PUBLISHED BY AUTHORITY OF THE SUPREME COURT OF THE COLONY OF THE CAPE OF GOOD HOPE.

STATUTES

OF THE

CAPE OF GOOD HOPE,

1652—1895.

EDITED BY

HERCULES TENNANT,

Of the Inner Temple, Barrister-at-Law, and Registrar of the Supreme Court; and

EDGAR MICHAEL JACKSON,

Chief Clerk and Chief Accountant, Colonial Secretary's Office.

VOL. I.—1652—1871.

J. C. JUTA & Co.,

CAPE TOWN, PORT ELIZABETH, AND JOHANNESBURG.

1895.

PRINTED BY W. A. RICHARDS AND SONS, CAPE TOWN.

Digitised by the University of Pretoria, Library Services, 2016

PUBLISHED BY AUTHORITY OF THE SUPREME COURT OF THE COLONY OF THE CAPE OF GOOD HOPE.

STATUTES

OF THE

CAPE OF GOOD HOPE,

1652—1895.

EDITED BY

HERCULES TENNANT,

Of the Inner Temple, Barrister-at-Law, and Registrar of the Supreme Court; and

EDGAR MICHAEL JACKSON,

Chief Clerk and Chief Accountant, Colonial Secretary's Office.

VOL. I.—1652—1871.

J. C. JUTA & Co.,

CAPE TOWN, PORT ELIZABETH, AND JOHANNESBURG.

1895.

PRINTED BY W. A. RICHARDS AND SONS, CAPE TOWN.

Digitised by the University of Pretoria, Library Services, 2016

PREFACE.

As a republication of the Statute Law of the Colony has become necessary on account of the Edition issued in 1887 having been exhausted, it was deemed desirable to consider the form in which the new Edition should appear.

Representations having been made to us by many members of the Legal Profession that a chronological arrangement would be of more practical convenience than the existing alphabetical one, which requires constant revision, we decided to adopt the former method of publication.

Inasmuch as Section 86 of the Constitution Ordinance provides that all Acts of Parliament shall be "enrolled of record in the Office of the Registrar of the Supreme Court," we applied for and obtained permission from that Court to publish a Chronological Edition of Cape Statutes and the Yearly Edition of each Session's Acts, which will be accepted as authoritative by the Court.

It was originally intended that this Edition should comprise the whole of the Statute Law up to and including the Acts for 1894, but in consequence of circumstances over which we had no control the publication was delayed for some months beyond the time first fixed. We have now, therefore, been able to add the Acts for 1895 and to make the necessary alterations in the body of the work except as to Statutes which had been printed before the Session of 1895 was concluded, the amendments to these being given on the next page.

This Edition consists of three Volumes, the first two containing the text of the Acts, and the last a full Chronological Table with a complete Index.

We intend in future, simultaneously with the publication of the Sessional Acts, to produce a revised Edition of this Table and Index brought up to date.

H.T.
E.M.J.

August, 1895.

Digitised by the University of Pretoria, Library Services, 2016

AMENDMENTS TO VOLUME I.

THE FOLLOWING AMENDMENTS TO VOLUME I. WILL HAVE TO BE NOTED :—

ORDINANCES—

No.	104, 1833.	Estates of Deceased Persons—§ 34 repealed and Ordinance amended by Act 27, 1895.
,,	105, 1833.	Estates of Minors, &c.—Amended by Act 27, 1895.
,,	1, 1838.	Sunday Observance—Amended by Act 19, 1895.
,,	2, 1838.	Sale of Bread Regulated—Repealed by Act 29, 1895.
,,	6, 1843.	Insolvent Estates, § 115—See Act 27, 1895.
,,	6, 1844.	Sales by Auction Regulated—Amended by Act 37, 1895.

ACTS—

No.	4, 1854.	Foreign Reprints—Repealed by Act 18, 1895.
,,	7, 1856.	Apportionment of Quitrent—See Act 40, 1895.
,,	15, 1856.	Masters and Servants—See § 17, Act 24, 1895.
,,	5, 1858.	Sales by Auction Regulated—Amended by Act 37, 1895.
,,	14, 1859.	Green and Sea Point Municipality—Repealed by Act 5, 1895, save and except as to sections 40, 54, 55 and 56.
,,	19, 1861.	Regulation of Railways—See § 22, Act 28, 1895.
,,	20, 1861.	Regulation of Telegraphs—See § 23, Act 28, 1895, § 4 sub-section (*b*), Act 36, 1895, and § 11, Act 42, 1895.
,,	33, 1861.	Cape Town and Green Point Tramways—See Acts 22 and 23, 1895.
,,	5, 1864.	Succession Duty—Amended by Act 4, 1895.
,,	14, 1864.	Executors' Accounts—§ 7 repealed by Act 27, 1895.
,,	14, 1868.	Port Elizabeth Municipality—See Act 25, 1895.

Digitised by the University of Pretoria, Library Services, 2016

CONTENTS OF VOL. I

(CHRONOLOGICAL).

			PAGE.
Establishment of the Debt Registry	Placaat	June 19, 1714	1
Confiscation of Property of Criminals	,,	April 22, 1779	2
Burial of Carcases of Animals dying on or near Roads	,,	,, ,, 1783	4
Debt Registry	Publication	,, ,, 1793	5
,,	,,	May 23, 1805	7
Imprisonment for Debt	Proclamation	Feby. 5, 1813	11
Quitrent Tenure	,,	Aug. 6, ,,	12
Land Boundaries between Cape Town and Simon's Town	,,	Dec. 23, 1814	16
Wills of natural-born Subjects	,,	July 12, 1822	17
The Boekhoo Plant	,,	Dec. 31, 1824	19
Justices of the Peace	Ord. No.	32, Dec. 11, 1827	24
Duties of Sheriff of the Colony	,,	37, Jan. 5, 1828	29
Deeds Registry	,,	39, Jan. 19, ,,	35
Criminal Procedure	,,	40 ,, 25, ,,	35
Civil Commissioner's Duties	,,	43, Feb. 28, ,,	49
Magistrates' Court Messengers	,,	44, Mar. 19, ,,	50
Witnesses' Expenses in Criminal Cases	,,	59, April 2, 1829	53
Legal Age of Majority	,,	62, June 20, ,,	55
Relief of Roman Catholic Subjects	,,	68, Jan. 13, 1830	57
Witnesses' Expenses in Criminal Cases	,,	69 ,, ,,	57
Law of Evidence	,,	72, March 1, 1830	58
Criminal Procedure	,,	73, April 15, ,,	68
Duties and Functions of Civil Commissioners	,,	77, Oct. 13, ,,	74
Trade in Gunpowder, &c., beyond the boundaries of the Colony	,,	81, Dec. 23, ,,	75
Cape of Good Hope Savings Bank	,,	86, June 8, 1831	81
Charter of Justice		May 4, 1832	93
Auction Sales without a Licence	Ord. No.	92, June 21, ,,	109
Discharge of Firearms in Table Bay	,,	100, Nov. 4, 1833	110
Duties of Orphan Chamber	,,	103, July 5, ,,	111
Estates of Deceased Persons	,,	104 ,, ,,	117
,, Minors, Lunatics, &c.	,,	105 ,, ,,	135
Cape Town English Church	[Local] Ord. No.	4, Sep. 1, 1829	158
Bathurst ,, ,, ,,	,,	5, June 13, 1832	169
Trade in Gunpowder	,,	7, Dec. 3, 1834	181
Deeds Registry	,,	2, May 26, 1836	191
Cape Flats and Downs	,,	5, June 1, ,,	192
Port Beaufort Mercantile Establishment	,,	7 ,, 27, ,,	195
Municipalities	,,	9, Aug. 15, ,,	201
Criminal Procedure	,,	2, June 21, 1837	217
Assistant Field-cornets	,,	5, Aug. 23, ,,	220
Markets	,,	6 ,,	220

Digitised by the University of Pretoria, Library Services, 2016

			PAGE.
Pendency of Criminal Suits	Ord. No.	7, Sep. 6, 1837	221
Sunday Observance	,,	1, Mar. 22, 1838	222
Sale of Bread regulated	,,	2, Sep. 26, ,,	225
Graham's Town English Church	,,	2, Jan. 23, 1839	226
Marriage	Order in Council	Sep. 7, 1838	231
,,	,,	Feb. 20, 1839	243
,,	,,	April 3, 1840	243
Recovery of Fines and Penalties in R.M. Courts	Ord. No.	6, Aug. 14, 1839	245
Cape Town Police	,,	2, April 6, 1840	247
Port Elizabeth English Church	,,	1, March 3, 1842	256
Sidbury English Church	,,	2 ,, ,,	263
Government Property not exempt from Municipal Taxation	,,	3, May 4, 1843	269
Insolvent Estates	,,	6, Oct. 24, ,,	270
Dutch Reformed Church Regulations	,,	7, Nov. 8, ,,	330
Municipalities	,,	2, Jan. 30, 1844	334
Execution Creditors	,,	3, ,, ,,	335
Sales by Auction regulated	,,	6, Feb. 28, ,,	336
Recovery of Land Rents	,,	9, July 4, ,,	340
Collection of Taxes	,,	13, Aug 28, ,,	347
Deeds Registry	,,	14, ,, ,,	348
Registration of Settler's Titles	,,	15, ,, ,,	348
Guano	,,	4, Jan. 30, 1845	355
Rondebosch English Church	,,	5, Feb. 27, 1845	357
Port Beaufort ,,	,,	7, Mar. 25, ,,	362
Concealment of Birth	,,	10, May 14, ,,	372
Execution of Wills	,,	15, Dec. 1, ,,	374
Dutch Reformed Church Regulations	,,	16, ,, ,,	375
Recovery of Land Rent	,,	7, Feb. 16, 1846	377
Graaff-Reinet English Church	,,	8 ,, ,,	378
Public Roads	,,	9, Feb. 28, ,,	383
Baking Trade regulated	,,	10, Mar. 10, ,,	403
Sale of fruit, vegetables, milk, eggs, firewood, cakes or confectionery without a licence	,,	11, ,, ,,	404
Loans on Shares	,,	13, Mar. 25, ,,	405
Law of Evidence	,,	14, ,, ,,	408
Conventional Hypothecations	,,	27, Oct. 3, ,,	411
Cape Flats and Downs	,,	28, ,, ,,	413
Public Markets, Agricultural and other Produce need not pass through	,,	20, Oct. 29, 1847	421
Harbour Improvement	,,	21, ,, ,,	423
Police	,,	25, Dec. 28, ,,	434
Witnesses' Expenses in Criminal Cases	,,	26, ,, ,,	439
Newspapers exempted from Stamp Duty	,,	2, June 27, 1848	440
Certain Marriages declared Legal	,,	4, ,, ,,	440
Jurisdiction of Resident Magistrates	,,	5, ,, ,,	445
Agricultural Societies' Sales	,,	6, ,, ,,	448
Municipalities	,,	8, July 4, ,,	449
Duties and Remuneration of Field-cornets	,,	9, ,, ,,	451
Cape of Good Hope Savings Bank	,,	10, July 27, ,,	454
Public Meetings	,,	15, Dec. 12, ,,	456
Dutch Reformed Church Regulations	,,	2, Nov. 11, 1851	457
Simon's Town Wharfage Dues	,,	6 Dec. 5, ,,	458

Digitised by the University of Pretoria, Library Services, 2016

			PAGE.
Kowie Harbour	Ord. No.	4, April 3, 1852	463
Municipalities	,,	5, ,, ,,	466
Nuisances in Liesbeek River	,,	6, ,, ,,	468
Criminal Procedure	,,	8, Dec. 9, ,,	472
Gunpowder and Firearms	,,	2, Oct. 10, 1853	478
Constitution Ordinance and Letters Patent, 23rd May, 1850		Order in Council, 11th March, 1853	491
Powers and Privileges of Parliament	Act No.	1, Sep. 19, 1854	530
Foreign Reprints	,,	4, Sep. 26, ,,	532
Regulation of Customs	,,	8, June 8, 1855	536
Merchant Shipping	,,	13 ,, ,,	537
Wharfage and Cranage Dues	,,	14 ,, ,,	549
Bank Holidays	,,	3, June 4, 1856	550
Port Elizabeth Provincial Hospital	,,	5 ,, ,,	551
,, Public Schools	,,	6 ,, ,,	557
Quitrent Tenure	,,	7 ,, ,,	562
Grant of Paddock	,,	9 ,, ,,	564
Queenstown Electoral Division	,,	11 ,, ,,	565
Inheritances of Minors	,,	12 ,, ,,	566
Division of Tulbagh Constituted	,,	13 ,, ,,	569
Masters and Servants	,,	15 ,, ,,	570
Registration of Voters	,,	16 ,, ,,	590
Military Pensioners	,,	17 ,, ,,	598
Gunpowder and Firearms	,,	19 ,, ,,	599
Resident Magistrates' Courts	,,	20 ,, ,,	601
Namaqualand Division Constituted	,,	27 ,, ,,	657
Table Bay Wharves	,,	4, June 29, 1857	659
Witnesses' Expenses in Criminal Cases	,,	7 ,, ,,	661
Resident Magistrates' Courts	,,	9 ,, ,,	662
Certain Divisions Constituted	,,	12 ,, ,,	667
Marriages of Military Settlers	,,	13 ,, ,,	668
Gunpowder and Firearms	,,	14 ,, ,,	669
Municipal Police	,,	15 ,, ,,	673
Port Regulations	,,	16 ,, ,,	677
South African Museum	,,	17 ,, ,,	684
Introduction of Children of Natives	,,	22 ,, ,,	687
Emissaries from Kafirland	,,	26 ,, ,,	690
Ordnance Property	,,	2, June 5, 1858	691
Light Houses	,,	3, June 5, 1858	693
Sales by Auction	,,	5 ,, ,,	694
Port Elizabeth Wharfage Dues	,,	10 ,, ,,	695
Weights and Measures	,,	11 ,, ,,	698
Legal Practitioners	,,	12 ,, ,,	704
Guardian's Fund	,,	18 ,, ,,	707
Table Bay Breakwater and Harbour	,,	20 ,, ,,	708
Main Roads and Tolls	,,	23 ,, ,,	713
Road Rates	,,	24 ,, ,,	715
Divisions Created	,,	25 ,, ,,	717
Main Roads and Tolls	,,	3, July 8, 1859	719
Printing and Publishing Newspapers	,,	8 ,, ,,	721
Unit of Land Measure	,,	9 ,, ,,	721
Green Point and Sea Point Municipality	,,	14 ,, ,,	722
Rehabilitation of Insolvents	,,	15 ,, ,,	744

Digitised by the University of Pretoria, Library Services, 2016

				PAGE.
Port Elizabeth Harbour	Act No.	16, July 8,	1859	747
Cape Town Board of Executors	,,	17 ,,	,,	749
Forest and Herbage Preservation	,,	18 ,,	,,	753
Bribery and Corrupt Practices	,,	21 ,,	,,	755
Introduction of Convicted Felons Prevented	,,	1, May 21,	1860	760
Disposal of Crown Lands (Quitrent Tenure)	,,	2, July 17,	,,	763
Mossel Bay Wharfage Dues	,,	7 ,,	,,	770
Offices of Judge and Superintendent of Police, Cape Town, abolished	,,	11, Aug. 15,	,,	773
Jurisdiction of R. M. Courts increased	,,	12, July 17,	,,	774
Cape Town Water Police	,,	13 ,,	,,	776
Municipal Ordinance continued	,,	15 ,,	,,	778
Marriages	,,	16 ,,	,,	779
Patents for Inventions	,,	17 ,,	,,	786
Glen Grey Pound	,,	19 ,,	,,	803
Art-Unions Legalized	,,	28 ,,	,,	805
Graaff-Reinet College Established	,,	29 ,,	,,	806
Alienation of Diocese Property	,,	30 ,,	,,	810
Criminal Procedure	,,	3, Aug 14,	1861	813
Law of Evidence amended	,,	4 ,,	,,	821
Tacit Hypothecs	,,	5 ,,	,,	824
Prescription	,,	6 ,,	,,	828
Salary of one of the Judges	,,	13 ,,	,,	832
Harbour Commissioners	,,	15 ,,	,,	833
Wharfage Dues, Simon's Bay	,,	17 ,,	,,	834
Robben Island Lighthouse	,,	18 ,,	,,	834
Regulation of Railways	,,	19 ,,	,,	835
Regulation of Electric Telegraphs	,,	20 ,,	,,	844
Partnerships' Limited Liability	,,	24 ,,	,,	848
General Estate and Orphan Chamber	,,	31 ,,	,,	852
Union Insurance Company	,,	32 ,,	,,	356
Cape Town and Green Point Tramway Company	,,	33 ,,	,,	860
Sea Point Waterworks Company	,,	34 ,,	,,	869
Precedence to Public Telegrams	,,	5, Aug. 7,	1862	879
Grantees' Loans	,,	11 ,,	,,	881
Settlers' Titles	,,	12 ,,	,,	881
Merchant Shipping	,,	3, July 28,	1863	883
Certain Tolls Established	,,	13 ,,	,,	885
George Town Water Supply	,,	19 ,,	,,	887
E. P. Guardian Loan and Investment Company	,,	20 ,,	,,	894
Mossel Bay Divisional Council Loan	,,	21 ,,	,,	898
Customs Revenue	,,	1, May 4,	1864	902
Stamps and Licences	,,	3, July 26	,,	905
Succession Duty	,,	5 ,,	,,	919
Loan of £234,000 for Liquidation of certain Debentures	,,	8 ,,	,,	924
Construction and Maintenance of Main Roads	,,	10 ,,	,,	925
Municipalities	,,	13 ,,	,,	927
Executors, Tutors and Curators to lodge their Accounts	,,	14 ,,	,,	932
Criminal Procedure	,,	15 ,,	,,	935
Certificates of Citzenship	,,	17 ,,	,,	937
Administration of Estates of Natives	,,	18 ,,	,,	942

Digitised by the University of Pretoria, Library Services, 2016

			PAGE.
Crown Land Leases	Act No.	19, July 26, 1864	944
Port Elizabeth Library	,,	20 ,, ,,	946
Eastern Districts Court Established	,,	21 ,, ,,	947
Kowie Harbour	,,	23 ,, ,,	956
Algoa Bay Harbour	,,	24 ,, ,,	957
Bullion and Coin exempt from Wharfage Dues	,,	26 ,, ,,	958
Gunpowder, Firearms and Lead	,,	28 ,, ,,	959
Kafir Emissaries	,,	29 ,, ,,	960
Annexation of British Kaffraria	,,	3, Oct. 10, 1865	961
Land Beacons	,,	7 ,, ,,	970
Kowie Harbour Improvement	,,	8 ,, ,,	1005
Malmesbury Board of Executors	,,	9 ,, ,,	1007
Judges of E. D. Court Jurisdiction to Review Magistrates' Sentences	,,	10 ,, ,,	1011
Mining Leases	,,	12 ,, ,,	1012
Grants in Aid of General Education	,,	13 ,, ,,	1015
Namaqualand Tramway	,,	15 ,, ,,	1017
Humansdorp Boundaries	,,	17 ,, ,,	1024
Beaufort West Water Supply	,,	4, 1866-'67, Jan. 12, 1867	1026
Land Beacons	,,	8 ,, ,,	1032
Loan to complete Table Bay Breakwater	,,	9 ,, ,,	1034
Kowie Harbour	,,	10 ,, ,,	1035
Loans (Payment of Unsecured Debts, &c.)	,,	11 ,, ,,	1037
Gunpowder Licences	,,	14 ,, ,,	1041
Judges' Pensions	,,	2, 1867, Aug. 16, 1867	1042
Uitenhage Water Supply	,,	3 ,, ,,	1042
Leases of Crown Lands	,,	4 ,, ,,	1054
Fish River Bridge	,,	6 ,, ,,	1056
Criminal Procedure (former conviction)	,,	7 ,, ,,	1059
Trial for Theft and Receiving Stolen Goods knowingly	,,	9 ,, ,,	1060
Fish Introduction	,,	10 ,, ,,	1061
Public Bodies Debts	,,	11 ,, ,,	1063
Loans (Payment of Unsecured Debtors)	,,	19 ,, ,,	1069
Native Pass Law	,,	22 ,, ,,	1070
Postage Stamps	,,	1, June 24, 1868	1074
King William's Town Quitrent	,,	8, Sept. 2, 1868	1076
Removal of Religious Disabilities	,,	11 ,, ,,	1077
Port Elizabeth Municipality	,,	14 ,, ,,	1078
King William's Town Stock Company	,,	15 ,, ,,	1097
Adelaide Church Property	,,	16 ,, ,,	1099
Repayment to Guardian's Fund	,,	22 ,, ,,	1102
Grants of Crown Land	,,	24 ,, ,,	1103
Protection of Northern Border	,,	27 ,, ,,	1104
Northern Border Police	,,	29 ,, ,,	1108
Worcester Divisional Council Loan	,,	31 ,, ,,	1111
Main Northern Road	,,	32 ,, ,,	1114
Capital Punishment	,,	3, Oct. 18, 1869	1115
Port Nolloth Tramway	,,	4 ,, ,,	1116
Beaufort West Water Supply	,,	5 ,, ,,	1124
Removal of Religious Disabilities	,,	6 ,, ,,	1125

Digitised by the University of Pretoria, Library Services, 2016

				PAGE.
Paarl Water Supply	Act No.	8,	Oct. 18, 1869	1126
Better Protection of Bees	,,	9	,, ,,	1128
Hawkers	,,	10	,, ,,	1129
Resident Magistrates' Courts	,,	12	,, ,,	1130
Kowie Harbour Improvement Company	,,	16	,, ,,	1131
King William's Town Borough Council	,,	17	,, ,,	1133
East London Harbour	,,	18	,, ,,	1135
Juvenile Offenders	,,	21	,, ,,	1136
Graham's Town Municipality	,,	23	,, ,,	1137
Military Deserters	,,	1,	May 5, 1870	1151
Seamen's Clothing	,,	2	,, ,,	1155
Agricultural Crown Lands	,,	4	,, ,,	1157
Crown Land Leases	,,	5	,, ,,	1160
Public Debt Consolidation	,,	7	,, ,,	1162
Stamps and Licences	,,	13	,, ,,	1166
Cattle Removal	,,	14	,, ,,	1172
Waschbank Lands	,,	18	,, ,,	1176
Graham's Town Municipality	,,	2,	Aug. 11, 1871	1178
Port Nolloth Tramway	,,	3	,, ,,	1178
Great Northern Road	,,	5	,, ,,	1181
Wodehouse Division	,,	6	,, ,,	1181
East London Harbour Loan	,,	7	,, ,,	1182
Hawkers	,,	11	,, ,,	1185
Loans	,,	13	,, ,,	1186
Orange River Bridge	,,	15	,, ,,	1187

Digitised by the University of Pretoria, Library Services, 2016

CONTENTS OF VOL. I

(ALPHABETICAL).

	PAGE.
Abolition of Office Judge and Superintendent Police	773
Accounts of Executors, &c., to be lodged	932
Agricultural Societies Sales	448
,, Crown Lands	1157
Art Unions legalized	805
Auction Sales without a Licence	109
,, ,, Regulated by	336
,, ,,	694
Baking trade regulated	403
Beacons, Land	970, 1032
Bees, Better Protection of	1128
Birth, Concealment of	372
Board of Executors, Cape Town	749
Boekhoo Plant, the	19
Borough Council, King William's Town	1133
Boundaries, Land, between Cape Town and Simon's Town	16
,, Humansdorp	1024
Bread, Sale of, regulated	225
Breakwater, Table Bay, Loan to complete	1034
Bribery and Corrupt Practices	755
Bridge, Fish River	1056
,, Orange River	1187
British Kaffraria, Annexation of	961
Bullion and Coin exempt from Wharfage Dues	958
Burial of Carcases of Animals Dying on or near Roads	4
Capital Punishment	1115
Carcases of Animals Dying near Roads, Burial of	4
Cattle Removal	1172
Charter of Justice	93
Church, Dutch Reformed, Regulations	330, 375, 457
,, English, Adelaide, Property	1099
,, ,, Bathurst	169
,, ,, Cape Town	158
,, ,, Graaff-Reinet	378
,, ,, Graham's Town	226
,, ,, Port Beaufort	362
,, ,, Port Elizabeth	256
,, ,, Rondebosch	357
,, ,, Sidbury	263
Citizenship, Certificate of	937

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Civil Commissioner's Duties... 49
,, ,, ,, Functions..... 74
Clothing, Seamen's..... 1155
College, Graaff-Reinet, Established..... 806
Constitution Ordinance..... 491
Creditors', Execution 335
Criminal Procedure.. ..... 35, 68, 217, 472, 813, 935, 1059
,, Suits, Pendency of..... 221
Criminals, Confiscation of Property of..... 2
Crown Lands—Agricultural..... 1157
,, ,, Boundaries between Cape Town and Simon's Town 16
,, ,, Grants to..... 1103
,, ,, Leases 944, 1054, 1160
,, ,, Quitrent, King William's Town. 1076
,, ,, Quitrent Tenure.....12, 562, 763
,, ,, Rent, Recovery of 340, 377
Customs, Regulation of..... 536
,, Revenue 902

Debt Registry, Establishment 1
,, ,, ... 5
,, ,, ... 7
,, Imprisonment for..... 11
,, Public Bodies..... 1063
,, Public, Consolidation..... 1162
Deeds Registry 35, 191, 348
Deserters, Military..... 1151
Diocese Property, Alienation of..... 810
Divisions Constituted 667-717
Dues, Wharfage, Bullion and Coin Exempt from..... 958
,, ,, Cranage..... 549
,, ,, Mossel Bay..... 770
,, ,, Port Elizabeth..... 695
,, ,, Simon's Town 458, 834

Eastern Districts Court Established 947
,, Province Guardian Loan Investment Company 894
Education, General Grants in aid of 1015
Electoral Division, Queen's Town 565
Estates of Deceased Persons 117
,, ,, Minors, Lunatics, &c. 135
,, Insolvent 270
Evidence, Law of 58. 408, 821
Execution Creditors 335
Executors, Tutors and Curators, to lodge accounts..... 932
,, Cape Town Board of 749
,, Malmesbury Board of 1007
Expenses in Criminal Cases, Witnesses' 53, 439, 661

Felons, Convicted, Introduction of, prevented..... 760
Field-cornets' Assistants 220
,, Duties and Remuneration of 451
Fines and Penalties, R.M. Courts, Recovery of 245

Digitised by the University of Pretoria, Library Services, 2016

PAGE

Firearms, Discharge of, in Table Bay 110
Fish Introduction 1061
Flats and Downs, Cape 192, 413
Foreign Reprints 532
Forest and Herbage Preservation 753

General Estate and Orphan Chamber 852
Glen Grey Pound 803
Graaff-Reinet College Established 806
Guano 355
Guardian's Fund 707, 1102
Gunpowder, &c., Trade in, beyond the boundaries of the Colony 75
,, Trade in 181
and Firearms 478, 599, 669
,, ,, Lead 959
,, Licences 1041
Harbour, Algoa Bay 957
,, Commissioners 833
,, East London 1135
,, Improvement 423
,, Kowie 463, 956, 1005, 1035, 1131
,, Loan, East London 1182
Hawkers 1129, 1185
Holidays, Bank 550
Hospital, Port Elizabeth Provincial 551
Humansdorp Boundaries 1024
Hypothecations, Conventional 411
,, Tacit 824

Insolvent Estates 270
Insolvents, Rehabilitation of 744
Insurance Company, Union 856
Inventions, Patents for 786

Judges, Salary of one of the 832
Justice, Charter of 93
Justices of the Peace 24
Juvenile Offenders 1136

Kaffraria, British, Annexation of 961
Kafirland, Emissaries from 690, 960
King William's Town Borough Council 1133
Kowie Harbour 463, 956, 1005, 1035, 1131

Land Measure, Unit of 721
Leases, Mining 1012
,, of Crown Lands. 944, 1054, 1160
Legal Practitioners 704
Library, Port Elizabeth 946
Licences, Sale of fruit, vegetables, milk, eggs, &c., without 404
Licences and Stamps. 1166
,, Gunpowder 1041
Lisbeek River, Nuisances of 468
Lighthouses 693
,, Robben Island 834

Digitised by the University of Pretoria, Library Services, 2016

PAGE.
Limited Liability Partnerships 848
Loans on Shares 406, 1037, 1069, 1186
,, Guarantees 881
,, Investment Co., E.P. Guardian 894
,, Divisional Council, Mossel Bay 898
,, of £234,000 for Liquidating Debentures, &c. 924
,, Divisional Council, Worcester..... 1111
Lunatics, Estates of 135
Magistrates' Court Messengers 50
Magistrate, Resident, Jurisdiction of 445, 774
,, ,, Court 601, 662, 1130
Main Road Tolls 713-719
Malmesbury Board of Executors 1007
Markets..... 220
,, Public, Agricultural, and other produce need not pass through 421
Marriage 231, 243, 779
,, certain, declared Illegal 440
,, of Military Settlers 668
Masters and Servants 570
Majority, Legal Age of 55
Meetings, Public 456
Minors, Inheritances of 566
Mossel Bay Wharfage Dues 770
Municipalities 201, 334, 449, 466
,, Grahamstown 1137, 1178
,, Green Point and Sea Point 722, 927
,, Port Elizabeth 1078
Municipal Taxation, Government Property not exempt from 269
,, Ordinance 778
Museum, South African 684

Namaqualand Division Constituted 657
Newspapers exempted from Stamp Duty 440
,, Printing and Publishing 721
Natural-born Subjects, Wills of..... 17
Natives' Children. Introduction of..... 687
,, Administration of Estates of 942
,, Pass Law..... 1070
Northern Border, Protection of 1104
,, ,, Police 1108
,, Road, Great 1181

Ordinance, Constitution 491
,, Municipal 778
Ordnance Property..... 691
Orphan Chamber, Duties of..... 111
,, and General Estate 852

Paddock, Grant of..... 564
Parliament, Powers and Privileges of 530
Partnerships Limited Liability 848
Pass Law, Natives' 1070
Patents for Inventions 786
Pensions, Judges, ... 1042

Digitised by the University of Pretoria, Library Services, 2016

PAGE.
Pensioners, Military 598
Police, Cape Town 247, 434, 776
,, Municipal 673
,, Northern Border 1108
Port Beaufort Mercantile Establishment 195
Port Elizabeth Harbour 747
,, Library 946
,, Municipalities 1078
Port Regulations 677
Pound, Glen Grey 803
Practitioners, Legal 704
Prescription 828
Property, Ordnance 691
,, Diocese, Alienation of 810
Punishment, Capital 1115

Queenstown Electoral Division 565
Quitrent Tenure 12, 562, 763
,, King William's Town 1076

Railways, Regulation of 835
Rehabilitation of Insolvents 744
Religious Disabilities, Removal of 1077, 1125
Rents, Land, recovery of 340, 377
Reprints, Foreign 532
Review of R.M.'s Sentence by Judge of E.D. Court 1011
Roads, Public 383
,, Main Construction and Maintenance of 925
,, Main Northern 1114, 1181
,, Rates 715
Robben Island Lighthouse 834
Roman Catholic Subjects, Relief of 57

Sale of Bread Regulated 225
Sale by Auction Regulated 336
Sale of Fruit, Vegetables, &c., without a Licence 404
Sale by Auction 694
Sale, Agricultural Societies 448
Salary of one of the Judges 832
Savings Bank, Cape of Good Hope 81, 454
School, Public, Port Elizabeth 557
Seamen's Clothing 1155
Settlers' Titles, Registration of 348, 881
Settlers, Military, Marriage of 668
Shares, Loan on 405
Sheriff of the Colony, Duties of 29
Shipping, Merchant 537, 883
Stamps, Postage 1074
Stamp Duty, Newspapers exempted from 440
Stamps and Licences 905, 1166
Stock Company, King William's Town 1097
Sunday Observance 222
Succession Duty 919

Digitised by the University of Pretoria, Library Services, 2016

PAGE.

Table Bay Wharves 659
,, ,, Breakwater and Harbour 708
Taxation, Municipal, Government Property not exempt from 269
Taxes, Collection of 347
Telegraph, Electric, Regulation of 844
Telegrams, Public, Precedence of 879
Theft, Trial for 1060
Titles, Settlers, Registration of 348, 881
Tolls Establishment 885
Tramway Company, Cape Town and Green Point 860
,, ,, Namaqualand 1017
,, ,, Port Nolloth 1116, 1178
Tulbagh Division Constituted 569

Voters, Registration of 590

Waschbank Lands 1176
Water Police, Cape Town 776
Waterworks Committee, Sea Point 869
Water Supply, George Town 887
,, ,, Beaufort West 1026, 1124
,, ,, Uitenhage 1042
,, ,, Paarl 1126
Weights and Measures 698
Wharfage and Cranage Dues 549
Wharfage Dues, Simon's Town 458, 834
,, ,, Mossel Bay 770
,, ,, Port Elizabeth 695
Wharves, Table Bay 659
Wills of Natural Born Subjects 17
,, Execution of 374
Witnesses' Expenses in Criminal Cases 53. 57, 439, 661
Wodehouse Division 1181

Digitised by the University of Pretoria, Library Services, 2016

ESTABLISHMENT OF THE DEBT REGISTRY. (1)

[June 19—1714.

Maurits Pasques de Chavonnes, Councillor Extraordinary of Netherlands India and Governor on behalf of the United Netherlands Chartered East India Company at the Cape of Good Hope and its dependencies, and the Council thereof, make known:

How that it hath come to our knowledge, &c., &c. [*The first part of the Placaat has reference to the Education of Minors, under guardianship of the Orphan Chamber, and is obsolete.*]

Preamble.

Further, it having been experienced that there hath hitherto remained unused and not adopted in practice in this Government, the registration of Kusting Brieven, Obligations before Schepenen and Orphan Masters and other Bonds passed before Commissioners of the Court here, whereby from time to time, divers lands, houses, erven, and other property, are bound, as well specially as generally, in favour of the holders thereof, whereby not only many difficult lawsuits are caused, but likewise the good inhabitants, or the Company's servants, who are inclined to put out their money at a proper interest, are kept back, inasmuch as it can never be seen what may be due by any persons by Kusting Brieven or Obligations before Schepenen, Orphan Masters, and writings of Mortgage on their immovable property, which, for the welfare of the good inhabitants, ought not to be.

Now, therefore, we, desiring to provide by these presents in the premises, have considered it highly necessary to order and command all Company's servants, or inhabitants belonging to this Government, as we order and command all of them and each in particular and every one whom in any respect it may concern, that all persons shall be bound, within the period of four months, or before the 19th of the ensuing month of October, to exhibit at the Secretary's office at this place, all such Kusting Brieven, Obligations before Schepenen, Orphan Masters, and other writings of Mortgage, executed before Commissioners of the Court, whereby any immovable property has been bound or hypothecated, and to give in to the Secretary the amounts or contents of their writings of Mortgage and of such as may be from any cause in their possession, and which shall in future be required to take place in every case when any such writings of Mortgage shall be obtained, to the end that a proper Register may be formed and kept thereof, and it

Mortgage Bonds must be exhibited at the Secretary's office.

(1) Placaat 22 April, 1793; Placaat 23 May, 1805; Ord. 39—1828; Ord. 2—1836; Ord. 14—1844; Ord. 27—1846; Act 3—1865, § 16; Act 39—1877, § 29; Act 19—1891.

Digitised by the University of Pretoria, Library Services, 2016

June 19, 1714.

may always be possible to see when any immovable property is lawfully mortgaged, so that all persons may, in the putting out of money, regulate themselves accordingly; under the penalty that who so neglects doing this shall forfeit the preference which would otherwise, in that respect, be awarded to him before other creditors.

Unregistered Bonds deprived of preference.

And that no one may pretend ignorance hereof, we order that these presents shall be published and affixed as usual at the proper time and place, in such manner as has been resolved to be fitting, for the benefit of the Commonwealth and the service of the Honourable Company.

Thus done and decreed in the Castle of Good Hope, the 19th June, 1714, and published on ————* thereafter.

(Signed) M. P. DE CHAVONNES.

By Order of the Governor and Council,

(Signed) PIETER DE MEYER, Sec.

Stamp Ordinance.—Stamps on "Grosses" or Authentic Copies of Public Instruments.

[June 26—1714.

[Repealed by Stamp Acts 1864—'84.]

Regulation respecting the Water flowing from Table Mountain.

[December 15, 1761.

[Obsolete.]

ABOLITION OF ALL LAWS AND USAGES AUTHORIZING THE CONFISCATION OF THE PROPERTY OF CRIMINALS. (1)

PLACAAT. [April 22, 1779.

The States-General of the United Netherlands, unto all who shall see or hear read these presents, greeting:

Preamble.

Know ye that, although from the earliest times unto the present day, in the Colonies of this State, as well in the East as West

* This date is not filled in in the MSS.

1 See Act 1—1860, (Introduction of convicted felons); Act 6—1884, (Imprisonment of criminals sentenced in adjacent territories).

Digitised by the University of Pretoria, Library Services, 2016

Placaat—April 22, 1779.

Indies, comprised under the style and situated within the limits of the charter of the East and West India Companies, the power has been exercised of confiscation of goods of delinquents, who, in consequence of crime committed had forfeited liberty and life, yet it has appeared to us, not only that abuse might be made of that power, but likewise that, in its exercise, several disputes and difficulties constantly arise; and that, moreover, actual injustice is inherent in it, inasmuch as by such confiscation the wives, children, or near relations of such delinquents are made, although themselves innocent, to share in the punishments imposed on them by the loss of the goods confiscated.

That for these and other reasons, for the general good of the inhabitants, and in order to remove the aforesaid hardship in several Kingdoms and States, and especially in the Provinces of Holland and Zeeland, where heretofore this power was exercised in the same manner, it hath been disused or wholly abrogated.

Confiscation of the property of criminals abolished in all Colonies.

Now, therefore, we, being desirous in like manner to provide therein for the welfare of our aforesaid Colonies and our inhabitants thereof, have been pleased, upon deliberation with the Council of State, after previous consultation and communication with His Highness the Prince of Orange and Nassau, our hereditary Stadtholder, to decree, as of our sovereign power and authority we do hereby decree, that from henceforth no confiscation of goods of delinquents, entire or partial, shall or may be ordered in our Colonies aforesaid, either by the Courts of Justice or by any other inferor Courts therein, for any reason or offence whatever, great or small, none excepted—and not even the *Crimen Perduellionis* or *Læsæ Majestatis* (treason)—abolishing, cancelling, and nullifying in so far, all laws, placaats, privileges, customs, and usages which might have an effect contrary hereto,—not desiring that the same shall in that particular be hereafter put to any further use, with instruction and express command to all judges, superior or inferior, within our aforesaid Colonies, to regulate themselves punctually according to this our placaat.

In all cases, not excepting conviction for treason.

And in order that no person may pretend ignorance of the same, we order and command the authorities of the chartered East India Company, the representative of His Royal Highness and authorities of the West India Company, the Directors of the Colony of Suriname, as also the Directors of the Colony of Berbice to cause this our placaat to be published and affixed in all directions in the respective Colonies under their authority, at the places where it is customary to make such publications and affixions, and to cause the same to be observed and acted upon by all superior and inferior Courts of Justice of the aforesaid Colonies.

Digitised by the University of Pretoria, Library Services, 2016

April 22, 1783. Given in the Hague under the seal of State, the Certificate of the President of our Council and the signature of our Registrar on the 10th August, 1778.

Certified . . . . . .

G. J. D. PALLANDT.

By order of the abovementioned States-General,

(Signed) H. FAGEL.

The seal of their High Mightinesses being printed on the "Spatium," on a red wafer covered with a paper lozenge

(*Endorsed*) The Placaat on the other side was published here in the usual manner on the 22nd April, 1779.

In the Castle of Good Hope, 23rd April, 1779.

C. L. NEETHLING, Secretary.

April 22 1783.

ANIMALS.

RENEWAL OF THE FOLLOWING WARNING, RESPECTING THE CARCASES OF HORSES, OXEN, &c., ON AND NEAR THE PUBLIC ROADS. [1]

Preamble. WHEREAS it is daily found that certain of the inhabitants, whose horses, oxen, and other beasts of burden, whether through weakness or otherwise, happen to fall down upon the public roads and die there, permit them to lie there and rot, without taking any further trouble about them, by which the air is infected, and other evils arise: Therefore, we, wishing to provide against this, have thought fit to ordain and direct, as we hereby ordain and direct, that whenever, as well in the Cape as in the country districts, any of the abovementioned animals or other cattle through sickness or other accident should happen to fall upon or about the public road, or are compelled to be left behind, so that there is nothing else to be expected but that such animal or animals will die there, such animals shall then be thrown into a hole, to be dug by those whom it may concern, whether Europeans or slaves, and be covered over with earth, under penalty that whoever shall be found neglectful herein shall be mulcted in a fine of fifty rixdollars; and masters of slaves who shall offend herein shall be liable for such slaves. Wherefore let everyone beware.

Cattle dying on or near roads to be buried by those in charge of them.

Penalty fifty rixdollars.

In the Castle of Good Hope, 4th September, 1742.

By order of the Honourable the Governor and Council,

J. DE GRANDPREEZ, Councillor and Sec.

---

[1] See Acts 27, 1882 : Part 2, § 7, sub-section 8, and 27, 1893, § § 9, 10.

Digitised by the University of Pretoria, Library Services, 2016

Thus done and renewed in the Castle of Good Hope, 22nd April, 1783. Published and affixed on the 30th of the same month. April 22, 1793.
By order of the Honourable the Governor and Council,
O. M. BERGH, Councillor and Sec.

Water Regulations. Placaat.
[April 3, 1787.
[Obsolete.]

Prohibition of Lotteries. Placaat.
[May 19, 1789.
[Repealed by Act No. 9, 1889.]

REGULATIONS FOR THE PREVENTION OF CONFUSION IN THE DEBT REGISTRY. (1)

[April 22, 1793.

PUBLICATION.

WHEREAS it hath been discovered and hath come to our knowledge that, in the registration of bonds passed before Magistrates and Orphan Masters whereby landed property is specially hypothecated, numerous abuses have heretofore taken place in the register, which is for this purpose kept at the Political Secretary's office, from which nothing but confusion and injury can result, as well to the creditors as debtors, and it has therefore become necessary for the public interest as well, that every one who has advanced money upon hypothec of landed property should have the certainty and knowledge that these hypothecs have been properly notified, in order to retain his right of preference; as also that every one of the inhabitants may be satisfied that in the aforesaid register of debts no other debts are entered against him than those actually due by him. Preamble.

Therefore it is that we, in order to be able to rectify the aforesaid Register of Debts here, and to purify it of errors existing therein, in such manner that every one may henceforward be able to rely on it with perfect confidence, have resolved to ordain and enact, as is hereby ordained and enacted:

That all holders of mortgages, bonds before Magistrates, and of bonds passed for the residue of purchase money under which landed property hath been specially hypothecated, shall be held and bound to appear before commissioned members of the Court of Justice of this Government (who shall attend gratis for this purpose, to commence from the 8th of the next month of May, on Commission to examine bonds.

(1) See Foot Note on Page 1.

Digitised by the University of Pretoria, Library Services, 2016

April 22, 1793.

Wednesdays and Fridays, in the Judicial Court-room, in the morning, from nine to twelve o'clock), to exhibit all the bonds passed before Magistrates (mortgages), and Kusting Brieven, and bonds passed before Orphan Masters belonging to them, in order that it may be examined whether all these obligations are found to be duly registered, so that, if this formality have been observed, proof thereof, under their signature, may be thereon endorsed, and those of which the registration may have been neglected, may at once be registered of the date on which the exhibition shall be made, and in like manner notice hereof under their hand shall be given by endorsement of the instruments.

That, in order to give sufficient time and opportunity for this purpose to the inhabitants of this Colony, a period of six weeks be left to the inhabitants of the Cape Valley and its neighbourhood, and to the inhabitants of the country districts a period of three months,—but to count from the 8th May next, when commissioned members of the Court of Justice shall first attend for the purpose,—under the penalty, that those who neglect to cause the required examination to be done before the expiration of the beforementioned terms, shall henceforward be and remain deprived of the preference to which they would otherwise be entitled by virtue of the registration of the bonds of which they are holders; and that the debts which thereafter may be created on the property hypothecated to them, unless the forementioned hypothec already existing shall have been confirmed according to the manner above prescribed, shall be preferent before those which may have been previously contracted and shall be found to have remained unregistered through the fault of the holders of the bonds.

Bonds not exhibited deprived of preference.

That all the inhabitants shall be at liberty within the abovementioned periods, and at the said days and places, to address themselves to the commissioned members of the Court of Justice, in order to receive likewise gratis information of the debts with which they are burdened in the aforesaid Register of Debts, so that, if it be found that their settled debts have not been properly cancelled, these may be, on production of the evidence required thereto, cancelled, and their property relieved therefrom, of which, at the same time, due evidence shall be furnished them.

Cancellation of paid debts remaining uncancelled.

And in order that every one may be able to have the necessary use of our salutary intentions herein and enjoy their salutary effect, this shall be published and affixed in the ordinary place, wherever it is customary that such affixion is made.

Thus done and decreed in the Castle of Good Hope, the 22nd April, 1793, and published and affixed the day following.

RHENIUS.

Digitised by the University of Pretoria, Library Services, 2016

REFORM OF THE DEBT REGISTRY. (1)

[May 23, 1805.

PUBLICATION.

Jan Willem Janssens, Governor and General-in-Chief, and the Court of Policy for the Colony of the Cape of Good Hope and its dependencies in South Africa, &c., &c., &c., to all and each who may see and hear these presents: Greeting, make known:

That whereas, it appears from the past records of the Government Secretary's office, that the public Debt Registries, whereby all mortgages, legal hypothecations, and notarial or secretarial obligations are made public, are by no means in such order as that would be possible safely to rely on them, inasmuch as it has sometimes been found that not only have debts standing open been long since paid, but even that unpaid debts through the ordinary affix in the margin, "*solvit*," appeared in the registry as already liquidated, that hence, repeatedly, very great uncertainty and confusion, and besides ruinous lawsuits, must arise between the several inhabitants of the Colony, and, in addition, distrust in the public Debt Registry be created, by which the certainty of ownership and mutual confidence in private transactions would be weakened; that these same causes in the year 1793, led the Government of the day to issue a publication on the 23rd of April of that year to reform the abuses which had crept in, and to establish the public Debt Register on a more certain footing for the future; that this useful work was immediately begun and further accurately set forth, until, in the year 1795, it became necessary to stop it temporarily, on account of the attack on the Colony by the English, and after the surrender of the Colony it wholly ceased; that the manner in which the work was begun and continued was in every respect of a good tendency, and therefore, could at present be usefully proceeded with, were it not that from the time which has elapsed and during which the old Debt Registers have been continued, an entire retracing of steps and revision thereof became necessary; that the revision is the more necessary, because the increasing population of the Colony has enlarged the utility and the great importance of accurate public Debt Registers; while, on the contrary, the continuance of the present renders the evil, which has crept in, daily less capable of cure, and more and more endangers the certainty of ownership, hypothecs, &c.: Preamble.

Now, therefore, the Governor and Council, in order to effectually provide herein, have considered it necessary to cause the public Debt Register to be revised with all possible accuracy, and thereafter to be brought into such order, that not only all uncertainty concerning the present registered debts may be removed, but in future, the danger of uncertainty and confusion as far as may be possible shall be prevented. And now, therefore, to this end,

[1] See Foot Note on Page 1.

Digitised by the University of Pretoria, Library Services, 2016

May 23, 1805.

resolved to order and decree, and order and decree by these presents:

First commission appointed.

1. That during the ensuing months of June, July, and August, a Commission, consisting of a member of the Court of Policy, a member of the Court of Justice, and a member of the Colonial Orphan Chamber, expressly to be appointed thereto by these bodies respectively, shall twice a week attend in the Government Court-hall in the Castle, at such times as they among themselves shall agree and shall make known to the public, in order to examine whether the "Kusting Brieven," "Schepenen"—Orphan Masters—and Bank-Obligations, and likewise, other public writing acknowledgements of Debt are, or are not duly registered.

Bonds to be exhibited to the commission.

2. That for this purpose all holders of such bonds of which it is here customary to give notice at the public Debt Registry, shall be bound to exhibit the same, or to cause the same to be exhibited by duly qualified persons on the specified days to this Commission, in order to be compared with the Debt Register.

Certificate on bonds duly registered.

3. That the Commission shall, in the case of such bonds as they shall find to be properly registered, make known the finding on the back, or at the foot of all such bonds, under the signature of two members of the said Commission.

Registration of bonds not duly registered.

4. That whenever, on examination, any bonds are found to be unentered in the Debt Registry, the Commission shall redress this omission by formally making the registration, and in proof hereof, shall note on the back, or at the foot of the exhibited bond, with the addition of the signatures of the entire Commission, that the bond is registered, with the addition of the date of the exhibition.

New debts register.

5. That after the expiration of the aforesaid period of three months, the examination shall be held as concluded, and that then the Governor and Council shall nominate a second Commission in order to frame an entirely new Debt Register, in which shall only be entered such bonds as have been exhibited to the first Commission.

Bonds not exhibit- deprived of prerence.

6. That all bonds not exhibited to the first Commission, and consequently not entered in the new Debt Registry, shall be deprived of the right of preference, unless the holders before the end of the present year shall, in a satisfactory manner, have caused it to appear to the Court of Justice, that they were prevented for reasons valid in law from satisfying this order, in which case the Commissioners of the Court of Justice who attend weekly for the purpose of having acts passed before them, shall be authorised to enter such bond in the new register.

How registrations and cancellations are to be signed.

7. That in future all registrations shall be signed by the Master of the Records and the first clerk in the Government Secretary's office, as likewise, all cancellations, which shall not be effected as heretofore by merely placing the word *solvit* in the

Digitised by the University of Pretoria, Library Services, 2016

margin of the registration, but, on the contrary, shall be effected by a proper counter entry on the opposite page of the Debt Registry, so that each debtor therein shall henceforth have a proper *debit* and *credit* side. May 23, 1805.

8. That in like manner as takes place in the Loan Bank, according to the fifth article of the instructions thereon, immediately after the registration, the hypothec or burden shall be notified by endorsement by the Master of the Records and first clerk on the deed of transfer. Endorsement of hypothec on title deed.

9. [This section has reference to the mortgage of slaves and is no longer applicable.]

10. That during the session of the first Commission, and on the days to be by it fixed, every person shall be at liberty to inquire of the Commission for what debts he appears liable according to the Debt Registry ; and if it be found that any person appears indebted in any amount which he, in a satisfactory manner, proves to the Commission to have been paid by him, on exhibition of such proof the debt shall be at once cancelled, which cancellation, in like manner as all further proceedings of the Commission, shall take place *gratis*. Cancellation of debts proved to have been paid.

And whereas, it hath further appeared to the Governor and Council that the registration of kinder-bewyzen, and antenuptial contracts, although expressly ordered by a proclamation of the 23rd April, 1793, does, notwithstanding, not take place universally, by which means it could easily occur that those ignorant of the legal hypothec might be misled in the valuation of the mortgage on which it is desired to raise money either with the Loan Bank or the Orphan Chamber, or with private individuals, they have resolved to order and decree, and order and decree by these presents. Registration of kinder-bewyzen and antenuptial Contracts.

11. That all those persons who have already obtained legal hypothecs on the property of their spouses by virtue of antenuptial contracts, shall also give notice thereof to the *first* Commission during the period fixed by article 1, in order that the same course may be followed as in respect to conventional hypothecs, under the penalty that those who do not give such notice shall be deprived of the right of legal hypothec, to which they would be otherwise entitled, and that consequently all conventional special hypothecs which are constituted after that date and are duly registered, shall be preferred to anterior non-registered antenuptial contracts. Conventional special hypothecs duly registered preferent to anterior non-registered antenuptial contracts.

12. That under a like penalty, all antenuptial contracts which shall be passed after this date must be publicly notified in the Debt Registry at the Government Secretary's Office. ([1])

13. That of all deeds of Kinderbewys, whether passed at the Orphan Chamber, or before a notary, or secretary and witnesses, due written notice shall be given within twenty-four hours after Notice of deeds of Kinderbewys to be given by the Notaries before whom they are executed, within twenty-four hours of their execution.

[1] See § 2 Act 21 of 1875.

Digitised by the University of Pretoria, Library Services, 2016

May 23, 1805.

the execution of the deed by the secretary of the Orphan Chamber, the respective notaries, and the secretaries of the country districts, signed by the person before whom the deed has been passed, under penalty that in case of omission of such notices, the officers named in this article shall be responsible for all damages which the orphans may suffer through their negligence. The notices of the secretaries in the country districts shall be prepared within twenty-four hours, in order to be transmitted with the first safe opportunity that offers to the capital; and

Widowers and widows not entitled to publication of banns before due registration of the Kinderbewys.

14. That, finally, in order to secure the interests of minors by all possible means, the commissioners of marriage causes may grant no publication of banns of marriage to widowers, or widows, having children of a former marriage, unless it satisfactorily appears to them, that not only in accordance with the nineteenth article of the Marriage Ordinance proper security shall be given, but that the deed passed thereof has been duly registered at the office of the Government Secretary. (1)

We order and command the Court of Justice, the Attorney-General, and all whom it may concern, to obey and cause to be obeyed, this our publication, with all punctuality, for we have found such necessary for the welfare of this Colony.

And that no one may plead any ignorance hereof, this shall be published and affixed in all places where it is customary to make publication and affixion.

Thus resolved and decreed in the Court of Policy, at the Cape of Good Hope, the 15th May, 1805, and published the 23rd thereafter.

Governor and Council aforesaid.

J. W. JANSSENS.

By order,

J. A. TRUTER, Sec.

Capitulation of the Colony. Proclamation. [Jan. 18, 1806.

[Not printed.]

Stamps, Licences. Proclamation. [Dec. 24, 1807.

[Repealed by Stamp Acts 1864-84.]

---

[1] See also § 22 Ord. 105; § 1, Act 12 of 1856 and § 6, Act 9 of 1882.

Digitised by the University of Pretoria, Library Services, 2016

PROCLAMATION (1)

[February 5, 1813.

By His Excellency Lieutenant-General Sir JOHN FRANCIS CRADOCK, &c., &c.

Preamble.

WHEREAS, by the laws now in force, there is no limited time for the duration of the imprisonment of any person or persons against whom an execution for debt, process of Court, or precept or warrant of any Court or competent authority, in the nature of an execution for the levying of any fine or fines, penalty or penalties, is issued for the non-payment of such debt and costs, or such fine or penalty, as such debtor or debtors, offender or offenders, are ordered and commanded to pay; but such debtor or debtors, offender or offenders, are thereby committed to prison, until such time as they can pay or satisfy such debt, fine, or penalty, so that it may happen a person may be confined many months for a small sum of money:

Confinement for debts, &c., not exceeding twenty rixdollars, not more than one month.

Now be it hereby declared, ordained, and enacted that no person or persons whatsoever shall be confined for any debt, fine, penalty, or contempt of Court or other authority, not exceeding the sum of twenty rixdollars, more than one month; and every Magistrate, Fiscal, Deputy Fiscal, Landdrost, or Deputy Landdrost, or others having the care, custody, or superintendence of any prison or place of confinement, is hereby ordered and directed to discharge from such prison or place of confinement at the end of such month such person or persons, without demanding or receiving any fees or other expenses than that of their diet, at the rate of ten stivers for each day.

Fifty rixdollars not more than six months.

And whereas it has occurred that a debtor or debtors have been confined for a long and indefinite period of time for small debts not exceeding fifty rixdollars: - Be it enacted and ordained, and it is hereby enacted and ordained, that no person shall be detained in prison for more than six calendar months, for any original debt not exceeding fifty rixdollars exclusive of all costs of suit; and the Fiscal, Deputy Fiscals, Landdrosts, Deputy Landdrosts, and all others having the care and superintendence of jails, prisons, or places of confinement are hereby directed and commanded to liberate all and every person or persons so confined at the expiration of the six calendar months, as aforesaid, and all and every person is forbidden again to arrest for such debt aforesaid, any person or persons so liberated; but nothing herein shall be construed to discharge such debt or debts, or to deprive the creditor or creditors of any and every other remedy against the goods, lands, or property of such debtor or debtors which now exists by law.

Other remedies of creditor reserved.

And that no person may plead ignorance hereof, this shall be published and affixed as usual.

---

1 See Ord. 6, 1839, § 2; Acts 20, 1856, § 20 and 8, 1879, § 6.

Digitised by the University of Pretoria, Library Services, 2016

CONVERSION OF LOAN PLACES TO PERPETUAL QUITRENT. (1)

[Aug. 6, 1813.

PROCLAMATION

By His Excellency Lieutenant-General Sir JOHN FRANCIS CRADOCK, &c., &c.

Preamble.

WHEREAS agriculture constitutes the chief source of prosperity in this Colony, and the full encouragement thereof must consequently have an immediate tendency to promote the real interests of its inhabitants: Whereas this encouragement chiefly depends on the certainty of tenures, and the confidence connected therewith, that all improvements of the soil, and all increase of fertility, should indisputably belong to the holder as his own, and that, in the ordinary course of things, all his arrangements, as well with respect to the produce as to the land itself, should, by the laws, be exclusively secured to him, his heirs, executors, assigns, or representatives: Whereas, although the establishment of loan leases might have been suitable to the early state of this Colony, when the wants of Government were not foreseen, it now appears from experience that the loan tenure is injurious to that certainty, so essential to the happiness and the interest of the inhabitants, and equally injurious to the public interest, by preventing the holders from appropriating as much of their means to the improvement and extension of agriculture as they would do, in case they had no right of re-assumption to apprehend, and might dispose of the ground as they please, *by sub-dividing the same among their children, letting, selling, or otherwise alienating it in lots, cultivating it in the prospect of remote benefit, by the planting of timber*, &c.: Whereas, notwithstanding a gradual re-assumption of loan lands and the re-granting of the same in lesser portions on a more certain tenure might considerably increase the colonial revenue; yet, having taken into consideration the great utility of no longer delaying the improved cultivation of land by giving security to title, and of making the same, as speedily as possible, a general measure, I have adopted the following determination: To grant to the holders of all lands on loan, who may regularly apply for the same, their places on *perpetual quitrent*, with the following rights and privileges, and on the following terms and conditions, namely.

Memorial to the Government for conversion of Loan Places to perpetual quitrent.

1. Every holder of a loan place, on his making application by memorial to Government for the purpose, shall have a grant of his place, on *perpetual quitrent*, to the same extent as he has hitherto *legally* possessed the same on loan.

Extent of grant.

2 No loan place shall exceed three thousand morgen; every addition to that quantity of land must be particularly mentioned

(1) See Act 15, 1887.

Digitised by the University of Pretoria, Library Services, 2016

to the surveyor and commission, and appear upon the face of the application, for His Excellency's consideration. Proc.—Aug. 6, 1813.

3. The holder, by this grant, shall obtain the right "to hold the land hereditarily, and to do with the same as he may think proper, in like manner as with other immovable property; as also, should he deem advisable, to sell or otherwise alienate it, with the usual previous knowledge of Government, either partly or wholly, as free and allodial property." Right to hold hereditarily and to alienate.

4. Government reserves no other rights but those on mines of precious stones, gold, or silver; as also the right of making and repairing public roads, and raising materials for that purpose on the premises: other mines of iron, lead, copper, tin, coals, slate, or limestone, are to belong to the proprietor. ([1]) Government reservation of precious stones, gold and silver—and of right of making and repairing roads.

5. In all places adjoining to the sea, or communicating with the sea by inlets therefrom, the rights of the Crown are reserved, with the power of re-assumption of any quantity of land, not exceeding twenty morgen, paying the proprietor for such buildings as he may have erected, according to a fair valuation, provided such ground be wanted for public purposes; and if given up by the Crown, it shall not be transferred to another individual, but revert to the proprietor or his representatives. Reservation of rights of Crown in places adjoining the sea.

6. In all judicial decisions regarding *perpetual quitrent* the same rights, laws, and usages shall be observed, which have hitherto been acted upon, or which may hereafter be established, enacted, and followed in judicial decisions, with respect to freehold lands. Laws respecting freehold lands to govern decisions on perpetual quitrent.

7. That for this, in the common course of things, irrevocable title, the holders shall pay to the public revenue an increased yearly rent, to be prescribed according to the situation, fertility, and other favourable circumstances of the land; in no case, however, exceeding a sum of two hundred and fifty rixdollars. Yearly rent not to exceed rixdollars two hundred and fifty.

8. For the survey of a loan place to be granted on *perpetual quitrent*, the land surveyor, exclusive of the diagram, travelling expenses, and wagon hire, shall not charge more that one hundred rixdollars, unless he may be obliged, from local difficulties, to appropriate more than five days to make the survey, in which case he shall be allowed to charge ten rixdollars for every day over and above that time: the respective landdrosts are therefore directed to pay strict attention hereto, when any account be presented to them to be paid out of the district treasury, as mentioned in the Government advertisement of the 16th July last. Payment of surveyor.

