter, and the Councillors and other persons aforesaid, or any of them, may take copies of or extracts from the said books without paying for the same.

Annual accounts.

75. In the month of January in every year a true account shall be made, in writing, of all moneys received and paid by virtue of this Act during the preceding year ending on the 31st day of December, and a copy or duplicate of such account, verified by solemn declaration of the Treasurer and certified by the auditors, shall be deposited with the said Council, and shall be open to the inspection of any enrolled voter, and an abstract thereof shall be advertised before the first day of March following in one or more papers published in Cape Town.

Digitised by the University of Pretoria, Library Services, 2016

Estimates of revenue and expenditure.

76. The Council shall in the month of January in every year draw out an estimate of the probable revenue and expenditure for the current year, showing the several taxes or rates to be levied or assessed during the same, which estimate shall be signed by the Treasurer, Mayor and Town Clerk, and shall be open to the inspection of any enrolled voter, and an abstract thereof advertised in one or more papers published in the said city before the 31st day of the said month of January in every year. And after such publication of the said annual estimate a special meeting of the Council shall be held upon fourteen days' notice, for the purpose of finally considering and confirming the said estimate, and at such meeting it shall not be competent or lawful to place any new item on said estimates or to increase any item.

Levying of rates.

77. After the said estimate, accounts and abstracts in the two last preceding sections of this Act mentioned shall have been published, as therein directed, at least twice during the fourteen days, the said Council shall immediately after the expiration of the said period call a meeting of the Council upon not less than seven days' notice, to be advertised in one or more papers published in Cape Town, for the purpose of assessing any such rate or rates on the immovable property situate within the Municipality, not to exceed the rate or rates hereinafter provided, and to endure for such period, not exceeding twelve months, as the majority of Councillors present and entitled to vote at such meeting shall deem necessary for all or any of the purposes of this Act.

Officers.

Town Clerk.

78. The Council shall from time to time appoint a fit person not a Councillor to be Town Clerk of the City of Cape Town, who shall hold office during the pleasure of the Council, shall perform such duties as the Council may determine, and shall have the charge and custody of and be responsible for the deeds, records and documents of the Council which shall be kept as the Council direct.

Deputy Town Clerk.

79. In case of the illness or absence of the Town Clerk, or in case the office of Town Clerk be vacant, the Council may appoint a Deputy or Acting Town Clerk from among the Council's officers to hold office during their pleasure, and all things required or authorised by law to be done by or to the Town Clerk may be done by or to the Deputy or Acting Town Clerk.

Treasurer.

80. The Council shall from time to time appoint a fit person, not being a Councillor, to be Treasurer of the City of Cape Town, who shall hold office during their pleasure.

Town Clerk and Treasurer's offices to be held by different persons.

81. The offices of Town Clerk and Treasurer shall not be held by the same person.

Officers of Council.

82. The Council shall from time to time appoint such other officers as they may think necessary and, unless it shall be otherwise stipulated in the contract with or appointment of any such

Digitised by the University of Pretoria, Library Services, 2016

officer, may at any time remove any such officer upon a notice of not less than one month, or in case of misconduct without notice.

Duties and remuneration of officers.

83. The Council shall require the Town Clerk, the Deputy or Acting Town Clerk, the Treasurer and all officers charged with the collection or the administration of moneys or the custody of documents or property of the Council to give such security as they think proper for the due execution of their offices, and may assign to every officer such duties and responsibilities as they may see fit, and shall allow him such remuneration as they think reasonable.

Officers not to engage in other business.

84. No officer appointed by the Council shall be engaged directly or indirectly in any other business, trade or profession than the business of the Council, save with the express sanction of the Council.

Duties of Treasurer and other officers as to accounts and moneys.

85. Every Treasurer and other officer appointed by the Council shall, at such times and in such manner as the Council shall direct, deliver to the Mayor, or such person as they shall appoint, true and perfect accounts, in writing, of all matters and things committed to his charge, and also of all moneys which shall have been by such officer received by virtue or for the purposes of this Act, and of how much thereof shall have been expended or disbursed, and for what purposes, together with proper vouchers for such payments; and every such other officer shall pay all money due from him to the Treasurer or as the Council shall direct, and if any such Treasurer or officer refuses or neglects to make or render such account, or to deliver up the vouchers relating to the same, or to make payment as aforesaid, or refuses or wilfully neglects to deliver to the Mayor, or to such person appointed to receive the same forthwith, after being thereunto required by the Mayor by notice, in writing, under his hand, given to or left at his last or usual place of abode, all books, papers, and writings in his custody or power belonging to the Council, or relating to the execution of his duties, or to give satisfaction to the Mayor or such other person as aforesaid respecting the same, then and in every such case, upon complaint made by the Mayor or by such person as aforesaid to the Supreme Court or any judge thereof, the said court or judge may, if they or he shall see fit, order the officer, so refusing or neglecting, to appear at an appointed time and place, and if it shall appear to the said court or judge upon the hearing of the case, that any moneys remain due from such officer, such court or judge may, by decree of the said court, or warrant under the hand of the said judge, cause such money to be levied by distress and sale of the goods and chattels of such officer, and if no goods and chattels of such officer shall be found sufficient to answer and satisfy the said money and the charges of distraining and selling the said goods and chattels, or if it shall appear to such court or judge that such officer had refused, or wilfully neglected, to render and give such account or to produce the vouchers relating thereto, or that any books, papers or writings belonging to the Council or relating to the execution of his duties remained in the hands or in the custody or power of

Digitised by the University of Pretoria, Library Services, 2016

such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case it shall be lawful for such court or judge to make such order as to justice shall appertain and, if such court or judge think fit, to commit such offender to the common gaol within the Municipality, there to remain without bail until he shall have given a true and perfect account as aforesaid, or until he shall have paid such moneys as aforesaid and until he shall have delivered up such books, papers and writings, or given satisfaction in respect thereof, to the Council, or to such other person as aforesaid, or until such other or future time as the said court or judge shall direct: Provided that nothing herein contained shall prevent such Treasurer, officer, or other person being tried, and, if found guilty, convicted and sentenced according to law for any crime or offence which he may have committed relative to any matter or thing entrusted to him under the provisions of this Act; and provided, further, that nothing herein contained shall prevent the Council from bringing an action for the recovery of any sum or sums due by the Treasurer, officer or other person to the Council.

Liability of sureties for officers.

86. No prosecution or commitment of any Treasurer or other officer or person shall acquit and discharge any surety or security that shall or may have been taken by or given to the Council, for the due and faithful execution of his or their office, or the payment of the moneys received or to be received by him or them respectively.

Making of Valuations.

Making of valuation.

87. The Council shall from time to time, but not less than once in every three years, cause a valuation of all immovable property within the Municipality to be made by one or more competent persons who shall be sworn appraisers appointed by the Master of the Supreme Court.

Declaration by valuer.

88. Every valuer shall, before entering upon the valuation entrusted to him, make before some Justice of the Peace a solemn declaration in the terms following :—

"I————, do solemnly and sincerely declare that I will to the best of my skill and knowledge, and without fear, favour or prejudice, truly and impartially appraise and value all such property as I shall be required to value in the Municipality of Cape Town, for the purpose of assessment, and that I shall conscientiously value the same at and for the full and fair price or sum which such property would, in my judgment, be likely to realise if brought at the time of valuation to voluntary sale and sold upon the usual terms and conditions. And I make this solemn declaration, conscientiously intending to fulfil the same.

"Declared at————, this——day of————

"Before me————."

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

And every such declaration shall be lodged with and preserved by the Council.

Particulars in Valuation Roll.

89. The valuer or valuers shall frame the valuation roll in such a manner as to show:—

(*a*) The name and the address of the owner.
(*b*) The name of the occupier (or if unoccupied to be stated).
(*c*) Description of the property valued.
(*d*) Name and situation of property.
(*e*) Rateable value.

Objections Valuation Roll.

90. When this valuation roll has been completed it shall be laid before the Council and a copy thereof shall lie at the office of the Council for the inspection of every owner or occupier of any property included therein who may at all reasonable times inspect the same, and the Council shall by notice published in one or more local newspapers and by circular call upon owners and occupiers to lodge in writing with the Town Clerk any objections they may have against the valuation of any property whether owned or occupied by them or not, within a specified time not being less than fourteen days from the first publication of such notice.

Council to appoint committee to settle Valuation Roll.

91. After the expiration of the time specified in such notice the Council shall appoint from among themselves a committee consisting of the Mayor and not less than two other Councillors who shall be assisted by two assessors to be appointed annually by the Governor, and form a valuation court, and such court shall thereafter at meetings duly called by the Town Clerk upon the instruction of the Mayor, proceed to consider the valuation roll and the objections made as aforesaid, and shall be entitled to make such alterations or amendments in the valuation roll as by them may seem expedient.

Notice of final valuation to be given to persons interested.

92. When such court has completed its examination of the valuation roll and has made such alterations and amendments therein as to it may seem necessary, the Town Clerk shall cause copy of such roll as settled to be made for the inspection of persons interested, and shall cause an advertisement to be published in one or more local newspapers not less than three times within a period of one week of the publication of the first advertisement and also a circular to be sent informing all owners and occupiers of landed property of the completion thereof and that the same will become fixed and binding upon all parties interested who shall not, before a date fixed in such notice not being less than fourteen days from the date of the first advertisement, bring the decision of the court in review before the Supreme Court on motion; provided, however, that no person shall be entitled to take any proceedings whatever for review who shall not have duly lodged an objection to the valuation as originally made or be interested as owner or occupier in a property the valuation of which shall have been increased by the valuation court and that no valuation shall be set aside or

Digitised by the University of Pretoria, Library Services, 2016

varied merely by reason that the circular notice referred to in this and section ninety of this Act shall not have been duly sent.

Interim valuation

93. Notwithstanding anything to the contrary in this Act stated, the Council may at any time direct that a valuation be made of any property discovered to have been omitted from the valuation roll, or of any buildings erected or improved, or of any property sub-divided, or of portions of any property which are occupied by different persons after any general valuation of property made as aforesaid, or may within three months after any general valuation of property, direct a valuation of any property which in the opinion of the Council is undervalued, and upon the making of any interim valuation, the same forms shall be observed as are in the last preceding section set forth with regard to general valuations, excepting that in the option of the Council the prescribed notice may be served, in writing, either upon the owners or occupiers of the property or properties affected instead of being published as aforesaid.

Power of entry by valuer.

94. Every valuer provided with written authority signed by the Town Clerk shall, for the purpose of making any valuation as aforesaid, have power to enter at all reasonable hours in the daytime into and upon any immovable property within the Municipality without being liable to any action on account thereof.

Rates leviable upon valuation.

95. All rates made or levied by the Council under the provisions of this Act shall be made or levied upon the valuation of immovable property framed in terms of this Act; and until such a valuation be made such rates shall be levied according to the existing valuation made under the Act 44 of 1882.

Making of Rate.

Making of rates.

96. It shall be lawful and competent for the Council to impose and levy a rate of not more than fourpence in the pound in any one year on the value of all rateable immovable property in the Municipality.

Liability for rates.

97. And the person or persons in whom shall be vested on the 15th day of March in each year the legal title to any immovable property shall be the person or persons primarily liable for the rates imposed during that year in respect of such property; provided that any person entitled to the usufruct or any other limited interest for life in respect of any such property shall be deemed to be invested with the legal title for the purposes of this section; and provided, always, that nothing in this Act contained shall in any way affect the provisions of the "Crown Property Rating Act, 1891," and the "Public Libraries and Museums Relief Act, 1892," or render liable to be rated any places used exclusively for public worship, public schools, or institutions supported by public charity.

Application of moneys received from rates.

98. The rate in the last preceding sections mentioned shall be voted and levied for all municipal objects, purposes and services, including water supply and water works, sewerage, drainage,

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

improving, cleaning, repairing and maintaining streets and squares, the construction and repairs of municipal buildings, payment of municipal servants, and all and every other municipal object or purpose necessary, in such manner as the Council shall deem advisable and expedient, and at the time of making the said levy it shall be determined how the amount to be so raised shall be apportioned and appropriated among and to such objects, purposes and services.

Notice of rates payable.

99. As soon as possible after the passing of a resolution to levy a rate on immovable property, in addition to every other notification required by law, a notice shall be posted to the address of each person by whom any money is payable because of such resolution, which notice shall set forth the rate levied, the property assessed, the amount payable, the latest date when, and the place at which payment must be made; provided, however, the non-receipt of such notice shall not be any defence in any proceeding instituted for the recovery of any such rate.

When rates payable.

100. All rates levied under this Act shall be due and payable at the office of the Treasurer of the Council on the 15th day of March of each year, and every person who shall be in default in payment of any such rates after the 30th day of June in each year, shall become liable to pay, and shall pay in addition to the rate in regard to which he shall have made such default, an additional sum equal to one-twentieth of the rate, and such additional sum together with the original rate shall be deemed to be the rate payable under this Act, and shall be recoverable as such by any of the means provided by this Act.

Recovery of Rates.

Recovery of rates.

101. After any rate levied by virtue of this Act shall have been assessed, the same shall be published in one or more local newspapers, and the Council may appoint one or more collectors for the purpose of collecting the amounts due and payable, and the said collectors are hereby authorised to demand and receive the amounts so to be collected, which shall, on non-payment thereof, be recoverable at the suit of any such collector, upon production of any such local newspaper, by action in the court of the Resident Magistrate of Cape Town, or in case any person liable for any rate shall not reside within the Municipality, then either in the court of the Resident Magistrate of Cape Town, or in the court of the Resident Magistrate of the district in which such ratepayer shall reside: Provided that as often as any ratepayer not resident in the Cape Division shall be proceeded against in the court of the Resident Magistrate of Cape Town, the summons directed to such ratepayer shall be served upon the person, if any, in occupation of the premises in regard to which the rate alleged to be due is claimed. And each collector

Digitised by the University of Pretoria, Library Services, 2016

shall give security to the Council for the due execution of his office to such amount as the Council shall deem sufficient.

Joint and several liability of owner and occupier for rates.

102. If the amount of any rate which under the provisions of this Act shall have been assessed on any immovable property liable to be rated or portion thereof shall not be paid by the owner thereof, it shall be lawful for the Council to sue either the occupier thereof at the time such rate was due and payable or the owner separately or both of them in one and the same action, each for the whole, before any competent court, and to obtain the judgment and process of such court for the recovery of the same, reserving to such occupier such relief against the owner as he may be lawfully entitled to: Provided that every person who, as occupier of any such property or portion thereof, shall at any time have become liable to pay any rate which may have been assessed thereon, shall continue to be liable, and may be sued in manner aforesaid for the same, notwithstanding that he shall have ceased to occupy such property or portion thereof: Provided, also, that any and every rate assessed under the provisions of this Act shall in so far as the owner of any property is concerned, be and be deemed to be a charge upon the property rated and recoverable against the owner at the time such rate was levied or any future owner; provided, always, that no future owner of property shall be liable for any rates which became due and payable at any period more than one year prior to the date upon which he became owner of the said property.

Evidence in suit for recovery of rates.

103. In any proceeding to levy or recover rates, or consequent on the levying or recovering of any rate, as well as in all other legal proceedings under the provisions of this Act, the Valuation Rolls, Rate Books and Records of the Council, and all entries made therein, and extracts or certified copies thereof signed by the Town Clerk and sealed with the seal of the Council, and also all copies of any newspaper containing any notice necessary to be proved, shall, upon production thereof alone, be *prima facie* evidence of such rate and of the contents thereof without any evidence that the notices required by or other requirements of this Act have been complied with; provided that it shall be competent for any party to any such proceeding to offer evidence to prove the contrary.

Loans.

Power to raise loans.

104. It shall be lawful and competent for the Council to borrow at any time on security of the rates any sum or sums of money upon obtaining the consent of a majority of the enrolled voters of the Municipality; provided always that no such consent shall be necessary so long as the total indebtedness of the Council does not exceed £662,000.

Provisions for obtaining consent of voters to any loans.

105. When the Council has resolved to ask the consent of the enrolled voters to any loan or loans,

(1) The Council shall cause notice of a meeting of such voters to be advertised for a period of not less than three weeks

Digitised by the University of Pretoria, Library Services, 2016

nor more than six weeks before the date of holding such meeting, in one or more newspapers published in Cape Town.

(2) The notice of such meeting shall set out the place, date, and hour of meeting, and describe the loan or loans, authority for the raising of which is sought, together with the object or objects towards which the money obtained from such loan or loans will be devoted.

(3) The Mayor or some other Councillor appointed by the Council shall be chairman of such meeting and shall make such arrangements as to him may appear necessary to insure the due conduct of such meeting, the taking of minutes of the proceedings thereof, that none but enrolled voters shall take part therein, and to provide for the mode in which the ballot shall be taken in case of a poll.

(4) All questions coming before such meeting shall be decided by show of hands, each voter counting for one vote, and the declaration of the chairman as to the result of the voting and an entry to that effect on the minutes shall be conclusive evidence of the fact: Provided always that any five such voters present at such meeting may immediately after the declaration of the chairman upon any question demand a poll of such voters of the Municipality thereon.

(5) If a poll be legally demanded it shall be taken and conducted at the expense of the Council as nearly as possible in the manner prescribed for voting at an election of Councillors, and before the returning officer at such elections by this Act appointed.

(6) A poll shall be taken on some day fixed by the returning officer, of which notice shall have been given in one or more local newspapers published in Cape Town for a period of not less than seven days, nor more than fourteen days prior to the day of voting.

(7) Each voter at such poll shall be entitled to give on the question submitted the same number of votes which he might give at any election of Councillors.

Advances from Bank.

106. For the temporary accommodation of the Council, it shall be lawful for the Council to obtain advances from banks or other financial institutions by overdraft of the current account; but no such overdraft or accommodation shall at any time under any circumstances exceed the Council's income for the year ending 31st December previously.

Incorporation of Public Bodies' Debts Act, 1867.

107. The Act No. 11 of 1867, known as the "Public Bodies' Debts Act, 1867," shall apply in the case of all debts due, or which may hereafter become due, by the Council, anything in the said Act to the contrary notwithstanding.

Digitised by the University of Pretoria, Library Services, 2016

CONTRACTS. No. 26—1893.

Powers as to contracts.

108. The Council may carry out any works departmentally, and may from time to time enter into any contract with any person or company whatsoever, for any work to be done and performed, or for any materials to be furnished to and for the Council by virtue and for the purposes of this Act, or in connection with any work authorised to be done by the Council, which contract shall specify the work to be done and the price to be paid for the same, and the time when the work shall be completed and the penalty to be suffered in case of non-performance thereof. Every contract shall be deemed to be duly executed on behalf of the Council if signed by the Mayor and Town Clerk, or by two Councillors authorised by resolution of the Council. No contract above the value of fifty pounds shall be entered into, unless fourteen days' notice be previously given in one or more of the public newspapers published in this city, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered and presented to the Council at a certain time and place in such notice to be mentioned: Provided, always, that if the Council shall be of opinion that it will not be advantageous to contract with the person offering the lowest price or with any other person making a proposal, it shall be lawful for the Council to contract with such other person or persons as they shall think proper, and such person or company so contracting shall give security for the due performance thereof to the satisfaction of the Council: Provided, however, that any Councillor who shall, either directly or indirectly, become a contractor or tender for any contract, either in his name or in the name of, or jointly with, any other person, shall forfeit all his share and interest in such contract for the benefit of the Council, and shall also be considered to have vacated his office of Councillor.

Contracts with companies in which Councillors have interest.

109. No Councillor shall be deemed or taken to have vacated his office of Councillor or to have incurred any penalty or forfeiture whatever, by reason merely that the Council shall have entered into any such contract as in the last preceding section mentioned, or any other dealing or transaction with any joint stock company in this Colony, of which such Councillor shall be a shareholder or in which he shall be otherwise interested, nor shall any shareholder or person otherwise interested in any joint stock company with which company the Council shall have entered into any executed or still subsisting contract, dealing or transaction be deemed or taken to be ineligible to be elected or to act as a Councillor by reason merely of such contract, dealing or transaction: Provided, always, that no Councillor who is also such a shareholder or so otherwise interested as aforesaid shall be allowed to vote as a Councillor upon the question of making or entering into any contract, dealing

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

or transaction with the joint stock company in which he is interested or upon any matter in connection with such interest, dealing or transaction; and any Councillor who shall so vote in contravention of this restriction shall for every such offence forfeit the sum of one hundred pounds: Provided, also, that nothing herein contained shall be deemed or taken to prevent the Mayor, being such a shareholder as aforesaid, from signing any such contract as by this Act is required.

Municipal Property.

Roads, &c., vested Council.

110. The property of and in the streets, roads, public lanes, thoroughfares, foot pavements, footpaths, sidewalks, squares, and open spaces, to which the inhabitants of the Municipality shall at any time have or acquire a common right and the property of and in the Green Point Common so far as it is situated within the Municipality and of and in the foreshore within the Municipality excepting in so far as it is situated between the Harbour Board enclosure on the north side of the Breakwater and the mouth of the Castle moat or ditch shall be vested in the Council: Provided that the Council shall not have the right to sell, part with, or lease or appropriate for building purposes any portion of the ground known as the Grand Parade, save with the approval by the Governor of a resolution of the Legislative Council and the House of Assembly.

Landed property vested in Council.

111. The property hereinafter mentioned and situate within the Municipality, to wit the town hall, the town market, the butcher's shambles, the granary buildings, the fish market, the waterworks and the buildings belonging thereto, together with all the waste ground or land situate within the Municipality, together with all the stone quarries therein situate, and all right, title and interest in and to the same, and which was before the first day of January, 1828, vested in or committed to the administration of the late Burgher Senate, and which, by Ordinance No. 34 of 1827 was afterwards vested in trustees, and all other property which at the time of the expiration of Ordinance No. 1, 1840, was legally vested in the Commissioners, except in so far as the same or any part thereof has been since transferred away to other persons in due form of law, shall be and the same are hereby vested in the Council as owners thereof, and the same and all landed property of which title has been or shall be received by the Council from Government, or which has been or shall be transferred to the Council in due form of law shall be administered, and the revenue thereof employed and made use of for the benefit of the Municipality, and for the purposes of this Act: Provided that the Council shall not be authorised or permitted to sell, lease or otherwise alienate the said buildings, lands or landed property without having first obtained the consent of the Governor for the time being to such sale, lease or alienation, and without having, previously to obtaining such

Digitised by the University of Pretoria, Library Services, 2016

consent, published such resolution to sell, lease or alienate during three successive weeks in two or more papers published in Cape Town: Provided, also, that nothing herein contained shall affect, or be construed to affect, any right or title which Her Majesty's Imperial Government has, or may have, in the immovable property hereinbefore mentioned or any part thereof, or to vest in the Council aforesaid any greater or other right in or to the granary buildings aforesaid than shall have been lawfully vested in the Commissioners of the Municipality on the 31st December, 1860, under the provisions of the Ordinance No. 1, 1840.

Other property vested in Council.

112. The property of and in the lamps, lamp-irons, lamp-posts, bridges, sluices, dams, reservoirs, sewers, drains, market houses, pipes, posts, chains, pales, and rails in or about, belonging to the said streets and places within the Municipality, and of and in all iron, timber, stone, bricks, and other materials, appurtenances, and furniture and things of, in and belonging thereto (except when the same shall be otherwise regulated by contract with the Council), also all the movable property which now is under the administration of the Council, and employed by them for the use of the Municipality, shall be, and the same is hereby, vested in the Council and may be used, sold, and disposed of by them from time to time as they shall deem necessary; and the money arising from such sale shall be applied towards the purposes of this Act; and the Council are hereby authorised and empowered to bring or cause to be brought any civil or criminal action or proceedings, in manner as is herein provided, against any person or persons who shall steal, break or otherwise damage any of the buildings or other things, the property in which is vested in the Council, subject, however, to the provisions of the law for the time being in force in that behalf; and in all such actions and proceedings it shall be and be deemed and taken to be sufficient to state generally that the article or thing for or on account of which such action or proceeding shall be brought is the property of the Council.

Penalties for injuring Council's property.

113. If any person shall wilfully break, throw down, spoil, or damage any lamp, lamp-iron, lamp-post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any lamp, or shall break, spoil or damage any building, the property in which is vested in the Council, or shall wilfully break or damage any public watercourse, sewer, drain, pipe or ditch within the Municipality, it shall be lawful for any person who shall see the offence committed, to apprehend, and also for any other person or persons to assist in apprehending the offender, and by the authority of this Act and without any warrant to deliver to any constable, who is to keep him in safe custody, and with all reasonable dispatch to convey him before the Resident Magistrate of Cape Town, or any Justice of the Peace having jurisdiction, and if the party accused

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

shall be convicted of any such offence by such Resident Magistrate he shall forfeit any sum not exceeding two pounds for every such offence, and shall also make full satisfaction for such damage not exceeding twenty pounds sterling as the Magistrate may at the instance of the Council summarily adjudge, and one moiety of such forfeiture shall be paid to the person or persons apprehending such offender, and the other moiety shall be applied for the purpose of this Act; and in case any such offender shall not on conviction pay the said forfeiture, such Magistrate is hereby required to commit him to the common gaol or house of correction, there to be kept at hard labour if such Magistrate shall so order, for any time not exceeding one calendar month unless such forfeiture shall be sooner paid: Provided nothing herein contained shall prevent the Council from electing to bring any civil action for damages against such offender before the Supreme Court, should they consider the amount of such damages to exceed the jurisdiction of the said Magistrate.

Accidental injury to property.

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

Police Expenses.

Expenses of Cape Town Police.

115. The Council shall pay over yearly on or before the 31st day of March to the Treasurer and Accountant-General of this Colony, or to the officer acting as such, towards the maintenance of the police required for the purposes of the Municipality of Cape Town, the yearly sum of four thousand pounds sterling.

Expenses for which Council is liable to contribute.

116. The items which shall for the purpose of such contribution as aforesaid be included in the expense of the police force shall be such as are included in the second Schedule to Act No. 31 of 1883; and the Council shall not be liable to contribute towards any further charge which may be incurred for or in respect of the said police or of any additional police hereafter engaged without the concurrence of the Council.

Digitised by the University of Pretoria, Library Services, 2016

Auditor-General's certificate to be proof of expenses.

117. A certificate, signed by the Auditor-General of the Colony, or the officer acting as such, certifying that a certain sum, to be specified in such certificate, has been the expense for the purposes of this Act of the police force aforesaid, for the year mentioned in such certificate, shall be deemed and taken to be *prima facie* evidence of the amount of such expense: Provided that the Council shall, should they require it, be supplied with a detailed statement showing the particulars of such expense.

Water Supply to Green and Sea Point.

Green Point water supply.

118. The inhabitants of the Municipality of Green Point and Sea Point shall have the right, and shall be entitled to be furnished and provided from the waterworks now existing, or which may hereafter be made, erected or provided, for supplying water to the inhabitants of Cape Town, with a supply of water, in the same proportions, on the same terms, at the same rates, under the same obligations and under the same regulations in, on, at, and under which the inhabitants of Cape Town shall for the time being have, or be entitled to have water supplied to them; and subject always to the payment of the rates which by the terms of this Act the Council have power to levy upon the immovable property within the Municipality of Green Point and Sea Point; and in consideration of such water rates to be paid by the inhabitants of the Municipality of Green Point and Sea Point as aforesaid, the Council shall, and they are hereby required to provide, keep in good order and repair, a main pipe extending from the said waterworks as far as the main pipe by which water is now supplied to the inhabitants of Green Point and Sea Point at present extends, for the due supply of water to the inhabitants of the Municipality of Green Point and Sea Point.

Council to make annually an account showing actual cost of waterworks for past year.

119. The Council shall in the month of January in every year make and frame a true and accurate account in writing showing the actual cost of the Municipal Waterworks with its appurtenances and appliances for the supply of water calculated up to the 31st day of December then last past. When such account has been framed a statement shall be prepared with a view to estimating the sum which will be required for water supply and waterworks for the then current year. In preparing such statement the Council shall add together the amount of the interest on the actual cost aforesaid calculated at the rate of five per cent. and a fair and reasonable amount as an allowance for depreciation. From the sum of these amounts shall be deducted all revenue derived during the year last past from the sale of water by the Council in the Municipalities of Cape Town and Green Point and Sea Point, and the deficiency found shall be the estimate of the sum required for the purposes of water supply and waterworks during the then current year.

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

How estimate of proportionate value of immovable property in Cape Town and in Green Point and Sea Point arrived at.

120. The estimate arrived at in the last preceding section shall then be divided in the proportion which the true and just valuation of the immovable property in the Municipality bears to the true and just valuation of the immovable property in the Municipality of Green Point and Sea Point. When by this means the fair proportion of moneys required from the inhabitants of the latter Municipality has been obtained, it shall be lawful and competent for the Council to impose and levy a rate on the valuation of all immovable property in the Municipality of Green Point and Sea Point sufficient to cover such fair proportion; provided always that such rate shall never in any one year exceed three-fourths of a penny in the £ upon such valuation, and that if it be necessary to levy a rate the Council shall never be required to levy a rate of less than one-eighth of a penny in the £.

Commissioners of Green Point and Sea Point Municipality to make valuation of property.

121. To enable the Council from time to time to levy the rates in the last preceding section mentioned upon a fair valuation the Commissioners of the Municipality of Green Point and Sea Point shall be bound not less than once in every three years to cause a true and just valuation of the immovable property in the said Municipality to be made in terms of any law or regulations in that behalf for the time being in force in the said Municipality, and upon such valuation being made a copy thereof shall after being duly certified by two of the Commissioners be transmitted to the Council and shall be deemed to be a valuation roll of the Council in terms of this Act.

Rates to be levied on valuations made.

122. All rates levied under the provisions of the one hundred and twentieth section of this Act shall be levied upon the valuations made in terms of the last preceding sections, and until such valuations be made such rates shall be levied according to the existing valuations of immovable properties in force in the Municipality of Green Point and Sea Point.

Power to lay mains, &c., in Green Point.

123. It shall be lawful for the Council, from time to time, with consent of the Commissioners of the Municipality of Green Point and Sea Point to lay under any of the streets, roads and public places within the said Municipality, such mains, service pipes and waterleadings, as in the opinion of the Council it may be advisable to provide for the purpose of facilitating the supply of water to the inhabitants of the said Municipality and the same to keep in order, repair and renew from time to time.

Water supply arrangement terminable by Green Point.

124. It shall be lawful for the Commissioners of the Municipality of Green Point and Sea Point upon a notice of not less than three months, to be given by them to the Council, to terminate and annul the arrangement mentioned in section one hundred and eighteen, either in the whole or in part, regarding the supply of water from the waterworks of Cape Town, for the time being, to the inhabitants of the Municipality of Green Point and Sea Point; and upon the expiration of such notice, or sooner, should the said

Digitised by the University of Pretoria, Library Services, 2016

Commissioners and Council so agree, all and singular the provisions of the one hundred and eighteenth to one hundred and twenty-third, inclusive, and the one hundred and thirty-second sections shall cease, determine and become void, as to the district or districts in respect to which the notice is applicable; but no notice terminating the said arrangement shall be of any validity unless and until the said Commissioners shall have prior to giving such notice obtained the sanction of a majority consisting of two-thirds of the householders present at a meeting called for the purpose upon due notice; provided that any householder present at such meeting may demand a poll of householders of the said Municipality, in which case no such notice as aforesaid shall be of any validity unless two-thirds of the householders polled shall by their votes declare in favour thereof; and provided that no householder who is not qualified as the owner of landed property in the said Municipality shall be entitled to vote at any such meeting, or at the taking of any such poll, unless he shall have been resident in the Municipality for a period of six months prior to the day of voting: Provided, always, that if any such arrangement as aforesaid be terminated and annulled either in the whole or in part, the Council shall sell to, and the Municipality of Green Point and Sea Point shall be bound to purchase and pay the fair value of the service pipes, mains and waterleadings belonging to the Council, situate in the district or districts in respect of which such arrangement shall terminate; and in the event of no agreement being arrived at the purchase price payable to the Council by the said Municipality shall be fixed by arbitration.

Powers and Duties of the Council.

Council's duty as to maintenance of water.

125. The Council shall make and maintain, at all times in serviceable order and efficient repair, all dams, tanks, reservoirs and other works necessary for the impounding of an adequate supply of water to the inhabitants of the Municipalities of Cape Town and Green Point and Sea Point and to the shipping in Table Bay; as also all mains, branch service pipes, and other appurtenances required to convey that supply to every locality or district entitled to it by the provisions of this Act.

Council's duty to maintain water supply.

126. The Council is hereby required to maintain, at all times, an adequate supply of water to every public fountain erected by or with the consent of the Council, and to every fire plug, to the cisterns from which the shipping in the harbour of Table Bay is supplied, and to all dwelling-houses and private water leadings; and in order to enable the Council to supply every dwelling-house with water the owner of every such dwelling-house shall within twenty-one days after receiving written notice to that effect lay on a private service pipe to the main branch or service as may be directed, and in all cases when the owner shall refuse or neglect, he shall be liable to a

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

penalty not exceeding five pounds sterling, and the Council is hereby empowered to supply and lay on such private service pipe at his expense; and for such purpose, and in case of renewing or relaying such pipes as may already have been lawfully laid, or in the laying on, at the expense of owners, private service pipes or water-leadings to dwelling-houses the Council shall have power to enter on private property.

Bridges, sluices, &c.

127. The Council shall cause to be made, provided, erected, and built, covered in or removed, such bridges, sluices, dams, or reservoirs, watercourses, drains, and ditches as now are or shall be deemed necessary within the Municipality, and shall cause the same to be kept at all times in good and efficient repair, and from time to time to make such rules and regulations thereon as they shall find necessary.

Abatement of nuisances.

128. The Council is hereby authorised and required to remove, put down and abate all nuisances of a public nature within the said Municipality, or which may tend either to injure the health or in any way affect the safety or reasonable comfort, peace and quiet, or the rights of the inhabitants at large, and if need be, to proceed at law before the Resident Magistrate or Supreme Court, against any person or persons so committing any such nuisance for abatement thereof and recovery of damages, if any; and the Council shall and they are hereby required to cause all streets, watercourses, drains, roads and places within the said Municipality to be kept clean and free from dirt, filth or rubbish; and any person convicted upon the complaint made by the Council to the Resident Magistrate, of throwing dirt, filth or rubbish into any such street, road, watercourse, drain, or place as aforesaid shall forfeit and pay any sum of money not exceeding five pounds; and in default thereof to be imprisoned for any period not exceeding two months unless such fine shall be sooner paid.

Repairs to streets, &c., and making of new streets.

129. The Council shall cause the public streets, roads, and places, within the Municipality, to be at all times kept in good and efficient repair; and as far as the funds of the Municipality shall permit shall cause such new streets and roads to be made as may be necessary for the public use, and shall keep the same in good and efficient repair, and from time to time make such rules and regulations thereon as to them shall seem fit.

Lighting of streets, &c.