9. ([2]) On the division of any place granted on *perpetual quitrent*, each part, and its holder, shall be *severally bound* and responsible for the full amount of the rent, in such manner, however, that he who makes the payment may recover from the other holders, for as far as regards their respective shares; unless at the request of the interested parties, on making the division, Government may have Each holder, on division of a place, bound for the full amount of the rent.

[1] See § 146, Act 40, 1889.
[2] See Acts 7, 1856, and 10, 1875.

Digitised by the University of Pretoria, Library Services, 2016

Proc.—Aug. 6, 1813.

been pleased to direct, that the rent shall be apportioned and registered proportionably at the time of the transfer.

Transfer *coram legis loci*.

10. That in order to ensure the necessary regularity, as well as the interest of the State, no alienation of any part of such place shall be considered as legal before the same shall be surveyed, a diagram made thereof, regularly transferred before Commissioners of the Court of Justice, as likewise duly registered in the office of land revenue.

Quitrent lands liable to same burdens only as freehold

11. This *perpetual quitrent* shall, further, not be liable to any other burthens but those to which all freehold lands are already subject, or which may hereafter be further prescribed.

Period within which applications may be made,—twelve months.

12. All applications for the conversion of loan lands into *perpetual quitrent*, with the privileges attached thereto by this present proclamation, must be made within twelve months from the date hereof; after the expiration of which period the said rights, privileges, terms, and conditions, shall be subject to such alterations as circumstances shall be found to require.

Issue of title deed.

13. The title deed (*erfgrondbrief*), on such application, shall be granted after the place shall have been surveyed, with the previous knowledge of, and if necessary pointed out by, the landdrost, by a sworn land surveyor, and a proper diagram of the same forwarded to Government by the landdrost, accompanied by his certificate, that the measurement was made without prejudice to any person; and also that the diagram does not contain any greater extent of ground than was *legally* possessed on loan by the holder.

Right of re-assumption of loan places, increase of rent, &c., not curtailed,—except in case of change of tenure.

14. By the regulations made in these presents, it is not to be understood that the right of re-assumption, increase of rent, or other arrangement regarding loan places, which undoubtedly belong to the Government of this Colony, and which have been, from time to time, exercised by the successive Governments of the same, are in anywise curtailed, or intended to be curtailed, unless when the parties obtain an alteration in their tenure on the terms proposed.

Right of Government as to attached places, not done away with by this proclamation.

15. In order to prevent all misunderstanding, it is hereby specially declared, that the right which belongs to Government with respect to *attached places* is in nowise done away by this measure, and consequently, that those places remain subject to all such further regulations as they would have been liable to, in case this proclamation had not been issued.

Loan places attached to drostdies and parsonages public property.

16. Loan places attached to the respective drostdies, deputy landdrosts, or the parsonages of the clergy, remain, as they are, public property, to be transmitted to their successors. But where Field-cornets, or other public functionaries, are excused from paying rent for a loan lease of their own as part of the remuneration for their public services,—in all such cases where the party solicits and obtains a change of tenure, for the purpose of

Digitised by the University of Pretoria, Library Services, 2016

dividing it amongst his family, or other motives, he shall not be liable to the raised rent during the time he is employed in the public service, and a new rent shall commence at the expiration of such services by death or otherwise. Proc.—Aug 6, 1813.

17. The whole tenor of the foregoing regulations will manifest the paternal view His Majesty had taken of this Colony; and, in deeply considering the permanent interest of the occupiers of lands, to what extent the Crown has resolved to sacrifice its rights and prerogatives in order to place property upon that solid and secure foundation, without which fair adventure and speculation cannot arise, and even common industry and labour will lose much of its effect. General tenor of the regulations.

Thus at length is this great measure matured and brought forward. It is the one that has long engaged the attention and anxious wish of each preceding Government, but which could not well admit of conclusion, except in times like the present—of unexampled tranquillity, uniform progress in civilization and good order, and the unbounded prospect of universal prosperity.

I feel the highest gratification in giving effect to these beneficent and paternal designs of His Majesty's Government; and persuade myself that the gratitude of the inhabitants of this Colony will be equal to the value of the inestimable gift thus extended to them on the part of the Crown, which, by graciously offering to their acceptance a perfect title to lands, that enables them to provide for their children and descendants, and dispose of them as they please, grants to them, in fact, possession of an estate, and the high character and station of "a real landholder."

They will thereby abandon an unworthy tenure, unfitted to the growing prosperity of the Colony, and only suited to the earliest and rudest institutions of the settlement; and being thus placed in their territorial possessions on the same footing as their fellow-subjects in Europe, the Cape of Good Hope in future may, with fair pretension, take its rank with other countries.

And that no person may plead ignorance hereof, this shall be published and affixed as usual.

Prohibition of Purchase at Sales by Auctioneers.

Proclamation.

[Sept. 3, 1813.

[Repealed by Ordinance 31.]

Cession of the Colony.

[Aug. 13, 1814.

Digitised by the University of Pretoria, Library Services, 2016

PROCLAMATION.

By His Excellency General the Right Hon. Lord CHARLES HENRY SOMERSET, &c., &c. [Dec. 23, 1814.

Preamble.

WHEREAS doubts have arisen with respect to the quantity of disposable Government ground in the vicinity of this town, and with respect to the limits of private property as affecting the same, a commission was appointed, in the year 1811, for the purpose of superintending a complete survey thereof, and examining the documents and titles to the land claimed and occupied as private property: Now, be it hereby made known that the survey of all the land situate and being to the right of the great road from Cape Town to Simon's Town, and extending from the military lines to the estate of Claasenbosch, now possessed by W. F. Versfeld, has been completed, and laid before me by the Government sworn surveyor, L. M. Thibault; and having personally examined the same, and compared the whole with the documents in support thereof, and the reports relative thereto, I do hereby declare my entire approbation of the same, and hereby recognise the boundaries as described thereon to be the true limits of the respective estates therein described.

Boundaries of land from Cape Town to Claasenbosch established.

Cession of ground near Cape Town, enclosed and cultivated in error, to occupiers, on title being taken out within six months.

And it appearing, moreover, that the occupiers of several of the estates alluded to have, either through error or inadvertence, enclosed or cultivated proportions of land, to which the former grants of this Government have not entitled them, I have resolved to cede to each of the parties alluded to the land so illegally held by them, upon due valuation thereof by the Magistrate of the Cape District, provided the parties interested take out, within six months from the date hereof, the usual title, authorising them to occupy the several spots of ground in question.

Titles to claimants of Government land.

And whereas it appears that within the limits of the survey under consideration, there are other persons who claim Government land, in virtue of certain resolutions of the former Governments, although they had not obtained regular titles thereto; and being desirous, whenever the interest of the Crown and local circumstances will admit of it, and no actual disposition has taken place, or been directed, to give favourable consideration to claims of the nature alluded to, I have given detailed instructions to the landdrost of the Cape district, to value such of the lands alluded to as are specified to him as being such as may, without detriment to public interest, be alienated, in order to their being ceded under regular title to the parties in question.

Delivery of diagrams to applicants.

And it is hereby recommended to all holders of land in the direction of the said survey, for the prevention of all future disputes with respect to the boundaries or extent of the land they occupy, to cause to be taken from the general survey under consideration,

Digitised by the University of Pretoria, Library Services, 2016

a diagram or chart of the lands they possess, which diagram, with a proper certificate from the Colonial Secretary, will be delivered to each applicant, free of expense, excepting the usual cost attending the land surveyor's copying the same. Proc.—July 12, 1822.

And in order that no person may plead ignorance hereof, this shall be published and affixed in the usual manner.

Stamps on Notarial Acts. Proclamation. [May 26, 1815.
[Repealed by Stamp Acts 1864-84.]

Game Law. Proclamation. [March 21, 1822.
[Repealed by Act 36, 1886.]

Testamentary Dispositions of Natural-born Subjects of the United Kingdom of Great Britain and Ireland resident within this Settlement. (1)

[July 12, 1822.

Proclamation.

By His Excellency General the Right Hon. Lord Charles Henry Somerset, &c., &c.

Whereas it has appeared to His Majesty's Government that the laws in force in this Colony relating to testamentary dispositions of property may, in their operation, defeat the expectations of those individuals who have emigrated and become settlers within the jurisdiction of this Government; and I have in consequence thereof received His Majesty's most gracious commands to make provision in the premises according to circumstances: I do therefore, in pursuance thereof, and by virtue of the authority in me vested, hereby make known, declare, and order that it shall be hereafter considered lawful, regular, and of full force, for all residents and settlers in this Colony of the Cape of Good Hope, being natural-born subjects of the United Kingdom of Great Britain and Ireland, to enjoy the same rights of devising their property, both real and personal, as they would be entitled to exercise under the laws and customs of England; provided, however, that in case any such natural-born subject of the United Kingdom of Great Britain and Ireland shall enter into the marriage state within this settlement, without making a previous marriage settlement (called, in the colonial law term, antenuptial contract), his property, in such case, both real and personal, shall be administered and divided

Preamble.

All natural-born subjects of the United Kingdom entitled to devise their property as in England.

In case of marriage in this colony without previous marriage settlement property to be administered according to colonial law, unless a testamentary devise be made by the testator in conjunction with his wife.

[1] See Acts 26 of 1873 and 23 of 1874; See Ords. 104, 1883, and 15, 1845; Acts 22, 1876 and 3, 1878.

Digitised by the University of Pretoria, Library Services, 2016

Proc.—July 12, 1822.

according to Colonial law, notwithstanding any subsequent testamentary devise, unless such subsequent testamentary devise be made in conjunction with the wife of the party, according to the Colonial law on this head.

Wills to be deposited in the Orphan Chamber.

And it is hereby further made known and ordered that the original will or testament of any person dying in this Colony shall be deposited, as usual, in the Orphan Chamber, at Cape Town, in order to legalize the administration of the estate by the executor or administrator thereof.

The tenor of this proclamation to be explained by matrimonial courts.

And I do hereby further order and direct the president, or acting president, of any of the Matrimonial Courts of this Government, to explain clearly, to every natural-born subject of the United Kingdom of Great Britain and Ireland who shall be about to enter into matrimonial engagements, and appear for that purpose before such Court, the tenor of this my proclamation,—noting on their record their having so done, that no man may justly plead ignorance of this provision.

And in order still further to obviate the plea of not knowing the law on this head, I have caused this proclamation to be published and affixed as usual, and to appear in three successive *Gazettes*.

Prohibition of Promissory Notes under Fifty Rixdollars—(£3 15s. 0d.). Proclamation.

[August 22, 1822.

[Repealed by Act 6, 1875.]

Amendment of Game Law.—Elephants. Government Advertisement.

[August 23, 1822.

[Repealed by Act 36, 1886.]

Amendment of Game Law.—Elands. Proclamation.

[March 14, 1823.

[Repealed by Act 36, 1886.]

Tariff of Stamps. Proclamation.

[April 30, 1824.

[Repealed by Act 3, 1864.]

Tariff of Stamps. Proclamation.

[December 10, 1824.

[Repealed by Act 3, 1864.]

Digitised by the University of Pretoria, Library Services, 2016

[December 31, 1824.

THE BOEKHOO PLANT.

PROCLAMATION.

By His Excellency General the Right Hon. Lord CHARLES HENRY SOMERSET, &c., &c.

Preamble.

WHEREAS I have been given to understand that the medicinal qualities of the Boekhoo (Boego) plant are held in great estimation in Europe, and that it is probable the demand for that article may increase to an extent which may prove very beneficial to the interests of this Colony, provided the necessary measures be taken for its preservation ·

And whereas it has been represented to me that the persons employed in collecting this article, not satisfied with gathering the leaves, or even cutting the shoots, of this plant, are in the habit of pulling it up entirely by the roots, or of cutting and hewing it so low down and in such a manner as to destroy the plant itself; I have deemed it necessary, for the general interests of the Colony, to order and declare, and it is hereby ordered and declared accordingly, that any person who may be convicted before a competent tribunal, of tearing up the Boekhoo (Boego) plant by the roots, or of burning it, or cutting it in such a manner as to injure the further growth of the plant, shall be deemed guilty of a misdemeanour, and be fined in a penalty of not less than twenty nor more than fifty rixdollars for every such offence, one-third of which shall go to the informer (provided always, that the property so injured or destroyed be not the private property of individuals, and cut or pulled up or burnt by their orders): And in the event of the inability of the offender to pay the fine awarded, that he be liable to imprisonment at hard labour for a certain period not exceeding two months for every such offence.

Any person tearing up or burning the Boekhoo plant, to pay a fine of not less than 20 and not more than 50 rixdollars.

In default, imprisonment with hard labour for two months.

And that no person may plead ignorance hereof, this shall be published and affixed in the usual manner.

No. 1. [May 28, 1825.

Ordinance for introducing the use of the English Language in the Judicial Transactions of the Court of Magistracy at Algoa Bay (Port Elizabeth), and assigning proper limits to the Territory within which the said Court is authorised to exercise its jurisdiction.

[Disallowed as superseded by the Charter of Justice. Proclamation of 14th May, 1829.]

Digitised by the University of Pretoria, Library Services, 2016

No. 2. [June 6, 1825

Ordinance for making British Silver Money a legal Tender in discharge of all debts due to Individuals and to Government, at the rate of One Shilling and Sixpence for each paper Rixdollar.

[Repealed by 33 and 34 Vict., c. 10.]

No. 3. [June 21, 1825.

Ordinance for reducing the reward hitherto paid for destroying Tigers, to Five Rixdollars per head.

[Repealed by Ord. No. 45.]

No. 4. [June 21, 1825.

Ordinance directing that from and after the 15th of July, 1825, all Licences to trade with the Kafirs at Fort Willshire, or at any other places which may hereafter be fixed on by Government, shall be written on a Stamp of Eighty Rixdollars, renewable annually.

[Repealed by Ord. No. 23.]

No. 5. [June 27, 1825

Ordinance for destroying a sum of Twenty Thousand Rixdollars, old and defaced Paper Money, &c. [Spent.]

No. 6. [July 12, 1825

Ordinance promulgating an order of the King's Most Excellent Majesty in Council, for giving currency to, and fixing the value of, British Silver and Copper Money throughout this Colony.

[Superseded by 33 and 34 Vict., c. 10.]

No. 7. [Aug. 1, 1825

Ordinance for the stamping and signing of a sum of Fifty-six Thousand Rixdollars, in lieu of an equal amount of worn-out and defaced Paper Money. [Spent.]

No. 8. [Aug. 22, 1825.

Ordinance for destroying the sum of Fifty-six Thousand Rixdollars, old and defaced Paper Money. [Spent.]

Digitised by the University of Pretoria, Library Services, 2016

No 9. [Aug. 29, 1825.

Ordinance for the more effectual Apprehension of Deserted Convicts, and Gangs of Vagrants.

[Disallowed. Proclamation 14th May, 1829.]

No. 10. [Sept. 5, 1825.

Ordinance for the better Apprehending and bringing to Justice the Person or Persons concerned in the Murder of Joel, of Mozambique, slave of the Widow Henry Alexander. [Spent.]

No. 11. [Oct. 10, 1825.

Ordinance for assigning to the office of His Majesty's Fiscal certain Duties specially to be entrusted to his charge, and for separating therefrom the Administration of the Police.

[Disallowed as superseded by the Charter of Justice. Proclamation 14th May, 1829.]

No. 12. [Oct. 10, 1825.

Ordinance for appointing an Officer to be entrusted with the Administration of the Police, and the Prosecution of Police Cases arising within the Jurisdiction of Cape Town.

[Disallowed as superseded by the Charter of Justice. Proclamation 14th May, 1829.]

No. 13. [Oct. 17, 1825.

Ordinance for the stamping and signing of a sum of Fifty Thousand Rixdollars, in lieu of an equal amount of worn-out and defaced Paper Money. [Spent]

No 14. [Oct. 17, 1825.

Ordinance for Abolishing the Duty of two and a-half per cent. levied on Movable Property bought in at Public Auction; and for reducing from two and a-half to one per cent. the Duty levied on Immovable Property bought in at Public Auction, if disposed of by private contract within six weeks after such attempt at Public Sale.

[Disallowed. Proclamation 14th May, 1829.]

Digitised by the University of Pretoria, Library Services, 2016

No. 15. [Nov. 7, 1825.

Ordinance for destroying the Sum of Fifty Thousand Rixdollars old and defaced Paper Money. [Spent.]

No. 16. [Nov. 17, 1825.

Ordinance for Opening the Trade in Cattle with the Kafir Tribes at the Fair established by Government at Fort Willshire, and at such other Fairs as may hereafter be established by Government for that purpose.

[Repealed by Ordinance No. 23.]

No. 17. [April 3, 1826.

Ordinance for removing all Prohibition to the Importation of Grain and Flour into the Ports of these Settlements for a limited time.

[Disallowed. Proclamation 14th May, 1829.]

No. 18. [May 29, 1826.

Ordinance for separating the Jurisdiction of the Commissioner of the Court of Justice, to be appointed to take cognizance of all Matters set forth in the third section of the Crown Trial, from the duties of the other Members of the Court, and making his office permanent; and for the further regulation of the Duties to be performed by the said Commissioner.

[Disallowed as superseded by Charter of Justice. Proclamation 14th May, 1829.]

No. 19. [1826

Ordinance for Improving the Condition of the Slaves at the Cape of Good Hope.

[Repealed. Order in Council, 2nd February, 1830; Act 3 and 4 William IV, c. 73; Ordinance No. 1, 1835.]

No. 20. [July 3, 1826.

Ordinance for abolishing the office of Wine Taster and for relieving the Exporters of Wine from the Duties levied therein.

[Repealed by Order in Council, 22nd February, 1832.]

Digitised by the University of Pretoria, Library Services, 2016

No. 21. [August 24, 1826.

Ordinance for declaring the Mode of Publication of the Ordinances of the Governor in Council of this Colony. [Obsolete.]

No. 22. [Sept. 4, 1826.

Ordinance for defining the Offence of Petty Theft, and regulating the manner of the Prosecution thereof.

[Disallowed as superseded by the Charter of Justice. Proclamation 14th May, 1829.]

No. 23. [Sept. 11, 1826.

Ordinance for facilitating the Commerce with the Kafirs and other Nations living beyond the Boundaries of the Colony, and for consolidating the several Proclamations relating thereto.

[Partially altered by Ordinance No. 81, but now wholly in disuetude. Repeals, *inter alia*, Ordinance No. 4 and Ordinance No. 16, except in as far as these Ordinances repeal former Proclamations.]

No. 24. [Sept. 21, 1826.

Ordinance for establishing Matrimonial Courts at Tulbagh, Caledon, and Cradock.

[Repealed by Ordinance No. 33.]

No. 25. [Oct. 9, 1826.

Ordinance for the better regulation of the Post Office in the Colony of the Cape of Good Hope.

[Amended by Ordinance No. 56. Repealed by Ordinance No. 1 of 1846.]

No. 26. [Oct. 23, 1826.

Ordinance for levying a Stamp Duty on Printed Newspapers and certain other Periodical Works.

[Repealed by Ordinance No. 2 of 1848.]

No. 27. [Dec. 13, 1826.

Ordinance for postponing the exclusive adoption of the English Language in all the Courts of Justice in this Colony.

[Superseded by the Charter of Justice.]

Digitised by the University of Pretoria, Library Services, 2016

No. 28. [April 21, 1826.

Ordinance for destroying the sum of Three Thousand Rixdollars, being the Twenty-first Instalment of the sum of Seventy-five Thousand Rixdollars created and advanced by the Batavian Government in the year 1804, for the special purpose of repairing the Damages occasioned by a fire in the Village of Stellenbosch.

[Spent.]

Letters Patent commonly called "The Charter of Justice," establishing the Supreme Court, dated 24th August, 1827.

[Amended and repealed by the New Charter of Justice, still in force, of the 4th of May, 1832]

No. 29. [Nov. 27, 1826.

Ordinance for making Regulations for the conduct and Proceedings of the Masters and Crews of Merchant Vessels arriving in the Ports of this Colony.

[Repealed by Ordinance No. 4 of 1844.]

No. 30. [Dec. 7, 1826.

Ordinance for granting Licences for the Sale of Wines, Malt Liquors, and Spirituous Liquors.

[Amended by Ordinance No. 54, and repealed by Ordinance No. 93.]

No. 31. [Dec. 7, 1826.

Ordinance for abolishing the office of Vendues, and for imposing certain Duties on Licences to be taken out by all Persons acting s Auctioneers, and on Property sold by Auction.

[Repealed by Ordinance No. 6, 1844, save in as far as former laws are repealed.]

No. 32.—Sd. Richard Bourke.] [Dec. 11, 1827.

Ordinance for creating Justices of the Peace in this Colony. (1)

Preamble

WHEREAS it is expedient for the preservation of the public peace, the security of individuals, and the due execution of the laws, that Magistrates be appointed in the several districts of this Colony, with power to apprehend, commit to prison, or hold to

[1] Any J.P. becoming insolvent forfeits his commission, § 12, Act 38 of 1884.

Digitised by the University of Pretoria, Library Services, 2016

bail, all vagrants, rioters, robbers, or other notorious offenders, found within their several jurisdictions, in order that such offenders may be brought to trial, and with power to do all other such matters and things as the said Magistrates may by law be appointed to do: Be it therefore enacted, and it is hereby enacted, that from and after the passing of this Ordinance, it shall and may be lawful for the Governor and Lieutenant-Governor for the time being, from time to time, as occasion may require, to appoint Justices of the Peace under the great seal of the Colony of the Cape of Good Hope, for Cape Town and the district thereof, and the several country districts respectively, who shall take and subscribe the oath of allegiance, and the oath of office, set forth in the schedule hereunto annexed, before the Chief Justice, or any Judge of the Supreme or Circuit Courts, or before the Civil Commissioner or any Magistrate of the district for which such Justice is assigned to act (who are hereby empowered and required to administer the same), and the Clerks of the Peace respectively shall enter in the records of their respective districts that the said oaths were duly administered and taken.

The Governor may appoint Justices of the Peace.

Oath of office and of allegiance to be taken by justices.

2. And be it further enacted, that from and after the passing of this Ordinance, the persons who shall be so appointed as aforesaid to act as Justices of the Peace, shall have power, and are hereby required, to preserve the public peace, and for that purpose to call to their aid and assistance all field-cornets, constables, and peace officers, military officers, and others His Majesty's subjects, to quell all riots, brawls, or other disturbances, and to lodge all rioters, brawlers, vagrants, and disturbers of the peace, in any prison within their respective jurisdictions, to be dealt with according to law; and they are hereby authorised and required to inquire of all crimes and offences committed, or alleged to be committed, within their respective jurisdictions, and for that purpose to summon and examine upon oath all witnesses, touching such crimes and offences, and to apprehend and cause to be apprehended, all criminals and offenders, and to deal with them according to law: And the said Justices of the Peace are hereby authorised and required, upon information or complaint in writing upon oath made to them, or any of them, to cause to come before them all those who have used any threats towards any person or persons, whether regarding their bodies or the firing of their houses, and to require of them sufficient security for the peace, or their good behaviour towards His Majesty or his subjects; and if they shall not give such security then to cause them to be safely kept in prison till they shall find such security.

Power and duties of justices.

Inquiry into offences.

Power to require security for the peace and for good behaviour.

3. And be it further enacted, that all Justices of the Peace shall cause all informations and complaints made to them in writing upon oath, as aforesaid, and all recognizances or other securities for keeping the peace, or for good behaviour taken by them to be

Informations on oath and recognizances, &c., to be transmitted by justices to the clerk of the peace within 21 days.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 32—1827.

sent to the Clerk of the Peace (1) acting for the district or place for which the said Justices are assigned respectively, within twenty-one days after such information or complaint made or security taken; and for every such information or complaint, made as aforesaid and not sent as aforesaid, and for every such recognizance or security taken, and not sent as aforesaid, every Justice so offending shall incur and be liable to the payment of a fine of twenty pounds sterling.

Penalty on failure, £20.

Gaolers to receive into custody persons committed by warrant of justices.

4. And be it further enacted that all gaolers and keepers of prisons shall receive into their custody, and safely keep, every person committed to their charge by warrant, under the hand and seal of any Justice of the Peace, until they be discharged by due course of law.

Notice of action against justices for acts done in execution of their office t be given, at least, one month before process is sued out.

5. And be it further enacted, that no process shall be sued out against, nor any copy of any process at the suit of a subject shall be served on, any Justice of the Peace, for anything by him done in the execution of his office, until notice in writing of such intended process shall have been delivered to him, or left at the usual place of his abode by the attorney or agent for the party, who intends to sue or cause the same to be sued out, or served, at least one calendar month before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action which such party has, or claims to have, against such Justice of the Peace, on the back of which notice shall be endorsed, the name of such attorney or agent, together with the place of his abode.

On failure of such notice, judgment to be given in favour of justice.

6. And be it further enacted, that no person shall recover any judgment against any Justice of the Peace, in any case where the action shall be grounded upon any act of the defendant as Justice of the Peace, unless it is proved upon the trial of such action, that such notice was given as aforesaid; but in default thereof such Justice shall be entitled to a judgment and his full costs.

Tender of amends by justice and further proceedings in action.

7. And be it further enacted, that it shall and may be lawful for such Justice of the Peace within one calendar month after such notice given as aforesaid, to tender amends to the party complaining, or to the attorney or agent of such party; and in case the same is not accepted, to plead such tender to any action to be brought against him grounded on such process, together with the plea of "not guilty," and any other plea with the leave of the Court; and if the Court before which such action is brought shall find the amends so tendered to have been sufficient, then such Court shall give judgment for the defendant, and in such case, or in case the plaintiff shall not proceed in his action, or in case judgment shall be given for the defendant on any proceeding in

[1] Clerks of the Peace no longer exist, and these documents are now sent to the Resident Magistrate.

Digitised by the University of Pretoria, Library Services, 2016

the nature of a demurrer, such Justice shall be entitled to like costs as he would have been entitled to, in case he had pleaded not guilty, only; and if the Court shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant on such other plea or pleas, then the said Court shall give judgment for the plaintiff, and such damages as the said Court shall think proper, together with the costs of suit.

Payment into court, in case of no tender or insufficient tender of amends.

8. And be it further enacted, that in case such Justice shall neglect to tender any amends, or shall have tendered insufficient amends, before the action brought, it shall and may be lawful for him, by leave of the Court where such action shall depend, at any time before the hearing of the said cause, to pay into Court such sum of money as he shall see fit, whereupon such proceedings, orders, and judgments shall be had, made, and given in and by such Court, as in other actions where the defendant is allowed to pay money into Court.

Evidence for plaintiff restricted to the cause of action contained in the notice.

9. And be it further enacted, that no evidence shall be permitted to be given by the plaintiff, on the trial of any such action as aforesaid, of any cause of action, except such as is contained in the notice hereby directed to be given.

No action to be brought against constables, &c., for act in obedience to warrant, until after demand and refusal of warrant.

10. And be it further enacted, that no action shall be brought against any constable, or other officer, or against any person or persons acting by his order and in his aid, for any thing done in obedience to any warrant under the hand or seal of any Justice of the Peace, until demand hath been made or left at the usual place of his abode, by the party or parties intending to bring such action, or by his, or their, attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same have been refused or neglected for the space of six days after such demand; and in case, after such demand and compliance therewith, by shewing the said warrant to, and permitting a copy to be taken thereof by, the party demanding the same, any action shall be brought against such constable, or other officer, or against such person or persons acting in his aid, for any such cause as aforesaid, without making the Justice or Justices who signed or sealed the said warrant, defendant or defendants, that, on producing and proving such warrant at the trial of such action, the Court shall give their judgment for the defendant or defendants, notwithstanding any defect of jurisdiction in such Justice or Justices; and if such action be brought jointly against such justice or justices, and also against such constable, or other officer, or person or persons acting in his or their aid, as aforesaid then on proof of such warrant, the Court shall find for such constable or other officer, and for such person or persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the judgment shall be given against the justice or justices, that in such case, the plaintiff or plaintiffs shall recover his or their

If demand of perusal and copy of warrant have been duly complied with, then on production of warrant at the trial, judgment to be given for the defendant,

notwithstanding defect of jurisdiction in the justice.

Digitised by the University of Pretoria, Library Services, 2016

Ord 32—1827.

Costs, how to be taxed.

costs against him or them, to be taxed in such manner by the proper officer, as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants, for whom such judgment shall be found as aforesaid.

If the judge certify on the record that the justice have wilfully and maliciously committed the injury, which is the cause of action, double costs to be allowed.

11. And be it further enacted, that where the plaintiff in any such action, against any Justice of the Peace, shall obtain a judgment, in case the judge before whom the cause shall be tried, shall, in open Court, certify on the back of the record, that the injury for which such action was brought was wilfully and maliciously committed, the plaintiff shall be entitled to have and receive double costs of suit.

Actions to be brought within six months after commission of the act complained of

12. And be it further enacted, that no action shall be brought against any Justice of the Peace, for anything done in the execution of his office, or against any constable, or other officer, or person acting as aforesaid, unless commenced within six calendar months after the act committed.

SCHEDULE.

Form of the Oath of Allegiance.

Oath of allegiance.

I, do sincerely promise and swear, that I will be faithful, and bear true allegiance to His Majesty King George. So help me God!

Form of the Oath of Office to be taken and subscribed by Justices of the Peace.

Oath of Office.

I, A. B. do swear, that as Justice of the Peace in the of in all articles in the Governor or Lieutenant-Governor's commission to me directed, I will do equal right to the rich and to the poor, to the best of my ability and power, and according to the laws and customs of the Colony, and ordinances and proclamations thereof: And I will not be of counsel of any quarrel depending before me: And the issues, fines, and amerciaments that shall happen to be made, and all forfeitures that shall fall before me, I will cause to be entered without any concealment or embezzling, and will truly send them to the Colonial Treasury, or otherwise dispose of them according to law: I will not obstruct the cause of justice for gift or other cause, but well and truly will discharge my duty as Justice of the Peace, without partiality, favour, or affection. So help me God!

No. 33. [Dec. 19, 1827.

Ordinance for creating Resident Magistrates and Clerks of the Peace in certain Districts and Places in this Colony.

[Repealed by Act No. 29 of 1856.]

No. 34. [Dec. 26, 1827.

Ordinance for dissolving the Burgher Senate.

[Repealed by Ordinance No. 3 of 1839, except in as far as the Burgher Senate is dissolved.]

Digitised by the University of Pretoria, Library Services, 2016

No. 35. [Dec. 28, 1827.

For repealing the Tax levied for Gauging Casks of Wine, Brandy, and Vinegar, and for appointing Trustees to preserve and maintain the Public Library.

[Repealed by Ordinance No. 71, except in as far as a former Proclamation is repealed.]

No. 36. [Jan. 5, 1828.

Ordinance for continuing the powers heretofore committed to and exercised by the Permanent Sitting Commissioner in Cape Town to a Judge of Police, and for extending his Jurisdiction to the Cape District, and for continuing a Matrimonial Court therein.

[Repealed by Ordinance No 44.]

No. 37.—Sd. Richard Bourke.] [January 5, 1828.

Ordinance for declaring and regulating the duty of the Sheriff of this Colony. (1)

Preamble. WHEREAS by His Majesty's Royal Charter, or Letters Patent, for the more effectual Administration of Justice in this Colony and in the several Territories and Settlements dependent thereon, bearing date at Westminster, the 24th day of August. 1827, it is amongst other things, ordained and declared that the Governor or Lieutenant-Governor, for the time being, of the said Colony, shall, by warrant under his hand and seal, nominate and appoint some fit and proper person, to act as and to be the Sheriff of the said Colony and its dependencies for the year ensuing; which Sheriff, when appointed, shall, as soon as conveniently may be, and before he shall enter upon his said office, take an oath, faithfully to execute the duties thereof, and the oath of allegiance, before the said Governor, who is by the said charter authorised to administer the same: And whereas it is by the said charter ordered, directed and appointed that the said Sheriff shall, by himself or his sufficient deputies to be by him appointed, and duly authorised under his hand and seal, and for whom he shall be responsible during his continuance in such office, execute all the sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands, and processes of the Supreme Court, or of the Circuit Courts, of the said Colony, as therein is mentioned, and shall make a return of the same, together with the manner of the execution thereof, to the Supreme Court of the Cape of Good Hope, or to the said Circuit Courts, as the case may be; and shall receive and

[1] See also Alphabetical Index for various other duties imposed on the Sheriff by particular Statutes.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 37—1828.

detain in prison all such persons as shall be committed to the custody of such Sheriff by the said Supreme Court and Circuit Courts, or by the Chief Justice, or any other Judge of the said Courts: And whereas it is further granted, ordained, directed, and appointed, by the said charter or letters patent, that it shall and may be lawful for the said Supreme Court, by any rules or orders of Court, to be by them from time to time, and for that purpose, made and published, to frame, constitute, and establish such rules, orders, and regulations as to them shall seem meet, touching and concerning (amongst other things) the proceedings of the Sheriff and other ministerial officers of the said Court, the process of the said Courts, and the mode of executing the same; provided (amongst other things therein provided) that the same shall be promulgated in the most public and authentic manner in the said Colony, for three months at least before the same shall operate and take effect: And whereas it is necessary and expedient, in the meantime, and until the said Supreme Court shall further or otherwise order, to make provisions for the performance of the duties of the said Sheriff in certain cases: Be it therefore enacted and declared, by His Honour the Lieutenant-Governor in Council, that the said Sheriff shall, immediately after his appointment, and after having taken the oaths aforesaid, appoint and depute sufficient persons and deputies, to act for him in the execution of the duties of his said office, and shall, immediately after such appointment, cause to be enrolled in the office of the Registrar of the Supreme Court the names and places of abode of such his lawful deputies, and which enrolment shall specify the district within which they are respectively to act for the said Sheriff; and also shall, immediately after any removal of any such deputy, cause such removal to be notified to the Registrar, and shall cause the name of the person succeeding him in the execution of his duty, to be in like manner enrolled in the said office, and shall cause the like notification to be published in the next ensuing *Government Gazette* of the said Colony. (1)

Sheriff to appoint deputies,

whose names, places of abode, and districts are to be enrolled with the registrar of the supreme court.

Names, places of abode, and districts of deputies to be placed conspicuously in the sheriff's office with this ordinance, and rules of court relating to sheriff, and table of fees.

2. And be it further enacted that a convenient office in Cape Town shall be appointed for the said Sheriff, wherein shall be placed, in some conspicuous part thereof, the names and places of abode of such his deputies, and the districts in which they are appointed respectively to act; and also this Ordinance and all such general rules and orders as shall at any time be made by the Supreme Court, for regulating the duty of the said Sheriff and his deputies, and a table of all the fees and charges which may, by law, be taken by him or them respectively.

Sheriff and deputies to be personally present in court.

3. And be it further enacted that the said Sheriff, or his deputy, shall give his personal attendance in the Supreme Court daily,

[1] See § 27, Charter of Justice.

Digitised by the University of Pretoria, Library Services, 2016

during term time, or any sitting or session of the said Court, or of any Circuit Court; and the said Sheriff shall, by himself or his deputy, immediately, and without delay, execute all the sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands, and processes of the said Supreme Court or Circuit Courts respectively, to him directed, where no time is specified therein for the execution thereof, or otherwise, according to the exigency of the same; and shall make a return thereof, together with the manner of the execution thereof, to the office of the Registrar of the said Supreme Court, or Registrar of the Circuit Courts respectively, as the case may be; and the said Sheriff shall receive and detain in custody all persons arrested upon any sentence, decree, judgment, writ, summons, rule, order, warrant, command, or process of the said Supreme Court or Circuit Courts respectively, and shall receive and detain in prison all such persons as shall be committed to his custody by the said Supreme Court or Circuit Courts, or by the Chief Justice or any of the Judges of the Supreme Court.

Sentences, processes, &c., to be executed without delay.

Returns thereof to be made to the registrar.

Sheriff to detain in custody all persons arrested by order of supreme or circuit court, or committed by supreme or circuit court, or by a judge.

4. Provided always, and be it further enacted, that the said Sheriff shall not be answerable or responsible for the rescue or escape of any such person out of the custody of the said Sheriff, or his deputy, on his way to any public gaol or prison in this Colony; or after being lodged therein, where such rescue or escape shall happen without the default or connivance of the said Sheriff or his deputy: Provided, however, that in case of any such rescue or escape, the said Sheriff, or his deputy, shall use all lawful means for the pursuit, apprehension, and security of any such person, without any further warrant or authority whatever.

Sheriff not responsible for rescue or escape, without his default.

In case of rescue or escape, he may use all lawful means of apprehension without further warrant.

5. And be it further enacted that where any summons or other process of the Supreme Court shall be issued to compel the appearance in the said Court, or in any Circuit Court of this Colony, of any person to answer any claim or demand, in any case where by law the said person may not be arrested or holden to bail, and the said original summons, or other process, shall be delivered to the Sheriff at his said office, the said Sheriff, or his deputy, shall execute the same according to the exigency thereof; and at the time of summoning any person in pursuance of such summons or process, he shall deliver to him personally, or leave with some one of his household for him at his dwelling-house, when the said defendant cannot be found, a copy of the said summons or process; at the same time informing the said defendant, or other person, of the nature and exigency thereof.

Mode of service of summons in civil actions

Service on defendant personally or on member of his household.

6. Provided always, and be it further enacted, that where neither the said defendant nor any one of his household, after diligent search, can be found at his usual place of abode, a copy of the said summons or process may in all cases be left at the dwelling-house of the said defendant.

Service by leaving writ at the dwelling house.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 37—1828.

Service of writ of arrest.

7. And be it further enacted that, in all cases where any process of the said Supreme Court shall be delivered to the said Sheriff at his said office, for the arrest or attachment of any defendant, in order to compel his appearance in the said Court, or in any Circuit Court, to answer any complaint or demand, at any day therein specified, then the said Sheriff shall, by himself or his deputy, immediately and without delay, execute the said process, and shall give to the defendant, at his request and at his charge, a true copy of the said process; and if, upon any such arrest, the said defendant, or any one on his behalf, shall give to the said Sheriff reasonable security, by bond or obligation of the said defendant and another person, having sufficient property within the said Colony, that the said defendant shall appear according to the exigency of the said process, and also shall stand to, abide, and perform the judgment of the Court thereon, or render himself to the prison of the Supreme Court of our Sovereign Lord the King, in execution thereof; or if the said defendant shall pay or deliver to the Sheriff, or his deputy, the sum of money or other thing mentioned in the said process, together with the costs and charges indorsed thereon, and his legal fee for making the said arrest; then the said Sheriff, or his deputy, shall permit the said defendant to go at large and free of the said arrest, as to the said action; and the said bond or obligation shall be as nearly as is material in the form following, that is to say:

Security to appear and abide the judgment.

Payment of amount claimed in the writ.

Form of security bond in case of arrest.

Know all men by these presents that we, A. B. and C. D., are held and firmly bound to , esquire, Sheriff of the Colony of the Cape of Good Hope, in the sum of £ (the sum or value of the thing mentioned in the process) of lawful money of Great Britain, to be paid to the said Sheriff or his certain attorney, executors, administrators, or assigns, for which payment to be made we bind ourselves, and each of us for himself in the whole, our, and every of our, heirs, executors, and administrators, firmly by these presents.

Signed with our hands, and dated the day of in the year of our Lord

Now, the condition of this obligation is such, that if the above bounden, A. B., do appear by his attorney before the Supreme Court of the Colony of the Cape of Good Hope on the day of to answer E. F. wherefore (following the statement in the process), and also shall stand to, abide, and perform the judgment of the said Court thereon, or render himself to the said Court in execution thereof; then this obligation to be void, otherwise to remain in full force.

Signed and delivered, being first (L.S.)
duly stamped in the presence of (L.S.)

Digitised by the University of Pretoria, Library Services, 2016

Money or property taken for the plaintiff to be delivered over by Sheriff.

And if the said Sheriff shall have taken from any person arrested, any money or thing for the said plaintiff, or any bond or obligation, by virtue of any process, then the said Sheriff shall, after the expiration of four days from the day of the return thereof, and being thereunto required by the plaintiff or his attorney, deliver over to the said plaintiff or his attorney the said money or thing; or assign to the said plaintiff such bond or obligation, by an endorsement to be thereon made by the said Sheriff under his hand; which endorsement shall be as nearly as may be in the form following, that is to say:

Bail bound to be assigned to the plaintiff by endorsement.

I, the within named Sheriff, at the request of E. F., the plaintiff within named, hereby assign to him, the said E. F., the within bail bond, and all the benefit and advantage arising therefrom.

In witness whereof I have hereunto set my hand this day of in the year of our Lord

Signed and delivered by the within named Sheriff, in the presence of (L.S.)

Demand of movable property in satisfaction of process of Supreme Court in Cape Town to be made within 24 hours after delivery of writ; within 25 miles of Cape Town in 48 hours; and at greater distances in proportion.

8. (1) And be it further enacted that whenever, by any process of the Supreme Court, the Sheriff shall be commanded to levy and raise any sum of money upon the goods and chattels of any person residing in Cape Town, or the district thereof, the said Sheriff shall, by himself or his deputy, within twenty-four hours after delivery of the same at his office; or if residing in the country, within twenty-five miles of Cape Town, then within forty-eight hours after delivery of the same; or if residing at any greater distance from Cape Town within so many days' distance, in addition to twenty-four hours, as such person resides from Cape Town,—repair to his dwelling-house, and there demand, that so much movable property may be pointed out as the said Sheriff, or his deputy, may deem sufficient to satisfy the exigency of the said process; which property shall be immediately inventoried and taken into the custody of the said Sheriff, or his deputy; and if upon the demand of the said Sheriff, or his deputy, no such property be pointed out, or such as is sufficient to satisfy the exigency of the said process, then he shall immediately seize and take into his charge so much of the movable property of the said defendant as will be sufficient to satisfy the exigency of the said process: Provided that if there shall be any claim made by any other person to any such property about to be seized by the said Sheriff, or his deputy, then, if the said plaintiff, or his attorney, will indemnify (2) the said Sheriff by an undertaking in writing, signed by the said plaintiff, to save

Movables pointed out to be inventoried and taken into Sheriff's custody.

Seizure of sufficient movable property, if not pointed out.

Indemnity by plaintiff whose property about to be seized is claimed by others.

[1] See Ord. 3, 1844, as to ranking of writs.

[2] See § 6, Act 17, 1886.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 37—1828.

him harmless from any loss or damage by reason of the seizure thereof, then the said Sheriff, or his deputy, shall take and seize the same, and the same shall forthwith be inventoried and taken into the custody of the said Sheriff, or his deputy.

Tools, implements of trade, wearing apparel, &c., not to be seized in the first instance.

9. Provided always, and be it further enacted, that the said Sheriff or his deputy shall not take or seize, in execution of any such process, any of the necessary tools, utensils, implements or cattle, used in trade or husbandry, or wearing apparel, of any person; unless there shall not be sufficient other movable property of the defendant to satisfy the same.

10. [Repealed by § 7 Act 17, 1886.]

Sum mentioned in process to be levied with the percentage chargeable by law and reasonable expenses.

11. And be it further enacted that, together with the sum mentioned in or endorsed upon any process of the Supreme Court, the said Sheriff shall levy and raise on the goods of the said defendant, sufficient to satisfy such percentage as is or shall be by law chargeable thereon, and the reasonable expenses, costs and charges of making the said levy and sale; and if, after satisfying the exigency of the said process, together with the said percentage, costs, and charges, there should remain any overplus, he shall pay over the same to the defendant; and the said Sheriff, or his deputy, shall make out and deliver to the said defendant an exact account, in writing, of the costs and charges of the said execution and sale; and the same shall be liable to taxation by the Master of the Supreme Court, upon application for that purpose by the said defendant; and if upon taxation, any sum shall be deducted by the Master, as having been improperly charged, the Sheriff shall refund the same to the defendant, with such costs as the Court shall think fit.

Surplus to be paid to the defendant.

Account of charge to be delivered by the Sheriff to the defendant, subject to taxation by the Master of the Supreme Court.

12. [Abrogated by Rules framed under authority of § 1. See Rules of Court Nos. 105 *et seq.*]

No. 38. [January 19, 1828.

Ordinance for authorising the Civil Commissioner of the Cape District to act within the District and Residency of Simon's Town, and for establishing a Board for the Registration of Marriages therein; and for repealing the Proclamation of the 8th of April, 1825, granting Jurisdiction to the Government Residents at Algoa Bay (now Port Elizabeth), and Port Frances, in certain Criminal and Civil Cases.

[Repealed by Act No. 20 of 1856.]

Digitised by the University of Pretoria, Library Services, 2016

No. 39.—Sd. Richard Bourke.] [January 19, 1828.

Ordinance of His Honour the Lieutenant-Governor in Council for enabling the Registrar of Deeds to certify and enregister all such Acts, Transfers, Mortgages, and other deeds, as were heretofore certified and enregistered before two members of the Court of Justice and the Colonial Secretary.

Preamble.

WHEREAS heretofore in this Colony, deeds of transfer of landed property, mortgages, and other like acts and instruments, have been certified and enregistered before, and subscribed by, two members of the Court of Justice, in the presence of the Colonial Secretary, before the said deeds and instruments could be duly registered; and whereas in consequence of the abolition of the Court of Justice, the said registration can no longer be in such manner carried on: Be it therefore enacted, by His Honour the Lieutenant-Governor in Council, that from and after the passing of this Ordinance, and until further and other provision be made in this respect, all such deeds, of any and whatsoever kind, as have been heretofore certified and enregistered as aforesaid shall be certified and enregistered before and subscribed by, the Registrar of Deeds; and all such deeds so certified by the said Registrar, shall be enregistered and be and become as valid and effectual, to all intents and purposes, as if the same had been certified and enregistered before, and subscribed by, two members of the Court of Justice, in the presence of the Colonial Secretary.

All deeds to be certified and enregistered by the registrar of deeds.

2. And whereas the Colonial Debt Registers have heretofore been kept at the office of the Colonial Secretary, and entries made therein, from time to time, by one of the clerks of that office: Be it therefore enacted, that from and after the passing of this Ordinance, the said registers shall be kept by, and all entries shall be made therein by and under the direction of, the said Registrar of Deeds.

Registers of debt to be kept.

No. 40.—Sd. Richard Bourke.] [January 25, 1828.

Ordinance for Regulating the Manner of Proceeding in Criminal Cases in this Colony. (1)

WHEREAS it is necessary and expedient to make certain changes and alterations in the mode of proceeding in criminal cases, and to declare the laws as at present established by His Majesty's Royal

[1] See Ord. 73, 1830; Charter of Justice (§§ 34, 39, 40, and 45; Ords. 2, 1837, 7, 1837, 8, 1852; Acts 3, 1861, 15, 1864, 7, 1867, 9, 1867, Act 7, 1873, 17, 1874, 5, 1879, (§§ 22—30) 40, 1882, (§ 16) 13, 1886, 17, 1886, (§ 5). See also Act 20, 1856. Ord. 8 of 1852 prescribes the procedure in districts where there is no Clerk of the Peace. § 5 Ord. 73 repeals so much of this Ordinance as requires the Superintendent of Police or his Deputy to take preparatory examinations or to prosecute at the public instance and so much as requires Res. Magistrates to transmit prep. examinations to the Supt. of Police or his Deputy. Act 11 of 1860 abolishes the Police Court in Cape Town and the offices of Judge and Supt. of Police. As to crimes committed in vehicles, &c., see §§ 1, 2, Ord. 73, in trains; Act 16, 1882, § 2.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 40—1828.

Preamble.

Charter, bearing date the 24th day of August, at Westminster, in the eighth year of His Majesty's reign: Be it therefore enacted and declared, by His Honour the Lieutenant-Governor in Council, that from and after the passing of this Ordinance, the manner of proceeding in criminal cases in this Colony shall be according to the rules and regulations hereinafter mentioned and set forth.

Of Jurisdiction.

All offences in the colony subject to the jurisdiction of the Supreme Court.

1. All crimes and all offences against the law (for the commission of which any penalty or punishment is by law provided) committed by any person in this Colony, or its dependencies, are subject to the jurisdiction of the Supreme Court of the Colony of the Cape of Good Hope. (1)

All offences in any circuit districts subject also to the jurisdiction of the Circuit Court for such district.

2. All crimes and offences against the law (for the commission of which any penalty or punishment is by law provided), committed by any person within any one of the districts into which this Colony has been or shall be divided by the Governor, are also subject to the jurisdiction of the Circuit Court of such district, or of any such Circuit Court held within any other district of the Colony, to which the trial of such crime or offence shall be permitted or allowed to be removed by the competent Court.

All offences not punishable by death, transportation, or banishment committed within local limits of an inferior court, subject to the jurisdiction of such inferior court.

3. (2) All crimes and offences against the law (for the commission of which any penalty or punishment is by law provided), not punishable by death, transportation, or banishment, committed by any person within the local limits within which the jurisdiction of any inferior Court erected or to be erected by the Governor of this Colony is appointed by the said Governor to be exercised, are also subject to the jurisdiction of such inferior Court.

Power of review in the Supreme Court of all proceedings of inferior courts.

4. (3) The Supreme Court has full power, jurisdiction, and authority, to review the proceedings of all inferior Courts of Justice within the Colony; and, if necessary, to set aside or correct the same.

Grounds of review;—

5. The grounds upon which it is competent to bring the proceedings of the inferior Courts under the review of the Supreme Court, are:

Incompetency of the court in respect of jurisdiction.

First. Incompetency of the Court in respect of the cause, including all excess of jurisdiction, whether committed by the judge in trying for an offence, which in respect of its nature, or magnitude, or of its having been committed out of his jurisdiction, or of its having been already tried, or forming the subject of a pending trial in any other competent Court, was not subject

---

1 See § 30 Charter of Justice.

2 See Act 20 of 1856, § 42, and Act 10 of 1876.

3 See Ch. of Justice, § 32, Act 21 of 1876, § 4, §§ 22 *et seq.* Act 5, 1879, § 16, Act 40, 1882, and §§ 1 and 5, Act 17, 1886.

Digitised by the University of Pretoria, Library Services, 2016

to his jurisdiction, or in awarding a greater punishment, than by the constitution of his Court he had power to award.

Incompetency in respect of interests of the judge or his near kinsman.

Second. Incompetency of the Court in respect of the judge himself, as that either the judge himself, or his near kinsman had an interest in the cause.

Malice or corruption.

Third. Malice or corruption on the part of the judge.

Gross irregularity.

Fourth. Gross irregularity in the proceedings.

Admission of illegal evidence.

Fifth. The admission of illegal or incompetent evidence. (1)

Of Prosecutors and their Title.

Attorney-General vested with right of prosecuting all crimes,—

6. (2) The Attorney-General of the Cape of Good Hope is vested with the right, and entrusted with the duty, of prosecuting in the name and on behalf of the King, all crimes and offences committed in this Colony.

In person in the Supreme Court,—

In Circuit and District Courts through the medium of clerks of the peace.

7. This right of prosecution is exercised by the Attorney-General, in the Supreme Court, in person—in the Circuit and District Courts, through the medium of the Clerks of the Peace for the respective districts in which such Courts shall be held; and in the Police Court in Cape Town, through the medium of the Superintendent of Police, or his deputy, unless any other person shall have been specially appointed by the said Attorney-General to appear and act for him in any particular case, before any or either of the said superior or inferior Courts. (3)

Power of prosecution absolutely in the Attorney-General.

8. This right and power of prosecution in the Attorney-General, is absolutely under his own management and control. (4)

Attorney-General's power of stopping prosecutions.

9. (5) The Attorney-General has the power at any time before conviction, of stopping all prosecutions commenced by him, or by the Superintendent of Police, or by the Clerks of the Peace, at the public instance: but in the event of the defendant having been previously arraigned upon any charge, he shall be entitled to a verdict of acquittal, in respect of such charge.

Power of ordering liberation of persons committed for further examination.

10. The Attorney-General has the power (except in the special case hereinafter excepted) of ordering the liberation of any person committed to gaol for further examination, or for trial; for which liberation, a writing, setting forth that the Attorney-General sees no grounds for prosecuting such person, and subscribed by him, shall be a sufficient warrant.

---

[1] See also Ord. 73, § 3, and § 54 of this Ord.

[2] As to powers of Solicitor-General, see § 36, Act 21 of 1864, and § 18, Act 40 of 1882. As to powers of Crown Prosecutor, see § 19, Act 39 of 1877. As to appointment of Acting Attorney-General see Act 23, 1884.

[3] The Police Court in Cape Town and the office of Judge and Superintendent of Police were abolished by Act 11 of 1860. For procedure in districts where there are no Clerks of the Peace see Ord. 8 of 1852.

[4] See § 4 Ord. 73.

[5] See § 81, Sched. B, Act 20 of 1856 and § 3 Act 17 of 1874.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 40—1828.

Proceedings by private prosecutor on such liberation by the Attorney-General.

11. ([1]) Where in virtue of the right of prosecution hereinafter given to private parties, any private party intends to prosecute any person, for whose liberation from gaol any warrant of the nature above mentioned may have been issued by the Attorney-General, it shall be competent for such private parties, upon entering into a recognizance for the prosecution of the said defendant in the form hereinafter set forth, to apply to the Supreme Court, or Circuit Court; or in case such Courts shall not be then actually sitting, to the Chief Justice of the Colony, or to any of the judges of the Supreme Court, for a warrant for the further detention in gaol of such person, (or in case the liberation has already taken place, for his recommittal to gaol for trial) upon which application, the said Courts, and the said Chief Justice, and other judges, shall make such order, as to them shall seem proper.

Neither acquittal nor conviction a bar to civil action for damages.

12. Neither conviction nor acquittal following on the prosecution of the Attorney-General is any bar to a civil action for damages, at the instance of any person who may have suffered any injury from the commission of any alleged crime or offence.

Private prosecution on refusal of the Attorney-General to prosecute.

13. In all cases, where the public prosecutor declines to prosecute for any alleged crime or offence, it is competent for any private party, who alleges that he has suffered injury by any such alleged crime or offence, to prosecute in any Court, competent to the trial of the same, the person alleged to have committed such crime or offence.

Private prosecutor to produce certificate of Attorney-General that he declines to prosecute at the public instance, before obtaining process of the Supreme or Circuit Court,—

14. ([2]) In order that no prosecution, at the instance of a private party, may take place, until the public prosecutor shall have exercised his discretion, whether he will prosecute the offender at the public instance, it shall not be competent for any private party to obtain the process of any court for summoning any party to answer to any indictment or complaint, unless the said private party shall produce to the officer, authorised by law to issue such warrant, the indictment or complaint, having endorsed thereon where the indictment is to be tried in the Supreme or Circuit Court, a certificate under the hand of, and subscribed by, the Attorney-General, that he has seen the indictment, and declines to prosecute at the public instance for the offence therein set forth;

Or a certificate of the proper officer entitled to prosecute to the like effect before obtaining process of an inferior court.

and where the indictment or complaint is to be tried in any inferior Court, a certificate under the hand of, and subscribed by, the officer who by law is entitled to prosecute at the public instance in such Court, that he has seen the said indictment or complaint, and declines to prosecute at the public instance for the offence therein set forth; and in every case, in which the Attorney-General declines to prosecute, he and the officers, through whom he exercises the right of prosecution in the inferior Courts, shall, at

[1] See § 5 Act 15 of 1864, and § 20 of this Ord.

[2] See §§ 6, 7 and 8 Ord. 73; § 10, Ord. 8 of 1852; § 64 Schd. B, Act 20 of 1856; § 5, Act 15, 1864.

Digitised by the University of Pretoria, Library Services, 2016

the request of the party intending to prosecute, grant the certificates above mentioned on every indictment submitted to them by such private party.

Private prosecutor must have substantial interest in the issue of the trial.

15. To support a prosecution at the private instance, the private party prosecuting must be able to show some substantial and peculiar interest in the issue of the trial, arising out of some injury, which he individually has suffered by the commission of the alleged crime or offence set forth in the indictment or complaint.

Prosecution by husband.

16. A husband possesses this right of prosecution in respect of crimes and offences committed against his wife.

Prosecution by guardians of minors.

17. The legal guardians of minors possess this right of prosecution in respect of crimes and offences committed against their wards.

Prosecution by wife or children or next of kin.

18. The wife or children, or where there is no wife or child, any of the next of kin, of any deceased person, possess this right of prosecution in respect of any crime by which the death of such person is alleged to have been caused.

Costs of private prosecution.

19 (1) Where a person prosecuted at the instance of a private party is acquitted, the Court, in which the prosecution was brought, may adjudge the prosecutor, to pay to the party prosecuted the whole, or any part, of the expenses, which may have been occasioned to him by the prosecution.

Recognizances to be entered into by private prosecutor.

20. (2) It shall not be competent for any private party to obtain the process of the Supreme Court for summoning any party to answer to any indictment or complaint, unless such private party shall first enter into a recognizance in the sum of twenty pounds sterling, together with two sufficient sureties in ten pounds sterling, each, to be approved of by the officer issuing such process, to prosecute the said indictment or complaint to a conclusion, according to the forms of law at the time, at which the summons requires the defendant to appear.

Prosecution for murder not barred by lapse of time; for other offences barred by lapse of 20 years.

21. The right of prosecution for the crime of murder shall not be barred by any lapse of time; but the right of prosecution for any other crime or offence, whether at the instance of the public prosecutor, or of the private party injured, shall be barred by the lapse of twenty years from the time when the crime or offence was committed.

Of Arrest and Preliminary Examination.

22. *The Chief Justice, or any Judge of the Supreme Court, the Judge of the Police Court in Cape Town, any Resident Magistrate, or Justice of the Peace, who has knowledge of any crime or breach of the peace, by seeing it committed, may himself arrest the offenders, or*

[1] See § 9 Ord. 8 of 1852; § 74 Sched. B, Act 20 of 1856.
[2] See § 14 of this Ord. and note thereto.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 40—1828.

by a verbal order he may authorise others to do so, who may follow the offenders thus pointed out to them, and execute this order on them out of the presence of such Magistrate, if they fly. (1)

Arrest by Sheriffs, Superintendents of police, Field-cornets, and constables.

23. (2) The Sheriff and his deputies, Superintendent of Police and his deputy, and Field-cornets, and all Constables, Police Officers, or other officers of the law, proper to the execution of criminal warrants, have the power of arresting, in cases of crimes or breaches of the peace committed in their presence, or of the commission of which they have credible information from others; and after taking the offender, such Sheriff or other officer shall immediately carry the offender before the nearest Magistrate, to be dealt with according to law.

24. *The Chief Justice of the Colony and Judges of the Supreme Court, the Judge of Police in Cape Town, the Resident Magistrates, and all Justices of the Peace, may lawfully grant a warrant for the apprehension of any offender, on a written application, setting forth the offence alleged to have been committed, and that from information taken upon oath, there are reasonable grounds of suspicion against him, subscribed by the Attorney-General, by the Superintendent of Police, in Cape Town, or by the Clerk of the Peace of the district, or upon the information to the like effect of any person made on oath before the Judge or Magistrate granting the warrant.* (3)

25. *A warrant issued by the Chief Justice, or any of the Judges of the Supreme Court, has effect and may be executed anywhere in the limits of the Colony and its dependencies; warrants issued by the Judge of Police in Cape Town, Resident Magistrates, and Justices of the Peace, have effect and can be executed only within the local limits within which the jurisdiction of the said Magistrate, Judge of Police, or Justice of the Peace, is appointed to be exercised;* but the Judge of Police in Cape Town, every Resident Magistrate, and every Justice of the Peace, on production to him of a warrant issued by any other Magistrate, is bound to grant his concurrence to it by an endorsement thereof, after which the warrant may be executed within the local limits of the jurisdiction of the Magistrate so endorsing it. (4)

Endorsement of warrants by Resident Magistrates.

Tenor of Warrant.

26. Every warrant so issued shall be to apprehend the party described in it, and to bring him before any Resident Magistrate, or the Judge of Police in Cape Town, or Justice of the Peace, for examination. (5)

27. (6) The Superintendent of Police in Cape Town, or his deputy, and every Clerk of the Peace, (7) on receiving information

[1] Superseded by § 11 Ord. 73.
[2] See § 12 Ord. 73.
[3] Superseded by § 9 Ord. 73.
[4] Amended by § 10 Ord. 73.
[5] See § 19 Ord. 73
[6] For procedure where there are no Clerks of the Peace see § 11 Ord. 8 of 1852. See also § 29 of this Ord. See also § 6 Ord. 73.
[7] See Rule of Supreme Court 376.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 40 1828.

of any crime or offence having been committed within his district (except it shall plainly appear to be proper for the cognizance of a court of summary jurisdiction), shall commence a preparatory examination before the Judge of Police in Cape Town, Resident Magistrate, or Justice of the Peace, within whose jurisdiction respectively such Superintendent of Police in Cape Town and his deputy, and Clerks of the Peace, are appointed to exercise their respective offices; and, for that purpose, shall immediately apply for a warrant for the apprehension of any person, who from information taken upon oath, may be reasonably suspected of having committed the said crime or offence, and for summoning those persons, whom it shall appear necessary to examine as witnesses: and in case of refusal or failure to attend after due proof of the service of such summons, a further warrant under the hand of any Magistrate, to enforce the appearance of such witnesses; or in the event of its not being known or suspected by whom the crime or offence was committed, a warrant for summoning as witnesses such persons as aforesaid: and the Superintendent of Police in Cape Town, and every Field-cornet, and every Constable, on receiving information of any crime or offence, except as in the case hereinbefore excepted, shall give immediate information thereof to the Clerk of the Peace of the district within which such Superintendent of Police, Field-cornet, or Constable, exercises his office: in order that the said Clerk of the Peace may institute or attend the preparatory examination, or give such directions concerning the conduct thereof, as to him shall seem necessary.

Preparatory examination.

Warrant for the apprehension of suspected persons.

Summons of witnesses.

Information by Superintendent of Police, Field-cornets, and constables, to Clerks of the Peace.

28. When in the course of any trial in any inferior Court, it shall appear that the crime or offence under trial is, from its nature or magnitude, only subject to the jurisdiction or more proper for the cognizance of a superior Court, then the Judge or Magistrate, before whom such inferior Court is held, shall stop the trial, and commence anew the examination of the person accused, and of the witnesses, as in a preparatory examination, and the examinations so taken shall be reported in the manner hereinafter directed as to other examinations. (1)

When a trial in an inferior Court should be stopped, and a preparatory examination should be instituted.

29. Where there is any danger that delay may defeat the ends of justice, the Judge of Police in Cape Town, any Resident Magistrate, or any Justice of the Peace, may himself commence taking the preparatory examinations; but he shall without delay give information thereof, in Cape Town and the district thereof to the Superintendent of Police or his deputy, and in any other district to the Clerk of the Peace of such district. (2)

Proceedings where delay might endanger the ends of justice.

30. Every officer conducting a preparatory examination, shall cause to be examined by the Magistrate, before whom the same is

Examination of all persons who can give information.

[1] See Ord. 73, §§ 7 and 8.
[2] Ibid § 5, and Rule of Supreme Court 376.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 40—1828.

taken, every person who can give any information on the subject of the crime or offence under investigation.

Evidence on oath at preparatory examinations.

31. ([1]) All preparatory examinations shall be taken upon oath, and every witness, before giving his evidence, shall make oath before the Magistrate by whom he is to be examined that in the whole of his deposition he will tell the truth, the whole truth, and nothing but the truth; and each witness shall be examined apart from the others. The depositions shall be taken down in writing in presence of the accused party, or if taken in his absence, shall be afterwards read over to him in the presence of the witnesses making the same, whom he shall be entitled to cross-examine; and such depositions shall be signed by the Magistrate, and by the witnesses; and in case of their incapacity or refusal, then the same shall be signed by two persons in whose presence the same were taken. And if any person, having been thereto summoned, shall refuse or neglect to attend, then the Magistrate shall issue a warrant to apprehend and bring him for examination; and if any witness shall obstinately refuse to give evidence, he may be committed to, and detained in prison until he shall comply. Every Magistrate before whom any preparatory examination is taken, may lawfully bind any witness, by recognizance, to appear to give evidence at the trial, upon being summoned thereto, and upon his refusing may commit and detain in prison the person so refusing until he shall comply.

Depositions to be in writing and in the presence of the accused.

Right of cross-examination.

Depositions to be signed by the Magistrate and witnesses.

Warrant for the apprehension of witnesses who refuse to attend.

Committal of witnesses who refuse to give evidence.

Recognizance to give evidence at the trial.

Prisoner to be carried before the Magistrate named in the warrant, or, if the warrant be general to the nearest Magistrate.

32. When any person, suspected of a crime or offence, is apprehended by virtue of the warrant hereinbefore described, the officer who executes the warrant shall, with all convenient speed, carry the prisoner before the Magistrate named in the warrant; or if the warrant is general, before the nearest Magistrate within the district in which the apprehension takes place.

Prisoner to be in his sound and sober senses.

33. When any person suspected of a crime or offence is brought before any Magistrate for examination, such Magistrate, before commencing the examination of the witnesses, shall satisfy himself that the prisoner is in his sound and sober senses.

Prisoner at the close of examination in support of the charge, to be cautioned that he is not obliged to make any statement criminating himself.

Statement how to be signed.

34. After the examination of the witnesses in support of the charge, in presence of the prisoner, or after the examinations have been read over to him, if taken in his absence, the Magistrate shall ask the said prisoner, what he will say in answer to the charge against him; and shall at the same time caution him that he is not obliged to make any statement, that may criminate himself, and that what he shall say may be used in evidence against him. The prisoner's statement shall then be taken down, in writing, in so far as the same is relevant to the charge; and the same, after being read over to him, shall be subscribed by him if he will

[1] As to production in evidence of depositions, see § 41, Ord 72, and § 5, Act 17 of 1874. As to taking recognizances from witnesses see § 20 Ord. 73.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 40 1828.

subscribe the same, and also by the Magistrate and by one person at the least who may be present thereat.(1)

Committal of prisoner for trial.

35. When there shall appear to any Magistrate sufficient grounds for putting any person, brought before him on trial for the crime or offence of which he is accused, the Magistrate shall grant a warrant to commit him to the gaol of the district, there to be detained, till brought to trial for the said crime or till liberated in due course of law; which warrant shall clearly express the crime or offence with which the prisoner is charged.(2)

Committal for further examination.

36. Where sufficient grounds do not appear for at once committing the prisoner for trial, or for discharging him, and there shall appear to the Magistrate probability that further evidence may be produced, the Magistrate may grant a warrant for committing him for further examination. Such re-committal for further examination may, if necessary, take place, oftener than once, upon sufficient cause appearing to the said Magistrate, which cause shall be expressed in the warrant of re-commitment; and every warrant of commitment for examination shall specify the time, when the prisoner is again to be brought before the Magistrate for examination.

Bail before conclusion of examination in the Magistrate's discretion.

37. Until the warrant for commitment for trial is made out, no prisoner, even although the offence of which he is accused is a bailable offence, can insist on being admitted to bail; but it is in the discretion of the Magistrate to admit a prisoner accused of a bailable offence to bail, before the preparatory examinations are concluded.

Access of friends and legal advisers by authority of Magistrate before committal. After committal, friends and legal advisers to have free access.

38. No prisoner, under commitment for examination shall be allowed the access of his friends or legal advisers, but by the authority of a Magistrate, and under such restrictions as to him may appear requisite; but after commitment for trial, the prisoner's friends and legal advisers shall have free access to him, subject to the regulations of the Magistrate, to whom the superintendence of the prison and the safe custody of the prisoners are entrusted.

39. (3) *A prisoner is not of right entitled to the assistance of a legal adviser while he is under examination.*

The officer conducting preparatory examination to make local inspection, and to cause *post mortem* and other examinations to be made.

40. It is the duty of the officer who conducts the preparatory examination to make any local inspections, which the particular circumstances of the case may render necessary; and in cases of homicide, and of serious injury to the person of any individual, to cause the dead body, or the person injured, to be examined by a regularly admitted medical man, if any such can be procured, and if not, then, by the best qualified person or persons that can be obtained, who shall draw up and subscribe a written statement of

[1] This statement is to be received in evidence upon production; § 4 Act 17 of 1874; Accused may give evidence, § 6 Act 13 of 1886.
[2] See § 21, Ord. 73, and § 5, Act 15 of 1864.
[3] Repealed by § 13, Act 17 of 1874.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 40—1828.

Field-cornets to perform like duties in their field-cornetcies.

the appearances and facts observed on such examination: Provided always, that in all cases the like duties, inspections, and examinations, shall and may be in like manner performed and conducted by any Field-cornet, each in his own particular Field-cornetcy.

All articles to be used in evidence on the trial, to be labelled for identification, and to be kept in safe custody.

41. The officer conducting the preparatory examination or the Field-cornet, as the case may be, shall cause all writings, and other articles, exhibited by the witnesses in the course thereof, and likely to be used in evidence on the prisoner's trial, to be inventoried and labelled, or otherwise marked in the presence of the person producing the same; so as they may be capable of being identified at the prisoner's trial, and shall cause the same to be kept in safe custody until the trial, and to be then produced.

Search warrants on information of reasonable grounds for suspecting the concealment of stolen goods.

42.(1) The Chief Justice of the Colony, and Judges of the Supreme Court, or the Judge of Police in Cape Town, the Resident Magistrates, and all Justices of the Peace, upon an information taken on oath being transmitted to them by the Attorney-General, the Superintendent of Police in Cape Town, or by any of the Clerks of the Peace, or upon the information of any person made on oath before such Judge, or Magistrate, that there is reason to suspect that stolen goods are concealed in any place within the jurisdiction of the Judge or Magistrate to whom the information is transmitted, or before whom the information is made, may by warrant under his hand cause every such place to be searched during the day time.

Preparatory examinations taken without the presence of the Clerk of the Peace to be at once transmitted to the Clerk of the Peace.

43. (2) Where a preparatory examination has been taken by a Magistrate, without the presence of the Clerk of the Peace of the district; or, if in Cape Town and the district thereof, without the presence of the Superintendent of Police or his deputy; such Magistrate shall forthwith deliver or transmit the examinations to the Clerk of the Peace of the district within which the same were taken, or to the Superintendent of Police, if taken within Cape Town or the district thereof, and the Superintendent of Police and his deputy, and every Clerk of the Peace, shall forthwith cause all preparatory examinations, whether taken by them, or received by them in manner above mentioned, to be transmitted to the Clerk of the Peace for the Cape district, at his office in Cape Town, in order to be by him submitted to the consideration of the Attorney-General. (3)

Powers of Attorney-General.

44. After considering the preparatory examinations submitted to him, the Attorney-General (3) may either order that the prisoner shall be forthwith liberated, (4) or committed for trial; (5) or that a further investigation shall take place; (3) or shall

[1] As to Seamen's property, see § 7, Act 2 of 1870. See § 33 Act 35, 1893.
[2] See § 12, Ord. 8 of 1852, and § 5 Ord 73.
[3] See Rule 376 and Act 23, 1884.
[4] Act 15, 1864, § 5.
[5] Act 17, 1874, § 11.

Digitised by the University of Pretoria, Library Services, 2016

forthwith take such measures, and give such directions for the trial of the prisoner in such competent Court of the district or place within which the offence was committed, as shall be most expedient for the ends of justice, and the due execution of the laws. Ord. 40—1828.

On Bail.

45. In every case where a person is committed for trial, he shall be entitled to demand a true copy of the warrant under the hand of the officer, bearer thereof, or the keeper of the gaol in which he is imprisoned, who shall be liable in the penalty of a sum not exceeding fifty pounds sterling, if he refuse to give it within six hours after it is demanded by the prisoner or his agent. True copy of warrant of commitment to be furnished to prisoner, under a penalty of £50.

46. Every prisoner committed for trial in respect of crimes not capital, is entitled, as soon as the warrant of commitment for trial is made out, to be admitted to bail. Bailable offences.

47. For this purpose it shall be competent for the prisoner, at the time of the commitment, to apply verbally to the Magistrate, or Judge granting the warrant of commitment, to be immediately liberated on bail. Verbal application at the time of commitment to be admitted to bail.

48. At any period, subsequent to the time of commitment, it shall be competent for the prisoner, to apply, by writing, to the Magistrate or Judge who granted the warrant of commitment, or to the Resident Magistrate within whose district he is imprisoned, or to the Supreme Court, or to any of the Judges thereof, to be admitted to bail. But when the commitment is on a warrant issued by the Supreme Court, or any of the Judges thereof, it shall only be competent to apply for bail to the said Supreme Court, or one of the Judges thereof. Every such written application for bail, shall be in form of a petition, and shall be accompanied by a copy of the warrant of commitment, or affidavit that a copy is denied. After commitment application to be made in writing, to the Magistrate who granted the warrant, or the Resident Magistrate of the district, or any Judge of the Supreme Court. In what cases only to the Supreme Court or a Judge thereof.

49. Every Magistrate to whom an application for bail is made, shall, within twenty-four hours after such application, determine whether the crime is bailable, and if so, modify the amount of the bail to be given, and failing to do so, shall be liable in the penalty of a sum not exceeding one hundred pounds sterling. Magistrate to determine whether the offence is bailable and modify the bail in 24 hours.

50. In determining whether the crime for which the prisoner has been committed is bailable or not, the Magistrate shall, in the ordinary case, take the charge against the prisoner, as he finds it on the face of the warrant of commitment. How Magistrate is to determine whether the offence is bailable.

51. (1) The Supreme Court has power to bail, in all cases whatever, whether capital or not [*where innocence may be fairly presumed, and in every case where the charge is not alleged with sufficient certainty.*] Power of Supreme Court to bail.

[1] Words in italics expunged by § 7, Act 17 of 1874. omitted

Digitised by the University of Pretoria, Library Services, 2016

Ord. 40—1828.

Refusal of bail from the uncertain issue of the act committed.

52. In case where a doubt may arise concerning the degree and quality of the crime, from the uncertain issue of the deed which has been done, as in the case of a wound, of which it cannot be foretold whether the sufferer shall die or recover, every Judge or Magistrate, to whom application for bail is made, may refuse to grant the same until all hazard of the life of the sufferer be at an end.

Excessive bail not to be required.

53. The amount of the bail to be taken in each case shall be at the discretion of the Judge, or Magistrate, to whom the application to be admitted to bail shall be made; provided that no person shall be required to give excessive bail.

Application of prisoner aggrieved by illegal committal to prison or refusal of bail, to the Supreme or Circuit Court, or any Judges of the Supreme Court.

54. In every case in which a prisoner considers himself aggrieved by the proceedings of the Judge of any inferior Court, or any Magistrate, in having illegally committed him to prison, or refused to admit him to bail, or in having required excessive bail, it shall be competent to such prisoner to apply to the Supreme Court, or to the Circuit Court of the district within which he is imprisoned: or in case neither of these Courts shall be then sitting, to the Chief Justice, or any of the Judges of the Supreme Court, who shall make such order thereon as to them, in the circumstances of the case, shall seem just.

Condition of recognizance, that the prisoner shall appear to answer to an indictment at any time within six months, and that he will accept service at some certain place by him elected.

55. The recognizance shall be taken by the Magistrate, either from the prisoner alone, or from the prisoner and one or more sureties, at the discretion of the Magistrate, according to the nature and circumstances of the case; and the condition of such recognizance shall be, that the prisoner shall appear and answer to any indictment that shall be presented against him, in any competent Court, for the crime or offence, wherewith he is charged, at any time within the space of six months from the date thereof; and that he will accept service of any such indictment, and summons thereon, at some certain place by him elected and therein expressed.

Gaol returns to be delivered by the keepers of gaol in Cape Town to the Court at the Criminal Sessions.

56 [1] The keepers of all the gaols within the district of Cape Town shall, under a penalty of five pounds sterling, at each session of the Supreme Court holden for the trial of criminal cases, deliver to the Court a list of all the persons confined within their respective gaols, which list shall specify the date of commitment of each prisoner, and the cause of his imprisonment, and the name of the committing Magistrate.

Returns of gaols in the country districts to be delivered to the Court at the Circuit Sessions.

57. The keepers of all the gaols within the district of each Circuit Court shall, under a penalty of five pounds sterling, at each session of each Circuit Court, deliver to the Court a list of all the persons confined within their respective gaols; which list shall specify the date of commitment of each prisoner, and the cause of his imprisonment, and the name of the committing Magistrate.

[1] As to district of Albany see Act 21 of 1864, § 35.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 40–1828.

Prisoners committed in Cape Town and Cape District to be brought to trial at the Criminal Sessions of the Supreme Court, provided 21 days have elapsed from commitment.

58. (1) In every session of the Supreme Court, holden for the trial of criminals, every prisoner who has been committed for trial within Cape Town and the Cape district, shall be brought to trial before the said Court, provided that twenty-one days have elapsed between his commitment for trial and such session, or else shall then be admitted to bail; unless it shall be made to appear to the satisfaction of the Court, that in consequence of the absence of material evidence, or some other sufficient cause, the trial cannot then be proceeded in without defeating the ends of justice; or unless a warrant shall have been obtained from the said Court for the transmission of the prisoner to the gaol of some circuit district, in order for trial before the Circuit Court, or any inferior Court within the same. And if such prisoner is not brought to trial at the second session of the Supreme Court holden after the date of his commitment for the trial of criminals, and has not previously been tried before any inferior Court, or before the Circuit Court, in order to his trial before which a warrant for his transmission to the gaol of the district of such Circuit Court had been obtained. provided such Circuit Court to which he was transmitted for trial shall in the meantime have been holden, he shall be discharged from his imprisonment for that offence, for which he had been committed for trial.

Such prisoners not brought to trial at the second Session of the Court after commitment, entitled to discharge from imprisonment.

Prisoners committed within circuit districts to be brought to trial at the first Circuit Session, provided 31 days have elapsed from commitment.

59. Every prisoner committed for trial within any of the districts of any Circuit Court, shall be brought to trial at the first session of the Circuit Court of that district, holden after the date of the commitment; provided, thirty-one days have elapsed between the date of the commitment and the time of holding such Court, or else shall be admitted to bail; unless it shall be made to appear to the satisfaction of the Court, that in consequence of the absence of a material evidence, or of some other sufficient cause, the trial cannot then be proceeded in without defeating the ends of justice; or unless before the close of such first session of such Circuit Court, a warrant shall have been obtained from some competent Court for his re-committal to gaol, in order to his trial elsewhere. And if such prisoner is not brought to trial at the second session of the Circuit Court of the district which shall be holden after the date of the commitment, and has not previously been tried before any other competent Court, to which he shall have been transmitted as aforesaid, he shall be discharged from his imprisonment for that offence, for which he has been committed for trial.

Such prisoners not brought to trial at second Session of the Circuit Court after commitment, entitled to discharge from imprisonment.

Prisoner may by consent be brought to trial at any time after commitment.

60. Any prisoner, by his own consent and with the consent of the public prosecutor, may be brought to trial either before the Supreme or the Circuit Courts at any time after his commitment; notwithstanding that the periods of twenty-one days and of thirty-one days respectively shall not have expired (2).

[1] Trial may be postponed after arraignment but not after jury is sworn; § 3, Act 17 of 1874.

[2] Repealed by Ordinance No. 73, § 23, but re-enacted by Act 7 of 1873.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 40—1828.

Prisoner transmitted by warrant of a competent Court for trial before another competent Court, to be tried at the next session of the last-mentioned court, or to be discharged.

61. When a warrant has been obtained from any competent Court for the transmission of any prisoner for trial before any other competent Court, such prisoner shall forthwith be transmitted to the gaol of the district of such last-mentioned Court, and shall be tried at the next session of the said Court holden for the trial of criminal cases, or otherwise shall be discharged from his imprisonment for that offence for which he was transmitted for trial: provided that such session shall not be holden within twenty-one days after the transmission of such prisoner to the gaol aforesaid.

Persons discharged from gaol by reason of non-trial not to be recommitted for the same offence.

62. No person who has been once discharged from gaol, in consequence of not being brought to trial within the period hereinbefore prescribed, shall be subject to be recommitted to gaol, either for examination or for trial, for the same offence.(1)

Persons admitted to bail and not duly brought to trial, not required to find further bail.

63. No person who has been admitted to bail, and who has not been duly brought to trial, shall be obliged to find further bail, or shall be subject to be committed to gaol, either for examination or trial, for the same offence, in respect of which he was formerly admitted to bail.

Discharge from imprisonment or expiration of recognizance, no bar to trial.

64. Neither any such discharge from imprisonment, nor the expiration of the recognizance, shall be any bar to any person being brought to trial in any competent Court for any offence for which he was formerly committed to gaol or admitted to bail.

Liberation of prisoners by Supreme and Circuit Courts.

65. The Supreme Court and Circuit Courts shall, at the close of each of their said sessions, discharge all such prisoners, as by law shall then be entitled to liberation.

Penalties in this Ordinance recoverable at the instance of public prosecutor or of aggrieved party, without prejudice to civil actions.

66. All the penalties hereinbefore provided, shall be recoverable before the Supreme Court or Circuit Court within the district of which such penalties shall be incurred, at the instance either of the public prosecutor or of the party aggrieved, without prejudice to the right of the prisoner to insist also for damages against the person, incurring such penalties, in a civil action before any competent Court.

Form of Process in the Supreme Court and Circuit Courts.

Form of procedure to be in accordance with rules of the Supreme Court.

67. The form and manner of proceeding in the trial of crimes to be observed in the Supreme Court, and Circuit Courts respectively, shall in pursuance of His Majesty's charter be according to the rules, orders, and regulations framed, constituted, and established by the said Supreme Court.

---

[1] But see § 64.

Digitised by the University of Pretoria, Library Services, 2016

No. 41. [Feb. 4, 1828.

Ordinance for determining the Qualification of Persons liable to serve on Grand and Petit Juries, and the mode for making out and returning Lists of the same.

[Repealed by Ordinance No. 84.]

No. 42. [Feb. 25, 1828.

Ordinance for regulating the Establishment of the Orphan Chamber, and for the better Administration of Estates held in trust by the members thereof.

[Repealed by Ordinance No. 104.]

No. 43.—Sd. Richard Bourke.] [Feb. 28, 1828.

Ordinance for empowering the Collector of Taxes in Cape Town, and the Civil Commissioners of the Country Districts, to collect the several Taxes and Duties now or hereafter to be imposed, and payable within the Colony. (1)

Preamble.

WHEREAS certain of the taxes now payable in this Colony have been heretofore collected and got in by the landdrosts, landdrosts and commissioned heemraden, deputy landdrosts, deputy landdrosts and commissioned heemraden, residents, and residents and commissioned heemraden, of the several districts, sub-districts, and residencies, respectively; and certain others of the said taxes have heretofore been collected by and got in by the late burgher senate: And whereas the offices of landdrost, deputy landdrost, and resident, have now ceased and determined, and the said burgher senate has been abolished, whereby the revenue can no longer be collected as heretofore, and it is therefore necessary to make some other provision in that behalf: Be it therefore enacted by His Honour the Lieutenant-Governor in Council that the several taxes and duties heretofore payable to, and levied by, the said burgher senate shall, from and after the passing of this Ordinance, be payable to, and levied by, the collector of taxes in Cape Town; and the several taxes and duties heretofore payable to, and levied by, the landdrosts, deputy landdrosts, and residents of the several districts, sub-districts, and residencies, and all taxes hereafter to be imposed shall, from the time aforesaid, be payable to, and levied by, the said collector and the Civil Commissioners respectively

Taxes heretofore levied by the Burgher Senate payable to the collector of taxes.

Taxes heretofore levied by landdrosts payable to civil commissioners.

[1] See Ord. 77—1830, Preamble and § 2, and Ord. 13, 1844.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 44—1828.

within their respective jurisdictions; and the said collector and Civil Commissioners shall have full right and power to collect all taxes and duties, and arrears thereof, and to sue for and recover the same by any action or suit to be brought by them in any competent Court.

Collector of taxes and civil commissioners to take oath.

2. And be it further enacted that the said collector of taxes and the said Civil Commissioners shall take the following oath before the Chief Justice, or any of the Judges of the Supreme Court, or any Resident Magistrate (who are hereby empowered and required to administer the same), before they act in pursuance of the provisions of this Ordinance:

I, A. B., do swear that I will act truly, faithfully, impartially, and honestly, according to the best of my skill and knowledge, in collecting the several taxes which I am empowered to do by an Ordinance marked No. 43, bearing date 28th day of February, 1828; and that I will act in all matters and things which shall be brought before me in collecting the said taxes, without favour or affection. So help me God!

No. 44.—Sd. Richard Bourke.] [March 19, 1828.

Ordinance for establishing and regulating the Court of the Judge of Police and Resident Magistrate for Cape Town and the District thereof, and the Cape District, and for other purposes.

[Partially repealed by Ordinance No. 4 of 1834.—Repealed by Act No. 20 of 1856,—'save and except in so far as, by the 17th section thereof, the messengers of the courts of Resident Magistrates are authorised to sell by auction goods taken in execution of the process of such courts.']

* * * * * * *

Messengers of the court of resident magistrate entitled to sell by public auction without auctioneer's licence goods taken by virtue of process of these courts.

17. And whereas it is expedient that goods taken in execution, and to be sold by virtue of any process of the said court, or of the court of the Resident Magistrate in any district of this Colony, should be sold by the messengers of the said court or their deputies alone, without an auctioneer licensed for that purpose: Be it therefore enacted that, from and after the passing of this Ordinance, it shall and may be lawful for the messengers of the said courts, and their deputies respectively, without any licence for that purpose, and they are hereby authorised, to sell by public auction, all such goods as shall or may be taken by virtue of any process

Digitised by the University of Pretoria, Library Services, 2016

of the said courts to them directed respectively, and to be sold in execution thereof; any Law or Ordinance to the contrary notwithstanding.

* * * * * * *

No. 45. [March 31, 1828.

Ordinance for abolishing the Rewards heretofore payable for the Destruction of noxious Animals.

[Obsolete.]

No. 46. [May 26, 1828.

Ordinance for the provisional regulation of Bankrupt and Insolvent Estates.

[Repealed by Ordinance No. 64.]

No. 47. [June 7, 1828.

Ordinance for regulating the Importation and Exportation of Grain and Flour in this Colony.

[Repealed by Order in Council, 22nd February, 1832.]

No. 48. [1828.

Ordinance for establishing an Executive Police in Cape Town and the District thereof, and for consolidating and amending the Laws and Regulations relating thereto.

[Repealed by Ordinance No. 2 of 1840, except in as far as the 47th section repeals former laws.]

No. 49. [July 14, 1828.

Ordinance for the Admission into the Colony, under certain restrictions, of Persons belonging to the Tribes beyond the Frontier th ɔof, and for regulating the manner of their Employment as free Labourers in the service of the Colonists.

[Repealed by Act No. 22, 1867.]

No. 50. [July 17, 1828.

Ordinance for improving the Condition of Hottentots and other Free Persons of Colour at the Cape of Good Hope, and for consolidating and amending the Laws affecting these Persons.

[Repealed by the Order in Council respecting Masters and Servants of the 27th August, 1842, chap I, § 1.]

Digitised by the University of Pretoria, Library Services, 2016

No. 51. [August 30, 1828.

Ordinance for removing the Restrictions upon the Exercise of the Trade and Calling of a Butcher in this Colony, and upon the Sale of Cattle in Cape Town and the District thereof, and for establishing a Cattle Market within the said Town and District.

[Repealed by Act No. 3, 1864, &c.]

No. 52. [Nov. 22, 1828.

Ordinance for authorising Field-cornets, in certain cases, to sell by Auction, Property under the Administration of the Orphan Chamber.

[Expired, *vide* Ordinance No. 103 and No. 104.]

No. 53. [Nov. 28, 1828.

Ordinance for continuing in force until the 31st day of March, 1829, the Ordinance No. 46, entitled "An Ordinance for the Provisional Regulation of Bankrupt and Insolvent Estates."

[Expired, *vide* Ordinance No. 64.]

No. 54. [Dec. 4, 1828.

Ordinance for altering and amending the Ordinance No. 30, entitled "An Ordinance for granting Licences for the Sale of Wines, Malt Liquors, and Spirituous Liquors."

[Amended by Ordinance No. 67, and repealed by Ordinance No. 93.]

No. 55. [Jan. 19, 1829.

Ordinance for regulating and defining the Mode of Collecting Taxes and Rates in Cape Town and the District thereof, and for instituting a general Survey of the same.

[Partially repealed by Ordinance No. 3 of 1839; and expired as to the rest.]

No. 56. [Feb. 9, 1829.

Ordinance for altering and amending the Ordinance No. 25, entitled "An Ordinance for the better regulation of the Post Office in the Colony of the Cape of Good Hope."

[Repealed by Ordinance No. 1 of 1840, except as far as former laws are repealed.]

Digitised by the University of Pretoria, Library Services, 2016

No. 57. [March 5, 1829.

Ordinance for repealing certain Taxes and Duties, and imposing certain others in lieu thereof.

[Virtually repealed by Order in Council of 10th August, 1840. Notice of discontinuance of the taxes in the Ordinance given by Government Advertisement, 17th December, 1840. Partially repealed, likewise, by Ordinance No. 3 of 1839, Ordinance No. 13 of 1844, and Act No. 14 of 1859.]

No. 58. [March 19, 1829.

Ordinance for continuing in force until the 31st day of May, 1829, the Ordinance No. 46, entitled "An Ordinance for the Provisional Regulation of Bankrupt and Insolvent Estates."

[Expired, *vide* Ordinance No. 64.]

No. 59.—Sd. G. Lowry Cole.] [April 2, 1829.

Ordinance for regulating the Payment of the Expenses of Witnesses attending to give Evidence on Criminal Trials and Preparatory Examinations. (1)

Preamble.

WHEREAS it is expedient and necessary that regulations should be made for the payment of the expenses of witnesses attending to give evidence in criminal cases: Be it therefore enacted by His Excellency the Governor in Council, that from and after the passing of this Ordinance, expenses shall be allowed to witnesses summoned at the instance of the Public Prosecutor, and who have duly appeared, in compliance with the summons, at any criminal trial, holden before the Supreme or Circuit Courts, or Resident Magistrates' Courts, or at any preparatory examination taken before a Resident Magistrate or Justice of the Peace, unless such Court shall, for sufficient cause, disallow the expenses of any witnesses.

Allowance of expenses to witness summoned on behalf of the prosecution.

2. And be it further enacted that expenses shall also be allowed to necessary witnesses summoned at the instance of the prisoner or party accused, and appearing as hereinbefore mentioned, upon a certificate of the Magistrate who presides, or of the Registrar of the Court, under the direction of the Judge, that the prisoner or accused party is unable, from poverty, to pay such expenses; or that, by reason of his full acquittal, such expenses ought to be allowed; and that the witnesses were or might have been necessary for the defence.

Allowance of expenses to witnesses summoned at the instance of the accused, on the inability of the latter to pay them:—or in case of full acquittal of the accused.

(1) Amended by Ordinance 69. See also Act 7, 1857.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 59—1829.

Rates of allowance for witnesses' expenses.

3. And be it further enacted that the expenses to be allowed to witnesses, for subsistence and travelling to and from the Court, or other place to which they shall be summoned, and during the necessary attendance, these shall in no case exceed four shillings and sixpence per diem of six hours if the witnesses have travelled in a carriage or on horseback, and one shilling and sixpence per diem of six hours if on foot; and in cases where a witness resides within five miles of the place to which he is summoned, the expenses to be allowed shall not exceed one shilling and sixpence per diem; and in cases where a witness shall reside within one mile of such place where any preparatory examination is taken, no expenses shall be allowed for attending such examination.

Bills of expenses on criminal trials, how made out and certified.

4. And be it further enacted, that the Clerk of the Peace shall, on all criminal trials at the instance of the Public Prosecutor, make out bills of expenses for the witnesses in each case, one of which bills shall be for the witnesses summoned and appearing on the part of the Public Prosecutor, and the other for the witnesses summoned and appearing for the accused party, in cases where such certificates have been obtained as aforesaid, each of which bills shall be made out in duplicate, and the Clerk of the Peace shall certify that the distance and time charged in the said bills are correct, and submit them to the Magistrate or Registrar of the Court before which the trial has been holden, who shall, unless the Court or Magistrate disallow to any witness his expenses on account of improper conduct, insert the rate of allowances (in no case exceeding the rate hereinbefore set forth), and the sum due to each witness, and shall certify the amount of each several bill of expenses so allowed. [1]

Bills of expenses in preparatory examinations, how made out and certified.

5. [2] And be it further enacted that in cases of preparatory examinations, the Clerk of the Peace shall make out and certify similar bills of expenses; and in his absence, the presiding Magistrate or Justice of the Peace shall make out, certify, and allow the same, and make out and sign cheques on the Civil Commissioner for the amount allowed to each witness.

Payment by cheque on the civil commissioner.

6. And be it further enacted that the Clerk of the Peace, or in his absence the presiding Magistrate or Justice of the Peace, shall, on a bill being so prepared, certified, and allowed, and on the witness signing on the said bill a receipt for the sum due to him for his expenses, make out, sign, and deliver to each witness a cheque on the Civil Commissioner of the district within which the trial or examination took place for the amount due to him; and shall further transmit every bill, so signed forthwith, to the said Civil Commissioner, who shall make payment of the amount of every cheque so drawn on him, to the holder thereof, if presented for payment within three calendar months after its date, and not

[1] See § 3, Ord. 26 of 1847. See also Government Notice No. 670, 22 July, 1885.
[2] See also Ord. 26 of 1847, § 4.

Digitised by the University of Pretoria, Library Services, 2016

afterwards. And if any Civil Commissioner shall not pay the amount of such cheque when duly presented to him, the party entitled to the same may sue for the recovery thereof in any competent Court. (1) Ord. 62—1829.

No. 60. [April 30, 1829.

Ordinance for preventing the Mischiefs arising from the printing and publishing Newspapers, and Papers of a like nature, by Persons not known, and for regulating the printing and publication of such Papers in other respects; and also for restraining the Abuses arising from the publication of blasphemous and seditious Libels.

[Repealed by Act No. 8 of 1859, except in as far as a former proclamation is repealed.]

No. 61. [June 13, 1829.

Ordinance for the provisional Regulation of Bankrupt and Insolvent Estates.

[Repealed by Ordinance No. 64.]

No. 62.—Sd. G. Lowry Cole.] [June 20, 1829.

Ordinance for declaring the Age of Twenty-one Years to be the Legal Age of Majority in this Colony.

WHEREAS doubts have arisen as to the legal age of majority of certain of His Majesty's subjects residing or being in this Colony; and whereas it is expedient that such doubts should be removed, and that the same period of majority should be fixed for all persons whatever: Be it therefore enacted by His Excellency the Governor in Council, that from and after the passing of this Ordinance all persons when they shall attain or who have already attained the full age of twenty-one years shall be deemed to have attained the legal age of majority. Preamble. Twenty-one years the legal age of majority.

2. Provided always, and be it further enacted, that nothing herein contained shall extend or be construed to alter the term at which in any act, deed, will, contract or agreement passed, executed, or entered into prior to the passing of this Ordinance any beneficial interest in favour of any person is provided or declared to commence or determine. Deeds, wills, contracts, &c., of prior date not affected.

3. And be it further enacted that nothing herein contained shall extend or be construed to prevent any testator from bequeathing Law of inheritance not affected.

[1] Payment of witnesses' expenses is now made by Treasury Drafts drawn in accordance with regulations framed under Act 30 of 1875.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 62 - 1829.

his property in any such manner as by the laws of this Colony he might have done before the passing of this Ordinance.

Nor attainment of majority by operation of law.

4. And be it further enacted that nothing herein contained shall extend or be construed to prevent any person, under the age of twenty-one years from attaining his majority at an earlier period by operation of law.

No. 63. [July 29, 1829.

Ordinance for establishing Boards for the Registration of Marriages at the Paarl and Port Elizabeth.

[Repealed partially by Ordinance No. 89, and wholly by Act No. 20 of 1856.]

No. 64. [Aug. 6, 1829.

Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony.

[Repealed by Ordinance No. 6, 1843.]

No. 65. [Aug. 6, 1829.

Ordinance for establishing certain Regulations for the Protection of the Public Health in cases of arrival of Vessels from Foreign Countries in the Ports of this Colony, with malignant diseases on board of an infectious or contagious nature.

[Repealed by Act No. 16 of 1857.]

No. 66. [Sept. 1, 1829.

Ordinance for extending the Jurisdiction of Resident Magistrates in certain cases of Ejectment.

[Repealed by Act No. 20 of 1856.]

No. 67. [Dec. 10, 1829.

Ordinance for altering and amending the Laws relative to the granting of Licences for the Sale of Wines, Malt Liquors, and Spirituous Liquors.

[Repealed by Ordinance No. 93.]

Digitised by the University of Pretoria, Library Services, 2016

No. 68.—Sd. G. Lowry Cole.] [January 13, 1830.

Ordinance for the Relief of His Majesty's Roman Catholic Subjects in this Colony. [1]

Preamble.

WHEREAS an Act was passed in the tenth (2) year of his present Majesty's Reign, entituled an Act for the relief of His Majesty's Roman Catholic subjects; and whereas it is expedient that such enactments and provisions of the said Act as are or may be applicable to this Colony shall be extended thereto, so altered and modified as to meet the circumstances of the case: Be it therefore enacted by His Excellency the Governor in Council, that after the commencement of this Ordinance it shall and may be lawful for any of His Majesty's subjects professing the Roman Catholic religion to hold, exercise, and enjoy all civil and military offices, and places of trust or profit, under His Majesty, his heirs or successors; and to exercise any other franchise or civil right, upon taking and subscribing, at the times and in the manner hereinafter mentioned, the following oath (3), instead of the oaths of allegiance, supremacy, and abjuration, and instead of such other oath or oaths as are or may be now by law required to be taken for the purpose aforesaid by any of His Majesty's subjects professing the Roman Catholic religion.

Roman Catholic subjects entitled to hold civil and military offices and exercise all civil rights on taking and subscribing oath.

2. And it is further enacted that wherever in the oath hereby appointed and set forth, the name of his present Majesty is expressed or referred to, the name of the Sovereign of the Realm of England for the time being, by virtue of the Act for the further limitation of the Crown and better securing the rights and liberties of the subject, shall be substituted from time to time, with proper words of reference thereto.

Name of sovereign of England for the time being, by virtue of the act of limitation to be substituted on oath.

3—14 repealed by Act 11 of 1868.

No. 69—Sd. G. Lowry Cole.] [January 13, 1830.

Ordinance for altering and amending so much of the Ordinance No. 59 as regards the Payment of Expenses of Witnesses attending to give Evidence on Criminal Trials and Preparatory Examinations held in Cape Town.

Preamble.

WHEREAS it is expedient to provide for the more ready and regular payment of witnesses attending to give evidence on criminal trials held before the Supreme Court, and on criminal trials or preparatory examinations held before the Court of the Resident Magistrate for Cape Town and the district thereof, and the Cape district: Be it therefore enacted by His Excellency the Governor in Council, that from and after the passing of this Ordinance all

[1] See 34 and 35, Vict., C. 48, and Act 6, 1869.
[2] 10 Geo. IV., C. 7.
[3] But see Act 18 of 1891 § 5, which substitutes another form of oath.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 72—1830.

Cheques for witnesses' expenses in criminal trials and preparatory examinations in Cape Town and the Cape district to be addressed to the Treasurer-General, and to be paid by him.

cheques to be issued under the provisions of the Ordinance No. 59, for payment of witnesses attending either of the aforesaid Courts, shall be addressed to the Treasurer and Accountant-General, and shall be presented for payment at the Treasury in Cape Town within seven days after the date thereof, and not afterwards; anything contained in the 5th and 6th sections of the said Ordinance No. 59 to the contrary notwithstanding; and if the Treasurer and Accountant-General shall not pay the amount of such cheque when duly presented to him the party entitled to the same may sue for the recovery thereof in any competent Court. (1)

No. 70. [February 3, 1830.

Ordinance for authorising the Philanthropic Society to purchase Slaves for the purpose of Manumission, and to apprentice the same for any term not exceeding the period at which they shall attain the age of eighteen years.

[Virtually repealed by the Act 3 and 4 William 4th, C. 73.]

No. 71. [February 3, 1830.

Ordinance for abolishing the Office of Trustee of the Public Library in Cape Town, and for vesting the Management thereof in a Committee of the Subscribers to that Institution.

[Repealed by Ordinance No. 8, 1836.]

No. 72.—Sd. G. Lowry Cole.] [March 1, 1830.

Ordinance for altering, amending, and declaring in certain respects, the Law of Evidence within this Colony. (2)

Preamble.

WHEREAS it is expedient to alter, amend, and declare, in certain respects, the law of evidence within this Colony: Be it therefore enacted and declared by His Excellency the Governor in Council,

No person to be excluded from giving evidence, except on a legal objection held valid.

that from and after the passing of this Ordinance no person shall be excluded from being sworn as a witness, or from giving evidence in any Court within this Colony, except in repect of a legal objection to his competency made, and appearing, to such Court to be valid.

The court to decide on admissibility of evidence.

2. And be it further enacted and declared that it shall be competent for the Court alone in which any case may be depending to decide upon all questions concerning the competency of any

The jury to determine effect of evidence admitted.

witness or the admissibility of any evidence; and that in all cases which shall and may lawfully be tried by a jury it shall be competent for such jury alone to determine as to the effect of any evidence admitted by the Court, and as to the degree of credit to be attached thereto.

---

[1] See note to § 6, Ord. 59.

[2] See Ordinance 14—1846, Acts 4—1861, 3—1864 § 12, 17—1874, §§ 4, 5 and 8, 21—1877, 13—1886, §§ 6, 7 and 8, 18—1891. Under various Statutes certified extracts from or copies of documents, &c., are admissible. See Alphabetical Index under "Evidence."

Digitised by the University of Pretoria, Library Services, 2016

Ord. 72—1830.

3. And be it further enacted and declared, that no person appearing, or proved to be afflicted, with idiocy, lunacy, or insanity, or labouring under any imbecility of mind arising from intoxication or otherwise whereby he is deprived of the proper use of reason, shall in any case be competent to give evidence while under the influence of any such malady or disability.

Incompetency from insanity and intoxication.

4. And be it further enacted and declared, that no child shall in any case be excluded from being sworn as a witness, or be deemed incompetent to give evidence, in respect of age, provided such child understands the nature and recognizes the religious obligation of an oath: And be it further enacted and declared, that it shall not be competent to examine any child as a witness except upon oath; and that when any child cannot be sworn in consequence of want of sufficient understanding, it shall not in any case be competent to admit in evidence any account or statement which such child may have given or made to any other person as the evidence of such child on the subject-matter of such account or statement. (1)

Children who understand the obligation of an oath competent.

Children to be examined on oath.

5. And be it further enacted and declared, that it shall not, in any case, be competent to examine any person as a witness except upon oath, or to administer an oath to any person as a witness who does not understand the nature and recognize the religious obligation of an oath: (1) Provided, always, that no person who understands the nature and recognizes the religious obligation of an oath shall in any case be excluded from being sworn as a witness on account of the religious tenets professed by such person. (2)

Witnesses to be examined on oath.

6. And be it further enacted and declared that in all cases the oath to be administered to any person as a witness shall be administered in the form which shall most clearly convey to him the meaning of the oath and which he shall consider to be binding on his conscience.

Form of oath.

7. [Repealed by Act No. 18—1891.]

8. [Superseded by § 2 Ord. 14 of 1846.]

9. And be it further enacted and declared, that no person shall in any criminal case, be incompetent to give evidence, in respect of having been an accomplice, either as principal or accessory, in the commission of any crime or offence charged in the indictment, information, or complaint under trial in such case.

Competency of accomplices.

10. And be it further enacted and declared that where any person who has been an accomplice, either as principal or accessory, in the commission of any crime or offence charged in the indictment, information, or complaint under trial, shall in any case be produced as a witness by and on the part of the prosecution, shall submit to be sworn as a witness, and shall fully answer

Freedom from liability to prosecution of accomplices giving evidence.

---

[1] Amended by § 12, Act 4 of 1861.

[2] § 32 of the Charter of Justice provides that in all criminal cases the witnesses shall deliver their evidence *viva voce* and in open Court.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 72—1880.

to the satisfaction of the Court all such lawful questions as shall be put to him while under examination, such person shall thereby be absolutely freed and discharged from all liability to prosecution for any such crime or offence, either at the instance of the public prosecutor or of any private party where he has been produced as a witness by and on the part of the public prosecutor, or where he has been produced as a witness by and on the part of any private prosecutor, from all prosecution for such crime or offence at the instance of such private prosecutor. And it shall and may be lawful for the said Court, thereupon to cause such discharge to be duly entered on the record of the proceedings in such trial: Provided always, that no such accomplice, produced as a witness by and on the part of any private prosecutor, shall in any case be bound, or legally compellable, to answer any question whereby he may criminate himself in respect of any crime or offence charged in the indictment, information, or complaint under trial, unless there shall be produced to him, and put on record where the case is tried in the Supreme or any Circuit Court, a writing under the hand of the Attorney-General, and in any inferior Court a writing under the hand of the officer who by law is entitled to prosecute at the public instance in such Court, discharging such accomplice from all liability to prosecution at the instance of the public prosecutor for such crime or offence.

Accomplice entitled to require from prosecutor a writing under his hand discharging such accomplice from liability to prosecution.

Evidence of accomplice not to be used against him, if he should thereafter be tried for the offence.

11. And be it further enacted and declared, that where any such accomplice as aforesaid in any crime or offence charged in any indictment, information, or complaint, shall have been produced as a witness, by and on the part of the public prosecutor or of any private prosecutor (by whom there shall have been obtained from the Attorney-General, or other officer as aforesaid, a written discharge of such accomplice from liability to prosecution as aforesaid), and shall have given evidence at the trial of such indictment, information, or complaint, it shall not be competent to give in evidence against such accomplice, if he shall thereafter be tried for such crime or offence, any part of the testimony which shall have been so given by him at the said trial as aforesaid: Provided always, that nothing herein contained shall extend or be construed to free or exempt any such accomplice who shall be guilty of prevarication, or who shall be convicted of having committed wilful and corrupt perjury, while under examination as a witness in any such trial as aforesaid, from any pains, penalties, or forfeitures to which persons guilty of prevarication, or convicted of wilful and corrupt prejury, are or shall be liable by any Law or Ordinance of this Colony; or to render incompetent or inadmissible any evidence which would otherwise be competent and admissible in the trial of such accomplice on a charge of having been guilty of wilful and corrupt prejury on his examination as a witness in any such trial as aforesaid.

But accomplice is notwithstanding liable to penalties of prevarication and perjury,—and evidence on charge of perjury not affected.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 72—1880.

Conviction on single evidence of accomplice provided the crime be proved *aliunde*.

12. And be it further enacted and declared, that it shall and may be lawful and competent for any Court or jury in any case which shall and may be lawfully tried by such Court or jury respectively, to convict any person who shall be so tried before any such Court or jury, of any crime or offence charged in the indictment, information, or complaint under trial on the single evidence of any such accomplice as aforesaid: Provided always, that such crime or offence shall be competent evidence other than the single and unconfirmed evidence of such accomplice be proved to the satisfaction of such Court or jury respectively to have been actually committed.

Competency notwithstanding consanguinity or affinity.

13. And be it further enacted and declared, that no person shall in any case be incompetent to give evidence in respect of any relation, either by consanguinity or affinity subsisting between such person and the person for or against whom he shall be produced to give evidence.

Incompetency of husband for or against wife, and of wife for or against husband.

14. (1) And be it further enacted and declared, that no person shall in any case be competent or admitted to give evidence for or against the husband or wife of such person, or to give evidence in any case in which the husband or wife of such person shall be tried for any crime or offence together with any other person.

Except in offences by either against the other's person.

15. Provided always, and be it further enacted and declared, that no husband or wife shall by reason of their marriage be incompetent to give evidence in any case in which either of them shall be prosecuted for any offence committed against the person of the other.

Competency in prosecution for bigamy, after proof of first marriage, of person married to prisoner, during its subsistence.

16. And be it further enacted and declared, that in all cases of prosecution for bigamy, no person, after proof of the first marriage of the person so prosecuted, shall be incompetent to give evidence by reason of any marriage contracted between the witness and the said party so prosecuted during the continuance of the said first marriage.

No witness compellable to answer questions which the witness's husband or wife might decline.

17. And be it further enacted and declared, that no person shall in any case be bound, or be legally compellable, to answer any question, or to give any evidence, which question or evidence the husband or wife of such person, if under examination as a witness in such case, might lawfully refuse, and could not legally be compelled to answer or give.

A witness incompetent where the husband or wife of such witness would be incompetent.

18. And be it further enacted and declared, that in every case in which any person shall, by virtue of any of the provisions of this Ordinance, be incompetent to give evidence by reason of the interest which such person may have in the event of such case, the husband or wife of such person shall in like manner be incompetent to give evidence in such case.

As to §§ 14-19, see §§ 2, 3 and 4 of Act 4 of 1861, and §§ 6 and 7, Act 13 of 1886.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 72—1830.

Husband and wife incompetent after divorce as to matters occurring during the subsistence of the marriage, as to which they would have been incompetent during the marriage.

19. And be it further enacted and declared, that no husband or wife, after the dissolution of their marriage for adultery, or any other lawful cause, shall in any case be competent, or admitted, or bound, or legally compellable to give evidence, as to any matter or thing which occurred during the subsistence of their said marriage, and as to which such husband or wife would not have been competent, or admitted, or bound, or legally compellable to give evidence, if their said marriage had still continued to subsist at the time when such case is tried.

20. Repealed by § 3 Ord. 14 of 1846.

Competency of informers.

21. Provided always, and be it further enacted and declared, that no person shall be incompetent to give evidence in any case by reason that by virtue of any Law or Ordinance now in force or which shall hereafter be made, or of any proclamation which has been or shall be lawfully made by any competent authority within this Colony, or any other part of the British dominions; or of any offer or promise made by any private party, such person shall or may in consequence of any information which he may have given respecting such case, or of any conviction which may be obtained in such case, acquire right or become entitled to the whole or any part of any penalty, forfeiture, or reward; or to any indemnity against, or discharge or privilege, from prosecution for any crime, offence, or act, committed or done by such person.

22. Superseded by § 3, Ord. 14 of 1846 and § 2, Act 4, of 1861.

23. Superseded by § 3, Ord. 14 of 1846 and § 2, Act 4, of 1861.

24. Superseded by § 5, Ord. 14, 1846 and § 2, Act 4, 1861.

Privilege of professional advisers.

25. And be it further enacted and declared, that no advocate, barrister, attorney, solicitor, or proctor duly admitted to practise in any Court within this Colony, or elsewhere, shall in any case be competent or legally compellable to give evidence against any person by whom he has been professionally employed or consulted, without the consent of such person, as to any fact, matter, or thing as to which such advocate, barrister, attorney, solicitor, or proctor by reason of such employment or consultation, and without such consent, would not be competent or legally compellable to give evidence in any similar case depending in any of His Majesty's Courts of Record at Westminster: Provided always, that no such advocate, barrister, attorney, solicitor, or proctor, shall in any case by reason of any such employment or consultation be incompetent or not legally compellable to give evidence as to any fact, matter, or thing relative to or connected with the commission of any crime or offence for which the person by whom such advocate, barrister, attorney, solicitor, or proctor has been so employed or consulted is in such case prosecuted; and which fact, matter, or thing has come to the knowledge of such advocate, barrister, attorney, solicitor, or proctor before he shall have been professionally employed or

Digitised by the University of Pretoria, Library Services, 2016

consulted for or with reference to the defence of such person against such prosecution. Ord. 72—1830.

26. Superseded by § 4, Ord. 14 of 1846 and § 2, Act 4 of 1861.

27. (1) Provided always, and be it further enacted and declared, that nothing herein contained shall extend or be construed to take away the right of either party to any suit, of referring the matter in dispute therein to the oath of the other party to the said suit, or to take away from any Court within this Colony the power of taking or requiring from either party the supplemental oath of such party when the same may by law be offered, taken, or required; or to take away the power of any Court to examine on oath the parties to any suit, or either of them, in any case where such power has or may hereafter be given to such Court by any Law or Ordinance. Reference to oath of opposite party. Supplemental oath. Judicial imposition of oath.

28. And be it further enacted and declared, that any confession of the commission of any crime or offence, which shall be proved by competent evidence to have been made by any person, accused of such crime or offence, whether before or after his apprehension, whether on a judicial examination or after commitment, and whether reduced into writing or not, shall in every case be admissible evidence against such person; Provided always, that such confession shall be proved to have been freely and voluntarily made by such person, in his sound and sober senses, and without having been unduly influenced thereby; and provided also, that when such confession shall have been made on a judicial examination before any Magistrate on any criminal charge, such person shall previously, according to law, have been cautioned by the said Magistrate that he is not obliged, in answer to the charge against him, to make any statement which may criminate himself, and that what he shall then say may be used in evidence against him: (2) Provided always, and be it further enacted and declared, that no confession made on oath, and that no deposition made by any person, on any judicial examination, under the provisions of the sixty-first or sixty-fourth sections of the Ordinance No. 64 (3) shall be admissible evidence in any prosecution of such person, for any crime or offence other than perjury committed by him on such examination. Admissibility of confessions by accused, if freely and voluntarily made without undue influence; and, if judicial, after due caution.

29. And be it further enacted and declared, that it shall be lawful and competent for any Court or jury by which any person prosecuted for any crime or offence, shall and may lawfully be tried, respectively, to convict such person of any crime or offence charged in the indictment, information, or complaint under trial, in respect and by reason of any such confession of the commission of such crime or offence, which shall be proved to the satisfaction Conviction on confession,—if the crime have been proved *aliunde*.

[1] See § 6, Act 4 of 1861.
[2] See § 34, Ord. 40, and § 4, Act 17 of 1874.
[3] For 61st and 64th sections of Ord. 64 read 62nd and 65th sections of Ord. 6 of 1843. See § 134, Ord. 6 of 1843.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 72—1830.

of such Court or jury, respectively, to have been made as aforesaid, although not confirmed by any other evidence: Provided always, that such crime or offence shall by competent evidence other than the single and unconfirmed evidence of such confession be proved to the satisfaction of such Court or jury, respectively, to have been actually committed.

Admissibility of facts discovered by means of inadmissible confession.

30. And be it further enacted and declared, that it shall in every case be competent to admit evidence of any fact, otherwise admissible in evidence, notwithstanding that such fact has been discovered and come to the knowledge of the witness who shall give evidence respecting it only in consequence of information given by the person under trial, in any confession or deposition which by law shall not be admissible in evidence against him in such trial.

Confession not admissible against other persons.

31. And be it further enacted and declared, that no confession which may be made by any person shall in any case be admissible as evidence against any other person.

32. And be it further enacted and declared, that it shall and may be lawful for the Court by which any civil suit shall be tried to find on any issue of fact, and in respect of such finding to give judgment for or against any party to such suit, on the evidence of any single, competent, and credible witness.

Sufficiency of one witness in criminal cases,

33. And be it further enacted and declared, that it shall be competent for the Court or jury, by which any person prosecuted for any crime or offence, shall and may lawfully be tried, except in so far as has been or shall be herein excepted, enacted, and declared, respectively, to convict such person of any crime or offence charged in the indictment, information, or complaint under trial on the single evidence of any competent and credible witness: Provided always that it shall not be competent for any such Court or jury to convict any person of the crime of perjury on the evidence of any one witness, except in addition to and independent of the testimony of such witness some other competent and credible evidence as to the guilt of such person shall be given to such Court or jury.

Except in prosecutions for perjury.

Inadmissibility of irrelevant evidence.

34. And be it further enacted and declared that no evidence as to any fact, matter, or thing shall in any case be admissible which is irrelevant or immaterial and cannot conduce to prove or to disprove any point or fact in issue in such case.

Evidence of character when admissible.

35. And be it further enacted and declared, that no evidence as to the character of any of the parties to any case, civil or criminal, or as to the character of any woman on whose person any rape or assault with intent to commit a rape, shall in any prosecution for rape or for assault with intent to commit a rape, be charged to have been committed, shall in any such case be admissible or inadmissible which would be inadmissible or admissible in any similar

Digitised by the University of Pretoria, Library Services, 2016

case depending in any of His Majesty's Courts of Record at Westminster. Ord. 72 1886

36. And be it further enacted and declared, that it shall not be necessary for any party in any case to give evidence to prove, or competent for any such party to give evidence to disprove, any fact or point admitted on the record of such case. Admission of facts or points in issue on the record.

37. And be it further enacted and declared, that every party on whom in any case it shall be incumbent to prove any fact, matter, or thing, shall be bound to give the best evidence of which from its nature such fact, matter, or thing shall be capable; and that no evidence as to any such fact, matter, or thing, shall be admissible in any case in which it was in the power of the party who proposes to give such evidence to produce, or cause to be produced, better evidence as to such fact, matter, or thing, except by consent of the adverse party to the suit, or when such adverse party shall by law be precluded from disputing any such fact, matter, or thing, by reason of any admission proved to have been made by such party. Necessity of best evidence of fact to be proved: unless waived by consent or admission of opposite party.

38. And be it further enacted and declared, that any evidence which would be admissible, and if credible, would be deemed in any case depending in any of His Majesty's Courts of Record at Westminster to be in law sufficient proof of the appointment of any person to any public office, or of the authority of any person to act as a public officer, shall be admissible, and if credible shall be deemed to be in law sufficient proof of such appointment or authority. Proof of appointment to public office.

39. And be it further enacted and declared, that nothing herein contained shall extend, or be construed to affect, alter, or repeal any Law or Ordinance now in force within this Colony, respecting the proof of any record, act, deed, instrument, or writing, or the effect thereof, or of any copy or extract thereof, as evidence. (1) Proof of records and instruments in writing.

40. And be it further enacted and declared, that nothing herein contained shall extend, or be construed to prevent the Supreme Court, or any Circuit Court, from allowing the deposition of any witness who, by virtue of any rule or order of such Court, has been examined *de bene esse*, to be admitted as evidence at the trial of any civil case in which such rule or order shall have been made. Examination of witnesses *de bene esse*.

41. And be it further enacted and declared, that the deposition of any witness taken upon oath, before any Magistrate, in the manner directed and required by the thirty-first section of the Ordinance No. 40, in the presence of any person who has been brought before such Magistrate, on a charge of having committed any crime or offence, shall be admissible in evidence on the trial of such person for such crime or offence; provided it shall be proved on oath, to the satisfaction of the Court, that the informant is dead (2); or that he has been kept away from the trial, by the Admissibility, in criminal cases, of deposition at preparatory examination of witness since deceased, or kept away by the contrivance of the prisoner.

[1] § 15, Act 4, 1861.
[2] Or is too ill to travel; See Act 17 of 1874, § 5.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 72—1830.

means and contrivance of the prisoner, and that the deposition offered in evidence is the same which was sworn before the Magistrate without any alteration.

Admissibility, in civil cases, of testimony of absent or deceased witness.

42. And be it further enacted and declared, that the testimony of a deceased or absent witness, who has been examined on oath, on the trial of any former civil action, between the same parties shall be admissible in every case in which, and may be proved and given in evidence in the same manner in which, the testimony of such deceased or absent witness would be admissible, and might be proved and given in evidence in any similar case depending in any of His Majesty's Courts of Record at Westminster.

Admissibility of dying declarations.

43. And be it further enacted and declared, that the declaration made by any deceased person under the apprehension of death shall be admissible in evidence in every case, and shall not be admissible in evidence in any case, in which such declaration would be admissible or inadmissible in any similar case depending in any of His Majesty's Courts of Record at Westminster.

Hear-say evidence.

44. And be it further enacted and declared, that no evidence which is of the nature of hear-say evidence shall be admissible in any case in which such evidence would be inadmissible in any similar case depending in any of His Majesty's Courts of Record at Westminster

Witness excused from answering questions, the answers to which would expose him to penalties, or degrade his character.

45. And be it further enacted and declared, that every witness may refuse, and shall not be legally compellable, to answer any question, which such witness, if he were under examination in any similar case depending in any of His Majesty's Courts of Record at Westminster, might refuse and would not be legally compellable to answer by reason that the answer of such witness might have a tendency to expose him to any pains, penalty, punishment, or forfeiture, or to a criminal charge, or to degrade the character of such witness. (1)

Witness not excused from answering question by reason that the answer would establish a civil claim against

46. And be it further enacted and declared, that a witness cannot by law refuse to answer a question relevant to the matter at issue, the answering of which has no tendency to accuse himself, or to expose him to penalty or forfeiture of any nature whatsoever, by reason only or on the sole ground that the answering of such question may establish, or tend to establish, that he owes a debt, or is otherwise subject to a civil suit, either at the instance of His Majesty, or of any other person or persons.

Privilege from disclosure of facts on the ground of public policy, or from regard to the public interest.

47. And be it further enacted and declared, that no witness shall in any case be legally compellable or permitted to give evidence as to any fact, matter, or thing, or as to any communication made to or by such witness, as to which, if the case were depending in any of His Majesty's Courts of Record at Westminster, such witness would not be legally compellable or permitted to give evidence, by reason that such fact, matter, or thing,

[1] See § 7, Act 13 of 1886.

Digitised by the University of Pretoria, Library Services, 2016

or communication, on a principle of public policy, and from regard to public interest, ought not to be disclosed, and is privileged from disclosure.

Impeachment and support of witness's credibility.

48. And be it further enacted and declared, that it shall in every case be competent for any party to impeach or support the credibility of any witness produced against or for such party, in any manner and by any evidence in and by which, if the case were depending in any of His Majesty's Courts of Record at Westminster the credibility of such witness might be impeached or supported by such person, and in no other manner and by no other evidence whatever.