130. It shall be lawful for the Council to make provision for lighting in a suitable manner the whole streets, lanes, squares, public passages, thoroughfares and public places within the city, and to provide, erect and maintain, or grant leave to any person or persons, company or companies to provide, erect and maintain, under such conditions as they may see fit, such a number of lamps, lamp-posts, lamp-irons, and other appliances and appurtenances as may be necessary for that purpose, and to light or enter into contracts for lighting, and cause to be lighted such lamps by

Digitised by the University of Pretoria, Library Services, 2016

means of oil, gas, electricity or otherwise; and the Council are hereby authorised to order and require such lamp-posts, lamp-irons and other appliances and appurtenances to be put or fixed upon the sides of the pavements, footways, streets and roads, or upon or against the walls and palisades of buildings on the sides of the streets, without being liable to any claims for compensation. And the Council may also from time to time make such regulations on the aforesaid matter as they shall find necessary.

Provisions for water supply.

131. It shall be lawful for the Council to excavate, construct and lay down within the limits of the Municipality, watercourses, water pipes, conduits, sluices, dams, reservoirs, aqueducts, wells and other works for supplying water to the inhabitants of the Municipality and to keep the same in repair; and to carry out any preliminary works in connection with a contemplated water supply from any quarter; and to enter into contracts for the supply of water to the Council and the inhabitants, or for any of the purposes aforesaid.

Compulsory supply of water.

132. The Council shall have power to call upon the owner of each and every house entitled to a supply of water under the terms of this Act to take from the Council at his own expense a water-leading and a supply of not less than one hundred gallons per diem and to pay the price thereof, and upon being so called upon every such owner shall be obliged so to do; provided that the terms of this section shall not apply to houses within the Municipality of Green Point and Sea Point at present supplied with water by the Sea Point and Green Point Waterworks Company, Limited, so long as they continue to be supplied by such company, its successors or assigns.

Drainage.

133. It shall be lawful for the Council from time to time to cause such sewers, drains and pipes to be made, laid, altered, deepened, covered over and maintained within the Municipality as shall be necessary for the effectual draining of the Municipality or any portion thereof, and from time to time to cause to be made and maintained all such reservoirs, sluices, engines, ventilating shafts and other works as shall be necessary for cleansing and ventilating such sewers, drains and pipes, and if needful they may carry such sewers, drains, pipes and ventilating shafts through and across private lands or beneath or against private buildings, making compensation for any damage done, which compensation shall, if not mutually agreed upon, be settled by arbitration; and the Council or any persons duly authorised by them shall have right of access for maintenance of such sewers and drains.

Power to carry sewer across public roads and streets and to expropriate vacant Crown land.

134. The Council may within the limits of the Cape division, carry any sewer through, across, or under any public road or street, or any place laid out as, or intended for a public street, and through, across or under any vacant or unimproved Crown land, or

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

any vacant or unimproved land belonging to any Municipality, and may expropriate any vacant or unimproved Crown land for a sewage farm, pumping station, or for other purposes connected with the drainage and sewage of Cape Town, without paying compensation.

Sewage farms, &c.

135. The Council shall have power to take and expropriate at such price as may be fixed by arbitration any landed property within the Cape Division required by them for the purpose of sewage farm or farms and pumping stations and generally for any purpose connected with the drainage and sewage of the city, and may carry their drains and sewers through or beneath any landed property lying within the Cape Division along any proposed route for such sewers from the city to the said sewage farm or farms, paying such compensation for damage done as may be ascertained by arbitration, and the Council and its officers and servants shall have right of access to private property for maintenance and inspection of all such sewers and drains.

Notice of any sewage works to be commenced or extended to be given in local papers.

136. The Council shall at least one month before commencing the construction or extension of any sewer or other work for sewage purposes beyond the limits of the Municipality of Cape Town, give notice of the intended work by advertisement in one or more local newspapers, circulating within the district where the work is to be done. Such notice shall describe the nature of the intended work, and shall state the intended terminus thereof, and particulars of the roads, streets, and other land (if any) through, across, under or on which the work is to be done; and shall name a place where a plan of the intended work is open for inspection at all reasonable hours, and a copy of such notice shall be served on the owners or reputed owners, lessees or reputed lessees, and occupiers of the land, and on the local authority (if any) having the care of such roads or streets.

Effect of objection of owner, occupier or lessee to projected work.

137. If any such owner, lessee or occupier, or any such local authority, or any other person who would be affected by the intended work objects to such work, and serves written notice on the Council of such objection at any time within the said period of one month, then the intended work shall not be commenced without the sanction of the Governor, unless such objection is withdrawn.

Governor may appoint Inspector to report.

138. The Governor may on the application of the Council appoint an Inspector to make an enquiry on the spot into the propriety of the intended work, and the objections thereto, and to report to such Minister as the Governor may direct on the said matter. And on receiving the report of such Inspector the Governor may make an order disallowing the intended work, or allowing it with such modification (if any) as he may deem necessary.

Council's power to deal with land held by it for the purpose of sewerage.

139. The Council may deal with any land held by it for the purpose of receiving, storing, disinfecting, or distributing sewage in such manner as it deems most profitable, either by leasing the

Digitised by the University of Pretoria, Library Services, 2016

same for a period not exceeding twenty years for agricultural purposes, or by contracting with some person to take the whole or part of the produce of such land, or by farming such land and disposing of the produce thereof; provided always that in dealing with land for any of the above purposes, provision shall be made for effectually disposing of all the sewage brought to such land without creating a nuisance.

Erection of houses over sewers.

140. No house or building shall be erected over any sewer or drain belonging to or vested in the Council without previous notice to them so that such works as they may deem necessary may be executed for the protection of the sewer or drain; and if any house or building be erected, without such notice, the Council may demolish the same, and the expense incurred thereby shall be recoverable by the Council from the person erecting such house or building.

Protection of sewers, &c., against damage.

141. Every person who without the written consent of the Council shall make or cause to be made any opening into any public sewers or drains, or who shall destroy or injure, or cause to be destroyed or injured, any of the said sewers or drains or any works in connection therewith, vested in or constructed under the authority of the Council, shall be liable to a penalty not exceeding ten pounds sterling over and above the expenses incurred by the Council in making good the damage thereby occasioned; and such penalty and expenses shall be recoverable in any court of competent jurisdiction, and upon failure to pay such penalty and expenses such person may by order of such court be imprisoned for a period not exceeding three months.

Drainage agreement with Woodstock.

142. It shall be lawful for the Council to enter into an agreement with the Council of the Municipality of Woodstock, with a view to the drainage and sewage of the two Municipalities being jointly carried out and dealt with, to such extent, and upon such terms as may be mutually agreed.

Council may enter into agreements with public bodies.

143. It shall be lawful for the Council from time to time to enter into agreements with the Colonial Government, the Councils of other Municipalities and other public bodies in the Cape Division with a view to carrying out any public works or for any public purposes which in the opinion of the parties to the agreement it is advisable should be dealt with jointly, and such agreements shall be in such terms and upon such conditions as may be mutually agreed upon.

Establishment of markets.

144. The Council may from time to time as occasion may require, keep up and establish within the Municipality, a market or markets for the sale of cattle, meat, fish, game, poultry, vegetables, fruit, and other produce of South Africa, and may cause suitable land, houses and buildings to be purchased, built, erected, and kept in repair for the convenience of persons attending, holding and superintending such market or markets, and in connection

Digitised by the University of Pretoria, Library Services, 2016

therewith may lease or let out stalls or portions of such market or markets upon such terms and conditions as they may deem advisable, and may also frame and make such regulations and impose such fines as they shall think necessary for ensuring order and cleanliness within the said market or markets.

Assize of weights and food.

145. The Council may from time to time make regulations for the due and proper care of weights and measures and with reference to the quality and assize of bread, and the quality of meat and other eatables; and may empower any person, at all times, to visit and enter into the shops or places where bread, meat, fish and other eatables are sold for the purpose of assizing the bread and examining the weights and measures, and also of taking proper care that the bread, meat, fish, game or other eatables therein sold are good and wholesome, and to seize, confiscate, remove and destroy all bad or unwholesome bread, meat, fish and other eatables.

Registration of births and deaths.

146. The Council shall have power to require the due registration of births and deaths of individuals within the Municipality; and with regard to deaths, they shall be entitled to require medical men to grant to persons entitled to ask therefor, under any regulation which may be framed, such certificate as to the cause of death as may be required to be furnished to the Council by such persons. And no undertaker, or other person shall bury a corpse, and no person or persons shall remove or cause to be removed any corpse outside the Municipality until a certificate of the registration of death by the Council shall have been exhibited to him. And the Council may make such bye-laws or regulations with reference to births, deaths and burials as to them may seem expedient, and shall therein provide for the registration of deaths upon every day of the week.

Contribution to Public Library.

147. The Council may contribute annually, out of the municipal revenue a sum not exceeding three hundred and fifty pounds sterling towards the expense of keeping the South African Public Library open during the evening for the benefit of the public, under such conditions as the Council shall impose.

Contribution to New Somerset Hospital.

148. The Council may contribute annually, out of the revenues of the Municipality, a sum not exceeding the sum of two hundred and fifty pounds sterling in aid of the purposes and objects of the New Somerset Hospital of Cape Town, in such manner and under such conditions as the Council shall deem advisable.

Contribution to public functions, &c.

149. The Council may from time to time out of its revenues, other than rates, pay such sums as it may deem necessary towards public functions, public demonstrations, and to defray the expense of the representation of the Council as such on any such occasion; provided, always, that nothing herein contained shall be construed so as to permit any Councillor to make any profit out of such sums. And the Council may further annually pay to the Mayor,

Digitised by the University of Pretoria, Library Services, 2016

to be expended by him, as Mayor, for the purposes of public hospitality, a sum not exceeding five hundred pounds sterling, anything to the contrary in this Act contained notwithstanding.

Pensions and allowances to officers and families.

150. The Council may pay to such officers and servants of the Municipality as shall be superannuated or become unfit for duty, such pensions or retiring allowances as such officers or servants would be entitled to according to the scale and regulations at the time existing relative to pension or retiring allowances of the civil service of the Colony, and pay such allowances and gratuities to the wives and families of deceased officers or servants as they may deem proper and expedient.

Construction of public baths, wash-houses, &c.

151. The Council may from time to time make, establish, construct and maintain public baths, abattoirs, refuse destructors, urinals, latrines, cabmen's shelters, coffee stalls and wash-houses, with or without drying grounds, and public bathing places for the use and accommodation of the inhabitants of Cape Town, and for any such purposes may expropriate, purchase and acquire lands and buildings and may utilise municipal property, and may from time to time fit up, furnish and supply the same respectively with all requisite furniture, fittings, requirements and conveniences and from time to time alter, enlarge, repair, renew and improve the same respectively and afford the use thereof respectively to such inhabitants at such reasonable charges and under and subject to such regulations as the Council may deem expedient.

Sale of public baths, wash-houses, &c.

152. Whenever any of such public baths, bathing places, abattoirs, refuse destructors, urinals, latrines, cabmen's shelters, coffee stalls, wash-houses or drying grounds are deemed by the Council to be unnecessary or too expensive to be kept up, or for other reason it be deemed inexpedient to continue the same the Council may discontinue the same and sell by public or private sale the lands, buildings and materials for the best price that can reasonably be obtained; provided that no such sale shall be made unless the Council resolve thereon at a meeting at which two-thirds of the Councillors in office be present, held not less than a fortnight after notice shall have been given to the Council at a meeting thereof of an intention to move that such discontinuance be carried out and such sale effected.

Establishment of gardens, recreation grounds, &c.

153. The Council may from time to time make, establish, maintain, enclose and provide gardens, parks, ornamental, pleasure, recreation, athletic, and racing grounds and pavilions, refreshment rooms, lavatories and other conveniences in connection therewith for the use of the inhabitants of Cape Town or any section thereof, and may from time to time level, drain, plant and otherwise lay out and improve the same for the more convenient use and enjoyment thereof, and the general management, regulation and control of the same shall be vested in the Council who may from time to time determine the charges if any to be made for the use thereof.

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

Construction of wharves, piers, &c.

154. The Council may from time to time, upon obtaining the consent of the Colonial Government and of the Table Bay Harbour Board respectively, execute, construct, carry out, improve, work, manage, and control wharves and piers with buildings thereon in Table Bay, and embankments and promenades and such buildings along the seashore, and may in order to make such embankments, promenades or buildings or carry out any other work of public utility upon obtaining such consent as aforesaid, reclaim land from the sea in Table Bay; and all such wharves, piers, embankments, promenades and reclaimed land shall be vested in the Council who shall have the control and management thereof, and be entitled to make regulations with regard to the use thereof, and the charges to be made in connection therewith.

Acquisition of property for Municipal purposes.

155. The Council may from time to time erect and construct buildings and may from time to time alter, enlarge, repair and remove the same and fit up, furnish and supply the same respectively with all requisite furniture, fittings and conveniences and may from time to time let or lease such buildings or such parts thereof as are not immediately required for the Council's purposes.

Improvement of city and streets.

156. The Council may for the purpose of town improvement, expropriate, purchase and acquire land, with or without buildings, and may remove, alter, renew or repair such buildings and erect new buildings upon such land and all streets which they may close to traffic, and the Council may from time to time sell, let, lease or otherwise deal with any property so acquired without obtaining the sanction of the Governor: Provided that no act shall be done under the powers by this section conferred unless and until such act shall have been resolved upon by a majority of Councillors at the time in office at a meeting of the Council held not less than a fortnight after notice shall have been given to the Council at a meeting thereof of an intention to move for such expropriation or purchase, and that no such expropriation of land shall take place until the Council shall have prepared a plan showing the nature of the intended improvement or work, and shall one month before proceeding to expropriate have given a notice in two or more newspapers published in Cape Town of the intended expropriation, and setting forth a place where the said plan shall be open for inspection at all reasonable hours, and until a copy of such notice shall have been served on the owners or reputed owners, lessees or reputed lessees, and occupiers of the said land: Provided further that if any person interested as owner, lessee, or occupier, shall within such period of one month serve written notice on the Council of any objection to such expropriation at any time within the said period of one month, then such intended work shall not be commenced without the sanction of the Governor, unless such objection be withdrawn; and the Governor may, on the application of the Council, proceed as in the one hundred and thirty-eighth section of this Act set out, and make such order as in the said section is referred to.

Digitised by the University of Pretoria, Library Services, 2016

Closing of streets, &c.

157. Should any property acquired by the Council under the terms of this Act include or constitute the whole of the properties on both sides of any street, lane or thoroughfare, the Council is hereby invested with authority to close such street, lane or thoroughfare: Provided, always, that if the Council decide to close any such street, lane or thoroughfare, they shall not less than one month prior to so doing advertise their intention in two or more local newspapers, during which time any person feeling aggrieved by such contemplated closing may apply to any competent Court for relief, and upon any such application being made within such period of one month the Court shall be entitled to restrain the Council from such closing unless they shall satisfy the Court that no real or substantial damage will be occasioned to the applicant or until they shall have expressed their willingness to make compensation for such damage as may be found by arbitration to have been caused to such applicant.

Fire.

Extinction of fires.

158. The Council may purchase or provide such engines for extinguishing fire, and such water buckets, pipes, and other appurtenances for such engines, and such fire escapes and other implements for safety or use in case of fire, and may purchase, keep or hire such horses for drawing such engines as they think fit; and may purchase, build, provide or hire places for keeping such engines with their appurtenances, and for the horses, and for the accommodation of the persons charged with the management thereof, and shall employ a force of firemen, to be called "The Cape Town Municipal Fire Brigade," which shall be under the command of an officer appointed by the Council, and styled the "Superintendent" of the Fire Brigade, and the Council may make rules for the regulation of the said force, and may therein prescribe who shall be the officer in charge of the brigade at any fire when the superintendent is absent or incapacitated from acting, and may also give such firemen and other persons such salaries and rewards for their exertions in case of a fire as the Council think fit. In the absence or incapacity of the superintendent, unless it be otherwise prescribed in the regulations, the senior in rank in the brigade present at any fire shall assume the duties of the superintendent, and be the officer in charge for the time being.

Powers of Superintendent of Fire Brigade in case of fire.

159. On the occasion of any fire within the Municipality, the superintendent of the said brigade, or the officer in charge, shall, from the time he arrives at the fire, have control over the property on fire, and over such other property as may be considered by him at risk, and shall so continue until he reports to the Council that the fire has been extinguished, which report may be made verbally to the Mayor or Town Clerk. He may in his discretion avail himself of the assistance, and if he does accept such assistance, shall take command, of any persons who may voluntarily place

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

their services at his disposal, and generally he may take any measures that may appear expedient for the protection or saving of life and property, with power by himself, his men, or any person under his command, to enter upon, break into, or through, or take possession of, pull down, or destroy any buildings or other property for the purpose of protecting, saving life or property, or putting an end to or preventing the spread of a fire, doing as little damage as possible; and for these purposes he shall have free right of access to, and liberty to draw water from all tanks, cisterns, pipes or other supplies of water, whether on municipal or other property. The persons volunteering as aforesaid and any person whose services may be temporarily engaged, for the time they are assisting shall be deemed to be members of the said brigade, and the superintendent or the officer in charge shall have power to dispense with the services of any of them at any time.

Powers of Police in case of fire.

160. The police shall aid the brigade in the execution of their duties: they may close any street, passage or thoroughfare, in or near which a fire is burning, and may on their own authority, and shall at the request of the superintendent or other officer of the brigade, remove any persons who may interfere, or are considered as likely to interfere by their presence or otherwise with the operations of the brigade.

Certain persons indemnified from claims for damages

161. The brigade, the police, and all persons acting under the orders of the superintendent or the officer in charge, are hereby indemnified and exempted from all claims or demands whatever by reason of anything necessarily done in the execution of their duty, and the Mayor, Deputy Mayor, and Council are hereby indemnified and exempted from all claims or demands whatsoever by reason of any damage done upon sufficient necessity by them, the brigade, the police, and other persons aforesaid.

Charges to be made by Council in case of fire.

162. The Council shall be authorised to charge on a private dwelling-house and its out-buildings which shall be or shall have been on fire the sum of five pounds sterling for the services of the brigade and the use of the fire engines and appliances, and also the sum of one pound sterling per hour for every jet of water supplied from the municipal waterworks during the time that such jet shall be playing upon the said dwelling-house, its out-buildings, and contents, and upon the adjoining buildings and erections, to prevent the extension of the fire. And the Council are hereby authorised to charge on every building (other than a private dwelling-house and its out-buildings) which shall be or shall have been on fire the sum of ten pounds sterling for the services of the brigade and the use of the fire engines and appliances, and also the sum of two pounds sterling per hour for every jet of water supplied from the municipal waterworks during the time that such jet shall be playing upon any such building and its contents and upon any adjoining buildings and erections to prevent the exten-

Digitised by the University of Pretoria, Library Services, 2016

sion of the fire: Provided, however, that the provisions of this section shall not extend to any buildings owned or occupied by the Government of this Colony when and so long as any special agreement exists between the Council and the Government as to the terms upon which the Council will grant the services of the brigade and supply water for the extinguishment of fire upon such buildings.

Who to pay charges.

163. The amounts charged on any building, in terms of the last preceding section, shall be payable by the owners and occupiers of such building in equitable proportions, and the distribution thereof shall be made by the superintendent or officer in charge, whose certificate shall be final and binding upon all parties interested, without appeal or review on any ground whatever. The amount charged on any building shall, however, be recoverable by the Council from the owner or occupier thereof, or both, who may be sued jointly or severally, each for the full amount, in any court of competent jurisdiction, and any owner or occupier paying the full amount charged as aforesaid, shall be entitled to be reimbursed by the other owners and occupiers to the extent to which according to the said certificate they are severally liable.

Salvage expenses.

164. No expenses incurred by the Council, superintendent or officer in charge, in causing to be pulled down or destroyed, any buildings or erections, or any parts thereof, for the purpose of putting an end to or preventing the spread of a fire, or for saving life, or in attempting to save buildings adjacent to or in the vicinity of a fire, shall be chargeable against the owners or occupiers of immovable property, but the Council shall not be liable to rebuild or repair or make compensation for any damage caused to any person or any buildings or other erections so dealt with.

Apportionment o expenses incurred.

165. The Council shall be entitled to sue for and recover all expenses incurred by them, the superintendent and officer in charge, in saving and removing and in attempting, or with a view to save or remove movable property from any buildings or erections on fire and from any buildings or erections adjacent to or in the vicinity of any building or erection on fire, and all expenses in keeping safe custody thereof, from the owners of the movable property saved or removed in equitable proportions, and the Council shall have an absolute lien upon the movable property so saved or removed until the expenses aforesaid shall have been received by the Council. The apportionment of the expenses aforesaid shall be made by the superintendent or the officer in charge, whose certificate shall be binding on all parties without appeal or review on any ground whatever: and if the aforesaid lien be not paid and discharged within twenty-one days, the Council shall have the right to sell and dispose of the said movables, or any of them, by public auction after three days' notice in two or more newspapers published in Cape Town, and after applying the net proceeds in reduction of such expenses may sue for and recover any deficiency which may be found to exist.

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

Report to Council on every fire by Superintendent.

166. The superintendent or the officer in charge shall make a report in writing to the Council on every fire he attends, and shall also send a similar report to the Resident Magistrate of Cape Town forthwith after the fire.

Damages and expenses incurred to be within meaning of Policy of Insurance.

167. All expenses incurred by the superintendent, the brigade, and the Council in the saving and removing or attempting to save or remove movable property, and in operations to save property and extinguish fire, charged against, and recoverable by the Council from owners or occupiers of movable or immovable property under this Act, and all damage occasioned by the brigade in the execution of their duties, and all sums chargeable upon any buildings, and payable in terms of section one hundred and sixty-three, shall be deemed to be loss or damage by fire within the meaning of any policy of insurance of such property or buildings against fire: Provided that nothing herein contained shall be construed so as to compel any Insurance Company to pay any sum in excess of the full amount insured in terms of such policy.

Rules and Regulations.

Existing regulations to continue till changed.

168. The existing rules and regulations of the Municipality of Cape Town, framed under Act 44 of 1882, in so far as the same are not contrary to law, and not repugnant to or inconsistent with the true intent and meaning of this Act, shall remain as legal, valid and effectual as if the same had been word for word inserted in this Act, until such time as the same shall have been altered by the Council in due form of law.

Power to make and alter regulations.

169. The Council may from time to time repeal, alter, add to or amend any of the municipal rules and regulations, and may frame any new rules and regulations within the scope of existing rules and regulations and the provisions of this Act, and from time to time add to, alter or amend the same.

Matters upon which regulations may be made.

170. The Council may also from time to time make, alter, revoke or amend rules and regulations for all or any of the following purposes:—

(1) For regulating the duties of the Council's officers and servants;

(2) For regulating the level, width, direction and construction of new streets made by the Council or by owners of private property and the sewerage or drainage thereof.

(3) For regulating the structure of walls, foundations, roofs and chimneys of new buildings, also their height and cubical contents, and the fixing of fireproof doors and shutters, at internal and external openings; for securing stability, the observance of sanitary precautions, the prevention of fires, and for purposes of health and public safety;

(4) For regulating the sufficiency of space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings;

Digitised by the University of Pretoria, Library Services, 2016

(5) For regulating the drainage and sewerage of buildings and for compelling the connection at the owner's expense of private drains with public drains, sewers or pipes, and for regulating the construction by the Council at the owner's expense of all house drains in so far as they connect with and extend from the main sewer to the kerb of the street;

(6) For regulating waterclosets, earthclosets, privies, ashpits and cesspools in connection with buildings, and to prohibit the use of such of them as the Council consider ought not to be allowed to continue.

(7) For regulating with respect to the closing of buildings or parts of buildings unfit for human habitations, and the prohibition of their use for such habitation;

(8) For prohibiting brothels, the overcrowding of houses, dwelling places and rooms and the erection of objectionable buildings;

(9) For securing the regularity of lines and levels of buildings, the class of architecture of buildings, and the removal, alteration and prevention of projections or obstructions in front of buildings.

(10) For regulating the giving of notices, and the deposit for the Council's approval of plans and sections by persons intending to lay out streets or to construct or alter buildings; the inspection by the Council or its officers; and as to the power of the Council to prevent, remove, alter, or pull down at the expense of the owner any work begun or done in contravention of its regulations.

(11) For compelling the pulling down, removing or rendering safe all buildings, walls, bridges, earthworks and stoeps of an unsafe or dangerous character or which have been allowed to fall into a dilapidated or ruinous condition, and for doing so at the cost of the owner;

(12) For regulating the inspection of buildings and structures by the Council and its officers;

(13) To provide for the due and proper care of the common pasture and other municipal lands, and therein to specify and regulate the quantity and kinds of live stock which each inhabitant shall be allowed to keep and depasture on the said lands;

(14) For preventing the spread of contagious or infectious diseases and for preserving the public health;

(15) For regulating and preserving public parks, walks, avenues, botanical gardens, public libraries, bleaching and drying greens and grounds, public washhouses, abattoirs, urinals, latrines, cabmen's shelters, coffee stalls, public baths, public places of recreation and open spaces, and

Digitised by the University of Pretoria, Library Services, 2016

preventing offences, nuisances and annoyances therein; and for regulating bathing and the hours of bathing near public thoroughfares or near any of the quays or piers;

(16) For regulating the storing, carriage, removal and use of gunpowder, dynamite, petroleum, oils, fireworks and other combustibles, and explosives, and for regulating the use of firearms;

(17) For regulating the removal of night soil, stable litter, filth, and refuse from private premises and from all streets, roads and public places, and for regulating the time and mode of the removal of any offensive matter or thing;

(18) For imposing a tax upon the keeping of dogs and providing with regard to the seizure, sale and destruction of ownerless dogs and those in respect of which the tax has not been paid;

(19) For the abatement of nuisances and causing vehicles to be kept under proper control; for preventing and removing obstructions in the streets, roads, public thoroughfares, squares, open spaces, foot pavements and sidewalks of the city; for dealing with diseased animals, and the burial of dead animals, and the driving of live stock through the streets, and as to live stock found straying in the streets;

(20) For regulating the naming from time to time of the streets, roads, thoroughfares, and open spaces, in the Municipality, and the numbering and re-numbering the houses, buildings and places therein, and imposing duties and obligations upon the inhabitants in respect thereof.

(21) For regulating the killing of cattle and sale of butcher's meat, the establishment and locality of slaughter houses, the keeping of slaughter houses and meat shops in a cleanly and proper state, and removing the filth therefrom, and requiring that all such places shall be provided with a sufficient supply of water;

(22) For providing that cattle, dogs, live stock and poultry shall not be kept in such places, or in such manner as to be a nuisance or annoyance to the inhabitants; for prescribing the situations or places in which swine may be kept, and for prohibiting, if deemed advisable, the keeping of swine;

(23) For regulating the beating or shaking of carpets, rugs or mats in streets or public places generally, and the hours within which carpets, rugs or mats may be beaten;

(24) For regulating the supply and distribution of any water under the control or management of the Council, the quantity of water to be supplied to and taken by the

Digitised by the University of Pretoria, Library Services, 2016

inhabitants, the price to be paid therefor, the time or times at which such supply is to be received, and for the purpose of preventing any waste of drinking water within the Municipality;

(25) For establishing one or more pounds within the Municipality and for providing for the management of pounds, the appointment of poundmasters, and for making such pound regulations as may seem necessary or expedient;

(26) For preventing any person or persons from carrying any board, basket or burden so as to obstruct or incommode passengers on any sidewalk or foot pavement, and for preventing the wheeling of perambulators, wheelbarrows and similar vehicles on any sidewalk or foot pavement, except for the purpose of crossing the same to or from any house or building;

(27) For preventing persons from congregating with others and thus causing an obstruction in any footpath, foot pavement, sidewalk or crossing, and for preventing the flying of kites, the use of catapults, and playing of games in public streets, thoroughfares, and open spaces, and for preventing the obstruction of public streets, thoroughfares and open spaces;

(28) For preventing the pollution of any water which the inhabitants have a right to use;

(29) For regulating the width, kerbing, paving, guttering, gravelling, cleansing and watering of roads and streets;

(30) For supervising and licensing pleasure boats and vessels, and prescribing the fees to be paid;

(31) For granting licences or permits for the making of bricks and for digging or removing sand, clay or gravel and for quarrying stone, and for cutting firewood, brushwood or grass upon municipal lands, and to prescribe the fees (if any) to be paid for the same;

(32) For regulating traffic and processions;

(33) For regulating, supervising and licensing hackney carriages and cabs, for fixing the amount of licence fees to be paid, the number of passengers to be carried, the fares to be charged, amount of luggage allowed to passengers, for regulating disputes as to fares, the position of cabs on stands to be appointed by the Council, and for the safety and convenience of passengers and the public;

(34) For regulating, supervising and licensing wagons, carts and other conveyances or vehicles drawn by any horse, mule, donkey or ox kept or used within the Municipality or plying for hire or profit, and for fixing the licence fees to be paid;

(35) For regulating the supervising and licensing of tramcars and omnibuses and for fixing the licence fees to be paid, the number of passengers to be carried, precautions to be

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

taken and provisions to be made against accidents, and regulating for the safety and convenience of the public;

(36) For regulating the keeping in repair and paving of tramway and railway lines running over public streets or roads and the keeping in repair and paving by tramway and railway companies and owners of tramcars and railways of the roadway between and adjacent to their rails;

(37) For regulating the use of bicycles, tricycles and velocipedes in streets, squares, thoroughfares and public places;

(38) For regulating or prohibiting the cleaning and training of animals, repairing, cleaning and outspanning of vehicles in streets and public places;

(39) For regulating the conditions upon which and the locality where noisome and offensive trades may be carried on and for prohibiting if deemed desirable the establishment of and for restraining the same;

(40) For planting and preserving trees and shrubs;

(41) For regulating and registering houses let or occupied as common lodging houses and sub-let tenement houses, boarding-houses and hotels, and inspecting such houses and hotels, and the keeping the same in a cleanly and wholesome state.

(42) For maintaining generally the good rule and government of the Municipality, and the safety, convenience and comfort of its inhabitants; and in framing regulations the Council may prescribe the time within which any works or things required to be done shall be executed, done or completed, and may provide in case of default for the execution, doing or completion by the Council of any such work or thing at the expense of the defaulter.

Penalties for breaches of Act or regulations.

171. Any rule or regulation made under this Act may impose a penalty for any breach thereof and may also impose different penalties in case of successive breaches thereof, but no penalty shall exceed twenty pounds; and any such rule or regulation may provide that in addition to any such penalty and expense incurred by the Council in consequence of the breach of any such rule or regulation and in the execution of any work directed by any such rule or regulation to be executed by any person and not executed by him shall be paid by the person committing such breach or failing to execute such work.

Approval of regulations by Governor.

172. After any regulation has been passed by the Council a copy of the same shall be posted in the Town Hall and a notice published in one or more local newspapers calling attention thereto, and three weeks after such notice shall have been advertised it shall be submitted for the approval of the Governor, and if approved, shall be published in the *Gazette* and thereupon shall have the force of law in the Municipality.

Digitised by the University of Pretoria, Library Services, 2016

173. A copy of the *Gazette* containing any bye-law or regulation shall be evidence of the due making of such bye-law or regulation and of the contents thereof.

No. 26—1893.

Production of *Gazette* to be evidence of Regulation.

MISCELLANEOUS.

174. The Council shall use all endeavours to keep the water flowing to or impounded in its reservoirs or other waterworks from being fouled or in any way rendered impure, and for this end, every person convicted upon the prosecution of the Council, of any of the following offences, shall forfeit to the use of the said Council a sum not exceeding five pounds; on failure of the payment of such fine the party convicted shall be liable to imprisonment, with or without hard labour, for any period not exceeding two calendar months;

Penalties for fouling municipal water.

(*a*) Every person who shall bathe or wash himself in any stream, reservoir, or other waterworks belonging to the Council, or wash, throw, or cause to enter therein any dog or other animal;

(*b*) Every person who shall throw any rubbish, dirt, filth, or other noisome thing into any such stream, reservoir, or other waterworks, or wash or cleanse therein any cloth, wool, leather or skin of any animal, or any clothes or other thing.

(*c*) Every person who shall cause the water of any sink, sewer, or drain, or any filthy water whatever, belonging to him or under his control, to run or to be brought into any such stream, reservoir, or other waterworks, or do any act whereby the water under the charge of the Council shall be fouled or made impure; and every such last mentioned person shall also forfeit the sum of one pound for each day, if more than one, during which the last mentioned offence shall be continued.

175. In case the Council shall require to take or use any land within the limits of the Municipality with or without the buildings, if any, erected thereon, or any frontage or stoep belonging to any premises, for the purpose of doing any act or of executing any work or undertaking authorised by this Act, or for the purpose of making or improving streets, roads, sidewalks, thoroughfares, causeways or pavements, or any other municipal purpose, or shall require to dig out and to carry away any materials, or to appropriate or to make use of any springs, streams or other supplies of water belonging respectively to any person or persons upon any lands within the limits of the Municipality, who shall not be bound by law to allow the Council so to do, then and in that case it shall be lawful for the Council, and they are hereby authorised and empowered to treat and agree with every such person or persons for the purchase, hire or use, as the case may be, of any such land, buildings, frontage, stoep, materials, springs, streams, or

Expropriation of property for public purposes.

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

supplies of water as aforesaid; or for the payment of consequential damages, and generally to enter into any such contract or contracts relative to the obtaining or using of any such land, buildings, frontage, stoep, materials, springs, streams, or any other supplies of water as aforesaid, on such terms and conditions as they shall deem expedient. And if any such person or persons and the Council shall not agree upon the purchase money or hire or recompense for consequential damages to be respectively given by one party and received by the other, then the amount of compensation, hire or recompense shall be settled by arbitration. Provided always that arbitrators, acting under the provisions of sections one hundred and fifty-six, one hundred and fifty-seven, or this section, in deciding upon any amount to be paid shall take into consideration the benefit and advantage derived or to be derived by the person claiming recompense or compensation, by reason of any work or improvement done or contemplated by the Council.

Medical men to give information as to infectious diseases.

176. Every medical practitioner in the Municipality shall, upon becoming aware, or being of opinion that any person attended on by him is suffering from an infectious disease, shall forthwith send a certificate to the Health Officer of the Council, or such other officer as the Council may appoint, disclosing the name and residence of the patient, and the disease he believes him to be suffering from, and for every certificate truly reporting the occurrence of an infectious disease the Council shall, after receiving the certificate, pay to the medical practitioner a fee of 2s. 6d., if the case occurs in his private practice. Any medical officer not complying with the terms of this section shall be deemed to have contravened a provision of this Act. The infectious diseases, of which notice must be given, shall include small-pox, cholera, diphtheria, membraneous croup, erysipelas, scarlatina or scarlet fever, and typhoid, typhus, enteric, relapsing, continued, yellow and puerperal fevers, and such other diseases as may at any time be declared by the Medical Council to be infectious.

Inquests.

177. In the case of the death of any person within the Municipality, when there has been no medical attendant who can testify as to the cause thereof, the occupier or occupiers, person or persons, responsible for the rent of the house in which the death has occurred, shall forthwith upon such death happening, report the fact to the Council and to the Resident Magistrate of Cape Town, the latter of whom shall, should he deem it advisable, hold an inquest as to the cause of death, and in the event of his deciding so to do, he shall have the powers and be charged with the duties set forth in the Act No. 22 of 1875, known as the "Inquests Act, 1875," excepting in so far as any part thereof may conflict with the provisions of this section.

Council to have preference on property for work done thereto.