Evidence in cases of treason and misprision of treason.

49. And be it further enacted and declared, that in every case in which any person shall be prosecuted within this Colony for the crime of treason, or misprision of treason, no witness shall be competent, nor any evidence admissible or sufficient to convict the person so prosecuted, who would not be competent or which would not be admissible or sufficient to convict such person, if prosecuted for any such crime in any of His Majesty's Courts of Record at Westminster; and that in every such case every witness shall be competent, and any evidence shall be admissible and sufficient to convict any person so prosecuted as aforesaid, who would be competent, or which would be admissible and sufficient to convict, if such person were prosecuted as aforesaid in any of His Majesty's Courts of Record at Westminster.

Repeal of former laws.

50. And be it further enacted and declared, that from and after the passing of this Ordinance, every law, ordinance, custom, usage, and practice heretofore in force within this Colony by reason whereof any witness herein enacted and declared to be competent, and any evidence herein enacted and declared to be admissible or sufficient, was heretofore deemed to be incompetent, inadmissible, or insufficient, or by reason of which any witness herein enacted and declared to be incompetent, and any evidence herein enacted and declared to be inadmissible or insufficient, was heretofore deemed competent, admissible, or sufficient, shall be, and the same are hereby repealed, and declared to be of no force or effect: Provided always, that nothing herein contained shall extend, or be construed to affect, alter or repeal any of the provisions and enactments of the Ordinances Nos. 19, 21, 32, 33, 38, 39, 44, 49, 50, 57, 60, 63, 64, 68.

Digitised by the University of Pretoria, Library Services, 2016

No. 73—Sd. G. Lowry Cole.] [April 15, 1830.

Ordinance for explaining, altering, and amending the Ordinance No. 40. (1)

Offences committed within two miles of the boundaries of two or more districts may be tried in any of such districts.

WHEREAS it is expedient, in certain respects to explain, alter, and amend the Ordinance No. 40: Be it therefore enacted and declared by His Excellency the Governor in Council, that where any crime or offence shall be committed on the boundary or boundaries of two or more districts, or within the distance of two miles of any such boundary or boundaries, or shall be begun in one district, and completed in another, every such crime or offence may be dealt with, inquired of, tried, determined, and punished in any of the said districts, in the same manner as if it had been actually and wholly committed therein. (2)

Offences committed in or upon carriages employed in a journey, or on board of a vessel on any river in or forming a boundary of the Colony may be tried in any district within two miles of the boundary of which such carriage or vessel may have passed.

2. (2) And be it further enacted and declared, that, where any crime or offence shall be committed on any person, or on or in respect of any property in or upon any coach, wagon, cart, or other carriage whatever, employed in any journey, or on board any vessel whatever, employed on any voyage or journey upon any river within, or forming the boundary of, any part of this Colony, such crime or offence may be dealt with, inquired of, tried, determined, and punished in any district, through any part whereof, or on, or within the distance of two miles of the boundary whereof, such coach, wagon, cart, or carriage, or vessel, shall have passed in the course of the journey or voyage, during which such crime or offence shall have been committed, in the same manner as if it had been actually and wholly committed in such district.

Review on the ground of rejection of evidence.

3. And be it further enacted and declared, that it shall be competent for any person, aggrieved by the proceedings of any inferior Court in any case, to bring the same under the review of the Supreme Court, on the ground that such inferior Court has, upon the trial of such case, rejected legal and competent evidence. (3)

Clerks of the Peace under control of Attorney-General.

4. And be it enacted and declared, that in all matters relating to, or connected with, any criminal proceedings, instituted or intended to be instituted against any person, or with regard to any crime or offence, the Clerks of the Peace of the several districts of this Colony, and the Superintendent of Police of Cape Town, shall be under the control of, and bound to conform to, the directions which shall and may from time to time be given to them respectively by the Attorney-General. (4)

Repeal of sections of former Ordinances authorising preparatory examinations to be taken by Superintendent of Police.

5. And be it enacted and declared, that from and after the passing of this Ordinance, the several enactments and provisions of the

1 See "Note" to title of Ord. 40.
2 See § 44, Act 20 of 1856, and § 2, Act 16 of 1882.
3 See Ordinance No. 40, § 5.
4 See Ordinance No. 40, § 8.

Digitised by the University of Pretoria, Library Services, 2016

Ordinances Nos. 40 and 48, (1) whereby the Superintendent of Police of Cape Town, or his deputy, are authorised or required to take any preparatory examination, or to prosecute at the public instance, for any crime or offence, and whereby any Magistrate is required to transmit any preparatory examination to the Superintendent of Police, or his deputy, shall be, and the same are hereby repealed; and that hereafter, the Clerk of the Peace for the Cape district, or some one of the clerks in the office of the said Clerk of the Peace, appointed for that purpose by the Attorney-General, shall be hereby authorised and required to take all such preparatory examinations, and to conduct all such prosecutions at the public instance, as the said Superintendent of Police and his deputy, were heretofore authorised or required to take or to conduct.

Ord. 73—1839.

All such examinations to be taken by Clerk of the Peace

6. (2) And be it further enacted and declared, that it shall be competent for any private person to prosecute summarily by complaint in any competent inferior Court, for any crime or offence for which such person shall be entitled so to prosecute, although such party shall not have previously applied for and obtained the certificate directed and required by the provisions of the fourteenth section of the Ordinance No 40, anything to the contrary therein contained notwithstanding.

Summary prosecution by private person without the certificate required by section 14 of Ordinance No. 40.

7. And be it further enacted and declared, that where, in the course of the proceedings in any summary prosecution as aforesaid, it shall appear that the crime or offence complained of, is, from its nature or magnitude, one which ought not to be permitted to be prosecuted at the instance of the private party, until the prosecutor shall have exercised his discretion, whether he will prosecute the offender at the public instance, the Judge or Magistrate shall stop all further proceedings in such case, until the party prosecuting shall produce to such Judge or Magistrate, a certificate in the form and to the effect directed and required by the provisions of the fourteenth section of the Ordinance No. 40: Provided always, that nothing herein contained shall extend or be construed to affect, alter, or repeal any provision or enactment of the twenty-eighth section of Ordinance No. 40.

Power of Magistrate to stop such summary prosecution, and necessity for the production of certificate in case of magnitude.

8. (3) And be it further enacted and declared, that in every case of any such summary prosecution as aforesaid, it shall be lawful and competent for the Attorney-General, or other officer who by law is entitled to prosecute at the public instance, in such Court, at any stage of the prosecution, to appear in Court, and take up the prosecution of such complaint at the public instance, and thereafter to conduct the proceedings in such case as if the prosecution had been originally at the public instance; or to apply by motion to the Judge or Magistrate to stop all further proceedings in such case,

Competency of Attorney-General to take up and conduct prosecution at the public instance in all cases of summary private prosecution.

[1] Ord. No. 48 is repealed by Ord. 2 of 1840.
[2] See § 10 Ord. 8, 1852, § 64 Sched. B, Act 20, 1856, § 5 Act 15, 1864.
[3] See § 10, Ord. 8 of 1852; § 64 Sched. B, Act 20 of 1856.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 73—1830.

in order that a prosecution for the same crime or offence may be instituted at the public instance in some other form or Court; or until such certificate aforesaid, shall be granted to the private party prosecuting in such case, and by him be produced to such Judge or Magistrate; and such Judge or Magistrate shall, in every such case be bound to make an order in the terms of such motion.

Warrants of apprehension by Judges, Resident Magistrates and Justices of the Peace.

9. And be it further enacted and declared, that it shall and may be lawful for the Chief Justice, or any Judge of the Supreme Court, the Judge of Police of Cape Town, or any Resident Magistrate, or Justice of the Peace, to grant warrant for the apprehension of any person, on a written application, setting forth the offence alleged to have been committed, and that, from information taken upon oath, there are reasonable grounds of suspicion against the person for whose arrest the warrant is sought, subscribed by the Attorney-General, by the Superintendent of Police of Cape Town, or by the Clerk of the Peace of the district; or upon the information, to the like effect, of any person, made on oath before the Judge or Magistrate granting the warrant: Provided always, that it shall not be lawful for any Resident Magistrate or Justice of the Peace, to grant any such warrant, except when the offence charged has been committed within the jurisdiction of such Resident Magistrate or Justice of the Peace, or except when the person, against whom the warrant is issued, shall at the time when such warrant is so issued, be known or suspected on reasonable grounds, to be within the jurisdiction of the Resident Magistrate or Justice of the Peace issuing such warrant. (1)

Execution of warrants.

10. And be it further enacted and declared, that every officer of the law within this Colony, proper for the execution of criminal warrants, shall be hereby authorised and required, to obey and execute every such warrant issued by the Chief Justice, or any of the Judges of the Supreme Court; and every such officer of the law, shall be hereby authorised and required, to obey and execute every such warrant issued or endorsed by the Resident Magistrate, or any Justice of the Peace of the district in which such officer of the law has been appointed to act; and every criminal warrant issued by the Chief Justice, or any of the Judges of the Supreme Court, or any Resident Magistrate, or Justice of the Peace, shall have effect, and may lawfully be executed anywhere within the limits of the Colony, or its dependencies, by any officer of the law, or by any private person to whom it shall be directed, anything contained in the Ordinances Nos 32, 33, (2) 40, 44, to the contrary notwithstanding. (3)

Arrest and verbal order to arrest, for offences committed in the presence of Judges, Magistrates, and Justices of the Peace.

11. And be it further enacted and declared, that it shall and may be lawful for the Chief Justice, or any Judge of the Supreme

1 See § 24, Ord. 40.
2 Ord. 33 and 44 have been repealed except § 17, Ord. 44.
3 See § 25, Ord. 40.

Digitised by the University of Pretoria, Library Services, 2016

Court, the Judge of Police of Cape Town, or any Resident Magistrate or Justice of the Peace, who has knowledge of any crime, or breach of the peace, by seeing it committed, himself, to arrest the offender, or by a verbal order to authorise others so to do, who shall be authorised and required to follow such offender, and to execute the said order on him, out of the presence of such Judge or Magistrate, if he fly. (1) Ord. 73–1830.

Arrest by Sheriff, police officers, and Field-cornets for offences committed in their presence, and on reasonable grounds of suspicion as to certain offences.

12. And be it further enacted and declared, that the Sheriff, and his deputies, the Superintendent of Police, and his deputies, and all Field-cornets and constables, police officers, and other officers of the law, proper for the execution of criminal warrants, shall be hereby authorised and required, to arrest every person, who shall commit any crime or breach of the peace, in their presence; as also every person whom they shall have reasonable grounds to suspect of having committed any murder, culpable homicide, rape, robbery, or assault with intent to commit any of those crimes, or in which a dangerous wound is given, arson, house-breaking with intent to commit any crime, or theft of any cattle, sheep, or goat, or any other crime of equal degree of guilt with any of the crimes aforesaid; as also every person whom they shall see engaged in committing any affray, or whom they shall find attempting to commit a crime, or clearly manifesting an intention so to do. (2)

Assistance by private person called on by officers of the law.

13. And be it further enacted and declared, that every private person when called upon by any officer of the law shall be hereby authorised and required to assist such officer in making any arrest which by law such officer is authorised to make of any person charged with or suspected of the commission of any crime or offence. (3)

Arrest by private person for certain offences committed in his presence.

14. And be it further enacted and declared, that every private person in whose presence any murder, culpable homicide, rape, robbery, or assault with intent to commit any of those crimes, or in which a dangerous wound is given, arson, housebreaking with intent to commit any crime, or theft of any cattle, sheep, or goat, or other crime of equal degree of guilt with any of the crimes aforesaid, is committed or attempted to be committed, or who has knowledge that any such crime has been recently committed, shall be hereby authorised and required, to arrest, or forthwith to pursue the offenders; and every other private person, to whom the purpose of such pursuit shall be made known, shall be hereby authorised and required, to join and assist in the same. And every private person, who, on such pursuit being made, shall come up with any person having the property, which has been stolen, in his possession, or with any person whose traces have conducted his pursuers from the place where the crime was committed to the place where he shall

Assistance by other private persons.

[1] See § 22 Ord. 40.
[2] See § 23 Ord. 40.
[3] See § 7 Ord. 2 of 1837.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 73 -1830.

be overtaken, shall be hereby authorised and required to arrest such person, so having such stolen property in his possession or so being, traced as aforesaid.

Arrest by private person, in certain crimes, on reasonable suspicion, but at his own peril.

15. And be it further enacted and declared, that it shall and may be lawful for any private person to arrest any other person, upon reasonable suspicion that he has committed any of the crimes specified in the fourteenth section of this Ordinance, or any other crime of an equal degree of guilt; but every arrest, or attempt to arrest, made by any private person, upon suspicion, shall be made at his own peril, if the party so arrested, or attempted to be arrested, be innocent. —

Arrest by private person in case of an affray.

16. And be it further enacted and declared, that every private person shall be hereby authorised and required, to lay hold of any person, whom he may see engaged in committing an affray, in order to prevent such person from continuing the affray, and to suppress the same.

In what circumstances the killing of any officer or private person in such cases of arrest shall be murder and in what cases, culpable homicide.

17. And be it further enacted and declared, that every person who, knowing the purpose for which any officer of the law or private person is acting, shall kill any such officer or person, while attempting to make or assisting in making any arrest, or while interfering in order to suppress any affray, which, in virtue of the provisions of this Ordinance, such officer or person is authorised and required to make, or to assist to make, or to suppress, shall be deemed in law, to be guilty of the crime of murder; and that every person, who shall kill any private person, while attempting to make any arrest, under the circumstances set forth in the fourteenth section of this Ordinance, knowing the purpose for which such private person so killed was acting, shall be deemed, in law, to be guilty of the crime of murder, if he have committed, or of the crime of culpable homicide, if he be innocent of the crime, on suspicion of which the person so killed attempted to arrest him; and that every person, who shall kill any private person, while attempting to make any arrest, under the circumstances set forth in the fourteenth section of this Ordinance, being ignorant of the purpose for which the person, so killed, was acting, shall be deemed, in law, to be guilty of the crime of culpable homicide, if he have committed the crime, on suspicion of which the person so killed attempted to arrest him; and that every person, who shall kill any such officer or private person, while attempting to make or assisting in making any arrest, which, in virtue of the provisions of this Ordinance, such officer or person is authorised and required to make, or to assist to make, being ignorant of the purpose for which such officer or private person, so killed, was acting, shall be deemed, in law, to be guilty of the crime of culpable homicide; and that every person, who shall kill any such officer or private person, while attempting to make an arrest, in virtue of any warrant hereinbefore mentioned, which, by reason of the informality thereof, shall not be, in law,

Digitised by the University of Pretoria, Library Services, 2016

sufficient to authorise the arrest of the person who shall kill such officer or private person, shall be deemed, in law, to be guilty of the crime of culpable homicide, whether he shall know or be ignorant of the purpose for which such officer or private person was acting.

In such cases of homicide all other facts or circumstances proved to have their ordinary legal effect.

18. And be it further enacted and declared, that, on the trial of any person for homicide, committed in resisting any arrest, nothing herein contained shall extend, or be construed to deprive any fact or circumstance (other than those, the legal effect of which is herein-before specially provided for and declared), under which such homicide shall have been proved to have been committed, of the effect, either in exculpating such person, or in mitigating or aggravating his guilt, which, by law, such fact or circumstance would have had previously to the passing of this Ordinance.

Breaking open of doors after failure in obtaining admission, for the purpose of arrest or search.

19. And be it further enacted and declared, that it shall and may be lawful for every officer of the law, and every private person, who shall by law be authorised or required to arrest any person known or suspected to have committed any crime or offence, for that purpose to break open the doors of, and to enter and search, any house, in which such person is known or suspected to be: Provided always, that such officer or other person, as aforesaid shall have previously failed to obtain admission, after having audibly demanded the same, and notified the purpose for which he seeks to enter such house.

Recognizance of witness to appear on criminal trial.

20. And whereas public justice has heretofore in many cases been defeated by the departure from the Colony, or otherwise, of witnesses who have been examined as such, under preparatory examinations taken before and as to the commitment of offenders for trial before the courts of criminal jurisdiction within the Colony, be it therefore enacted and declared, that every Magistrate, before whom any preparatory examination is taken, may lawfully require any witness, either alone, or together with one or two sufficient sureties, to the satisfaction of the said Magistrate, to enter into a recognizance, under condition that the said witness shall, at any time within six months from the date thereof, appear and give evidence at the trial of the said case, upon being summoned thereto at some certain place, to be so elected by such witness; and if any witness, being so required to enter into any such recognizance, shall refuse or fail so to do it shall and may be lawful for the said Magistrate, to commit and detain in prison the witness so refusing or failing, until such recognizance shall have been entered into as aforesaid. (1)

Committal by Magistrate if the offence be committed in other than his own district.

21. And be it further enacted and declared, that in every case, in which any person, charged with any crime or offence, shall be apprehended and brought before any Magistrate of any district, other than that in which such crime or offence is charged to have been committed, and where such Magistrate shall see cause to

[1] See Ordinance No. 40, § 31.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 77—1830.

commit such person, either for trial or for further examination, it shall be lawful for such Magistrate, to grant warrant to commit such person, either to the gaol of the district in which the crime or offence is charged to have been committed, or to the gaol of the district within which such Magistrate has jurisdiction to act.

Removal of prisoner from gaol of one district to that of another.

22. And be it further enacted and declared, that the Resident Magistrate of any district, shall and may lawfully, on an application to that effect, signed by the Attorney-General, or the Clerk of the Peace of such district, grant warrant for the removal of any person, detained in virtue of any legal warrant, within the gaol of such district, on any criminal charge, to the gaol of any other district, specified in such application, therein to be detained for further examination or for trial, or till liberated or removed therefrom in due course of law.

23. (1) *And be it further enacted and declared that from and after the passing of this Ordinance, the sixtieth section of the Ordinance No.* 40 *shall be, and the same is hereby repealed.*

No. 74.] [May 24, 1830.

Ordinance for erecting a Toll on the New Road over the Hottentots Holland Mountain.

[Repealed by Ordinance No. 3 of 1845]

No. 75.] [Aug. 9, 1830.

Ordinance for regulating as to the Food, Clothing, Lodging, and hours of Labour for Slaves in this Colony.

[Repealed by Act No. 3 and 4 William 4, c. 73.]

No. 76.] [Aug. 9, 1830.

Ordinance for regulating as to the Baptism and Interments of Slaves, and declaring Punishment in certain cases to be illegal.

[Repealed by Act No. 3 and 4 William 4, c. 73.]

No. 77.—Sd. G. Lowry Cole.] [October 13, 1830.

Ordinance for the better defining and fixing the Duties and Functions of the Civil Commissioners in this Colony.

Preamble.

WHEREAS the office of Landdrost was abolished on the 31st day of December, 1827; and whereas certain officers have been appointed to perform, respectively, the duties and functions which were formerly discharged by the Landdrosts; and whereas Civil Commissioners have been appointed and instructed to perform divers of the said duties, but no Ordinance has hitherto been made defining the duties so to be performed by the said Civil Commis-

[1] Repealed by Act 7 of 1873.

Digitised by the University of Pretoria, Library Services, 2016

sioners : Be it therefore enacted by His Excellency the Governor in Council, that from and after the passing of this Ordinance, the Civil Commissioners of the districts respectively shall perform all such duties as were formerly performed by the said Landdrosts, and which have not by any Ordinance been appointed to be performed by the Resident Magistrates or other officers, respectively ; and all matters and things which have been done and performed by the said Civil Commissioners in pursuance of the instructions aforesaid shall be as valid and of the same force and effect as if the same had been done and performed by virtue of this Ordinance.

Ord. 81—1830.

Civil Commissioners to perform duties of landdrosts.

No. 78.] [Nov. 15, 1830.

Ordinance for altering and equalizing the Rates of the Hearth or House Tax and the Public Water Tax in Cape Town.

[Virtually repealed by Ordinance No. 3 of 1839, and Ordinance No. 1 of 1840.]

No. 79.] [Nov. 15, 1830.

Ordinance for preventing the practice of Riding or Driving carelessly or furiously on the frequented parts of the Public Roads in this Colony.

[Repealed by Ordinance No. 9 of 1846.]

No. 80.] [Dec. 23, 1830.

Ordinance for explaining and declaring the Law relative to Licences for the Brewing of Malt Liquors.

[Repealed by Ordinance No. 94.]

GUNPOWDER AND FIREARMS.

No. 81.—Sd. G. Lowry Cole.] [Dec. 23, 1830.

Ordinance for the better Regulation of the Trade carried on beyond the Land Boundaries of this Colony between the Inhabitants thereof and the Kafirs and other Nations residing in Africa. ([1])

WHEREAS the trade carried on beyond the land boundaries of this Colony by the inhabitants of the Colony and the Kafirs and other nations or tribes residing in Africa beyond the said bounda-

Preamble.

[1] See Ords. 7—1834, 2—1853 ; Acts 19—1856, 14—1857, 28—1864, 14—1866-'67, 11—1875, 13—1877, 29—1879, 7—1886, 13—1878, 4—1879, 4—1887, 9—1888.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 81—1830.

ries, has much increased of late years, and the improved relations of peace and commerce existing between them respectively render it expedient to give greater facilities to the commercial operations of persons trading beyond the said boundaries than heretofore, under such regulations as shall provide for the more prompt and effectual punishment of any acts of outrage or misconduct committed by such traders or their servants, which may endanger the continuance of the beneficial intercourse which at present exists with such nations: Be it therefore enacted by His Excellency the Governor in Council, that it shall and may be lawful for the Civil Commissioners of the several districts of the Colony respectively which abut upon the said boundaries, and they are hereby authorised and required, to grant a licence to trade beyond the said boundaries of the Colony, to any of His Majesty's subjects who shall apply for the same, and who shall satisfy the Civil Commissioner that he is a person of good character, and fit to be entrusted with such licence.

Authority of civil commissioners to grant licences to trade beyond the boundaries.

Stamp, £3.

2. And be it further enacted that every such licence shall be issued on paper stamped of the value of three pounds, and shall be in force for one whole year commencing from the day of the date thereof.

Licence not to be granted unless two sureties enter into recognizance.

3 Provided always and be it further enacted, that it shall not be lawful for any such Civil Commissioner as aforesaid to grant any such licence, unless the party applying for the same shall produce two sureties, being persons possessed of immovable property situate within this Colony, to the value of one hundred pounds at the least, and who shall enter into the recognizance hereinafter mentioned, or unless the party applying shall produce to the Civil Commissioner to whom application shall be made a like recognizance signed and sealed by any Resident Magistrate by whom the said recognizance is taken.

Form of recognizance.

4. And be it further enacted that the said recognizance shall, as near as may be, be in the words following, that is to say:

Place of residence of Resident Magistrate or Civil Commissioner, as the case may be. } Before me, Resident Magistrate (or Civil Commissioner, as the case may be), of the district of on the day of

A. B. residing at and C. D. residing at severally acknowledge themselves to be indebted to our Sovereign Lord the King in the sum of fifty pounds, to be levied upon their goods and lands and property, of what nature soever the same may be, upon condition that E. F. shall, during the time he shall sojourn in Africa beyond the boundaries of this Colony, by virtue of his licence bearing date the day of , conduct himself, and cause his servants to conduct themselves, in a quiet and peaceable manner towards all and every person with whom they shall meet beyond the said boundaries; and that he and his servants

Digitised by the University of Pretoria, Library Services, 2016

Ord. 81–1830.

will, in case of attack or aggression on him or them, only act in defence of themselves and his and their property; and that he will not give, sell, or barter any fire-arms or ammunition to any natives; and that he will not in any manner, direct or indirect, kidnap, purchase, or bring within the boundaries of the Colony any person or persons, without his or their own free will and consent, nor permit his servants or any of them so to do, then this recognizance to be void, or else to remain in full force.

A. B. G. H., Civil Commissioner,
C. D. or Resident Magistrate, (as the case may be).

Record of recognizance by civil commissioner.

5. And be it further enacted that every Civil Commissioner before whom any such recognizance is entered into, or to whom any such recognizance entered into before a Resident Magistrate is produced, shall duly enter and record the same; and if any Civil Commissioner as aforesaid shall grant any such licence without such recognizance having been taken or produced and recorded, he shall incur and be liable to a penalty of fifty pounds for each offence.

Statement by licensed person of fire-arms and ammunition which he intends to take beyond the boundary.

6. And be it further enacted that every person to whom such licence has been granted as aforesaid shall either in person or by his attorney duly constituted and appointed, whenever he shall think fit to transport merchandise beyond the said land boundaries, deliver to the Civil Commissioner by whom his licence has been granted a statement of the number and description of fire-arms and the quantity of ammunition which he intends to take beyond the said boundaries for the defence of himself, his servants, and property, together with a statement, as near as may be, of the number and description of persons he intends to take with him, and which statement shall be subject to alteration by the said Civil Commissioner if he shall think fit; and the said statement, when approved of by the said Civil Commissioner, shall be signed by the person to whom the said licence is granted, and shall be kept by the said Civil Commissioner; and the said Civil Commissioner shall give the said licensed trader a certificate or certified copy of the said statement, which shall remain in the possession of the person who is left in charge of the said trader's wagons or other conveyances: and if any licensed trader shall not make such statement, or if he, or other person acting on his behalf, shall refuse to show the certified copy thereof to any Justice of the Peace, Commissioned Officer, or Non-commissioned Officer, Field-commandant, Field-cornet, or Constable, on demand, who are hereby authorised and required to inspect the same, he shall and may be detained and brought before the Resident Magistrate of the district where the offence is committed, and shall on conviction be liable to a fine not exceeding twenty pounds and to forfeiture of his licence.

Certified copy of statement furnished by civil commissioner for exhibition to justices of the peace and other authorities.

Penalty on omission to make statement, or on non-production of certified copy, &c., and forfeiture of licence.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 81–1830.

Authority of justices and others to search wagons of licensed traders containing firearms or ammunition not set forth in statement.

7. And be it further enacted that all Justices of the Peace, and other persons hereinbefore authorised to inspect certificates, are hereby authorised and required to search the wagons and other conveyances of any such licensed trader which they suspect to contain any fire-arms or ammunition not set forth in the certificate of such trader, and to seize the same if they contain any such arms or ammunition; and every such licensed trader in whose possession a greater number of fire-arms or a greater quantity of ammunition shall be found within the boundaries of the Colony than the number or quantity set forth in his certificate, shall on conviction incur and be liable to a fine not exceeding fifty pounds, and shall forfeit his licence together with the wagons and other conveyances and the effects loaded thereon at the time of their seizure.

Penalty, £50 and forfeiture of licence.

Report on return to the colony to nearest field-commandant or field-cornet, or other officer.

8. And be it further enacted that the servants and wagons or other conveyances belonging to any licensed trader, shall on their return within the Colony stop at the first convenient place adjacent to the said boundaries thereof, and the said trader, or some person acting on his behalf, shall immediately report his return to the nearest Field-commandant or Field-cornet or to the officer or non-commissioned officer of the nearest military post, who shall forthwith proceed thither, and shall require such trader or other person as aforesaid to produce the certificate and fire-arms of such trader; and if the number of fire-arms produced shall not amount to the number mentioned in the certificate, the person demanding production of the same shall endorse such deficiency upon the certificate and shall report the same to the Civil Commissioner of the district, who shall, if he think fit, institute such inquiry thereupon as he may deem requisite.

Inquiry into disposal of firearms and ammunition.

Penalty on neglect of report or refusal to produce certificate, or arms, or on giving unsatisfactory account, £50.

9. And be it further enacted that if any such trader or other person as aforesaid shall on his return advance beyond the residence of the nearest Field-commandant or Field-cornet, or beyond the nearest military post, without making such report as aforesaid, or shall refuse to produce his certificate of fire-arms on demand, or shall not render a satisfactory account of the fire-arms found to be deficient, the said trader shall incur and be liable to a fine not exceeding fifty pounds.

Production of natives brought from beyond the boundary and accounting for their absence and that of servants named in certificate.

10. And be it further enacted that the said Field-commandant, Field-cornet, or military officer shall also at the time and place aforesaid, require every such trader or other person as aforesaid to produce all persons belonging to any of the native tribes beyond the land boundaries thereof who have been brought within the said boundaries of the Colony by the said trader or such other person, and to account for the absence of any who have been brought in and are not then present, and for the absence of any of the servants mentioned in his certificate, and shall make such inquiry relative to the matter aforesaid as he shall think proper; and the said Field-commandant, Field-cornet, or military officer

Digitised by the University of Pretoria, Library Services, 2016

shall endorse on the certificate the names and descriptions of those persons who have been produced, and the names and descriptions of those who are absent, if any, together with the alleged cause of their absence; and if any such trader or other person as aforesaid shall not produce all such persons as aforesaid, or shall not truly account for the absence of such as are not produced, he shall incur and be liable to the payment of a fine not exceeding fifty pounds.

Penalty on non-production or untrue account, £50.

11. And be it further enacted that if any Field-cornet or other officer as aforesaid shall upon such examination and inquiry as aforesaid have reasonable cause to suspect that any trader or other person as aforesaid has been guilty of any offence against any of the provisions of this Ordinance he shall forthwith transmit to the Civil Commissioner of the district the certificate of such trader, together with a statement of the alleged offence or offences endorsed thereon.

Report of suspected offences against this ordinance by field-cornet, &c., to civil commissioner.

12. And be it further enacted that it shall not be lawful for any person whomsoever to bring within this Colony any person from beyond the said boundaries thereof not legally contracted to him within the Colony, against the free will and consent of such person, under a penalty not exceeding one hundred pounds, and if any such person be brought within the Colony upon any contract or agreement of any nature soever entered into beyond the said boundaries such contract or agreement shall be void and of no effect.

Penalty on bringing natives into the colony against their free will—£100.

Agreement beyond the boundaries of the colony void.

13. Provided always, that nothing herein contained shall extend to prevent any native or other person who may have voluntarily come into the Colony with or been brought by any trader or other person from entering into any legal contract or agreement before a Clerk of the Peace or other person before whom the same may be made.

Legal contract before clerk of the peace of persons coming voluntarily into the colony.

14. And be it further enacted that if any person shall, without having such licence as aforesaid proceed towards the said land boundaries of the Colony for the purpose of trading beyond the same, he shall on conviction thereof incur and be liable to a penalty of fifty pounds.

Penalty on proceeding to the boundary for the purpose of trade beyond, £50.

15. And be it further enacted that it shall and may be lawful for all officers and non-commissioned officers of His Majesty's land service, and all Civil Commissioners, Resident Magistrates, Clerks of the Peace, Field-commandants, Field-cornets, and Constables, and they are hereby required to stop all wagons or other conveyances proceeding towards the said land boundaries of the Colony which they suspect are intended to be employed in trading beyond the same, and to demand of the person in charge thereof to see his licence, and if the same be not produced and no good reason given for the non-production of the same they shall proceed to search all such wagons or other conveyances; and, if they find merchandise which they have reason to suspect is intended to be carried beyond

Stoppage of wagons proceeding towards the boundary, suspected to be for the purpose of trade beyond: on non-production of licence.

Detention of wagon and suspected merchandise.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 81 - 1830.

the said boundaries of the Colony, they shall detain the wagons or other conveyances together with their contents, and bring the same with the party in charge thereof before the nearest Resident Magistrate, to be dealt with according to law.

16. [Repealed by Act 13, 1877, § 1.]

Jurisdiction of resident magistrate, and of circuit court.

17. And be it further enacted that all offences against any of the provisions of this Ordinance shall be cognizable before the Resident Magistrate of the district where the offences are committed respectively; and any proceedings against any surety of any trader, licensed by this Ordinance shall be cognizable and triable at any Circuit Court held in the district where the licence to such trader was granted; and all fines and penalties imposed by this Ordinance shall go one half to the Colonial Treasury and the other half to the informer.

Fines—one half to colonial treasury,—one half to informer.

Licence to traffic at border fairs.

18. (1) And be it further enacted that every licence to attend and traffic at the border fairs shall be issued on paper stamped of the value of three pounds, and shall be in force for one whole year commencing from the date thereof.

Repeal of provisions of Ordinance No. 23.

19. And be it further enacted that such provisions of the Ordinance No. 23 as are at variance with or repugnant to the enactments of this Ordinance shall be null and void, and the remainder of the said Ordinance shall continue in full force and effect.

No. 82.] [December 23, 1830.

Ordinance for altering and amending the Laws and Regulations relating to Medical Practitioners and Apothecaries in this Colony.

[Repealed by Act No. 34, 1891, § 4.]

No. 83.] [May 5, 1831.

Ordinance 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.

[Repealed by Ordinance No. 84.]

No. 84.] [May 14, 1831.

Ordinance 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.

[Repealed by Act No. 22, 1891.]

No. 85.] [June 8, 1831.

Ordinance for altering and amending the Ordinance No. 84.

[Repealed by Ordinance No. 1, 1843, except in as far as it repeals § 4 of Ordinance No. 84.]

---

[1] These fairs no longer exist.

Digitised by the University of Pretoria, Library Services, 2016

No. 86.—Sd. G. Lowry Cole.] [June 8, 1831.

Ordinance for establishing and regulating a new Savings Bank in the Colony of the Cape of Good Hope. (1)

Preamble. WHEREAS, at a public meeting of certain persons, inhabitants of this Colony, duly holden at the Commercial Hall in Cape Town on the 22nd day of November in the year of our Lord 1830, it was considered and agreed upon that it is expedient and necessary that a new bank for savings should be forthwith established in this Colony, for the purpose of receiving deposits from benevolent and charitable societies, tradesmen, mechanics, labourers, servants, children, and others, as nearly according to the principles upon which similar institutions have been established in Great Britain, as the circumstances of this Colony will permit: And whereas at the said meeting certain persons were elected to form a society for the establishment and management of a bank in Cape Town, for the purposes aforesaid, according to a plan agreed on at the said meeting; and whereas the said persons have made application to His Excellency the Governor that an Ordinance may be passed to sanction and confirm the plan agreed upon at the said meeting, and to provide for carrying the same into effect, and it is expedient that the same should be done: Now, therefore, be it enacted by His Excellency the Governor in Council, that from and after the passing of this Ordinance, it shall and may be lawful to and for the said persons so elected, and for any other persons who shall from time to time in manner hereinafter provided be elected, to be the president, vice-presidents, directors, and managers of the said society, to be and form, and the said persons are hereby constituted and declared to be, a society for the establishment and management of a bank in Cape Town for the purposes aforesaid, which said society shall be called "The Cape of Good Hope Savings Bank Society."

Establishment of The Cape of Good Hope Savings Bank Society.

Constitution of the Society. 2. And be it enacted that the said society shall consist of one president, five vice-presidents, ten directors, and at the least sixty managers: Provided always, and be it further enacted that the said society shall not expire, cease, or determine by reason of the death, resignation, removal from or non-acceptance of office of any member or members thereof, so long as there shall be so many members remaining and belonging thereto, and willing to act as shall be sufficient to constitute a committee of management as is hereinafter provided.

Elected vice-presidents and trustees to be first vice-presidents and trustees. 3. And be it enacted that the persons who at the meeting aforesaid were elected to be the vice-presidents and trustees of the said society, and whose names are inserted in the schedule hereunto annexed, marked A, shall be respectively the first vice-presidents

[1] Amended by Ord. No. 10, 1848, and Act 24, 1894. For Post Office Savings Bank see Acts 6, 1883; 4, 1886; 5, 1889.

Digitised by the University of Pretoria, Library Services, 2016

No. 86—1831.

and directors thereof, and that the persons who at the meeting aforesaid, were elected to be the managers of the said Society, and whose names are inserted in the schedule hereunto annexed marked B, and all such householders residing in Cape Town, or within eight (1) miles thereof as shall at any time hereafter be

Election of managers

elected to be managers of the said society, at any general meeting of the said society holden in manner hereinafter provided, or by the committee of management hereinafter provided, at any general meeting thereof, and who shall consent to accept such office, shall be the managers of the said society.

Continuation in office of president, vice-presidents, and directors, until election of others;

4. And be it enacted that the persons hereinbefore provided and declared to be the vice-presidents and directors, and all others who shall hereafter be duly elected to be the president, vice-presidents, and directors of the said society, shall continue in office as such until the election of other persons to the said office in manner hereinafter provided; and that the persons hereinbefore provided and declared to be, and all others who shall hereafter be duly elected to be the managers of the said society, shall continue in office as such so long as they shall be householders and shall reside in Cape Town, or within eight miles thereof: Provided always,

Of managers as long as they are householders, or until resignation or removal.

that nothing herein contained shall extend or be construed to prevent any president, vice-president, director, or manager from resigning his said office, on giving seven days' notice of his intention so to do to the committee of management, by writing delivered at the place where the business of the society is for the time transacted, to any officer or manager of the said society in attendance thereat; and provided also, that nothing herein contained shall extend or be construed to prevent any president, vice-president, director, or manager from being removed from his office by any general meeting of the society in manner hereinafter provided.

Responsibility of members for loss arising from dishonesty, bad faith, or gross neglect.

5. And be it enacted that every member of the said society shall be liable, as such, to make good any loss or damage which shall or may accrue to or be sustained by the funds of the said society, or to or by any depositor in the said bank, by reason of the dishonesty, bad faith, or gross neglect of such member, and not otherwise.

Members not entitled to derive any salary or profit from the funds of the bank.

6. And be it enacted that no president, vice-president, director, or manager of the said society shall, either directly or indirectly, receive or derive any salary, allowance, profit or benefit from any of the funds thereof, or from any money deposited in the said

Depositors to receive the whole benefit of money deposited.

bank; and that the persons depositing money in the said bank shall respectively have and receive the whole benefit of the money therein deposited, and of the produce thereof, save and except only so much as may from time to time be required to defray such salaries, allowances, and other necessary expenses as shall in

[1] All inhabitants of Cape Town or within ten miles eligible. § 2, Ordinance 10, 1848.

Digitised by the University of Pretoria, Library Services, 2016

manner hereinafter provided be allowed and expended for the charges of managing the said bank, and for the remuneration of such persons as may be necessarily employed in transacting the business thereof, not being presidents, vice-presidents, directors, or managers of the said society: Provided always, that nothing herein contained shall extend or be construed to prevent any manager of the said society, not being a member of the committee of management, from transacting business with the said bank.(1)

Competency of managers to transact business with the bank.

7. And be it enacted that it shall and may be lawful to and for the said society to receive deposits in the said bank of such amount as they shall think fit from any friendly, benevolent, or charitable society, tradesmen, mechanics, labourers, servants, children, and other persons, at their discretion, whether slaves or free persons, and also to reject or refuse to receive deposits in all cases in which they shall think fit so to do, and to lay out and invest (2) upon such colonial securities as they shall think fit all moneys deposited in the said bank, together with the interest or produce which shall from time to time accrue thereupon, or so much thereof as shall not be required to defray the necessary expenses of the said bank, or shall not be required by the said depositors, or their representatives; and the said society shall and may, at any time when they shall see fit so to do, and also shall and may, upon the lawful demand of any depositor or his or her representatives, either made in person or by the bearer of an order under the hand of any depositor or his or her representative, attested and signed in such manner as shall be provided by any rule or regulation of the said society, return the whole or any part of such deposits, and the produce thereof, to the depositors or their representatives respectively, deducting only out of the interest or produce of such deposits so much as shall have been required and retained for the purpose of defraying the necessary expense of the said bank; and the receipts of any depositor or his or her representative for the same shall be a good and sufficient discharge to the said society, notwithstanding the minority or coverture of such person.

Depositors.

Investment of moneys deposited.

Return of deposits.

8. And be it enacted that it shall and may be lawful to and for the said society to conduct and manage the affairs and proceedings thereof by and through a committee of management, which shall consist of the president, the vice-presidents, and the directors of the said society for the time being, and of ten of the managers thereof to be elected out of the whole body of managers in manner hereinafter provided, and that any seven or more of the members of the said committee (of whom three at the least shall be vice-presidents or directors) shall form a quorum, and shall be competent to do and perform all matters and things which may under and by virtue of this Ordinance be done and performed by the

Composition of committee of management.

[1] See § 3, Ordinance 10, 1848, and § 30, Act 24, 1894.
[2] See § 5, Act 24, 1894.

Digitised by the University of Pretoria, Library Services, 2016

No. 86—1831.

said committee, and that the vote or resolution of the major part of such quorum shall in all cases be deemed to be and shall have effect as the vote or resolution of the committee, and that, in the absence of the president, the eldest vice-president present, and in the absence of the vice-presidents, the eldest director present, shall preside at the meetings of the said committee; and that in any case in which the votes or opinions of the members of the said committee shall be equally divided, the person who shall at the time preside at the meeting thereof shall have a casting vote; and that whenever it shall be necessary for the said committee to execute any deed or instrument in writing, such deed or instrument shall be signed in name of the committee by a quorum thereof, or by some two members thereof, appointed for that purpose by such committee, and every such deed or instrument signed in manner herein provided shall have the same force and effect in law as if it had been signed by all the members of the committee of management.

Execution of instruments by quorum of committee.

Funds, &c., of the bank vested in committee.

9. And be it enacted that all moneys, goods, and effects whatsoever, and all securities for money, or other obligatory instruments, and all evidences, muniments, and all rights and claims whatsoever belonging to or had by the said society shall be vested in the said committee of management for the time being for the use and benefit of the said society, and of the depositors in the said bank, and their representatives respectively, according to their several claims and interests; and also shall, for all purposes of action or suit, as well criminal as civil, in anywise touching or concerning the same, be deemed and taken to be, and shall in every such proceeding (where necessary) be stated to be, the property of the committee of management of the said society for the time being, without further description; and such committee shall and they are hereby authorised to bring or defend or cause to be brought or defended, any action or suit touching or concerning any of the property, rights, or claims aforesaid belonging to the said society, in the name of the "Committee of Management of the Cape of Good Hope Savings Bank Society," without specifying the names of the members thereof, and without other description; and no suit or action shall be discontinued or abate by reason of the death or removal from the committee of all or any of the members thereof, but the same shall and may be proceeded in by the succeeding committee of management, any law, usage, or custom to the contrary notwithstanding; and such succeeding committee shall pay or receive like costs as if the action or suit had been commenced by them for the benefit of or to be reimbursed from the funds of the said society.

Authority of committee to sue and be sued.

Ordinary meetings of committee.

10. And be it enacted that meetings of the said committee shall and may be holden at their usual place of business so often as shall be found to be necessary, or as shall be appointed by any

Digitised by the University of Pretoria, Library Services, 2016

rule or regulation duly made as hereinafter provided, for the purpose of transacting the ordinary business of the society, according to the subsisting rules and regulations thereof: Provided always, that the said committee at such ordinary meeting shall not have power or authority to repeal or alter, or to do or cause to be done, any matter or thing which shall be in contravention of any of the existing rules or regulations, or to make any new rules or regulations for the management thereof, or to expend or authorise the expenditure of any of the funds of the society to any extent, or for any purpose to, or for which such expenditure shall not have been previously authorised by a general meeting of the society, or of the committee of management. And be it further enacted that a general meeting of the committee of management shall be holden at the place aforesaid on the first Thursday of every month at the hour of eleven o'clock in the forenoon, and that it shall be lawful for the president, or any two of the vice-presidents or directors, at any time, to call a general meeting of the committee of management by written notices thereof, specifying the purpose for which such meeting is called, delivered to or at the dwelling-houses or places of business of such members thereof as shall be in Cape Town or within eight miles thereof, not less than twelve hours before such meeting shall be holden. ([1])

Monthly genera meetings.

11. And be it enacted that it shall and may be lawful for the committee of management, at any general meeting, to make and establish all necessary and lawful rules and regulations for the management of the said bank and the affairs of the said society as to them shall seem fit, and as shall not be inconsistent with the provisions of this Ordinance, and to enforce the observance of the same by any member or officer of the said society by the imposition of reasonable fines to be paid to and for the benefit of the said society, not exceeding for any one default the sum of one pound sterling; and the said rules and regulations or any of them to repeal, alter, and amend from time to time as occasion may require: Provided always, that all such rules and regulations and every repeal or alteration or amendment thereof shall be entered in a book to be kept by some member or officer of the said society to be appointed for that purpose, and which shall be open at all reasonable times without fee or reward for the inspection of any member or officer of the said society or person making deposits in the said bank, and such rules and regulations, and also any repeal, alteration, or amendment of the same or of any part thereof, shall be fairly transcribed, and such transcript shall be deposited with the clerk of the Court of the Resident Magistrate in Cape Town, who shall forthwith enrol and deposit the same among the records of the said Court, and give to the said committee a certificate thereof, without fee or reward; and provided

Framing of rules and regulations.

Entry of rules in a book open for inspection.

Enrolment of transcript of rules in court of resident magistrate of Cape Town.

[1] Amended by § 5, Ordinance 10 of 1848.

Digitised by the University of Pretoria, Library Services, 2016

No. 86—1831.

also that no such rule or regulation or repeal or alteration or amendment shall have any force or effect until the same shall be entered, transcribed, enrolled, and deposited as aforesaid.

Force of rules and regulations.

12. And be it enacted that all rules and regulations for the management of the said society which shall from time to time be duly made and entered, enrolled, and deposited in manner hereinbefore provided, shall be binding on the several members and officers thereof, and on the several depositors in the said bank and their representatives, and that such entry, enrolment, and deposit as aforesaid shall be deemed and taken to be due notice thereof to the said members, officers, depositors, and their representatives respectively.

Appointment of officers.

13. And be it enacted that it shall and may be lawful to and for the committee of management, from time to time as the same may be necessary, to hire apartments and to provide furniture, books, and stationery, and to appoint officers, servants and others necessary for transacting the business of the said society, and to

Payment of expenses.

defray the costs and charges of the same respectively out of the produce of any money deposited in the said bank, or out of any funds which may belong to the said society: Provided always, and be it further enacted, that it shall not be lawful to defray the same or any part thereof out of the capital of any sum deposited in the said bank.

Security by officers entrusted with money for due execution of their trust.

14. And be it enacted that the committee of management shall and may require every treasurer, officer, or other person who shall be trusted with the receipt or custody of, or the duty of whose office it shall be to receive or keep any sum or sums of money belonging to the said society, or deposited in the said bank, to become bound by an obligation in writing to the committee of management for the just and faithful execution of such office or trust, in such a sum of money and with such security or surety or securities as the said committee shall think fit; and no such treasurer, officer, or other person shall be permitted to enter on the execution of any such office or trust until he shall in manner hereinbefore provided have become bound to the said committee: Provided always, that nothing herein contained shall extend or be construed to authorise or require the said committee to require or take any such obligation or security as aforesaid from any of the managers of the said society, whose duty it may be, under and by virtue of the provisions of this Ordinance or of any rule or regulation made or established in manner hereinbefore provided, to attend in rotation to receive any sum or sums of money from persons desirous of depositing the same in the said bank.

Election of managers by committee at a general meeting thereof.

15. And be it enacted that it shall and may be lawful to and for the committee of management for the time being, at any general meeting thereof, to elect as managers all such good and lawful men, being householders residing in Cape Town or within

Digitised by the University of Pretoria, Library Services, 2016

eight miles thereof, as they shall think fit, and who shall signify in writing their acceptance of the said office; and upon the death, resignation, or removal from office or departure from this Colony of any president, vice-president, or director, or of any of the other members of the committee of management, to elect some fit, proper, and qualified person in his stead: Provided always, that in the event of three or more vacancies in the committee of management occurring by reason of any of the causes aforesaid at one and the same time, it shall not be lawful for the committee to elect any person to fill up the said vacancies, but such committee shall and may call a general meeting of the said society in manner hereinafter provided, at which meeting fit, proper, and qualified persons shall be elected to fill up the said vacancies; and provided also, that in the event of so many vacancies in the committee of management occurring by any of the causes aforesaid that there shall not remain a quorum of the said committee willing to act as such, it shall be lawful for any member of the said committee, or for any five managers of the said society, to call a general meeting thereof in like manner as it is hereinafter provided that such general meetings may be called by the said committee, at which meeting fit, proper, and qualified persons shall be elected to fill up the said vacancies. And provided also, that the ten managers to be elected members of the first committee of management of the said society, shall be elected at a general meeting of the society, to be holden for that purpose within fifteen days after the publication of this Ordinance in the *Government Gazette* of this Colony.

Such election, in the event of three or more vacancies, at a general meeting of the society.

Proceedings in the event of there being no quorum of the committee.

Election of first committee.

16. And be it enacted that it shall and may be lawful for the committee of management to call a general meeting of the said society whenever they shall think fit, and that the said committee shall be thereunto required by any writing signed by ten of the managers and delivered at the usual place of business of the said committee to any officer or manager of the said society in attendance thereat, to call a general meeting of the said society, seven days' previous notice whereof and of the time and place and purpose of holding the same shall be given by the said committee by advertisement in the *Government Gazette* of this Colony.

Mode of calling general meetings of the society.

17. And be it enacted that a general meeting of the said society shall be publicly holden in the month of January [1] in each year, at some convenient time and place in Cape Town, to be appointed for that purpose by the committee of management, fourteen days' previous notice whereof shall be given by the said committee by advertisement in the *Government Gazette* of this Colony, and at such general meeting the said committee shall lay before the said society a report of the transactions of the society and of the state of the accounts thereof, and shall furnish to the

Annual general meeting in March of each year.

Report of transactions and state of accounts of the society.

[1] March, see § 6, Ordinance 10 of 1848.

Digitised by the University of Pretoria, Library Services, 2016

No. 86—1831.

said meeting all such other information as shall be required and which the major part of the members then present shall consider to be proper to be given, and that at such annual general meeting the managers of the said society and the members of the committee of management then present, shall elect a president, five vice-presidents, and ten directors, for the ensuing year, and shall also elect ten managers to be members of the committee of management for the ensuing year: Provided however, that if such election as to all or any of the said offices shall not take place, then the persons last in office as president, vice-presidents, directors, or members of the committee of management, and to whom a successor in office shall not be chosen, shall respectively continue in their said offices for the ensuing year.

Election of committee, &c.

Proceedings in case of non-election.

Power of the members at general meetings.

18. And be it enacted that it shall be lawful for the members of the said society at any general meeting thereof, to give to the committee of management all such directions relative to the transaction of the business of the society as to the said meeting shall seem fit, and as shall not be inconsistent with the provisions of this Ordinance or with any subsisting rule or regulation for the management of the said society, and to confirm, repeal, alter, or amend any such rules or regulations as shall have been made in manner hereinbefore provided by the committee of management or by any general meeting of the said society, and to make any such new rules and regulations for the purpose aforesaid as to the said meeting shall seem expedient, and to elect all such good and lawful men being householders, residing in Cape Town, or within eight miles thereof, as they shall think fit, and who shall signify in writing their acceptance of the said office, and to elect fit, proper, and qualified persons to fill up any vacancies which may have occurred in the offices of president, vice-president, or director in the committee of management, in any case in which it is hereinbefore provided that such vacancies shall be filled up by the election of a general meeting of the said society, and to remove from office any president, vice-president, director, member of the committee of management, or manager, for any cause which shall to such meeting appear sufficient: Provided always, that it shall not be lawful for the members of the said society at any general meeting thereof to make any new rule or regulation, or to repeal, alter, or amend any subsisting rule or regulation as aforesaid, or to remove any person from office as aforesaid, unless notice that a motion to that effect will be made at such general meeting, shall have been given seven days previous to such meeting by some member of the society, either publicly at some general meeting thereof, or in writing, and delivered at the usual place of business of the committee of management to some officer or manager in attendance thereat, and where such motion shall be to remove any person from office, then such previous written notice thereof

Digitised by the University of Pretoria, Library Services, 2016

shall also be either delivered to such person or left at his dwelling-house: and provided also, that every new rule or regulation and every repeal, alteration, or amendment of any subsisting rule or regulation established or made by any such general meeting, shall be entered, transcribed, enrolled, and deposited in like manner as it was hereinbefore provided that any rules, regulations or repeals, alterations or amendments thereof, made by the committee of management should be entered, transcribed, enrolled, and deposited, and no rule or regulation, or repeal, alteration, or amendment thereof made at any general meeting of the said society shall have any force or effect until the same shall be entered, transcribed, enrolled, and deposited as aforesaid.

Rules of order, &c., at general meetings.

19. And be it enacted that the vote or resolution of the major part of any general meeting of the said society shall in all cases be deemed and taken to be and shall have effect as the vote or resolution of such meeting, and that in absence of the president the eldest vice-president, and in the absence of the vice-presidents the eldest director, and in the absence of the directors the eldest member of the committee of management, and in their absence the eldest manager present shall preside at the general meetings of the said society, and that in every case in which the votes or opinions of any such meeting shall be equally divided the person who shall preside at such meeting shall have a casting vote, and that in all cases when the election to any office or offices is to be made by any such general meeting, the mode of election shall be by signed lists given in by the members present, and the person or persons who shall (by a committee of scrutiny to be chosen by such meeting) be found to have the most votes in his or their favour shall be deemed and taken to be and shall be duly elected.

Receipt and payment out of deposits by two or more managers in rotation

20. And be it enacted that two (1) or more managers of the said society shall attend at the office or place of business thereof in rotation, in such manner and at such times as shall be appointed by any rule or regulation to that effect duly made in manner hereinbefore provided, for the purpose of receiving and paying out deposits and transacting such other business of the said society as shall be committed to them by the said committee. (2)

Declaration of depositor respecting distribution of his deposits after his decease, signed by him and duly attested by managers, valid as a will to be administered by the committee.

21. And be it enacted that it shall and may be lawful for any depositor in the said bank at the time of making any deposit to declare to the managers who shall receive such deposit, or at any time afterwards to declare to the managers who shall for the time be in attendance at the usual place of business of the said society for the purpose of transacting the business thereof, in what manner and to and amongst what persons the said depositor will have the amount of his or her deposits and the produce thereof distributed by the committee of management in the event of his or

[1] See § 11, Act 24 of 1894.
[2] See § 4, Ordinance 10 of 1848.

Digitised by the University of Pretoria, Library Services, 2016

No. 86—1831.

her decease without making any other legal disposition of the same, and the said committee shall cause every such declaration to be entered in a book to be kept by them for that purpose. and to be signed by the said depositor or by some one for and on behalf and by authority of the said depositor, and in his or her presence and in the presence of and attested by two or more of the managers of the said bank, and the said declaration so made, entered, and attested shall be valid and effectual in law as the will of the said depositor respecting such property, and the said committee are hereby authorised and required, and upon due proof of the decease of such depositor as aforesaid, and provided no other legal disposition of such property by the said depositor shall be produced, and after the payment of the just debts of the said depositor, to administer and distribute the same according to such declaration, any law or usage of the Colony to the contrary notwithstanding. And be it further enacted that such administration and distribution of the said committee shall be entirely free and discharged from all stamps and Government fees and duties whatsoever. And be it further enacted that the managers of the said society who shall at any time receive a deposit from any person then for the first time making a deposit in the said bank, shall inform such person that he or she may make and shall inquire whether such depositor is willing to make such declaration as aforesaid. (1)

Proceedings in case of death of depositor who has not made such declaration.

22. And be it enacted that in case any depositor in the said bank shall die leaving a sum of money in the said bank which with the interest due thereon shall not exceed in the whole the sum of £50, it shall and may be lawful to and for the said committee of management, and they are hereby authorised and required, provided that the said deceased depositor shall have made no such declaration as aforesaid, to cause public notice to be given forthwith in the *Government Gazette* of this Colony of the death of such depositor, of the amount due to him at the time of his death, and of the period fixed for payment thereof, which period shall be fixed according to the circumstances of the case at the discretion of the said committee. And if no will of such depositor shall be proved before the period so fixed, it shall and may be lawful for the said committee at any time thereafter, and after paying the just debts of such depositor, to pay and divide such money as aforesaid, by and with the consent of the Attorney-General of this Colony, to and among such person or persons as shall appear to him and them to have the best claim thereto; and every such payment shall be a valid and effectual discharge against any demand or claim made upon the funds of the said society or upon the said committee, or upon any member of the said society by any other person or persons, as being the lawful representative or representatives of such depositor; and such person or persons so claiming as afore-

[1] See § 7, Ordinance 10 of 1848.

Digitised by the University of Pretoria, Library Services, 2016

No. 86—1831.

her decease without making any other legal disposition of the same, and the said committee shall cause every such declaration to be entered in a book to be kept by them for that purpose. and to be signed by the said depositor or by some one for and on behalf and by authority of the said depositor, and in his or her presence and in the presence of and attested by two or more of the managers of the said bank, and the said declaration so made, entered, and attested shall be valid and effectual in law as the will of the said depositor respecting such property, and the said committee are hereby authorised and required, and upon due proof of the decease of such depositor as aforesaid, and provided no other legal disposition of such property by the said depositor shall be produced, and after the payment of the just debts of the said depositor, to administer and distribute the same according to such declaration, any law or usage of the Colony to the contrary notwithstanding. And be it further enacted that such administration and distribution of the said committee shall be entirely free and discharged from all stamps and Government fees and duties whatsoever. And be it further enacted that the managers of the said society who shall at any time receive a deposit from any person then for the first time making a deposit in the said bank, shall inform such person that he or she may make and shall inquire whether such depositor is willing to make such declaration as aforesaid. (1)

Proceedings in case of death of depositor who has not made such declaration.

22. And be it enacted that in case any depositor in the said bank shall die leaving a sum of money in the said bank which with the interest due thereon shall not exceed in the whole the sum of £50, it shall and may be lawful to and for the said committee of management, and they are hereby authorised and required, provided that the said deceased depositor shall have made no such declaration as aforesaid, to cause public notice to be given forthwith in the *Government Gazette* of this Colony of the death of such depositor, of the amount due to him at the time of his death, and of the period fixed for payment thereof, which period shall be fixed according to the circumstances of the case at the discretion of the said committee. And if no will of such depositor shall be proved before the period so fixed, it shall and may be lawful for the said committee at any time thereafter, and after paying the just debts of such depositor, to pay and divide such money as aforesaid, by and with the consent of the Attorney-General of this Colony, to and among such person or persons as shall appear to him and them to have the best claim thereto; and every such payment shall be a valid and effectual discharge against any demand or claim made upon the funds of the said society or upon the said committee, or upon any member of the said society by any other person or persons, as being the lawful representative or representatives of such depositor; and such person or persons so claiming as afore-

[1] See § 7, Ordinance 10 of 1848.

Digitised by the University of Pretoria, Library Services, 2016

said shall have their remedy by recourse against the person or persons who shall have received such payments, and not otherwise; and such administration or distribution by the said committee shall be entirely free and discharged from all stamps and Government fees and duties whatsoever. Provided always, that in case no claims be made on any such money as aforesaid, or if made shall not be admitted by the said committee, or by the determination and adjudication of one of the judges of the Supreme Court or of the Resident Magistrate for Cape Town made in manner hereinafter provided, then and in every such case such money shall remain under the administration of the said committee, and the interest thereof shall be applied for the general purposes of the said society, until further provision be made for the application and disposal of such money by any law for that purpose to be hereafter made and provided.

Reference of differences between managers, or between committee of management and other persons to the arbitration of a judge of the supreme court, or resident magistrate of the Cape district.

23. And be it enacted that in case any difference shall arise between and amongst the managers of the said society, or between the said managers or any person concerned in the management of the said society and any depositor in the said bank, or any executor, administrator, next of kin, or any party claiming as such, or otherwise, to be entitled to the effects of any deceased depositor in the said bank, then and in every such case the matter so in dispute shall be referred to the summary decision of such one of the Judges of the Supreme Court, or the Resident Magistrate of the Cape District as shall be mutually agreed upon by the parties in dispute; and in case the parties shall not mutually agree thereon then to such Judge or Magistrate aforesaid as shall be determined on by the committee of management (such Judge or Magistrate being willing to accept the said reference), and the said Judge or Magistrate is hereby authorised to inquire and determine the said matter in dispute, and also to adjudge by whom the costs and expenses of the said reference shall be paid, and his determination and adjudication on the premises shall be final and conclusive, and binding on the said parties to all intents and purposes whatsoever.

Establishment of branch banks

24. And be it enacted that it shall be lawful for the members of the said society, at any general meeting thereof duly holden for such purpose in manner hereinbefore provided, to establish branch savings banks for the like purposes for which the said bank is hereinbefore declared and provided to be established in any district, town or place within this Colony, wherein it shall appear to any such meeting expedient that a savings bank should be established, and wherein there shall be a sufficient number of fit and proper persons able and willing to undertake the management and transact the business of such bank, and to make all necessary rules and regulations for the management of such branch banks.

Repeal of proclamation of 11th October, 1822.

25. And be it enacted that from and after the publication of this Ordinance in the *Government Gazette* of this Colony, the pro-

Digitised by the University of Pretoria, Library Services, 2016

No. 86—1831.

clamation of the 11th October, 1822, shall be and the same is hereby repealed, and the branch opened in the discount bank, under and by virtue of the provisions of the said proclamation, shall thenceforth cease and be discontinued, and that all accounts relating to deposits of money made by any person in the said branch shall within one month from and after the publication of this Ordinance in the *Government Gazette* of this Colony, be adjusted and settled, and that all balances which shall be found or appear to belong to any person or persons in respect of any such deposits or any interest accruing thereon, together with all books, accounts, documents, and vouchers relating or appertaining thereto, shall at the expiration of the said period of one month be transferred to the discount bank, and the president and directors of the said bank shall cause accounts to be opened in the books of the said bank in the names of the persons to whom such balances shall be found or appear to belong respectively, and shall in such accounts give credit for such balances to such persons respectively: Provided always, that after such balances shall have been transferred as aforesaid, no interest shall be allowed thereon by or may lawfully be claimed or demanded from the said discount bank.

SCHEDULE A, SEC. 3.

President:

First vice-presidents and trustees.

Vice-presidents: The Hon. Sir John Truter, the Hon. Lieut.-Colonel John Bell, the Hon. J. W. Stoll, Esq., Anthony Oliphant, Esq., J. Smuts, Esq.

Trustees: W. W. Bird, C. Burton, J. B. Ebden, W. Hawkins, J. A. Joubert, D. Kuys, H. G. Muntingh, J. Nisbet, C. Pillans, Esquires, Major Rogers.

SCHEDULE B, SEC. 3.

First managers.

Managers: C. Ludwig, Advocate Cloete, Advocate Brand, Advocate de Wet, Advocate Hofmeyr, G. H. Maasdorp, J. F. Dreyer, F. Collison, C. M'Kenzie, G. J. Vos, G. Thompson. A. Thomson, H. Murphy, W. Hayward, A. de Smidt, J. H. Tredgold, H. Buckton, R. Hoets, H. E. Rutherfoord, D. F. Lehman, jun., W. Hawkins, W. Hunt, T. Ansdell, J. Deane, G. Rietz, H. Hancke, T. Elliott, F. Russouw, sen., T. Sutherland, H. Ross, A. J. van Breda, W. Liesching, R. J. van der Riet, J. C. Gie, M s., E. Norton, J. Bance, A. Chiappini, A. Jardine, L. Twentyman, P. Serrurier, J. Simpson, J. D. Gregory, G. Greig, F. S. Watermeyer, G. W. Prince, R. J. Jones, A. Robertson, P. H. Polemann, J. Syme, F. Stegmann, T. Tennant, R. A. Zeederberg, B. Phillips, J. Clark, R. W. Eaton, W. Gadney, W. Bridekirk, W. Heideman, E. Christian, W. Dickson, J. Lawton, W. Billingsley, M. de Kock, L. Herman, F. Hertzog, P. Roux, W. Heyward, R. Waters, J. Saunders, P. M. Brink, J. G. Muller, H. Hewitt, J. Marshall.

Digitised by the University of Pretoria, Library Services, 2016

No. 87.] [June 22, 1831.

Ordinance for altering and amending the Ordinance No. 74.

[Repealed with Ordinance No. 74, by Ordinance No. 3 of 1845.]

No. 88.] [June 30, 1831.

Ordinance for Abolishing the Office of the Commissioner for the adjustment of the Affairs under the administration of the late Sequestrator and Joint Sequestrator, and providing for the administration, distribution, and joint settlement of all property, estates, matters, and things under the administration of the said Commissioner.

[Expired.]

No. 89.] [February 6, 1832

Ordinance for annexing the District of Port Elizabeth to the District of Uitenhage, and for defining and appointing the local limits within which the Courts of the Resident Magistrates and Matrimonial Courts within this Colony shall respectively have and exercise Jurisdiction.

[Repealed by Acts 20 of 1856, and 9, 1882.]

ADMINISTRATION OF JUSTICE.

His Majesty's Royal Charter for the better and more effectual Administration of Justice within the Colony of the Cape of Good Hope. (1)

William the Fourth, by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith.

To all to whom these presents shall come,

GREETING :—

Preamble. WHEREAS it is expedient to make provision for the better and more effectual administration of justice in our Colony of the Cape of Good Hope, and in the several territories and settlements dependent thereupon, and for that purpose to constitute within our said Colony and its dependencies one Supreme Court of Justice, to be holden in the manner and form hereinafter mentioned: Now

[1] By a proclamation of Governor Sir Benjamin D'Urban, K.C.B., under the 55th Section, dated 13th February, 1834, this charter took effect in the Colony from the 1st March, 1834. See Acts 21—1864, 15—1867, 23—1875, 39—1877, §§ 9—18, 5—1879, 12—1880, 40—1882, 41—1882, §§ 1, 2 and 4, 17—1886, 13—1861, 2—1867, 3—1890, 26—1894.

Digitised by the University of Pretoria, Library Services, 2016

Charter of Justice.

know ye, that we of our special grace, certain knowledge, and mere motion, have thought fit to grant, direct, order, and appoint, and by these presents do accordingly for us, our heirs and successors,

Creation of the supreme court.

grant, direct, order, and appoint, that there shall be within our said Colony of the Cape of Good Hope, a court which shall be called "The Supreme Court of the Colony of the Cape of Good Hope."

A court of record.

2. And we do hereby create, erect, and constitute the said Supreme Court to be a Court of Record.

Its constitution.

3. And we do further will, ordain, and appoint, that the said Supreme Court of the Colony of the Cape of Good Hope shall consist of and be holden by and before one Chief Justice and two [1] Puisne Judges, and that the said Chief Justice shall be called and known by the name and style of the Chief Justice of the Colony of the Cape of Good Hope, and which said Chief Justice and Puisne Judges shall be respectively barristers in England or Ireland, or advocates admitted to practise in our Courts of Session in Scotland or in the said Supreme Court. And which said Chief Justice and Puisne Judges shall, from time to time, be nominated and appointed to such their offices by us [2], our heirs and successors, by letters patent under the public seal of the said Colony, to be issued in pursuance of any warrants or warrant to be from time to time for that purpose granted by us, our heirs and successors, under our or their sign manual.

Appointment of judges by letters patent under the seal of the Colony.

Power of the Governor, in case of death, resignation, sickness, or incapacity of a judge, to appoint a fit person to act in the place of such judge.

4. And we do hereby declare, ordain, and grant that upon the death, resignation, sickness, or incapacity of the said Chief Justice, or any of the said Puisne Judges, or in the case of the absence of any of them from the said Colony, or in case of any such suspension from office as hereinafter mentioned, of any such Chief Justice or Puisne Judge, it shall and may be lawful to and for the Governor of our said Colony for the time being, by letters patent, to be by him for that purpose made and issued under the public seal of the said Colony, to nominate and appoint some fit and proper person or persons to act as and in the place and stead of any such Chief Justice, or Puisne Judge, so dying or resigning, or labouring under such sickness or incapacity as aforesaid, or being so absent as aforesaid from the Colony, or being so suspended until the vacancy or vacancies so created by any such death or resignation or sickness or incapacity, or absence or suspension, shall be supplied by a new appointment, to be made in manner aforesaid by us, our heirs and successors, or until the Chief Justice, or Puisne Judge, so becoming sick or incapable, or being absent or suspended, as aforesaid, shall resume such his office and enter into the discharge of the duties thereof.

[1] Increased to 3 by Act 10, 1855; to 4 by Act 21, 1864; to 5 by Act 5, 1879; to 6 by Act 12, 1880; and to 8 by Act 40, 1882.

[2] Judges are now appointed by the Governor in the name of the Queen by virtue of power delegated to him in his Commission.

Digitised by the University of Pretoria, Library Services, 2016

Charter of Justice.

Tenure of office during good behaviour.

5. And we do further will, ordain, and grant, that the said Chief Justice and Puisne Judges shall hold such their offices during their good behaviour: Provided, nevertheless, that it shall and may be lawful for the Governor of our said Colony for the time being, by any order or orders to be by him for that purpose made and issued under the public seal of the said Colony, with the advice of the Executive Council of Government of the said Colony, or the major part of them, upon proof of the misconduct of any such Chief Justice or Puisne Judge, as aforesaid, to suspend him from such his office and from the discharge of the duties thereof: Provided, that in every such case the said Governor shall immediately report for our information, through one of our Principal Secretaries of State, the grounds and causes of such suspension.

Power of suspension by Governor with advice of the executive council, in case of misconduct.

Confirmation or disallowance of such suspension.

6. And we do hereby reserve to us, our heirs and successors, full power and authority to confirm or disallow such suspension from office as aforesaid, of any such Chief Justice or Puisne Judge. And we do hereby further reserve to us, our heirs and successors, full power and authority upon sufficient proof to our or their satisfaction of any such misconduct, to remove and displace any such Chief Justice or Puisne Judge from such his office.

Rank and precedence of chief justice

7. And we do hereby give and grant to our said Chief Justice, for the time being, rank and precedence above and before all our subjects whomsoever within the said Colony of the Cape of Good Hope, and the territories and places dependent thereupon, excepting the Governor or Lieutenant-Governor for the time being, thereof, and the Commander-in-Chief of our forces for the time being within the same, and excepting all such persons as by law or usage in England take place before our Chief Justice of our Court of King's Bench.

Of puisne judges.

8. And we do hereby give and grant to the said Puisne Judges for the time being, rank and precedence within our said Colony of the Cape of Good Hope, and the territories and places dependent thereupon, next after our said Chief Justice of our said Colony, for the time being.

Seniority of puisne judges.

9. And we do hereby declare that the said Puisne Judges shall take rank and precedence between themselves, according to the priority of their appointments respectively.

Seal of supreme court.

10. And we do further grant, ordain, and appoint, that the said Supreme Court of the Colony of the Cape of Good Hope shall have and use, as occasion may require, a seal, bearing a device and impression of our royal arms, within an exergue or label surrounding the same, within this inscription, "The Seal of the Supreme Court of the Cape of Good Hope."

Custody of the seal.

11. And we do hereby ordain, grant, and appoint, that the said seal shall be delivered to, and shall be kept in the custody of the said Chief Justice, with full liberty to deliver the same to any Puisne Judge of the said Court, for any temporary purpose; and in

Digitised by the University of Pretoria, Library Services, 2016

Charter of Justice.

case of vacancy of, or suspension from, the office of Chief Justice, the same shall be delivered over to, and kept in the custody of such person as shall be appointed by the said Governor of our said Colony, to act as and in the place and stead of the said Chief Justice.

Salaries of Judges.

12. And we do further grant, ordain, and declare, that the said Chief Justice, and the said Puisne Judges, so long as they shall hold their offices respectively, shall be entitled to have and receive such salaries as shall be granted to them by us, our heirs and successors, which salaries shall be in lieu of all fees of office, perquisites, emoluments, and advantages whatsoever; and that no fee of office, perquisite, emolument, or advantages, other than and except the said salaries, shall be accepted, received, or taken by any such Chief Justice or Puisne Judge, on any account, or any pretence whatsoever. (1)

Forfeiture of judicial office by acceptance of other office.

13. And we do further ordain, appoint, and declare, that no such Chief Justice or Puisne Judge as aforesaid, shall accept, take, or perform any other office, place of profit, or emolument, within our said Colony, and that the acceptance of any such other office or place as aforesaid shall actually vacate and avoid such his office of Chief Justice or Puisne Judge, as the case may be, and the salary thereof shall cease accordingly, from the time of the acceptance of any such other office or place.

Officers of the court.

14. And we do hereby ordain, appoint, and declare, that there shall be attached, and belong to the said Court, the following officers, (that is to say),—one officer to be styled the Registrar (2) or Prothonotary and Keeper of Records of the said Court, and one other officer to be styled the Master thereof (3) together with such and so many other officers as to the Chief Justice of the said Court for the time being, shall from time to time appear to be necessary for the administration of justice, and the due execution of the powers and authorities which are granted and committed to the said Court by these our letters patent: Provided nevertheless, that no new office shall be created in the said Court, unless the Governor of the said Colony, or Lieutenant-Governor for the time being, shall first signify his approbation thereof to the said Chief Justice for the time being, in writing, under the hand of such Governor or Lieutenant-Governor.

Mode of appointment of officers.

15. And we do further ordain and direct, that all persons who shall and may be appointed to the offices of Registrar or Prothonotary and Keeper of Records, or Master of the said Court, and that all persons who shall be appointed in the said court to any offices, of which the duties shall correspond to those performed by the Master or Prothonotary of any or either of our Courts of

[1] See Act 36 of 1882, which provides for payment of allowance to Chief Justice as President of the Legislative Council.

[2] Assistant Registrar appointed by Rule of Court 281.

[3] Taxing Officer appointed by Rule of Court 351.

Digitised by the University of Pretoria, Library Services, 2016

Record at Westminster, shall be so appointed by us, our heirs and successors, by warrant, under our or their Royal Sign Manual, and that all persons who shall and may be appointed to any other office within the said Supreme Court, shall be so appointed by the Governor for the time being of the said Colony. Charter of Justice

16. And we do further direct and appoint, that the several officers of the said Court other than and except the said Chief Justice and Puisne Judges thereof shall hold their respective offices therein during the pleasure of us, our heirs and successors. Duration of office

17. And we do hereby authorise and empower the said Supreme Court of the Colony of the Cape of Good Hope, to approve, admit, and enrol such persons as shall have been admitted as barristers in England or Ireland, or advocates in the Court of Session of Scotland, or to the degree of Doctor of Laws at our Universities of Oxford, Cambridge, or Dublin, (1) to act as barristers or advocates in our said Supreme Court. Admission of barristers, &c.

18. And we do further authorise and empower the said Supreme Court, to admit any persons to practise as barristers and advocates therein, who, previously to the promulgation of these presents within the said Colony, have been actually admitted to practise as advocates in the Supreme Court of Justice heretofore existing within the same. Advocates of the late court.

19. And we do further authorise and empower the said Supreme Court, to approve, admit, and enrol any persons, being attorneys or solicitors of any of our Courts of Record at Westminster or Dublin, or being proctors admitted to practise in any Ecclesiastical court in England or Ireland, or being Writers to the Signet in Scotland, or being now entitled to practise as Proctors or Notaries in the said Supreme Court of Justice heretofore existing within the said Colony, to act as attorneys, solicitors, or proctors in the said Supreme Court of the Colony of the Cape of Good Hope. Admission of attorneys, solicitors and proctors.

20. And we do further authorise our said Supreme Court, to approve, admit, and enrol as such attorneys, solicitors, or proctors, as aforesaid, such and so many persons as may be instructed within our said Colony, in the knowledge and practice of the law, by any barrister, advocate, attorney, solicitor, or proctor, duly admitted to practise in the said Court, and which persons shall be so approved, admitted, and enrolled, according to and in pursuance of any general Rule or Rules of Court, to be for that purpose made in manner hereinafter directed. (2) Future admission of attorneys, solicitors, and proctors.

21. And we do ordain and declare, that persons approved, admitted, and enrolled as aforesaid, shall be, and they are hereby authorised to appear and plead and act for the suitors of the said Supreme Court; subject always to be removed by the said Supreme Court from their station therein, upon reasonable cause. Capacity and removal of enrolled persons.

[1] See § 2, Act 12, 1858; § 20, Act 16 of 1873; § 1 Act 30 of 1892.
[2] See § 3, Act 12, 1858, and § 21, Act 16, of 1873. See also Act 27, 1883, and § 46 of this Charter.

Digitised by the University of Pretoria, Library Services, 2016

Charter of Justice.

Incapacity of unenrolled persons.

22. And we do further ordain, that no person or persons whatsoever, not so approved, admitted, and enrolled, as aforesaid, shall be allowed to appear, plead, or act in the said Supreme Court for or on behalf of any suitors in the said Court.

Functions of barristers and of solicitors.

23. Provided always, and we do further ordain and declare, that the functions and office of barristers and advocates shall not be discharged in the said Court by the attorneys, solicitors, and proctors thereof, and that the functions and office of such attorneys, solicitors, and proctors shall not be discharged by such barristers at law or advocates.

Authority of the court, in case of insufficiency in number of barristers or attorneys, to allow attorneys to act as barristers, and *vice versa*.

24. Provided nevertheless, and we do further declare our will to be, that in case there shall not be a sufficient number of barristers and advocates within the said Colony, competent and willing to act for the suitors of the said Court, the said Court shall, and is hereby authorised, to admit any of the attorneys, solicitors, or proctors thereof, to appear and act as barristers and advocates, during the time of such insufficiency only; and in case there shall not be a sufficient number of attorneys, solicitors, and proctors within the said Colony, competent and willing to appear and act in that capacity for the suitors of the said Court, the said Supreme Court shall, and is hereby authorised, to admit any of such barristers or advocates, to practise and act in the capacity of attorneys, solicitors, and proctors, during the time of such insufficiency only.

Annual appointment of sheriff.

25. And we ordain and declare, that the Governor for the time being, of the said Colony of the Cape of Good Hope, shall, on the first Monday in the month of January in each year, by warrant under his hand and seal, nominate and appoint some fit and proper person, to act as and be the Sheriff for our said Colony of the Cape of Good Hope, and its dependencies, for the year ensuing, which Sheriff, when appointed, shall, as soon as conveniently may be, and before he shall enter upon his said office, take an oath, faithfully to execute the duties thereof, and the oath of allegiance, before the said Governor, who is hereby authorised to administer the same. ([1])

Duration of sheriff's office.

26. And we do direct, that the said Sheriff shall continue in such his office during the space of one whole year, to be computed from the said first Monday in the month of January, and until another shall be appointed and sworn into the said office; and in case such Sheriff shall die in, or resign, his said office, or depart from our said Colony of the Cape of Good Hope, during the period of his office, then, another person shall, as soon as conveniently may be, after the death, resignation, or departure of such Sheriff, be in like manner appointed and sworn in as aforesaid, and shall continue in his office for the remainder of the year, and until another Sheriff shall be duly appointed and sworn into the said office.

[1] See Ord. 37.

Digitised by the University of Pretoria, Library Services, 2016

Execution of all sentences, decrees, orders, commands, processes, &c., of the court, by sheriff or his deputies.

27. And we do further order, direct, and appoint that the said Sheriff for the time being, shall, by himself, or his sufficient deputies, to be by him appointed and duly authorised under his hand and seal, and for whom he shall be responsible during his continuance in such office, execute, and the said Sheriff, by himself and his said deputies, are hereby authorised to execute, all the sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands, and processes of the said Supreme Court of the Cape of Good Hope, or of the Circuit Courts of the said Colony hereafter mentioned, and shall make a return of the same, together with the manner of the execution thereof, to the Supreme Court of the Cape of Good Hope, or to the said Circuit Courts, as the case may be, and shall receive and detain in prison, all such persons as shall be committed to the custody of such Sheriff by the Supreme Court of the Cape of Good Hope, or by the said Circuit Courts, or by the Chief Justice, or by any other Judge of the said Courts.

Authority to the Governor to reappoint the same sheriff.

28. And we do further authorise our Governor for the time being, of the said Colony of the Cape of Good Hope, in each succeeding year, to reappoint the same person to fill the office of Sheriff, if it shall appear to our said Governor expedient so to do: Provided nevertheless, and we do hereby require our said Governor in the selection of any person to fill the said office of Sheriff of the Cape of Good Hope, to conform himself to such directions as may from time to time be given in that behalf by us, our heirs and successors, through one of our or their Principal Secretaries of State.

Execution of process by a person specially appointed, when the sheriff cannot by law execute.

29. And we do further direct, ordain, and appoint that whenever the said Supreme Court of the Cape of Good Hope, or the Circuit Courts hereinafter mentioned, shall direct or award any process against the said Sheriff, or award any process in any cause, matter, or thing, wherein the said Sheriff, on account of his being related to the parties, or any of them, or by reason of any good cause of challenge, which would be allowed against any Sheriff in England, cannot or ought not by law to execute the same, in every such case the said Supreme Court of the Colony of the Cape of Good Hope, or the said Circuit Courts, as the case may be, shall name and appoint some other fit person to execute and return the same, and the said process shall be directed to the person so to be named for that purpose, and the cause of such special proceedings shall be registered and entered on the records of the said Courts respectively.

Jurisdiction of the supreme court

30. And we do hereby further ordain, direct, and appoint, that the said Supreme Court of the Colony of the Cape of Good Hope shall have cognizance of all pleas, and jurisdiction in all causes, whether civil, criminal, or mixed, arising within the said Colony, with jurisdiction over our subjects, and all other persons whomso-

Digitised by the University of Pretoria, Library Services, 2016

Charter of Justice.

ever residing and being within the said Colony, in as full and ample a manner and to all intents and purposes, as the Supreme Court of justice now existing within the said Colony now hath or can lawfully exercise the same. (1)

Laws according to which the court is to judge and determine.

31. And we do further give and grant to the said Supreme Court of the Colony of the Cape of Good Hope, full power, authority, and jurisdiction, to apply, judge, and determine upon, and according to the laws now in force within our said Colony, and all such other laws as shall at any time hereafter be made and established for the peace, order, and government thereof by us, our heirs and successors, with the advice and consent of Parliament, or in our or their Privy Council, or by the Governor of the said Colony by the advice of the Legislative Council of Government thereof.

Power of review of proceedings of all inferior courts.

32. And we do further give and grant to the said Supreme Court, full power, jurisdiction, and authority to review the proceedings of all inferior courts of justice within our said Colony, and, if necessary, to set aside or correct the same (2) ; and in the exercise of such jurisdiction, powers, and authorities as aforesaid, our will and pleasure is, that the pleadings and proceedings of the said Supreme Court and the said Circuit Courts shall be carried on, and the sentences, decrees, judgments, and orders thereof pronounced and declared, in open Court, and not otherwise, and that the several pleadings and proceedings of the said court shall be in the English (3) language; and that in all criminal cases, the witnesses against and for any accused person or persons shall deliver their evidence *vivâ voce*, and in open Court.

Proceedings in open court, and in the English language.

Quorum of the court in civil suits.

33. And we do further will, direct and appoint, that for the conduct and decision of all civil suits, actions, and causes depending before the said Supreme Court, and of all questions, matters, and things arising in the course of any such civil suits, actions, or causes, any two of the Judges of the said Supreme Court shall form a quorum, and shall be competent to execute all and every the powers, jurisdictions, and authorities hereby granted to and vested in the said Supreme Court, and that in the event of any difference of opinion between such two Judges, the decision of the said Court shall, in any such case, be suspended until all the three Judges shall be present, and the decision of such two Judges, when unanimous, or of the majority of such three Judges in case of any difference of opinion, shall in all cases be deemed and taken to be the decision of the whole Court. (4)

Trial by jury in criminal cases.

34. And we do further ordain, direct and appoint that in any criminal case depending before the said Supreme Court, the trial

---

[1] See § 1, Ord. 40; Acts Nos. 21, 1864, § 10 ; 3, 1890, and 26, 1894.

[2] See § 4, Ord. 40, § 4, Act 21 of 1876. §§ 22 *et seq*. Act 5, 1879; § 16, Act 40, 1882, and §§ 1 and 5, Act 17, 1886.

[3] But see Act 21 of 1884.

[4] During vacation one judge can discharge all functions of the court. See Act 23 of 1875 As to quorum see § 3, Act 40, 1882.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

correct diagram and the true contents of the said farm: And provided that the expense of such survey shall be borne by the person causing the same to be made: Provided, also, that no fresh grant shall be issued by the Surveyor-General under this section until after the expiration of three months from the publication of a notice in the *Government Gazette* by the Divisional Council, at the expense of the owner of the farm surveyed, stating the name or other description of the farm surveyed, and the field-cornetcy and division in which it is situated, and that it has been surveyed under this section for a fresh grant, according to its admitted beacons as the same stood on the 31st December, 1867, [1] and for six months previously: Provided, lastly, that the provisions of the ninety-ninth section of this Act, relating to Crown land, shall extend and apply to every surveyor employed in making any resurvey under this section, in like manner as if such surveyor had been appointed under the ninety-fourth section of this Act.

Expense to be borne by owner.

Issue of fresh grant not to take place within three months of publication of notice.

Provisions of section 99 regarding Crown land to apply.

Beacons erected within six months of 31st December, 1867, may be disputed.

105. Every beacon, whether of a farm of which the beacons ought before the taking effect of this Act to have been up, or of a farm first created by grant or transfer after the taking effect of this Act, and which beacons shall have been erected at any time later than six months next before the 31st of December, 1867, [1] may be disputed as erroneous for any length of time during which it could lawfully have been disputed in case this Act, (except the next succeeding section thereof) and the several Acts by this Act repealed had not been passed: Provided that as often as any doubt or question shall arise as to the time at which any beacon in controversy was first erected, said beacon shall be deemed and taken to have been erected later than six months before the said 31st day of December, 1867, [1] unless the person asserting that it was erected before that date shall prove the giving, not later than six months next before the said 31st day of December, 1867, [1] of the notice in the eighty-ninth section of this Act mentioned; and that the beacon in question was up when such notice was given, and that such beacon had ever since been standing; and in the absence of such proof such beacon shall be deemed to have been erected for the first time later than six months next before the said 31st day of December, 1867 [1]: Provided, also, that for the purpose of this section, the notice mentioned in the third section of the Act No. 6 of 1862, if given before the taking effect of this Act, shall be deemed to be equivalent to the notice in the eighty-ninth section of this Act mentioned: Provided, further, that nothing in this section contained shall extend to any beacons which shall have been erected in pursuance of and in conformity with any resurvey made under this Act, all which beacons shall be and remain indisputable.

How, when date of erection is disputed.

Notice required by section 3 of Act 6, 1862, to stand in place of notice in section 99 of this Act.

Beacons erected in conformity with any resurvey under this Act, not affected.

[1] Printed as amended by Act 8, 1866-'67.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

Period of prescription and servitude limited to thirty years.

106. The period of prescription in regard to immovable property in this Colony, and servitudes upon or connected therewith, shall, from and after the 1st day of January, 1867, be thirty years, instead of the third of a century.

Definition or description of sections or areas not interfered with.

107. Nothing in this Act contained shall be construed so as to prevent the definition or description, at any time, of such sections or areas as are in this Act mentioned, it being the true intent and meaning of this Act, firstly, not to prevent or interfere with the creation, at any time, whether before or after the 31st day of December, 1867, [1] of such sections or areas as aforesaid; and secondly, to provide for the mode in which the beacons of farms not included in any such section or area may, if erected for a certain time before the 31st Day of December, 1867, [1] become admittedly true and correct; and thirdly, to leave all other beacons whatsoever to be dealt with by the law of the Colony regulating prescription: Provided that if any such section or area shall include any farm which shall have been resurveyed, and shall have had its beacons fixed under the provisions of this Act applicable to the determination of detached disputes not arising within sections or areas previously described or defined, such farm shall not be again surveyed, or be chargeable with any of the expenses of the resurvey of the section or area in which such farm shall be afterwards included.

Farm already resurveyed, &c., if included in a section, not to be resurveyed in such section or charged with expenses.

Parties disputing beacons, or whose beacons are in dispute, not prevented from proceeding under section 93.

108. Provided, always, and it is hereby declared, that it shall at all times hereafter, during the subsistence of this Act, be lawful for any person [2] who shall dispute the beacons of any other person, or whose beacons any other person shall dispute, to proceed, by objection or application (as the case may be), according to the ninety-third section of this Act: and thereupon the several sections of this Act from the ninety-fourth to the ninety-ninth, both inclusive, shall apply to the final settlement of such dispute: Provided that nothing in this section contained shall extend to any beacons within any section or area which shall have been proclaimed for resurvey.

But not to extend to beacons included in any section.

Inconsistent beacons not objected to or in course of settlement on 31st December, 1867, may be disputed.

109. Should it in any case happen that there shall be standing upon the 31st day of December, 1867, [1] and not then already objected to, or put in course of settlement, in manner and form as in the ninety-fourth section of this Act provided, the beacons of two or more farms not contained in any section or area which shall have been or shall be proclaimed for resurvey, which beacons shall be inconsistent with each other, so that all of them cannot be true and correct, then, in case neither of the persons maintaining, respectively, the correctness of each set of inconsistent beacons, shall have given the notice in the eighty-ninth section of this Act mentioned, none of the said beacons shall become or be admittedly true and correct, but shall all be capable of being disputed

[1] Printed as amended by Act 8, 1866-'67.
[2] Including the Surveyor-General, Act 8, 1866-'67, § 3.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

as erroneous for any length of time during which they might lawfully have been disputed in case this Act (except the hundred and sixth section thereof) and the several Acts by this Act repealed had not been passed. But in case one of the said persons shall have given such notice as aforesaid, and the other shall not, then the beacons of the person who shall have given such notice shall be deemed to be admittedly true and correct, as against the person who did not give such notice: Provided that if the farm of such last-mentioned person shall have first come into existence by grant or transfer, within the period of six months next before the 31st day of December, 1867, (1) then such person may object to the beacons of the person who gave such notice, at any time before the 31st day of December, 1868, (1) and such objection shall be of the same force and effect as if it had been lodged within the time in that behalf in the ninety-third section of this Act limited.

How, when one of the parties concerned shall have given notice of such inconsistency.

Period for objecting, under certain circumstances, extended.

Admission of correctness of beacons not to affect right of Government to dispute beacons adjoining Crown land.

110. Nothing contained in the ninety-second or any succeeding section of this Act, regarding the cases or circumstances in which beacons shall or may become admittedly true and correct, shall apply to any beacon adjoining any Crown land, which beacon may (except as hereinafter is excepted) be disputed by the Government for any length of time during which the same might have been disputed in case this Act and the several Acts hereby repealed had not been passed: Provided that nothing herein contained shall extend to any beacon erected in conformity with any fresh grant made, upon resurvey, under the Act No. 10, 1859, or under this Act, all which beacons, whether within a section or area or not, and if not within a section or area, whether under section ninety-four or section one hundred and four, shall be and remain indisputable.

Except as regards beacons erected after resurvey.

Obligation of owners to keep beacons up and in repair from 31st December, 1866.

But council may extend time.

111. From and after the 31st day of December, 1866, the owner or owners of every farm throughout the Colony shall (except as hereinafter is excepted) be at all times bound to keep up and in repair the beacons of such farm, being such beacons as are in the next succeeding section mentioned: Provided that when, by reason of disputes or any other sufficient cause, any owner or owners shall not be in a position to put up such beacons as are by the said succeeding section contemplated, it shall be lawful for the Divisional Council to grant to such owner or owners such an extension of time for the erection of such beacons as to the said council shall seem reasonable.

Council to prescribe size and shape of and material for beacons.

But to be clearly distinguishable.

112. All such beacons as are in the last preceding section mentioned shall be of such a size and shape as the Divisional Council shall prescribe, and shall be made of stone and lime, or of brick and lime, unless where, in places in which such materials shall not be obtainable, the Divisional Council shall see fit to sanction the use of some other materials: Provided that no such

[1] Printed as amended by Act 8, 1866-'67.

Digitised by the University of Pretoria, Library Services, 2016

other materials shall, unless in cases of necessity, be sanctioned, except such as are of a sort or description clearly and easily distinguishable from the soil and other substances at and about the spot where the beacon is to stand.

Penalty for not keeping beacons up and in repair.

113. If after the 31st day of December, 1866, or after any further extension of time which the Divisional Council may under the hundred and eleventh section of this Act, have seen fit to grant, any farm within the Colony shall be found which shall not have the beacons thereof, being such beacons as are in the last preceding section mentioned, up and in good repair, the owner or owners of such farm shall incur, for and in regard to each beacon not up, or not in repair, a fine not exceeding five pounds, nor less than one pound, in addition to the costs of the prosecution which fine shall be incurred afresh for every three months, after a first conviction, during which any such beacon shall not be put up, or be left out of repair: Provided that it shall be lawful for the Divisional Council to cause every absent beacon of which the site is known to be erected, and every defective beacon to be replaced or repaired, and the costs thereby incurred shall be recovered as part and parcel of the costs of prosecution: Provided, also, that the fine aforesaid may be prosecuted for, and when recovered shall be applied, in like manner as the fine in the eighty-fourth section of this Act mentioned.

Council may erect, replace, or repair beacon at cost of owner.

Fines, how to be recovered and applied.

Penalty for unlawfully destroying, injuring, or removing, beacons.

114. If any person shall unlawfully and wilfully destroy, remove, or injure, or cause to be destroyed, removed, or injured, any beacon, whether belonging to such person himself or to any other person, and whether a provisional beacon or a permanent beacon with intent to defraud or injure any other person, such person so offending shall be guilty of the crime of contravening this section of this Act, and shall, upon conviction, forfeit any sum not exceeding five hundred pounds; and, in case of non-payment, shall be liable to be imprisoned and kept at hard labour for any term not exceeding three years.

Field-cornet to report when beacons are absent or defective.

115. It shall be the duty of every field-cornet, and he is hereby required, to report to the Divisional Council of his division every case of absent or defective beacons within his ward which shall come to his knowledge; and it shall be lawful for the Divisional Council, from and out of any funds at its disposal, to pay such field-cornet for his trouble: Provided that nothing herein contained shall be construed so as to affect the proviso in the eighty-fourth section contained, touching the description of the provisional beacons which it shall be lawful to put up before the 31st of December, 1866.

Not to affect proviso in section 84 regarding provisional beacons.

How, as regards erection and maintenance of common beacons.

116. As often as any beacon, whether within a section or area or not, shall be common between two or more farms, and shall, upon that or any other account, be a beacon which should of right be kept up by the said farms jointly, every owner of either or any of the said farms shall in case such beacon shall not be up, or not

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

be in proper or substantial repair, be liable to the fine in the eighty-fourth and the hundred and thirteenth sections of this Act mentioned, and to the other provisions of the said sections, precisely as if such beacon had been exclusively a beacon of his own farm: Provided that every such owner may himself erect or repair (as the case may be) any such beacon, and may recover from the other owner or owners his or their proportion of the cost of so doing.

Owner erecting or repairing common beacon may recover proportion of cost from other joint owners.

Line beacons to be erected as well as angle beacons.

117. In all cases in which any farm, whether within a section or area or not, shall be resurveyed under any of the provisions of this Act, then, besides the angle beacons thereof, there shall be erected, under the inspection of the surveyor or surveyors, line beacons at distances and spots visible one from another; and such surveyor or surveyors shall, upon the diagram or some writing annexed thereto, give, as he or they best can, a topographical description of the places where the angle beacons stand, and of the boundary line or lines connecting them: Provided that such line beacons need not be made of the materials hereinbefore in the hundred and twelfth section of this Act directed, in regard to the proper or angle beacons of the farm, and that they shall be, in shape, distinguishable from such angle beacons: Provided, also, that if any such line beacon shall not be kept up and in good repair, the owner or owners of the farm to whom it belonged or belongs shall incur and be liable to the penalties in the eighty-fourth section of this Act provided.

Material for line beacons.

Penalty for not keeping up and repairing line beacons.

As to resurvey of certain section in division of Piquetberg irregularly commenced and completed.

And whereas the Divisional Council of the division of Piquetberg was, in the year one thousand eight hundred and sixty-two, requested by the proprietors of certain farms in the said division, who could not agree amongst themselves regarding the proper boundaries of their farms, to define or describe for resurvey a section or area under the "Land Beacons Act of 1859," in order to have all doubts, disputes, and controversies regarding such boundaries settled under the said Act, the said proprietors offering to defray the whole cost and charge of such resurvey: And whereas the said Divisional Council, acceding to the request of such proprietors, did define and describe for resurvey the section following, that is to say:

"A tract of country in the division of Piquetberg contained within the following boundaries, and including the places, 'Steenwerf,' 'Middelpost,' 'Avontuur,' and 'Holfmans Hoff,' namely, eastward from the Twenty-four Rivers mountain to the outermost beacon of the place 'Gelukswaard,' which is undisputed, to the outermost beacon of the place 'Klipbanks Drift,' which is also undisputed, to the outermost beacon of the place 'Koppes,' which is also undisputed, and from there to the Berg River; and southward from the undisputed beacon between the places 'Hofmans Hoff' of A. J. Wyd, in this division, and 'Hofmans Hof' of William Edwards and F. Liesching, in the division of Tulbagh, to the undisputed beacons between the places 'De Twenty-vier

Digitised by the University of Pretoria, Library Services, 2016

Rivieren,' and 'Avontuur,' in this division, and from there to the Berg River":

And whereas the Divisional Council aforesaid, in defining or describing the section or area aforesaid consulted with and obtained the concurrence of the Surveyor-General, as by the third section of the "Land Beacons Act of 1859" required, whereupon the resurvey of such section or area was, partly from reasons of local convenience, and partly from inadvertence, begun and completed, whilst as yet the application, report, and description or definition in the sixth section of the said Act mentioned had not been forwarded to the Colonial Secretary, and whilst as yet no proclamation under the seventh section of the said Act, directing the resurvey of the said section or area had been issued; And whereas under these circumstances, no proclamation for the resurvey of such section or area has been issued: And whereas it is expedient to supply the want of such proclamation, as well as the want of any other forms enjoined by the said Act, which may have been neglected, none of which forms, owing to the fewness in number of the proprietors of farms within the said section or area, and their unanimous desire to have such resurvey made, were needed in this particular case: Be it enacted as follows:

Validity of resurvey of section irregularly commenced and completed established.

118. The description or definition of the section or area aforesaid and the resurvey of such section or area, and everything already done, or to be hereafter done, in reference to such resurvey, shall be judged of and be of the same force and effect, and be as valid and effectual, as if, before the commencement of such resurvey, a proclamation under the seventh section of the "Land Beacons Act of 1859" had been duly issued directing such resurvey, and as if the previous notice in the twelfth section of the said Act mentioned had been duly given.

Short title.

119. This Act may be cited for all purposes as the "Land Beacons Consolidation Act, 1865."

No. 8—1865.] [October 10, 1865.

ACT

To Make Provision for Completing the Improvement of Kowie Harbour.

Preamble.

WHEREAS by the Act No. 23 of 1864, entitled "An Act for making further provision towards completing the Improvement of the Kowie Harbour," authority was given to the Governor to raise a certain sum of money to be lent to the directors of the Kowie Harbour Improvement Company, to enable them to discharge certain liabilities of the said company, and to continue the works of the said harbour, for the period in that behalf in the said Act specified: and whereas it is expedient to provide means for

Digitised by the University of Pretoria, Library Services, 2016

No. 8—1865.

enabling the said directors to complete the said works, and for that purpose to authorise the Governor to raise a loan of twenty thousand pounds upon the credit of this Colony, which amount the directors have represented will, without any further grant from the public revenue, be sufficient for the final completion of the said works: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Loan of £20,000 to be raised.

1. It shall be lawful for the Governor to borrow and take up, in England, upon debentures to be issued through the Crown Agents for the Colonies, bearing interest at a rate not exceeding six per cent. per annum, the sum of twenty thousand pounds sterling; which debentures shall be and the same are hereby charged upon the public revenue of the Colony.

Principal and interest of debentures payable in London.

2. The interest upon all such debentures shall be payable in London half-yearly, at the office of the Crown Agents for the Colonies, and the principal of all such debentures shall be payable at the said office on the thirty-first day of December, which will be in the year of our Lord one thousand nine hundred; and the debentures so to be issued as aforesaid shall, amongst other things, stipulate for such payments to be so made.

Loan to be paid over to directors of Kowie Harbour Improvement Company

3. It shall be lawful for the Governor to pay to the directors of the said company the sum of twenty thousand pounds, so to be borrowed as aforesaid, and such sum shall by such company be applied to the final completion of the improvement of the Kowie Harbour.

Loan to form third charge on funds and assets of company.

4. The sum of twenty thousand pounds, to be raised as aforesaid by the Government of this Colony, for the purpose of the harbour works aforesaid, with the interest upon the same, shall be and the same is hereby charged, in favour of the said Government, upon the dues of wharfage and cranage levied and to be levied at the said harbour, and upon the proceeds of the sales of all lands vested in the said directors for the purpose of the said works, and upon all other the assets of the said company; such sum of twenty thousand pounds, with the interest thereupon to be a third charge upon the said funds and assets, and to rank thereon next after the sum of twenty-four thousand pounds borrowed and taken up under and by virtue of the Act No. 18, 1863, and the sum of twenty thousand pounds borrowed and taken up under and by virtue of the Act aforesaid No. 23, 1864.

Accounts of receipts and expenditure to be laid before Parliament.

5. An account showing the amount of all moneys received under this Act by the directors of the company aforesaid, and the expenditure thereof, or of so much thereof, as shall have been expended, vouched by the said directors, shall be laid before both Houses of Parliament at the next ensuing session thereof.

Short title.

6. This Act may be cited for all purposes as "The Kowie Harbour Loan Act, 1865."

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1865.] [October 10, 1865.

ACT

For Incorporating the Malmesbury Board of Executors and Trust Company, and enabling them to sue and be sued in the name of their Secretary. (1)

Preamble.

WHEREAS under a deed bearing date at Malmesbury, the fourth day of October, in the year of our Lord one thousand eight hundred and sixty-four, certain persons having become co-partners together in a certain joint-stock company, called the Malmesbury Board of Executors and Trust Company, for the purpose of managing all such property and estates as the said board may from time to time become legally appointed to administer, as executors, administrators, guardians, curators, or trustees, either by virtue of any order or decree of any competent court, the lawful authority of any public officer, or the valid last will and testament, procuration, or other deed, document, or instrument of any person or persons whatever, whether residing in the Colony or otherwise, subject to and under the rules, regulations, limitations, conditions, provisions, and agreements contained in the said deed, or to be in the future agreed and fixed in the manner therein provided: And whereas in and by the said deed it is stipulated and agreed that the capital of the said company shall be twelve thousand five hundred pounds sterling, divided into one hundred and twenty-five shares of one hundred pounds each, whereof eighty shares have been allotted, and the remaining forty-five shares have been reserved for the benefit of the shareholders of the said company: And whereas the directors of the said company, acting for and on behalf of the said shareholders, and being enjoined and required thereto by the provisions of the said trust deed, have applied for an Act to incorporate the said company, and to enable the company to sue and be sued in the name of the secretary for the time being, and for the more effectually legalizing, carrying out, and fulfilling the objects of the company:

Institution of proprietors.

1. Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof: That it shall and may be lawful for the said persons and such others as may become entitled to the privileges of this Act, under the provisions of the said deed, to be and continue joint-stock proprietors of the said capital of twelve thousand five hundred pounds sterling, (2) and of all other such sum or sums of money as they may hereafter acquire under the provisions of the said deed.

Incorporation of and title of company.

2. The several persons who are or shall become shareholders in the said company, their respective heirs, executors, and administra-

[1] See Acts 34, 1884, and 10, 1889.
[2] Capital increased to £20,000. See Act 34, 1884.

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1865.

tors, shall be and are hereby united into one body corporate, under the name and title of the Malmesbury Board of Executors and Trust Company. (1)

Capital stock.

3. The capital stock of the company shall consist of shares of the value of one hundred pounds sterling each, which said sum of one hundred pounds sterling shall be paid and satisfied in the manner following, that is to say: The sum of ten pounds sterling, upon the allotment of each share, in cash, and the remaining ninety pounds per share either in cash or otherwise by special or general mortgage, or otherwise by a promissory note or acceptance under pledge or security of shares in public companies in this Colony, or by such other security as shall be approved and accepted by the directors. (1)

Shares, how to be paid up.

Directors may call up full amount due on shares.

4. It shall be lawful for the directors, in the terms of the said deed, and subject to the provisions of the same, and under the restrictions therein contained, upon a resolution of shareholders to that effect, from time to time to call upon such shareholders as shall not have paid up the full amount of their shares in cash for the payment of further instalments, not exceeding ten pounds at any one time. (1)

When interest shall be payable on shares.

5. Every shareholder who shall pay in cash the whole amount of his share, being one hundred pounds, or any sums on account of his said share in excess of the ten pounds, or any additional sum so called up by the directors, shall upon the balance paid up by him in excess of ten pounds, or of the total amount of the calls respectively made upon the shareholders, be entitled to receive from and out of the capital stock of the company interest calculated from the date of such payment made by him, at and after such rate as the directors for the time being of the said company shall determine.

Trust deed, list of shareholders, &c., to be filed with registrar of Supreme Court.

6. A copy of the trust deed of the said company, duly authenticated by the secretary of the same, appointed under the provisions of the said deed, shall be filed in the office of the Registrar of the Supreme Court of this Colony of the Cape of Good Hope within one month after the passing of this Act; and in like manner a return of the names of the several persons at the time being members of the said Board of Executors, with their respective places of abode, and the name and place of abode of the chairman and of each director thereof, and of the secretary thereof, in the same manner authenticated, shall be at the same time filed in the said office.

Alterations or additions in deed to be similarly filed.

7. A copy of all alterations in or additions to the said deed, which may at any time be made in conformity with the provisions therein contained, shall within one month after any such alterations or additions shall have been duly made, in like manner authenticated, be in like manner filed at the office of the said Registrar.

---

[1] But see §§ 3 to 5, Act 34, 1884.

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1865.

Transfer of shares.

8. Whenever the transfer of any share in the said co-partnership or company shall be made, a return in like manner authenticated shall, within one month after such transfer shall have been made, be in like manner filed in the office of the said Registrar, and which return shall contain the date of such transfer the name and place of abode of the person to whom or in whose behalf such transfer is made.

Names and abodes of chairman, directors and secretary to be filed.

9. A return in like manner authenticated shall, from time to time, as occasion shall render it necessary, be filed in the office of the said Registrar of the name and place of abode of any person who shall have been appointed chairman, director, or secretary, in place of any former chairman, director, or secretary, within one month after such appointment shall have been made.

Certified copy of extract of deed or return may be used in evidence.

10. A copy made from the copy of the said deed, or of any alteration in or addition thereto which may have been filed as aforesaid, and a copy of any such return of any such chairman, director, or secretary, or member, certified under the hands of the Registrar of the Supreme Court, shall, in all proceedings, civil or criminal, be received in evidence or proof of such deed, or of any such alteration or addition as aforesaid, or of the authority of the officer named in such return, and also of the fact that all persons therein named as members were such at the date of such return.

Appointments under wills, &c., in favour of company valid.

11. All appointments under and by virtue of any last will and testament, codicil, or of any deed or act which shall have been at any time previous to the passing of this Act, or which shall hereafter be, duly made and executed, of the directors of the said Board of Executors, or of the secretary of the same, as executors, administrators, tutors, curators, or agents, or as executor, administrator, tutor, curator, or agent, as the case may be, shall be deemed and taken to be a valid appointment of the said Malmesbury Board of Executors and Trust Company hereby constituted.

Evidence of members admissible.

12. In all actions, suits, and proceedings, whether civil or criminal, the evidence of any person being a member of the said Board of Executors shall be admissible, in like manner as if such person were not a member thereof.

Company to sue and be sued in name of secretary.

13. All actions and suits, and all other proceedings at law, to be commenced or instituted for and on behalf of the said Board of Executors, against any person or persons, bodies politic or corporate, or others (whether members of the said Board of Executors or otherwise), for recovering any debts or enforcing any claims or demands due to the said Board of Executors, or for any other matter relating to the concerns of the said Board of Executors, shall and lawfully may, after the passing of this Act, be commenced or instituted and prosecuted to a final judgment or sentence in the name of the secretary of the Board of Executors, as the nominal plaintiff, applicant, or petitioner for and on behalf

Digitised by the University of Pretoria, Library Services, 2016

of the person or persons accused shall be before any one or more of the Judges of the said Court and a jury of nine men, who shall concur in every verdict to be given on the trial of any such accused party or parties; and every such verdict shall be delivered in open Court by the mouth of the foreman of every such jury, and shall be thereupon recorded and read over to such jury before they are discharged from attendance on the said Court. Provided nevertheless, and we do further declare, and direct, that no person within the said Colony, who may be otherwise competent to serve on any such jury as aforesaid shall be or be taken to be incompetent to serve on such jury by reason of his ignorance or supposed ignorance of the English language. Charter of Justice. Delivery of verdict in open court. Jurors ignorant of the English language.

35. And we do further ordain and direct, that all the duties heretofore performed by the Orphan Chamber within our said Colony, shall henceforth be performed by the Master for the time being of the said Supreme Court, and that the said Orphan Chamber shall be, and the same is hereby, abolished. (1) Abolition of orphan chamber.

36. And we do further direct and appoint, that the said Supreme Court shall at all times be holden at Cape Town, in our said Colony. Supreme court in Cape Town.

37. And we do further ordain and direct, that it shall and may be lawful for the Governor of the said Colony, by any proclamation or proclamations to be by him for that purpose issued, to apportion and divide the said Colony into two or more districts, and to fix and ascertain the boundaries and limits of every such district, and such boundaries and limits, from time to time, to alter as occasion may require: Provided always, that such apportionment of the said Colony into such districts as aforesaid, be made in such manner as to such Governor may appear to be best adapted for enabling the inhabitants of the said Colony to resort with ease and convenience to the Circuit Courts, to be therein established as after mentioned. Division of the colony into circuit districts.

38. And we do further grant, ordain, and appoint, that Courts, to be called Circuit Courts, shall be holden twice at the least in each year, in each of the districts into which the said Colony may be so divided as aforesaid: and each of the said Circuit Courts shall be holden by the Chief Justice or by one of the said Puisne Judges of the said Supreme Court of the Colony of the Cape of Good Hope, at such times, and at such one, or more, place or places within each of the said districts, as the Governor of the Colony of the Cape of Good Hope shall from time to time direct and appoint. (2) Circuit courts held twice at least in each year before judges of the supreme court.

39. And we do direct and appoint, that each of the said Circuit Courts shall be respectively Courts of Record, and shall within the district in which it may be holden, have, and exercise all such and the same jurisdiction, powers and authority, as is hereby vested in Jurisdiction of circuit courts, and mode of proceeding therein in criminal cases.

---

[1] See Ords. 103, 104, 105.
[2] See § 37, Act 21 of 1864.

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1865.

of the said Board of Executors, and shall and lawfully may, subject to the provisions of any Act, Law, or Ordinance which may be in force, or which may hereafter be enacted on that behalf, prosecute any criminal action for any fraud, crime, or offence committed against or with intent to defraud the said Board of Executors or the members thereof jointly; and that no action or other proceedings shall abate, discontinue, or be rendered ineffectual by reason of the death or resignation of such secretary, but the secretary for the time being shall always be deemed to be the plaintiff, applicant, petitioner, or prosecutor in any such case, action, suit, or other proceedings, as the case may be; and that all actions, and suits, and proceedings at law to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of the said Board of Executors or otherwise, against the said Board of Executors, or against the said members thereof jointly, shall and lawfully may be commenced, instituted, and prosecuted to a final judgment or sentence against the said secretary of the said Board of Executors, as the nominal defendant or respondent for and on behalf of the said Board of Executors, or for the members of the said Board of Executors aforesaid, and not against the Board of Executors or against the members, or any of them.

Officers and members of company may be sued by board.

14. It shall and may be lawful for the secretary of the said Board of Executors to bring and maintain any action, suit, or other proceeding at law against any person being an officer or member of the said Board of Executors, for or on account of any claim or demand which the said Board of Executors may have against such person, in like manner as if he were not an officer or member thereof.

And may sue board.

15. It shall and may be lawful for any person being an officer or member of the Board to bring and maintain any action, suit, or other proceeding at law against the secretary of the said Board of Executors, for or on account of any claim or demand which he may have against the said Board of Executors, in like manner as if he were not an officer or member of the said Board.

Shares or dividends not to be set off against debts due to board.

16. No claim or demand which any member of the said Board of Executors may have in respect of his share of the capital stock of the said co-partnership, or of any dividends, interests or profits payable in respect of such shares, shall be capable of being set off; and no claim in reconvention shall be brought on account of any such share, or dividend, or profits, against any demand which the said Board of Executors may have against such member on account of any other matter or thing whatsoever; but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital stock, or of any dividends, interest, or profits payable in respect thereof.

Bonds or other acts executed by two directors valid.

17. It shall and may be lawful for any two directors of the said company to execute any bond or other act for and on behalf of

Digitised by the University of Pretoria, Library Services, 2016

the said Board of Executors, to draw up and execute any inventory, or liquidation, distribution, or other account; and all such bonds, acts, inventories, and accounts so executed shall be equally valid as if the same had been done and executed by every one of the members thereof. No. 10—1865.

18. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of by all Judges, Magistrates, and others, without been specially pleaded. Public Act.

No. 10—1865.] [October 10, 1865.

AN ACT

To give to the Judges of the Court of the Eastern Districts Jurisdiction in respect of Sentences of Courts of Resident Magistrates within the Eastern Districts requiring revision by the Judges of the Supreme Court.

WHEREAS by the forty-seventh section of the Act No. 20 of 1856, entitled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," it is provided that as often as any Court of Resident Magistrate shall sentence any person to be imprisoned, with or without hard labour, for any period not exceeding one month, or to pay any fine exceeding five pounds, or to receive any number of lashes exceeding twelve, the Magistrate pronouncing such sentence shall forward to the Registrar of the Supreme Court the record of the proceedings in the case, to the end that the same shall be laid before one of the Judges of the Court, in chambers, for his consideration: And whereas it is expedient that all such sentences as aforesaid, pronounced by any Court of Resident Magistrate within the districts in and for which the Court of the Eastern Districts is established, should be forwarded to the Registrar of such last-mentioned Court, for the consideration of one of the Judges of the said Court: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:— Preamble.

1. So much of the Act aforesaid, No. 20 of 1856, as shall be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed. Repugnant portions of Act No. 20 of 1856 repealed.

2. Every Resident Magistrate within the districts in and for which the Court of the Eastern Districts is, by "The Administration of Justice Act, 1864," established, who shall pronounce any such sentence as is in the forty-seventh section of the Act aforesaid, No. 20 of 1856 described, shall forward the records of the Revision of certain judgments of resident magistrates' courts in Eastern Districts transferred from Supreme to Eastern Districts Court.

Digitised by the University of Pretoria, Library Services, 2016

No. 12—1865.

proceedings in the case in which such sentence shall have been pronounced to the Registrar of the Court of the Eastern Districts, and not to the Registrar of the Supreme Court; and thereupon all and singular the provisions of the forty-seventh, forty-eighth, and forty-ninth sections of the said Act, No. 20 of 1856, shall apply to such Resident Magistrate, to the Registrar of the Court of the Eastern Districts, to the Judges of the said Court, and to the said Court itself, precisely as if the said Registrar, the said Judges, and the said Court had, in the said sections of the said Act, been named in place and stead of the Supreme Court and the Judges and Registrar thereof.

No. 11—1865.] [October 10, 1865.

An Act for applying a Sum not exceeding Four Hundred and Nineteen Thousand Two Hundred and Forty Pounds, Five Shillings and Sixpence, for the service of the Year 1865.

[Spent.]

No. 12—1865.] [October 10, 1865.

ACT

For Fixing the Terms upon which Mineral Lands in Namaqualand, the Property of the Crown, may be leased and worked. (1)

Preamble.

WHEREAS it is expedient to fix by law the terms upon which Mineral Lands in Namaqualand, the property of the Crown, may be leased and worked: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Mineral lands, how to be leased.

1. All Crown lands in Namaqualand, containing or supposed to contain mineral deposits, may be let on lease for mining purposes for a term of thirty-one years, neither more nor less.

Extent of land leased limited.

2. The extent of land to be included in any lease shall not exceed forty morgen.

Leases, by whom to be executed.

3. All such leases shall be executed by the Surveyor-General of the Colony, on behalf of the Colonial Government, of the one part, and by the lessee of the other part.

Terms of lease.

4. Every lessee shall be bound to pay an annual ground rent of five shillings per morgen for every morgen of land comprised in his lease, and shall also be bound to pay the sum of ten shillings upon or for every ton of ore raised from the land comprised in his lease, or of copper of whatever purity, smelted from such ore, and

(1) As to Mines and Minerals generally see Acts 9—1877, 15—1883, 19—1883, 22—1885, 18—1886, 44—1887, 10—1888, 13—1888, §1; 12—1889, 31—1893, § 6, 25—1894.

Digitised by the University of Pretoria, Library Services, 2016

shipped at any port or place in Namaqualand, whether for exportation beyond seas direct or for transport coastwise to some other port or place in this Colony: Provided that, for the purpose of this Act, a ton shall be taken to mean 2,352 lbs. weight.

What shall be taken to be a ton.

5. The payment aforesaid of ten shillings per ton shall be made at the port or place in Namaqualand at which the ore shall be shipped, and shall be payable to the principal officer of Customs at such port or place, or to such other person there as the Governor shall from time to time, by notice in the *Government Gazette* nominate and appoint.

Place where and officer to whom tonnage charge shall be payable.

6. Nothing in this Act contained shall extend to impose any charge or duty upon any ore raised from mineral lands being the property of any private person, or of any joint-stock company.

Private mines exempted from preceding charges.

7. As often as any ore such as is in the last preceding section mentioned shall be about to be shipped, then the owner of such ore or his accredited agent, or, in case such ore shall be the property of a joint-stock company, the local manager of such company, or his accredited agent, shall, before shipping the same, or any part thereof, make before the officer or person to whom the tonnage payment in the fourth section mentioned would have been payable in case such ore had been raised from Crown land, a solemn declaration which shall be, in substance, as follows, that is to say:

Declaration to be made on shipment of ore raised from private mines.

Form of declaration.

I, A.B., do solemnly and sincerely declare that the ——— (state supposed number) bags of ore now lying at ——— and about to be shipped on board the ———, bound for ———, contain ore raised from the mine at ———, the property of ———, and that none of the said bags, containing in all ——— tons of ore, or thereabouts, contain any ore raised from any Crown land, leased under the Mineral Leases Act of 1865; and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Ordinance No. 6, 1845, entitled "An Ordinance for substituting Declarations in the place of certain Oaths, and for the suppression of voluntary and extra-judicial Oaths and Affidavits."

(Signed) A. B.

Declared before me at ——— day of ——— 186—.

(Signed) C. D., Sub-Collector
(or otherwise as the case may be.)

Declaration to have effect as if made before resident magistrate.

8. Every such declaration shall be of the same force and effect as if made before a Resident Magistrate duly authorised by the said Ordinance, No. 6, 1846, to attest the same.

How if declaration be not made.

9. All ore which shall at any time after the taking effect of this Act be shipped, or be about to be shipped in regard to which such a solemn declaration as aforesaid shall not have been made, shall be deemed and taken to be ore raised from Crown land, and shall be

Digitised by the University of Pretoria, Library Services, 2016

No. 12—1865.

liable to the certain tonnage payment in the fourth section of this Act mentioned.

Notice of intention to ship ore raised from Crown lands required.

10. No person shall ship at any port or place in Namaqualand any ore raised from any Crown land occupied under any lease granted under this Act, until he shall have given notice, in writing, to the officer or person at such port or place to whom the tonnage payment in the fourth section mentioned shall be payable, of his intention to ship the same, which notice shall be, in substance, as follows:

Form of notice.

To the Principal Officer of Customs at ——— (or if any other person shall have been appointed describe him).

I beg to inform you that I am about to ship on board the ———, bound for ———, a quantity of ore raised from ——— (describe the leasehold land), held by ——— (name the lessee) under lease from the Colonial Government.

The weight of the ore is ——— tons, or thereabouts.

Dated at ——— this ——— day of ——— 18—.

(Signed) A. B.

Penalty for shipping without previous notice.

11. If any person shall ship, or cause to be shipped, any ore subject to such tonnage payment as in the fourth section mentioned without having given, before such shipment, the notice in the last preceding section mentioned, he shall be liable to pay, for every ton of ore so shipped, in lieu and stead of ten shillings, the sum of twenty shillings.

Leases may be assigned or sublet.

12. Every lessee in any such lease as aforesaid may, with the consent of the Governor, signified by any writing under the hand of the Surveyor-General, assign his lease, or sublet the land contained therein.

Government may cancel lease and resume ground.

13. If at the expiration of the first and of each succeeding term of three years during the continuance of any such lease as aforesaid, there shall not have been raised from the land comprised in such lease, and shipped as aforesaid, during the three years which shall have last expired, a quantity of ore not less than fifty tons, the Government shall have the right, should it appear to the Governor fit and proper to do so, to cancel the said lease, and resume the land comprised in it: Provided that it shall not be competent for the Government to claim such resumption later than three months next after the expiration of the term of three years during which term the quantity of ore raised and shipped as aforesaid shall not have been fifty tons: Provided, also, that as often as the lessee shall satisfy the Governor that the land comprised in his lease has been, is being, or is about to be worked in a fair *bonâ fide* manner, then such land shall not be resumed by the Government under the provisions of this section.

Right of such resumption limited.

Existing leases may be cancelled, and fresh leases obtained.

14. All persons holding, or being entitled to, existing leases or rights of occupation of Crown lands in Namaqualand, for mining purposes, may, upon the taking effect of this Act, surrender such

Digitised by the University of Pretoria, Library Services, 2016

leases or rights and thereupon obtain leases under this Act, to commence from the date of such leases.

Extent of mine or excavation limited.

15. No lessee shall be entitled to carry any mine or excavation, either above ground or under ground, made in or at the land comprised in his lease, beyond the limits of the said land; and the Civil Commissioner of Namaqualand, and any person authorised by him in writing, shall be at all times entitled to visit the land comprised in any lease granted under this Act, and to inspect the works there carried on.