178. In all cases, where by this Act or any rule or regulation at any time in force, the Council is authorised to do any work upon

Digitised by the University of Pretoria, Library Services, 2016

any private property, the expenses to which the Council may be put in doing such work and defraying the costs of materials in connection therewith, shall be a first claim and charge upon such property, and be paid in preference to any debt, obligation or mortgage thereon by the owner thereof; provided that the Council shall at no time take legal proceedings for the recovery of such expenses until three months after notice has been given to the owner of the property affected, and in case of the owner not being known or to be found, until the Council can show that due diligence has been used in endeavouring to ascertain the whereabouts of the owner and that he cannot be found.

Actions at law.

179. In any action or suit which shall or may be brought for the recovery of any penalty or sum of money due or payable by virtue of this Act, or for or in respect of any other matter or thing relating to this Act, by or against the Council, the warrant of attorney to sue or defend shall be deemed to be duly executed if issued under the common seal of the Council and signed by the Town Clerk; and all such costs, charges, and expenses as the Council shall be put to or become chargeable with by reason of bringing or defending such action or suit, or under any judgment of the Court, shall be paid out of the funds of the Council, and no Councillor shall be personally answerable or liable for the payment of the same, or any part thereof, unless such action or suit shall arise in consequence of his own wilful neglect or default.

Service of legal process on Council.

180. Any summons or notice or any writ or other proceeding at law which any person may desire to serve or have served upon the Council may be served by being given personally to the Town Clerk or by being left at his office with one of the officers of the Council.

Newspaper in which notices to be published.

181. In all cases on which any matter or thing is by this Act required to be advertised or printed in one or more newspapers published in Cape Town, the Council shall from time to time appoint at least one newspaper which may be regarded as its medium for such purposes.

Power of entry upon private property.

182. The Council shall for the purposes of this Act and its rules and regulations have power by themselves or their officers to enter at all reasonable hours into and upon any building or land for the purpose of executing any work or making any inspection authorised to be executed or made by them under this Act or the Council's rules and regulations without being liable to any legal proceedings on account thereof.

Penalty for obstructing Council.

183. Every person who shall at any time obstruct the Council in any of its officers in the performance of anything which they are respectively empowered or required to do by this or any other Act or by any municipal regulation, shall be liable in each case to a penalty not exceeding five pounds.

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1893.

Penalties for contravention of Act or regulations.

184. Every person who shall contravene any provision of this Act or any rule or regulation in force in the Municipality, shall for every offence be liable to the penalty expressly imposed by this Act or any such rule or regulation, and if no other penalty be imposed to a penalty not exceeding ten pounds.

Prosecution of offences and recovery of penalties.

185. All offences committed in contravention of this Act, or of any municipal rule or regulation, may lawfully be prosecuted in the Court of the Resident Magistrate for Cape Town; and if any person shall be convicted of any such offence, and shall not pay or satisfy the amount of fine imposed on him, it shall be lawful, unless otherwise provided in this Act, for the said Resident Magistrate to sentence such offender to any period of imprisonment not exceeding three months, unless such fine shall be sooner paid; and the amount of all fines, forfeitures, and penalties, when recovered, shall be paid to the Treasurer of the Council for the purposes of this Act.

"Lands and Arbitrations Clauses Act, 1882," incorporated.

186. For the purposes of any arbitration under the provisions of this Act, when the mode of arbitration is not set forth, the provisions of the "Lands and Arbitrations Clauses Act, 1882," are hereby incorporated.

Council's expenses.

187. All costs, charges, and expenses incurred in and about the promotion and passing and carrying the provisions of this Act and of the Municipal Regulations into effect, shall be paid out of the money authorised to be received by the Council under the provisions of this Act.

Short Title of Act.

188. This Act may be cited as "The Cape Town Municipal Act, 1893."

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE.

No. 27—1893.
Schedule.

Form of Front of Ballot Paper.

Counterfoil No.		*No. of Votes.*
1	BROWN (John Brown, of 21, Adderley Street, Cape Town, merchant.)	
2	JONES (Henry Jones, of 45, St. George's Street, Cape Town, attorney.)	
3	SMITH (Frederick Smith, of 51, Kloof Street, Cape Town, broker.)	
4	ROBINSON (George Robinson, of 33, Strand Street, Cape Town, draper.)	

No. of Votes

NOTE: *The Counterfoil is to have a number to correspond with that on the back of the ballot paper.*

Form of Back of Ballot Paper.

No....

Election for Town Council of the City of Cape Town.

....189..

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

No. 27—1893.] [Promulgated 12th September, 1893.

ACT

To Prevent the Spread of Contagious and Infectious Diseases amongst Cattle and other Animals.

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

Repeal of Laws.

1. The Ordinance No. 5 of 1844, the Ordinance No. 1 of 1853, the Act No. 7 of 1866-67, the Cattle Diseases Act, 1868, and the Animals Diseases Act, 1881, and so much of any other law as may be repugnant to or inconsistent with the provisions

Digitised by the University of Pretoria, Library Services, 2016

No. 27—1893.

hereof are hereby repealed: Provided that the repeal of any of the aforesaid laws shall not affect any proceedings commenced before the passing of this Act.

Interpretation clause.

2. For the purposes of this Act the following terms shall bear the following meanings:

"Animal" shall mean any horse, gelding, mare, mule, ass, bull, ox, cow, heifer, calf, sheep, goat, pig or ostrich, and shall, for the purposes of sections three, four, five, six and seven, include "dogs" and "cats."

"Occupier" shall mean:—

(*a*) Any person, company or co-partnership occupying or in possession of land other than Crown land, in respect of such land.

(*b*) The Field-cornet in respect of public roads, outspans and waste Crown lands within his field-cornetcy.

(*c*) The inspector of native locations in respect of locations on Government land, and in respect of locations on private land the owner or person in charge of such land.

(*d*) The Chairman or, in his absence, the Town Clerk or Secretary of a Municipality or Village Management Board, in respect of lands, other than private property, roads and outspans, within the limits of such Municipality or Village.

"Scab Inspector" shall mean any inspector appointed under the provisions of Act No. 28 of 1886, or of Act No. 33 of 1888.

Part I.—Importation.

Duty of officer boarding vessel to inform master of existence of Act and proclamation under it.

3. It shall be the duty of the port captain, harbour master, or other officer of Government who shall first board any ship or vessel arriving at any of the ports of this Colony, to ask the master of such ship or vessel whether he has on board any animals within the meaning of this Act, mentioning such animals by their denominations; and should the said master reply in the affirmative, the port captain, harbour master, or other officer shall inform the said master of this Act and of any proclamation that may have been made thereunder, and deliver to him a copy of the same respectively.

No animal from over sea to be landed without certificate.

4. From and after the 1st day of January, 1894, no animal brought from any place separated by sea from the Colony shall be landed at any place in the Colony from any ship, vessel or boat unless or until it be certified to the officer in command of such ship, vessel or boat under the hand of some person authorised by the Governor in that behalf, that such animal is free from any infectious or contagious disease, and that it has been proved to the satisfaction of such person that such animal is not brought from some place beyond the Colony in respect to which the proclamation in the next section of this Act mentioned shall be in

Digitised by the University of Pretoria, Library Services, 2016

force; and any officer in command of any such ship, vessel or boat who shall land or permit to be landed therefrom, contrary to the provisions of this section of this Act, any such animal shall, for every such animal so landed or permitted to be landed, be liable to a fine of not exceeding one hundred pounds and in default of payment thereof to imprisonment with or without hard labour for any period not exceeding six months unless such fine be sooner paid.

Governor may by proclamation prohibit importation of animals, &c.

5. It shall be lawful for the Governor by proclamation in the *Gazette* to prohibit the importation or introduction into this Colony from any place beyond the same in which any infectious or contagious disease affecting animals shall be known or supposed to be prevalent, of any such animals for such time as in such proclamation shall be mentioned, and from and after such proclamation and during the time mentioned therein, the master of any vessel or ship, and the owner of any boat, who shall knowingly land or permit to be landed from such vessel, ship or boat, and any other person who shall otherwise introduce into this Colony any such animals, contrary to the prohibition in such proclamation contained, shall for every such animal so landed or otherwise introduced, as the case may be, be liable to a fine of not exceeding one hundred pounds, or in default of payment thereof to imprisonment with or without hard labour for any period not exceeding six months, unless such fine be sooner paid.

Governor may permit landing of animals under certain conditions.

6. Notwithstanding the provisions in the last two preceding sections contained, it shall be lawful for the Governor by proclamation in the *Gazette* to permit the landing or introduction of any such cattle, sheep, horses or other animals, as aforesaid, at such place or places in the Colony, and subject to such restrictions and regulations as may in such proclamation be imposed.

Governor may make regulations as to animals so landed.

7. It shall be lawful for the Governor in and by such proclamation as in the last preceding section mentioned to make rules and regulations regarding the quarantine, isolation, care, safe-keeping or other treatment of any such animals so permitted to be landed or introduced as aforesaid, and such regulations may provide for the destruction of any such animals should it be deemed expedient to do so.

Part II.—Diseases in the Colony.

Any animal affected with any contagious disease to be isolated, and notice given of fact.

8. Every person who shall have in his possession or under his charge, or shall knowingly have on any property of which he shall be the occupier, any animal affected with the disease of lung sickness, or the disease of glanders, or with such other disease as the Governor may proclaim to be contagious or infectious, shall forthwith destroy, or shall keep such animal separate from all animals not so affected, and shall forthwith give notice to the Resident Magistrate of the district or the field-cornet

Digitised by the University of Pretoria, Library Services, 2016

No. 27—1893.

of the ward in which such animal is, or to the nearest justice of the peace, inspector of native locations, or scab inspector, and also to all the occupiers of all contiguous lands (not being lands situate within the limits of any town or village) that such animal is so affected; and every such justice of the peace, field-cornet, inspector of native locations, or scab inspector to whom such notice shall be given, or who shall himself be the person from whom such notice is required, shall report the notice received or shall give the notice required, as the case may be, to the Resident Magistrate of the district, and every Resident Magistrate to whom such report is made or notice given, shall report the same to the Minister in charge of the Agricultural Department.

Resident Magistrate, field-cornet, justice of peace, or inspector of locations with two landowners to inspect affected animal, and may order such animal to be destroyed or isolated.

9. Whenever any notice or information shall have been received by any Resident Magistrate, field-cornet, justice of the peace, inspector of native location, or scab inspector, or it shall otherwise have come to the knowledge of any such person, or such person shall have reason to suspect, that any animal in his district, ward, area, or location, is affected as aforesaid, he shall, with all convenient speed, call to his assistance any two farmers, being landowners, chosen from a list framed for each district of such landowners as are recommended by the Divisional Council (which list shall be published by notice in the *Gazette* and may be altered and amended from time to time), who are hereby authorised and required, upon being so called upon, to render such assistance; and he shall, together with such farmers, forthwith proceed to inspect such animal, and to hold an inquiry into the circumstances of the case, and if they, or any two of them, shall be of opinion that such animal is affected with any such disease as aforesaid, and that there is danger of such disease spreading they shall forthwith cause such animal to be destroyed or isolated, or dealt with in such other manner as they, or any two of them, may deem expedient in order to prevent the spread of such disease: or if they shall unanimously be of opinion that though such animal is not actually affected with any such disease, but that in order to prevent the spread of such disease it is necessary to deal with such animal as if so diseased, it shall be lawful for them to cause such animal to be isolated or dealt with in such manner other than destruction as shall be deemed expedient. The carcases of all animals destroyed under the provisions of this Act, or that may have died from any contagious or infectious disease, shall forthwith be buried or burnt by the owner thereof at the spot as nearly as may be where the death occurred.

Carcases of animals destroyed to be buried or burnt.

If animal found affected with lung sickness, may be destroyed.

10. When under the provisions of the last preceding section any animal has been found to be affected with glanders, the Board convened in terms of such section shall cause such animal to be immediately destroyed; but in the case of lung sickness the Board may cause the immediate destruction of such animal unless

Digitised by the University of Pretoria, Library Services, 2016

the owner of the infected animal has, in the opinion of the Board, a sufficiently safe camp, shed or stable in which to keep the infected animal isolated.

Resident Magistrate may declare infected area pending proclamation by Governor.

11. Whenever it shall come to the knowledge of any Resident Magistrate that any animal within the district is affected with any infectious disease, it shall be lawful for such magistrate upon notice to the occupier of the land on which such animal is, to declare such land or any portion thereof an infected area, and to prohibit the removal of any such animal as may be named in such notice from the land so declared an infected area, for a sufficient period from the date of such notice to enable the Governor, if he thinks fit, to issue the proclamation referred to in the next succeeding section, and such notice shall be published in some newspaper circulating in the district, and a copy thereof shall be posted at the office of the Resident Magistrate, and from and after such notice and prohibition and during such period the owner of any such animal in such infected area who shall allow any such animal to stray or be removed into any uninfected area, shall be guilty of an offence against the provisions of this Act and liable to the penalties prescribed for the contravention of the same.

Governor may by proclamation declare area or district infected.

12. Whenever any such disease as aforesaid is known to exist among animals in any district or districts, the Governor may by proclamation in the *Gazette* declare such district or districts or any area embracing or forming part of such district or districts, to be an infected district or area, and may by such proclamation order and direct that it shall not be lawful to remove from such district or area any such animals as shall be named in such proclamation whether the same are or are not affected with any such disease, and may by such proclamation make rules and regulations regarding the quarantine, isolation, care, safe keeping or other treatment of any animals in such district or area, and such regulation may provide for the destruction of such animals should it be deemed expedient to do so, and for such compensation for animals so destroyed as the Governor may deem fit: Provided that it shall be lawful for the Governor in such proclamation to make such exceptions as he shall think fit with regard to the removal from such district or area of any animals not affected with any such disease as aforesaid.

Withdrawal of Proclamation by Governor.

13. Whenever it shall be shown to the satisfaction of the Governor that contagious and infectious diseases have ceased to exist amongst animals in any district, area or portion of any such district or area with regard to which any such proclamation as in the last preceding section mentioned shall have been issued, it shall be lawful for him, if he thinks fit, at any time to repeal such proclamation by another proclamation in the *Gazette* and to declare such district or area or portion of such district or area as the case may be to be no longer infected.

Digitised by the University of Pretoria, Library Services, 2016

PART III.—GENERAL.

enalty clause.

14. Any person contravening any of the provisions of this Act or any proclamation issued under the provisions thereof, or wilfully obstructing any person in the due execution of any of the said provisions shall be liable to a fine not exceeding fifty pounds, or in default of payment to imprisonment with or without hard labour for any period not exceeding three months, unless such fine be sooner paid.

Operation of Pound Act within infected district or area.

15. For the purposes of the operation of "The Pound Act, 1892," within any district or area declared or proclaimed to be an infected district or area under the provisions of this Act, the term "nearest pound" shall be deemed to be the nearest pound within such proclaimed or declared district or area; and in case there is no pound in such district or area, the Governor may proclaim at some convenient spot, a pound therein, for the purposes of this Act, which pound shall then be under the control of the Divisional Council.

Act not to apply to certain diseases.

16. Nothing in this Act contained shall be taken to apply to the disease known as scab amongst sheep or goats, or the disease known as strangles, or, save as to the provisions of sections three, four, five, six and seven thereof, to the disease known as "Rabies."

Short title.

17. This Act may be cited for all purposes as the "Animal Diseases Act, 1893."

No. 28—1893.] [Promulgated 12th September, 1893.

ACT

To Authorise a Company to be styled the Green and Sea Point Water and Electric Lighting Company (Limited), to construct and maintain certain Water and Electric Lighting Works.

Preamble.

WHEREAS it is desirable for the better supply of water and for the supply of electric lighting to the inhabitants of Sea Point and Green Point, and to the persons residing within the distributing area shown on the plans hereinafter referred to, that a company should be formed for the purpose of constructing reservoirs and other works on, and laying down a line of water pipes and other works from the property known as Oudekraal, being portion of the entailed estate Orangezicht, belonging at present to Michael Alexander Willem van Breda, to Botany Bay at Sea Point to the reservoirs to be there constructed, and thence to be distributed within the Municipality of Green Point and Sea Point, and distributing area as shown upon the diagrams deposited with the Clerk of the House of Assembly:

And whereas the plans and sections of the said line of water pipes are now deposited in the office of the said Clerk of the House of Assembly:

Digitised by the University of Pretoria, Library Services, 2016

And whereas it is desirable that the company should acquire for such purpose all rights to the water and the springs, fountains and other sources of the same, flowing, existing or rising, or which may in future be found to flow, exist or rise on the said property Oudekraal, and certain rights over the said property and over the land adjacent to the said line of pipes and other works:

And whereas agreements have been entered into between one Hercules Petrus du Preez and Michael Alexander Willem van Breda who is entitled to the said property subject to the provisions contained in the Deed of Transfer in favour of the late Dirk Gysbert van Breda, dated 13th day of February, 1851, wherein the conditions under which the said property is entailed are set forth; and whereas under the said agreements the said Michael Alexander Willem van Breda has consented, subject to the consent of Parliament being obtained to the release of the said entail, to let in perpetuity the said property together with all such rights over the same as are necessary for the acquisition, storage and conveyance of the water thereupon and the purposes of the company in respect of the same, to any company which may be formed by the said Hercules Petrus du Preez for the above purposes and duly constituted and registered within this Colony under the Companies Act, 1892, within a year after the passing of the Act releasing the entail, in consideration of an annual income or rental of five hundred pounds being paid to the said Michael Alexander Willem van Breda and his successors, the first payment of the said income to be made on December 31st, 1894, and thereafter the said annual sum to be paid on the last day of each and every succeeding year:

And whereas it is necessary to provide that the said annual income or rental shall be guaranteed and secured to the said Michael Alexander Willem van Breda and his successors so soon as he shall have obtained from Parliament the release of the said entail subject to the conditions that upon failure to fulfil the terms of payment of the said annual income as aforesaid the release shall be void and the entail be restored, and all the rights, powers and privileges granted by this Act shall lapse, cease, and determine:

And whereas the said Hercules Petrus du Preez has undertaken to transfer, cede and assign all his right and title under the said agreements to the company to be formed under this Act:

And whereas it is expedient and necessary that certain rights, privileges and powers should be granted to and vested in the said company for the furtherance and carrying out of the purposes aforesaid:

And whereas it is desirable that the liability of the shareholders in the said company should be limited to the amount of their respective shares:

Digitised by the University of Pretoria, Library Services, 2016

No. 28—1893.

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

Payment to Mr. Breda of £500 per annum.

1. The company shall pay to the said Michael Alexander Willem van Breda and his successors for the lease in perpetuity of the property Oudekraal being portion of the entailed estate Orangezicht in the Cape District, and containing 599 morgen and situate on the north-west slope of Table Mountain between the places Van Camps Bay and Houts Bay including all rights necessary for the purposes of this Act the annual income or rental of five hundred pounds which shall be a preferent charge upon all the assets of the said company, the payment of which sum shall be made on the 31st day of December, 1894, and thereafter on the last day of each and every succeeding year : Provided that before the said 31st day of December, 1894, the said Michael Alexander Willem van Breda shall have obtained from Parliament the release of the said entail; and provided further that in the event of failure of the said annual income or rental for a period of thirty days after the due date and after lawful demand made in writing of payment the release of the said entail shall be void and the said entail shall be restored and all the rights, powers and privileges granted and conferred under this Act shall lapse, cease, and determine.

Constitution and Registration of Company.

2. The company shall be duly constituted and shall be registered with limited liability under the Companies Act, 1892, within a year of the passing of the said Act releasing the entail, and in default of such registration within the said period all the powers and privileges granted and conferred under this Act shall lapse, cease and determine.

Power to Green and Sea Point Water and Electric Lighting Company, Limited, to take, generate and convey water and electrical power.

Line of pipes and works.

3. The said company shall be and is hereby authorised and empowered, subject to the provisions of section one of this Act, to convey such a supply of water as it may require for the purposes of this Act, from the said property Oudekraal, and to conduct, lead, and carry such water across ground the property of the estate of the late Daniel Mills, thence across the ground the property of the Sea Point Waterworks Company, Limited, Charles A. Fairbridge and others, thence across the property of E. Tilley, thence across the property of " Ohlsson's Cape Breweries, Limited," thence across ground vested in the Town Council of Cape Town, thence across the property of C. H. van Zyl, thence across the property of Mrs. Kingon, into the Municipality of Green Point and Sea Point, as shown on the diagram in the hands of the Clerk of the House of Assembly, and to generate and transmit electrical energy within the limits or area of distribution shewn on the said diagram or plan : Provided that it shall be lawful for the company to deviate from and vary the line of the said water pipes and alter the proposed site of reservoir and other works with the consent of any owner or owners through whose lands the said

Digitised by the University of Pretoria, Library Services, 2016

line may pass, or on whose land the proposed site of such reservoir and other works shall be situated, or in the case of lands vested in any Municipality or Town Council, with the consent of such Municipality or Town Council.

Powers of company to enter on lands, &c.

4. For the purposes of this Act the company is hereby authorised and empowered on its formation to do all and each of the following acts and things in respect of land lying adjacent or convenient to the line of pipes or works marked on the aforesaid plans, that is to say:—

(*a*) To enter upon, take possession of, use, hold and appropriate any such land.

(*b*) To dig and make excavations and cuttings in, and make and construct mounds, walls, slopes, banks, bridges and culverts upon the said land.

(*c*) To place, make, construct and lay down upon, in, and under such land reservoirs, dams, pipes, canals, aqueducts, machinery, dynamos, wires, poles, cables, insulators, tubes, pipes, boxes, and any other constructions or works necessary or adapted for the impounding, storing, diverting, appropriating, cleaning, purifying, taking, conveying, or distributing water, and for the generating, conveying, transmitting or distributing electricity, for the purposes of this Act.

(*d*) To take, raise and carry away stones, clay, gravel and other materials, upon and from such land.

(*e*) To build and erect buildings, store houses, engine houses, sheds, machinery and any other requisite for construction or maintenance of the said water pipes, water works, electric lines and electric lighting works.

(*f*) From time to time to do all and each of the aforesaid acts and things, and such other acts and things as may be necessary in order to improve or maintain the works made and constructed for the purposes of this Act:

Compensation to be paid.

Provided, however, that in respect of every such act and thing done by the said company in respect of such land, without agreement made and entered into with the owner, lessee or occupier thereof, or in respect of such land as is vested in any Municipal or Town Council, without agreement made and entered into with such Municipal or Town Council; or in respect of such land as is the property of Her Majesty in her Colonial Government, without the consent of the Governor, the owners of such land or such Municipal or Town Council, or the Colonial Government as the case may be, shall be entitled to receive compensation from the company, and in addition thereto the lessee or occupier shall be entitled to receive compensation for disturbance of his possession or occupation, and for any injury that he may sustain by reason of the act or thing done: and provided further that no such act

Digitised by the University of Pretoria, Library Services, 2016

No. 28—1893.

or thing as aforesaid shall be done without the consent of the Governor, or the owner, or such Municipal or Town Council, as the case may be, in respect of any such land which is cultivated, planted or built upon, and provided also that nothing be done to interfere with the present pipes or other fittings and connections, the property of the Town Council of Cape Town or the Sea Point Waterworks Company, save as hereinafter provided.

Exemption of land cultivated, planted, or built on.

Provisions of Lands and Arbitrations Clauses Act to apply.

5. Whenever compensation shall be claimed from the company under and by virtue of any of the provisions of this Act the amount of such compensation shall, in the absence of agreement, be determined by arbitration, and with regard to every such arbitration the provisions of the "Lands and Arbitrations Clauses Act, 1882," shall *mutatis mutandis* apply so far as they are not inconsistent with any of the provisions of this Act.

Commissioner of Crown Lands to approve of Regulations regarding electric lighting.

6. Subject to the provisions of this Act the company shall, if required, supply water and electricity within the area of distribution for the purposes of this Act; provided that electric lighting shall be supplied only by means of a system approved, in writing, by the Commissioner of Crown Lands, and subject to such regulations and conditions for securing the safety of the public and for insuring a proper supply of lighting as the said Commissioner may from time to time approve: and provided further that at least fourteen days before submitting the regulations for the approval of the Commissioner, a copy thereof shall be furnished by the company to the Municipality.

Power of company to construct works, and protection of public in respect thereof.

7. The company is, for the purposes of this Act and within the limits of the Municipality of Sea Point and Green Point, and limits or area of distribution as shown on the plans aforesaid, authorised and empowered to lay down, make and construct pipes, meters, conduits, and any other appliances necessary for the supply of water, and to attach hydrants, and to lay down, erect and construct poles, wires, insulators, cables, tubes, pipes, meters, and any other necessary appliances for the supply of electric lighting, under or along any public road, street or thoroughfare: Provided that before the company open or break up any public road, street or thoroughfare, they shall give to the persons under whose control or management, or in whom the same may be vested, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works of the company, and in such cases the said notice shall be given so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen: Provided further that no such public road, street or thoroughfare shall be opened or broken up except according to such plan and in such manner as shall be approved of by the persons in whom the same, or the control and management thereof, may be vested: and provided that all wires, insulators and the like appliances shall be placed at such a height as not to impede public or private traffic.

Digitised by the University of Pretoria, Library Services, 2016

Provided, also, that when the company open or break up any public road, street or thoroughfare, they shall with all convenient speed complete the work for which the same shall be broken up and fill in the ground and reinstate and make good the road or pavement so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light, sufficient for the warning of passengers, to be set up and kept there every night during which such road or pavement shall be continued open or broken up, and shall make good any damage which may exist or be caused by such opening or breaking up and to the satisfaction of the Municipality, Council or persons aforesaid at any time within a period of three months from such opening or breaking up, and shall moreover make good any subsidence of the soil arising from such opening or breaking up which shall occur within twelve months from and after such opening or breaking up: and provided further that where pipes cross private property the company shall leave sufficient communication between the portions of the property separated by such pipes and that in case of excavation on private property the ground shall be properly levelled.

If the company open or break up any public road, street or thoroughfare without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or if the company make any unnecessary delay in completing such work or in filling in the ground or reinstating and making good the public road, street, or thoroughfare so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to make good any defect caused by such opening or breaking up which may appear or arise within the space of three months next after the reinstatement of the road, street, or thoroughfare, or any subsidence of the soil caused by such opening or breaking up which may appear or arise within the space of twelve months next after such reinstatement, they shall forfeit to the persons having the control or management of the public road, street, or thoroughfare in respect of which such default is made, a sum not exceeding five pounds for every such offence and an additional sum of not exceeding five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof: provided further that in all such doings the company shall be liable for any accident or damages that may happen by reason of any neglect or fault on the part of the company or their employés.

Works and lands vested in company.

8. The right to and property in all and singular the work and buildings constructed as aforesaid by the company, under the provisions of this Act, and in all and singular the appurtenances to such works and also in all land appropriated for the purposes of

Digitised by the University of Pretoria, Library Services, 2016

No. 28—1893.

this Act or acquired by the company in connection with the said works shall be vested in the company. Provided that the title to land appropriated by the company shall not vest in the company until transfer thereof be made in due form of law and until compensation be made for such appropriation if such compensation be required.

Right of access to works.

9. It shall at all times be lawful for the company, its directors, engineers, contractors, agents or servants to have free and convenient access and right of way to every portion of the works constructed, and all land or other property used, possessed or owned by it under the provisions of this Act, for the purpose of altering, adding to, repairing, reconstructing, relaying, supervising or maintaining the said works or any part or portion thereof, or generally in order to carry out the purposes of this Act.

Right of company to supply municipality within area of distribution.

10. The company shall have the right to supply any person residing outside the limits of the Municipality, but within the limits or area of distribution as shown on the plan aforesaid, with water and electric lighting at such a rate as shall be mutually agreed upon between the company and such person, and to supply the inhabitants residing within the Municipality and the Municipal Council thereof with water and electric lighting at such a rate as may be mutually agreed upon between the company and the Commissioners of the Municipality, subject to the sanction of ratepayers in the manner provided for in the twentieth section hereof; provided

(*a*) That nothing in this Act or in the plans aforesaid contained shall give the company the right to supply water or electric lighting within the Municipality of Cape Town without the consent of the Town Council of the City of Cape Town first had and obtained.

(*b*) That if at any time after the happening of the conditions in the twentieth section of this Act referred to, the company shall at any time for the space of twenty-four hours, fail to supply water according to the requirements of the inhabitants or Commissioners of the Municipality, the said Commissioners shall have the right and are hereby authorised forthwith to enter upon and take possession of the water works of the company and to make all necessary provisions for supplying and to supply the said inhabitants with water according to their requirements at the expense and risk of the company until such time as the company shall be in a position to resume the supplying of water as aforesaid, and all costs, loss, charges and expenses made or incurred by the inhabitants or the said Commissioners in supplying the said inhabitants with water as hereinbefore provided shall be borne and paid by the company and shall be a charge on the assets of the

Digitised by the University of Pretoria, Library Services, 2016

said company ranking next after the charge in the first section hereof mentioned, and the said Commissioners shall have the further right to receive and collect all amounts due and owing by the said inhabitants to the said company for or in respect of water supplied previous to and during such default, and shall set off all amounts so collected or received against the costs, charges and expenses hereinbefore referred to.

Company to supply persons who demand to be supplied.

11. The company may from time to time, and shall at any time upon the application of the owner, or upon the application of the occupier, with the consent, in writing, of the owner of any dwelling-house, building, or other property within the limits of the said Municipality and limits or area of distribution as shown on the aforesaid plans, make, construct and lay down communicating pipes, conduits, wires, cables, poles, insulators or any other appliances necessary or suitable for the conveyance and supply, and for the measurement of the supply of water and electric lighting to any such house, building or property, and to attach hydrants for the supply of water, and wires, cables, poles, insulators for the supply of electric lighting to such house, building or property, and shall supply water and electric lighting to same.

Cost of house connection and repairs borne by consumer.

12. The cost of the house connection with shut-off cocks and suitable house fittings, and of all repairs, shall be borne by the persons to whom the water or electric lighting is supplied; but the materials for the same shall be of good quality and laid down by competent workmen or contractors, and the company shall have the right to object to any material or work supplied of an inferior quality to that usually put into such work: Provided always that when the water or electric lighting is supplied by meter the work up to and including the meter shall be done by the servants of the said company, and the work and fittings on the consumer's side of the meter may be done by the consumer in such way as he may deem fit.

Company to frame tariff of charges.

13. So soon as may be after the company is prepared and ready to supply water and electric lighting, it shall be lawful for the said company, and it is hereby required, to frame a tariff of charges in accordance with any agreement entered into under the tenth section hereof showing the terms upon which filtered and other water, and electric lighting, shall be supplied by the said company, and to make regulations showing at what times, in what manner and under what conditions the Municipal Council, the inhabitants of the said Municipality of Green Point and Sea Point, and of the said distributing area may obtain a supply of water and electric lighting; provided that such tariff and regulations or any alterations thereof shall be published in the *Gazette* from time to time and also in one or more of the newspapers published in Cape Town: Provided further that should any street lamp supplied by the company fail

Digitised by the University of Pretoria, Library Services, 2016

to give light at the appointed time through failure on the part of the company to supply the electric current, notice of the said default shall be given to the company, and if the said default continue for forty-eight hours after receipt by the company of the said notice, the company shall be liable to pay to the Municipality a fine of two shillings and sixpence for every night that such default shall be made in respect of each lamp: and in case of failure, through similar causes of any lamp installed in any private house, there shall be payable by the company to the Municipality, after receipt of such notice, and default for forty-eight hours as aforesaid, a fine of sixpence for every night that such default shall continue.

In default of payment company may cut off supply and sue for recovery.

14. If any person supplied with water or electric lighting by the company under the provisions of this Act shall, for thirty days after lawful demand, fail or neglect to pay the amount fixed by the tariff of the company for water or electric lighting supplied to him, the company may lawfully cut off the supply of water or electric lighting supplied to such person, and may by legal proceedings recover, not only the amount due for water or electric lighting supplied, but also any expense or costs incurred in or about the cutting off of such supply.

Company may frame bye-laws to be approved by Governor and published in *Gazette*.

15. It shall be lawful for the company from time to time to make, alter and repeal bye-laws and regulations for preventing waste or damage to the company, for regulating the conduct while on duty of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatever, and providing penalties, which shall not exceed five pounds for each offence, for the contravention of any of such bye-laws or regulations: Provided, however, that no bye-law affecting or imposing penalties upon persons other than servants of the company shall be of any force or effect until it shall have been approved by the Governor and published in the *Gazette* and one or more local newspapers: and provided further that at least fourteen days before submitting the regulations for the approval of the Governor, a copy thereof shall be furnished to the Municipality, and published in the *Gazette*, and in one or more local newspapers.

Copies of bye-laws to be supplied to servants, and to be placed in public places.

16. The company shall cause all bye-laws and regulations made under the preceding section to be printed, and shall cause a copy of such bye-laws and regulations to be given to every officer and servant of the company affected thereby, and shall cause the short particulars of the several offences for which any punishment or penalty is provided by this Act or by any bye-law or regulation made under this Act, affecting persons other than the shareholders, officers or servants of the company, and of the amount of every such penalty, to be painted on a board or printed upon paper and pasted thereon in the English and Dutch languages, and shall cause such board to be hung up or affixed on some conspicuous

Digitised by the University of Pretoria, Library Services, 2016

part of the principal place of business of the company, and where any such penalties are of local application shall cause such board to be affixed on some conspicuous place approved of by the Municipality in the immediate neighbourhood, to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or removed.

Company may enter premises and cut off supply for purpose of inspecting and repairing.

17. The company may authorise any of their servants or employés, for the purpose of inspection and repair, to enter upon and into any house or building supplied with water or electric lighting by the company, between the hours of ten a.m. and four p.m., and to cut off the supply to any such house after twenty-four hours' notice, in writing, shall have been given of the intention to do so: Provided, however, that such supply shall not, under this section, be cut off for any period longer than may be actually required for the purpose of detecting waste water or making necessary repairs.

Company is bound to commence and to complete works within certain periods for water and electric lighting respectively, under penalty of losing benefits of Act; but Governor may extend time.

18. The company is hereby bound and required to commence the works to be constructed for the purpose of this Act, within one year, and to complete the said work so as to be able to supply water to the said Council and the inhabitants of the said Municipality, within three years, and so as to be able to supply the said Council and the inhabitants of the said Municipality with electric lighting within three years from the date of the passing of this Act, and failing either the due commencement or the due completion of the said works within the time specified, all the rights, powers and privileges by this Act conferred on the company shall cease and determine, so far as relates to the special purpose in respect of which default is made, that is to say in case of failure to comply with this section in respect of the aforesaid waterworks, the power to supply water only shall cease and determine, and in case of failure to comply in respect of the aforesaid works for electric lighting, the power to supply electric lighting only shall cease and determine, unless before the expiration of the period of one year, or three years aforesaid, the Governor shall see fit to extend the time for either the commencement or completion of the said works, upon proof that the company is unable, through no negligence or fault on its part, either to commence or complete the said works within the periods respectively specified: Provided that no extension of time shall be granted until after the expiration of three months from the date of a notice to be published in the *Gazette* and one or more local newspapers, setting forth the intention to apply for such extension.

Company may take over property and plant of Sea Point Waterworks Company, Limited.