Gold, silver, and platinum excepted.

16. No lease granted under this Act shall convey to the lessee any right or title to any gold, silver, or platinum which may be found in the land comprised in his lease.

Short title.

17. This Act may be cited for all purposes as "The Mining Leases Act, 1865."

No. 13—1865.] [October 10, 1865.

ACT

For Regulating the mode of appropriating Grants from the Public Revenue in aid of General Education. (1)

Preamble.

WHEREAS it is expedient to make provision for the more general extension of the system of granting aid by the Government in support of schools for the instruction of the youth of all classes throughout the Colony, and for the encouragement of young persons to qualify themselves for the duties of teachers within the Colony: And whereas it is expedient that the funds known as the Slave Compensation Fund and the Bible and School Commission Fund should be appropriated in future to the payment and training of young persons desirous of qualifying themselves to become teachers in schools established chiefly for the education of the poor: And whereas it is expedient that the institutions and schools aided or supported by grants of money under Schedule D of the Ordinance, forming the Schedule to the Order in Council of the 11th of March, 1853, should be included in the system of public education of the Colony: 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:—

Moneys, how to be administered.

1. All sums of money granted by Parliament for the purposes of public education shall be administered by the Governor, through the Superintendent-General of Education, in accordance with such rules and regulations touching public education as shall, from time to time, be approved of by the Governor, with the advice of the Executive Council, and published by proclamation in the *Government Gazette*: Provided that no such rule or regulation, nor any

[1] See Act 24, 1874.

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1865.

No rules for the administration of moneys to have effect before assented to by Parliament.

alteration or recission thereof, which may from time to time become expedient, shall be proclaimed by the Governor, or shall take effect until such rule or regulation, or the alteration or rescission thereof, as the case may be, shall have been assented to by both Houses of Parliament by a resolution of each House:

"School Regulations" declared rules

Provided, also, that the "School Regulations" contained in the Schedule to this Act shall be, and the same are hereby declared to be, the rules and regulations touching public education for the time being, subject to alteration or rescission in the manner hereinbefore set forth:

Annual report to be submitted to Parliament.

Provided, always, that an Annual Report in detail of the existing allocation of such sums of money, specifying, as to teachers, whether they act or are employed as clergymen or preachers in any church or congregation in the Colony, or are in the receipt of any salary or allowance from the public revenues, shall be prepared by the Superintendent-General of Education, and shall each year be laid before Parliament within one month of the opening of its Session:

Payments on account of Border Department, how to be made.

Provided, further, that none of the payments authorised by that part of the said school regulations headed "Order C—Border Department, Aborigines," shall be made except from and out of the sum reserved by the Schedule marked D to the Appropriation Ordinance annexed to the Order in Council of the 11th of March, 1853.

Slave Compensation and Bible and School Funds to be administered by Master of Supreme Court.

2. The capital sums of the Slave Compensation Fund and of the fund in the hands of the Bible and School Commission, together with such landed and other property as is now vested in the said Bible and School Commission, shall, within twelve months from and after the taking effect of this Act, be vested in the Master of the Supreme Court (in his capacity as administrator of the Guardian's Fund), and the interest on the said funds, and the profits of the said property, shall be paid from time to time by the said Master to the Superintendent-General of Education, to be appropriated by him to the payment and training of pupil-teachers in mission schools established chiefly for the education of the poor, in accordance with such rules and regulations as aforesaid:

Disposal of interest thereof.

Report of appropriation of interest to be laid before Parliament.

Provided that a report, signed by the Superintendent-General of Education, showing the objects to which such interests and profits shall have been applied during the past year, shall be annually laid before both Houses of Parliament.

Schools receiving aid from moneys reserved under Schedule D subject to inspection, &c.

3. All institutions or schools supported or aided by or from the moneys reserved under Schedule D of the Ordinance aforesaid shall be subject to inspection by the Superintendent-General of Education or his deputy duly appointed by the Governor, and also to such rules and regulations in regard to such institutions or schools as may, from time to time, be contained in the rules and regulations for the time being touching public education, published by proclamation as aforesaid.

All aided schools subject to inspection.

4. It shall and may be lawful for the Superintendent-General of Education, and he is hereby authorised and empowered, to

Digitised by the University of Pretoria, Library Services, 2016

inspect, whenever the Governor shall deem it expedient for him so to do, all schools, colleges, and other educational establishments that receive grants-in-aid from and out of the general revenue of the Colony, whether established under special Act of Parliament or otherwise. No. 13—1865.

5. The Government schools now existing on the fixed establishment of the Colony, and provided for from and out of the moneys reserved under Schedule A of the Ordinance aforesaid, shall respectively be closed upon the death, resignation, retirement, or removal from office of the present teachers in such schools respectively, or at such earlier period as circumstances shall permit. Schools provided for under Schedule A to be closed.

6. The thirty-second section of the Act No. 5, (1) 1855, entitled "An Act for creating Divisional Councils in this Colony," and the Act No. 14, 1858, entitled "An Act for the Creation of Educational Boards in the Field-cornetcies, Villages, and Towns of this Colony, on which the local Regulations of each shall be founded," are hereby repealed. Section 32 of Act 5 of 1855 and Act 14 of 1858 repealed.

7. This Act may be cited for all purposes as "The Education Act, 1865." Short title.

SCHEDULE.

[This Schedule has been amended under § 1 of this Act and is therefore not printed. The amendments made from time to time are shown in a Manual issued annually by the Superintendent-General of Education.]

No. 14—1865.] [October 10, 1865.

An Act for authorising certain expenditure not provided for by Parliament in the year 1864.

[Spent.]

No. 15—1865.] [October 10, 1865.

ACT

To Authorise the Cape Copper Mining Company (Limited) to construct a Tramway or Railway between Hondeklip Bay and Riethuis. (2)

WHEREAS it is desirable and expedient that greater facilities should be afforded for the transport of minerals from the mines in Namaqualand to the Port of Hondeklip Bay, and also for the transport of passengers, goods, merchandize, and other articles to and from the said Bay: And whereas such facilities would be greatly promoted and the resources of the country developed by Preamble.

[1] Repealed by Act 4, 1865.
[2] See Acts 4, 1869; 3, 1871; 24, 1873.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1865.

the construction of a tramway or railway between the said Bay and Riethuis: And whereas the Cape Copper Mining Company (Limited), duly registered and having a subscribed capital of one hundred and fifty thousand pounds sterling, is willing to undertake the construction and working of the said tramway or railway, upon being empowered for that purpose in manner hereinafter mentioned and provided: 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, as follows:—

Cape Copper Mining Company empowered to construct tramway or railway according to certain plan.

1. The Cape Copper Mining Company (Limited), whereof William Bevan, Esquire, Pieter Gerhard van der Byl, Esquire, Osgood Hanbury, Esquire, junior, Edward Jenner Jerram, Esquire, William Keats, Esquire, John King, Esquire, Edmund Alfred Pontifex, Esquire, John Taylor, Esquire, and Richard Taylor, Esquire, are directors, shall be and they are hereby authorised, and empowered to construct and work a tramway or railway between Hondeklip Bay and Riethuis aforesaid, as shown by the plans duly lodged with the Clerk of the House of Assembly, save and except so far as the said plans may be inconsistent with any of the provisions of this Act.

Powers granted to company to enter upon adjoining lands for purposes of excavation, &c.

2. It shall and may be lawful for the directors of the said company or their representatives, and they are hereby authorised, to enter upon and take possession of all such lands within the limits of deviation, and also to dig for, excavate, and carry away, all such materials within or near to the said limits as may be required for the construction and maintaining of the said tramway or railway: Provided that the extent of land taken for the said tramway or railway shall not exceed the width of fifty feet, with sufficient additional width for slopes, drainage, stations, stopping-places, approach-roads, and all other works, matters, and things which may be requisite or necessary for the efficient construction and working of the said tramway or railway: Provided that the proprietor or proprietors of, or person or persons holding by lease from the Crown, the lands so taken possession of and of the materials so carried away and used shall be paid by the said directors the just value, by way of recompense or compensation for such land or materials, or for any damage which may be done by reason thereof: Provided, also, that in the event of the directors of the said company and any such proprietor or proprietors or the person or persons claiming compensation not being able to agree upon the sum to be paid by the said directors and accepted by such proprietor or proprietors or person or persons claiming compensation, then the said directors shall cause to be served upon such proprietor or proprietors or person or persons claiming compensation a written notice offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such proprieter or proprietors or person or persons claiming compensation to state in writing to the said directors or their representative, or to some person

Extent to which such excavation, &c., may be carried on.

Compensation to proprietors or lessees

Disputes regarding compensation, how to be settled.

Digitised by the University of Pretoria, Library Services, 2016

by them appointed in this Colony, within a certain limited time to be specified in the said notice, whether he or they is or are willing to accept the sum therein mentioned or not; and in case he or they shall refuse to accept the sum offered, or shall neglect to reply to the said notice, then the said directors or their representatives shall by another notice in writing, call upon such proprietor or proprietors or person or persons, claiming compensation to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said directors, and for that purpose to transmit to their representative in Cape Town, within a certain reasonable time to be specified in the said last mentioned notice, the name of some person whom he or they shall select to be an arbitrator upon such arbitration; and the said directors or their said representative, upon receiving the name of the person so selected, shall nominate a second arbitrator, and the said arbitrators shall choose a third arbitrator, and the said directors or their representative shall cause a deed of submission to be prepared, which shall be signed by the agent, general manager, or representative of the said company in this Colony, and by the said proprietor or proprietors or person or persons claiming such recompense or compensation as aforesaid, and which deed shall clearly set forth the matter to be determined by the said arbitrators. And the said arbitrators, or any two of them, shall be authorised to fix and determine the amount of compensation to be paid as aforesaid, according to what they shall conceive fair and reasonable; and the award of the said arbitrators, or any two of them, shall be made a rule or order of the Supreme Court, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the subject-matter; and in case such proprietor or proprietors or person or persons as aforesaid claiming compensation or recompense shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said directors or their agent or representative, and they or either of them are hereby authorised, to lodge in some joint-stock bank in Cape Town the sum of money offered by them as aforesaid for or on account and at the risk of such proprietor or proprietors or person or persons as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his or their absolute property. And the said directors or their agent or representative, upon so lodging the said sum, shall be authorised and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by the arbitrators. And thereupon, or upon payment of any sum which may be awarded, or which may be agreed to be accepted as and for recompense or compensation as aforesaid, the said land shall be held and taken to be vested in the said company as fully, absolutely, and effectually as

Mode of proceeding in case of arbitration.

Award to be made a rule of court.

How where proprietor refuses or neglects to proceed to arbitration, &c.

Lands regarding which the compensation shall be settled by arbitration, or otherwise, to become absolute property of company.

Digitised by the University of Pretoria, Library Services, 2016

Charter of Justice.

the said Supreme Court of the Colony of the Cape of Good Hope, throughout the whole of the said Colony (1) ;—and that all crimes and offences, cognizable in the said Circuit Courts, shall be inquired of, heard and determined by the said Circuit Judge, and a jury of nine men ; and that the verdict of such jury shall be pronounced and recorded in the manner before directed, respecting the verdicts of juries to be given in the said Supreme Court ; and that the provision hereinbefore (2) contained respecting the ignorance or supposed ignorance of the English language of any person otherwise competent to serve on any jury in the said Supreme Court, shall also extend and apply to persons serving, or who may be required to serve, as jurors in the said Circuit Courts, or any of them.

Number of jurors, and provision in case of a deficiency of jurors.

40. Provided nevertheless, and we do further ordain and direct, that if upon the trial of any crime or offence before any of the said Circuit Courts nine good and lawful men, being duly summoned, shall not appear to form a jury, then, in all such cases, such trial shall be had before the Circuit Judge and any number of the jury who shall appear, not being less than six, who shall be sworn, and have the same power, as if the full number of nine had appeared. (3)

Decision of civil suits.

41. Provided also, and we do further direct and appoint, that all civil suits or actions, depending in any of the said Circuit Courts, shall be tried and decided by the Judge of such Court alone, and without a jury : [Remainder of Section superseded by Section 13, Act 5, 1879.]

42. [Repealed by Section 12, Act 5, 1879.]

43. [Repealed by Section 12, Act 5, 1879.]

Removal of suits from supreme court to circuit court, and *vice versa*.

44. And we do further direct and appoint, that as often as any action or suit shall be brought in the Supreme Court, or in either of the said Circuit Courts, respectively, and it shall be made to appear to the Court, before which such action or suit may be pending, that such action may be more conveniently heard or determined either in the said Supreme Court or in some other of the said Circuit Courts, it shall be lawful for such Court to permit and allow such action or suit to be removed to such other court : and such allowance shall be certified by the Judge, together with the process and proceedings in such action or suit, to the Court into which such action or suit shall be intended to be removed ; and thereupon it shall be lawful for such last-mentioned Court and such Court is hereby required, to proceed in such action or suit in like manner, as if the same had been originally commenced and prosecuted in such last-mentioned Court.

Transmission to the Governor by the presiding judge of report of proceedings on trials resulting in condemnation to death, transportation, or banishment.

45. And we do further ordain and direct, that no judgment or sentence, either of the said Supreme Court, or of any such Circuit

[1] See § 2, Ord. 40.
[2] § 34.
[3] See § 43, Act 22, 1891.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1865.

if transfer and conveyance thereof had been duly passed by the respective proprietors thereof or parties interested therein, in favour of the said company, according to the law and custom of this Colony, or as if all acts by law required for vesting in the said company a sufficient title thereto had been duly done and performed; and the said materials shall be held and taken to be, and shall be, the free and absolute property of the said company: Provided that the cost of the arbitration as aforesaid shall be in the discretion of the arbitrators.

Costs of arbitration.

Exception as regards land containing water.

3. Nothing in the last preceding section mentioned shall extend so as to entitle the said company to claim any land upon which there shall be any fountain or piece of water, being private property, or to use any water, being private property, without permission of the owner.

Crown lands not otherwise appropriated may be used for purposes of tram or railway.

4. It shall and may be lawful for the said directors of the said company to enter upon and to take possession of so much of any Crown lands not already appropriated or used as a public road or street as shall be required for the construction and maintaining of the said tramway or railway, or for any other purposes relating to the execution of this Act, and also to enter upon all Crown lands not previously leased by the Government to any lessee, and not previously appropriated or used as a public road or street lying convenient to the said tramway or railway, and there to dig for, excavate, and carry away all such stones, clay, or other materials as may be required or be serviceable for the construction and maintaining of the said tramway or railway: Provided that nothing in this Act contained shall establish any servitude in favour of the said directors or company for procuring materials for the said tramway or railway upon any land which may at any time hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.

But not to establish servitude.

Limits of line of tram or railway, its route and extent.

5. The said tramway or railway shall commence one hundred yards to the northward of the present existing jetty at Hondeklip Bay, and leave the said bay on the north side, crossing erf No. 7, of the village there; thence traversing waste Crown lands for a distance of about seven miles; thence crossing the north-west corner of Roode Laagte; thence taking the course of the Zwaartlintjes River, across De Riet, and continuing on the same line to a terminal point at Riethuis: Provided, always, that it shall be lawful for the said company to deviate from and vary the said line, as shown by the said plans, to the extent of three hundred yards on each side.

Variation allowed.

Line may cross streets or roads.

6. At all places where the line of the said tramway or railway or any deviation thereof within the limits of deviation hereinbefore provided, shall intersect or cross the line of any public street or road, it shall be lawful for the said directors to make and carry the said tramway or railway across such street or road, either by means of a level crossing or by a convenient and sufficient bridge

Digitised by the University of Pretoria, Library Services, 2016

or viaduct over or under the said street or road. And the said directors shall be bound and obliged to make all such cuttings, embankments, and approaches, with all such culverts and drains, as may be, requisite to make good the said street or road across, or over, or under the said tramway or railway, at gradients not exceeding one foot in twenty feet. And the said directors shall be bound and obliged to maintain and keep in repair all such crossings, bridges, viaducts, cuttings, embankments, and approaches, culverts, and drains, as aforesaid.

Company to make and keep in repair crossings.

7. Nothing in this Act contained shall hinder or prevent any public roads hereafter to be constructed under Act of Parliament or proclamation lawfully issued under Act of Parliament from being made and carried across the said tramway or railway at all requisite and convenient points : Provided that as little damage as possible shall be caused to the said tramway or railway by such crossings.

Right to construct roads across line reserved.

8. All damage which may be caused by the construction of the said tramway or railway to any roads or streets shall be repaired and made good by the said company, so soon as practicable, at the cost and charge of the said company.

Damage to roads, &c., to be made good at cost of company.

9. Nothing in this Act contained shall be construed as an admission of the right of the said directors or company to maintain as against the Colonial Government the jetty already erected by them at Hondeklip Bay, or to debar the Colonial Government from erecting a jetty or other works at such place or places in the said bay as shall be deemed expedient nor as an admission of the right of the said directors or company, or of any other persons, to any land lying between the sea and lots four, five, six, and seven of the village at Hondeklip Bay, nor shall authorise the said company in any manner to obstruct or hinder the landing and shipping of goods at the beach at Hondeklip Bay, or the safe passage of the ordinary traffic on the roads now in use, but in all cases a sufficient space shall be left to allow carriages, wagons, and passengers to pass the carriages, trucks, or other vehicles on the said tramway or railway in a safe and convenient manner.

Stipulations in regard to the preservation of governmental and public rights as to landing places, roads, &c.

10. The directors of the said company shall be bound, and are hereby required, to finish and complete the said tramway or railway within three years, reckoned from the date of the first commencement of the works thereof, so that the said tramway or railway may be opened for the public conveyance of goods : Provided that the said company shall be bound to commence the said tramway or railway not later than two years from and after the taking effect of this Act ; failing which all and singular the powers and authorities conferred by this Act shall cease and determine.

Line to be completed in three years.

Date of commencement fixed.

11. So soon as the line of tramway or railway is in a fit condition for traffic, the directors for the time being shall frame terms and conditions and a tariff of charges for the conveyance of goods, and such terms, conditions, and tariff shall be submitted to the Governor

Terms, conditions, and tariff of charges to be framed, submitted for approval, and published in Gazette.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1865.

for approval, and, if approved, be published in the *Government Gazette*, for general information : Provided, always, that the said terms and conditions and the rates so chargeable may from time to time be altered by the directors, with consent of the Governor ;

And may be altered.

and the directors or their representative shall be entitled to recover by legal process all such charges as shall be in force for the time being from the owners of goods, merchandize, articles, or things conveyed by the company on the said line, and shall, moreover, have the right of retaining such goods, merchandize, articles, or things until the rates or charges due or payable for or in respect of the carriage or conveyance thereof shall have been duly paid.

Charges, how recoverable.

Governor to regulate number of stopping places, goods stations, &c.

12. The directors of the said company shall be bound and obliged to establish and permit to be used so many stations or stopping-places upon the said line of tramway or railway for receiving and delivering goods, merchandize, minerals, or other articles to be conveyed upon the said tramway or railway, or any portion thereof as the Governor shall from time to time direct to be established for public use, or for the use of any proprietors or lessees of mines or minerals requiring to use the said tramway or railway. And the said Company shall at all times thereafter allow to the public and to proprietors and lessees aforesaid, free and convenient way-leave and access to all such stations or stopping places over all lands belonging to or in the possession or occupation of the said company, with all cattle and vehicles to be used for conveying passengers, goods, merchandize, minerals, or other articles, to and from such stations.

Facilities for receiving, forwarding, &c., of goods, without undue preference to be provided.

13. The said Company shall afford all reasonable facilities for the receiving, storing, forwarding, and delivering of traffic upon and from the said tramway, and no undue or unreasonable preference or advantage to or in favour of any particular person or persons, or any particular description of traffic, in any respect whatsoever, shall be given ; nor shall the said company subject any particular person or persons, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Tolls, fares, &c., to be charged equally to all persons, without distinction.

14. All tolls, fares, or rates for passengers or goods shall be at all times charged equally to all persons, and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers, and of all goods of the same description and conveyed or propelled in a like carriage and by a like power passing only over the same portion of the line of tramway or railway, under the same circumstances ; and no reduction or advance in any such tolls, fares, or rates shall be made, either directly or indirectly, in favour of or against any particular company or person travelling upon or using the tramway or railway.

Steam power not to be used for passenger traffic before

15. No steam power shall be used for the conveyance of passengers upon the said tramway or railway until the certificate

Digitised by the University of Pretoria, Library Services, 2016

of the Colonial Engineer or other officer appointed by the Governor shall have been obtained, at the expense of the directors, that the said tramway or railway is in a fit and proper condition for the safe conveyance of passengers by means of such steam power: Provided that before any passengers shall be conveyed on the said tramway or railway, the said directors shall frame terms and conditions and a tariff of charges for the conveyance of such passengers, and the provisions of the eleventh section hereinbefore contained shall, *mutatis mutandis*, apply to such terms, conditions and tariff.

obtaining certificate of proper officer.

Previous to conveyance of passengers, table of charges &c., to be framed.

16. From and after the adoption of steam power, subject to such certificate as aforesaid, as the means of conveying or propelling trucks or carriages of any description with passengers, such and so many of the provisions of the "Regulation of Railways Act, 1861," as the Governor, with the advice of the Executive Council, shall by any proclamation to be published in the *Government Gazette* specify and determine shall come into force, and apply to the said tramway or railway hereby authorised to be constructed and made, as if the said provisions were herein separately set forth and made applicable to the same.

On adoption of steam power, provisions of "Regulation of Railways Act, 1861," to apply.

17. The Colonial Government shall have the right of sanctioning any junction of branch lines communicating with the said line of tramway or railway, from or for the use of any mines which may be opened in Namaqualand, upon such terms and conditions as may be agreed upon between the person or persons desiring to have and maintain such branch line and junction and the directors of the said company; and in case of any question or controversy as to such terms and conditions, such question shall be referred to three persons, one to be nominated by the Governor, one to be nominated by the directors of the said company, and the other to be nominated by the person or persons seeking to establish such junction; and the decision of any two or more of such three persons shall be final. The costs of every such arbitration to be in the discretion of the arbitrators.

Right of sanctioning junction of branch lines reserved

Disputes respecting terms or conditions to be settled by arbitration.

Decision final.

Costs of arbitration.

18. At any time after the expiration of ten years from the date of opening for traffic of the entire line from Hondeklip Bay to Riethuis, the Colonial Government shall, if so disposed, have the right of purchasing from the Cape Copper Mining Company (Limited) the said tramway or railway; and the said company shall, if required thereto, be bound to sell it to the Colonial Government on being paid an amount not exceeding the cost of construction and equipment of the said line, to be agreed between the Colonial Government and the said company.

Right of Government to purchase line at cost price.

19. The said directors shall and may sue and be sued within this Colony by the name or style of the "Cape Copper Mining Company (Limited)" and service of process upon the said company, at any office or place of business thereof in this Colony, shall be good service of such process.

How company may sue and be sued.

Digitised by the University of Pretoria, Library Services, 2016

No. 17—1865.

Short Title.

20. This Act may be cited for all purposes as "The Namaqualand Tramway or Railway Act."

No. 16—1865.] [October 10, 1865.

An Act for Applying a Sum not exceeding One Hundred and Ninety Thousand Seven Hundred and Twenty-two Pounds Seventeen Shillings and Nine Pence for the Service of the Year 1866.

[Spent.]

No. 17—1865.] [October 10, 1865.

ACT

To alter in certain respects the Limits of the Division of Humansdorp.

Preamble.

WHEREAS the Fiscal Division of Humansdorp forms part of the Electoral Division of Uitenhage: and whereas it is expedient to alter the existing limits of the Fiscal Division of Humansdorp, and to include therein a portion of the Fiscal Division of the Knysna, which last-mentioned division forms part of the Electoral Division of George: and whereas it is necessary that such alteration should be made 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:—

Boundaries of fiscal division of Humansdorp.

1. The boundaries of the Fiscal Division of Humansdorp, which Fiscal Division forms part of the Electoral Division of Uitenhage, shall, as well for all electoral purposes as for all fiscal purposes, be the boundaries in the schedule to this Act set forth, and the territory included within the said boundaries shall constitute, for judicial purposes, the district of the Resident Magistrate of Humansdorp.

Certain registered voters hitherto included in electoral division of George to be transferred to electoral division of Uitenhage.

2. As soon as may be, after the taking effect of this Act, the Civil Commissioner of the division of George shall transmit to the Civil Commissioner of the division of Uitenhage the names of all persons who, next before the taking effect of this Act, were registered voters for the Electoral Division of George, and who, by being included within the boundaries in the last preceding section mentioned, will, upon the taking effect of this Act, become resident within the Electoral Division of Uitenhage; and such persons shall become registered voters for the Electoral Division of Uitenhage, and be added to the list of registered voters, for the time being, for such last-mentioned Electoral Division, and shall cease to be registered voters for the Electoral Division of George.

Power of Governor to alter boundaries of field-cornetcies or fiscal divisions and fix limits of magistracies, not affected.

3. Nothing in this Act contained shall be construed so as to prevent the Governor from making, from time to time, by proclamation, such alterations as the public convenience may seem to him

Digitised by the University of Pretoria, Library Services, 2016

to demand in the boundaries of Field-cornetcies all comprised within the same Fiscal Division, or in the boundaries of Fiscal Divisions all comprised within the same Electoral Division, or to deprive the said Governor of the power now by law vested in him of fixing, from time to time, by proclamation, the limits of districts of Resident Magistrate.

Provision regarding election of members of divisional council.

4. The limits of the districts into which the Fiscal Division of Humansdorp is now divided for the purpose of electing members of the Divisional Council for such division, or the limits of so many of the said districts as may be found necessary, shall, as soon as may be after the taking effect of this Act, be altered, so that the whole of the territory comprised within the boundaries fixed by this Act shall belong to or form a part of some district electing members or a member of the Divisional Council; but no such alteration in the limits of any district shall vacate or affect the seat in the Divisional Council of the member or members now representing such district: Provided that from and after the happening of the first vacancy in the representation of any district of which the limits shall have been altered as aforesaid, then, and from thenceforth, the member or members for such district shall be elected by the district according to its altered limits.

SCHEDULE.

BOUNDARIES OF THE DIVISION OF HUMANSDORP.

From the summit of the Coxcomb Mountain to the junction of the Kruis and Kouga Rivers, thence along the watershed and summits of the Kouga River heights, which separate from each other the valleys of the Kruis and Kouga Rivers, and the Kromme River, from the Lange Kloof, to the source of the Blue Krantz River; thence along that River to its mouth; thence along the Sea-coast in an Easterly direction to the Mouth of the Gamtoos River, following that River to its junction with the Loeries River; thence along that River to its source in the Van Stadensberg; and thence along the summit of the Van Stadensberg to the Coxcomb.

No. 18—1865.] [October 10, 1865.

An Act to prevent the Introduction into this Colony of Malignant Diseases affecting Horned Cattle.

[Repealed by Act 20, 1868.]

No. 19—1865.] [October, 10, 1865.

An Act for Securing the Periodical Publication of Statements showing the Assets and Liabilities and the Names of the Shareholders of Joint-stock Companies trading as Bankers in this Colony.

[Repealed by Act 6 of 1891.]

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1866-'67.

No. 1—1866-'67.] [December 31, 1866.

An Act for Altering the Duties of Customs in the Colony of the Cape of Good Hope.

[Superseded by Act 13, 1884.]

No. 2—1866-'67.] [December 31, 1866.

An Act to Continue the Provisions of the Act No. 10 of 1864.

[Expired.]

No. 3—1866-'67.] [January 8, 1867.

An Act to Continue, with Amendment, until the 31st of December, 1867, the Provisions of the Act No. 18 of 1865, entituled "An Act to prevent the Introduction into this Colony of Malignant Diseases affecting Horned Cattle."

[Expired.]

No. 4—1866-'67.] [January 12, 1867.

ACT

For Enabling the Commissioners of the Municipality of Beaufort to secure a Supply of Water for the Inhabitants of such Municipality. (1)

Preamble.

WHEREAS the inhabitants of the municipality of Beaufort have long experienced inconvenience from a very deficient supply of water: And whereas facilities exist in the immediate neighbourhood of the town for constructing a large and permanent reservoir, capable of storing a quantity of water amply sufficient for the wants of the inhabitants: And whereas the commissioners of the municipality, acting in conformity with the desire and representations of the inhabitants, made arrangements some time since for commencing the construction of such a reservoir as aforesaid, and, for the purpose of procuring the necessary funds, applied to the Cape of Good Hope Savings Bank Society for a loan, which said society lent and advanced certain moneys to the said commissioners, wherewith the work aforesaid has been commenced, and has consented and agreed to lend and advance such further moneys as may be required, not exceeding, in the whole, the sum of two thousand pounds sterling: And whereas it is expedient that the said commissioners should be empowered to secure the repayment of the said moneys so borrowed, and to be borrowed, which shall

[1] See Acts 5, 1869; 20, 1875; 15, 1881.

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1866-'67.

not, in the whole, exceed the said sum of two thousand pounds sterling: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Commissioners empowered to make regulations for supply of water, and to impose water rate.

1. It shall be lawful for the said commissioners, from time to time, to make regulations touching and concerning the terms and conditions upon which the inhabitants of the municipality may obtain, by means of private service pipes or other channels or water courses, a supply of water for domestic use, irrigation, or other purposes, and to impose, for the purpose of providing for the payment of the interest or principal, or interest and principal, of the moneys aforesaid, rates upon the immovable property situate within the municipality, and liable to be rated for municipal purposes; and every such rate so imposed by the said commissioners shall be of the same force and effect, and be levied in like manner, as if it had been a rate imposed by a meeting of householders acting under the provisions of the Ordinance No. 9 of 1836, section 28.

Loan made by Savings Bank chargeable upon rate levied.

2. The sum aforesaid of two thousand pounds sterling, or such lesser sum as shall have been lent and advanced for the purpose aforesaid by the Cape of Good Hope Savings Bank Society to the commissioners aforesaid, is hereby charged upon and made payable out of all and singular the rates and revenues in the last preceding section mentioned: Provided that it shall be lawful for the said commissioners to apply to the payment of the interest or principal or interest and principal, of the said debt any funds or moneys coming to them from any source whatever, and not specifically appropriated to or required for any other object: Provided, also, that nothing in this section contained shall be construed so as to impair or affect the provisions of any of the next succeeding sections of this Act.

Other funds also applicable to payment of loan or interest.

Succeeding sections of Act not affected.

Commissioners to grant written acknowledgment of loan.

3. The commissioners aforesaid shall grant to the Cape of Good Hope Savings Bank Society a written acknowledgment of, or for, the moneys borrowed by the said commissioners for the purpose aforesaid, not exceeding in the whole, the sum aforesaid of two thousand pounds sterling; which acknowledgment shall, in substance, be in the form annexed to this Act, and shall be signed, on behalf of the said commissioners, by three of the commissioners for the time being, of whom the chairman for the time being of the board of commissioners shall be one.

Form of acknowledgment.

By whom to be signed.

Supreme Court may be applied to on failure by sheriff to find assets in satisfaction of writ of execution sued out by Savings Bank.

4. In case it should at any time appear by the return of the Sheriff to any writ of execution sued out by the Cape of Good Hope Savings Bank Society against the commissioners for the time being of the municipality aforesaid, for the recovery of the debt aforesaid, or any part thereof, that the Sheriff had not found any goods or chattels of the said commissioners wherewith to satisfy the said judgment, it shall be lawful for the said society to apply to the Supreme Court, by motion, for an order that it be

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1866-'67.

referred to the Master of the Supreme Court, to inquire and report the amount due to the said society by the said commissioners for principal, interest, and costs: Provided that notice of the said motion shall be given to the said commissioners at their office.

Commissioners entitled to notice of motion.

Supreme Court to direct Master to inquire and report amount due.

5. Upon the hearing of the said motion, then, unless the said commissioners shall satisfy the said Court that the said commissioners will be prepared within a reasonable time, to be approved by the said Court, to satisfy from rates assessed or to be assessed, or other assets, the debt of the said society, together with costs and all interest accrued due thereupon, the said Court shall, unless the said commissioners shall admit the amount claimed by the said society, make an order, referring it to the Master to inquire and report the amount due to the said society.

Supreme Court may impose rate for liquidation of debt, with interest and costs, not to exceed one penny in the pound.

6. When by report of the Master, the Supreme Court shall be informed of the whole amount of the debt due and owing by such commissioners to the said society, it shall be lawful for the said Court, and it is hereby required, to assess and impose such a rate, not exceeding one penny per pound of the value of every rateable tenement within the municipality of Beaufort, as shall appear to be sufficient to satisfy, from and out of the net proceeds of such rate, the debt due by the said commissioners to the said society, together with all costs and interest legally chargeable thereon: Provided that if a single rate of one penny per pound, as aforesaid, shall be insufficient to satisfy the whole of the said debt, interest, and costs, then a second rate not exceeding one penny per pound shall be assessed, and so on, until the said debt of the said commissioners, and all interest and costs legally chargeable thereupon, shall be finally discharged: Provided that not less than twelve months shall elapse between the day on which any preceding rate became due and payable and the day upon which any succeeding rate shall become due and payable.

More than one rate may be levied.

But not before expiration of twelve months from date of previous levy.

Supreme Court to appoint receiver.

7. As often as the Supreme Court shall assess any rate for the purpose of paying such debt as aforesaid, such Court shall appoint a receiver, who shall be charged with the recovery of such rate, and who shall give security for the due performance of his office, and shall be entitled to such percentage or other remuneration as the said Court shall fix; and shall conform to all instructions regarding the custody of the moneys received by him, or other matters, as the said Court shall from time to time issue for his guidance. Notice shall be given in the *Government Gazette* of every rate assessed as aforesaid, and of the day upon which such rate shall become due and payable; and such notice shall be, in substance, as follows:

Notice of rate so assessed to be given in Government Gazette.

MUNICIPALITY OF BEAUFORT.—RATE UPON IMMOVABLE PROPERTY.

Form of notice.

Notice is hereby given that the Honourable the Supreme Court has this day assessed, under the provisions of

Digitised by the University of Pretoria, Library Services, 2016

"The Town of Beaufort Water Act, 1866," a rate of ——— per pound upon the value of every rateable tenement within the Municipality of Beaufort, which rate will become due and payable on the ——— day of ———, 18——, and of which rate A. B., of ———, has been appointed the receiver.

Dated at Cape Town this ——— day of ———, 18—.

T. H. B., Registrar of the Supreme Court.

Publication of notice.

Provided that such notice as aforesaid shall be published for not less than thirty-one days before the day mentioned in such notice as that upon which the rate shall become due and payable.

Recovery of rate.

8. The receiver of any such rate as aforesaid shall be entitled to recover the amount thereof in any competent Court: Provided that every such rate shall be recoverable from the same persons who would be liable to be sued for the same in case it were a rate assessed in and for the municipality of Beaufort, under the Ordinance No. 9, 1836.

Disposal of surplus after liquidation of debt.

9. Any surplus of the amount of any such rate as aforesaid which shall happen to exist after the discharge of the debt which it was assessed to liquidate shall be paid to the commissioners aforesaid.

Service of summons for recovery of debt should no commissioners be in office

10. In case there should happen to be no commissioners of the said municipality in office when the Savings Bank Society shall desire to proceed by legal process for the recovery of the debt, acknowledged in manner aforesaid, or of any part of such debt, then the publication in the *Government Gazette* of the summons issued by the said society against the commissioners of the said municipality shall be deemed to be good service of such summons, and be of the same force and effect as if on the day of such publication the said summons had been duly served at their office upon commissioners in office: Provided, also, that in case there should not, at any time when an application shall be made for the assessment of a rate under this Act, be any valuation of the immovable property within the said municipality be in force for municipal purposes, then the valuation of such property for municipal purposes which last expired shall be deemed to be still in force for the purpose of any rate to be assessed under this Act.

Assessment of rate when municipal valuation has ceased to be of force.

Commissioners may enter upon lands, lay down pipes, and remove materials, &c.

11. It shall and may be lawful for the said commissioners, and they are hereby authorised, to enter upon and take possession of such lands as may be required for the laying of the water pipes and the construction of water courses, and for any other necessary purpose relating to the water works contemplated by this Act, and to enter upon all lands, and there dig for, excavate, and carry away all such materials as may be required for the construction and maintaining of the said water works; and the proprietors of the said lands, and of the said materials so taken, used, and carried away, shall be paid by the commissioners a reasonable sum by way

Owners to be compensated.

Digitised by the University of Pretoria, Library Services, 2016

Court as aforesaid, in any criminal case, whereby any person shall be condemned to death, or transportation, or banishment from the said Colony, shall be carried into execution, until a report of all the proceedings upon any such trial hath been laid before, or transmitted to the Governor of the said Colony by the Chief Justice or Puisne Judge presiding at any such trial, nor until such Governor shall have authorised and approved the execution of such sentence.

Framing and publication of rules, orders, and regulations of supreme and circuit courts.

46. And we do further grant, ordain, direct, and appoint that it shall and may be lawful for the said Supreme Court, by any rules or orders of Court to be by them from time to time, for that purpose made and published, to frame, constitute, and establish such rules, orders, and regulations, as to them shall seem meet, touching and concerning the time and place of holding the said Supreme Court; and touching the forms and manner of proceeding to be observed in the said Supreme Court and Circuit Courts respectively (1); and the practice and pleadings upon all actions, suits, and other matters, both civil and criminal, indictments, and informations to be therein brought; the appointing of Commissioners to take bail and examine witnesses; the examination of witnesses, *de bene esse*, (2) and allowing the same as evidence; the proceedings of the Sheriff and other ministerial officers of the said Courts respectively; the process of the said Courts, and the mode of executing the same; the summoning, impannelling, and challenging of jurors; the admission of barristers, advocates, attorneys, solicitors, and proctors; the fees, poundage or perquisites to be lawfully demanded by, and payable to, any officers, attorneys, solicitors, and proctors in the said courts respectively; and touching and concerning all such other matters and things necessary for the proper conduct and dispatch of business in the said Supreme and Circuit Courts respectively; and all such rules, orders, and regulations from time to time, to evoke, alter, amend, or renew, as occasion may require: Provided always, that no such rules, orders, and regulations shall be repugnant to this our Charter, and that the same shall be so framed as to promote, as far as may be, economy and expedition in the dispatch of the business of the said Supreme Court and Circuit Courts respectively, and that all such rules and forms of practice, process, and proceeding shall, so far as the circumstances of the said Colony may permit, be framed with reference to the corresponding rules and forms in use in our Courts of Record at Westminster, and that the same be drawn up in plain, succinct, and compendious terms, avoiding all unnecessary repetitions and obscurity, and promulgated in the most public and authentic manner in the said Colony, for three months at least (3), before the same shall operate and take effect: Provided always, that all such rules, orders, and regulations shall forthwith be trans-

Transmission of rules for the royal approbation or disallowance.

[1] See §§ 3 and 4 of Act 15, 1867, and § 9 of Act 39, 1877.
[2] See Ord. 72, § 40.
[3] See Act 15 of 1867.

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1866-'67.

of recompense for the value of such land or materials, or for any damage that may be done by reason thereof, or connected therewith: Provided that in the event of the commissioners aforesaid and any such proprietor not being able to agree upon the sum to be paid by the said commissioners and accepted by such proprietor, then the said commissioners shall cause to be served upon such proprietor a written notice, offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such proprietor to state in writing to the said commissioners, or to some person by them appointed, within a certain limited time to be specified in the said notice, whether he is willing to accept the sum therein mentioned or not, and in case he shall refuse to accept the sum offered, or shall neglect to reply to the said notice, then

Arbitration.

the said commissioners shall, by another notice, call upon such proprietor, within some time to be specified in such other notice, to refer to arbitration the amount of recompense or compensation to be paid to him, and for that purpose to transmit to the said commissioners, or the person so appointed by them, the name of some person whom he shall select to be an arbitrator upon such arbitration; and the said commissioners, or other person as aforesaid, upon receiving the name of the person so selected, shall nominate a second arbitrator, and the said arbitrators shall choose a third arbitrator; and the said commissioners shall cause a deed of submission to be prepared, which shall be signed by three of the said commissioners, of whom the chairman shall be one, and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators; and the said arbitrators, or any two of them, shall be authorised to fix and determine the amount of compensation to be paid as aforesaid, according to what they shall consider fair and reasonable; and the award of the said arbitrators, or any two of them, shall be made a rule of the Supreme Court, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for and on account of the same subject matter; and in case such person as aforesaid, claiming such recompense or compensation, shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said commissioners, and they are hereby authorised, to lodge in some joint-stock bank in Beaufort, or in Cape Town, the sum of money offered by them as aforesaid, for and on account and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the bank as his absolute property; and the said commissioners, upon so lodging the said sum, shall be authorised and entitled to take and use the said land or materials in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by the arbitrators, and as if all acts by law required for vesting in the said

How, if party claiming compensation, refuses or neglects to proceed to arbitration, or rejects award.

Digitised by the University of Pretoria, Library Services, 2016

commissioners a sufficient title to the use of and property in the said land or materials aforesaid had been duly done and performed.

Separate and distinct accounts to be kept.

12. The commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys, and of all revenues arising from the water works contemplated by this Act, distinguishing sums received for private service pipes or private water courses from sums received from rates imposed, under the fourth section of this Act, upon the rateable property of the municipality, and of all moneys expended upon the construction and maintenance of the water works contemplated by this Act; and the said commissioners shall yearly, and every year, as long as any part of any debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the Civil Commissioner of Beaufort, for the inspection at all reasonable times, of any resident householder of the municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the thirty-first day of December in each year, and shall be deposited in the office of the Civil Commissioner not later than the first day of March of the year next succeeding.

Annual accounts to be deposited in civil commissioner's office.

Expenses incurred in obtaining Act may be paid out of loan.

13. The necessary costs, charges, and expense of obtaining this Act may be paid by the said commissioners out of the moneys borrowed, as aforesaid, from the Cape of Good Hope Savings Bank Society.

Short title.

14. This Act may be cited for all purposes as "The Town of Beaufort Water Act, 1866."

SCHEDULE.

We, the undersigned, commissioners of the municipality of Beaufort, do hereby acknowledge that the said commissioners, in their said capacity, are indebted to the Cape of Good Hope Savings Bank Society in the sum of ———— sterling, for so much money borrowed by the said commissioners, for the purposes set forth in "The Town of Beaufort Water Act, 1866," and certify that the said sum is and stands secured by the said Act, in manner and form as by the said Act provided. And we further covenant and engage, for and on behalf of the said commissioners, that the interest and principal of the said debt shall be payable and paid in manner following, that is to say: (Here insert, according to agreement, the rate of interest and times of payment thereof, and the date or dates or other conditions upon which the principal of the debt shall become payable).

Given under our hands, at Beaufort, this —— day of ——, 186—.

A. B., Chairman of the Municipality.

C. D., E. F., } Commissioners.

Witnesses:

G. H., I. J. }

Digitised by the University of Pretoria, Library Services, 2016

No. 8—1866-'67.

No. 5—1866-'67.] [January 12, 1867.

An Act for the Better Maintenance of Discipline among Persons under Sentence of Imprisonment with Hard Labour.

[Repealed by Act 23, 1888.]

No. 6—1866-'67.] [January 12, 1867

An Act for Applying a Sum not exceeding Four Hundred and Forty-seven Thousand and Fifty-five Pounds Thirteen Shillings and Ten Pence for the Service of the Year 1866.

[Spent.]

No. 7—1866-'67.] [January 12, 1867.

An Act to Extend the Provisions of the Ordinance No. 5 of 1844 to Mules and Asses.

[Repealed by Act 27, 1893.]

No. 8—1866-'67.] [January 12, 1867.

ACT

To Amend Act No. 7 of 1865, entitled "An Act to consolidate and amend the several Acts relating to the Adjustment of Disputed Land Boundaries, and to the Erection and Preservation of Land Beacons."

Preamble.

WHEREAS it is expedient that the landowners of the division of King William's Town and East London should have an opportunity of availing themselves of certain temporary provisions of Act No. 7, 1865, whereby land beacons may be rendered indisputable, and that a further opportunity should be extended to the other landowners of this Colony: And whereas it is expedient that further provisions should be made for determining the boundaries of farms abutting on Crown lands, when there is reason to believe that the beacons purporting to define such boundaries encroach on such Crown lands: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof:—

Period allowed for verification of beacons extended.

1. That the eighty-eighth, eighty-ninth, ninety-second, one hundred and fourth, one hundred and fifth, one hundred and seventh, and one hundred and ninth sections of said Act shall be amended by inserting therein the year 1867 in lieu of the year 1866, wherever the said year 1866 is mentioned in any of the said sections, and the one hundred and ninth section shall be further

Digitised by the University of Pretoria, Library Services, 2016

amended by inserting therein the year 1868 in lieu of the year 1867 where the said year 1867 is mentioned in the said section.

Exceptions where beacons have been or are being adjusted.

2. Nothing in this Act contained shall be deemed to alter the law as now existing in respect of any beacons which shall have become indisputable before, or would become indisputable on the 31st day of December, 1866, or which now are or may then be in course of settlement, under any of the provisions of the said Act No. 7, 1865, or shall invalidate any act or proceeding already done under the said Act.

The word "person" in section 108 of Act 7, 1865, to include Surveyor-General.

3. For the purposes of the said Act No. 7 of 1865, the word "person" in the one hundred and eighth section of the said Act shall be held to include the Surveyor-General of the Colony in respect to any land the property of the Crown: Provided, always, that nothing herein shall be taken impliedly to repeal anything in the ninety-second or the one hundred and tenth section of the said Act contained.

Sections 92 and 110 of said Act not affected.

Rectification of beacons where the Crown is not bound by Act 7 of 1865.

4. It shall be lawful for the said Surveyor-General, on behalf of the Crown, at any time, in cases in which the Crown is not bound by virtue of the said Act, if he shall have reason to suspect that the beacons of any farm encroach on any land the property of the Crown, to cause a notice to be served on the proprietor of such farm that such beacons are disputed, which notice may also define where such beacons ought to be erected, and require that such proprietor shall rectify the same, and also to lodge with the Divisional Council of the division within which such beacons are situate a like notice; and if such proprietor do not within three calendar months after the service of such notice rectify such beacons in manner required by such notice, if he shall have been so required, then, at the expiration of such three calendar months, or if he shall not have been so required, then forthwith, proceedings shall be taken in manner provided by the ninety-fourth section of the said Act No. 7 of 1865, in like manner as if a person whose beacons had been objected to had applied under the ninety-third section of the same Act requesting the council to have the correctness of such beacons investigated and determined under the said Act.

Settlement under resurvey binding upon Crown.

5. In every case in which the Surveyor-General, on behalf of the Crown, shall have required that the correctness of beacons disputed by him on behalf of the Crown should be investigated, and the same shall have been settled by a resurvey under the said Act or this Act, such settlement shall, under the provisions of the said Act, and subject to the conditions therein contained as to appeals, become and be binding on the Crown as well as on the person with whom such disputes shall have been settled, in like manner as if the Crown were a private proprietor of a farm abutting on the farm the beacons whereof shall have been so disputed as aforesaid, and such dispute had been settled under the said Act No. 7 of 1865.

Short title.

6. This Act may be cited for all purposes as the "Land Beacons Amendment Act, 1866."

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1866-'67.] [January 12, 1867.

ACT

For Raising the further Sum of Fifty Thousand Pounds for the Completion of the Breakwater and Docks in Table Bay. (1)

Preamble.

WHEREAS by accounts and estimates framed up to the 31st May, 1866, printed by order of the Honourable the House of Assembly on the 1st of November, 1866, it appears that in addition to the sums already expended on the said 31st May, 1866, on the works now in progress for improving the harbour of Table Bay and constructing a breakwater therein, there will be required for the completion, to the extent described in the said estimate of the said works, sums of money amounting together to seventy-five thousand two hundred and thirty-one pounds sterling, and that there will be further required for the payment of the interest and other charges on sums already borrowed in respect of the said works and for maintaining in repair the works already constructed as part of or necessary for the said works, and for maintaining the establishment necessary to the proper use of the works so already constructed, during the period to elapse between the said 31st of May, 1866, and the 31st of December, 1867, sums amounting in the whole to twenty-one thousand six hundred and twenty-two pounds sterling: And whereas to meet the said requirements, amounting in the whole to ninety-six thousand eight hundred and fifty-three pounds sterling, the Commissioners of Table Bay Harbour were, on the 1st of June, 1866, possessed of a sum of nineteen thousand seven hundred and thirty-nine pounds two shillings and six pence sterling, and expected in the period to elapse between the said 31st of May, 1866, and 31st of December, 1867, to receive further sums, amounting in the whole to thirty-two thousand and ten pounds sterling, making a total of fifty-one thousand seven hundred and forty-nine pounds two shillings and six pence sterling, leaving a balance to be provided for of a sum approaching fifty thousand pounds sterling: And whereas it is expected that on the 31st of December, 1867, the said works now in progress will be so completed, and the harbour and docks contemplated be available for purposes of trade: And whereas by an Act passed in the year 1858, and numbered 20, entitled "An Act for constructing a Breakwater to form a Harbour of Refuge in Table Bay and otherwise improving the said Harbour," and by a further Act passed in the year 1860, and numbered 6, being an Act to amend the said Act No. 20 of 1858, the Governor was authorised to take up upon debentures, or such other form of loan as he should consider preferable, sums not exceeding in the whole two hundred thousand

[1] See also Acts 17, 1888; 19, 1888; 22, 1889; 22, 1892; 20, 1893; 6, 1894.

Digitised by the University of Pretoria, Library Services, 2016

pounds sterling, in manner by the said Acts provided: And whereas it is expedient that a further sum of fifty thousand pounds sterling should be in like manner taken up or raised, to enable the said works to be made so complete and available for the purposes of trade, and to maintain in the meantime such works as are already constructed and the establishment necessary for the proper use thereof, and to discharge the interest in the meantime becoming due on the moneys already raised as aforesaid: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Further loan of £50,000 authorised.

That it shall be lawful for the Government to raise, in manner provided by the said Acts No. 20 of 1858 and No. 6 of 1860 for the purpose of so completing as aforesaid the said works and other purposes hereinbefore mentioned, a sum not exceeding in the whole the sum of fifty thousand pounds sterling, in addition to the sum of two hundred thousand pounds sterling which under the said Acts he was empowered to raise for the purposes therein mentioned, in like manner, in all respects, as if the said additional sum of fifty thousand pounds sterling were part of the said sum of two hundred thousand pounds sterling.

No. 10—1866-'67.] [January 12, 1867

ACT

To Amend the Ordinance No 4 of 1852, and make Provision for different Rates of Wharfage and Cranage to be levied on Matters shipped or landed in the Kowie Harbour. (1)

Preamble.

WHEREAS it is desirable that the tolls or dues of wharfage and cranage payable under or by virtue of the Ordinance No. 4 of 1852 at the Kowie harbour, on goods, articles, matters, and things landed or shipped in the said harbour, should be altered, and certain new rates of tolls or dues should be established: 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:—

Rates of dues payable.

1. From and after the passing of this Act the dues set forth in the Schedule to said Ordinance No. 4 of 1852, shall cease to be payable, so far as the same are different from the dues set forth in the first Schedule hereunto annexed, and the dues set forth in the first Schedule hereunto annexed shall be payable in lieu thereof.

Person landing or shipping goods to state to principal Customs officer the value thereof.

2. The person by whom any goods, articles, matters, or things chargeable according to the Schedule aforesaid upon the value thereof, shall be or be about to be landed or shipped in Kowie

[1] See Acts 26, 1864 11, 1874.

Digitised by the University of Pretoria, Library Services, 2016

No. 10—1866-'67.

harbour, or his known agent, shall be bound to state to the principal officer of Customs at Kowie harbour, who shall be entitled to demand and receive the dues or rates payable thereon,

Declaration as to value may be required.

the value thereof; and if it shall appear to the said officer that the same are not valued according to the actual value thereof, then the said officer may require the person who shall have landed or shipped, or be about to land or ship, any goods, articles, matters, or things, to make and subscribe a declaration, which declaration shall be, in substance, in the form in the second Schedule to this Act set forth: and the value stated in such declaration

Bond to be taken if wharfage not paid forthwith.

shall be the value upon which dues shall be paid: Provided that it shall be lawful for such officer, as often as it shall be made to appear to him that the value of any goods, articles, matters, or things, landed in Kowie harbour cannot be declared at or immediately after the time of such landing, to permit the same to be taken away without the payment of wharfage; but in every such case such officer shall take a bond or obligation for the payment of such wharfage at or before such time as shall in that behalf be specified in such bond or obligation.

Penalty for false declaration.

3. Any person who shall wilfully and corruptly make and subscribe any such declaration as aforesaid, knowing the same to be untrue in any material particular, shall be deemed to be guilty of the crime of contravening this section of this Act, and shall, upon conviction thereof, be liable to such punishment as shall be by law provided for the crime of perjury.

Sums collected under this Act to be paid over to Kowie Harbour Improvement Company.

4. The principal officer of Customs as aforesaid shall periodically, and at such periods as shall be agreed upon between him and the directors of the Kowie Harbour Improvement Company, pay over to the said directors all sums received by him under this Act, and shall allow the said directors access at all reasonable times to all such accounts, books, and papers as may be required for checking or auditing the accounts of such sums:

Employment of clerk authorised.

Provided, also, that it shall be lawful for the said directors to employ, and pay out of the sums receivable under this Act, a wharf or other clerk, who shall be under the superintendence and control of the said officer of Customs.

SCHEDULE No. 1.

Upon all wool shipped or landed at the Kowie Harbour there shall be payable and be paid sixpence for and upon every one hundred pounds of the weight thereof.

Upon all goods, articles, matters, or things, except wool, shipped or landed at the said harbour, dues shall be payable and be paid at and after the rate of ten shillings for every one hundred pounds of the value thereof.

Digitised by the University of Pretoria, Library Services, 2016

EXEMPTIONS. No. 11—1866-'67.

1. All public stores, naval and military baggage, and personal baggage of passengers.
2. Ships' stores outwards.
3. All goods shipped upon which dues had been paid on importation under this Act.
4. All goods shipped to or landed from any place within the Colony. (1)

SCHEDULE No. 2.

I, A. B., do hereby declare that I am cognisant of the value of the following articles about to be shipped by me (or by C. D., according to the fact) on board the ————, in Kowie harbour, namely (here describe the articles, with marks and numbers, if any), and I do further declare that the said articles are of the value of ————.

(Signed) A. B.

The above declaration, under the Act No. —, was made and subscribed this — day of ———— 186—, in the presence of

C. D.

(*** When the articles are landed or about to be landed, the above form will be altered according to the facts.)

No. 11—1866-'67.] [January 12, 1867.

ACT

For Raising Two Hundred Thousand Pounds by Debentures, for paying off Unsecured Debt, and other purposes. (2)

Preamble. WHEREAS, from accidental circumstances, the revenue of the Colony fell considerably short of the authorised expenditure during the years 1865 and 1866: And whereas it became necessary for the Government to obtain temporary loans from the Guardian's Fund, as well as from certain persons and co-partnerships, as will be more fully shown in the annexed Schedules; and it is expedient that the sum of two hundred thousand pounds should be raised by debentures, as hereinafter mentioned: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Loan of £200,000 on debentures authorised. 1. It shall and may be lawful for the Governor to raise and take up upon debentures such sum or sums of money as from time to time shall seem to him fit and necessary for the exigencies of the public service, not exceeding in the whole the sum of two hundred thousand pounds; and the Governor shall, out of the first

[1] And all bullion and coin *landed*, Acts 26, of 1864, and 11 of 1874.
[2] See Acts 19, 1867; 22, 1868.

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1866-'67.

Previous temporary loans to be paid off out of proceeds.

moneys to be so taken up or raised, cause to be paid the sum of one hundred and ninety-seven thousand seven hundred and seven pounds, portion of the sum of two hundred and forty-eight thousand pounds appearing in the second Schedule hereunto annexed, already obtained by him on loan as aforesaid.

Mode of issuing debentures.

2. Such debentures shall be issued for sums not exceeding five hundred pounds, nor less than one hundred pounds each, and shall bear date the 15th of April, 1867, and shall be signed by the Colonial Secretary for the time being, by command of the Governor and countersigned by the Treasurer-General and Auditor-General of the Colony, and shall bear interest at the rate of six pounds per cent. per annum until the 15th of October, 1900.

Rate of interest.

Debentures when and where payable.

3. Such debentures shall be payable at par, at the office of the Crown Agents for the Colonies, London, on the 15th October, 1900, and after that date shall cease to bear interest.

Interest payable out of current revenue.

4. The Governor shall from time to time, out of the current revenue of the Colony, pay the interest upon the said debentures and may also out of such current revenue from time to time buy up and cancel such debentures.

Power to buy up and cancel debentures.

Interest when and where payable.

5. Interest shall be payable on the said debentures at the office of the Crown Agents for the Colonies aforesaid on the 15th October, next succeeding the issue thereof, and thereafter on the 15th of April and the 15th of October in each year, until the 15th of October, 1900, or until such debentures respectively shall be redeemed and cancelled as aforesaid.

Transfer of debentures.

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

Disposal of debentures.

7. All such debentures shall be put up for public tender in London, and may be disposed of for the best terms, not being less than par, which can be thus obtained. If more tenders than one, offering the same terms, shall be received for a greater amount of such debentures than the amount for the time being about to be issued, it shall be lawful to accept any one or more of such tenders, or any part of any such tenders, as circumstances may make expedient.

Principal and interest to form charge on public revenue.

8. The capital sum and interest of the said debentures, payable as hereinbefore is provided, shall be charged and chargeable on and payable out of the general revenue of this Colony.

Accounts to be submitted to Parliament.

9. An account showing the amount of all such debentures issued under the authority of this Act, and the moneys realized thereby and the expenditure thereof, or of so much as shall have been expended, vouched by the Auditor-General of the Colony, shall be laid before both Houses of Parliament within fourteen days after

Digitised by the University of Pretoria, Library Services, 2016

the commencement of the next session which shall have been held after the notice of the issue of such debentures. No 11—1868-'67

FIRST SCHEDULE.

1865.

REVENUE.	EXPENDITURE.
£519,044	£614,741
	Deficiency .. £95,692

1866.

REVENUE.		EXPENDITURE.	
Quarter ending—			
31st March ..	£119,809	£153,183	
30th June ..	127,534 Actual.	145,888	Actual.
30th September	140,003	159,290	
31st December..	133,300 Estimated.	164,300	Estimated.
	£520,646	£622,661	
	Deficiency ..	£102,015	
Deficiency, 1865	£95,692		
,, 1866	102,015		
	£197,707		

Exclusive of Tulbagh Kloof Railway Expenditure, £49,083 7s. 5d., defrayed out of the Loans of £248,000, but not yet authorised.

SECOND SCHEDULE. [1]

TEMPORARY LOANS ON 30TH NOVEMBER, 1866.

Cape of Good Hope Bank.

	£10,000	
	30,000	
	10,000	
	15,000	
	10,000	
	15,000	
Kaffrarian Loan ..	5,000	
	.. ..	£95,000

Port Elizabeth Bank.

	£10,000	
	7,000	
	2,000	
	2,000	
	.. ..	£21,000

[1] See Acts 19, 1867, and 22, 1868.

Digitised by the University of Pretoria, Library Services, 2016

Charter of Justice.

mitted to us, our heirs and successors, under the Seal of the said Court, for our or their approbation or disallowance. (1)

Provision for the passing of laws respecting the qualification of jurors.

47. And whereas it may be expedient and necessary to make provision respecting the qualifications of jurors, to serve in the said Courts and the mode of enforcing the attendance of such jurors, and it may also be expedient and necessary to make provision for the extension of trial by jury in the said Supreme Court, (2) or Circuit Courts, in civil cases: Now, we do further ordain, direct, and appoint, that it shall and may be lawful for the Governor, for the time being, of our said Colony, with the advice of the Legislative Council of Government thereof, to make and establish all such wholesome laws, statutes, and ordinances, as to them may seem meet, respecting the matters aforesaid; which laws, statutes, and ordinances shall forthwith be transmitted to us for our approbation or disallowance, in the manner prescribed by law respecting all other the laws, statutes, and ordinances made, or to be made, by the said Governor with the advice of the said Council.

Provision for the constitution of inferior courts having civil and criminal jurisdiction.

48. And whereas it may be expedient to establish within our said Colony Courts of Request, and other Courts having jurisdiction in civil cases of small amount or value, and in cases of crimes or offences not punishable by death or transportation: Now we do hereby authorise and empower the Governor, for the time being, of our said Colony, with the advice of the Legislative Council of Government thereof, by any Laws and Ordinances to be from time to time made for that purpose, to erect, constitute, and establish all such Courts of Request and other Courts having jurisdiction in civil and criminal cases within our said Colony: Provided that the jurisdiction of such Civil Courts shall not be extended to any case wherein the sum or matter in dispute shall exceed the amount or value of forty pounds sterling money, or wherein the title to any lands or tenements, or any fee, duty, or office may be in question, or whereby rights in future may be bound: And provided also, that the jurisdiction of such Courts in criminal cases shall not be extended to any case wherein any person may be accused of any crime punishable by death, transportation, or banishment from the said Colony. (3)

Framing of rules for such courts.