19. It shall be lawful for the company to agree with the Sea Point Waterworks Company to take over and purchase or otherwise acquire from the said company all the land, water, water rights, buildings, conduits, pipes, plant, machinery and every other matter or thing belonging to the said company and used by it for the

Digitised by the University of Pretoria, Library Services, 2016

purpose of supplying water to the said Municipality, and in like manner to acquire all the rights of the said Sea Point Waterworks Company under the "Sea Point Waterworks Company Act, 1861," at a price or for a consideration to be mutually agreed on, and from and after such agreement and such taking over of such works and rights aforesaid, the said Sea Point Waterworks Company shall cease to have the right to supply the Municipality and its inhabitants with water, or any rights whatsoever under the said Act, and all the rights of the said company under the said Act shall vest in the company who shall continue the said waterworks and supply water subject to the provision of this Act.

After the taking over the existing arrangement between Municipalities of Cape Town and Green and Sea Point may be terminated.

20. After the taking over and acquisition by the company of the rights and works in the preceding section mentioned, and upon the Commissioners of the said Municipality being satisfied that the works are substantially built, of sufficient capacity, and that the supply of water is ample throughout the year, and that the company are able to supply the inhabitants thereof with sufficient water, it shall be lawful for the said Commissioners, with the sanction of the registered owners of landed property, as hereinafter mentioned, within the Municipality, to give to the Town Council of Cape Town the notice in the fifty-ninth section of the Cape Town Municipal Act, 1882, mentioned, and upon the expiration of such notice or sooner, should the Commissioners and Town Council so agree, the provisions of the fifty-third, fifty-fourth, and fifty-fifth sections of the said Act shall cease, determine and become void as to the district or districts in respect of which such notice is applicable: Provided always that if any such arrangement as is in the said Act mentioned be terminated and annulled in the whole or in part, the Town Council of Cape Town shall sell to, and the Municipality shall be bound to purchase and pay the fair value of the service pipes, mains and waterleadings belonging to the Town Council of Cape Town situate in the district or districts in respect of which such arrangement shall terminate, and in the event of no agreement being arrived at the purchase price payable to the said Town Council by the said Municipality shall be settled by arbitration, and upon such sale and purchase the said Municipality shall sell to the company the said service pipes, mains and waterleadings so purchased at the price paid therefor to the said Council, together with all costs and charges incurred by the said Municipality in connection with the said purchase. In case the said Act shall be repealed in this present Session of Parliament, then the provisions of this section shall, *mutatis mutandis*, be applicable to such portions of the repealing Act as shall relate to the matters set out in the said sections: Provided further that the sanction as aforesaid of the registered landed proprietors to terminate the said agreement with the Town Council of Cape Town shall be obtained at a duly convened meeting called by the Municipality in the same

Digitised by the University of Pretoria, Library Services, 2016

manner as meetings of ratepayers of the Municipality are by Act 14 of 1859, or may be by any later Acts amending or repealing the lastmentioned Act, convened, and that at such meeting every resolution shall in the first instance be determined by a show of hands; but that any five of such proprietors being dissatisfied with the result, shall be entitled to demand a poll, in writing delivered at the office of the Commissioners within twenty-four hours after the meeting is held. And if upon the taking of such poll, the votes of a majority of not less than two-thirds of the registered owners of landed property, as aforesaid, be given in favour of the resolution submitted it may be acted upon by the Commissioners, but not otherwise. Such poll shall be taken within fourteen days after the date of such meeting and upon a day to be fixed by the Chairman of the Municipality, not being less than five days after the publication of a notice in two or more newspapers circulating in the Municipality announcing the date of such poll, and such poll shall be kept open from eight o'clock in the morning until eight o'clock in the evening. The result of such poll shall be reported to the Chairman of the Municipality or in his absence to the Secretary to the Municipality and shall be by him announced. And at such poll all males or females, whether living in or out of the Municipality, having landed property in the Municipality, and also the representative of any person absent from the Colony, or of any estate, having landed property within the Municipality, may vote in person or by proxy.

Penalty for injuring waterworks, &c.

21. Any person who shall wrongfully injure, damage, disturb, obstruct or interrupt any building, machine, erection, conduit, aqueduct, reservoir, dam, watercourse, drain, ditch, pipe, tube, standard wire, dynamo, turbine, lamp, or other work or works forming portion of the works contemplated by this Act, or obstruct, hinder or prevent the forming, constructing, completing, or maintaining of the said works, shall upon conviction be liable to a fine not exceeding ten pounds sterling, or to imprisonment with or without hard labour for any period not exceeding two months, unless such fine be sooner paid, or to both such fine and such imprisonment for such period as aforesaid.

Penalty for polluting water.

22. Any person who shall bathe or wash himself in any dam or reservoir, belonging to the company, or in any stream flowing into such dam or reservoir, or wash, throw, or cause to enter therein, any dog or other animal, or place or throw any rubbish, dirt, filth, or noisome thing into any such dam, reservoir, or stream, or dip, wash, or cleanse therein any wool, leather, or skin of any animal, or any clothes, or other thing, or in any way contaminate the same, shall for each such offence upon conviction be liable to the penalty prescribed by the preceding section.

Offences against regulations.

23. Every person guilty of an offence against any bye-law or regulation made under this Act shall, subject to the proviso in the

Digitised by the University of Pretoria, Library Services, 2016

No. 29—1893.

fifteenth section of this Act contained, be liable to the penalty expressly imposed by such bye-law or regulation, and if no such penalty be imposed, then to a penalty of not exceeding five pounds sterling.

How same may be tried.

24. Every offence against the provisions of this Act including every offence against the company's bye-laws and regulations shall be cognisable, and shall be tried by criminal process in the Court of the Resident Magistrate of the district wherein such offence shall be committed, and of every fine imposed, one-third shall be paid to the Colonial Treasury, one-third to the municipality wherein it is committed, and one-third to the company: provided that the company shall not participate in any fine imposed upon it under the provisions of this Act.

Company to have local office representative and local Board of Directors.

25. The company shall have a local office and a local secretary or agent and shall have a local board of directors, of which board the Chairman of the Municipality of Green Point and Sea Point for the time being shall be *ex officio* a member.

Company may sue and be sued in its corporate name.

26. The company shall and may sue and be sued as "The Green and Sea Point Water and Electric Lighting Company, Limited," and the service of process upon the agent or secretary of the said company at his office or place of business in Cape Town or Sea Point shall for all purposes be deemed and taken to be good service upon the company. All powers to sue or institute legal proceedings in this Colony shall be signed and executed as the trust deed or articles of association shall direct.

Explanation of terms.

27. In this Act, save where such meanings shall be inconsistent with the context, the following terms shall have the following meanings:—

(*a*) "The company" shall mean the "Green and Sea Point Water and Electric Lighting Company, Limited."

(*b*) "The Municipality" shall mean the Green Point and Sea Point Municipality.

Short title.

28. This Act may be cited for all purposes as "The Green and Sea Point Water and Electric Lighting Company Act, 1893."

No. 29—1893.] [Promulgated 12th September, 1893.

ACT

To make provision for the Release of a certain further portion of the Estate Orangezicht, from the entail of *Fidei Commissum*.

Preamble.

WHEREAS certain property known as Oudekraal, situate at Camp's Bay, being portion of the Estate Orangezicht, in the Cape Division, is now the property of the family of Van Breda, held by them subject to the burden and entail of *fidei commissum* under the provisions, conditions and stipulations set forth and

Digitised by the University of Pretoria, Library Services, 2016

provided in the deed of transfer of the said estate duly registered in the Deeds Registry of the Colony from the Executors of the late Michael van Breda, senior, to and on behalf of Dirk Gysbert van Reenen van Breda, and dated the 13th day of February, 1851: that is to say,—that the whole of the estate Orangezicht shall for ever, and for the utmost and longest time which the law of this Colony may permit such fiduciary limitations to subsist, be and remain, an inalienable hereditary family estate of the family of "Van Breda," to be possessed and succeeded to as hereinafter mentioned: That, at the death of said Dirk Gysbert van Reenen van Breda, the said estate shall devolve upon and be succeeded to by his eldest son, or his male descendants in a direct line, and such failing, in the indirect line of succession, and in case there shall be none such, then to his second son or his male descendants in the direct or indirect line as aforesaid, and so on until there be no more male descendants begotten by, or issued from, the said Dirk Gysbert van Reenen van Breda, and in case there should be no male descendants of the said Dirk Gysbert van Reenen van Breda, subject to the further conditions in the said deed of transfer expressed and declared.

And whereas Michael Alexander Willem van Breda, grandson of the said Dirk Gysbert van Reenen van Breda, the person now entitled to and in possession of the said estate subject to the said burden and entail, has entered into agreements with one Hercules Petrus du Preez, for a perpetual lease of a portion of the said property to a company which is about to be formed by the said Hercules Petrus du Preez, for the purpose of supplying the inhabitants of Green Point, Sea Point, and others with water and electric lighting, upon payment to him the said Michael Alexander Willem van Breda and his successors of a certain annual income or rental of five hundred pounds sterling, and upon certain reservations in respect of land and water in favour of the said Michael Alexander Willem van Breda and his successors in this Act set forth: And whereas it is expedient that under the said lease subject to the above reservations, the said company should for the above purposes be entitled to enter upon, take possession of, use and enjoy the said property and have full and free occupation of the same, including the right to dig, bore, excavate or otherwise open up springs upon the said property, and carry out all such works as may be found necessary for their purposes as aforesaid, and to construct filtering beds and all other works required for the purpose of collecting, storing and distributing the water which now exists or may hereafter be found to exist upon the said property "Oudekraal," to lay down pipes in and across the said property, to erect and build dwellings, houses, buildings, sheds, machinery and plant of every kind and description necessary for the above purposes, to take material from the said property for the above

Digitised by the University of Pretoria, Library Services, 2016

No. 29—1893.

purposes, and to do all other matters and things thereupon necessary for and incidental to the purposes of the said company: And whereas it is expedient in the interests of the said Michael Alexander Willem van Breda and his successors, that the said Michael Alexander Willem van Breda should have authority to enter into the said lease, and that the entail of *fidei commissum* should as far as the said portion proposed to be leased is concerned and as far as is necessary for the above purposes be removed: And whereas it is expedient that provision be made for securing the said annual income or rental to the said Michael Alexander Willem van Breda and his successors under the said entail or otherwise: And whereas it is expedient to make provision for the restoration of the said entail upon default being made by the said company in payment of the said annual income or rental to the person entitled thereto under the provisions of this Act:

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

Portion of estate Orangezicht released from entail.

1. The burden and entail of *fidei commissum* set forth in the deed of transfer in favour of the said Dirk Gysbert van Reenen van Breda, dated February 15th, 1851, is to the extent that the same is affected by the provisions of this Act hereby removed and annulled, so far as relates to the property "Oudekraal" situated behind Table Mountain, between the places "Van Camps Bay" and Hout's Bay, being portion of the estate Orangezicht, in the Cape Division, and containing 599 morgen, and more particularly described in the diagram framed by J. Melville, Government Land Surveyor, bounded to north-west by sea coast, north-east by farm "Van Camps Bay," south-east by high mountains and south-west by land of farm Hout's Bay: Provided that if at any time hereafter the conditions as to the payment of the annual income or rental set forth in this Act be not performed the said entail shall be restored as hereinafter provided.

Said portion may be leased for £500 a year to a company to be formed for purpose of supplying Green and Sea Point with water, &c.

2. It shall be lawful for Michael Alexander Willem van Breda, the present owner of the said property, subject to the conditions in the said deed of transfer, to let in perpetuity to any company formed by the said Hercules Petrus du Preez and duly registered within this Colony for the purpose of supplying water and electric lighting to the inhabitants of Green Point and Sea Point and others the said property "Oudekraal," save as in the sixth section is excepted, in consideration of the payment by the said company of an annual income or rental of five hundred pounds sterling, and upon the conditions in this Act set forth.

Said sum to be a preferent charge on assets, and if not duly paid entail restored.

3. The said annual income or rental shall be payable to the said Michael Alexander Willem van Breda or his successors under the conditions in the deed of transfer set forth, upon the last day of each and every year, commencing on December 31st, 1894, and

Digitised by the University of Pretoria, Library Services, 2016

shall be a preferent charge upon all the assets of the said company and shall continue to be paid as aforesaid until by any Act of Parliament the decree of any competent court, or the happening of any event the said property known as "Oudekraal" shall pass free and discharged from the said entail to any person or persons in full and absolute property and shall then be payable to such person or persons: and in case default be made in the payment of the said annual income or rental for a period of thirty days after the due date at any time before the said discharge of the entail above referred to, and after demand requesting payment shall have been made in writing, the said entail shall be fully and completely restored, and all the rights, powers, and privileges conferred under this Act shall forthwith lapse, cease, and determine as if this Act had never been passed: Provided that nothing in this Act contained shall prevent the said Michael Alexander Willem van Breda or his successor from suing for and recovering in any competent court the amount of such annual income or rent as to which default shall have been made.

Company not to acquire rights until registration, to take place within a year.

4. The said company shall be duly constituted and registered within this Colony under the provisions of the Companies Act, 1892, within one year from the passing of this Act, and upon such registration all the rights, powers and privileges conferred upon the said company under this Act shall come into force, and not sooner: Provided that if no such registration takes place within one year from the passing of this Act, all the said rights, powers and privileges shall lapse, cease, and determine, as if this Act had never been passed.

Company to have all necessary rights over property let.

5. The said company shall be entitled to enter upon, take possession of, use and enjoy the said property, and have full and free occupation of the same for all and every purpose necessary for and incidental to the supply of water and electric lighting as aforesaid, including the right to dig, bore, excavate, or otherwise open up springs upon the said property, and to carry out all such works as may be found necessary for the said purposes, to construct filtering beds and all other works required for the purpose of collecting the water upon the estate, to lay down pipes to and across the said property, to erect and build dwellings, houses, buildings, sheds, machinery and plant of every kind and description that may be found necessary, to take materials from the said property for the above purposes and to do thereupon all other matters and things necessary for and incidental to the purposes of the said company.

Certain portion of land reserved free from the lease.

6. There shall be reserved to the said Michael Alexander Willem van Breda and his successors as aforesaid six hundred square roods of ground immediately above, and bounded by the Victoria Road on the eastern side of the ravine down which the stream known as "Lekkerwater" at present flows, to be selected by him,

Digitised by the University of Pretoria, Library Services, 2016

No. 30—1893.

and the boundaries thereof marked and defined by fences or other enclosures; the said portion of ground shall include the homestead and cottages now occupied by John Combrink, and none of the rights, powers and privileges conferred upon the said company under the provisions of this Act shall apply to or be exercised over the said land so reserved.

Company to supply Breda and his successors with water for certain purposes free of charge.

7. The said company shall be bound and obliged to supply, free of charge, to the said Michael Alexander Willem van Breda and his successors as aforesaid out of the said stream "Lekkerwater" such quantity of water as he may from time to time require for domestic and garden purposes, not exceeding ten thousand gallons per diem.

Short title.

8. This Act may be cited as the "Oudekraal Release Act, 1893."

No. 30—1893.] [Promulgated 12th September, 1893.

ACT

To Extend the Provisions of the "Transfer Facilitation Act, 1890."

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

Section 1 of Act No. 16 of 1890 extended to sales of part of land, but seller to continue liable.

1. Whenever such a seller of land as is referred to in section one of the Act No. 16 of 1890, commonly called the "Transfer Facilitation Act, 1890," shall sell or shall heretofore have sold an undivided part or share and not the whole of the land affected by the mortgage bond therein referred to, the provisions of the said Act shall, *mutatis mutandis*, apply, provided that

(*a*) The notice referred to in section one of the said Act shall be substantially in the form set forth in the Schedule to this Act;

(*b*) The entries referred to in section five of the said Act shall not set forth that the debt is cancelled, but shall set forth that the purchaser is jointly and severally liable with the seller for the amount of the bond.

(*c*) The endorsement upon the bond shall set forth that in accordance with the provisions of this Act, the purchaser has become jointly and severally liable with the seller as debtor under the bond.

Entire land to remain subject to bond.

2. Section nine of the said Act shall not apply to any seller falling within the provisions of this Act, but such seller shall be jointly and severally liable with the purchaser in respect of such bond, and the entire land shall continue to be subject thereto.

Short title.

3. This Act may be cited as the "Transfer Facilitation Amendment Act, 1893."

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE.

No. 31—1893.

Schedule.

NOTICE UNDER SECTION 1 OF ACT No. OF 1893.

To the Honourable the Treasurer:—

Whereas I, the first undersigned, A.B. (a), am the registered owner, by virtue of a Title Deed, under the provisions of Act No. 15 of 1887, dated the day of , of a certain piece of land, in the division of , field-cornetcy of , being Lot No. , called : and whereas a Mortgage Bond on the said land for the sum of £ was passed in favour of the Colonial Government on the day of , and there still remains due and owing on the said Bond the sum of £ : Now, therefore, I do hereby give notice that I have agreed to give transfer of [*here insert share to be transferred*] of the said land to C.D. (b), the second undersigned:

(a) Insert full name of seller.

(b) Insert full name of purchaser.

And I, the said C.D., do hereby notify that I have agreed to take transfer of [*here insert share to be transferred*] of the said land, and that I am ready and willing to become liable jointly and severally with the said first undersigned to the Colonial Government under the Mortgage Bond aforesaid.

Dated at , this day of

A.B.
C.D.

As Witnesses:
E.F.
G.H.

No. 31—1893.] [Promulgated 12th September, 1893.

ACT

To Amend the Law with regard to Alluvial Diamond Diggings.

Preamble.

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

Size of claims and licence payable by holders to be fixed by Governor.

1. Notwithstanding anything contained in section fourteen of the "Precious Stones and Minerals Mining Law Amendment Act, 1887," or in any other law, the following provisions shall, from and after the promulgation of this Act, have effect in regard to alluvial diamond diggings:—

(a) The size of all claims

(i) Marked out at the date of the taking effect of this Act,

(ii) Marked out after the said date in any such alluvial digging,

shall be such as may be fixed by the Governor by Proclamation from time to time in regard to each class.

Digitised by the University of Pretoria, Library Services, 2016

No. 31—1893

(*b*) Nothing in the last preceding sub-section contained shall apply to the surveyed portion of Gong Gong alluvial diggings, as proclaimed by Proclamation No. 34 of 1871, of Griqualand West, and Proclamation No. 59 of 1887.

(*c*) The licence payable by the holders of claims or portions of claims in any such alluvial digging situate on Crown land, or upon land the title to which is subject to a reservation of precious stones and minerals in favour of the Crown, shall be such as may be fixed from time to time by the Governor.

(*d*) The provisions of the law regulating the size of claims in such alluvial diggings and the licence money payable thereon shall remain as in existence at the taking effect of this Act until altered by the Governor as aforesaid.

Diggers' Committee.

2. It shall be lawful for the Governor from time to time by proclamation to declare that any portion of a duly proclaimed alluvial diamond digging shall constitute a separate area for the election of a Diggers' Committee; or to declare that two or more such adjoining diggings or parts thereof, or one or more diggings together with any adjacent land occupied as a digging whether proclaimed or not, shall together form an area for the said purpose: Provided that

(1) No such area shall be declared unless there are fifty registered claimholders resident within it; and

(2) If it be necessary for the constitution of such area to abolish any existing Diggers' Committee, it shall be lawful for the Governor, by proclamation, to abolish it, so soon as due provision has been made by arrangement for the taking over of the assets and liabilities, if any, of the committee to be abolished by one or more other committees.

(3) Every registered claimholder shall be eligible to be a member of a Diggers' Committee, and shall have one vote and no more in the election of members of such committee; but no such claimholder shall be eligible or be a voter

(*a*) Whose estate shall be sequestrated as insolvent, or

(*b*) Who shall have been convicted of an offence against the laws for the regulation of the trade in diamonds, or

(*c*) Who shall have been convicted of treason, murder, rape, theft, perjury, or other infamous crime, and who shall not have received a free pardon.

If, after election, any member shall cease to hold the necessary qualifications his seat shall *ipso facto* become vacant.

Certificate required of person seeking to be registered as claimholder.

3. In lieu of the certificate provided for by section two of the Griqualand West Proclamation 14 of 1872, or by Section VII of the rules and regulations published under Griqualand West Pro-

Digitised by the University of Pretoria, Library Services, 2016

clamation No. 8 of 1880, no person shall, after the taking effect of this Act, be registered as the holder of any claim or part of a claim in any alluvial diamond digging within the Province of Griqualand West unless and until he shall produce to the registering officer a certficate obtained at that or some other alluvial diamond digging in accordance with the following provisions :—

(*a*) He shall apply to the Diggers' Committee having jurisdiction in the digging or part of a digging in which he proposes to take out a claim, for a certificate that he is of good character and a fit and proper person to be registered as a claimholder. The decision of the committee shall be by a majority of members present at a meeting called to consider the application.

(*b*) If there is no Diggers' Committee having jurisdiction in such digging or part of a digging as aforesaid, then he shall apply for such certificate to the Inspector of Claims. The Inspector shall thereupon summon two registered claimholders or holders of certificates under this section resident within the area of the said digging, or part of a digging, to assist him in deciding upon the said application; and the decision shall be by a majority of the Inspector and registered claimholders or certificate holders aforesaid.

(*c*) If the Diggers' Committee or the Inspector and residents, as the case may be, shall refuse any application for such certificate, then the person desirous of obtaining the same may apply to the Chief of the Detective Department at Kimberley for such certificate. The Chief of the Detective Department may, after enquiry into the case and after communicating with the Diggers' Committee or Inspector aforesaid, grant a certificate that the applicant is of good character and a fit and proper person to be registered as a claimholder.

(*d*) No application for a certificate shall be considered until the name and description of the applicant shall have been posted for at least seven days in such conspicuous place and manner in such digging as the Committee, or, if there be no Committee the Inspector of Claims, may determine.

A certificate obtained in terms of this section shall be produced to the registering officer by the person therein referred to when he seeks to be registered as a claimholder.

Removal of name of claimholder from Register.

4. The Diggers' Committee, or if there be no Diggers' Committee having jurisdiction, then the Inspector of Claims, may give not less than one month's notice to any person registered as the holder of any claim or part of a claim in any such alluvial digging, that at the expiration of the period for which he holds a licence

Digitised by the University of Pretoria, Library Services, 2016

No 32—1893.

in respect of such claim or part of a claim his name will be removed from the register and his licence will not be renewed, and unless such person shall show cause to the satisfaction of the said Diggers' Committee or Inspector of Claims, as the case may be, or, if neither the said Committee nor Inspector of Claims, as the case may be, shall consent to withdraw such notice, then to the Chief of the Detective Department, why such notice should be withdrawn, the name of such person shall at the expiration of the said period be removed from the register of holders, and his licence shall not be renewed: provided that during the said period such person may sell and dispose of his right in respect of such claim or part of a claim to any person registered or admitted to registration as the holder of any claim at the same alluvial digging.

Register of refused applications under section 3 and of names removed under section 6 to be kept.

5. A list of persons whose applications shall have been refused under section three, or whose names have been removed from the register under section four of this Act, shall be preserved by the Inspector of Claims at every such alluvial digging, and it shall be the duty of every Inspector to forward to every other Inspector of Claims at other alluvial diggings for insertion in such list, the name of every person whose application has been refused or whose name has been removed as aforesaid at the alluvial digging of which he is Inspector.

Governor may appoint any other officer to perform functions of Chief Detective Department.

6. It shall be lawful for the Governor at any time to appoint any other officer to exercise the powers of the Chief of the Detective Department under sections three and four.

Section 28 of Act No. 48 of 1882 amended.

7. Section twenty-eight of the Act No. 48 of 1882 shall be amended by inserting the words "one shilling" in place and stead of the words "five shillings."

Short title and date of taking effect.

8. This Act shall take effect on a day to be fixed by proclamation in the *Gazette* and may be cited for all purposes as the "Alluvial Diamond Diggings Law Amendment Act, 1893."

No. 32—1893.] [Promulgated 12th September, 1893.

ACT

To amend and Alter Ordinance 6 of 1852, and to make better provision for the Drainage and Improvement of the Municipalities of Wynberg, Claremont, Rondebosch and Mowbray.

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

Definition of words.

1. Unless the context otherwise denotes, the following words shall have the meanings set opposite to them respectively:—

Digitised by the University of Pretoria, Library Services, 2016

"Minister" means the Minister to whom the Governor shall assign the working of this Act.

"Council" means any of the Municipal Councils of Wynberg, Claremont, Rondebosch, or Mowbray, acting within its own territorial limits.

"Drain" means any drain used for the drainage of one building only, or of premises within the same enclosure, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed.

"Sewer" includes sewers and drains of every description, except drains to which the word "drain" as above defined applies.

Repugnant laws repealed.

2. From and after the taking effect of this Act, every law which is inconsistent with the provisions of this Act shall be and the same is hereby repealed; but such repeal shall not affect any right acquired or liability incurred previously under such ordinance or law, which rights or liabilities, if any, shall be judged of as if this Act had not been passed.

Duties of Council with regard to Liesbeek River.

3. It shall be the duty of every Council to take all lawful measures, in accordance with the terms of this Act, in order to conserve the Liesbeek River throughout its entire course, and to prevent the water of the said river from being polluted by the introduction of either solid or liquid filth or other matter so as to cause a nuisance.

Sluices.

4. No dam shall be placed or allowed to remain in the said river unless provided with a proper sluice or sluices; and no sluice shall be deemed a proper sluice, for the purposes of this section, unless approved of by the Council within whose jurisdiction such sluice is situated or is proposed to be placed.

Dams.

5. From and after the taking effect of this Act it shall not be lawful for any person to place a dam at any spot in the said river, except with the previous permission of the Council within whose jurisdiction such dam is proposed to be placed.

Raising of sluices.

6. During the period between the 1st day of September and the 1st day of May in every year all sluices in the Liesbeek River shall be raised by the persons by whom they are maintained or used in such manner as to allow the free escape of water on the last Saturday of every month from five o'clock to seven o'clock p.m.

Pollution of river.

7. Every person who casts into the said river, or who causes to fall or flow, or knowingly permits to fall or flow, or to be carried into the said river, any poisonous, noxious or polluting liquid so as to cause a nuisance, shall be guilty of a contravention of this section.

Digitised by the University of Pretoria, Library Services, 2016

No. 32—1893.

Fouling of river.

8. Any person casting or conducting night soil or rubbish into the said river, or washing wool or steeping or dressing skins therein, or throwing into the said river the carcase of any dead animal, or drowning any animal in it, or knowingly doing any other act or thing plainly calculated to foul the water of the said river so as to cause a nuisance, shall be guilty of a contravention of this section: Provided, however, that the washing of clothes in the said river within the limits of any Municipality, the Council of which has not published the notice in the next section provided for, shall not be deemed and taken to be a contravention hereof.

Washing in river.

9. So soon as any Council shall have erected a number of wash-houses sufficient in the opinion of the Council to supply the necessities of the inhabitants of its Municipality, it shall be lawful for such Council to publish a notice in one or more local newspapers and in the *Gazette*, prohibiting the washing of clothes in the said river, within such Municipality, from and after a date not earlier than one month from the date of the said notice.

Notices prohibiting washing in river.

10. Copies of such notice, in the English and Dutch languages, shall be posted by the said Council, in convenient places at or near the said river; and from and after the date named in the said notice any person who washes dirty clothes in the said river, or at any place so close to the banks thereof, that it is possible for dirty water used in the said washing to run or drain back into the said river, shall be guilty of a contravention of this section.

Authority of police constable or other officer.

11. Any police constable, or any person authorised in writing by the Chairman or Secretary of any Council, may, after announcing his office and the object of his visit to the occupier or some person at his residence, enter upon any private property lying along the sides of the said river, whether within the limit of the four Municipalities aforesaid or not, for the purpose of ascertaining whether the terms of this Act are being complied with; and any person obstructing such police constable or duly authorised person shall be guilty of a contravention of this section.

Liesbeek River, what included in.

12. All ditches, watercourses or channels, whether artificial or natural, into which water from the said river passes and out of which the water returns again into the river, shall, for the purposes of this Act, be deemed to be a part of the said river.

Penalties.

13. Any person found guilty of contravening the provisions of the fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh sections of this Act shall be liable to a penalty of not exceeding ten pounds, or in default of payment to imprisonment with or without hard labour, for any period not exceeding three months, and such penalty may be enforced at the instance of any person duly authorised to prosecute on behalf of any Council, or at the instance of any ratepayer within any of the said Municipalities.

Sections 7 to 13 apply to other streams.

14. The provisions of sections seven to thirteen, inclusive, of this Act shall apply to any other perennial stream within any of

Digitised by the University of Pretoria, Library Services, 2016

the said Municipalities, and any contravention of such sections in regard to such other stream shall subject the offender to the same penalty as if the contravention had taken place in respect to the Liesbeek River.

Wash-houses.

Wash-houses.

15. It shall be the duty of every Council, so soon as practicable, to erect or provide at a suitable place or places a number of wash-houses (either with or without open drying grounds), sufficient in the opinion of the Council to supply the needs of the inhabitants of its Municipality.

Order and repair of wash-houses.

16. Such wash-houses shall be maintained in good order and repair, and shall be furnished with all requisite fittings and conveniences by the Council.

Management of wash-houses.

17. The management of the said wash-houses, the mode in which they shall be used, and the charge made for using them shall be dealt with by regulations framed by the Council within whose jurisdiction such wash-houses are respectively situated in accordance with the provisions of this Act.

Sewers and Drainage.

Control of sewers.

18. The existing and any future sewers within the area of each of the four Municipalities aforesaid, except

(1) Sewers made by any person for his own use or profit, or by any company for use or profit of the shareholders; and

(2) Sewers made and used for the purpose of draining, irrigating or otherwise improving land,

shall vest in, and be under the control of the Council of the Municipality.

Drainage areas constituted by Council.

19. Any Council may from time to time, but subject to the approval of the Minister, constitute and define the boundaries of areas within its Municipality, which in the opinion of the Council can be suitably and conveniently drained by a system of sewers; such areas when so constituted and defined shall be called drainage areas.

Confirmation by Minister.

20. When a resolution has been adopted by any Council to constitute a drainage area, a copy of such resolution, together with a description of the boundaries of the area, shall be submitted to the Minister, who shall, after making such enquiry as may seem fit, either confirm the resolution or disallow it, or request the Council to modify any or all of the limits of the proposed area.

Notice in *Gazette*.

21. When any drainage area has been finally approved as such by the Minister, notice of the fact, and of the boundaries of the area, shall be posted at the office of the Council, and shall be published in the *Gazette* and in three consecutive issues of one or more local newspapers.

Council to make and repair sewers.

22. Every Council shall keep in repair all sewers belonging to it, and shall cause to be made such sewers as may from time to

Digitised by the University of Pretoria, Library Services, 2016

No. 32—1893.

time be necessary for effectually draining any drainage area in terms of this Act.

Power of Council as to carrying sewers over public road, &c.

23. Any Council may within its municipal limits carry any sewer through, across, or under any public road or street or any place laid out as, or intended for, a public street, without payment of compensation to any person, company or public body.

Over Crown land.

24. Any Council may within its municipal limits carry any sewer through, across, or under any vacant or unimproved Crown land without compensation, and through, across or under any Crown land which has been improved or built upon, or any land which is the property of a private individual or company, upon payment of compensation to the owner.

Power of Council beyond limits of municipalities.

25. Any Council may (subject to the provisions of this Act relating to sewage works beyond the limits of its Municipality) exercise beyond the said limits, for the purpose of outfall or distribution of sewage, all or any of the powers given by the last two preceding sections.

Powers of Council in dealing with sewers.

26. Any Council may, from time to time, enlarge, contract, alter, cover in, or otherwise improve any sewer belonging to it, and may close up or destroy any such sewer, on condition of providing a sewer as effectual, for the use of any person who may be deprived in pursuance of this section of the lawful use of any sewer: Provided that the closing up or destruction of any sewer shall be so done as not to create a nuisance.

Sewers to be properly kept.

27. Every Council shall cause the sewers belonging to it to be constructed, covered, ventilated and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied.

Map of system of sewerage.

28. Every Council shall as soon as practicable cause to be prepared a map exhibiting a system of sewerage for effectually draining every drainage area; and shall, wherever any covered sewer is made by it in any such district, provide a map indicating the position of every such sewer. All such maps shall be kept at the office of the Council and shall at all reasonable times be open to the inspection of any ratepayer within the Municipality within whose limits such area is situated.

Use of sewer by private owners or occupiers.

29. The owner or occupier of any premises within a drainage area shall be entitled to cause his drains to empty into the sewers of the Council, upon giving such notice of his intention as the Council may by regulation require, and upon complying with the regulations of the Council as to the mode in which the communications between such drains and sewers are to be made, and as to the provision of an adequate water supply to flush such drains; and subject to the control of any person who may be appointed by the Council to superintend the making of such communications.

Any person causing a drain, in any drainage area, to empty into a sewer of the Council within whose jurisdiction such area is situated without complying with the provisions of this section shall

Digitised by the University of Pretoria, Library Services, 2016

be liable to a penalty not exceeding ten pounds. And such Council may close any communication between a drain and sewer made in contravention of this section; and may recover in any competent court, from the person so offending, any expenses incurred under this section.

Owner or occupier may be required to make drain.

30. Where any house within a drainage area is without a drain sufficient for effectual drainage the Council within whose jurisdiction such area is situated may, by written notice, require the owner or occupier of such house, within a reasonable time therein specified, to make a drain or drains emptying into any sewer which such Council is entitled to use, and which is not more than three hundred feet from the site of such house. And the Council may require any such drain or drains to be of such material and size, and to be laid at such level, and with such fall as may appear to the Council to be necessary.

If such notice is not complied with, the Council may, after the expiration of the time specified in the notice, do the work required, and may recover from the owner, in any competent court, the expenses incurred by it in so doing.

When house more than 300 feet from sewer.

31. Where any such house as is in the last preceding section mentioned is more than three hundred feet from any suitable sewer which any Council is entitled to use, the Council may, at its own expense, construct a drain from the said house to the nearest such sewer as aforesaid, and upon the completion of the said drain the Council may recover from the owner of the said house in any competent court such sum of money as bears the same proportion to the total expenditure of the Council under this section in connection with the said house, as the distance of three hundred feet bears to the total length of the said drain.

Council may change private drain at its own expense.

32. Where any house within a drainage area has a drain communicating with any sewer, which drain, though sufficient for the effectual drainage of the house, is not adapted to the general sewerage system of the district, or is in the opinion of the Council within whose jurisdiction such area is situated otherwise objectionable, the Council may, on condition of providing a drain or drains equally effectual for the drainage of the house, and communicating with such other sewer as it think fit, close such first mentioned drain, and may at its own expense, do any works necessary for that purpose.

Drain to be constructed before house built.

33. It shall not be lawful in any drainage area to erect any house, or to rebuild any house which has been pulled down to or below the ground floor, or to occupy any house so erected or rebuilt, unless and until a drain or drains is or are constructed of such size and materials, and at such level, and with such fall, as may appear to the Council to be necessary for the effectual drainage of such house.

Digitised by the University of Pretoria, Library Services, 2016

The drain or drains so to be constructed shall empty into some sewer which the Council is entitled to use, and which is within three hundred feet of the site of the house to be built or re-built. If no such sewer is within that distance then the Council may either at its own expense continue the necessary drain or drains from the said distance of three hundred feet, in the direction of the nearest suitable sewer until the said sewer is reached; or may, upon being satisfied that the drainage and sewage of the said house will be otherwise satisfactorily provided for, grant an exemption to the owner or occupier of such house from the terms of this section.

Any person who causes any house to be erected or re-built, or any drain to be constructed contrary to the provisions of this section, shall be liable to a penalty not exceeding ten pounds.

Offences and penalties.

34. Any person who in any drainage area, without the written consent of the Council within whose jurisdiction such area is situated,

(1) Causes any building to be newly erected over any sewer of the Council; or

(2) Causes any vault, arch, or cellar, to be newly built or constructed under any street,

shall be liable to a penalty not exceeding ten pounds, and a further penalty of ten shillings for every day during which the offence is continued, after written notice from such Council.

The Council may cause any building, vault, arch, or cellar erected or constructed contrary to the provisions of this section to be altered, pulled down, or otherwise dealt with as it thinks fit, and may recover from the offender, in any competent court, any expenses incurred in so doing.

House owner to provide water for drainage.

35. The owner of every house within a drainage area shall take steps to provide for the use of the occupants of the said house a supply of water sufficient to properly flush the drains of such house, and every such owner who neglects within a reasonable time after the receipt of a written notice from the Council to take such steps as aforesaid shall be guilty of a contravention of this section, and shall be deemed guilty of the successive contraventions in each successive day after the expiry of such reasonable time until he complies with the provisions of this section.

Any person contravening the provisions of this section shall be able to a penalty not exceeding two pounds.

Disposal of Sewage.

Powers of Board in disposal of sewage.

36. For the purpose of receiving, storing, disinfecting, distributing, or otherwise disposing of sewage, any Council may

(1) Construct any works within the limits of its Municipality, or (subject to the provisions hereinafter contained) beyond the said limits;

(2) Contract for the use of, purchase, or take on lease any land, buildings, engines, materials or apparatus, either within or beyond the limits aforesaid;

Digitised by the University of Pretoria, Library Services, 2016

(3) Enter into contracts for the supply of sewage to any person for any period not exceeding twenty years, and as to the execution and cost of works:

Provided that no nuisance shall be created in the exercise of any of the powers conferred by this section; and provided also that the terms of section one hundred and five of the Municipal Act, 1882, shall apply to all contracts entered into under this section.

Powers of Council in dealing with land held by it.

37. Any Council may deal with any land held by it for the purpose of receiving, storing, disinfecting or distributing sewage in such manner as it deems most profitable, either by leasing the same for a period not exceeding twenty years for agricultural purposes, or by contracting with some person to take the whole or a part of the produce of such land, or by farming such land and disposing of the produce thereof: Provided always that in dealing with land for any of the above purposes provision shall be made for effectually disposing of all the sewage brought to such land without creating a nuisance.

Power to contribute towards expenses of contractor.

38. Where any Council agrees with any person as to the supply of sewage, or as to works to be made for the purpose of such supply, such Council may contribute to the expense of carrying into execution by such person, all or any of the purposes of such agreement.

Sewage Works beyond Municipal Limits.

Notice of sewage works beyond limits of municipalities.

39. Every Council shall, at least one month before commencing the construction or extension of any sewer or other work for sewage purposes beyond the limits of its Municipality, give notice of the intended work by advertisement in one or more of the local papers circulating within the district where the work is to be done.

Such notice shall describe the nature of the intended work, and shall state the intended terminus thereof, and particulars of the roads, streets, or other land (if any) through, across, under, or on which the work is to be done; and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be served on the owners or reputed owners, lessees or reputed lessees, and occupiers of the land, and on the local authority (if any) having the care of such roads or streets.

Notice of objections to such sewage works.

40. If any such owner, lessee or occupier, or any such local authority, or any other person who would be affected by the intended work, objects to such work, and serves written notice on the Council concerned of such objection, at any time within the said period of one month, then the intended work shall not be commenced without the sanction of the Governor, unless such objection is withdrawn.

Enquiry in objections.

41. The Governor may, on the application of such Council, appoint an inspector to make enquiry on the spot into the propriety of the intended work and the objections thereto, and to report to the Minister on the said matters. And on receiving the report of uch inspector, the Governor may make an order disallowing the

Digitised by the University of Pretoria, Library Services, 2016

No. 32—1913.

intended work, or allowing it with such modifications (if any) as he may deem necessary.

Inspection.

Duties of inspecting officer.

42. (1) Any officer appointed by a Council to carry out the objects of this section, if he has reason to suspect that any drain or sewer on private property within any drainage area is a nuisance or is injurious to health, or is in any way defective, may, after forty-eight hours' written notice to the occupier of the property, or in case of emergency without notice, enter upon the premises with or without assistants, and cause the ground to be opened and examine such drain or sewer.

(2) If the drain or sewer is found to be in proper condition, the officer shall cause the ground to be closed, and any damage done to be made good as soon as possible; and the expenses of the work shall be defrayed by the Council.

(3) If the drain or sewer is found to be in bad condition, or to require alteration or amendment, the local authority shall forthwith cause notice in writing to be given to the owner or occupier of the property, requiring him forthwith, or within a reasonable time therein specified, to do the necessary work.

(4) If the notice is not obeyed, the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default, and the Council may, if it think fit, execute the work, and may recover in any competent court, from the owner, the expenses incurred in so doing.

Liability of Occupiers.

Liability of occupier for expenses under this Act.

43. Any costs and expenses recoverable under this Act by any Council from any owner of premises may be recovered from the occupier for the time being of such premises; and the owner shall allow the occupier to deduct any such moneys which he is compelled to pay under this Act out of the rent from time to time becoming due in respect of the premises, as if the same had been actually paid to such owner as part of such rent: Provided

(1) That no such occupier shall be required to pay any further sum than the amount of the rent for the time being due from him, or which became payable by him, after demand of such costs or expenses from him, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, unless such occupier refuses on application to him by the Council, or one of its duly authorised officers, truly to disclose the

Digitised by the University of Pretoria, Library Services, 2016

amount of his rent, and the name and address of the person to whom such rent is payable; but the burden of proof that the sum demanded from any occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie on the occupier.

(2) That nothing herein contained shall affect any contract between any owner or occupier of any house, building, or other property, whereby it is agreed that the occupier shall pay or discharge all rates, dues, and sums of money payable in respect of such house, building or other property, or to affect any express contract between landlord and tenant, inconsistent with the provisions of this section.

Mountain Fires.

Mountain fires.

44. It shall be lawful for any Council to employ such number of men as to it may seem meet, either permanently or temporarily, for the purpose of extinguishing or assisting to extinguish all grass or bush fires along the slopes of Table Mountain.

Municipal regulations.

45. The Council of any of the said Municipalities may, from time to time, make, alter and revoke bye-laws or regulations for all or any of the following purposes:

(1) For regulating the structure of walls, foundations, roofs and chimneys of new buildings, and for securing the stability of such buildings, and due and proper sanitary provision therein.

(2) For prohibiting the overcrowding of houses, dwelling-places and rooms, and the erection of objectionable buildings.

(3) For securing regularity in and defining the lines of frontage of streets, and for securing reasonable architectural uniformity in the class of buildings to be erected in the various localities.

(4) For regulating the proximity of new buildings to existing buildings, so as to secure free circulation of air and due ventilation.

(5) For regulating the sanitary appliances of closets and privies in connection with buildings, and for prohibiting use of such of them as in the opinion of the Council should not be allowed to continue.

But no such bye-law or regulation shall be contrary to the provisions of this Act or of any other law in force in this Colony. And to all such bye-laws the provisions of the hundred and tenth to hundred and fourteenth sections of the Municipal Act, 1882, shall apply.

Time for poll.

46. When any poll is taken for the election of Councillors in any Municipality under this Act, the poll shall commence at eight o'clock in the forenoon and shall close at six o'clock in the after-

Digitised by the University of Pretoria, Library Services, 2016

No. 33—1893.

noon, anything to the contrary in the fifty-fourth section of the Municipal Act, 1882, or in any other law notwithstanding.

Joining of Municipalities.

47. If any two or more of the Municipalities aforesaid shall at any time be joined together into one Municipality, then the Council of such last mentioned Municipality shall be in the same position as if it had been one of the Councils expressly dealt with in this Act, and shall be subject to and entitled to take advantage of all its provisions.

Short title.

48. This Act may be cited as "The Liesbeek Ordinance Amendment Act, 1893."

No. 33—1893.] [Promulgated 12th September, 1893.

ACT

To Provide for the Management of the South African Public Library.

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

Repeal of laws.

1. The Ordinance No. 8 of 1836, so much of the Ordinance No. 5 of 1842 as is not already repealed, and so much of any other law as is repugnant to or inconsistent with the provisions of this Act, are hereby repealed.

Interpretation clause.

2. In the interpretation of this Act the word "Library" shall mean the South African Public Library, in Cape Town, the word "Board" shall mean the Board of Trustees created by this Act, and the word "Subscriber" shall mean any person who shall have been admitted to the privilege of the Library under section fourteen of this Act, and who shall have paid in advance an annual subscription of not less than one pound sterling.

Board of Trustees for management of Library established.

3. A Board of Trustees, composed as hereinafter described and provided for, shall be constituted and established as a body corporate for the management of the Library, and in any action which shall be brought by or against such Board, touching anything contained in this Act, or touching anything in any way relating to the Library, it shall be lawful for the Board to sue and be sued by the style or description of "The Board of Trustees of the South African Public Library."

Powers, &c., of present Committee of Management to devolve on Board.

4. The present Committee of Management of the Library shall cease to exist when the first Board is constituted, and thereupon all moneys, funds, assets, and other property, movable or immovable, at the said date vested in the said Committee, in trust for the community of this Colony, and all money, funds, assets, and other property, movable or immovable, which shall hereafter accrue to, or become due and payable, or be given, bequeathed or devised to the said Library, shall vest in and belong to the Board in trust

Digitised by the University of Pretoria, Library Services, 2016

for the said Library: Provided, however, that all such money, funds, assets and other property, movable or immovable, shall be administered, laid out, and applied by the Board, in terms of, and in conformity with, the conditions and trusts on which such money, funds, assets or other property has been or shall be vested in the said Board.

Constitution of Board.

5. The Board shall consist of ten members, of whom one shall be the Mayor of Cape Town for the time being, or if he shall decline, or be, or become disqualified, some other qualified member of the Council of Cape Town, elected by the said Council, one shall be the Vice-Chancellor of the University of the Cape of Good Hope for the time being, or if he shall decline, or be, or become disqualified some other qualified member of the University to be elected by the Council thereof, four shall be nominated by the Governor, and the remaining four shall be elected by the subscribers to the Library, in manner hereinafter set forth: Provided, however, that the Mayor of Cape Town for the time being or such Councillor shall be or continue to be a member of the said Board, only if and as long as there shall be paid annually by the Town Council of Cape Town to the funds of the Library, a sum of not less than three hundred and fifty pounds, and whenever such annual payment shall not be made, such Mayor or such Councillor shall cease to be a member of the Board, which shall then consist of nine members: Provided that no such Councillor or member of the University shall continue in office longer than the Mayor or Vice-Chancellor for whom he is a substitute would otherwise have been a member.

Retirement of nominated and elected members of Board by rotation.

6. Of the members of the first Board nominated or elected under this Act, two of the members nominated by the Governor and two of the members elected by the said subscribers shall vacate their seats at the annual meeting held in the year 1895, and the remaining two members nominated by the Governor and two members elected by the subscribers shall vacate their seats at the next annual meeting, and upon such vacation of office by any member, he shall be succeeded by a member who shall be similarly nominated or elected as the case may be, and every such newly nominated or elected member shall remain in office for two years from the date upon which the member of the Board whom he succeeds shall have vacated office, and every such newly nominated or elected member of the Board shall in turn be succeeded by a member to be nominated or elected, as the case may be, in like manner; provided that the Governor shall determine the order in which the nominated members shall vacate their seats under this section, and that every member vacating his seat shall, if duly qualified, be eligible to be again nominated or elected, as the case may be.

Persons eligible as members of Board.

7. At least three weeks before a general meeting to be called by the present Committee of Management for the purpose of

Digitised by the University of Pretoria, Library Services, 2016

No. 33—1893

constituting the first Board, and subsequently before any annual general meeting, a circular shall be sent by post to every qualified subscriber, giving the name and (if known) the address of every subscriber qualified to vote, calling for nominations for members of the Board to be elected; and every subscriber who shall have been duly nominated by two other qualified subscribers, and whose nomination shall have been lodged with the Secretary of the Committee of Management on the occasion of the first election, and at all subsequent elections with the Secretary of the Board, or such person as the Board may appoint, a clear week before the day of election, shall be eligible for election as a member of the Board. The nominations received shall be published as soon as possible after the said period, in one or more newspapers circulating in Cape Town. In the event of no sufficient nominations being duly received as aforesaid, any two subscribers may at the aforesaid special meeting or the annual meeting nominate any other qualified subscriber.

Mode of election of members of Board

8. Members of the Board shall be elected in manner following:—

(*a*) At any time before the special meeting referred to in the last preceding section or before the annual general meeting to be held on the second Friday in March in the year 1895 and every subsequent year, every subscriber then on the books of the Library may sign and deliver to the Secretary or to such person as may be appointed by the Board for the purpose, at the Library, a written paper to the following effect for the purpose of voting for any duly nominated candidate for membership of the Board:—

day of 18 .
Election of members of Board of Trustees of Public Library.
I vote for of and
of to be members of the Board of Trustees of the South African Public Library.
(Witness.)
(Sgd.)

(*b*) The said paper may be delivered through the post; but no paper shall be accepted or counted which has not been delivered at the Library before the time appointed for the meeting, and unless the signature to such paper is attested as genuine by a witness.

(*c*) Any subscriber entitled to vote at such election may vote for as many candidates as there are members to be elected.

(*d*) The Secretary or such person as is in sub-section (*a*) mentioned shall open and count the said papers, and shall in the year 1894, and subsequent years, add the votes so

Digitised by the University of Pretoria, Library Services, 2016

given to the votes given by other subscribers present at the annual general meeting, and the duly qualified and nominated persons who shall have the greatest number of votes shall be elected members of the Board.

(*e*) In case of an equality of votes between two or more candidates the Secretary or the said person shall determine by lot who shall be the elected members amongst those candidates.

(*f*) A member having a greater number of votes or priority in case his membership has been determined by lot shall vacate his seat under section six, after the member or members having less votes or not having such priority.

Resignation, death, &c., of member of Board.

9. If any member shall resign, die, become insolvent, be declared insane, not be, or cease to be, a subscriber, or shall otherwise become incapacitated from fulfilling the duties of his office, or shall be absent from the meetings of the Board for three consecutive months without permission of the Board, then and in every such case the office of such member shall *ipso facto* become vacant, and the Board may appoint from amongst the subscribers to the Library some fit and proper person to fill such vacancy, and the person so appointed shall hold office during the unexpired portion of the time of the member whose seat shall have so become vacant.

Absence of member for six months.

10. The Board may grant leave of absence from its meetings to any member for any period not exceeding six months, and whenever any member of the Board shall obtain such leave of absence, the Board may, if it think fit, appoint from amongst the subscribers to the Library some person to fill the vacancy caused by such absence, and the person so appointed shall hold office during such absence and during any continuation without leave of such absence, not exceeding three months, after the termination of such period, and not exceeding the term of office of the absent member.

Monthly meeting of Board.

11. The Board shall meet at least once a month, and for the despatch of the ordinary business of the Board three shall be a quorum, provided that no new regulations shall be made, nor any existing regulations repealed or altered, nor any resolution dealing with the invested funds in the hands of the Board passed at any meeting of the Board at which fewer than five members shall be present.

Officers of Board.

12. The Board shall have the entire management and superintendence of the affairs, concerns and property of the Library, and shall annually, as soon as may be after the general meeting, elect a chairman and treasurer, and the Librarian for the time being shall be the secretary of the Board.

Majority of votes to decide.

13. Questions arising at any meeting of the Board or any general meeting of subscribers, shall be decided by a majority of votes, and in case of an equality of votes the chairman or acting chairman shall have a second or casting vote.

Digitised by the University of Pretoria, Library Services, 2016

No. 33–1893.

Power of Board to make rules and regulations.

14. The Board at any meeting assembled from time to time may, subject to the provisions of this Act, and to all conditions or trusts, binding upon the said Board, make, repeal, alter or re-enact such rules and regulations as they may think fit for the purpose of providing for:—

(1) The conduct of their own proceedings.
(2) The management of the Library and its contents, and the proper custody of collections.
(3) The accepting and dealing with gifts, legacies, endowments, &c., to the Library.
(4) The details of the mode of election of members of the Board by subscribers at any election, and the adjournment of meetings of subscribers.
(5) The restrictions and conditions under which and the hours during which the use of the Library and its contents shall be allowed to the public or subscribers.
(6) The investment and dealing with the funds of the Library in the hands of the Board.
(7) The terms of subscriptions to the Library.
(8) The appointment of committees for general or special purposes, fixing the quorum of any such committee, and determining whether its action shall or shall not be subsequently approved by the Board.

And all such rules when passed shall be submitted for the approval of the Governor, and if approved shall be published in the *Gazette*.

Appointment, &c., of officers of Library.

15. The Board may appoint a Librarian and such other officers at such rates of salary and under such conditions as they shall see fit, and may suspend or dismiss such Librarian or such other officers. The present Librarian and other officers shall continue in office unless or until suspended or dismissed under this section.

Special general meeting of subscribers.

16. The Board shall cause the Librarian to convene by special notice given for that purpose, a special general meeting of the subscribers whenever they shall be required to do so by any requisition to that effect, specifying the object and purpose of the meeting, and signed by not fewer than fifteen subscribers, on any lawful day specified in such requisition, not being less than seven days subsequent to the date of the transmission of such requisition to the Board; and if no day shall be so specified, then on any day not more than three weeks subsequent to the date of such transmission as to the Board shall seem fit.

Procedure at special general meeting.

17. At every special general meeting of subscribers the Chairman of the Board shall, if present, preside at such meeting, and in his absence any other subscriber to the Library may be appointed by the meeting to take the chair.

Annual general meeting.

18. An annual general meeting of subscribers shall be held in the month of March of each year, at which the annual report of the Board shall be read and members of the Board elected. At such annual general meeting the person appointed by the Board for that purpose shall take the chair.

Digitised by the University of Pretoria, Library Services, 2016

Auditors.

19. The accounts of the Library made up to the 31st December in each year shall be audited once a year by two auditors, one of whom shall be appointed by the Governor and one by the Board, and the mode of audit shall be such as the Governor may from time to time direct.

Annual Report to Colonial Secretary.

20. The Board shall, as soon as possible after every annual general meeting report its proceedings during the preceding year to the Colonial Secretary, and such report shall contain a full account of the income and expenditure, duly audited, and of all the rules and regulations passed and approved, as aforesaid, during such year, and a copy of such report shall in each year be laid before Parliament.

Duties of trea urer of Library.

21. The treasurer of the Library for the time being shall pay into such bank or banks as the Board may from time to time select and appoint, all sums which he may receive on the Library account: Provided that nothing herein contained shall be taken to prevent the Board from investing such part of the funds of the Library as may not be required for the immediate use of the Library in Government stock, mortgages on houses or landed property, and to realise, call up, and reinvest the same, provided that it shall be sufficient authority to the Registrar of Deeds to cancel a mortgage bond if an extract from the minutes of the Board, certified as such by the chairman and secretary, is lodged with him, and the person therein named signs the consent to cancellation.

Library to be open daily subject to rules and regulations.

22. The said Library shall be daily open to the public, except on Sundays, holidays, or days on which the Library may be closed pursuant to such rules or regulations as aforesaid, and all quiet and respectable persons, even although they be not subscribers, shall have the right to read such books, magazines, and papers as shall form the 'Public Library,' and may be permitted to read works in the Library of Reference or in any portion of the Library building defined under such rules and regulations as are framed in terms of section fourteen: Provided, always, that no person whose subscription is in arrear and unpaid shall have the right of demanding books or other works to be taken out of the Library or of voting at the meetings of the subscribers.

Dessinian Collection.

23. The collection of books in the Library known as the Dessinian Collection shall continue to be in a proper and commodious part of the building which is now or may hereafter be appropriated for the reception of the Public Library and separate and apart from the books thereunto belonging, subject to the sole and entire management of a committee of the Consistory of the Dutch Reformed Church in Cape Town, who shall make as heretofore all such regulations for its management as they shall deem requisite, provided the same do not interfere with the general regulations for the management of the Public Library; and pro-

Digitised by the University of Pretoria, Library Services, 2016

34—1893.

vided also that such regulations shall be notified to the Board at least ten days previous to their having force and effect; and the said Consistory shall continue to expend from the funds under their separate trust and independently of the subscribers to the Library or their office-bearers, all such sums of money as they shall see fit to appropriate for the maintenance and augmentation of the valuable collection committed to their charge, and shall have power to appoint at their own expense, if needful, a Librarian to take the entire charge of the Dessinian Collection: Provided, always, that nothing herein contained shall be construed to authorise the said Consistory or its committee to interfere officially in any way with the management of the said Public Library or the application of its funds.

Coming into operation of Act and Short title.

24. This Act shall come into force on a day to be proclaimed by the Governor in the *Gazette*, and may be cited for all purposes as "The South African Public Library Act, 1893."

No. 34—1893.] [Promulgated 12th September, 1893.

ACT

To apply a Sum of Money for the Service of the Year ending the 30th day of June, 1894.

Preamble.

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

Public Revenue to be charged with £2,529,949.

1. The public revenue of the Colony is hereby charged towards the service of the year ending the 30th June, 1894, with a sum of two millions five hundred and twenty-nine thousand nine hundred and forty-nine pounds sterling, in addition to the sum of six hundred thousand pounds sterling provided for by Act No. 2 of 1893, and the sum of four hundred thousand pounds provided by Act No. 7 of 1893.

How to be applied.

2. The money granted by this Act shall be applied to the purposes and services expressed in the schedule annexed hereto, and more particularly specified and set forth in the estimates and supplementary estimates of the expenditure for the year ending 30th June, 1894, with the notes to such estimates, submitted to and approved by Parliament.

Not to be applied except as granted.

3. The said aids and supplies shall not be issued or applied to any use, intent or purpose other than the particular services to which the said amounts have been granted respectively by this Act, and the aforesaid schedule, estimates, and supplementary estimates.

Short title.

4. This Act may be cited for all purposes as the "Appropriation Act, 1893."

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE.

Summary of Recapitulations of Estimates and Supplementary Estimates.	Establishments.	Services exclusive of Establishments.	Total.	Required to be provided for.
	£	£	£	£
I. Ministerial Department of Colonial Secretary ..	500,964	399,269	900,233	814,401
II. Ministerial Department of Treasurer of the Colony	244,305	1,785,130	2,029,435	585,060
III. Ministerial Department of Attorney-General ..	117,442	95,605	213,047	198,492
IV. Ministerial Department of Commissioner of Crown Lands and Public Works	26,253	1,840,426	1,866,679	1,862,069
V. Ministerial Department of Secretary for Native Affairs	69,386	17,655	87,041	69,927
Grand Totals	958,350	4,138,085	5,096,435	3,529,949
Less amount provided for by Acts Nos. 2 and 7 of 1893				1,000,000
Total required to be voted				2,529,949

No. 35—1893.] [Promulgated 12th September, 1893.

ACT

To Consolidate and Amend the Law relating to the Theft of Stock and Produce.

Preamble.

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consentof the Legislative Council and House of Assembly thereof, as follows:—

Repealed Laws.

1. The laws mentioned in the Schedule to this Act to the extent to which the same are therein expressed to be repealed, shall be and the same are hereby repealed, except as to proceedings instituted previously to the promulgation of this Act.

Digitised by the University of Pretoria, Library Services, 2016

No. 35—1893.

Interpretation of terms.

2. In the interpretation of this Act the following terms shall have the meanings hereinafter assigned to them, that is to say:—

"Stock" shall include any horse, mare, gelding, colt, filly, mule or ass; any bull, cow, ox, heifer or calf; any sheep, goat, or pig or domesticated ostrich; and the slaughtered carcass, or portion of the slaughtered carcass of any such stock.

"Produce" shall include all skins, hides, horns, wool, mohair and ostrich feathers.

"Sufficient fence," when applied to wire fences, shall mean a fence of not fewer than four wires and not less than three feet six inches high, in other cases any fence, wall or hedge through which no stock could pass without breaking, or any natural boundary through or across which no sheep would ordinarily pass.

"Theft" shall embrace besides actual stealing (1) receiving knowing to have been stolen, (2) attempting to steal, and (3) being or having been in unlawful posssesion, not being able to give a satisfactory account of such possession.

"Supreme Court" shall, within the limits of their respective jurisdictions include the Eastern Districts Court and the High Court of Griqualand West, as the case may be.

"Attorney-General" shall, within the limits of the districts in which they exercise their offices, include the Solicitor-General or the Crown Prosecutor respectively.

Trial to be conducted in ordinary manner, and record to be kept.

3. In the trial of cases under this Act the courts of Resident Magistrates shall (except as hereinafter is excepted) proceed in like manner as in criminal cases falling within their ordinary jurisdiction: Provided that in all cases under this Act, the Magistrate shall take down in writing, or cause to be taken down in writing, the evidence in the case, the judgment of the court, and should such judgment be a judgment of "guilty," the sentence pronounced upon the offender.

Plea of guilty and sentence to be recorded.

4. On the day of the hearing of any case under this Act, the Magistrate shall read over, or cause to be read over, to the accused person the charge or complaint against him, and shall ask him if he pleads "guilty" or "not guilty" to the offence set forth in such charge or complaint; and should such person plead "guilty," his said plea shall be recorded, as shall also the sentence pronounced upon the offender.

Sections 43, 47, 48 and 49 of Act No. 20 of 1856 and Sec. 4 of Act 21 of 1876 to apply.

5. The provisions of the forty-third, forty-seventh, forty-eighth, and forty-ninth section of the Act No. 20, 1856, entituled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," and of the fourth section of Act No. 21 of 1876, as amended by this Act, shall extend and apply to all cases of convictions under this Act, whether upon a plea of

Digitised by the University of Pretoria, Library Services, 2016

"guilty" or after a plea of "not guilty," and whatever may be the period of imprisonment or the number of lashes to which the offender shall have been sentenced.

Findings under a charge of theft.

6. It shall be lawful for the courts of Resident Magistrates on the trial of any accused person for theft, as defined by this Act, to find such accused person guilty of any of the offences embraced in the term theft as so defined, although such accused person may not have been originally charged with that particular offence.

Jurisdiction of Courts of Resident Magistrates.

7. From and after the taking effect of this Act the courts of Resident Magistrates shall, respectively, have jurisdiction, in all cases in which any person may be accused of the theft of any stock or produce, provided that it shall not be lawful save as is hereinafter excepted for any such court to punish any person convicted of any such theft in any higher or other manner than, in the case of a first conviction, by imprisonment with or without hard labour for any period not exceeding one year, or by imprisonment with spare diet and with or without hard labour for any period not exceeding three months, or by corporal punishment in any number of lashes not exceeding twenty-five, or by both such first-mentioned imprisonment and such lashes; and, in the case of a second or any subsequent conviction within the space of three years next following a previous conviction for theft of stock or produce by imprisonment with or without hard labour for any period not exceeding two years or by corporal punishment in any number of lashes not exceeding thirty-six or by both such imprisonment and such lashes: Provided, also, that no offender sentenced under this Act to imprisonment with hard labour for any period exceeding three months shall be sentenced to spare diet, except for offences against the discipline of the gaol or other place at which he may be lawfully confined or employed: Provided, further, that in regard to the infliction of spare diet under this Act, the courts of Resident Magistrate shall, in their sentences observe and conform to such regulations and restrictions as shall from time to time be deemed necessary to prevent injurious consequences, and be by the Governor prescribed for the guidance of such court; and such courts shall, in their sentences, fix, in conformity with such regulations and restrictions, the particular days or times during which the offender shall be subject to spare diet.

Restrictions to be observed in infliction of spare diet.

Judgment for compensation and damages.

8. It shall be lawful for such court, upon the conviction of any person on a charge of theft of stock or produce, or upon his committal for trial on such charge, at the request of the owner or owners of the stock or produce, for the theft of which such person is so convicted or committed for trial, as aforesaid, or of the person authorised in writing by such owner or owners, to inquire summarily and without pleadings but in the presence of the accused person into the value of such stock or produce; and such court upon proof made to its satisfaction of the value of such stock

Digitised by the University of Pretoria, Library Services, 2016

or produce, and of any damages which the said owner shall have sustained by the loss of such stock or produce, or by the cost of a search for, or other endeavour to recover the same, shall give judgment in favour of such owner and against the accused, for such value as aforesaid, together with such damages, if any, and such judgment shall be of the same force and effect, and be executable in the same manner, as if it had been given in a civil action duly instituted: Provided, that no such court shall give any such judgment as aforesaid in any case except one in which the proof of the guilt of the accused shall be such as would, in the opinion of such court, if given in a civil action founded upon the same theft, require such court to give judgment in favour of the owner and against the accused: And provided, also, that no Resident Magistrate shall give any such judgment for any sum exceeding forty pounds sterling: And provided, further, that no such judgment for such value shall be given in any case in which such stock or produce shall have been recovered by the owners before the conviction or committal for trial, as the case may be, of the accused person.

The proof to be such as would entitle the owner to a judgment in a civil action.

Judgment not to exceed £40.

Exception where animal recovered.

Execution of civil judgment: Security.

9. No such judgment as aforesaid shall be put in execution if the person convicted or committed for trial as the case may be shall give security to the satisfaction of such court, to pay the amount thereof should his conviction be confirmed by a judge, or should he be afterwards duly convicted when brought to trial, nor shall any such judgment be put into execution unless and until the owner of the said stock or produce shall give security, to the satisfaction of the Magistrate, to refund, in case he shall, by law, be required so to do, any sum of money which shall be levied under or upon such judgment, and to make good such damages, if any, as the accused person shall have sustained by the execution of such judgment.

In case of acquittal where security shall have been given, judgment to be void.

10. If any conviction of any person who shall have given such security shall afterwards be quashed on appeal or review, or if any accused person who shall have given such security shall ultimately be acquitted of the theft in regard to which he was committed, then the judgment aforesaid shall be null and void: Provided, however, that nothing in this Act contained shall deprive the owner of the stock or produce aforesaid of any right of civil action which he may, by law, be entitled to have or maintain, notwithstanding the quashing of such sentence or such acquittal, against the person so convicted or committed for trial.

Right of civil action reserved to owner.

Procedure where civil judgment has been put into execution and conviction quashed, or criminal proceedings abandoned.

11. As often as any such judgment as aforesaid shall have been put into execution and the conviction be quashed on appeal or review by a judge, or in the case of a committal for trial, the person committed be ultimately acquitted or discharged, then the court by or before which the person accused shall have been convicted or committed for trial, as the case may be, shall upon

Digitised by the University of Pretoria, Library Services, 2016

application of, or on behalf of, such person, give judgment, summarily and without pleadings, for such sum as shall have been levied under such execution, and such damages, if any, as referred to in section nine unless it shall be found by such court upon considering the evidence in the criminal case, and any other evidence which may be given by the owner aforesaid and the person acquitted, or either of them, that, upon grounds of law, applicable to the decision of civil actions, the said owner was and is *prima facie* entitled to have and retain such judgment as aforesaid against the person acquitted, notwithstanding such acquittal.

Further proof as to value of stolen animals.

12. In case the value of any stock or produce with the theft of which any person shall be charged, and the amount of such damages as aforesaid, shall not sufficiently appear upon the depositions taken on the preparatory examination or at the trial, and further proof of such value or such damages shall be tendered on the part either of the owner or of the accused, such further proof shall be taken down in writing, and shall by such Magistrate be preserved.

When criminal case tried in Superior Court, Magistrate must transmit to Registrar particulars of civil judgment.

13. As often as any charge of theft of stock or produce, in regard to which any such judgment as aforesaid shall have been given by any Resident Magistrate, shall be tried in the Supreme or any Circuit Court, it shall be the duty of the Resident Magistrate who gave such judgment to deliver, or cause to be delivered to the Registrar of such court, a copy of such further proof, if any, of value and damages as such Magistrate shall have taken, over and above the preparatory examination, together with a statement of the date and amount of the said judgment, as also a statement of the amount, if any, levied thereupon, and the said Registrar shall before, during, or immediately after the trial, lay the same before the presiding judge for his inspection.

Where magistrate has given no judgment for value of stolen animal, such judgment may be obtained from the judge after conviction.

14. In case any such owner as aforesaid shall not have obtained from the committing Magistrate any such judgment as aforesaid, and the prisoner committed for trial shall be afterwards convicted, before the Supreme or any Circuit Court, then the judge before whom such conviction shall have taken place shall upon the like request as that in the eighth section of this Act mentioned, but in the presence of the prisoner, inquire summarily, and without pleadings, into the value and damages therein referred to, and give judgment for the same, and such judgment shall be of the same force and effect, and be executable in the same manner, as if it had been given in a civil action duly instituted.

Where case is remitted to magistrate for trial, the particulars as to judgment for value of stolen animals is to accompany his record of proceedings.

15. Should any case in which any such judgment as aforesaid, shall have been given by any Resident Magistrate be afterwards remitted to the court of such Resident Magistrate such Magistrate shall, in forwarding the record of the proceedings in such case to the Registrar of the Supreme Court, to be laid before a Judge in

Digitised by the University of Pretoria, Library Services, 2016

No. 35—1893.

Chambers for his consideration, forward with such record the same particulars regarding such judgment as such Magistrate is, under and by virtue of the thirteenth section of this Act, enjoined to deliver, or cause to be delivered, in cases in which the person accused is tried in the Supreme or any Circuit Court.

Judgment given for value of stolen property to become void where Attorney-General declines to prosecute unless security for private prosecution is given.

16. If, in any case, the Attorney-General, upon considering the preparatory examination, shall decline to prosecute any person against whom the committing Magistrate shall have given judgment under this Act, then such person shall be deemed to be discharged within the meaning of section eleven, unless the person in whose favour such judgment shall have been pronounced shall within a time to be fixed give security as a private prosecutor to the satisfaction of the Magistrate for the prosecution of the person accused, and unless the accused person shall be so prosecuted and convicted within a further time to be fixed by the Magistrate; and if such conviction shall be quashed on appeal or review, the provisions of section eleven shall also apply.

Value of stolen property recoverable from one or more persons concerned in theft.

17. As often as more persons than one shall be convicted of the theft of any stock or produce, or committed for trial on any charge of such theft, then any such judgment as may be given for value and damages, or value without damages, by any Magistrate or Judge against such persons jointly, shall be deemed to be joint and several, and may be executed against the property of any one or more of the persons who shall have been so convicted or committed for trial: Provided that it shall be lawful to give judgment against any one or more of such persons without including in that judgment any of the other persons convicted or committed for trial for or in regard of the theft of the same stock or produce: and provided that no person against whom such judgment has been pronounced shall in any case recover under section ten or eleven of this Act more than the amount levied against himself in satisfaction of such judgment, together with any damages awarded to him under section nine.

Owner not obliged to apply for judgment, but may proceed by civil action. If damages exceed £40, owner may sue for excess.