49. And we do hereby authorise and empower the said Governor, by and with the advice of the said Chief Justice and Puisne Judges of the said Supreme Court, for the time being, to make, ordain, and establish all necessary rules, orders, or regulations respecting the manner and form of proceeding in any such last-mentioned Courts, and respecting the local limits within which the jurisdiction thereof is to be exercised, and respecting the manner and form of carrying the judgments and orders of such

[1] See Act 15 of 1867.
[2] See Acts 7, 1854, 30, 1874 and 23, 1891.
[3] See Act 20 of 1856.

Digitised by the University of Pretoria, Library Services, 2016

No. 11 —1866-'67.

Colonial Bank.

Loan taken over from Port Elizabeth Bank .. £10,000

Guardian's Fund.

£6,000
4,000
5,000
5,000
5,000
5,000
5,000
5,000
7,000
12,000
6,000
6,000
4,000
10,000
6,000
5,000
4,000
6,000
4,000
5,000

.. .. £115,000

Harbour Board.

Balance of Loan 7,000

£248,000

No. 12—1866-'67.] [January 12, 1867.

An Act for Raising Fifty Thousand Pounds by Debentures or Treasury Bills for the Public Service of the Year 1867.

[Spent.]

No. 13—1866-'67.] [January 12, 1867.

An Act for Applying a Sum not exceeding Two Hundred and Eleven Thousand and Seventy-four Pounds Nine Shillings and Eight Pence for the Service of the Year 1867.

[Spent.]

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1866-'67.] [January 12, 1867.

AN ACT

To Amend Ordinance No. 2 of 1853, relative to the Issuing of Licences and Permits for the Purchase of Gunpowder, Firearms, and Lead, and to extend the operation of Section 2 of the Act No. 14 of 1857.

Preamble.

WHEREAS it is provided by Ordinance No. 2 of 1853 that no Justice of the Peace being or residing within twelve miles of the seat of magistracy shall grant a licence or permit for the purchase of gunpowder, firearms, or lead: And whereas the said restriction has been found to act prejudicially and inconveniently to the public interest: And whereas it is desirable to bring the districts of King William's Town and East London within the provisions of section 2 of the Act No. 14 of 1857: 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:—

Repugnant laws repealed.

1. So much of Ordinance No. 2 of 1853, or of Act No. 14 of 1857, or any subsequent Act, as shall be repugnant to or inconsistent with this Act shall be, and the same is hereby, repealed.

Justice of the peace may grant permit.

2. It shall be lawful for every Justice of the Peace, not being a dealer in gunpowder, firearms, or lead, from and after the taking effect of this Act, to grant a licence or permit for the purchase of gunpowder, firearms, or lead to any fit and proper person applying for such licence or permit.

Form of permit.

3. Every permit or licence for the purchase of gunpowder, firearms, or lead shall be in the form provided by the said Ordinance, No. 2 of 1853, in that behalf.

Restrictions on sale of lead, &c., specified in Act 14 of 1857, extended to divisions of King William's Town and East London.

4. From and after the taking effect of this Act, the restrictions which were placed on the dealing in lead and other articles by certain Ordinances and Acts mentioned in Act No. 14 of 1857, and by the second section of the last-mentioned Act restricted to the districts therein enumerated, shall, as amended by this Act, extend and apply to the divisions of King William's Town and East London, as if the said two divisions had been included within the operation of the said Ordinance and Acts, and had been expressly named in the said second section of the said Act No. 14 of 1857 as divisions in which the dealings in lead and the said other articles were thereby restricted.

No. 1—1867.] [July 25, 1867.

An Act to Amend the Act No. 1 of 1861, entitled "Act for the creation of a Municipal Board for the City of Cape Town."

[Repealed by Act 44, 1882.]

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1867.] [August 16, 1867.

AN ACT

To Amend Act No. 14, 1861, to regulate the Retiring Pensions of the Judges of the Supreme Court.

Preamble.

WHEREAS it is expedient that the provisions of Act No. 14 of 1861 should be altered: Be it enacted by 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 1 of Act 14 of 1861 repealed. Exception in regard to judges now in office.

The first clause of the Act No. 14 of 1861 is hereby repealed, save and except as regards the Judges of the Supreme Court now serving or in office, and the following substituted: Any person having served the office of Judge of the Supreme Court for the full period of ten years shall be entitled to retire from the said

Pensions after ten years' service and upwards.

office and to receive a pension, to be ascertained as follows: that is to say, if he shall have served such office for a period of ten years or upwards, he shall be entitled to a pension equal to one half of the salary which shall have been paid to him for the three

Pensions after fifteen years' service and upwards. No pension claimable before the age of sixty-five, unless disabled.

years immediately preceding his retirement; and if he shall have served for the period of fifteen years or upwards, then to a pension equal to two-thirds of such salary as aforesaid: Provided, always, that no such pension shall be paid to any Judge retiring before he shall have attained the age of sixty-five years, unless he shall be afflicted with some permanent infirmity disabling him from the

Pension for service under ten years may be granted.

due execution of his office; and provided, further, that in case any person serving the office of Judge shall, before he shall have served for such full period of ten years, happen to be afflicted with any permanent infirmity disabling him from the due execution of his office, he shall be entitled to receive such pension as the Governor for the time being shall, in the circumstances, consider to be reasonable, such pension not exceeding one-half of the salary which shall have been payable to him at the time at which he shall have ceased to be able to discharge the duties of his office.

No. 3—1867.] [August 16, 1867.

ACT

For enabling the Commissioners of the Municipality of Uitenhage to procure a better and purer Supply of Water for the Inhabitants of such Municipality. [1]

Preamble.

WHEREAS the inhabitants of the Municipality of Uitenhage have for some years past experienced great inconvenience in consequence of a deficient supply of water for the proper irrigation of the lands within the municipality: And whereas the present supply

[1] See Act 14, 1890.

Digitised by the University of Pretoria, Library Services, 2016

of water is derived from a stream having its rise from a spring or springs lying between certain rugged hills situate within and forming part of the commonage lands of the Municipality of Uitenhage, in the neighbourhood of the farm Sandfontein: And whereas there is no reservoir in existence for the storage of the water aforesaid, which is conducted to and distributed in the town of Uitenhage from the said spring or springs by means of open sluits, and the waters conveyed in such sluits are constantly polluted by decayed vegetable and animal matter continuously accumulating therein: And whereas it will be very beneficial to the inhabitants that one or more reservoirs should be constructed and provided, and that the water should be conveyed to the town in an improved manner as hereinafter mentioned: And whereas, to enable the said commissioners to construct one or more reservoirs and otherwise improve the present water service for the said municipality, it is proposed that a special rate should be laid on all immovable property within the Municipality of Uitenhage, to be called the water rate: And whereas it is proposed that the said commissioners should be empowered to borrow money on the security of the intended water rate, to enable them to construct the intended works, but such objects cannot be obtained without the aid and authority of Parliament: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof:—

Power to construct reservoirs, dams, &c. on commonage lands.

1. The commissioners are hereby empowered to cause to be made, provided, and constructed in or upon any part of the commonage lands, all such reservoirs, dams, watercourses, drains, and ditches as may be deemed necessary for the impounding of an adequate and proper supply of water for the said inhabitants for domestic, irrigating, and other purposes, and also to provide and lay down, in or under any commonage land, street, or thoroughfare, any pipe or pipes for the conveyance of water from such reservoir or reservoirs to and throughout the township for the supply of the inhabitants, and from time to time to maintain and keep such reservoir or reservoirs, dams, watercourses, ditches, and pipes in repair.

And to lay down and maintain water pipes.

Public fountains to be erected.

2. The commissioners shall erect within the township public fountains for the gratuitous supply of water, with suitable drinking troughs for the convenient use of horses, cattle, sheep, and other animals, and shall from time to time maintain and keep in repair such fountains and troughs. The number and situations of such fountains and troughs shall from time to time be determined by the commissioners.

Ratepayers entitled to private water-leading.

3. Every ratepayer shall be entitled at his own expense to have a private service pipe laid on to the main or branch pipe for the supply of water for domestic, irrigating, or other purposes, on payment of such special or extra rate as the commissioners may

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1867.

think fair and reasonable, such special or extra rate to become due and payable in advance.

Tariff of charges for private water-leadings to be published.

4. The commissioners shall determine and publish the tariff by which the supply of water by private water-leadings shall be regulated, and the payment for all private water-leadings shall be in accordance with such tariff.

Plans, &c., of proposed works to be open to inspection for twenty-one days after notice given.

5. Before proceeding with the works hereinbefore authorised, the commissioners shall cause a plan, specification, and estimate of such intended works to be placed in the Town-office in Uitenhage, for the inspection of the inhabitants, and shall cause a notice in the form number one in the schedule hereto to be given to the inhabitants as hereafter is directed. After the publication of such notice, the plans, specification, and estimate shall remain open for inspection in the Town-office aforesaid for the period of twenty-one days.

How objections thereto may be lodged.

Any ratepayer objecting to such plans, specification, or estimate, or to any matter of detail therein, may at any time within the said period of twenty-one days leave with the secretary of the said commissioners a statement in writing, setting forth clearly and concisely his objections to the same.

Plans, &c., to be submitted for Governor's approval.

On the expiration of the said period of twenty-one days, the plan, specification, and estimate, together with a duplicate of the notice given by the commissioners and all notices of objection lodged with the said secretary, shall be deposited in the office of the Colonial Secretary, for the purpose of being laid before the Governor for the time being, for his approval; and in the event of the Governor not dissenting from such plans within forty-two days from the time of their being so deposited, the commissioners may proceed with the contemplated works.

No commissioner to contract for or derive profit from any work performed under this Act.

6. No commissioner shall be allowed either directly or indirectly to become a contractor or to tender for any contract, either in his name or in the name of or jointly with any other person, or in any manner to participate in any profit to be derived from any work to be performed for the said commissioners in pursuance of this Act,

Penalty for contravention.

on pain of forfeiture of all his interest in such contract for the benefit of the municipality; and any commissioner acting in contravention of this section shall also be considered to have vacated his office of commissioner *ipso facto*, and be ineligible to be elected at any future period to serve as commissioner: Provided that no commissioner shall be deemed or taken to have vacated his office or to have incurred any forfeiture whatever by reason merely that the commissioners shall have entered into such contract or any other dealing or transaction with the directors or other managers of any joint-stock company of which such commissioner shall be a shareholder; nor shall any shareholder or person otherwise interested in any joint-stock company, with which company the commissioners 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 commissioner by reason merely of such contract, dealing or transaction.

Not to extend to commissioner by reason of his being a shareholder in any joint-stock company contracting for such work.

Digitised by the University of Pretoria, Library Services, 2016

Commissioners to frame regulations for supply of water.

7. It shall be lawful for the said commissioners, from time to time, to make regulations touching and concerning the terms and conditions upon which the inhabitants of the municipality may obtain, by means of private service pipes or other channels or watercourses, a supply of water for domestic use, irrigation, or other purposes, and to impose, for the purpose of providing for the payment of the interest or principal, or interest and principal, of the moneys to be borrowed under this Act, special rates upon the immovable property situate within the municipality, and liable to be rated for municipal purposes; and every such rate so imposed by the said commissioners for the purposes of this Act shall be of the same force and effect, and be levied in like manner, as if it had been a rate imposed in accordance with the provisions of the Act No. 30 of 1877 as amended by Act No. 12 of 1883 : (1) Provided that no such rate shall at any one time, or within any one calendar year, exceed one penny in the pound on the value of such immovable property as aforesaid.

And to impose water rate.

Rate limited.

Loan may be raised, not to exceed £2,500, irrespective of loans for paying off existing mortgages.

8. (2) The commissioners are hereby empowered, with the consent of the Governor, from time to time, subject to the proviso hereinafter contained, to borrow and take up at interest upon the security of the water rate any sum of money not exceeding in the aggregate the principal sum of two thousand five hundred pounds, and to mortgage the rate for securing the repayment of such moneys : Provided that moneys borrowed for the purpose of paying off then existing mortgages shall not be deemed to form part of such two thousand five hundred pounds.

Loan chargeable on rates levied.

9. The sum aforesaid of two thousand five hundred pounds sterling, or such lesser sum as shall be lent and advanced for the purpose aforesaid, to the commissioners aforesaid, shall be and is hereby charged upon and made payable out of all and singular the rates and revenues in the seventh section of this Act mentioned : Provided that it shall be lawful for the said commissioners to apply to the payment of the interest or principal, or interest and principal of the said debt any funds or moneys coming to them from any source whatever, and not specifically appropriated to or required for any other object: Provided, also, that nothing in this section contained shall be construed so as to impair or affect the provisions of the preceding or following sections of this Act.

Other funds also applicable to payment of loans or interest.

Preceding or following sections not affected.

Notice to be given of intention to apply for Governor's sanction to raise loan.

10. The commissioners, before applying to the Governor for his consent to borrow and take up at interest any such moneys as mentioned in the eighth section, shall cause a notice in the form number two in the schedule hereto to be given as hereinafter is directed. Any ratepayer objecting to the raising of such money shall, within the period of fourteen days from the publication of such notice, leave with the secretary of the commissioners a notice in writing, setting forth clearly and concisely the nature and

How objections may be lodged.

[1] Printed as amended by Act 14, 1890, § 1.
[2] See Act 27, 1874.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1867.

grounds of his objections, and the evidence to be adduced in support of such objections. On the expiration of such period of fourteen days the commissioners shall deposit in the office of the Colonial Secretary a duplicate of the notice given by them, with a statutory declaration verifying the due publication thereof and all notices of objection lodged with the secretary of the said commissioners, in order that the validity of such objections may be taken into consideration by the Governor; and in the event of the Governor not dissenting from the proposed taking up of such moneys within the period of forty-two days from the time of such notice being deposited as aforesaid, the consent of the Governor shall be assumed, and the commissioners shall be empowered to take up such moneys as shall have been specified in their notice.

Duplicate of notice with declaration of due publication and objections lodged, to be deposited with Colonial Secretary.

Should Governor's dissent not be signified within forty-two days, commissioners empowered to effect loan.

Form of mortgage under this Act.

11. All mortgages to be granted in pursuance of this Act shall be in the form number three in the schedule hereto, and shall be signed by the commissioners for the time being, or any three of them.

Mortgages to be registered, and registry to be produced annually for inspection.

12. The commissioners shall cause all mortgages granted by them to be registered, and such registry shall be produced annually, for the inspection of the inhabitants, at a meeting to be held every year, in the month of March, for that purpose.

Form of transfer of mortgage.

13. All transfers of mortgages by deed shall be in the form number four in the schedule hereto, and shall be registered with the commissioners, and a fee of two shillings and sixpence in respect of such registry shall be paid to the said commissioners.

Funds to be applied only for purposes of this Act.

14. All moneys received from the water rate or land to be sold or leased (with consent of the Governor previously obtained under Ordinance No. 8 of 1848) for the purposes of this Act, and from special or extra water rates in respect of private supplies or leadings, and to be borrowed and taken up at interest by virtue of this Act, shall be applied for the purposes of this Act, and shall not be spent upon or applied to any other purpose.

Separate and distinct accounts to be kept.

15. The commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys; and of all revenues arising from the waterworks contemplated by this Act, distinguishing sums received for private service pipes or private watercourses from sums received from rates imposed under the second section of this Act, upon the rateable property of the municipality, and of all moneys expended upon the construction and maintenance of the waterworks contemplated by this Act; and the commissioners shall yearly, and every year, as long as any part of any debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the Civil Commissioner of Uitenhage, for inspection, at all reasonable times, of any resident householder of the municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart:

Annual accounts to be deposited in civil commissioner's office.

Digitised by the University of Pretoria, Library Services, 2016

Provided that every such account so to be prepared shall be made up to the thirty-first day of December in each year, and shall be deposited in the office of the Civil Commissioner not later than the first day of March of the year next succeeding.

Expenses incurred in obtaining Act may be paid out of loan.

16. The necessary costs, charges, and expense of obtaining this Act may be paid by the said commissioners out of the moneys to be borrowed as aforesaid.

Supreme or Eastern Districts Court may be applied to on return of no goods to writ of execution against Municipality

17. In case it should at any time appear by the return of the Sheriff to any writ of execution sued out by any creditor or creditors under this Act against the commissioners for the time being of the municipality aforesaid for the recovery of the debt aforesaid, or any part thereof, that the Sheriff had not found any goods or chattels of the said commissioners wherewith to satisfy the said judgment, it shall be lawful for such creditor or creditors to apply to the Supreme Court or Eastern Districts Court by motion, for an order that it be referred to the Master of the Court, to inquire and report the amount due to the said creditor or creditors by the said commissioners for principal, interest, and costs: Provided that notice of the said motion shall be given to the said commissioners at the Town-office.

Commissioners entitled to notice of motion.

Proceedings on such motion.

18. Upon the hearing of the said motion, then, unless the said commissioners shall satisfy the said Court that the said commissioners will be prepared within a reasonable time, to be approved by the said Court, to satisfy from rates assessed, or to be assessed, or other assets, the debt of the said creditor or creditors, together with costs and all interest accrued due thereupon, the said Court shall, unless the said commissioners shall admit the amount claimed by the said creditor or creditors, make an order, referring it to the Master to inquire and report the amount due to the said creditor or creditors.

Court may impose rate to be applied to liquidation of debt with interest and costs.

19. When, by report of the Master, the Court shall be informed of the whole amount of the debt due and owing by such commissioners to the said creditor or creditors, it shall be lawful for the said Court, and it is hereby required, to assess and impose such a rate, not exceeding one penny per pound of the value of every rateable property within the municipality of Uitenhage, as shall appear to be sufficient to satisfy, from and out of the net proceeds of such rate, the debt due by the said commissioners to the said creditor or creditors, together with all costs and interest legally chargeable thereon: Provided that if a single rate of one penny per pound, as aforesaid, shall be insufficient to satisfy the whole of the said debt, interest, and costs, then a second rate not exceeding one penny per pound shall be assessed; and so on, until the said debt of the said commissioners, and all interest and costs legally chargeable thereupon, shall be finally discharged: Provided that no less than twelve months shall elapse between the day upon which any succeeding rate shall become due and payable.

More than one rate may be assessed.

But not before expiration of twelve months from date of previous levy.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1867.

Court to appoint receiver of rate levied to liquidate debt.

20. As often as the Court shall assess any rate for the purpose of paying such debt as aforesaid, such Court shall appoint a receiver, who shall be charged with the recovery of such rate, and who shall give security for the due performance of his office, and shall be entitled to such percentage or other remuneration as the said Court shall fix, and shall conform to all instructions regarding the custody of the moneys received by him, or other matters, as the said Court shall from time to time issue for his guidance.

Notice of rate assessed and when due.

Notice shall be given in the *Government Gazette* and in some one other paper circulating in the town of Uitenhage, if any such there be, of every rate assessed as aforesaid, and of the day upon which such rate shall become due and payable, and such notice shall be, in substance, as follows:

Municipality of Uitenhage.

RATE UPON IMMOVABLE PROPERTY.

Form of notice.

Notice is hereby given that the ——— Court has this day assessed, under the provisions of the "Uitenhage Water Act, 1867," a rate of —— per pound upon the value of every rateable fixed property within the municipality of Uitenhage, which rate will become due and payable on the ——— day of ———, and of which rate A.B. of ———, has been appointed the receiver.

Dated at ——— this —— day of ———.

——— Registrar of the ——— Court.

Publication of notice.

Provided that such notice as aforesaid shall be published for not less than thirty-one days before the day mentioned in such notice as that upon which the rate shall become due and payable.

Recovery of rate.

21. The receiver of any such rate as aforesaid shall be entitled to recover the amount thereof in any competent Court: Provided that every such rate shall be recoverable from the same persons who would be liable to be sued for the same in case it were a rate assessed in and for the municipality of Uitenhage, in accordance with Ordinance No. 9, 1836, or of the Act No. 13 of 1864.

Disposal of surplus after liquidation of debt.

22. Any surplus of the amount of any such rate as aforesaid which shall happen to exist after the discharge of the debt which it was assessed to liquidate shall be paid to the commissioners aforesaid.

Service of summons for recovery of debt should no commissioners be in office.

23. In case there should happen to be no commissioners of the said municipality in office when a creditor or creditors under this Act shall desire to proceed by legal process for the recovery of the debt, acknowledged in manner aforesaid, or of any part of such debt, then the publication in the *Government Gazette* of the summons issued by such creditor or creditors against the commissioners of the said municipality shall be deemed to be good service of such summons, and be of the same force and effect as if on the day of such publication the said summons had been duly served at the

Digitised by the University of Pretoria, Library Services, 2016

Town-office upon commissioners in office: Provided, also, that in case there should not, at any time when an application shall be made for the assessment of a rate under this Act, be any valuation of the immovable property within the said municipality in force for municipal purposes, then the valuation of such property for municipal purposes which last expired shall be deemed to be still in force for the purpose of any rate to be assessed under this Act.

Assessment of rate when municipal valuation has ceased to be of force.

24. When the Governor shall receive from the commissioners any plan, specification, or estimate as aforesaid, he shall consider the same, and should they or any of them appear to him to be imperfect, or not to give sufficient information in regard to the proposed works, he may call upon the commissioners for such further information as may appear to him to be required, and shall then, with the advice of the Executive Council, decide whether the proposed works shall or shall not be approved of by him: Provided that before approving of any proposed works, the Governor shall cause to be published in the *Government Gazette* and in some one or other paper circulating in the town of Uitenhage, if any such there be, for not less than twenty-eight days a notice which shall contain all such particulars regarding the said works as shall be deemed necessary, and amongst other particulars, the names of the owner or owners of any private property in or upon which the said works, or any part of them, shall be proposed to be constructed.

Governor in Executive Council to decide on approval or otherwise of proposed works.

Notice of intended approval to be given.

25. If the commissioners shall, for the purpose of any proposed works under this Act, require to take or use any land belonging to any private person, such commissioners may treat and agree with every such person for the purchase or hire, as the case may be, of any such land, and may enter into any contract relative to the obtaining of such land, upon such terms and conditions as the said commissioners shall judge expedient; and if any such person and the said commissioners should not agree upon the purchase money, hire, or other recompense to be respectively given and accepted, then the said commissioners shall cause to be served upon such person a written notice, offering as recompense or compensation whatever sum of money the said commissioners shall deem sufficient, and requiring such person to state in writing to the said commissioners, or to some person by them appointed, within a certain limited time to be specified in the said notice, whether he is willing to accept the sum therein mentioned or not; and if such person should refuse to accept the sum offered, or neglect to reply to said notice, then the said commissioners shall, by another notice in writing, call upon such person to refer to arbitration the amount of recompense or compensation to be paid to him by the said commissioners, and for that purpose to transmit to the said commissioners, within a certain reasonable time to be specified in the said last mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration, and the said

Commissioners empowered to purchase or hire private lands.

How, when unable to agree regarding purchase money, hire, &c.

Arbitration

Digitised by the University of Pretoria, Library Services, 2016

Courts into execution, and all such other rules, orders, and regulations as may be necessary for giving full and perfect effect to the jurisdiction of the said Courts. (1) Charter of Justice.

Right of appeal to the Privy Council, in all cases beyond £500.

50. And we do hereby grant, ordain, and direct, that it shall and may be lawful for any person or persons, being a party or parties to any civil suit or action depending in the said Supreme Court of the Colony of the Cape of Good Hope, to appeal to us, our heirs and successors, in our or their Privy Council, against any final judgment, decree, or sentence of the said Court, or against any rule or order, made in any such civil suit or action, having the effect of a final or definitive sentence; and which appeals shall be made subject to the rules, regulations, and limitations following, that is to say: in case any such judgment, decree, order, or sentence shall be given or pronounced, for or in respect of any sum or matter at issue, above the amount or value of five hundred pounds sterling, or in case such judgment, decree, order, or sentence shall involve, directly or indirectly, any claim, demand, or question, to or respecting property, or any civil right amounting to or of the value of five hundred pounds sterling, the person or persons feeling aggrieved by any such judgment, decree, order or sentence of the Supreme Court may, within fourteen days next after the same shall have been pronounced, made, or given, apply to the said Supreme Court, by petition, for leave to appeal therefrom to us, our heirs and successors, in our or their Privy Council; and in case such leave to appeal shall be prayed by the party or parties, who is or are directed to pay any sum of money, or perform any duty, the said Supreme Court shall, and is hereby empowered, either to direct that the judgment, decree, order, or sentence appealed from, shall be carried into execution, or that the execution thereof shall be suspended pending the said appeal, as to the said Court may in each case appear to be most consistent with real and substantial justice. And in case the said Supreme Court shall direct such judgment, decree, order, or sentence to be carried into execution, the person or persons, in whose favour the same shall be given, shall, before the execution thereof, enter into good and sufficient security, to be approved by the said Supreme Court, for the due performance of such judgment or order, as we, our heirs and successors, shall think fit to make thereupon; or in case the said Supreme Court shall direct the execution of any judgment, decree, order, or sentence to be suspended pending the said appeal, the person or persons against whom the same shall have been given, shall, in like manner, and before any order for the suspension of any such execution is made, enter into good and sufficient security, to be approved by the said Supreme Court, for the due performance of such judgment or order, as we, our heirs and successors, shall think fit to make thereupon: and in all cases, we

Power of supreme court to order or suspend execution of sentence pending the appeal; and security in either case.

[1] See § 7, Act 21 of 1876 and § 13, Act 17, 1886.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1867.

commissioners, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed by the said commissioners and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and shall contain amongst other things, a power to the said arbitrators, in case of a difference of opinion, to call in an umpire, whose decision shall be final, and the award of such arbitrators or umpire, as the case may be, shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the same subject-matter; and if such person as aforesaid claiming such recompense or compensation should neglect or refuse to name some person to be such arbitrator as aforesaid or to sign the said deed of submission, then the said commissioners may lodge in some joint-stock bank in the Colony the sum of money offered by them as aforesaid in the first notice in this section mentioned, for or on account and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property, and the said commissioners upon so lodging the said sum shall be authorised and entitled to take and use the land in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by arbitrators or an umpire under the provisions of this section, and as if all acts by law required for vesting in the said commissioners a sufficient title for the use of or property in the land aforesaid had been duly done and performed.

How, if party claiming compensation refuses or neglects to proceed to arbitration, or rejects award

How to proceed if owner be a minor.

26. In case the commissioners shall require to take or use any land belonging to any minor or other person under guardianship or curatorship, the guardian or curator, as the case may be, shall be authorised, in his capacity as such guardian or curator, to treat and agree with the said commissioners for the purchase or hire of the land required, and to execute any contract which may be needful for carrying out any agreement which may be made; and in case of non-agreement, to refer the matter in difference to arbitration, as in the last preceding section mentioned; but all moneys which shall either by agreement or by arbitration be payable by the said commissioners for or on account of any land in this section mentioned shall be paid by the said commissioners to the Master of the Supreme Court administering the Guardian's Fund, who is hereby authorised to receive the same and to place the same to the credit of the minor or other person entitled to such moneys; and if in any case any person of full age shall by way of fidei-commissary limitation, or any limitation of a like nature, be entitled to a life or other limited interest in any such land as aforesaid, in which a minor or other such person as aforesaid under guardianship or curatorship shall also be interested in remainder

Moneys in such case to be paid to Master of Supreme Court.

How, if land be partly under fidei-commissary trust.

Digitised by the University of Pretoria, Library Services, 2016

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

Commissioners empowered to dam up rivers or streams.

27. The commissioners may, for the purpose of any proposed works under this Act, at any place within the municipality of Uitenhage, dam up or otherwise collect the water of any river or stream: Provided that such commissioners shall do so in such manner as not to impair or injure any servitude upon or other lawful right or title to any of the water of such river or stream: Provided, also, that no person entitled to any such servitude or other right shall, in regard to such servitude or other right, be held to come under the provisions of the twenty-fifth section aforesaid, or to be deprived of the same or of any part thereof, except with his own consent.

Existing rights protected.

Interpretation of terms.

28. In the construction of this Act, the following words and expressions have the several meanings assigned to them over and above their several ordinary meanings, unless there be something in the context repugnant to such construction, namely: the expression "commissioners" shall mean commissioners of the municipality of Uitenhage; the expression "inhabitants" shall mean householders of the municipality of Uitenhage; the expression "street or public thoroughfare" shall mean street or public thoroughfare situate within the municipality of Uitenhage; and the expression "ratepayers" shall mean parties paying the special rate to be levied by this Act: and the word "person" shall mean any person, or his agent lawfully authorised.

Short title.

29. This Act may be cited as the Uitenhage Water Act, 1867, and shall take effect from and after the promulgation thereof.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1867.

THE SCHEDULE BEFORE REFERRED TO.

[No. 1.]

IN THE MATTER OF THE UITENHAGE WATER ACT, 1867.

Notice is hereby given that the plans, specification, and estimate of the works proposed to be constructed by the commissioners of the municipality under the authority of the above Act have been this day placed in the Town-office of Uitenhage for the free inspection of the inhabitants, and that the same may be inspected on any day (Sundays excepted) up to and including ——— the —— day of ——— (next or instant) between the hours of ten a.m. and four p.m. Any rate-payer objecting to such plans, specification, or estimate, or to any matter of detail therein, may at any time within twenty-one days from this date leave with the secretary of the commissioners a statement in writing, setting forth clearly and concisely his objections to the same, in order that such objections may accompany the plans, specification, and estimate, and be laid with them before the Governor for his consideration.

Dated this ——— day of ——— 18—.

[No. 2.]

IN THE MATTER OF THE UITENHAGE WATER ACT, 1867.

Notice is hereby given that the commissioners of the municipality of Uitenhage, in pursuance of the above Act, intend to make application to the Governor of the Colony for his consent to their borrowing and taking up at interest, under the provisions of the above Act, a sum of money not exceeding two thousand five hundred pounds, on the security of the water rate: Any party liable to such rate objecting to the raising of such money must, within the period of fourteen days from this date, leave with the secretary of the commissioners a notice in writing, setting forth clearly and concisely the nature and grounds of his objections and the evidence to be adduced in support of such objections, in order that such notice may accompany the application to the Governor, and be laid before him for his consideration.

Dated at Uitenhage, this ——— day of ———, 18—.

[No. 3.]

FORM OF MORTGAGE.

We, the undersigned, being commissioners of the municipality of Uitenhage, in consideration of the sum of ——— pounds sterling lent and advanced to us for the purposes of the Uitenhage Water Act, 1867, by ——— do hereby, in pursuance of the powers contained in the said Act authorising us in this behalf, charge the water rate of ——— in the pound imposed by the said Act with the repayment

Digitised by the University of Pretoria, Library Services, 2016

to the said ————, his heirs, executors, administrators, or assigns, of the said sum of ———— by the instalments and in manner following; the principal sum of ———— on the ——— day of ———, and the like principal sum of ——— on the ——— day of —— in each and every subsequent year, until the whole of the said principal sum of ———— shall have been paid and discharged; and also with the payment of interest after the rate of ——— pounds per centum per annum on all principal moneys, continuing secured hereon by equal half-yearly payments, on the —— day of ——— and —— day of ——— in each year.

As witness our hands this —— day of ————, in the year of our Lord one thousand eight hundred and ——.

[No. 4.]

FORM OF TRANSFER.

I, the undersigned, ———— in consideration of the sum of —— sterling money paid to me by ——— do hereby assign unto ——— his heirs, executors, administrators, and assigns, all principal moneys and interest secured by a certain deed bearing date the ———— day of ——— 18— under the hands of ——— commissioners of the municipality of Uitenhage, with power for the said ———— heirs, executors, administrators, and assigns, or his or their substitute or substitutes, in the name or names of the said ——— heirs, executors, or administrators, to sue for, receive, and give receipts for the same.

As witness my hand this —— day of ——— 18—.

[No. 5.]

IN THE MATTER OF THE UITENHAGE WATER ACT, 1867.

Account of all moneys received and paid by the commissioners of the Municipality of Uitenhage, under or by virtue of this Act, between the 1st day of January, 18—, and the 31st day of December, 18—, both inclusive:

Moneys Received.

To amount received from water rate	£
,, amount received from water leading	
,, amount received from sale or leasing of lands ..	
,, amount received upon loan	
,, amount taken up from any other source	

Moneys Expended.

By amount expended on works	£
,, ,, ,, in salaries	
,, ,, ,, in repairs	
,, ,, ,, in interest of debt	
,, ,, ,, in repayment of debt	
,, ,, ,, on any other account	

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1867.

SUMMARY OF RECEIPTS AND EXPENDITURE ON CAPITAL ACCOUNT UP TO THE 31ST DAY OF DECEMBER, 18—.

To amount realized on sale or leasing of lands	£
,, amount taken up on loan	
,, amount received from rates after payment of interest and working expenses, as under:	
Water rate	
Private water leading	
By amount expended on works	
,, repayment of loans	

STATEMENT OF LIABILITIES AND ASSETS ON THE 31ST DECEMBER, 18—.

Liabilities.

To amount due on loans	£
,, outstanding accounts	
,, cash balance	

Assets.

Arrears of rate	£
Cash balance	

ESTIMATE OF INCOME AND EXPENDITURE FOR THE CURRENT YEAR.

Income.

To cash balance	£
,, amount to be received from arrears of rate	
,, amount to be received from private water leading	
,, amount to be received from water rate	

Expenditure.

By cash balance	£
,, new works	
,, interest on advances	
,, repayment of advances	
,, salaries	
,, repairs	
,, any other account	

No. 4—1867.] [August 16, 1867.

ACT

To Amend in certain respects the Act No. 19 of 1864, "To provide for the Leasing of Crown Lands and other purposes." (1)

Preamble.

WHEREAS it is expedient that the Act No. 19 of 1864, commonly called "The Crown Lands Act, 1864," should be amended as hereinafter is provided: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

[1] Repealed by Act 14, 1878, save in so far as the provisions of this Act relate to land disposed of prior to the taking effect of Act 14, 1878.

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1867.

Crown Lands not leased in consequence of inadequacy of bidding at public auction may be let by tender or private contract.

1. Notwithstanding anything in the third section of the said recited Act contained, whenever any Crown lands shall have been put up for lease by public auction, under or by virtue of the said recited Act, and the highest rent which shall be bidden therefor shall be deemed inadequate, then it shall be lawful for the Governor to lease such lands as shall have been so put up, at any time within twelve calendar months from the time of such public auction, by tender or private contract, at any rent exceeding the highest rent which shall have been bidden therefor at such public auction, which shall be deemed by the Governor reasonable and expedient to be accepted therefor. But no lease shall be granted of any Crown lands, in pursuance only of any tender or private offer, for any term exceeding twelve calendar months, unless such lands for which offers may have been made by tender or private offer to take the same on lease for a longer term shall, subsequently to such offers, have again been put up at public auction, in manner provided by the third section of the said Act No. 19 of 1864, and at an upset price, and for the term of years proposed in such tender or private offer; after which, should no higher bid be obtained at such public auction, it shall be lawful for the Governor to lease the same for any term not exceeding twenty-one years, in accordance with the tender or private offer. But should a higher bid be obtained at such public auction, then the Governor shall be bound to accept such higher bid, upon sufficient security being found by the lessee for the performance of the conditions of such lease, as in other cases provided for by the said Act No. 19 of 1864.

Term of such lease.

Act No. 19, 1864, to apply to leases executed under this Act.

2. Every lease to be executed under the provisions of this Act shall in other respects be dealt with as if the same were made under the provisions of the said recited Act, and all such last-mentioned provisions shall, save as hereinbefore is provided, be applicable in all respects to the case of lands leased under or by virtue of this Act.

Short title

3. This Act may be cited as the "Crown Lands Leasing Amendment Act, 1867."

No. 5—1867.] [August 16, 1867.

An Act for Continuing till the 31st of December, 1868, the Provisions of the Act No. 3 of 1866-'67.

[Repealed by Act 20, 1868.]

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1867.] [August 16, 1867.

ACT

For Enabling the Divisional Council of Cradock to take over from the Commissioners of the Municipality of Cradock an Iron Bridge, and to borrow Moneys upon the security of Road Rates and Tolls for the erection of the same across the Fish River at Cradock. (1)

Preamble.

WHEREAS the commissioners of the municipality of Cradock have purchased an iron bridge for erection across the Fish River at that place, towards the cost of which certain sums of money have been contributed by grants from the general revenue, from the funds of the Divisional Council and municipality aforesaid, and by voluntary subscriptions of private individuals, but which they are unable to complete for the want of the necessary means: And whereas it is highly necessary and expedient that measures should be devised for having the said bridge completed, to which end the said Divisional Council have proposed to take it over from the municipality, and erect the same with money to be borrowed upon the security of the road rates of the said division to be levied under the Act No. 9, 1858, and the tolls intended to be levied at the said bridge: And whereas such objects cannot be attained without the aid and authority of Parliament: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Divisional Council of Cradock empowered to take over the bridge lying at the Fish River.

1. The Divisional Council of Cradock is hereby empowered to take over from the commissioners of the Municipality of Cradock the iron bridge now lying on the banks of the Fish River at that place ready for erection, and to pay to the said commissioners such sum or sums of money as the said bridge may have cost, delivered in Cradock, over and above the amount received by them by grants from the Colonial Revenue, by votes from the funds of the said Divisional Council and municipality, and the contributions of private individuals.

Council may contract for erection and completion.

2. It shall be lawful for the said council to cause the said bridge to be erected and completed according to the plans and specifications thereof, furnished by the engineer employed by the commissioners of the said municipality, and for that purpose the said council may enter into one or more contract or contracts with any joint-stock company, other partnership, or private individual: Provided that the amount to be expended, inclusive of the debt on the bridge to be paid to the said municipality, shall not exceed the sum of six thousand pounds sterling.

Cost not to exceed £6,000.

---

[1] See also Act 12, 1875.

Digitised by the University of Pretoria, Library Services, 2016

3. It shall be lawful for the said council to take, or direct to be taken by the contractor or contractors from the common pasture lands of the said municipality, such stone, lime and other material as may be required for the erection of the said bridge, free of charge. Removal of material from municipal commonage.

4. It shall be lawful for the said council to erect and establish a toll at the said bridge, subject to and in accordance with the provisions of the twenty-second, twenty-third, and twenty-fourth sections of the Act No. 9, 1858, in that behalf; and the provisions of the fourteenth, fifteenth, sixteenth, and eighteenth sections of the said Act shall extend and apply to the toll bar and toll at or connected with the said bridge. Council empowered to establish toll.

5. The provisions of the fifty-sixth and fifty-seventh sections of the aforesaid Act No. 9, 1858, shall extend and apply to the said bridge in regard to its protection against injuries, whether malicious or through carelessness. Protection of bridge against injuries.

6. After the completion of the said bridge it shall be the duty of the said council to cause the same to be kept in a fit and proper state of repair. Council to keep bridge in repair.

7. When and as soon as the said bridge shall be completed and declared open for traffic, it shall be lawful for the said council to close, and thereafter to keep closed, all fords upon the Fish River within two miles on either side of the said bridge; and it shall not be permitted to the commissioners of the said municipality to cause any new ford to be made on the said river within the limits of the municipality, without the consent of the said council first had and obtained: Provided, always, that no drift on any existing public road shall be closed until notice shall have been given thereof and published in one or more of the local papers one month previous to such closure, nor until the sanction of His Excellency the Governor shall have been obtained thereto and duly certified to the Divisional Council aforesaid. On completion of bridge, council may close fords within two miles of it. No drifts on public roads to be closed without previous notice or Governor's sanction.

And for the purpose of enabling the said council to carry the provisions of this Act into effect: Be it enacted as follows:

8. The said council is hereby empowered from time to time to borrow and take up at interest, upon the security of the road rates of the said division, to be levied and raised under the provisions of the Act No. 9, 1858, and of the tolls to be levied at the said bridge, any sum of money not exceeding in the whole the sum of six thousand pounds, and to mortgage the said rates and tolls for securing the repayment of such moneys: Provided, however, that moneys borrowed for the purpose of paying off then existing mortgages shall not be deemed to form part of the said sum of six thousand pounds. Council empowered to raise loan not exceeding £6,000. To include amount required to pay off existing mortgages.

9. It shall be lawful for the chairman of the said council, being duly authorised thereto by a resolution of the said council, to execute a bond or bonds for the repayment of the capital sum of all moneys raised as aforesaid, together with the accruing interest Bonds for moneys raised, how to be executed.

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1867.

thereof, and specially to hypothecate the road rates and tolls aforesaid as a security for the repayment of the said loan or loans and the interest thereof; and which bond or bonds shall be countersigned by the secretary of the said council.

Moneys raised to be deposited in bank and drawn out by cheques.

10. All moneys raised as aforesaid shall, on receipt thereof, be deposited in a bank to be chosen for that purpose by the said council, to the credit of a separate account; and all sums required shall be drawn out by cheques, to be signed by the chairman and countersigned by the secretary.

Separate account to be kept of receipts and expenditure.

11. The said council shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the Colonial Secretary, half-yearly, showing all moneys received and expended up to the 30th June and 31st December, then preceding, and all liabilities and assets on the same days.

Accounts to be audited.

12. The accounts in the last preceding section mentioned shall be audited and examined by the auditors to be from time to time appointed under the provisions of "The Divisional Councils Act, 1865"; and the provisions of the eighty-third and eighty-fifth sections of the said Act shall extend and apply to all accounts, books, and papers connected with the said bridge.

Fund to be provided for repayment of loan.

13. It shall be incumbent on the said council, and they are hereby required, after the payment of the interest on any loan or loans raised as aforesaid, and providing for the necessary repairs of the said bridge, to set apart the remainder, if any, of the tolls levied at the said bridge, and the further sum of two hundred pounds sterling annually, from their general revenues, in order to provide a fund for the repayment of the capital sums of money raised as aforesaid, until the same are wholly paid off and discharged.

Council may be sued for debt arising out of operation of this Act.

14. It shall be lawful for any person who shall be a creditor of the said council in respect of any claim or demand arising out of the operation of this Act to sue the said council for the amount of the said debt, and all and singular the several sections of "The Cape Town Municipal Act," No. 1, 1861, from the eighty-fourth to the ninety-second (both inclusive) shall, *mutatis mutandis*, apply to any judgment recovered by such creditor, and to any writ of execution issued in pursuance of such judgment, precisely as if the said Divisional Council were the municipal board of Cape Town, and the judgment recovered against the said council had been a judgment recovered against such municipal board:

Mode of recovery.

Eastern Districts Court to have concurrent jurisdiction with Supreme Court.

Provided, however, that the Court of the Eastern Districts shall have jurisdiction, concurrent with the Supreme Court, in regard to the several proceedings in the said sections mentioned.

Expenses attending procuring of this Act chargeable to moneys received under its provisions.

15. All the necessary costs, charges, and expenses attending the procuring of this Act, and carrying the provisions thereof into effect, shall be paid out of the money authorised to be received under the provisions of this Act.

Digitised by the University of Pretoria, Library Services, 2016

16. In the interpretation of this Act the expression "Divisional Council" and the word "council" shall mean the Divisional Council of Cradock; the word "commissioners" shall mean the commissioners of the Municipality of Cradock; the term "municipality" shall mean the Municipality of Cradock; and the word "bridge" shall mean the bridge to be erected and completed under the provisions of this Act, unless there be something in the context repugnant to such construction.

No. 7—1867. Interpretation of terms.

No. 7—1867.] [August 16, 1867.

ACT

To Amend the Act No. 3 of 1861, intituled "An Act for improving the Administration of Criminal Justice."

WHEREAS it is expedient that the law relative to the proof of aggravations in cases of trial for criminal offences should be amended: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:— Preamble.

Whenever any person shall be indicted before the Supreme or any Circuit Court, or before the Court of the Eastern Districts, for any crime to which such person shall plead guilty, and it shall appear to the prosecutor that such person has been formerly convicted of any offence which might formerly have been charged in an indictment or plaint against the same person for the same cause, in aggravation of the crime to which such person shall have pleaded guilty, and notice shall have been duly served on such person that evidence of such former conviction would be offered against him, as provided by the terms of the Act No. 3 of 1861, it shall be lawful, on such person pleading guilty, for the prosecutor, before sentence is pronounced, to offer to prove such former conviction or convictions, and thereupon the Court shall ask the prisoner whether he confesses that he is the person so appearing to have been formerly convicted, and that he was so convicted as alleged, and if he shall not confess such matters, then to empanel a jury to try the truth of such matters, or such of them as the prisoner shall not confess; and if on such trial the same matters, or such of them as he shall not confess, shall be proved, or if he shall confess such matters, or any of them, then the Court shall take into account such of them as shall be proved or confessed in awarding sentence for the crime to which such prisoner shall have pleaded guilty. (1) Mode of proof of former conviction on plea of guilty.

[1] See also § 16, Act 3, 1861; § 14, Act 4, 1861 and §§ 8, Act 13, 1886.

Digitised by the University of Pretoria, Library Services, 2016

Charter of Justice.

Security for the prosecution of the appeal.

will and require that security shall also be given by the party or parties appellant, to the satisfaction of the Supreme Court, for the prosecution of the appeal, and for the payment of all such costs as may be awarded by us, our heirs and successors, to the party or parties respondent; and if such last-mentioned security shall be entered into within three months from the date of such petitions for leave to appeal, then, and not otherwise, the said Supreme Court shall allow the appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her, or their appeal, to us, our heirs and successors, in our or their Privy Council, in such manner, and under such rules, as are observed in appeals made to us from our plantations or Colonies. (1)

Power of the court of appeal to reverse, correct, or vary judgment.

51. And we do hereby reserve to ourselves, our heirs and successors, in our or their Privy Council, full power and authority, upon the humble petition, at any time, of any person or persons aggrieved by any judgment or determination of the said Supreme Court, to admit his, her, or their appeal therefrom, upon such other terms, and upon and subject to such other limitations, restrictions and regulations, as we or they shall think fit, and to reverse, correct, or vary such judgment or determination, as to us or them shall seem meet. And it is our further will and pleasure,

Transmission of proceedings.

that in all cases of appeal allowed by the said Supreme Court, or by us, our heirs and successors, the said Court shall certify and transmit to us, our heirs or successors, in our or their Privy Council, a true and exact copy of all evidence, proceedings, judgments, decrees, and orders, had or made in such causes appealed, so far as the same have relation to the matter of appeal; such copies to be certified under the Seal of the said Court.

Execution of judgments or orders in appeal.

52. And we do further direct and ordain, that the said Supreme Court shall, in all cases of appeal to us, our heirs and successors, conform to and execute such judgments and orders, as we shall think fit to make in the premises, in such manner, as any original judgment, decree, or decretal order or rule by the said Supreme Court of the Colony of the Cape of Good Hope could or might have been executed.

Aid and assistance of authorities, civil and military.

53. And we hereby strictly charge and command all Governors, Commanders, Magistrates, Ministers, civil and military, and all our liege subjects within and belonging to the said Colony, that in the execution of the several powers, jurisdictions, and authorities hereby granted, made, given, or created, they be aiding and assisting, and obedient in all things as they will answer the contrary at their peril.

Reservation of power of repeal or alteration of charter by letters patent.

54. Provided always, that nothing in these presents contained, or any act which shall be done under the authority thereof, shall

---

[1] This Section to apply to appeals from E. D. Court to Supreme Court. See Act 21, 1864, § 27. See also Act 5, 1879.

Digitised by the University of Pretoria, Library Services, 2016

No 9—1867.

No. 8—1867.] [August 16, 1867

An Act to Amend the Ordinance No. 25 of 1847, intituled "An Ordinance for improving the Police of the Colony."

[Repealed by Act 27, 1882.]

No. 9—1867.] [August 16, 1867.

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.

Preamble.

WHEREAS it not unfrequently happens that a prisoner being charged with theft escapes conviction by reason that, being concerned in the theft and being found in possession of portion of the stolen property, the actual fact of the theft cannot be substantiated by the evidence: 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: —

Persons indicted for theft may on such indictment be convicted of receiving stolen goods, knowing them to have been stolen.

1. On the trial of any person upon any indictment or charge for theft, it shall and may be lawful for the jury or Court of Resident Magistrate, as the case may be, before whom such case shall be tried, should they consider that the evidence, though not sufficient to substantiate the charge of theft, is sufficient to show that the prisoner was guilty of receiving stolen goods knowing them to have been stolen, to find that the prisoner is guilty of receiving stolen goods knowing them to have been stolen, and upon any such finding the prisoner shall be liable to suffer, and shall suffer, the same penalty as if convicted of the like offence on an indictment or charge specifically framed for the crime of receiving stolen goods knowing them to have been stolen.

And whereas it is found that in many cases of theft in this Colony the offenders are not induced to commit such offences by need or poverty, but are themselves possessed of cattle, sheep, or other property: And whereas it is expedient that the cost incurred in their prosecution and in the prevention of the like outrages should be to some extent made good by such offenders: Be it enacted as follows:

2—4. [Repealed by Act 35, 1893.]

Digitised by the University of Pretoria, Library Services, 2016

No. 10—1867.] [August 16, 1867.

AN ACT

For Encouraging the Introduction into the Waters of this Colony of Fishes not native to such Waters, respectively. (1)

Preamble.

WHEREAS it is desirable, in many cases in this Colony, that fishes not native to certain waters in the said Colony should be introduced into the same, respectively, for the purpose of being therein propagated: And whereas divers private individuals are or may be willing to introduce the same, or the spawn or fry thereof, into certain rivers or other waters of this Colony, if there be provided by law means for protecting the same fish, spawn, and fry respectively, when introduced: 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:—

Application for leave to introduce and for protection of fish, how to be made.

1. It shall be lawful for any person to apply in writing to the Governor for leave to introduce into any river or part of any river, or other water in this Colony, to be in each case defined in such application, any fish, or spawn, or fry of fish not native to such river, the name or kind of such fish, spawn, or fry to be also defined in such application, and to state in such application what degree and nature of protection within the provisions of this Act the applicant requires for such fish, spawn, or fry, or all or any of the same, and thereupon it shall be lawful for the Governor, with the advice of the Executive Council, to grant such leave, and to make such provision for the protection of such fish, spawn, and fry, or any of them, as is hereinafter provided, on condition that such fish, spawn, or fry shall be actually introduced into such river, part of river, or other water, within such time as shall be agreed on between such applicant and the Governor. If leave shall be granted, as hereinbefore is provided, it shall be lawful for the Governor, with the advice of the Executive Council, by proclamation, which shall be published in the *Government Gazette*, to order that within the limits to be defined in such proclamation, such limits not being extended beyond the rivers, parts of rivers, or other waters, respectively, for which protection shall have been asked and which it shall be deemed by the Governor in Council necessary or expedient to protect for the purpose of securing the propagation, or a fair chance of the propagation, of the fish, fry, or spawn proposed to be introduced as aforesaid, no person, or no person other than the applicant, or his agents or servants in that

Governor in Council may grant leave and provide for protection.

Limits of waters protected to be defined, and destruction of fish prohibited by proclamation.

[1] See Acts 7, 1883; 29, 1890; 15, 1893.

Digitised by the University of Pretoria, Library Services, 2016

No. 10– 1867.

behalf, or other persons thereto by him, his heirs, or executors, duly authorised, shall, during such period as shall by the said proclamation be defined, not exceeding six years, otherwise or to any degree than may by such proclamation or any other subsequent proclamation made in that behalf with the like advice, and published in the *Government Gazette*, be expressly permitted, knowingly kill, take, or destroy, or endeavour or attempt to kill, take, or destroy, any such fish, spawn, or fry as aforesaid, or use any net, engine, or instrument other than, or in other ways or times than, may by such proclamation or any subsequent proclamation in that behalf, to be made with the like advice, and published in the *Government Gazette*, expressly be permitted, with intent to, or calculated to, or the probable result of the use whereof would be to kill, take, or destroy such fish, fry, or spawn, or any of them.

Duration of protection.

2. After the publication of such proclamation, and so long as the same shall remain in force by reason that the time limited therein shall not have expired, and that the same shall not have been recalled or altered by a new proclamation in that behalf, and if the same shall have been altered as aforesaid, then so long as the said new proclamation, or any proclamation altering the same shall in like manner remain in force, the proclamation which shall for the time being be in force as aforesaid shall be considered as having the force and effect of law, as if the terms thereof were inserted in this Act, so far as the same are authorised by this Act;

Penalty for contravention.

and any person contravening the provisions thereof, so far as the same are so authorised, shall be liable to forfeit any net, engine or instrument which shall have been used by him in contravention of such proclamation as aforesaid, and, further, shall be liable, on conviction, to pay any penalty not exceeding twenty pounds, and to be imprisoned for any period not exceeding three months, unless the fine be sooner paid.

Proclamation may be altered or repealed.

3. It shall be lawful for the Governor, with the advice of the Executive Council, from time to time to repeal or alter any such proclamation as aforesaid, and with the like advice, from time to time, if it shall seem right, either to substitute any other provisions authorised by this Act for the provisions thereof, or to repeal and recall the provisions thereof; and such new provisions, if any, or such repeal or recall of the provisions theretofore in force, shall be published in the *Government Gazette* and from the date of such publication shall take effect either to alter or to recall the provisions theretofore in force, according to the tenor of such new proclamation, so far as the same shall be authorised by this Act.

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1867.] [August 16, 1867.

ACT

To make Provision for the Payment of Judgment Debts found to be due by Public Bodies empowered to levy Rates. (1)

Preamble.

WHEREAS it is expedient that provision should be made for the payment of just debts, liabilities, and obligations found to be due or payable by public bodies empowered to levy rates: 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:—

Proceedings upon insufficiency of assets to satisfy judgment.

1. Whenever any judgment shall be recovered, or decree or order lawfully made in or by any competent Court, for the payment by any public body empowered to levy rates of any sum of money for debt, damages, costs, or other cause whatsoever, to any party to a cause or suit, or any person whatsoever, in case it shall appear by the return of the Sheriff or other officer whose duty it may be to execute any such judgment, decree, or order, that such Sheriff or other officer has not found sufficient assets of such public body available to answer such judgment, decree, or order, to satisfy the same, it shall be lawful for the party or person to whom such sum of money shall have been payable to apply by petition to the Supreme Court, or in case the rateable property upon which such public body is empowered to levy rates shall be situate within the local limits of the jurisdiction of the Court of the Eastern Districts, then, if such creditor shall so elect, by petition to such last-named Court, in either case annexing to such petition copies of the judgment, decree, or order, and of the writ or warrant of execution and of the return thereto, and praying for such relief in the premises as the said Courts respectively shall be empowered to afford; and a rule *nisi* shall thereupon be granted, requiring such public body to show cause why the relief prayed should not be granted.

Court may grant rule *nisi*.

Service of rule, and how returnable.

2. Such rule shall thereupon be served upon such public body at their office, or if the Court shall otherwise order, then in such manner as the Court shall direct, and shall be returnable in such manner as the Court by general or any special order shall direct.

Rule may be made absolute.

3. If before the time for showing cause against such rule the said judgment, decree, or order shall not be satisfied in full, together with interest and costs properly incurred in respect thereof, and if at the time for showing cause as aforesaid, or such adjourned time as the Court may order, either then, or from time to time, no sufficient cause shall be shown against the making absolute of such rule, then the same shall be made absolute; and

[1] Extended by Proclamation No. 80 of 1890 to all the Native Territories.

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1867.

if such public body shall not satisfy the said Court by sufficient securities that it can and will fully satisfy such judgment, decree, or order, with interest and all costs properly incurred in respect thereof, and also such other debts as are hereinafter mentioned, if any, with interest, within a reasonable time, to the satisfaction of the said Court, then the Court shall assess and impose such a rate or rates on the rateable property upon which such public body is empowered to levy rates, to be levied at such time or times as to the said Court shall seem fit and necessary, to satisfy, either at once or by instalments, as to the said Court shall seem right, from and out of the net proceeds of such rate or rates, all moneys payable under or by virtue of such judgment, order, or decree and also, if the Court shall see fit so to order, such other moneys as are hereinafter mentioned: Provided, always, that no such rate shall exceed one penny per pound of the value of every rateable tenement upon which such public body is empowered to levy rates; but a second rate not exceeding one penny per pound shall be assessed; and so on until all such debts and costs as aforesaid shall have been finally discharged: Provided that not less than twelve months shall elapse between the day on which any preceding rate became due and payable and the day upon which any succeeding rate shall become due and payable.

And a rate assessed to satisfy judgment.

Rate limited.

More than one rate may be assessed;

But not within twelve months.

Court may order inquiry by Master into further liabilities.

4. If on showing cause against such rule *nisi* as aforesaid, it shall appear to the Court that there are other debts due by the public body on which such rule has been served, which will not probably be paid without the intervention of the Court, it shall be lawful for the Court, but not imperative upon it, if it shall make absolute such rule, before assessing such a rate or rates as aforesaid, to order an inquiry before the Master whether any, and what, debts other than that upon the said judgment, decree, or order are due by the said public body to any, and what, persons.

Master to call meeting of creditors.

5. If the Court shall make such order, then the Master shall, by a notice of not less than twenty-one days in the *Government Gazette* and one or more papers circulating in the district within which the property rateable by such public body shall be situate, a copy of which notice shall be affixed on the door of the Magistrate's office of the district, call a meeting of all persons claiming to be creditors of the said public body, for proof of debts, and such debts, if not admitted by the said public body, or evidenced by their books and accounts, shall be proved by affidavit; and any such person claiming to be a creditor may appear and prove his debts by proxy.

Proof of debt.

Liabilities reported by Master may be liquidated out of rate assessed.

6. When by the report of the Master the Court shall be informed of the whole amount of the debts found by him to be due and owing by such public body, whether there be or be not other disputed claims, it shall be lawful for, but not imperative on, the Court to include the debts so found to be due or owing in the sum for the payment whereof such rate or rates as aforesaid shall be by the said Court assessed and levied; and the net amount or amounts

Digitised by the University of Pretoria, Library Services, 2016

assessed and levied by means of such rate or rates as aforesaid shall be paid and administered, first in defraying the costs of the petitioner as well of the petition and the proceedings thereunder as of his original action or suit against the said body incurred subsequent to judgment, and thereafter, save as hereinafter is mentioned, in payment of the claims of such petitioner and the other creditors, if any, *pro rata*, until all the debts proved, with interest thereon, shall be fully satisfied.

Apportionment of proceeds of rate in such case.

7. The decision of the Master as to any claim of debt shall be open to review by the Court, which may direct such debt to be proved in such manner as it shall see fit, or may direct an action to be brought for the purpose of establishing the same; but it shall not be compulsory on such Court to delay the assessment or levy of such rate or rates as aforesaid until such claim shall be finally decided.

Proof of debt allowed by Master subject to review.

Assessment of rate not necessarily delayed thereby.

8. If any judgment for damages shall be recovered by any person against such public body, pending the proceedings under such petition as aforesaid, and before such rate or rates shall have been ordered by the said Court to be levied, then it shall be lawful for the person so recovering judgment to enter before the Master a claim upon such judgment, and to make application to the Court to be admitted to the benefits of the proceedings pending, and the Court may allow such application, and take such judgment into account in assessing such rate or rates as aforesaid.

Judgment for damages may be included in sum for liquidation of which rate is assessed.

9. As often as the Court shall assess any rate for the purpose of paying any creditor or creditors under this Act, such Court shall appoint a receiver, who shall be charged with the recovery of such rate, and who shall give security for the due performance of his office, and shall be entitled to such percentage or other remuneration as the said Court shall fix, and shall conform to all instructions regarding the custody of the moneys received by him, or other matters, as the said Court shall from time to time issue for his guidance. Notice shall be given in the *Government Gazette*, and also in one or more newspapers circulating in the district within which the property to be rated shall be situated, and a like notice affixed on the door of the Magistrate's office of the district, of every rate assessed as aforesaid, and of the day on which such rate will become due and payable, and such notice shall be in substance as follows:

Court to appoint receiver of rates.

Notice of rate assessed and when due.

(NAME OF PUBLIC BODY.)—RATE UPON IMMOVABLE PROPERTY.

Form of notice.

Notice is hereby given that the Honourable the (Supreme Court or the Court of the Eastern Districts, as the case may be,) has this day assessed, under the provisions of the "Public Bodies Debts Act, 1867," for payment of debts, a rate of ———————— per pound upon the value of all the rateable property within the (limits of district over which power of rating extends), which rate will become due

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1867.

and payable on the ——— day of ———, 18—, and of which rate A. B., of ————, has been appointed the receiver. Dated at (Cape Town or Graham's Town, or elsewhere, as the case may be), the —— day of ——, 18—.

M. or N.,

Registrar of the (name of Court).

Such notice shall be published not less than twenty-one days before the day mentioned in such notice as that upon which the rate shall become due and payable.

Receiver may recover rate.