18. Nothing in this Act contained shall be construed so as to oblige any owner of any such stock or produce to apply for any such judgment as aforesaid, or to deprive him of any right of civil action which he may have against the accused person for or on account of such stock or produce; nor shall the fact of having obtained from any Resident Magistrate a judgment for the sum of forty pounds, prevent the owner who obtained such judgment from suing in any competent court for any damages by him sustained over and above the said sum of forty pounds: nor shall the fact of judgment under section ten or eleven bar any civil action by the owner who has lost the stock or produce forming the subject of the charge.

Magistrate in certain cases empowered to commence preparatory examination.

19. As often as any charge of the theft of stock or produce shall be brought under the notice of any Resident Magistrate, which

Digitised by the University of Pretoria, Library Services, 2016

charge shall from its nature or magnitude appear to such Magistrate to be unfit to be disposed of under the limited jurisdiction conferred by this Act, it shall be lawful for such Magistrate, instead of proceeding to try the case under this Act, to commence and take a preparatory examination, in like manner precisely as if this Act has not been passed: Provided that if the Attorney-General, upon consideration of the preparatory examination, shall be of opinion that the evidence is such as to require that the prisoner shall be put upon his trial, and be of opinion also that the exercise of the jurisdiction conferred by this Act will satisfy the ends of justice, then and in that case the Attorney-General may remit the case for trial to the court of the Resident Magistrate by whom the preparatory examination was taken, and such court shall thereupon proceed to try the same in manner and form as in the twenty-ninth section of the "Criminal Law Amendment Act, 1861," prescribed; and in case the prisoner shall be convicted, such court may pronounce upon him any sentence to which he might have been subjected under this Act, in case he had been tried under this Act without any preparatory examination having been taken: and provided that nothing herein contained shall be deemed to deprive the Attorney-General of any power to remit such cases which may at any time be vested in him by law independently of this section.

Magistrate may stop trial and turn proceedings into preparatory examination.

20. When, in the course of any trial under this Act in any court of any Resident Magistrate, it shall appear to the Resident Magistrate, from the facts disclosed by the evidence, that the case is one which from its nature or magnitude is unfit to be disposed of under the limited jurisdiction conferred by this Act, it shall be lawful for such court to stop the trial, and to take, or turn proceedings into, a preparatory examination; and thereupon all and singular the provisions of the last preceding section shall apply to such preparatory examination, precisely as if such trial as aforesaid had never been commenced.

Fine.

21. It shall be lawful for any court empowered to pass sentence on any person, for the offence of theft of stock or produce, to impose upon such offender, in addition to such sentence, a fine not exceeding in amount ten times the value of the stock or produce for the theft of which such offender shall be then and there sentenced, such fine, if not paid, to be levied on the movable property of the offender under and by virtue of a warrant under the hand of the Judge or Magistrate imposing such fine, together with the cost of such levy. The amount of such fine when paid or levied shall be paid into the public treasury; and it shall and may be lawful for the Governor, upon the recommendation of the Judge or Magistrate who shall have tried the case, out of the amount so paid or levied as aforesaid, to make restitution, in whole or in part, to the owner of the stock or produce with regard to the theft

Disposal of fine.

Digitised by the University of Pretoria, Library Services, 2016

of which such sentence shall have been passed, of the value of such stock or produce, and further to reward any person or persons, not being himself or themselves concerned in the theft, or accessory thereto, who may have given such information as to lead to the apprehension or conviction of the offender or to the recovery of the stolen stock or produce; and when and as often as any such fine as aforesaid shall be imposed by a Resident Magistrate, such Resident Magistrate shall forward the record of the proceedings in the said case to the Registrar of the Supreme Court, in order that the sentence may be reviewed by one of the judges, and such judge may reduce or disallow the same, as shall seem to him to be most in accordance with real and substantial justice; and in every case in which such record shall have been so forwarded as aforesaid, the warrant shall be executed by immediately attaching sufficient goods as aforesaid to answer the fine imposed by such Magistrate in the first instance, but such goods shall not be sold to realise the amount of such fine until the sentence shall have been finally approved or amended by such judge as aforesaid, and then only so much thereof shall be sold as shall probably be necessary to produce the amount of such fine as shall ultimately be imposed, together with the costs of levy, as aforesaid.

Fine imposed by resident magistrate subject to review by Supreme Court.

Goods attached to satisfy fine not to be sold before confirmation of sentence.

If any fine in this section mentioned be paid when imposed by any Resident Magistrate, and be afterwards reduced or disallowed as aforesaid, the amount by which the same shall be reduced, or the amount of such fine, as the case may be, shall be refunded to the person who shall have paid the same.

In case of reduction or disallowance of fine, refund to be made.

22. Any person who shall, by way of purchase, bargain, exchange or gift, acquire or receive into his possession, from any other person, any stolen stock, or stolen produce, without guilty knowledge that the said stock or produce is stolen but without having reasonable cause, proof of which shall lie on such first-mentioned person, for believing, at the time of such acquisition or receipt, that such stock or produce was the property of the person from whom he received it, or that such person was duly authorised by the rightful owner to deal with or dispose of it, shall be deemed guilty of contravening this section, and shall be liable on conviction to a fine not exceeding one hundred pounds, or to imprisonment, with or without hard labour, for a period not exceeding twelve months, or to both such fine and such imprisonment.

Penalty on purchase or receipt of stolen stock or produce without reasonable belief that vendor had right to sell.

23. The provisions of section twenty-two of this Act shall not apply to stock or produce purchased—

Transactions exempted from operation of preceding section.

(*a*) On any public market.

(*b*) At any sale held by a duly licensed auctioneer, or held in pursuance of the order of a court of competent jurisdiction.

Digitised by the University of Pretoria, Library Services, 2016

Imprisonment upon failure to pay fine.

24. It shall be lawful for any Judge or Magistrate passing any sentence and imposing any fine under any provision of this Act, at the time of passing such sentence and imposing such fine, to order that, if at the expiration of such sentence such fine shall not have been paid or recovered, and shall not have been disallowed on appeal or review as in the said section mentioned, the person convicted shall be imprisoned for a further period not exceeding six months.

Penalty for entry upon enclosed place with intent to steal stock.

25. Any person who enters any farm, or part of a farm enclosed on all sides with a sufficient fence, and whether such entry shall be affected by breaking through such fence or not, or any kraal, with intent to steal any stock which is in or upon such kraal, farm, or part of a farm, shall be liable upon conviction to imprisonment with or without hard labour for a period not exceeding one year, or to a fine not exceeding one hundred pounds, or to both such fine and such imprisonment.

Presumptive evidence of intent to steal.

26. Any person found within any farm, or part of a farm enclosed on all sides with a sufficient fence, or within any kraal, and who when so found was not proceeding along some road or thoroughfare traversing such farm or part of a farm, shall, if charged with a contravention of section twenty-five of this Act, have the burden imposed upon him of proving that he did not enter such kraal, farm, or part of a farm with intent to steal the stock, if any, kept therein.

Theft of stock and entry upon enclosed place with intent to steal, may be charged in same indictment.

27. Any person charged with the theft of stock from any such kraal, farm, or part of a farm, may in the same indictment be charged with a contravention of the twenty-fifth section of this Act; and upon conviction shall be separately sentenced in regard to each offence.

Suspected person may be apprehended without warrant.

28. If there be reasonable grounds for believing that any person is or has been in unlawful possession of any stock or produce, it shall be competent for any justice of the peace, field-cornet, landholder, or police constable to apprehend or cause to be apprehended such person without warrant, and convey him or cause him to be conveyed in custody before any Resident Magistrate having jurisdiction, and if it be found that he is or has been in possession of any such stock or produce, and is not able to give a satisfactory account of such possession to such Magistrate, he shall be deemed to be guilty of the crime of theft of stock or produce and shall thereupon be dealt with as if he had originally been charged with such crime.

Sacks, &c., of persons suspected to be conveying wool, &c., may be searched, and persons apprehended without warrant.

29. If any person is reasonably suspected to have in any sack, knapsack, or other covering, any produce or the carcases, or portions of carcases, of slaughtered stock, it shall be lawful for any justice of the peace, field-cornet, landholder, or police constable to detain or cause to be detained such person and examine or cause to be examined the contents of such sack, knapsack, or other covering,

Digitised by the University of Pretoria, Library Services, 2016

No. 35—1893.

and in case such person shall, upon such examination, be found to be in possession of any of the articles aforesaid, it shall be lawful for such justice of the peace, field-cornet, landholder, or police constable to apprehend him or cause him to be apprehended without warrant and to convey him or cause him to be conveyed before any Magistrate having jurisdiction, and in case he shall be unable to give a satisfactory explanation of such possession to such Magistrate, he shall be deemed to be guilty of the crime of theft of stock or produce and shall be thereupon dealt with as if he had been originally charged with such crime.

If unable to give explanation to be deemed guilty of theft.

On charge of theft when court or jury satisfied that prisoner had no guilty knowledge that stock was stolen.

30. Any person charged with theft of stock or produce in accordance with either of the last two sections may, if the court or jury before whom he is tried be satisfied that he had no guilty knowledge that the stock or produce forming the subject of the charge was stolen, be dealt with in all respects as though he stood charged with a contravention of section twenty-two of this Act.

Payment to person who gives information leading to a conviction.

31. Upon the conviction of any person for an offence under this Act it shall be lawful for the Governor, out of such funds as may from time to time be appropriated to the carrying out of the Criminal Law of the Colony, or as may be at the disposal of the Governor for that purpose, to pay to the person other than the owner of stolen property forming the subject of the charge who shall have given information or made the charge leading to such conviction as aforesaid such sum as the Governor shall direct, or as shall be provided for by a tariff to be published in the *Gazette*.

Penalty for wrongful arrest.

32. Any person who shall, under colour of this Act, wrongfully and maliciously, or without probable cause, apprehend any other person, or cause him to be apprehended, shall be liable to pay a fine not exceeding twenty pounds, and to pay to the apprehended person such amount, not exceeding the sum of fifty pounds, as and for damages, as the Magistrate before whom such apprehended person is brought for trial shall award, and in default of payment of the fine shall be liable to be imprisoned, with or without hard labour, for a period not exceeding three months, unless such fine shall be sooner paid: Provided that nothing in this section contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy given him by law in lieu of the remedy by this section given.

Persons authorised to search buildings, &c., for stolen stock or produce.

33. Notwithstanding the provisions of section forty-two of Ordinance No. 40 of 1828, it shall be lawful for any justice of the peace, field-cornet, assistant field-cornet, or for any police officer of such rank as the Governor may from time to time designate, upon being satisfied that there is reason to suspect that any stolen stock or stolen produce is concealed in any building, hut, kraal or enclosure, to search or to grant written authority to any person applying for the same, to search such building, hut, kraal or enclosure at any time during the day or night: Provided that

Digitised by the University of Pretoria, Library Services, 2016

any landowner shall in respect of building or huts upon his own land be entitled to exercise all the powers conferred by this section upon the officers hereinbefore mentioned.

Penalty for malicious exercise of authority to search.

34. Any person who shall, under colour of this Act, wrongfully and maliciously, or without probable cause, apply for, obtain, and act upon such written authority as aforesaid, or wrongfully and maliciously, or without probable cause exercise the powers of search conferred by the last preceding section, shall be liable to a fine not exceeding twenty pounds, or in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months; and shall also be liable to pay to the person lawfully in occupation of the building, hut, kraal or enclosure in question, when the same was searched, such sum not exceeding fifty pounds for damages as any competent court may award.

Damages.

Resident Magistrate to impose penalty and award damages.

35. The Resident Magistrate of the district in which any building, hut, kraal or enclosure wrongfully searched as aforesaid is situated shall have jurisdiction to impose the penalty and to award the damages in the last preceding section provided. But nothing in this or the last preceding section contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy allowed by law in lieu of the remedy under this Act.

Proviso.

Purchase of feathers, skins, or hides between sunset and sunrise prohibited, except at public sales.

36. It shall not be lawful for any person to purchase or sell for purposes of trade, any produce between the hours of sunset and sunrise: Provided, however, that this prohibition shall not apply to any person purchasing or selling produce at any public sale.

Penalty for contravention of foregoing section.

37. Any person contravening the provisions of the preceding section of this Act shall, upon conviction, be liable to a penalty of not exceeding twenty pounds, or to imprisonment with or without hard labour not exceeding three months.

Not to apply to contract of sale where price not less than £50.

38. The provisions of the two preceding sections shall not apply to any contract for the purchase and sale of produce where the purchase price paid or agreed to be paid for the said produce shall amount in value to the sum of fifty pounds sterling or upwards.

Secs. 36, 37 and 38 to be in force in any division upon proclamation after request of Council by vote of three-fourths at special meeting.

39. The three last preceding sections of this Act shall only apply to and be in force in those divisions of this Colony wherein the provisions of the Act No. 13 of 1885 shall be in force at the date of the passing of this Act, or which shall from time to time be notified by the Governor by Proclamation published in the *Gazette*, and the Governor shall be authorised to publish any such Proclamation at the request of the Divisional Council of any division, and, by the like request, to revoke or alter any such Proclamation: Provided that, before any Divisional Council shall make any such request as aforesaid, three-fourths of the elected members thereof present at a meeting to be specially called for the making of such request shall concur in making the same, and not less than three months' notice of such meeting, and of the object thereof, shall have been given by advertisement in some newspaper circulating in the division.

Digitised by the University of Pretoria, Library Services, 2016

No. 35—1893.

Short title.

40. This Act may be cited for all purposes as "The Stock and Produce Theft Repression Consolidation Act, 1893."

Schedule.

SCHEDULE.

LAWS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Act 16 of 1864 . .	The Cattle Theft Repression Act, 1864.	So much as remains unrepealed.
Act 9 of 1867 . .	An Act to amend the Law relating to the Trial and Punishment of Criminals for Theft and for receiving Stolen Goods knowing the same to have been stolen.	Sections 2, 3 and 4.
Act 17 of 1867 . .	The Cattle Theft Repression Amendment Act, 1867.	The whole.
Act 17 of 1874 .	The Criminal Law Amendment Act, 1874.	Section 1.
Act 21 of 1876	The Resident Magistrates' Court Act, 1876.	The words between "1856" and "shall" in the 2nd and 3rd lines of the fourth section, and the whole of the sixth section.
Act 18 of 1879	The Cattle Thefts Extended Punishment Act, 1879.	The whole.
Act 32 of 1883	The Ostrich Feathers and Skins Theft Repression Act, 1883.	Sections 5, 6 and 7.
Act 19 of 1884	The Wool, Mohair and Carcases Theft Repression Act, 1884.	The whole.
Act 13 of 1885 . .	The Ostrich Feathers and Skins Theft Further Repression Act, 1885.	The whole.
Act 33 of 1891	The Stock and Produce Theft Repression Act, 1891.	The whole.

Digitised by the University of Pretoria, Library Services, 2016

No. 36—1893.] [Promulgatad 12th September, 1893.

ACT

To Authorise the Expropriation of Land for the purpose of Roads in the District of Xalanga, Tembuland, in the Transkeian Territories.

Preamble.

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

Governor may expropriate certain land for road purposes.

1. Notwithstanding anything to the contrary contained in any law, it shall be lawful for the Governor at any time after the passing of this Act, to take or expropriate for the purpose of giving road facilities to certain landowners in the district of Xalanga, Tembuland, in the Transkeian Territories, such land as he may deem to be necessary for that purpose.

Roads specified.

2. The roads, for the purposes of which it shall be lawful so to take or expropriate land as aforesaid, are all or any of the roads mentioned in the report of G. E. Jarvis and A. E. Murray, dated the 2nd day of November, 1892, and shown in the plan annexed to the said report.

Compensation in respect of expropriation.

3. Compensation in respect of the taking or expropriation as aforesaid shall be claimable in all cases in which such compensation would by law be claimable from a Divisional Council in this Colony, in connection with the construction, maintenance or repair of any divisional road, and such compensation shall be assessed, in accordance with the provisions of the Lands and Arbitrations Clauses Act, 1882, but by a Road Board constituted under the provisions of the following section of this Act.

Road Board to be constituted.

4. A Road Board shall be constituted by the Governor by proclamation in the *Gazette*, which shall have the power of arbitrators under the Lands and Arbitrations Clauses Act, 1882, for the purpose of assessing such compensation as may be payable under the provisions of this Act, and the said Board shall be composed of two members appointed by the Governor, not more than one of whom shall be in the service of the Government, and one member appointed by a vote of the majority of the registered landowners in the Xalanga district, present at a meeting of such landowners, which shall be called for the purpose in accordance with directions to be hereafter issued by the Governor, and of which meeting three weeks notice shall be given in the *Gazette*.

Board to point out rights of way and assess compensation.

5. It shall be lawful for such Board to point out rights of way between farms in the said district, for which rights of way persons requiring the same shall be liable to compensate the owners of farms traversed thereby, and such compensation shall be assessed by the said Board in accordance with the provisions of this Act and of "The Lands and Arbitrations Clauses Act, 1882."

Short title.

6. This Act may be cited as "The Xalanga Districts Roads Act, 1893."

Digitised by the University of Pretoria, Library Services, 2016

No. 37—1893.] [Promulgated 12th September, 1893.

ACT

To Provide for the Payment of certain Duty in respect of certain Insurances against Death or Injury from other than Natural Causes.

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

Duty on Accident Insurance Coupons.

1. From and after the passing of this Act, there shall become due and payable, for and in respect of all coupons, letters, notices or handbills which purport to insure upon the death, within a period of not more than one month from the date of issue of any such coupon, letter, notice or handbill, of any person from accident or violence or otherwise than from a natural cause, or as compensation for any personal injury received within the said period, five pounds per centum upon the annual receipts from the sale or issue for valuable consideration of all such coupons, letters, notices or handbills, which charge or duty shall be in lieu of any charge or duty heretofore due and payable in respect of any such coupon, letter, notice or handbill under Schedule II, Tariff XI, of "The Stamps and Office Fees Act, 1884."

Deposit of £50 in respect of such duty.

2. Every company, society, or association, shall before in any year selling or issuing as aforesaid any such coupon, letter, notice or handbill, pay to the officer duly appointed by the Governor in that behalf, the sum of fifty pounds in respect of the duty which would become chargeable as aforesaid upon such coupons. letters, notices or handbills for the then current year ending the thirty-first day of December; provided

(*a*) That the Treasurer may after the close of such year, if satisfied that the said sum of fifty pounds shall amount to more than the total duty chargeable under the provisions of the first section of this Act, repay an amount not exceeding the difference between the said sum of fifty pounds and the sum actually chargeable as aforesaid.

(*b*) That in the event of the amount of duty so chargeable as aforesaid being in excess of the said sum of fifty pounds, such excess shall be paid by such company, society, or association, so selling or issuing the coupon, letter, notice or handbill, in respect of which such charge shall be in excess of the said sum.

(*c*) That no duty shall be chargeable upon any *bona fide* second or subsequent sale or issue for valuable consideration or otherwise of any such coupon, letter, notice or handbill, in respect of the sale or issue of which duty shall be satisfactorily proved by the seller or issuer to have already been paid or secured.

Digitised by the University of Pretoria, Library Services, 2016

Account to be rendered annually.

3. Every such company, society, or association, so selling or issuing as aforesaid any such coupon, letter, notice or handbill, shall render a true and correct account or return to the officer duly appointed by the Governor in that behalf, not later than the thirty-first day of January in each year, of all receipts from the sale of such coupons, letters, notices and handbills for the year ending the 31st day of December preceding the rendering of such account or return, and such account or return shall be in such form as the Treasurer may require.

Pe ty cla

4. Every such company, society, or association, so selling or issuing as aforesaid any such coupon, letter, notice, or handbill, without previously paying the amount required by the second section of this Act, or failing or neglecting to render an account or return in accordance with the third section thereof, or making or rendering, or causing to be made or rendered a false account or return, shall be liable to a fine not exceeding two pounds for every such issue without such previous payment, to a fine not exceeding five pounds for every day during which such failure or neglect shall continue, and to a fine not exceeding fifty pounds for every such false account or return.

Presumption value for issue coupon, &c.

5. The issuing of any such coupon, letter, notice, or handbill, shall be deemed to be for valuable consideration unless or until the contrary be proved.

Short title.

6. This Act may be cited for all purposes as "The Accident Insurance Act, 1893."

Digitised by the University of Pretoria, Library Services, 2016

INDEX

TO

ACTS OF PARLIAMENT, 1889—1893.

PAGE

Abakweta Native Dance prohibited..... 254
Accident Policies—
Insurance against death or injury, duty on coupons..... 728
Coupons issue of regulated and collection of duty 728
Issue of, deemed valuable consideration..... 729
Acceptance legal by bank, what constitutes..... 230
Accoucheur. See Medical Practitioner.
Accounting Officer, personal liability for unauthorised services.. 400
Adulteration of Food, &c.—
Act to prevent, 168—176. See also Analyst, butter, drugs, food, seeds.
Employer exempt from penalty if due diligence proved..... 173
Forging or falsifying warranty, invoice, &c..... 176
Prosecutions for, procedure regulated 174
Advocate of Supreme Court—
Admission from other South African States..... 507
Not to carry on Attorney's business..... 507
Affidavit or Affirmation. See Oath.
Agriculture, Secretary for—
Office of, created..... 565
May be Prime Minister..... 566
Animals, diseases of, notification to..... 676
Aliens, Naturalization Act, 1889, amended..... 56
Allegiance, oath of, form amended..... 257
Ammunition—
Meaning of term..... 422
Not to be landed or shipped without Customs permission..... 423
Rules and regulations for how made..... 423
To Port St. John's or Walfisch Bay..... 423
Analyst, Public (Adulteration Act)—
Appointment of, how made..... 171
Certificates by, form of..... 173, 177
Production of, evidence of facts..... 175
Samples sent to, how dealt with..... 172
To report quarterly to Treasurer..... 173
Animals—
Diseases of, Act to control..... 674
Certain, Act of 1893 not applicable to..... 678
Affected with infectious, notice of to be given..... 675
Destruction of, procedure..... 676
Areas infected, proclamation of..... 677
Importation of from over seas, certificate of health..... 674
May be prohibited by Proclamation..... 675
Meaning of term..... 674
Quarantine of, rules, how made..... 677

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Animals—*continued.*
Impounding of, meaning of term ... 401
Impounded, suffering from contagious disease ... 415, 421, 403
Fees payable and alteration of ... 414, 416
Illegal, liability for ... 418
Not released within 10 days ... 416
Penalty for working, rescuing ... 405, 408
Proper care of ... 403
Suffering from contagious disease ... 404
Penalty for molesting on owners' property ... 418
Stolen, R.M. may send to pound ... 419
Stray, not to detained beyond 14 days ... 408
To be kept separate, when ... 415
Trespassing, sent to nearest pound ... 406
Certain, may be destroyed ... 407
Owner, may tender damages ... 407
Not to be sold or worked under penalty ... 408
Penalty for ill-treating, &c ... 408
Mileage fees for bringing to pound ... 408
In vineyard, garden, &c ... 409
On outspans, vacant Crown land ... 414, 563
Beyond limits of Municipality ... 420

Apothecary. See Chemist and Druggist.

Appeal, Court of—
Constituted under "Africa Order in Council 1889" ... 164

Apprentice, charged with offence must accompany Master to Court 51

Apprenticeship of Juvenile Offenders, provided for ... 18, 20, 312
See also Juvenile Offenders.

Arms, landing of, &c. See Firearms, Ammunition.

Appropriation Acts—
For 1889, 53; 1890, 205; 1891, 297; 1892, 505; 1893, 714.
Additional—1888-89, 17; 1889-90, 163; 1890-91, 213; 1891-92, 339; 1892-93, 506, 557.
Partial—1889-90, 8; 1890-91, 164, 177; 1891-92, 214, 232; 1892-93, 340, 366; 1893-94, 558, 561.
Unauthorised—1889, 30; 1890, 203; 1891, 298; 1892, 422; 1893, 568

Arrest—
Of idle and disorderly person ... 47
Of person driving stock, liable to seizure ... 35
Of servant and apprentice ... 57

Asses—
Brands, registration. See Brands.
Impounding of, included in term horses, which see.
Stallion, trespassing, special penalty for ... 412
Damage for, may be assessed ... 413
To be castrated, when ... 413
Castration of, provided for ... 413
Sale of, date regulated ... 413
Theft of. See Stock.

Assigned estate, disqualifies from seat on Table Bay Harbour Board ... 183

Assurance. See "Accident Policy, Life Assurance."

Attorney—
Admission from other South African States ... 507
Service under articles, British Bechuanaland accepted ... 509

Attorney, power of—
Executed outside Colony, authentication of, for Deeds Registry ... 259

Attorney-General—
Company formed, but not for gain, may license ... 444
Divisional Councils, to sue for amounts surcharged by Auditor ... 111
Includes Solicitor-General and Crown Prosecutor, Stock Thefts Act ... 716

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Attorney-General—*continued.*
Life Assurance Company in default, powers of 243
Lunatic, certificates, orders, &c., copies to 323
Ex officio curator *ad litem* of 323
To lay orders, &c., before Judge 323
Offences committed by Colonial Forces outside Colony, powers of 528

Auction—
Sale of pledges in pawnbrokers' hands 60
Duty at pound sales not payable 417

Auditor-General—
Advances from Contingencies Account, must authorise 400
To surcharge Accounting Officers for unauthorised payments 400
Cape Town Police, certifies cost of 651
Civil Service appointments, Sec. 3, Act $\frac{31}{88}$, reports to Parliament 538
Divisional Council accounts, audits 101
Main roads, certifies sums expended by Government in repair of 130

Ballot—
At Parliamentary election. See Election 377
At Divisional Council election, how obtained 502
At Municipal election 502

Bank. See also "Bank Notes," "Bill of Exchange."
Acceptance legal by, what constitutes 230
Affairs of, Treasurer may order inspection 223
Annual statement of, submitted to shareholders 225
Assets and liabilities, quarterly statement of, published 222
How to be signed and posted 222
Statements to Treasurer twice yearly 223
Personal liability for false statements 223
Auditors of accounts, two appointed annually 225
Disqualification of 225
Duties and powers of 225
Reports of, to be read and published 225
Deed of settlement, copy to Treasurer and Registrar of Deeds 220
Alterations in, to be notified to 220
Having head office outside Colony—
Chief Agent of, to be appointed 220, 221
Process and notices to be served on 220
Changes in office to be notified 221
Statement, submitted to shareholders, to Treasurer and gazetted 223
Personal liability for false statement 223
Licence to be taken out annually 230
Meaning of term 219
Notes, issue of, by. See "Bank Notes."
Failure to redeem in gold, procedure 227, 228
Shareholder, chairman and directors, list of, yearly, to Registrar of Deeds 221
Register of, kept by every, and inspection of 222
May demand inspection of affairs of, when 224
Particulars to be contained in 221
Unclaimed trust moneys, statement of, published every January 230

Bank Note—
Meaning of term and when deemed in circulation 219
Destruction of worn out or mutilated 228
Duty of 10s. *per centum* in circulation 229
Expenses of providing borne by public revenue 227
Failure to redeem in gold 227, 228
Half or mutilated, how payment obtained 229
Imitation of, advertisement, prohibited 228
Issue of, restricted and regulated 224, 230
Amount of limited 226
Bank to pay ½d. for every note delivered 227
Government securities to be deposited to cover 226
Monthly returns of to Treasury 229
Duty on how calculated if no returns 229
Statement of notes in circulation and gold held 230

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Bank Note—*continued.*
Mutilation, defacing, &c., penalty 229
What to be expressed on face of 227
When completed circulate as money receivable at par 227

Barkly West, Masters and Servants Law in district, amended .. 425

Bathurst English Church Ordinance $\frac{6}{32}$, provision for repeal of .. 235

Bill of Exchange—
Acceptance, what deemed in law 583, 585
Presentment for, when necessary 589
,, rules to apply 590
,, for honour, liability of parties 601
Qualified, duties 591
Acceptor of, liability of 597
becoming holder after liability 600
Accommodation, party to, liability and rights of holder 586
Alteration of, rights of parties 600
Banker paying demand draft, rights of 599
Cancellation of 600
Consideration valuable for, what constitutes 586
Defined and general interpretation 579, 604
Delivery of essential before contract enforced 584
Discharge of, what taken to be 599
Dishonour of, general procedure ..... 593—99, 609
Measure of damages 598
By non-acceptance and its consequences 591
Drawer and drawee, being one person, rights of holder 580
Liability of 598
May insert name of person in case of need 582
Stipulation by on 581
Signature essential to liability 585
Drawee, address of must be indicated 580
Funds in hand of, not necessarily available 597
Drawn in a set, provisions regarding 603
In one country and payable in another, conflict of laws 603
Holder in due course, who deemed 586
General duties of 589
Rights and powers of 589
Waiving his rights on 600
Indorsement of, what constitutes valid ..... 587—88
Indorser of, liability of 598
May insert name of person "in case of need" 582
Signature essential to liability 585
Stipulations by on 582
Liability to incur, capacity defined 585
Lost, holder's right to duplicate 602
Action on, powers of Court 603
Minor, drawn by, rights, &c., of holder 585
Negotiable or otherwise, what deemed to be 580
Negotiation of, what constitutes 587
Noting or protest of 596, 609
Payable, on demand, when deemed to be 581
At future time, ,, ... 581
Antedating or postdating does not invalidate 582
Omission of dates in, rights of holder, &c. 582
Presentment, rules as to 594, 609
Payee, address of to be stated 580
Payment for honour 602
Protest, where no Notary 609
Signature, if any person signing, liability 598, 608
In blank, rights of parties 583
Forged and unauthorised, inoperative 585
By procuration, authority limited 585
Person signing as agent, liability 585

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Bill of Exchange—*continued.*
Signature—*continued.*
Of every party, *prima facie* evidence of liability 587
Sum payable on, what deemed to be 581
Transfer of 599
Boar, every above 9 months old, to be kept separate in pound .. 415
Bonds, registration of, see also Deeds Registry.
Cancellation of, manner and form of 259
Executed in Native Territories 260
General or notarial, to be in duplicate 260
Insolvent obtaining discharge, procedure 259
Insolvent estate, payment by on account, notice to Deeds Office 259
Lost, cancellation and copies of, regulations for 259
On undivided share of property 261
Regulations for preparation and execution of, how framed 259
Boundaries of divisions, how altered 78
Brands (registration, horses, cattle, &c.)
Act to provide for ..... 184—89, 424
Applicable to certain districts only but may be extended 184, 424
Description of every, published in *Gazette* 186
Directory of all registered, published annually 187
Poundmaster keeps copy of 187
Lists of registered published quarterly in *Gazette* 187
Meaning of terms employed 184
Owner of cattle, application for registration of and procedure ..... 185—86
Registers, three separate kept 185
Registrar of, appointment of 185
Certificates of as to registration, effect of 187
Deputies of, may be appointed 185
Duty on receiving applications for registration ..... 185—86
Where same or similar description of brand received 186
Registration of, certificates to each proprietor 186
Regulations general for carrying out, how made 188
Proprietor of may cede his right 187
Sale of sheep, &c., at pound sale with different brands prohibited 417
Bridges—
Loans for certain authorised 395
Divisional Council rights and obligations 125
All, periodical inspection of 130
Contributions towards 133
Injury to, regulations to prevent 156
Neglect to keep in repair 130
To be deemed portion of main or other road, when 129
Over rivers crossed by line of main road—
Construction of, tenders for 125
Extraordinary repairs to 132
Tolls leviable at 126
When deemed part of or main road 127
Maintenance of, power to enforce 130
Over rivers crossing line of divisional road—
Construction of by Divisional Councils ..... 127—28
Within municipal limits ..... 128—29
Connecting two divisions 130
Britstown, fiscal division constituted 396
Bull—
Theft of. See "Stock."
Trespassing, special penalty for
Above 2 years, to be kept separate in pound 415
To be sold singly at pound sales 417

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Burgher service, members of Colonial Forces exempt from..... 531
Burr-weed (Xanthium Spinosum) 143
Bye-laws and regulations generally, power to make 156
Confirmed by D. C. to Governor for approval 157
When gazetted force of law 157
Penalty for breach of.....157, 158
Repeal by Governor 157
Prosecutions under 158
Butter, or Butterine (Adulteration Act)—
Importation of into Colony, regulated 173
Cases containing to be properly marked..... 174
Exposed for sale to be clearly labelled 174
Meaning of term 168
Cape Division—
1st Monday in October declared public holiday in 56
Divisional roads in, certain declared to be 135
Election of Council for, poll and manner of holding 87, 98
Elects 14 councillors 78
For Council purposes what to include and how sub-divided 78
Cape Mounted Riflemen. See also "Colonial Forces."
Force to be called, provision for enrolment 514
Duties of defined 515
Officers of eligible for Civil Service 538
Examination of before promotion..... 514
Under command Senior Officer, Colonial Forces 514
Police as well as military force 514
members possess same powers and privileges as police 515
Pensions and gratuities to regulated 529
Rules and regulations for, how framed 515
Cape Town—
And Sea Point Railway, Act authorising.....37—43
Chamber of Commerce incorporated 264
Commercial Exchange buildings, expropriated 209
English Church Ordinance $\frac{1}{5}$, provision for repeal 235
Electoral division, duty of registering officer 375
Voter in can only give one vote to one candidate 568
Mayor of, *ex-officio* member Table Bay Harbour Board 183
Municipality, Consolidating and Amending Act.....622—672
Public buildings in, certain, exempt from municipal taxation 334, 424
Police, apportionment of cost of 651
Cathcart, power to expropriate land for road purposes..... 31
Cattle—
Impounded, meaning of term 401
Suffering from contagious disease 404
Sale of, regulated..... 417
Illegally, special penalty for 418
Removal. Act 14 of 1870 amended 35, 241
Arrest of person driving stock liable to be seized..... 35
Procedure thereupon 5, 36
Driving stock. Definition of "driving" 241
Theft of. See "Stock."
Registration of brands. See "Brands."
Census of Colony for 1891. Provision made for..... 165, 168
Ceres, Divisional Council, bound to maintain its own roads 561
Chemist and Druggist. See also "Poisons."
Meaning of term 301
Admission to practice, regulated..... 306, 307
Licences signed by Colonial Secretary..... 307
Certificate of issue signed by Under Colonial Secretary, evidence 315
Obtaining under false pretences 309
Penalty for selling medicines of bad quality 312

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Chemist and Druggist—*continued.*
Poisons, sale of, general precautions to be taken 313
Responsible for acts of servants 314
Register of every, to be kept 305, 309
Erasure of name from, procedure 310, 311
Recovery of debts owing to 315
Cheque on bank—
Crossed, general and special 695
Provisions to apply to dividend warrants, money orders 609
Defined 604
Presentment for payment 604
Child, destitute, transfer of to industrial home or reformatory 342
Civil Commissioner. See also "Voter."
Divisional Council,
Actions by or against, signs warrants 113
Auditors, convenes meetings for election 106, 108
Clerk to, may be appointed secretary 106
Ex officio, Chairman and Councillor 105
Election of, duties generally ..... 84—101
Complaints regarding, investigates, &c. 92
Nominations, receives 85
Failure to elect, reports to Governor 98
Names of candidates, publishes 95
Polling Officers, appoints 87
Polling papers, examines, &c. 94
Poll, investigates complaints 92
Meeting, first of Council, fixes 96
Voters' lists, where boundaries altered, duty of 79
Xanthium Spinosum, notices for destruction of 143
Native locations, establishment of, duty 536
Voters, claims and objections, supplies forms 372
Lists of framed, sent to 373
Date for revising fixes 373
Procedure of revising court 374
Of, as on August, 1893, to preserve 376
Civil Service—
Acts of 1883 and 1885 amended 537
Employés of 10 years' service in Railway Department, &c., rights of 537
under Sec. 3 Act $\frac{31}{88}$, selection from passed candidates 538
Examination, officers C.M.R. eligible for and for appointment 538
Officers appointed under Sec. 13 Act $\frac{43}{85}$, promotion of 539
Pensions where service partly in Colony and elsewhere 538
Widows' Pension Fund Act amended 218
Commutation of provided for 218
Contributions paid to credit of separate fund 218
Investment of funds 218
Claremont Municipality—
Powers of with regard to drainage Liesbeek River 679
Building and sanitary arrangements, powers 707
Fires on mountain, power to deal with 707
Colonial Forces. See Cape M. Rifles, Rifle Club, Volunteers.
Act consolidating, law relating to 512, 533, 560
Actions against, period limited 532
Arms and accoutrements of, penalty for buying 531
Cannot be attached 532
Billeting of on active service, rules for 532
Burgher service, members of exempt from 531
Calling out for active service, Governor's powers 529
Courts for trial of offences, composition of 524
Members of, disqualifications of 525
Prisoner may challenge 525
Oath to be taken by 525
Proceedings to be recorded, &c. 525, 526

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Colonial Forces—*continued.*
Discipline, offences against defined and procedure for trial 520
Arrest and trial of offenders 522
Courts for trial of, composition of 524
Imprisonment of offenders, provisions to apply 527
Liquor, penalty for supplying on duty 532
Obstructing wilfully, penalty for 532
Offences of serious nature outside the Colony, Attorney-General's powers 528
By members of against members of regular forces 560
Officers of, how to rank 529
Senior of, appointment and duties of 514
General of regular forces, powers of over 529
Pensions and gratuities to 529
Permanent members of, meaning of term 512
Police force, when deemed portion of 529
To ordinary members if injured in execution of duty 530
Rewards for diligence, &c. 531
Toll, exempt from payment of 531

Colonial Secretary—
Bridges, objections to construction of sent to 127
Chemist and druggist's licence, signs 307
Election, Parliamentary,
Ballot papers, reports to of number rejected, &c. 381
Not open to inspection except by order 382
Documents other than, open to inspection on terms 383
Preservation of by for one year 382
Returning officer at, may allow assistance to to count votes 384
Lunatic, criminal, may order examination of 320
May remit to prison, when 321
Discharged conditionally, periodic report to 321
Employment of male officer in charge of female, special report to 327
Mechanical means of restraint, quarterly reports to 328
Private person taking charge of, notice of to be given to 327
May order enquiry into 328
Periodic inspections of, to order 327
Powers vested in may be transferred to other person 329
Transfer of, may order 321
To receive reports on once a year at least 321
To consider specially each case once every two years 321
Warrants for detention, &c., how signed 320
Medical practitioners, register of all must keep 309
Information to be entered therein 309
Erasure of names from, procedure 310
Pound sales, half-yearly notices of, publishes 417
Under Colonial,
Certificate of as to licensed medical practitioners, evidence 315
Warrants for transfer of lunatics, signs 324, 329
Xanthium spinosum, failure of Council to act, duty 144

Commissioner of Public Works, Ministerial title of fixed 566

Company. See Deeds Registry.
Act consolidating law relating to ..... 428—497
Does not apply to company incorporated under special Act 430
Action brought by, security may be required 461
Actions against, what declaration to aver 461
Affairs of may be enquired into by Government, when 458
Procedure thereupon 459
Books, &c., falsification of, penalty 479
Capital, reduction of, provisions to apply 436, 440
Conversion into stock, effect of 448
Increase of, notice to be given 449
Carrying on with less than seven members, penalty 456
Deeds of execution abroad 458

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Company—*continued.*
Directors of, qualifications ... 450
Or managers of, names and addresses kept and sent to Deeds Office ... 455
Delinquent, damages against may be assessed ... 478
Liability of for incorrect statement in prospectus ... 451
Dissolution of, order to Registrar of Deeds ... 470
Registration, procedure and effect ... 431-32
Dividends payable only out of profits ... 458
Formed after taking effect of Act (Sept. '92)
Exceeding certain number of members must be registered ... 434
Formation of ... 434
Inspectors to enquire into affairs, appointment and powers of ... 459
In existence on taking effect of Act (Sept. '92), how affected ... 430
May register under new Act at any time ... 430
Limited, meaning of term ... 429
Memorandum of association, what to contain ... 434, 441
Alteration in and confirmation of ... 435
Copies of, charge for ... 442
May be accompanied by articles of association or otherwise regulations ... 441, 448
Registration of and effect of ... 431, 442
Formed but not for purposes of gain, Attorney-General's licence ... 444
Shares in, sub-division ... 440
Issue regulated ... 442
Share warrants to bearer, issue of ... 444
Returns of half-yearly ... 445
Treasurer may alter returns required ... 461
Unlimited, meaning of term ... 429
Memorandum of association, what to contain ... 434
Alterations in and confirmation of ... 435-36
Copies of, charge for ... 443
Registration and effect of ... 442
To be accompanied by articles of association ... 441
To be signed, and effect of ... 441
Meeting, first general, when to be held ... 456
General, held once a year at least ... 456
Regulations of, may be altered at ... 456
Minutes of to be kept, received in evidence ... 460
Members of, who deemed to be ... 446
Liability of in case of winding up ... 452
List of to be made up annually ... 447
Number of, increase in, notice to be given ... 447
Register of to be kept ... 447
Voting by at meetings of ... 457
Name of may be changed ... 440
Identity of names guarded against ... 443
Notices on, service of ... 460
Authentication of ... 460
Office, registered for each required ... 454
Penalties, recovery of ... 460
Promissory notes when deemed accepted by ... 456
Promoter of, liability for incorrect statements ... 450, 452
Prospectus of, what to be specified in ... 450, 452
Liability for incorrect statements in ... 451
Register of shares, open to inspection ... 448
Improper entries or omissions, remedy for ... 449
Power to close ... 449
Rectification of, copy order to Reg Deeds ... 450
To be received in evidence ... 450
Shares in, certificate of by *prima facie* evidence of title ... 448
Conversion of into stock and effect of ... 448
Division of into shares of larger amount ... 448
Fully paid up, certain provisions of Act not applicable ... 483
Issue of, regulated ... 442

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Co pany—*continued.*
Shares—*continued.*
Issued, to be deemed fully taken up ... 453
In trust, to minor or insolvent, not to be entered in register ... 448
Register of, open to inspection ... 448
Transfer of, how effected ... 446
Warrants to bearer, regulated ... 444
Stamp duty on ... 445
Penalty for forging or pers nating owner ... 446
,, ,, engraving plates, &c ... 446
Special resolutions at meetings of, defined ... 459
Copy of to Reg. Deeds, and to be annexe to Articles of Association ... 457, 458
Winding up of by Court, part of Act substituted for Winding-up Act of 1868 ... 482
Calls, power of Court to make ... 469
Court, general powers of ... 468, 470, 480
Disposal of books, papers, &c ... 475
Contributory, meaning of, and nature of liability ... 461
Death of, liability of estate ... 462
Insolvency of ... 462
List of, how settled ... 468
Liquidator, provisional, appointment, and powers of ... 463, 466
Official, appointment, powers, and duties of ... 464, 468
Order for, when and how to be made ... 462
Applications for, how made ... 463
Copy of to Reg. Deeds ... 463
Powers of Court with regard to ... 463
Extraordinary powers ... 470
Proceedings for, may be referred to Master ... 461
Servants of, payment of, wages, &c ... 483
Voluntary—
How commenced ... 471
Disposal of books, &c ... 475
Effect and consequences of ... 472
Liquidators and their powers ... 473, 480
Procedure, general, upon ... 472, 480
When Company deemed dissolved ... 475
of unregistered Company, procedure ... 480
Compounded Spirits, sale of, without notice to purchaser, illegal 201
Contingencies Account—
Act establishing, to provide for unforeseen expenditure ... 399
Advances from, to meet unforeseen expenditure, how made ... 400
How obtained and repaid ... 400
Parliament refusing to make provision for ... 401
Amount to be advanced in any one year, limited ... 400
Unauthorised service, liability of accounting officer ... 400
Contracts not affected by "Sale of Food and Drugs Act, 1890" 175
Controller and Auditor-General. See "Auditor-General."
Conveyancer, Reg. Deeds, *ex officio*, one of examiners for ... 261
Convict—
Found in unlawful possession of money, &c., penalty ... 215
Offences committed by, place for trial of extended ... 215
Property of, rules may be framed for custody of ... 215
Convict Station—
Medical officers and dispensers in, must be licensed ... 316
Subordinate officers of, meaning of term ... 215
Desertion of, penalty ... 215
Offences committed by, place for trial extended ... 215
Resignation by, of office, limitations on ... 214
Visiting Magistrate may exercise Res. Magistrate's jurisdiction in certain cases ... 215

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Cowsheds. See Dairies.
Criminal Law Amendment Act. See also "Child," "Woman" 622
Crown—
Property of, liable to Municipal rates 333
Exemptions to above 334
Crown Land—
And Quitrent Relief Act, 1889 73
Disposal Act, 1887—
Transfer of land, mortgaged under facilitated 195, 427, 694
Partition of, facilitated 427
Undivided share, sale of, procedure 694
Extended to Lessees under Griq. W. Ord. 3 of 1874 248
Leased under Act 19, 1864, relief of lessees 73
Leasing Act, 1891 290
What not to include 290
Sale of to lessee, when 290
Native location, hut tax payable 537
Cost of fencing 252
Purchase under Act 5 of 1870, quitrent reduced 34
Vacant, animals trespassing on 414
Crown Land and Public Works, Commissioner of to be styled in future Commissioner of Public Works 566
Crown Prosecutor—
Lunacy orders with medical certificates, &c., sent to 323
Ex officio curator *ad litem* of lunatics 323
Customs Officer—
Imported articles of food suspected to be adulterated, powers 173
Customs Union. (South African)—
Act providing for entry into 1
Dues to be collected under 2, 200
Apportionment of to States inside Union 2
Rebate to States outside Union 2
On Sugar, jam manufacturers 2
Goods, removal and conveyance of, regulations 2, 200
May be removed from Colonial ports under bond 200
[Promulgated, 12, 12, 90]
Dairies—
Act regulating management of 216
Regulations for general inspection and management of, how framed 216
Local authorities may adopt 216
Dam or tank—
Animals trespassing on 414
Maintenance of, apportionment of D. C. funds for 155
Regulations for preventing injury to 155
Debt—
Registry of. See also "Deeds Registry."
Regulations for, how framed 259
Payments on account of by insolvent estate, written off by Reg. Deeds, and on original obligation also 260
Declarations, solemn—
Form of 258
Penalty for making false 258
Registrar of Deeds may accept, when 266
Not to apply to declarations under Transfer Duty Act 258
Deeds lost—
Cancellation of, regulations for 259
Copies of, regulations for supplying 259
Deeds, Registrar of. See also "Bonds," "Deeds Registry."
Acting, or assistant, appointment of 259
Bank, copies, deeds, settlement, &c., sent to 220
Shareholders, directors, &c., lists of annually to 221

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Deeds, Registrar of—*continued.*
Bonds tendered to, sent in duplicate 260
Certificate of registered title by, procedure 262
Companies, registration of, duty 431
Association, memorandum of to 436
Capital, reduction or increase, notice to 439, 449
Change of name, registers 440
Directors or managers, names filed with 455
Dissolution of, notice to 470
Documents relating to, inspection of 443, 482
Members of, list annually to, and rectifications of 448, 449, 450
Office, registered of, notified to 454
Shares in trust, to minor or insolvent, not to be entered in register .. 448
Share warrants, half-yearly returns of issues to 445
Special resolutions at meetings, copy to 457
Winding up of, order of Court to 463
Voluntary of, when Company dissolved 475
Conveyancers, one of official examiners 261
Crown land, mortgaged under Disposal Act of 1877, transfer by 196, 427, 694
Entries in debt register, and fees to 197
Sale of individual shares, procedure 694
Declaration, solemn, may accept and require 260
Fees to be taken by, regulations for 259
,, ,, transfer individual shares 261
,, ,, Companies registration 442, 443, 483
Fencing Act, duty where money owing for cost of fence 251
To enter amount in debt register if no mortgage 251
Information required by law, regulations for recording, &c. 259
Insolvents obtaining discharge, returns of all to 260
Duty of, thereupon 260
Rates, Divisional Council, notice of, to, by, every Council 154
Regulations for better working of office, how framed 259
Transfer, immovable property, receipt for Divisional Council, rates must require before 154
Property won in lottery prohibited 22

Deeds Registry—
Act regulating ..... 258—263
Applies only to Cape Town Office, unless specially extended 259
Debt Registry, regulations for 259
Insolvent estate, payments on account by 260
Insolvent discharged, debts prior to be written off 260
Land Registry, regulations for how framed 259
Regulations for better working of 259

Dentist—
Meaning of term 301
Licence to practise, how obtained 305
Obtaining or practising under false pretences 309
Refusal to issue, Court may grant relief 307
Recovery of debts owing to 315
Register of every to be kept 305, 309
Erasure of name from, procedure 310
Evidence of issue of, certificate of Under Colonial Secretary 315

Diamond digger, licensed Griq. West, qualified as voter 369

Diamond digging, alluvial—
Claims, size of regulated 695
Licence, payable by holder 696
Claimholder, certificate of character required of 696
List of, names removed to be kept 698
Register, removal of names from 697
Chief of Detective Department, issue and withdraw of certificates by 697
Diggers' committee, qualification of members 696
Area for election of, may be fixed 696
Inspector of claims, powers and duty as to claimholders 697

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Diamond Mines—
Claims in proclaimed, registration and abandonment of 28
Once registered remain on register till mine abandoned 29
Abandoned, procedure 29
Dioceasan College, Rondebosch, incorporated .....236—240
Districts—
For D. C. purposes, how formed 77
Boundaries of, how fixed and altered 77
Numbering of, and number of Councillors 77
Division—
Annexation of, to, adjoining, where D. C. lapsed 114
Boundaries of, how altered 78
Disputes concerning, arbitration, &c. 78
Means, fiscal division 76, 402
Portion of, separated from one and added to another 79
Property in, liable for D. C. rates 146
Divisional Council—
Accounts of, abstract to be published 108
Audit of, mode of 108, 110, 111
Auditors of, how elected 106
Powers and duties of 108, 111
Salaries of, charge on rates 154
Vacancies, how filled 108
Expenditure on amounts received from outside sources 111, 114
Objections to, at Audit 109
Open to inspection 108
Statements of, prepared half-yearly 109
Actions by or against, how brought, &c. 113
Animals diseases, to frame list of landowners to form Boards of Destruction 676
Banks, amount of overdraft limited 112
Sums unlawfully borrowed, personal liability for 112
Surplus funds, deposited in 111
By-laws, how framed 156
Brands Registration Act, may request Governor to proclaim 184
Resolution of to be advertised 184
Fees to poundmaster for cattle not branded 188
Bridges, powers of, regarding construction, &c. See "Bridges."
Burr weed, powers regarding. See "Burr weed."
Chairman of, accounts certified 110
Civil Commissioner, *ex officio* 103
Incapacity of *locum tenens* 105
Minutes of proceedings, signs 105
Officers of, may suspend 103
Rates, in arrear, powers of 156
Revises and certifies voters' roll 82
Committees of, how appointed 104
Powers of, generally 104
Constitution of 77
Contracts, mode of entering into 145
Creditor of, power to inspect books, &c. 105, 108, 109
Documents of, authentication of 157
Dogs, powers regarding. See "Dogs."
Election for,
Adoption of ballot, how procured 503
Candidates, who eligible 86
Elected names published 95
Ineligible, complaints how treated 97
Names of, published 87
Failure to nominate, procedure 98
May appoint agent 89
Receiving equal number of votes 95
Complaints as to conduct of, how made 92

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Divisional Council—*continued.*
Election for—*continued.*
Corrupt Practices Act, disqualify voter 81
Defined, procedure 97
Expenses of, defrayed out of general funds 101
Failure to elect, procedure 98
Fresh, held trienially 101
Mode of, procedure generally ..... 84—101
Nominations, how called for ..... 84—100
Poll at, mode of taking 86
Polling papers, examination of 94
Polling officer, duties generally ..... 86—92
Voters at, qualification of 80
Complaints, investigation of 92
Voting at, manner of 89
Fencing purposes, loans to, for. See also Fences 249
Funds of, allocation of 112, 133, 154
Contributions towards works in other divisions 133
Gates, erection of. See "Gates"
Hut tax from native location on Crown land, payable to 537
Lapsing for 3 months, division may be annexed 114
Loans by, apportionment of liability, where bounda ies a tere 79
Local authority under Public Health Act, when 137
Meaning of term 76
Meetings of, adjournments permissible 104
Notices of, in writing 104
Chairman of, has no casting vote 103
Open to public 103
Minutes of, kept and open to inspection 105
Obstructing, special penalty for 157
Quorum, what to be 103
Questions before, how decided 103
Resolutions, revocation or alteration of 104
Members of, Civil Commissioner *ex officio* 103
Elected for more than one district 102
Jury lists, form portion of Revising Court 268
Liability of, for sums illegally borrowed 112
Must not vote in matters in which pecuniarily interested 103
Meetings, written notice of, to 104
Nomination, of, by Governor 114
Number of, for each district 77
Payment to, for attendance 112
Powers of enquiry may be delegated to, when 104
Qualifications and disqualifications of 85
Resignation of, how made 101
Vacancy in office of, what to cause 101
Mountain passes, assistance to certain in maintaining 551
Native location, number necessary to constitute, powers 534
Concurrence of, to issue, &c., of licence 535
Officers of, appointment and tenure of office 105
Not to receive fees for official work 106
Duties of, regulations for 154
Salaries of, charge on rates 155
Ostriches, wild. See "Ostriches."
Outspans, public. See "Outspans."
Pounds, powers of. See "Pounds."
Produce, sale of, between sunrise and sunset, may request prohibition ... 725
Rates. See also "Valuation," *infra.*
Apportionment and application of 154
Arrear, person in, may not vote 81
Interest chargeable on, and recovery of 152
Assessment of, annually 151
Notice to Registrar of Deeds 154
Collection of, general charge 154

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Divisional Council—*continued.*
Rates—*continued.*
Date when due, notice of, required ... 152
Liability for, fixed ... 146
Receipt for, required before transfer of property ... 154
Recovery of, general provisions ... 79, 114, 152
Special levy of, for making road ... 133
Under Public Health Act ... 138
For main roads in another division ... 134
Ratepayer, books and accounts may inspect, &c ... 108, 109
Maintenance of road in field-cornetcy, may insist on ... 132
Meaning of term ... 76
Meetings of, when to be called ... 133
Minutes of, may inspect ... 105
Roads. See under "Roads."
Scab Act, may request suspension of ... 335
Secretary of, actions by or against, powers of. See also "Pounds" ... 113
Appointment and tenure of office ... 106
Members of Council, certifies to payment of ... 113
Minutes of proceedings, keeps ... 105
Injuries to roads, prosecutes for ... 135
Not to receive fees for work done ... 106
Polling papers, preserves for six months ... 96
Property, certificate of valuation, to give ... 160
Rates, gives notice of assessment, &c ... 151
Resignation of Councillors sent to ... 101
Signature of, authenticates documents ... 157
Valuations of property, receives objections, &c ... 149
Voters' roll, preparation of, duty ... 81, 287
Tolls, control over. See "Tolls."
Tree-planting. See "Trees."
Trespass. See "Pounds," "Trespass."
Valuation of rateable property—
To be made every five years ... 146
Roll, to lie for inspection, and then rate assessed ... 148, 151
Court for revision of roll ... 148
Expense of, charge on rates ... 154
Valuers for, appointment of, &c ... 146
Voters—
May give one vote to each candidate ... 80
Meaning of term ... 76
Qualifications, &c., of ... 80
Roll of, what deemed to be ... 80, 83
Preparation of, every third year ... 81
Liquor Act requirements ... 287
Omission to prepare, &c ... 83
Revision of ... 80, 83
Xanthium Spinosum. See under that head.

Dogs—
Destruction of (Rabies) ... 558
Local Municipal regulations may be suspended ... 559
Destruction of, without licence, when permissible ... 141
Trespassing in vineyard at certain times ... 407
In fenced camp ... 407
Owner contravening Village Management Board Regulations, liability ... 36
Tax on, by D.C., imposition and collection of ... 140
Douglas Water Furrow irrigation work, loan for authorised ... 199
Drugs (Adulteration of)—
Analysts of, how appointed ... 171
Refusal of seller to sell for purpose of ... 172
Samples for, how dealt with ... 172
Analysis of, by purchaser, how made ... 171
Forging or falsifying invoice, warrantry, &c ... 176

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Drugs (Adulteration of)—*continued.*
Include medicines for internal or external use ... 168
Mixing of injurious ingredients in, penalty ... 169
Sale of, so mixed, penalty ... 169
Of bad quality, penalty for selling (Medical Act) ... 312
Sale of, not of nature or quality demanded ... 170
Compounded, prohibited, with exceptions ... 170
No defence to allege purchase, for analysis ... 171
Suspected adulteration, summary powers of search, &c ... 172
Drunkenness, habitual, punishment for ... 289
East London—
Frere Hospital, Act regulating ... 359, 366
Harbour Board, Act constituting ... 569, 578
Accounts of, to be framed and audited ... 575
Annual report of progress to Parliament ... 575
Chairman of, elected ... 572
Constitution of ... 569
Dues and charges generally, power to make ... 574
Election of members, poll, &c ... 571
Loan of £50,000, 1890, for works ... 199
Loan of £150,000, responsible for interest ... 576
Local limits of jurisdiction defined ... 569
Members retire by rotation ... 571
Payment to, authorised ... 572
Powers generally of ... 573
Qualifications, &c., of ... 570, 571
Quorum, three to form ... 572
Railway station, landing, &c., of goods for trucks to perform ... 576
Pensions to officers of ... 577
Voters' roll for election, how framed ... 570
Port Captain of, under control of Harbour Board, except in quarantine matters ... 575
Education—
Grants out of revenue in aid of school buildings ... 395
Transfer of land for school purposes, free ... 560
Election, parliamentary—
Agents of candidates, how appointed ... 380, 384
Counting of votes may be present at ... 384
May seal ballot boxes ... 386
Ballot, votes to be given by after July, 1894 ... 377
Box, description of ... 378
Mode of voting ... 377, 379
Paper, contents of ... 378, 392
Official mark on kept secret ... 378
Application for, effect of ... 386
To be marked before handed to voter ... 379
Spoilt, fresh paper may be given ... 380
Preservation and inspection of ... 382
Regulations for voting by, how made ... 378
Candidates may be present at polling place ... 384
Misconduct at, penalty for ... 383
Not invalidated by mistaken use of forms ... 386
Officers, all employed, to make declaration of secrecy ... 384
To maintain secrecy as to voting ... 385
Offences at defined and penalty for ... 385
Polling officer, duty ... 377, 380
Returning officer, duty ... 377, 378
Counting of votes by ... 381
Expenses incurred, payment of ... 378
May act as polling officer ... 384
May appoint assistant to count votes if Colonial Secretary approves ... 384
Publication, mode of in discretion of ... 383
Trial of petition, candidate to lose every vote improperly obtained ... 387

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Election, parliamentary—*continued.*
Tendered votes, list of kept separate 379
Secrecy, declaration of by all officers employed 384
Voter at, cannot be compelled to disclose for whom he voted..... 386
Personation of, what deemed to be 386
English Church Ordinance Repeal Act, 1891..... 235
Evidence—to be received as
Certificate of Registrar of Brands in stock thefts 187
,, Public Analyst..... 175
Life Assurance accounts, &c., certified copies of returns sent to Government 243
Company, certificate of, title to shares 448
Register of members 450
Inspector's opinion of affairs..... 459
Minutes of meeting..... 460
Order of Court on contributory..... 469
Voluntary winding-up, books, &c. 475
Lunatics, certificates, &c., of medical officers 328
Medical practitioner licenced, certificate of U. C. S..... 315
Voting at election by ballot 383
Excise—
Sale of compounded spirits without notice, illegal 201
Wine, meaning of term 201
Exhibition Act of 1892, repealed 560
Explosives, jurisdiction of Table Bay Harbour Board 75
Fees of Office—
Practitioners, R. M. courts, Griqualand West..... 7
Registration deeds, transfer of undivided shares 261
Registration deeds of Association of Company 442, 483
Inspection of documents relating to companies 443
Fences—
Dividing, Act 30 of 1883 amended 249
Meaning of term 251
Native location on Crown land..... 252
Occupier, meaning of term 249
Not in area, contributes to cost of when 250
Contributions payable by instalments.....250, 253
Mortgage bond may be passed 250
Amount due entered in debt register 251
Loans to public bodies for 249
Roads, material required for, by D. C., fence not to be broken..... 117
Gates to be erected 119
Width of fixed, fence to be removed..... 121
Sufficient what to be. (Pounds Act)..... 402
Ferry—
Plying between two divisions, apportionment of tolls 124
Provisions with regard to toll-bars applicable to 124
Field-cornet—
Adulteration Act, summary powers of search, &c..... 172
Arrest by of person driving stock liable to be seized 35
,, of suspected stock thief 723
Animals diseased, powers of 674
Impounded, power to order destruction 404
Notice of given to 675
Powers to order destruction of 676
Jury list, may be called in to frame..... 267
Penalty for default in preparing 274
Liquor adulterated, power of seizure 171
Lunatic, powers of constable under Lunacy Act 318
Arrest, summary powers of 319
Dangerous, to arrest on written order..... 319
Ordinary cases, to report to R. M. 322
Meaning of term in connection with D. C. election 76

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Field-cornet—*continued.*
Native dances, power to prevent certain ... 254
Native location, certifies to residence of European on farm ... 536
Poll at Div. Council election takes ... 86
Pounds and trespasses—
Assesses damages when called on, fees to ... 410—413
Road, notice of intention to close or divert, posted by ... 118
Width of, notice to when fixed ... 120
Voter, competent witness to claim to be registered ... 368

Firearms—
Meaning of term ... 422
Landing or shipping of, Customs officer's permission required ... 423
Rules and regulations for, how made ... 423
At Port St. John's or Walfisch Bay regulated ... 423

Fiscal Divisions, Act of 1888 amended ... 564

Fish—
Dynamite not to be discharged in any waters of Colony ... 212
Protection of, general regulations for, how made ... 567
Include crawfish ... 567

Fort Beaufort, English Church Ordinance $\frac{7}{45}$ provision for repeal 235

Food (adulteration of)—
Includes every article used as food or drink other than drugs or water ... 168
Abstraction of any part of and sale without notice ... 170
Analysis of, by purchaser how obtained ... 171
Refusal of seller to sell for purposes of ... 172
Samples for, how dealt with ... 172
Analysts of, how appointed ... 171
Imported found adulterated, Customs officer's powers ... 173
Forging or falsifying warrants, invoices, &c. ... 176
Mixing of injurious ingredients, penalty ... 169
Sale of so mixed, penalty ... 169
Sale of, not of nature or quality demanded ... 170
Compounded prohibited with exceptions ... 170
No defence to allege purchase for analysis ... 171
Suspected adulteration, summary powers of search ... 172

Franchise. See Election.—Voter.

Frere Hospital, East London, Act regulating ... 359

Friendly Society—
Accounts, audit of provided for ... 353
To registrar annually ... 353
Actions by or against trustees of ... 351
Actuarial valuation every five years ... 354
Definition of ... 346
Disputes between members how settled ... 355
Dissolution of how effected ... 355
Funds, investment and application of ... 351, 355
Misappropriation of ... 356
Funeral expenses of child under 10, precautions before paying ... 354
Medical officers of, must be licensed ... 316
Minors may be members ... 354
Office registered must have ... 350
Penalties general for neglect ... 357
Purposes for which may be established ... 346
Registrar of, appointment and duties of ... 347—357
Accounts, statements, &c., annually to ... 353
Actuarial valuation makes every five years ... 354
Certificate of registration, grants or cancels ... 349
Registration of, how effected ... 347
Cancellation of ... 349
Provisions applicable to ... 348

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Friendly Society—*continued.*
Rules and regulations for management, how framed 347
Amendments of not valid till registered 350
Copies of must be delivered on demand 350
Treasurer of, to give security and render accounts 352
Trustees, appointment of 350
Liability of limited 351
Property, books, &c., vested in 351
To bring and defend actions 351

Gaika Location Roads Act, expropriation of land for 31

Game—
Preservation of, law relating to amended 336
Close season not to apply to game transported, when 337
Licence to sell or hawk, conditions of 337
Penalty for selling without 337
Penalty for destroying certain kinds of 336
Trespass on private property in search of 337

Gaoler, to receive alleged lunatic, when 319

Gates—
Erection of compulsory when road passes over fenced property 119
Person using must close under penalty 119
Injuring, penalty for 119

Gazette, to be published in—
Brands for cattle, description of proposed 186
Quarterly lists of all registered 186
Bank statements, quarterly, of assets and liabilities 223
By bank having head office outside Colony 223, 225
Notes, monthly statement in circulation and gold held 230
Unclaimed trust moneys held by in January yearly 230
Company, order for dissolution 470
Voluntary winding up of 472, 474
Divisional Council, by-laws of 157
Bridges, notices calling for tenders 125
Boundaries of divisions 77
Dog tax, rules for collection 140
Election notices, free of charge 84, 95
Candidates, names, &c 84, 95
Pounds, abolition or establishment of 139
Fees, alterations, &c. 416, 140
Rates, notice of assessment, &c. 151
Roads, closing, fixing width of 118
Tolls, establishment, &c., of 121, 124
Voters' roll, notice of preparation 81

Girl—
Under 14, unlawful carnal knowledge of 620
Permitting premises to be used for 620
Unlawful detention of, for purposes of prostitution 621

Glanders—
Animal affected, to be isolated, and immediate notice given 675
Board to destroy immediately 676

Goat, theft of. "See Stock"—
Impounding of, flock, meaning of term 402
Illegal, penalty for 418
Infected with scab, fees, damages, &c. 402, 415, 412
Provisions where Scab Acts are in force 412
Sale of, regulated 417
Ram trespassing, provisions regarding 412

Gouritz River Bridge, loan of £50,000 authorised 199

Graaff-Reinet English Church Ordinance, provision for repeal of 235

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Graham's Town—
English Church Ordinance, provision for repeal of 235
Municipality, authority given to, to obtain advances by overdraft 233
Green and Sea Point—
Railway from Cape Town authorised 37–43
Municipality, loan for general purposes authorised 397
Water and Electric Lighting Company, working powers to 678
Griqualand East—
Transfers of land passed under Chief Magistrate's orders, under Derelict Lands Act, validated 200
Griqualand West—
Fees to practitioners in R.M. Courts regulated 7
Lessees of land under Ordinance $\frac{3}{74}$, Crown Lands Disposal Act, 1877, extended to 248
Masters and Servants law, in certain districts, amended 425
Voters, Parliamentary, qualification of, altered 369
Guano Islands, property of Crown, regulations for government of, how made 567
Hankey Outspan Act 503
Hawker, produce of British Bechuanaland, may sell without licence 195
Hay, Masters and Servants law in district amended 425
Health, Medical Officer of. See "Medical Officer of."
Herbert, Masters and Servants law in district, amended 425
Hides, theft of. See "Produce."
High Commissioner for South Africa, salary provided for 74
Horns, theft of. See "Produce."
Horses—
Branding of. See "Brands."
Glanders in. See "Glanders."
Impounded, suffering from contagious disease 403
Fees for and sale, &c., of, regulated 414, 416
Stallion trespassing, penalty for 412
Theft of. "See Stock."
Hospitals—
Lunatic, alleged, summary removal to, when authorised 319
Medical officers and dispensers of, must be licensed 316
House of Correction, medical officers and dispensers in, must be licensed 316
House duty abolished 8
Husband—
May cede life policy to wife, effect of 244
Provisions when premiums cannot be kept up 245
Hut tax payable by occupier on Native location on Crown land .. 537
Hypothecation. See "Bonds."
Imvani and Indwe Railway and Coal Mines Act, 1882, amended 554
Indecent pictures, books, &c., sales or publication prohibited 509
Insolvency—
Disqualification to seat on Harbour Boards, Table Bay, East London 183, 571
Insolvent—
Company, shares in, not to be registered in favour of 448
Contributory in, winding up of 462
Diggers' Committee, diamond digging, cannot be member of 696
Harbour Boards, Table Bay and East London, vacates seat 183, 571
Obtaining discharge, return of every, to Registrar of Deeds 260
Debts registered against, prior to, to be written off 260
Insolvent Estate—
Payment by, on account of registered debt, notice of, to Deeds Office 260

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Intonjane Native Dance prohibited 254
Irrigation Works—
Loans for certain, authorised 199
Loans for purposes of, amount to be paid for, altered 562
Jurors—
Books of, framed by Sheriff 269
Corrupting or attempting to, penalty 273
Deficiency in number, by-standers may be empannelled 273
Exemption from service 266
Penalty for not obeying summons 273-74
Penalty for false claim to exemption 274
Qualification and disqualification of 265-66
Disqualification does not invalidate verdict 272
Special, qualifications, &c., of 266
Payment to 279
Jury—
Law relating to consolidated 265
Districts for purposes of, defined 267
In civil cases,
Law relating to, amended 275, 281
Actions to be submitted to 276
Issues to be tried by, to be fixed 276
List of, Sheriff's duty 277
Nine men form 276
Payment to members of 278
Trial by, right of challenge 278
New may be applied for 280
Rules for, how framed 281
Verdict of, general or special and how recorded 278
In criminal cases,
Lunacy, special verdict of, may bring in 320
Special, Court may order, preparation of list 269-70
Summoning of, mode of 270
Lists, preparation of 267-68
Revision of, Court for 268
Completed, sent to Sheriff 269
Penalty for defacing 274
To be sworn 272
Justice of the Peace—
Adulteration Act, summary powers of search 172
Affidavit, in what cases may swear deponent 257
Arrest by of person driving stock liable to seizure 35
Arrest by of persons suspected of stock theft 723
Animals, diseased, notice of to and powers of 676
Impounded, found diseased, powers 404, 413, 418
Damages for trespass, powers to assess 410
Lunatic, dangerous, immediate arrest of, may order 319
Liquor dealer, seizure without warrant of deleterious substances in possession of 171
Native locations, power to prevent certain 254
Oath, extra-judicial, not to administer 256
In what cases or proceedings may administer 257
Search, power of at any time for stolen stock 724
Solemn declaration voluntarily made, may take 258
Voter's claim to be registered, competent witness 368
Juvenile offenders. See also "Reformatory."
Apprenticeship of, Act 15 of 1856, applies 19, 343
Contract of, cancellation of 19
Sent to Reformatory, provisions to apply 343
Magistrates' powers over 19, 20
Wages to be deposited in Post Office Savings Bank 19
Convicted under Reformatory Act, may be apprenticed 18
Under 16 under sentence, may be sent to reformatory 342

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Kafir beer—
Considered an intoxicating liquor 289
Manufacture and sale of, Municipal regulations may be made 564
Kei river bridge, toll over abolished 33
Kenhardt, fiscal division created 204
Kimberley, certain roads in may be proclaimed main roads 18
Kinderbewys, tendered for registration, duplicate to be sent 260
Komgha, power to expropriate land for road purposes 31

Land—
Two pieces of contiguous owned by one person, issue of certificate of registered title to 262
Otherwise than Crown, property of Government, disposal of 291
Crown or other, power to take for construction, &c., of roads 116
Derelict, arrear rates on 154
Transfer of to two or more persons by one deed, forbidden 260

Landowner—
Arrest by of persons driving stock liable to be seized 35
Arrest by of idle and disorderly persons 47
Arrest by of suspected stock thief 723
Game, power of to sell without licence 337
Search for stolen stock, powers of over property 725
Impounded animals found diseased, powers 404, 418
Damages for trespass, powers to assess 410

Land registry. See "Deeds registry."

Legal practitioners—
Advocates and attorneys, neighbouring states, admission of 507
Examinations, certain may be declared equivalent to Colonial examinations 508

Libraries, public, exempt from Municipal taxation 424

Liesbeek River—
Act to conserve and prevent pollution of 699
Dams and sluices in, regulated 699
Duty of Councils with regard to 699
Pollution of, penalty 699
Sewers and drainage, powers of Council 701, 706
Washing in, regulations for 700, 701

Life Assurance Companies—
Act amending law relating to 241, 248
Accounts and statements of to be rendered annually 242
Personal liability for false 243
Penalty for delay in furnishing 243
Open to inspection, &c. 243
Certified copies of received in evidence 243
To be laid before Parliament annually 244
Actuarial investigation into financial position of, periodically 242
Foreign Company, meaning of term 242
Copy of deed under which business done, to be filed 242
Name of principal officer to be notified 243
Policy, meaning of term 242
Assignment of, notice must be given 246
Effected with intent to defraud creditors 245
Husband may cede to wife, effect of 244–245
In force for three years, protected from execution 244
Married woman may take out 244
Protected, moneys from not available for debts as against certain claims 245
Receipt of legal administration of estate, sufficient discharge 247
Regulations, general, for administration of Act 242
Winding up of, provisions to apply 246
English law to be administered 246

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Liquor. See also "Spirits."
Adulteration, dealer found in possession of vitriol, &c. 170
Areas may be defined for closing purposes 289
Colonial forces on duty, penalty for supplying 532
Drunkenness habitual, punishment for 289
Importer or general dealer, not to give liquor to his customers 287
Kaffir beer taken to be intoxicating liquor 289
Licences, Inspector of, appointment, powers, and duties of 284–285
For new premises or renewals 284–285
Granting and renewal of, local option clauses 286
Retail holder of and importer, restriction as to place of sale 287
Licensed premises, payment of wages in forbidden 288
Licensing Act, amended 283–290
Bottle licence defined 283
Licensing Court, may fix hours for closing, &c 284
Inspector of licences must attend 285
Cost incurred by 289
Lodgers, sale of to at any time 288
Poundmaster cannot be a licensed dealer in 402
Railway refreshment room, provisions with regard to 288
Sunday, sale of on, restricted 289

Loans, general—
Acts of 1881 and 1883 amended 340
Consolidated Stock, issue of 341
Conversion into Colonial or Consolidated Stock 340
Regulations for framing of 341
Premiums on raised, applied to Sinking Fund 341

Lodgers, sale of liquor to at any time 288

London Missionary Society, certain lands at Hankey—
Released from servitude of Outspan 504

Lotteries—
Act prohibiting 20, 22
Conducted outside Colony, liability remains 22
Meaning of terms 20
Penalty for participating in, advertising, &c. 21, 22
Prizes won at, Treasurer may recover 22
Subscribers to, may recover subscription 22
But may not claim any prize 22

Lunatic—
Act amending law relating to 318, 333
Actions by persons declared, period limited 329
Asylum, meaning of term 318
Medical officers and dispensers in, must be licensed 316
Officer of, neglecting or permitting to escape 326
Male not to have charge of female patient 327
Persons not to be detained in 327
Alleged, summary power of arrest 379
Arrest of, orders, certificates, &c., to Attorney-General 323
Relations, if any, may petition Court direct 324
Court, Superior, powers not abridged by Act 326
Curators *ad litem ex officio*, who to be 323
Curators of property of, appointment, powers and duties of 324-25
Orders appointing, lodged with Master 325
Criminal, meaning of term 318
Colonial Secretary to consider case of each, every two years 321
Discharge of by Governor, conditional terms of 321
Remission of to prison, Colonial Secretary may order 321
Reports on, to Colonial Secretary once a year at least 321
Prisoners, appearing to be, procedure 320
Imbecile, special regulations for may be made 321
Transfer of, may be ordered 321
Trial of and special verdict of insanity, procedure 320

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Lunatic—*continued.*
Dangerous, Resident Magistrate may order immediate detention of 319
Ceasing to be, Governor may discharge 319
Orders for detention of, provisions to apply 320-24
Detention, illegal of, penalty for 321
Enquiries regarding, person holding may administer oath 329
Escaped, recapture of 329
Female, males not to be in charge of 327
Penalty for carnally knowing 327
Ill-treatment of, penalty for 326
Orders all for detention of, laid before Judge 323
Procedure thereupon 323-24
Meaning of term 318
Mechanical means of restraint, safeguards to use of 329
Medical certificates and reports, requirements of 328
Not to be given by relative 328
Ordinary (not dangerous or not criminal)—
Apprehension of, Resident Magistrate may order 322
Examination of, by Resident Magistrate 322
Cases of, to be reported to Resident Magistrate and Police 322
Summary reception order, when to issue 322
endures for one month only 322
Relatives may take charge of when 323
Person detained as, may apply to Court 324
,, declared, transferred to asylum by warrant 324
Partnership of, Court may dissolve 325
Penalty, general, under Act 326
Private person taking charge of, to notify Colonial Secretary 327-28
Rules and regulations, power to make 320
Warrants under Act, how signed 329
Woman, penalty for carnal knowledge of 620

Magistrate, Resident—
Animals diseased, notice of to, &c. 676
Apprentices, juvenile offenders, powers over 19, 20
Courts of Griqualand West, fees to practitioners 7
Jurisdiction
Adulteration Act, powers of search, &c. 172-73
Colonial Forces Act, offences against discipline 520
Companies Act, limited 460
Divisional Council Act
Arrear rates 153
Fences, obstructing road 121
Gates, leaving open 119
Penalties under Act 154
Roads, negligent driving 135
Injury to 135
Xanthium spinosum 143
Game Law preservation 337
Friendly Societies, to settle disputes 355
Stock and produce thefts, special 716, 722
Compensation and damages, may award 717
Spare diet, restrictions on 717
To award damages wrongful search 725
Volunteer Corps, resignation of member 517
Village management board regulations (dogs) 36
Pounds and trespasses 412, 419, 418
Jury lists, duty of in preparing 267
Lunatics, powers, &c., of 318, 330
Native dances, certain power to prohibit 254
Oaths, extra-judicial, not to administer 256
Poisons, sale of, powers to inspect register, &c. 312

Malmesbury Board of Executors, power to to carry on Fire Assurance business 23

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Margarine, meaning of term. See "Butter" 164

Marriage—
Effect of on policies of Life Assurance 244
With deceased wife's sister legalized 555
Woman, liability of on bills of exchange 585

Master may compel servant to attend Court 51

Master and Servant—
Law relating to amended 51
Law relating to certain districts, Griqualand West amended 425
Payment of wages in licensed premises forbidden 288

Master of the Supreme Court—
Insolvent obtaining release, returns of to Reg. Deeds 260
Insolvent estate, payments on account of registered debts, notice to Reg. Deeds 260
Lunatic, order appointing curator lodged with 325
Duty of to protect estate 325

Medical Council, Colonial. See also "Pharmacy Board," "Poisons"—
Meaning of term 301
Constitution and election of 302, 304
Committee executive, power to appoint 304
Dentist, one to be member of, rights and powers 303
Funds received by, administration of 316
Medical practitioners, admission to practice 306
Diplomas necessary may prescribe 306
Legal proceedings, may institute 315
President of, how elected 303
May administer oaths 315
Rules and regulations, conduct of business, &c. 303
Penalties under limited in amount 315
Quorum, four form 304
Secretary to, appointment and duties of 304, 309
Sphere of duty defined 315

Medical Officer—
Of health must be a licensed practitioner 316
Of asylum, convict station or other public institution must be licensed .. 316

Medical Practitioner. See also "Poisons"—
Meaning of term 301
Certificates by, required by law invalid unless licensed 316
Females not disqualified from admission 308
Licence to practise, how obtained 305
Evidence of issue of, what to be 315
Refusal to grant, court may grant relief 306
Obtaining under false pretences, penalty 309
May practise as accoucheur and compound medicines 306
Penalty for selling medicines of bad quality 312
Military or naval, when licence not required 306
Puerperal fever, regulations to prevent spread of 307
Copy of supplied to every, by Council 307
Register of all to be kept 305, 309
Erasure of name from, procedure 310
Recovery of debts owing to 315

Medicines, penalty for selling of bad quality 312

Merchandise—
Act to provide against fraudulent marking of, amended 31
Goods of foreign manufacture, meaning of term 31

Metropolitan and Suburban Railway Company incorporated 37

Midwifery. See "Nurses"—
Certificates of competency in, how granted 307
Evidence of issue of, what to be 315
Penalty for pretending to be certified 308

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Midwifery—*continued.*
Puerperal fever, regulations to prevent spread of 307
Copy of sent to every 307
Milk—
Act regulating sale of 216
Regulations, general, *re* sale and inspection of, how framed 216
Local authority, may adopt 216
Minister of the Crown, meaning of term 566
Minor—
Bills of exchange, &c., drawn by, rights of holder 585
Shares in Company, not to be registered in favour of 448
Mohair, theft of. See "Produce."
Mortgage Bonds. See "Bonds."
Mountain Passes, roads through, certain D. C.s assisted in maintaining 551
Repair of retaining walls, maintenance for 12 months 44
Mowbray Municipality—
Powers of with regard to Liesbeek River 699
Fires on mountain, power to deal with 707
Buildings and sanitary arrangements generally, powers 707
Mules—
Registration of brands. See "Brands."
Theft of. See "Stock."
Trespass of, penalty, &c. 412
To be sold singly at pound sales 417
Municipality—
By-laws (brothels, overcrowding, &c.), power to make 612
Bridges erected within limits of, powers of 128-29
Candidates, returning officer may reject for cause 128-29
Burr weed, duty of to destroy 144
Councillor, seat of may be declared vacant 612
Crown, property of liable for rates 333
Libraries and museums excepted 424
Elections for, ballot at how obtained 502
Dog tax not leviable in by Div. Council, when 142
Fencing purposes, loans to for 249
General act of 1882 amended 611
Ratepayer, who liable to be rated 612
Inspectors of native locations, appointment of 264
Powers and functions of 264
Kaffir beer, regulations sale of, &c., may make 564
Natives carrying weapons through streets 564
Pounds within, control over 138
Regulation of 419
Roads, main, passing through, maintenance 135
Tolls, erection of within 122
Museums exempt from municipal taxation 424
Native, carrying weapons in public streets may be prevented 564
Native Affairs—
Office of secretary abolished 566
Duties of to be performed by Prime or other Minister 566
Native Dances—
Abakweta and Intonjane prohibited 254
Act in force in proclaimed districts only 254
Penalty for taking part in 254
Native Location—
Act amending law regarding 534-37
Inspector of, may be appointed by Municipality under Vagrancy Act 264
Animals diseased, notice of to 676

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Native Location—*continued.*
On Crown Land, provisions regarding fencing 252
Hut tax payable by occupier on 537
Handed over to Divisional Council 537
Licence for establishment of, how obtained 535
Conditions of issue 536
Revocation of, how obtained 535
Reasonable time for removal to be given 535
For on private property, annual 535
For limited period, issue of 536
Number necessary to constitute, Governor may fix 534
On private property, establishment of 535
Register of inmates, stock, &c., to be kept 536

Native Territories, certain declared part of E. D. Court 260

Newspaper—
Advertisement of lotteries in, penalty 22
Brands registration, resolution of D. C. to enforce 184
Company, order for dissolution 470
Pound fees and sales, notice of alteration, &c 416, 140
Divisional Council may select for advertisements 157
Accounts half-yearly 108
Auditors, notice convening for election 106
By-laws proposed 156
Divisional Council, contracts, notice of 145
Dog tax, rules for collecting 140
Nomination of candidates, returns of names, &c 86–87
Pound fees, alterations in 140
Rates, notice of assessment 151
Ratepayers' Meetings 133
Roads, notice of intention to close or divert 118
Width of, notice of when fixed 120
Tolls, letting or farming of 122
Valuation roll, revising Court 148
Voters' roll, notice of preparation of 81
Voters' list (Parliamentary), notice of revision 373

Northern Railway Act 189, 613

Nurses Trained—
Certificate of competence, how obtained 308
Cancellation of for misconduct 308
Lists of published annually in January 308
Register of all to be kept 308
Erasure of name from, procedure 310
Evidence of issue of, what to be 315
Penalty for falsely pretending to be 308

Oath. See also "Affidavit," "Declaration."
Affirmation or declaration in lieu of permitted 257
Penalty for making false 257
Extra-judicial not to be administered 256
Of allegiance, form of 257
Law relating to consolidated and amended 256

Obscene Publications—
Definition of 509
Destruction of when permissible 510
Sale or exhibition of, penalty for 509

Orange River bridges, tolls over abolished 33

Orange River Free State, railway through provided for 38

Orangezicht Estate, portion (Oudekraal) released from entail 690

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Ostriches—
Registration of brands. See "Brands."
Domesticated, theft of. See "Stock."
Feathers, theft of. See "Produce."
In fenced camp, owner of dog injuring liable 407
Impounded, fees for, sales of, &c. 408, 414, 417

Ostriches, Wild—
Close or fence season, may be proclaimed 212
Penalty for killing during 212
Licence to kill on unoccupied Crown land, how obtained 55
Penalty for killing, taking eggs, &c., without 55
Penalty for killing on occupied Crown land without permission 55
Public road and outspan, D.C. considered occupier 55
Municipal land, secretary considered occupier 55

Oudekraal, released from entail 690

Outspan—
Fencing of, powers of Div. Council 249, 563
Leasing of 563
Impounding of animals belonging to owner of land 414
Control vested in Div. Council 137
Letting or hiring of, conditions 137
Regulations for use of, how made 156
Penalty for obstructing 158

Ox, theft of. See "Stock."

Parliament—
Expenditure unauthorised power of over (contingencies account) 400
Public Works, accounts of moneys raised under temporary loans for 244
To be laid before annually—
Analyst, Public, quarterly reports of 173
Banks, copies of all deeds of settlement, &c. 220
East London Harbour 575
Life Assurance Companies, abstracts of accounts 244
Post Office Savings Bank, accounts of deposits in 10-12
S. A. Public Library, annual report 713
Volunteer regulations 518
Widows' Pension Fund transactions 218

Partnership, dissolution when one of parties declared lunatic 325

Pawnbrokers—
Books, &c., to be kept by 59, 68
Must produce when required 67
Business of, Act regulating 57-67
Licence, annual £10 65
May be revoked for misconduct 65
R.M. grants certificates for 65
Loans by, restricted in amount 58
Special contract may be made 61
Meaning of term 57
Offences by, general penalty for 66
Pledges, disposal of regulated 59
Profit, &c., charged by, fixed 59
Restrictions, general, on 63
Special as to certain articles 64
Rules to be observed by 59

Pawning—
Act regulating 57-66
Of articles, procedure 59
Pledges regulated 59-61
Penalties, apportionment of 66
Unlawful of goods, penalty 63

Digitised by the University of Pretoria, Library Services, 2016

Pharmacy Board, Colonial—
Constitution of, election, &c.....302-30
Committee, executive, power to appoint..... 30
Funds received by, administration of..... 31
Legal proceedings, may institute..... 31
Meaning of term..... 30
President of, how elected..... 30
May administer oaths..... 31
Quorum, three form..... 30
Rules, &c., for conduct of business, framing of..... 30
Penalties under restricted in amount..... 31
Secretary to, appointment and duties.....304, 30
Sphere of duty defined..... 31
Physician. See "Medical Practitioner."
Pictures, indecent, &c., sale or publication of prohibited..... 50
Pig, theft of. See "Stock."
Trespass of, destruction of, pound fees, &c.....407, 415, 4
Pigeons trespassing on gardens, &c., may be destroyed..... 40
Pledges in pawn—
Delivery up of how effected.....61,
Destruction of, pawnbroker's liability.....
Forfeiture of.....
Redemption of, ticket to be produced.....59,
Sale of regulated.....
Special, how regulated.....
Unlawfully made, powers of Court.....
Poisons—
Sale and keep of regulated.....311,
Articles declared to be.....311,
Certain exempt from operation of act.....
Importer or general dealer, sale of by regulated.....
Register of all sales to be kept.....
Chemist and druggist, general conditions of sale by.....
Obtaining by false pretences.....
Penalty for carelessly keeping.....
Register book of sales to be kept and open to inspection.....313,
To be carefully labelled as such.....
Police Officer—
Adulteration Act, summary powers of search.....
Arrest by of person driving stock liable to be seized.....
Arrest by of suspected stock thief.....
Called out on active service, form portion of Colonial forces.....
Jury list, may be called upon to frame.....267,
Lunatics, powers of under Lunacy Act.....
Arrest, summary powers of.....
Dangerous to arrest on written order.....
Ordinary cases to report to Res. Magistrate.....
Native dances, power to prevent certain.....
Pound book, may inspect free of charge.....
Seizure by of deleterious substances found in possession of liquor dealer
Pontoon. See "Road, main."
Port Captain, duty of under Animals Diseases Act when boarding vessels .....
Port Elizabeth—
English Church Ordinance, 1/42 provision for repeal of.....
Harbour Board, loan £100,000, 1890.....
Released from payment of interest on certain loans.....
Municipality, loan £300,000 water supply authorised.....

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Post Office —
Money and postal orders, law as to crossed cheques applies to 609
Postage, letters sent by private ship and inland packets 539
Postmaster, declaration to be made by every on appointment 539
Savings Bank Act of 1883 amended 9
Certificates of £100, issue regulated 10–12
Accounts of kept separate 10, 11
Deposits in, amount limited 9
Accounts of laid before Parliament 10
Poultry trespassing may be destroyed 407
Pound—
Animals on outspan 563
Animals Diseases Act, infected area 678
Management and control of vested in Div. Councils 402, 138
Establishment and abolition of 402, 138
Copy of Act regulating to be kept near 405
Fees chargeable, alteration of, &c 416, 138
Separate enclosures to be kept 403
Municipal provisions regarding 419
Pound Book—
Entries in, what required and mode of keeping 403-406
Inspection of and fee for 405
Extracts from, fee for 405
To be taken to every pound sale 406
Poundmaster—
Act regulating, copy of in English and Dutch keeps 402
Animals tendered, must receive 402
General duties and responsibilities thereupon 402, 406, 408
Sales of, draws advertisement, &c 416
Separate enclosures keeps 403
Stallions, castrates and fee 412
Suffering from contagious disease 403
Written description and notice of, &c 402, 408
Appointment and dismissal of 139, 402
Auctioneer acts at sales without licence 416
Award in arbitration cases, copy to 411
Brand directory must keep where act in force 187-88
Branded cattle, must give notice of 188
Can only hold one pound.
Fees, general to 140, 188, 405, 413, 414, 417, 419, 421
Licensed dealer in liquor cannot be 402
Penalties on, general for not complying with act 406, 410, 415, 417
Pound book, duties of with regard to 405
Pound Sale—
Animals impounded, regulated 416
Advertisemedts of, how drawn, &c 139, 416
When and where to be held 139, 416
Prime Minister—
Has right of debate in either house 566
Native Affairs, administration of takes over 566
Prints, indecent or obscene, sale of, &c., prohibited 509
Prison—
Lunatic, alleged, gaoler to receive when 319
Subordinate Officer of, meaning of term 215
Desertion by, penalty 214
Offences committed by, place for trial extended 215
Resignation by of office, limitations on 214
Prisoner—
Found in unlawful possession of money, &c., ... 215
Imbecile, unfit for penal discipline, special rules for 321
Offences committed by, place for trial extended 215
Property of, rules for custody of 215

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Produce—
Meaning of, includes wool, hides, skins, &c. ... 716
Theft of, act regulating ... 716, 726
Arrest, summary of suspected person ... 723
Buying or acquiring without reasonable precaution ... 722-24
Fines for and disposal of ... 721, 723
Purchase of, between sunset and sunrise ... 725
Rewards to informers ... 724
Search, powers of, at any time ... 724
Trial for, procedure ... 716-22

Promissory notes—
Definition of ... 607
Delivery, necessary to complete ... 607
Maker of, liability ... 608
Presentment for payment ... 607

Public Establishments, medical officers and dispensers in, must be licensed ... 316

Public Works—
Loan Acts for certain ... 1891, 298; 1892, 425
Certain, authorised out of public revenue ... 395, 425
Ministerial title of, fixed ... 566

Puerperal fever, rules for preventing spread of ... 307

Quitrent—
On land purchased under Act 5 of 1870, reduced ... 34
Valuation by land board may be substituted in title ... 74

Rabbits—
Introduction into Colony prohibited ... 201
Destruction of, when found on private property ... 202
Keeping of, restrictions placed on ... 202
Penalty for negligently allowing to run loose, &c. ... 202
Return half-yearly of animals kept to be sent to C.C. ... 208

Rabies—
Disease, spread of, regulations for prevention of ... 552

Railways—
Additional Works ... 1889, 48; '90, 182; '91, 298; '92, 425; '93, 619
Bloemfontein, extension form Norval's Pont ... 33, 182, 191
to Viljoen's Drift ... 256
Buffalo Harbour Railway Station, work to be performed by Harbour Board ... 576
Burghersdorp to Bethulie Bridge ... 48
,, ,, Springfontein including bridge ... 256
Cape Town to Sea Point by private company ... 37-43
Colesberg Junction to Norval's Pont ... 182
Construction Balances Account Act, 1892 ... 367
Balances to be carried to by resolution of Parliament ... 367
Deficiencies on authorised lines met out of ... 367
Crossing public roads on level adjoining station ... 32
Eerste River to Sir Lowry Pass ... 182
Improvement of existing lines, relaying, &c., loan for ... 611
Imvani and Indwe, bonus to company completing ... 554
Indwe coal mine, junction with Eastern System ... 181, 554
Kalk Bay to Simon's Town ... 48, 182
Kimberley to Warrenton ... 189
Warrenton to Vryburg ... 190
Agreement for Construction ... 191, 613
Municipal taxation, property exempt from ... 334, 424
Middelburg Road to junction with Eastern System ... 181
Port St. John to Maclear ... 292-96
Refreshment rooms, provisions regarding sale of liquor ... 288
Revenue, excess over estimate, allocation of limited ... 400
Sheep, conveyance of (Scab Acts) ... 180
Stock destroyed by, compensation for ... 162

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Railways—*continued.*
Transvaal, loan to Netherlands Company 394
Worcester to Ashton (Cape Central Railways) 48
Rams trespassing, special penalty for 412
Rape, person indicted for may be convicted under Criminal Law Amendment Act 622
Reformatory Institution. See also "Juvenile Offenders"—
Act of 1879 amplified 342
Apprenticeship of inmates, provisions to apply 343
Contract of, cancellation 343
Convicted child under 16 may be removed to 342
May be detained under apprenticeship 342
May be detained till 18 or apprenticed till 21 342
Apprenticeship of, provisions to apply 343
Destitute child, transfer to authorised 342
Native territories, application to 345
Penalty for trespassing on grounds, &c 344
Rules and regulations, general, power to make 345
Registrar of Deeds. See "Deeds."
Registration of Bonds. See "Bonds."
Resident Magistrate. See "Magistrate."
Rifle Club, Mounted—
Formation of, conditions, &c 519
Management of, regulations for 520
May be called out for active service 520, 559
Roads—
Certain in Kimberley, power to proclaim main roads 18
Through mountain passes, certain D. C.s assisted to maintain 552
Accounts for maintenance to be kept separate 552
Retaining walls, repair of 118
Connecting other divisions, provisions for joint action 134
Contributions towards in other divisions 133
Construction and maintenance of 77, 115
Diverting or closing of, procedure 118
Driving on, rules to be observed 135
Injury to or destruction of 135, 156
Land through which road passes, fencing of 119
Land and materials for, power to take 116
Property in, vested in Council 115
Rates. See under Divisional Council.
Width of, *apply specially proclaimed divisions only* 120
How fixed and determined 120
Fences or obstructions must be removed 121
Notice to be given 120
Roads, Divisional—
Apportionment of rates for 154
Construction, closing or diverting of 115, 118
Maintenance of vested in Council 115
Neglect to repair 132
Proclamation of by Governor 117
Roads, Main—
Accounts, expenditure on to be kept separate 154
Apportionment of rates for 154
Closing or diversion of, procedure 118
Construction of, consent of Parliament required 117
Inspection, periodical of by Government 130
Land and materials for, power to take 116
Maintenance of, passing through Municipality 135
Power of, vested in Council 115
Neglect to provide properly for 130
Ratepayers may insist on 132

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Roads, Main—*continued.*
Proclamation of by Governor 117
Pontoons on, Government inspection of 130
Extrordinary repairs to 132
Rondebosch—
Diocesan College incorporated 236-240
English Church Ordnance 5/45, provision for repeal 235
Municipality, powers with regard to Liesbeek River 699
Fires on mountain, power to deal with 707
Buildings and sanitary arrangements, powers 707
Scab—
Acts relating to, amended and extended 44, 178, 180, 335
Application of in field-cornetcy adjoining protected area 45, 178
Inspectors, regulations for may be altered, &c 335
Animal diseased, notice of to 676
May be proclaimed or suspended, any division 335
Sheep, conveyance by rail 180
Removal of, without licence 336
Impounded, duty of poundmaster 403
Trespass money for 411
School Buildings—
Grants in aid of 395
Land for, transferred free of duty 560
Sea Birds—regulations for protection of, how made 567
Seals, regulations for protection of 567
Seal Islands, property of Crown, regulations for government of .. 567
Seeds (Adulteration Act)—
Analysis of, how obtained by purchaser 171
Refusal of person to sell for purpose of 172
Samples for, how dealt with 172
Analysts of, how appointed 171
Forging warants, invoices, &c., penalty 176
Meaning of terms "to kill" or "to dye" 169
Penalty for selling "killed" or "dyed" 174
Suspected adulteration, powers of search 172
Servant. See also "Master"—
Law relating to amended 51
Classes of employees law applies to, extended 51
May be compelled by master to attend court 52
Payment of wages to on licensed premises, penalty for 288
Sheep. See also "Scab"—
Theft of. See "Stock"
Impounded, infected with scab 403
Trespass money payable 411
Pound and sustenance fees 414
Ram trespassing, penalty 412
Sale of impounded 416
Sheriff of the Colony—
Jury lists when complete, sent to 269
Mode of drawing names for service 271
Special for civil cases, duties of 277
Special for criminal cases 270
Ordinary for criminal cases, summoning of 270
Juror, penalty for illegally excusing 274
Sidbury English Church Ordinance, provision for repeal of 235
Skins, theft of. See "Produce."
Solicitor-General—
Lunacy orders, medical certificates, &c., to 323
To lay papers before Judge 323
Ex officio curator *ad litem* of Lunatics 323
Solemn Declaration. See "Declaration."

Digitised by the University of Pretoria, Library Services, 2016

PAGE

South African Public Library—
Act providing for management of 708, 714
Dessinian collection, management 713
Spare Diet for Stock Thefts, restrictions to be observed 713
Special Justice of the Peace—
Jurisdiction, costs for contravening municipal regulations regarding dogs 36
Gates left open or injured 119
Ferocious dogs 36
Under Masters and Servants law, limited 51
Spirits—
Compounded, sale of without due notice illegal 201
Adulteration, dealer in found in possession of vitriol, &c. 170
Articles so found may be seized 171
Sale of, when adulterated by *water* only 176
Stamps on Share Warrants 445
Stock. See also "Brands"—
Thefts of, act regulating 716, 726
Fines for and disposal of 721, 723
Arrest without warrant 723-24
Meaning of term 716
Buying or acquiring without reasonable precaution 722, 724
Person unable to account for possession, guilty of theft 723
Penalty for entering enclosed place with intent 723
Rewards to informers 724
Search, powers of at any time 724
Trial for, procedure 716, 722
Destroyed or injured on Government railways, compensation for 161
Stutterheim, power to expropriate land for roads 31
Supreme Court—
Court of Appeal, constituted under Africa Order in Council 1889, 164
Procedure of, regulations for 165
Deeds registry, power to frame rules 259
Master of. "See Master."
Sunday, sale of liquor on restricted 289
Surgeon. See "Medical Practitioner."
Table Bay Harbour Board—
Commissioners nominated hold office for three years 183
Disqualifications of 183
Vacancies in, how filled up 183
Constitution of amended 183
Mayor of Cape Town *ex officio* member 183
Dues on submarine cables, &c., power to remit 562
Loans to authorized, 1889, '92, '93 ..... 37, 426, 610
Explosives, jurisdiction under Explosives Act 75
Property of exempt from municipal taxation 334
Tank or dam, animals trespassing on 414
Telegraphs, loans for construction of certain lines 199
Tolls—
Members of Colonial forces exempt from 124, 531
Abolition or removal of 121
Injury to or destruction of 135
Establishment of, procedure 121, 124
Within municipal limits 122
Apportionment of income between different divisions 124
Evasion of payment, penalty 123
Letting of, how effected 122
Rates leviable, alteration or abolition of 121
Table of to be posted 123
Exemptions from payment enumerated 124, 531
Trade mark, definition of for purposes of registration 291

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Transfer—
Deeds of, regulations for preparation, &c., of how framed 259
Of land mortgaged under "Crown Lands Disposal Act, 1887," facilitated 195, 427, 694
Of fractional parts or shares of land 261
Of undivided share of property 261
To two or more persons by one deed forbidden 260
Transvaal Railways Loan Act, 1892 394
Travellers—
Animals of trespassing on dam or tank 414
Detained through stress of weather, trespass by animals of 414
Treasurer—
Ministerial title of fixed 566
Accident policies, duty on coupons, collects 728
Adulteration Act, quarterly reports to by analyst 173
Power to destroy imported articles of food 173
Advances for contingencies account may requisition for 400
Banks, copy of every deed of settlement to 220
Affairs of may order inspection 223-24
Assets and liabilities to call for and publish 223
Auditors, of, appointment of, &c. 225
Statement of affairs to by banks having head office outside Colony 223
Notes, issue of, powers and duties of 226, 230
Failure of bank to redeem in gold 227-28
Monthly return of issues to 229
Companies' Act, prosecutes for penalties 460
Forms of returns, &c., may alter 461
Post Office Savings Bank deposits, investment of 10
Trees—
Planting and cultivation of, appropriation of D. C. funds for 155
Regulations for preventing injury to, how framed 156
Powers to village boards to plant 45
Trespass—
Actions for, pounds act does not prevent 418
Animals, rights of owner 406
Damages for 410, 413, 414
Money, amount of 409, 411, 414, 416, 418, 421
Tulbagh, Divisional Council to maintain its own main roads 561
Uitenhage Water Supply, Act amended 195
University, Cape of Good Hope—
Law examinations held by, certain persons admissible as candidates 509
Vagrancy—
Acts relating to, amended 46, 264
Idle and disorderly person, meaning of term 47
Arrest of without warrant 47
Inspector of locations appointed by municipality, powers 264
Squatter, meaning of term 46
Van Rhynsdorp, fiscal division created 282
Van Wyk's Vlei, irrigation works, loan for completion 199
Village Management Boards—
Dogs, ferocious, costs follow contravention of regulations 36
Elections of, adoption of ballot how obtained 502
Fencing, loans to for 249
Inspector of native locations (vagrancy act) may appoint 264
Kaffir beer, regulations regarding making, &c., of 564
Natives carrying weapons through streets, regulated 564
Trees, planting of, special powers granted to 45
Vineyards—
Acts for preventing spread of disease in, continued 52, 209, 291, 428
Dog trespassing in may be destroyed when 407
Trespass in, penalty 409, 421

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Volunteer Corps. See Rifle Club, Colonial Forces—
Acceptance of services of ... 515
Disbandment of ... 516
Members of, to enrol for one year ... 517
Dismissal of, liability after ... 518
Misconduct of, while on duty ... 518
Resignation, conditions of ... 517
Muster roll of every, to be ... 515
Officers, appointment of ... 516
Regulations, how framed and penalty for contravening ... 518
Service, liability for ... 516
Calling out for active, provisions to apply ... 516, 520
Temporary corps, enrolment of ... 519
Widows of killed in action, pension to ... 531
Voters' roll, Divisional Council, mode of preparation ... 287
Voter, Parliamentary. See Civil Commissioner. Election—
Claim to be registered as, how dealt with ... 370-72
Mark of claimant not permissible with exceptions ... 375
Diamond digger, licensed Griqualand West, may claim ... 369
Griqualand West, qualification altered ... 369
Must be able to sign name and write address and occupation ... 369, 375-76
Objections to registration of, how dealt with ... 371
Qualification of raised ... 368-69, 375
Existing rights, limited protection of ... 368
In Griqualand West assimilated to Colony ... 369
Provisional lists of, duty of Registering Officer ... 369
Claims and objections, how dealt with ... 370-72
When complete copies posted, originals to C.C. ... 373
Revision of ... 373
Registering Officer, duty of in preparing lists ... 369-72
Names of persons claiming under reserved qualification to be clearly underlined ... 376
Wages, payment of in licensed premises, penalty for ... 288
Weeds or plants noxious, provision for destruction of ... 143
Wife—
May effect policy on own life or on husband's ... 244
Rights, certain secured thereby ... 244
Husband may cede policy to and effect of ... 244
Provisions where policy cannot be kept alive ... 245
Wine, meaning of term under Excise Spirits Acts ... 201
Woman—
Liability of, on bills of exchange ... 585
Under 14, unlawful intercourse with ... 620
Unlawful detention of for purposes of prostitution ... 621
Woodstock Municipality—
Act providing for water supply ... 24-28
Loan to for drainage scheme authorised ... 541
Vacant crown land vested in ... 565
Wool, theft of. See "Produce."
Wynberg—
English Church, provision for management of ... 233
Municipality, buildings and sanitary arrangements, general powers ... 707
Fires on mountain, powers to deal with ... 707
Liesbeek River, powers with regard to ... 699
Xalanga, expropriation of land in for roads ... 727
Xanthium Spinosum—
Destruction of, notice to land holders ... 143
Contribution by government towards ... 144
Neglect of occupier to insure ... 144
On crown or municipal land ... 144
On Native locations, liability for ... 144
Regulations, general, how framed ... 156
Council may destroy at cost of occupier ... 144
Inspectors to see Act carried out may be appointed ... 144

Digitised by the University of Pretoria, Library Services, 2016