10. The receiver of any such rate as aforesaid shall be entitled to recover the amount thereof in any competent court.

Disposal of surplus.

11. Any surplus which shall remain of the proceeds of any such rate as aforesaid, after the payment of all the matters or things properly payable thereout, and the full discharge of all the debts which it was assessed to discharge, shall be paid to the public body whose debts it was raised to discharge.

Effect of order of Court on debentures and other securities.

12. Any such order of Court as aforesaid, referring to the Master to report upon the debts of any such public body as aforesaid, shall have the effect of making all debentures, securities, and engagements, lawfully granted or entered into by such public body, due and payable forthwith, notwithstanding that the same might not, but for such order, have been payable till some future date; but nothing in this Act contained shall be construed to give validity to any debt or engagement contracted in the name or on behalf of any public body, which such body was not legally authorised to contract; but such debt or engagement shall be the debt or engagement of the person or persons contracting the same in the name of the said public body: Provided, always, that any tort committed by such body, through breach or neglect of the duties to perform which was part of the object of its creation as such body, shall be an obligation on the body in its corporate capacity, whether any individual be or be not also liable for the results of such breach or neglect.

Jurisdiction of Eastern Districts Court.

13. In all cases prosecuted under this Act in the Court of the Eastern Districts, the said Court shall have the like jurisdiction subject to the like limitations and the same appeals as are provided by the Act No. 21 of 1864 with regard to other matters within the jurisdiction of the same Court.

How order for reference to Master is to be notified when public body in Eastern Districts is respondent.

14. Whenever any order for reference to the Master under this Act shall be made in any case wherein any public body, empowered to levy rates upon immovable property lying within the local limits of the jurisdiction of the Court of the Eastern Districts shall be the respondent, then notice of such order shall be forwarded forthwith by the Registrar of the Supreme Court, in case such order shall be made in the Supreme Court, to the Court of the Eastern Districts, through its Registrar, or in case such order shall be made in the Court of the

Digitised by the University of Pretoria, Library Services, 2016

Eastern Districts, then by the Registrar of such last-named Court to the Supreme Court, through its Registrar.

Proceedings when there are several petitions, and order for reference to Master has been made on one petition.

15. In case more than one petition under this Act shall be presented, either in the Supreme Court or in the Court of the Eastern Districts, or in case one or more than one such petition shall be presented in one of such Courts, and one or more in the other of them, such petitions may be prosecuted until an order shall have been made for reference to the Master upon some one petition, or until notice shall be received by the Court in which any such petition is pending that such an order for reference to the Master has been made in the other of the two Courts to which jurisdiction is given in matters under this Act, and after such order for reference, or such notice as aforesaid, no further separate proceeding shall be had in any other such petition pending in either of such Courts, save only that each petitioner shall be at liberty to have his costs up to that date estimated and awarded, as to the Court in which his petition shall be pending shall seem fit; and all such petitions shall be consolidated, and each petitioner shall be entitled to come in under the reference, and to prove such costs in addition to his judgment debt; and such costs, together with his costs in his original action against such public body, incurred subsequent to judgment, shall be paid next after the like costs of the petitioner upon whose petition the order for reference shall have been obtained, and if more petitioners than one are in such condition as aforesaid, then their costs of their proceedings under this Act, as well as of their original actions against such public body, incurred subsequent to judgment, shall be paid rateably next after the costs of the petitioner upon whose petition such order for reference as aforesaid shall have been made, notwithstanding anything in the sixth section hereof contained; and in other respects the provisions of the said sixth section shall be carried into effect.

Costs of petitioner

When orders for reference have been made in both Courts, proceedings to be consolidated.

16. If an order for reference be made in the Supreme Court in any case wherein a public body is respondent, and before notice thereof shall be received by the Court of the Eastern Districts a like order shall have been made by such last-mentioned Court in any case where the same public body is respondent, then on notice of the order made in the Supreme Court being received by the Court of the Eastern Districts, all further proceedings in the last-mentioned court shall be stayed, and the proceedings theretofore had therein shall be consolidated with the proceedings in the Supreme Court, and shall be forwarded by the Registrar of the Court of the Eastern Districts to the Registrar of the Supreme Court, and shall become thenceforward and be recorded in the Supreme Court as if the same had been originally taken in the Supreme Court.

Act not to apply to Municipality of Cape Town, or in any case

17. Nothing in this Act contained shall apply in the case of any debt due by the municipality of Cape Town, or in any other case

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1867.

Especially provided for.

where full provision is otherwise made for the objects contemplated by this Act; nor shall this Act be taken to repeal any Act for the like purpose made in special cases, but shall apply only to such public bodies and in such cases as are otherwise insufficiently provided for.

Short title.

18. This Act may be cited as the "Public Bodies' Debts Act, 1867."

No. 12, 1867.] [August 16, 1867.

An Act to impose a Licence Duty for the benefit of the Colonial Revenue on Persons depasturing Stock upon Waste Lands of the Crown in this Colony, and to provide for enforcing the Payment thereof.

[Lapsed.]

No. 13—1867.] [August 16, 1867.

An Act for Authorising certain Expenditure not provided for by Parliament in the Year 1865.

[Spent.]

No. 14—1867.] [August 16, 1867.

An Act to Enable the Harbour Board at Port Elizabeth to raise a further Loan of Forty Thousand Pounds, and to provide for keeping down the Interest thereof.

[Repealed by Act 25, 1875.]

No. 15—1867.] [August 16, 1867.

An Act for Confirming certain General Rules and Orders and for amending the Law relating to General Rules and Orders of the Supreme Court and the Court of the Eastern Districts.

[Not Printed.]

No. 16—1867.] [August 16, 1867.

An Act to Continue to the end of 1868 the Act No. 10 of 1864.

[Expired.]

No. 17—1867.] [August 16, 1867.

An Act to Amend the Criminal Law in regard to Thefts of Stock.

[Repealed by Act 39, 1893.]

Digitised by the University of Pretoria, Library Services, 2016

No. 18—1867.] [August 16, 1867. No. 19—1867

An Act for Applying a Sum not exceeding Four Hundred and Fifty-seven Thousand Two Hundred and Fifty-seven Pounds Six Shillings and Three Pence for the Service of the Year 1867.

[Spent.]

No. 19—1867.] [August 16, 1867.

ACT

To Amend Act No. 11 of 1866-67. (1)

Preamble.

WHEREAS by an Act, numbered 11 of 1866-'67, entitled "An Act for raising £200,000 by Debentures for paying off Unsecured Debt, and other purposes," it was among other matters provided that certain moneys to be raised under the provisions of the same Act should be appropriated to paying off the sum of £197,707 therein mentioned: And whereas a portion of the said sum of £197,707 was due and payable to the Master of the Supreme Court, as custodian of the Guardian's Fund: And whereas it has since been found necessary to raise, by means of temporary loans, further sums of money for the public service of the Colony, and it is therefore expedient that the provision of the said Act which directs the appropriation of a portion of the said £197,707 towards payment of the sum due to the said Master of the Supreme Court should be repealed: 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:—

Provision in Act 11 of 1866-'67, for repayment of debt due to Guardian's Fund out of loan raised, repealed.

So much of the said Act as provides for the appropriation of a portion of the said sum of £197,707 towards the payment of the debt so due as aforesaid to the Master of the Supreme Court shall be and the same is hereby repealed, and it shall be lawful to allocate such portion of the said moneys so appropriated by the said Act as aforesaid towards the liquidation and discharge of the temporary loans so incurred and due as aforesaid to persons or bodies corporate other than the said Master: Provided, however, that the debt due to the Master of the Supreme Court shall be paid off and discharged so soon as the finances of the Colony shall allow.

No. 20—1867.] [August 16, 1867.

An Act for Applying a Sum not exceeding Two Hundred and Twenty-two Thousand Three Hundred and One Pounds Eleven Shillings and Ten Pence for the Service of the Year 1868.

[Spent.]

---

(1) See Act 22, 1868.

Digitised by the University of Pretoria, Library Services, 2016

extend or be construed to extend, to prevent us, our heirs and successors, from repealing these presents, or any part thereof, or from making from time to time, as occasion may require, such further or other provision by Letters Patent, for the administration of justice, civil and criminal, within the said Colony, and the places now or at any time hereafter to be annexed thereto, as to us, our heirs and successors, shall seem fit, in as full and ample a manner, as if these presents had not been made; these presents, or anything contained to the contrary therein, in anywise notwithstanding. Charter of Justice.

And whereas our royal brother and predecessor, his late Majesty King George the Fourth, by Letters Patent, under the Great Seal of the United Kingdom aforesaid, bearing date at Westminster, the twenty-fourth day of August, in the eighth year of his reign, did grant, direct, order, and appoint, that there should be within the Colony of the Cape of Good Hope, a Court, which should be called the Supreme Court of the Colony of the Cape of Good Hope, and it was thereby amongst other things provided that nothing therein contained should extend or be construed to extend, to prevent us, our heirs and successors, from repealing the said Letters Patent or any part thereof, or from making such further or other provision, by Letters Patent for the administration of justice, civil and criminal, within the said Colony, and the places then or at any time thereafter to be annexed thereto as to us, our heirs and successors, should seem fit, in as full and ample a manner as if the said Letters Patent had not been made; the said Letters Patent, or anything contained to the contrary therein, in anywise notwithstanding:

Now, we do hereby in virtue and in pursuance of the powers so reserved to us as aforesaid, in and by the said Letters Patent, repeal and revoke the beforementioned Letters Patent, and each and every part thereof: Provided nevertheless, that all decrees, judgments and sentences, rules and orders heretofore made by the Courts established by, or by the judges appointed under, the said Letters Patent, or by any or either of such Courts or Judges, and that all general rules, orders, and regulations of Court made under and in pursuance thereof, and that all proclamations issued by any Governor of the said Colony in virtue thereof, and that all Laws and Ordinances promulgated by the Governor of the said Colony, with the advice of the Council of Government thereof for carrying the said Letters Patent, or any part thereof, into effect, shall to all intents and purposes be as binding, conclusive, good, valid, and effectual, as if these presents had not been made. Repeal of former charter.

55. And we do further ordain and direct, that the Governor of our said Colony of the Cape of Good Hope, upon the arrival therein of these presents, shall, by proclamation, notify to the inhabitants of the said Colony the time when the Courts hereby established will Proclamation by Governor of the time of the opening of the courts hereby established.

Digitised by the University of Pretoria, Library Services, 2016

No. 22—1867.

No. 21—1867.] [August 16, 1867.

An Act for Conferring on Divisional Councils certain Powers relating to the Regulation and Management of Pounds in their Divisions.

[Repealed by Act 40, 1889.]

No. 22—1867.] [August 16, 1867.

ACT

To Amend the Law relating to the issue of Passes to, and Contracts of Service with Natives, and to the issue of Certificates of Citizenship, and to provide for the better protection of Property. (1)

Preamble.

WHEREAS it is necessary further to amend the laws relating to the issue of passes and to contracts of service with Native Foreigners, and relating to issue of certificates of citizenship; and likewise to provide better protection for property: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Certain laws repealed.

1. The Ordinance No. 49 of the year 1828, intituled "An Ordinance for the admission into the Colony, under certain Restrictions, of Persons belonging to the Tribes beyond the Frontier thereof, and for regulating the manner of their employment as Free Labourers in the Service of the Colonists"; the Act No. 23 of the year 1857, intituled "An Act for more effectually preventing Kafirs from entering into the Colony without Passes;" the Act No. 27 of the same year, intituled "An Act for regulating the terms upon which Natives of Kafirland and other Native Foreigners may obtain employment in this Colony"; the Act No. 24 of 1859, intituled "An Act to amend the Laws for regulating the admission of Kafirs and other Native Foreigners into the Colony"; the Act No. 23 of 1860, intituled "An Act for preventing unauthorised Persons from granting to Kafirs or other Native Foreigners Passes or Papers pretending or supposed to be such, and for preventing Kafirs or other Native Foreigners from being harboured on the premises of persons who do not employ such Kafirs or other Native Foreigners"; and the twenty-third and twenty-fourth sections of the Act No. 17 of the year 1864, intituled "An Act for amending the Law regarding Certificates of Citizenship"; shall be, and the same are hereby repealed.

Contracts under Masters and Servants Act to hold good.

2. From and after the passing of this Act all contracts of service made between employers and Natives or Native Foreigners, in conformity with the provisions of the Act No. 15 of the year 1856,

[1] See Act 17, 1864.

Digitised by the University of Pretoria, Library Services, 2016

commonly known as the "Masters and Servants Act," shall be good and valid in law; but the existence of any such contract shall not be allowed to protect any Native Foreigner who may be a party thereto from being prosecuted and punished for entering or being within the Colony without a pass, as hereinafter provided.

But not to protect persons infringing subsequent provisions of Act.

3. It shall not be lawful for any Native Foreigner to enter this Colony without a pass (1) signed by some officer or functionary named in some notice in the *Government Gazette* as empowered to grant such passes; and every such pass shall be framed according to the Schedule A hereunto annexed; and every Native Foreigner who shall enter into or shall be in the Colony without such pass, or who, having a pass shall violate the conditions of the same, shall, upon conviction thereof, be liable to imprisodment for any period not exceeding one month, with or without hard labour, and with or without spare diet, or to a fine not exceeding one pound sterling, and, in default of payment thereof, to such imprisonment, with or without hard labour, and with or without spare diet.

No native foreigner to enter Colony without pass.

Form of pass, and by whom to be signed.

Penalties for contravention.

4. It shall be lawful for any Resident Magistrate or other person thereto duly authorised by the Governor, if such Magistrate or other person shall think fit so to do, to grant to any Native Foreigner who shall have already entered the Colony, or who shall hereafter enter the same, with a pass, permission to remain therein for such time in excess of that mentioned in the pass, as to such Magistrate or other person shall seem expedient; and such Magistrate or other person shall endorse such permission on the pass that shall have been granted to such Native Foreigner, and such endorsement shall thereupon be deemed and taken to be of the like force and effect as if the substance thereof had been inserted in such pass at the time of the issue thereof; and any Native Foreigner violating the conditions of such endorsement shall be liable, on conviction, to the punishment prescribed by the preceding section hereof.

How period mentioned in pass may be extended.

5. If after payment of any fine imposed, or at the expiration of any sentence passed upon any Native Foreigner who may be convicted under the provisions of either of the two preceding sections, such Native Foreigner shall desire to return to the performance of the contract of service, if any, under which he shall have been employed at the time of his arrest, or if such Native Foreigner shall be desirous of entering into a contract of service, and shall be able to find an employer, then the Resident Magistrate of the district in which such Native Foreigner shall have been imprisoned shall grant to him a pass to remain in the Colony for the performance of such contract of service. But in default of any such contract of service, such Resident Magistrate shall grant such Native Foreigner a pass to enable him to return to his own country within such period as shall be named in such pass; and any Native Foreigner to whom any pass shall have been issued under the provisions of

After expiration of sentence, pass may be granted to native foreigner desiring to complete or enter into contract of service.

In default of such contract, pass to return to his country to be issued.

[1] See also § 4, Ord. 2, 1837.

Digitised by the University of Pretoria, Library Services, 2016

No. 22—1867.

this section, who shall be found in the Colony in violation of the same, shall be liable, on conviction, to the punishment prescribed by the third section hereof.

Definition of term "native foreigner."

6. For the purposes of this Act the term "Native Foreigner" shall be taken to mean any member of any tribe, other than a Fingo, of which the principal chief shall live beyond the borders of the Colony.

Act to apply to certain Kafir and Tambookie locations

7. For the purposes of this Act, all Kafirs belonging to any Native Location within the divisions of King William's Town and East London, and the Tambookies of the Tambookie Location within the division of Queen's Town, shall, unless provided with certificates of citizenship, be taken to be Native Foreigners; and if any such Kafir or Tambookie not so provided as aforesaid with a certificate of citizenship shall be found in any other part of the Colony than such location, or shall proceed beyond the borders of the Colony without a pass from the proper officer, he shall be liable, on conviction, to be punished in manner provided by the third section hereof. Provided, always, that in those cases within the divisions of King William's Town and East London in which the officer in charge of any such location, and authorised to issue passes to the Kafirs thereunto belonging, shall not reside within the limits thereof, no such Kafir as aforesaid shall be liable to be apprehended on any road leading from such location to the residence of such officer, in consequence of his not being in possession of a pass as aforesaid: Provided, further, that (any law now in force to the contrary notwithstanding) any such Kafir or Tambookie shall be entitled to receive a certificate of citizenship who may be a proprietor of any land, or the owner of any house or building, of the value of not less than ten pounds sterling; and it shall be lawful for the Governor to direct that a certificate of citizenship shall be issued to any such Kafir or Tambookie as aforesaid, who may to the Governor appear to merit that privilege in consequence of his industry and good conduct, and who shall have resided in the Colony for a period of not less than seven consecutive years: Provided, moreover, that all the provisions of the twenty-seventh section of Act 17 of 1864, intituled "An Act for amending the Law regarding Certificates of Citizenship" as are not repugnant to this section of this Act shall apply and extend to the certificates of citizenship issued under this section: And provided, also, that, for the purposes of this section, residence in British Kaffraria previous to the incorporation of that Colony with the Cape of Good Hope shall be deemed to have been residence in this Colony.

Exception where officer in charge of location shall not reside within its limits.

Proprietor of land or building entitled to certificate of citizenship.

Governor may grant certificate to deserving Kafir or Tambookie.

Section 27 of Act 17 of 1864 to apply.

Residence in British Kaffraria to be taken as residence in Colony.

Who may demand production of pass.

8. It shall be lawful for any Justice of the Peace, officer of police, field-cornet, constable, or any owner or occupier of land to demand of any such Native Foreigner the production of his pass; and if any such Native Foreigner shall fail or refuse to produce the same and show that he is acting in conformity with the conditions

Digitised by the University of Pretoria, Library Services, 2016

thereof, then it shall be lawful for such Justice of the Peace, officer of police, field-cornet, constable, owner or occupier of land to apprehend such Native Foreigner, and to convey him, or cause him to be conveyed, before the Resident Magistrate of the district, to be dealt with according to law.

On failure or refusal to produce pass, native foreigner may be apprehended.

9. No Fingo or other person who shall be lawfully in possession of, and shall, when required to do so by any officer named in the preceding section hereof, produce a certificate issued under the provisions of the Act No. 17 of 1864, shall be liable to be apprehended by reason of his not possessing a pass to enter the Colony in conformity with the third section hereof.

Certificate issued under Act 17 of 1864 to hold good.

10. So much of the hereinbefore-mentioned Act No. 17 of the year 1864 as relates to the annual revision and renewal of certificates shall be, and the same is hereby repealed, and every certificate of citizenship which shall have been or shall be hereafter issued in conformity with the provisions of the said Act shall be and continue of full force and effect, notwithstanding that the same shall not have been revised or renewed, so long as the same shall lawfully remain in the possession of the person to whom it shall have been issued.

Annual revision and renewal of certificates not necessary.

11. [Repealed by § 1 Act 23, 1879].

12. Any one who shall, under colour of this Act, wrongfully and maliciously and without probable cause, arrest, or cause to be arrested, any person, shall be liable to pay a fine not exceeding one pound sterling, and to pay to the arrested person such amount as and for damages, as the Magistrate before whom such arrested person is brought for trial shall award.

Penalty on wrongful arrest.

SCHEDULE A.

PASS GRANTED UNDER ACT No. — OF 1867.

No. — Time allowed ——— days.

Permission is hereby granted to A B, of ——— tribe, to enter the Colony of the Cape of Good Hope for the purpose of ———.

This pass to protect A B in proceeding and returning from (name the district or place), provided he does so within ——— days, and to and from such other place and for such further time as the Resident Magistrate of such district shall, by endorsement hereon, authorise, provided the said A B shall comply with all the conditions stipulated for and expressed in such endorsement; provided, also that no stock shall be removed by him without a written authorisation to that effect, and that this pass shall be endorsed by the Magistrate, Field-cornet, or other officer to whom the bearer is directed.

WWW

Digitised by the University of Pretoria, Library Services, 2016

No. 1—1868.

DESCRIPTION OF A B.

Name,
Father's name,
Head of village,
Sex,
Age (about),
Height,
Marks (if any),
Particulars of family and stock (if any),
This certificate was issued by me ——— at ——— on the —— day of 186—.

No. 1—1868.] [June 24, 1868.

ACT

To Confine the use of Postage Stamps to the purposes of Postage. (1)

Preamb'e. WHEREAS it is desirable that postage stamps should be made use of for the purposes of postage only: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Postage stamps to be used for postage only. Notwithstanding the provisions of the eleventh section of the Stamp Act, 1864, no postage stamp which shall, from and after the 30th day of September next, be affixed to any instrument or document required by the said Stamp Act, 1864, or any other Act, to be stamped, shall be deemed available by way of a stamp on such instrument or document, save only for the purposes of postage; but every instrument or document, so far as the same shall be stamped with postage stamps, shall, save for the purposes of postage, be deemed to be unstamped or insufficiently stamped, as the case may be, in like manner as if no such postage stamps had been affixed thereto, and shall be liable to all the disabilities and penalties which would attend such instrument or document if so unstamped or insufficiently stamped as aforesaid; and every person who shall affix by way of stamp, for any purpose other than for postage purposes, a postage stamp to any instrument or document required by the said Act, or any other Act, to be stamped, and every person who shall receive such instrument stamped with any postage stamp, shall be liable to the same penalties and disabilities as if such postage stamp were not affixed, and no stamp were affixed in stead thereof.

---

[1] But see § 7 Act 20, 1881.

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1868.] [June 24, 1868. No. 2—1868.

An Act to Alter in certain respects the Rates to be charged for Licences for the Sale of Wines and Spirituous and Fermented Liquors by Retail.

[Repealed by Act 28, 1883.]

No. 3—1868.] [Sept. 2, 1868.

An Act to Exempt from Tolls Officers and Men of the Frontier Armed and Mounted Police.

[Repealed by Act 9, 1878.]

No. 4—1868.] [Sept. 2, 1868.

An Act for the Protection of Private Property in Domesticated Ostriches.

[Expired.]

No. 5—1868.] [Sept. 2, 1868.

An Act for Correcting an Error or Misprint in the Act No. 17, 1867, entitled "An Act to amend the Criminal Law in regard to Thefts of Stock."

[Superseded by Act 18, 1879.]

No. 6—1868.] [Sept. 2, 1868.

An Act for Altering and Regulating certain Rates of Postage.

[Repealed by Act 4, 1882.]

No. 7—1868.] [Sept. 2, 1868.

An Act to Amend and Alter in certain respects the Regulations of the Post Office.

[Repealed by Act 4, 1882.]

Digitised by the University of Pretoria, Library Services, 2016

No. 8—1868.] [Sept. 2, 1868.

ACT

To Abolish Liability to Quitrent within the Limits of the Municipality of King William's Town.

Preamble.

WHEREAS it appears that, before the creation of the municipality of King William's Town, certain erven within the limits of the said municipality were granted by the late Government of British Kaffraria to certain parties, on condition, among other things, that the proprietors thereof should pay an annual quitrent, with a view to the application of the proceeds of such quitrents for the purpose of keeping in repair the streets of the said town, and other local purposes: And whereas by virtue of the provisions of the Ordinance for constituting the municipality of King William's Town, and by the Act No. 3 of 1865, annexing British Kaffraria to this Colony, the proprietors of the said erven have, in addition to the said liability to payment of quitrent, become liable to payment of the municipal rates imposed for the purposes aforesaid, and also to the payment of road rates; and it is proper that the said proprietors should be relieved from such first-mentioned liability: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof:—

Proprietors of lots of land within municipality of King William's Town relieved from payment of quitrent.

1. From and after the 1st day of July, in the present year, the liability to payment of quitrent of the proprietor of any lot of land situated within the limits of the municipality of King William's Town shall cease and determine. But nothing herein contained shall be construed to exempt any such proprietor from payment of any sum which may have or shall become due and payable before or on the said 1st day of July, in respect of any such land.

No. 9—1868.] [Sept. 2, 1868.

An Act to Amend the Act No. 9, 1855, entitled "An Act for Incorporating the South African Association."

[Repealed by Act 17, 1875.]

No. 10—1868.] [Sept. 2, 1868.

An Act to Repeal the Third Section of the Act No. 4 of the year 1858.

[Repealed by Act 16, 1873.]

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1868.] [Sept. 2, 1868.

ACT

To Declare void certain Laws imposing Disabilities on certain Persons and Bodies on account of their Religious Persuasions, and to amend Ordinance No. 68.(1)

Preamble.

WHEREAS certain restrictions, disabilities, and penalties have in times past been imposed by certain laws formerly in force in the Dutch Republic and in this Colony, upon certain religious communities and orders, and upon certain persons, by reason of such communities, orders, and persons holding and professing certain religious opinions, which laws have become obsolete in this Colony, but have never formally been repealed: And whereas it is expedient that such laws, so far as the same impose any such restrictions, disabilities, and penalties as aforesaid, should be formally declared to be null and void, in order by such declaration to place on an equal footing before the law all religious denominations: And whereas certain restrictions, disabilities, and penalties are by certain provisions of Ordinance No. 68, entitled "An Ordinance for the relief of His Majesty's Roman Catholic Subjects in this Colony," imposed on certain persons of the Roman Catholic persuasion in respect of such persuasion, which provisions have fallen into disuse, and it is expedient for the reasons above mentioned that the same provisions should be repealed: 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:—

Provisions of Ordinance No. 68 from Section 3, repealed.

1. The several sections of the said Ordinance No. 68, following the second section thereof shall be and the same are hereby repealed.

All laws affecting rights, &c., or imposing penalties on account of religious belief, to be null and void.

2. All other laws heretofore in force in this Colony, if any, whereby any religious community or order, or any person whatsoever is or was deprived of any rights or privileges in law, or whereby any penalties or disabilities are or were imposed upon such communities, orders, or persons by reason only of their religious belief or profession, are, so far as any such restrictions, penalties, and disabilities are or were imposed by the same, hereby declared to be null and void and of no effect.

Existing wills or deeds not affected by this Act.

3. No will or deed or other instrument executed by any person in favour of any religious community or order, or of any person, before the passing of this Act, shall be held to have been invalid by reason only of any such law as is hereby declared to be null and void; but such deed, will, or other instrument shall not be

[1] Extended by Proclamation No. 80 of 1890 to all the Native Territories See Act. 6, 1869.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1868.

saved by this enactment from any invalidity or legal cause of defeasance other than an invalidity or cause of defeasance arising by reason of some law hereby declared null and void.

No action to be taken in respect of penalties already incurred.

4. No person shall after the passing of this Act be brought in question for or in respect of any penalty already incurred under any law hereby declared null and void or hereby repealed.

Short title.

5. This Act may be cited as the "Disabilities Removal Act, 1868."

No. 12—1868.] [Sept. 2, 1868.

An Act to Make Provision for the Winding up of Joint-stock Companies.

[Repealed by Act 25, 1892.]

No. 13—1868.] [Sept. 2, 1868.

An Act for defining and establishing the Constitution of the Joint-stock Company or Co-partnership called "The Eastern Province Bank."

[Lapsed.]

No. 14—1868.] [Sept. 2, 1868.

ACT

For Constituting the Town of Port Elizabeth a Municipality.

Preamble.

WHEREAS it is expedient to repeal the Act No. 31 of 1860, entitled "An Act for constituting the Town of Port Elizabeth a Municipality," in order to re-enact, with amendments, the provisions of the said Act: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Act No. 31, 1860, repealed.

Existing council to remain in statu quo.

1. The Act aforesaid, No. 31 of 1860, is hereby repealed: Provided that the council of the said municipality which shall be in office at the time of the taking effect of this Act shall be deemed and taken to be in the same plight and condition, and have and possess the same powers and authorities in all respects,

Term of office of existing council.

as if such council had been elected under this Act, and shall remain in office until the 1st day of January, 1869, but no longer, to be then succeeded by a council elected under this Act;

Act to apply to casual vacancies in existing council.

Provided, also, that the provisions of this Act relative to casual vacancies occurring in the office of councillor for any ward shall extend and apply to such casual vacancies as may occur amongst the members of council who shall be in office as aforesaid at the

Digitised by the University of Pretoria, Library Services, 2016

time of the taking effect of this Act; and that as often as the office of councillor for a ward designated by a certain number shall so become vacant, such vacancy shall be filled up by the voters for the ward designated by the same number as such ward is defined by this Act.

Limits of municipality.

2. The town of Port Elizabeth, including all lands and property within the area circumscribed by the following boundary lines,—namely, on the south by a line from the sea drawn through the Roman Rock beacons to the south-east corner of Walmer farm: from thence in a northerly direction along the east boundary of said farm to the north-east corner of the same; from thence westward along the Walmer boundary to the beacon near Harries' kraal; thence in a north-easterly direction, along the boundaries of Newcombe's farm and Korsten, to the south-east beacon of Korsten, to the northward of the north creek; from thence, following the line of the Deal Party's Grant, to the sea; and from thence along the sea beach at high-water mark to the first-mentioned point,—shall be, and the same is hereby constituted, a municipality.

Style of town corporation.

3. There shall be in the said municipality a body corporate, which shall take and bear the name of "The Mayor, Councillors, and Ratepayers of Port Elizabeth," and by that name shall have perpetual succession, and shall have a common seal, and shall by that name sue and be sued, and shall, by the council thereof, do all acts, and have and enjoy all the rights and privileges, which bodies corporate, as such, may in this Colony do and have.

Town Council.

4. The council of the said municipality shall consist of twenty-one councillors, one of whom shall be the Mayor.

Municipality divided into seven wards.

5. The said municipality shall be divided into seven wards, to wit:

No. 1. Comprising all immovable property within the municipal limits south of the Baaken's River.

No. 2. Eastern boundary the sea; northern boundary the southern side of Jetty-street, southern side of White's Road, southern side of Western Road in line through Saint George's Park, and southern side of the street between Lots Nos. 24 and 25 Park Lands, from thence northward of the Mill property to the western limits of the municipality; western boundary the western limits of the municipality; southern boundary the Baaken's River.

No. 3. Eastern boundary the sea; northern boundary the southern sides of Rodney and Donkin-streets, the southern side of Parliament Road, and along the southern side of the Cape Main road to the western limits of the municipality; western boundary the western limits of the municipality; southern boundary the boundary on the north of Ward No. 2.

Digitised by the University of Pretoria, Library Services, 2016

Charter of Justice.

be open; and as soon as the Judges of the said Supreme Court shall have assumed and entered upon the exercise of their jurisdiction therein, then, and from thenceforth, the Supreme Court of the Colony of the Cape of Good Hope, and the Circuit Courts now established within the same, and the jurisdiction of the said Courts respectively, shall be absolutely abolished, cease, and determine; and every suit, action, complaint, matter, or thing, civil or criminal, which shall be depending in such last-mentioned Courts respectively, shall and may be proceeded upon in the Supreme Court instituted under and by virtue of these presents, or in either of the said Circuit Courts which shall and may have jurisdiction within the district or place in the Colony of the Cape of Good Hope where such action or suit or other matter, civil or criminal, respectively, was depending; and all proceedings, which shall thereafter be had in such action or suit, or other matter, civil or criminal, respectively, shall be conducted in like manner as if such action or suit, or other matter, civil or criminal, had been originally commenced in one or other of the said Courts instituted under these presents. And all the records, muniments, and proceedings whatsoever of and belonging to the said Supreme Court and Circuit Courts established by the said recited Letters Patent shall, from and immediately after the opening of the said Courts respectively instituted by these presents, be delivered over and deposited for safe custody in such of the said Courts respectively instituted under these presents as shall be found most convenient; and all parties concerned shall and may have recourse to the said records and proceedings, as to any other records or proceedings of the said Courts respectively.

Abolition of courts established under the former charter

Custody of records of the said courts.

Power of Governor, in his absence, vested in the officer for the time being administering the government.

56. And we do hereby further declare and direct, that during the absence from our said Colony of the Cape of Good Hope of the Governor thereof, or if there shall be no person commissioned by us, our heirs and successors, to be the Governor of our said Colony, then, and in every such case, all and every the powers hereby granted to and vested in the Governor for the time being of the said Colony, shall and may be executed by and vested in the Lieutenant-Governor thereof, or the officer for the time being administering the Government thereof.

In witness whereof, we have caused these our Letters to be made Patent. Witness ourself at Westminster, the fourth day of May, in the second year of our reign.

By Writ of the Privy Seal,

BATHURST.

No. 90.] [June 6, 1832.

Ordinance for the prevention and suppression of meetings whereby the peace and good order of the Colony may be in danger.

[Expired.]

Digitised by the University of Pretoria, Library Services, 2016

No. 11–1868.

No. 4. Eastern boundary the sea; northern boundary the southern side of Saint Andrew's-street, and crossing Main-street, taking the southern side of Russell Road to the Cape main road; western boundary a point being the junction of Russell Road with the Cape main road; southern boundary the boundary on the north of Ward No. 3.

No. 5. Eastern boundary the sea; northern boundary the southern side of Palmerston-street and Palmerston Road, through the Provincial Hospital lands, from thence northward of the Native Strangers' Location to the Cape main road, at the north-west corner of St. George's Park; western boundary the north-west corner beacon of St. George's Park, southern boundary the boundary on the north of Ward No. 4.

No. 6. Eastern boundary the sea; northern boundary from the sea, taking the southern side of South-street, to Frederick-street, from thence following the watercourse to Queen-street, the southern side of St. George's Road (formerly Cooper's Kloof) to the Cape main road; western boundary a point being the junction of St. George's Road with the Cape main road; southern boundary the boundary on the north of Ward No. 5.

No. 7. Eastern boundary the sea; northern boundary the limits of the municipality northward; western boundary the limits of the municipality on the west; southern boundary the boundary on the north of Ward No. 6.

Council may alter boundaries of wards. But notice of intended alteration to be given.

6. The said council shall, from time to time, if they shall think fit, alter the boundaries of the said wards: Provided that the council shall, before making any such alteration, give, in the *Government Gazette* and one or more of the newspapers published in Port Elizabeth, public notice of the intention to make such alteration, and of the particular alteration intended to be made which notice shall be published for not less than thirty-one days before any such alteration shall be made, and a copy of the same shall also be posted in some conspicuous place upon or near the Town-hall.

Three councillors to be elected for each ward.

7. Three councillors shall be elected for each ward, in manner hereinafter mentioned.

Who qualified to vote at elections.

8. Every male person of full age, who is the owner or occupier of any immovable property in any ward of the municipality, in regard to which property no municipal rate shall, at the time of any election of councillors, or a councillor of such ward, be due and in arrear, shall be qualified and entitled to vote at such election, in respect of such ward: Provided that his name shall appear as a ratepayer in the assessment roll of such ward which shall have been made next or latest before the election at which such person shall be elected: Provided, also, that the assessment

Digitised by the University of Pretoria, Library Services, 2016

roll in existence at the time of the taking effect of this Act shall be deemed and taken to have been framed under this Act, and that all municipal rates assessed before the taking effect of this Act, and then due and in arrear, shall be deemed and taken to have been assessed under this Act.

Existing assessment roll to be taken as framed under this Act.

9. The following persons shall be disqualified from voting at any such election:

Who disqualified from voting.

Persons who have been convicted of treason, murder, rape, theft, fraud, perjury, or forgery, and who shall not have received a free pardon.

10. No person shall be eligible to be elected a councillor for any ward who has not been a rated owner or occupier of immovable property within the municipality for not less than twelve months next before the election, or who is the owner or occupier of any such property in regard to which any municipal rate shall, at the time of the commencement of such election, be due and in arrear: Provided that different premises or properties owned or occupied in immediate succession shall satisfy this section as fully as if they had been one and the same premises or properties.

Who may be elected councillor.

11. No person shall be deemed a candidate at any election, nor qualified to be elected a councillor for any ward, unless he shall have been invited to become such candidate by a requisition, signed by at least three qualified voters of such ward, and shall have transmitted such requisition, with his acceptance thereof, addressed to the Town Clerk, and delivered at his office between the hours of ten a.m. and three p.m., at least fourteen days before such election is appointed to take place.

Who shall be deemed a candidate.

12. The Town Clerk shall, at least ten days before the day appointed for the election in each ward, cause the names of the candidates for election thereat, together with the names of the persons who have signed such requisition, to be published in manner hereinafter in the seventy-fifth section mentioned.

Names of candidates to be published.

13. On the second Tuesday in the month of December in every year an election shall take place for councillors for the said municipality.

Annual election of councillors.

14. The poll in every ward shall be taken by some person to be appointed for that purpose by the Mayor, or, in case of his absence from the town of Port Elizabeth, by the Town Clerk: Provided that as often as the number of candidates nominated for any ward shall not exceed the number of councillors to be elected for such ward, no poll shall be necessary for such ward, but the candidates or candidate so nominated shall be deemed and taken to be duly elected: Provided, also, that the Mayor or Town Clerk, as the case may be, shall be the returning officer of the said municipality.

How poll to be taken.

When poll shall not be necessary.

Mayor or town clerk to act as returning officer.

15. Every candidate may, if he think fit, appoint a scrutineer to see that the votes are fairly taken and recorded.

Candidate may appoint scrutineer.

16. The election shall take place in the following manner: Every ratepayer qualified as aforesaid may vote for any candidate for his ward, not being more than the number to be elected for the

Mode of election.

Digitised by the University of Pretoria, Library Services, 2016

No. 14 - 1868.

ward, by delivering to the polling officer a voting paper, containing the christian and surname of the candidate or candidates, and signed by the person voting, or by the polling officer at his request, and stating his place of abode and description.

Polling officer to receive and register votes.

17. The polling officer shall receive such voting paper, and shall register each vote.

Duration of poll.

18. The poll shall commence at ten o'clock in the forenoon, and shall finally close at two o'clock in the afternoon of the same day.

Certain questions may be put to voter.

19. No enquiry shall, at any election, be permitted to be made as to the right of any person to vote, except as follows,—that is to say the polling officer may, of himself, or at the request of any qualified householder, put to any voter the following questions, or either of them, and no other:

1st. Are you the person whose name appears as "A. B." to the voting paper now delivered in by you?

2nd. Has the last municipal rate assessed upon the immovable property now occupied or now owned by you been paid?

Penalty for false answers.

20. If any person shall wilfully make a false answer to either of these questions he shall be liable to a penalty not exceeding ten pounds, to be recovered in the Court of the Resident Magistrate.

Returning officer to declare result of election.

21. At the close of the election, the returning officer shall ascertain the number of votes given for each candidate; and so many candidates, being equal to the number to be chosen, as shall have the greatest number of votes shall be declared by the returning officer to be duly elected.

Polling officer to transmit voting papers to returning officer, who shall declare candidates elected.

Names of candidates elected, with numbers of wards for which elected, to be published.

22. The polling officer shall then transmit in a sealed envelope the voting papers given for each candidate to the returning officer, who shall ascertain the number of the votes given for each candidate, and so many candidates, being equal to the number to be chosen, as shall have the greatest number of votes shall be declared duly elected; and such returning officer shall forthwith cause a list thereof, with the numbers of the wards for which such persons are elected, to be published in manner hereinafter in the seventy-fifty section set forth.

When first-elected councillors to enter upon office.

23. At the first election of councillors under this Act, the ratepayers shall elect, in manner hereinbefore provided, three councillors for each ward, who shall enter upon their office on the 1st of January following.

When and how to vacate office.

How when votes are equal.

24. Of the persons so elected as in the last preceding section mentioned, the councillor in each ward who shall have been elected by the smallest number of votes shall vacate his seat at the expiration of one year from the said 1st day of January: and in case, by reason of any such councillors having been elected by an equal number of votes, 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 councillors for each ward shall successively vacate their seats in like manner at the expiration of two and three years respectively; and upon the retirement

Digitised by the University of Pretoria, Library Services, 2016

from office of such councillors respectively, they shall be succeeded by councillors who shall be elected as hereinbefore provided, so that at every yearly election after the first there shall be elected one councillor for each ward who shall enter upon his office on the 1st day of January next after his election, and continue therein for three years; and every retiring councillor shall be eligible for re-election.

What to constitute vacancy.

25. If any councillor shall die, resign or become insolvent, or shall be absent without leave from the ordinary meetings of the council for a period of three calendar months, his office shall be declared vacant, and another councillor shall be elected in his place and stead, in manner hereinbefore provided, who shall hold office 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.

Council to appoint auditors.

26. On the first Wednesday in the month of January in every year, the council shall appoint from among the ratepayers two persons to be auditors of the municipality, who shall continue in office until the same day in the year following.

Who disqualified from being auditor.

27. No person shall be eligible as an auditor who shall be a councillor, treasurer, clerk, or other officer of the municipality.

How in case of vacancy.

28. If any auditor shall die, resign or be declared insolvent, or compound with his creditors, or assign his estate for the benefit of his creditors, another auditor shall be elected in his stead, on a day to be fixed by the Mayor.

How in case of equality of votes at election of councillor.

29. In case of an equality of votes at any election of councillors, the returning officer shall determine by lot which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot be both, or all of them, elected.

Election of mayor for first year.

30. On the Thursday following the first general election under this Act, the councillors then elected under this Act, but none others, shall choose from among themselves, by a majority of votes, the Mayor of the municipality, who shall hold office for one year from the 1st day of January then next ensuing.

How to be elected in after years.

31. That on the Thursday following every subsequent yearly election, those of the councillors then in office who shall have to continue in office for the following year in terms of section twenty-four, together with the newly-elected councillors, but none others, shall choose from amongst themselves, by a majority of votes, the Mayor of the municipality for the following year; and every such Mayor shall enter upon his office on the 1st day of January next after his election, and shall continue therein for one year, and shall during his year of office be exempt from serving on any jury summoned for the division of Port Elizabeth: Provided that in case of an equality of votes at any election of Mayor, the question between the candidates so equal shall be determined by lot.

Commencement and duration of office.

How when votes are equal.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1868.

Mayor may resign office.

32. It shall be lawful for the Mayor to resign his office, provided that he shall give to the council not less than one calendar month's notice of his intention so to do.

When mayor shall be deemed to have vacated office.

33. That if any Mayor shall die, or resign, or shall become insolvent, or compound with his creditors, or assign his estate for the benefit of his creditors, or shall be absent from the municipality, without the permission of the council for one calendar month, or shall neglect to attend the meetings of the council for the period of three calendar months, without leave, such Mayor shall be held to have vacated office, and the council shall forthwith elect out of their own number a successor for the remainder of the year.

Officers of council not to be interested in any contract with council.

34. No person holding any office in the gift or disposal of the council shall, directly or indirectly, have any share or interest in any contract made by or with the council, otherwise than as a shareholder in any bank with which such council may transact business, or in any joint-stock company which shall contract with the council for the lighting or supplying with water, or insuring against fire, any property belonging to the said municipality; and any person contravening the provisions of this section shall, upon conviction, be liable to a penalty not exceeding fifty pounds.

Penalty for contravention.

Powers and duties of council in regard to general purposes of municipality.

35. The council shall have power and authority to do the following acts: To make and keep in repair the roads, streets, dams, sewers, drains, and bridges within the limits of the municipality, to excavate, construct, and lay watercourses, water-pipes, conduits, sluices, dams, reservoirs, aqueducts, and other works for supplying the municipality with water, and to keep the same in repair or to grant leave to any person or company of persons to lay down pipes or to execute any other like works; to take order for the prevention and extinguishment of fires, [1] and for that purpose to provide and keep fire-engines with pipes and utensils; to order, establish, alter, or remove markets, and to have or purchase any land, and to erect or purchase and keep in repair any building for the same; to assize weights and measures and appoint an officer for that purpose; to grant permits and licences, and to levy tolls and dues as hereinafter provided; to regulate the time and place for slaughtering cattle, and the state and condition of slaughter-houses, tanneries, and wool-washing establishments; to appoint one or more competent persons to examine meat, fish, and other provisions exposed for sale and who, in case such meat, fish, or other provisions be found unfit for food, shall be empowered to cause the same to be destroyed; to prevent and abate nuisances, and generally to devise and carry out all such measures as shall appear to be to the advantage and convenience of the municipality; to make regulations for the management of the common pasture lands of the municipality, and for fixing the number and description of cattle which each ratepayer shall be allowed to depasture on such lands; to establish and provide for the management of

[1] See also § 28, *et seq.* Act 8, 1881.

Digitised by the University of Pretoria, Library Services, 2016

public pounds: Provided that no toll, due, or fee or charge for any permit or licence, or any punishment or penalty, shall be imposed by reason of anything in this section contained, unless the same shall have been imposed by some such municipal regulation as is in the next succeeding section mentioned.

No toll, charges, penalties, &c., to be imposed except under municipal regulation.

36. It shall be lawful for the council, at any meeting at which two-thirds of the members shall be present, to frame, from time to time, all such municipal regulations as may seem meet for the good rule and government of the municipality: Provided that all municipal regulations in force in the municipality of Port Elizabeth at the time of the taking effect of this Act shall be of the same force and effect as if they had been duly framed, approved, and published under this Act.

Council to frame municipal regulations.

Existing regulations not affected.

37. No municipal regulation shall be of force to subject any person to any fine, penalty, or payment until it shall have been, by the council submitted to the Governor, and shall have been approved of by him, with the advice of the Executive Council and published in the *Government Gazette*.

Regulations to be approved by Governor and Executive Council and published.

38. After any municipal regulation shall have been so published as aforesaid, it shall not be necessary, in any proceeding founded upon it, to prove that two-thirds of the council were present at the meeting at which it was framed, nor shall any evidence be received to prove the contrary.

Publication of regulation sufficient proof of validity.

39. It shall not be competent, by any municipal regulation, to punish the contravention thereof in any higher or more severe manner than by a fine not exceeding five pounds: Provided that it shall be competent for any such municipal regulation to provide that if the person convicted of contravening the same shall not forthwith pay the fine imposed upon him, he shall be liable to be imprisoned, with or without hard labour, for any period prescribed by such regulation: Provided, moreover, that such period must not exceed three months.

Penalties for contravening regulations limited.

40. All property which shall at the time of the taking effect of this Act be vested in the council of Port Elizabeth, elected under the Act aforesaid, No. 31, 1860, shall upon and from and after the 1st day of January, 1869, become and be vested in the council elected under this Act, upon the like trusts and purposes for which the same was originally granted or transferred.

All property vested in existing council, vested in council elected under this Act.

41. The council elected under this Act may, with the consent of the Governor of this Colony, testified by any writing under the hand of the Colonial Secretary, sell by public sale any of the land or property in the last preceding section mentioned for any purpose of a municipal nature which the council shall deem desirable and the said Governor shall approve of: Provided that the said council shall, before applying to the said Governor for his consent, give public notice, in the manner hereinafter in the seventy-fifth section mentioned, of their intention to apply for such consent, in which notice so published shall be given a full and clear statement of the

Council may sell lands with sanction of Governor.

Notice of intention to apply for Governor's sanction to be given.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1868.

situation, nature, and extent of the land or property proposed to be sold, and of the object or purpose for which the money to arise from the sale is required: Provided, also, that when and as often as any land or property shall be sold under and according to the provisions of this section, then such land or property shall be subject to such servitudes, conditions, and provisions as shall be inserted in the transfer deed of the land or property so sold, and to none other; anything contained in the original grant of such land or property to the contrary notwithstanding: Provided, further, that the said council may, with such consent, as aforesaid, alienate any of the land or property aforesaid in exchange for other land or property, but such council shall not, except with such consent, alienate any such land or property; and the provisions of this section in regard to the notice to be given before applying for a consent to sell shall extend to any application for a consent to an exchange.

Lands may be sold subject to servitudes

Council may exchange lands.

Council may, with consent of Governor, raise loans on mortgage or by debentures.

42. The council elected under this Act may, with the consent of the Governor aforesaid, testified as aforesaid, raise by way of mortgage of any land or property vested in the said council, or by debentures or other securities charged upon such land or property, any sum of money which shall be required for any purpose of a municipal nature which the said council shall deem desirable and the said Governor shall approve of: Provided that the provisions of the last preceding section requiring the publication of notice of an intended sale shall, *mutatis mutandis*, apply to the case of an intended mortgage or issue of debentures: Provided, also, that as often as the said council shall raise money by the issue of debentures, to be charged upon any such land or property as aforesaid, the council shall execute to and in favour of any person or persons whom the said council shall propose, and the Governor aforesaid shall approve of, a mortgage of the land or property upon which it is intended that the said debentures shall be charged, to be held by such person or persons in trust for the holders of the debentures so issued, which holders shall, according to their respective amounts and interests, rank *pari passu* upon the proceeds of the land or property comprised in such mortgage.

But notice to be given of such intention.

Council to execute mortgage of property on which debentures shall be charged.

Extent to which loans may be raised.

43. The sum of money to be raised under the last preceding section in any one year, reckoned from the first day of January till the 31st of December, shall not exceed double the amount which shall be estimated as the probable sum to be yielded by the municipal rate assessed, or to be assessed, in manner hereinafter mentioned, for that year: Provided that no mortgage granted or debentures issued under the said last preceding section shall be invalidated or affected, either wholly or in part, by reason that the sum secured by such mortgage or debentures shall prove to have exceeded the sum which, under and according to the provisions of this section, ought to have been raised.

But mortgages or debentures issued not affected by limit being exceeded.

Digitised by the University of Pretoria, Library Services, 2016

44. The council may, for any such purpose as is in the forty-second section described, mortgage or charge by debentures the municipal rates of the said municipality in security for any sum of money to be borrowed by the said council: Provided that no sum of money shall be capable of being borrowed under the provisions of this section, unless with the previous consent of a majority of the ratepayers of the said municipality present at a meeting to be convened by the council upon a notice of not less than twenty-one days, to be published in the manner hereinafter in the seventy-fifth section mentioned: And provided that it shall not be lawful for the said ratepayers to sanction or for the said council to borrow upon security of the said rates any sum or sums exceeding at any one time the sum of twelve thousand pounds sterling.

Council may raise loans upon security of rates.

But only with consent of majority of ratepayers.

And not to exceed £12,000.

45. Every mortgage aforesaid or power of attorney for authorising the execution of a mortgage of any land or property under this Act shall be under the common seal of the corporation, and shall be executed by two councillors and be countersigned by the Town Clerk, and every debenture issued under this Act shall be executed in the same manner.

Mortgages, how to be executed.

46. As often as any mortgage granted or debenture issued under any of the preceding sections of this Act shall be called up, or any debenture shall become payable, it shall be lawful for the said council to raise by a fresh mortgage of the same land, property, or rates which was or were mortgaged by such mortgage, or to raise by the issue of fresh debentures, any sum not exceeding the sum then required to be paid off; and the council may raise upon debentures moneys required to pay off mortgages, and conversely may raise by mortgage moneys required to pay off debentures, so long as the same land, property, and rates which were charged by the one form of security and none other, shall be charged by the other or substituted form of security: Provided that it shall not be necessary for the council to obtain the consent of the Governor aforesaid for the granting of any mortgage or the issue of any debentures under the provisions of this section. And whereas by the Act aforesaid, No. 31 of 1860, certain borrowing powers akin to those in this Act mentioned were conferred upon the council created by the said Act: And whereas the said council, acting *bonâ fide*, and purporting to act under such powers, borrowed from the South African Mortgage and Investment Company (Limited) a sum of six thousand pounds upon mortgage of certain property of the said municipality, to wit, the property commonly called and known as the Town-hall: And whereas, owing to a failure to comply with certain of the powers or requirements of the Act aforesaid, in regard to such mortgage, doubts may be entertained whether the said mortgage is in law valid and sufficient: And whereas it is the desire of the said council and at the same time just and expedient, that all such doubts should be removed, and also that the said council should be authorised and empowered to secure

Council may enter into fresh loan to pay off loans becoming payable without obtaining Governor's sanction.

Provision for loans contracted previous to passing of this Act.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1868.

by one or more first mortgages as may be found convenient the moneys needed to pay off the principal and interest of the said mortgage to the said South African Mortgage and Investment Company (Limited): Be it enacted as follows:

Mortgage in favour of South African Loan and Investment Company declared valid.

47. The mortgage aforesaid, bearing date the 27th day of June, one thousand eight hundred and sixty-three, and executed by the council aforesaid to and in favour of the company aforesaid, for six thousand pounds, with interest, is hereby ratified and confirmed, and declared to be and to have been from the date thereof a good, valid, and sufficient mortgage.

Council may grant one or more mortgages for paying off loan of above company.

48. It shall be lawful for the council of the municipality for the time being, at any time after the taking effect of this Act, to grant one mortgage, or more than one, as may be found convenient, for securing to any person or persons who shall have lent and advanced to the said council the amount required to pay off the mortgage aforesaid, or any part thereof, the amount so advanced; which mortgage or mortgages, as the case may be, shall hypothecate the same property which was hypothecated by the mortgage aforesaid, and none other, and shall not be granted for any greater sum upon the whole than the principal sum of six thousand pounds secured by the mortgage aforesaid, together with any interest which may be due upon the said sum; and such last-mentioned mortgage shall be cancelled before the granting of the mortgage or mortages to be substituted therefor: Provided that if more mortgage bonds than one shall be granted under the provisions of this section, they shall each bear equal date, and, notwithstanding the order of time in which they may stand registered in the Deeds Registry, they shall all rank *pari passu* as if registered at the same instant: Provided, also, that the provisions of the forty-fifth and forty-sixth sections of this Act shall respectively apply to the mortgage or mortgages to be executed under the provisions of this section, and that the mortgage deed or deeds so executed shall state in some part thereof that the same is or are granted under the authority of this section of this Act.

Mortgages, where more than one shall be granted, how to rank.

Sections forty-five and forty-six to apply to such mortgages.

Municipal lands may be leased for building purposes.

49. The council may lease any portion of the lands belonging to the municipality for building purposes, for a period not exceeding thirty-three years, and for any other purpose for a period not exceeding twenty-one years: Provided that such leases shall be put up at auction to public competition, and that they shall contain a power to re-enter for non-payment of rent or non-peformance of covenants.

Mode of leasing and conditions of lease.

Mines and quarries.

50. The council may, by public sale or tender, lease the privilege of working any mines or quarries belonging to the corporation.

Lessee not to sub-let without sanction of council.

51. No lessee of any such land, or of any mines or quarries, shall assign or sub-let the same without the previous consent of the council, testified in writing by the Town Clerk.

Digitised by the University of Pretoria, Library Services, 2016

Council may purchase or hire lands, buildings, or materials for public improvements.

52. In case the said council shall require to take or use any land, with or without the buildings, if any, erected thereon, for the purpose of making, widening, or improving any street, market, or public building, or to dig out or carry away any materials belonging to any person or persons within the said municipality, or to appropriate or make use of any springs, streams, or other supplies of water belonging to any person or persons who shall not be bound in law to allow the Town Council so to do, then, and in that case, it shall be lawful for the said council, and it is hereby authorised and empowered, to treat and agree with every such person or persons for the purchase or hire, as the case may be, of any such land, buildings, materials, springs, streams, or other supplies of water, as aforesaid, and generally to enter into such contract or contracts, relative to the obtaining of any such land, buildings, materials, springs, streams, or other supplies of water, upon such terms and conditions as the said council shall judge expedient; and in case any such person or persons and the said council shall not agree upon the purchase money, or hire, or other recompense to be respectively given by the one party and accepted by the other, then the said council shall cause to be served upon such person or persons a written notice, offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state in writing to the said council, or to some person by it appointed, within fourteen days from the service of the said notice, whether he or they are willing to accept the sum therein mentioned or not; and in case the person shall refuse to accept the sum offered, or shall neglect to reply to the said notice, then the said council shall, by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said council, and for that purpose to transmit to the said council within a certain reasonable time to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration, and the said council, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said corporation by the Town Clerk for the time being, and by the person or persons claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators in case of a difference of opinion, to call in an umpire, whose decision shall be final; and the award of such arbitrators or umpire, as the case may be, shall be made a rule of the Supreme Court of this Colony or the Court of the Eastern Districts, and shall be binding and conclusive, and may be pleaded in bar to any action or proceeding at law brought for, or on account of, the same subject-matter. And in case such person as aforesaid claiming

How where parties disagree as to terms of sale or hire.

Arbitration may be referred to.

Digitised by the University of Pretoria, Library Services, 2016

No. 91.] [June 9, 1832.

Ordinance for imposing a new rate of Toll Duties at the Houwhoek Pass.

[Repealed by Ordinance No. 3, 1845.]

No. 92.—Sd. G. Lowry Cole.] [June 21, 1832.

Ordinance for enabling certain Persons to sell by Auction without a Licence.

Preamble.

WHEREAS it is expedient that the officers of the High Sheriff of this Colony, the Messenger of the Master of the Supreme Court, and the several market-masters throughout the Colony, should be permitted to sell property by auction without taking out any licence in the execution of their several offices and duties respectively: Be it therefore enacted by His Excellency the Governor and Council, that from and after the passing of this Ordinance, all officers to that effect authorised and appointed by the Sheriff, may sell by auction any property taken by the said Sheriff, or his lawful deputy, in execution of any legal process; and the messenger, or other person appointed by the Master of the Supreme Court, may sell by auction any property under the order and direction of the said Master in the execution of his office; and all market-masters now appointed, or hereafter to be appointed, may sell by auction, any goods, wares, and merchandise, in the due execution of the office of market-master, without taking out any licence whatever; and all such persons so authorised to sell by auction as aforesaid, save and except the market-masters aforesaid, shall comply with such regulations as are provided in the tenth section of the Ordinance [1] No. 31, and in default thereof shall be liable to the payment of the fine therein mentioned.

Auction sales by sheriff's officers, master's messengers and market-masters without a licence.

2. And be it further enacted that no officer, or other person hereinbefore authorised to sell by auction without a licence, shall be liable to any action or prosecution for having sold any property in the due execution of his office without a licence, before the passing of this Ordinance, any law or usage to the contrary notwithstanding.

Non-liability of such persons to prosecutions for former sales.

No. 93.] [June 26, 1832.

Ordinance for granting Licences to sell, and for the better regulation of the sale of Wines, Spirituous Liquors, Malt Liquors, Ginger Beer, and Spruce Beer.

[Repealed by Ordinance No. 29, 1846; *vide* Ordinance No. 9, 1851.]

[1] Ordinance No. 31 is repealed by Ordinance 6, 1844.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1868.

How where owner of property neglects or refuses to name arbitrator.

such recompense or compensation shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said council, and it is hereby authorised to lodge in some joint-stock bank in the Colony the sum of money offered by it as aforesaid, in its first notice in this section mentioned, for or on account, and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said council, upon so lodging the said sum, shall be authorised and entitled to take or use the said land, buildings, materials, springs, streams, or other supplies of water in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been an order by the arbitrators or umpire under the provisions of this section, and as if all acts by law required for vesting in the said council a sufficient title to the use of, or property in, the land, buildings, materials, springs, streams or other supplies of water aforesaid, had been duly done and performed.

How if owner of property be absent or not discoverable.

53. In case the said council shall require to take or use any of the land, with or without the buildings, if any, erected thereon, or to dig or carry away any of the materials, or to appropriate or make use of any springs, streams, or other supplies of water, in the last preceding section mentioned, of which the owner or owners shall be absent from the Colony, and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said council, and it is hereby authorised, to cause a notice to be inserted in the *Government Gazette*, and one or more newspapers published in the town of Port Elizabeth, for four successive weeks, describing, as accurately as may be, the materials, land, buildings, springs, streams, or other supplies of water which are required to be taken or used, and calling by name on the owner or owners of the said land, buildings, materials, springs, streams, or other supplies of water, if known, to take notice that the said council is ready and willing to treat with the owner or owners, or any persons duly authorised by him or them, for the recompense or compensation to be made or paid by the said council for the said land, buildings, materials, springs, streams, or other supplies of water, and requiring such owner or owners to apply within six months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed; and if the owner or owners shall so apply within the said period, then the like proceedings in regard to the agreeing for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken, which are prescribed in the last preceding section, precisely as if the said owner or owners had from the first been in actual occupation; and in case such owner or owners shall not apply to the said council within the said period,

Digitised by the University of Pretoria, Library Services, 2016

then it shall be lawful for the said council to appoint some competent person, to be approved of by the Civil Commissioner of the division, to appraise the value of the land, buildings, materials, springs, streams, or other supplies of water required, and such person shall make oath before some Justice of the Peace, that he hath to the best of his judgment, fairly appraised such value; and, thereupon it shall and may be lawful for the said council to pay whatever sum such person shall have valued the land, buildings, materials, springs, streams, or other supplies of water in question at, into the Guardian's Fund, to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to the persons absent from the Colony; and the said council, upon so paying the said sum, shall be authorised and entitled to take or to use the land, buildings, materials, springs, streams, or other supplies of water in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of, or property in, the land, buildings, materials, springs, streams, or other supplies of water aforesaid, had been duly done and performed.

Value to be paid into Guardian's Fund.

54. All acts hereby authorised or required to be done by the council, and all questions that may come before them, shall, except as hereinafter excepted, be done and decided by the majority of councillors who shall be present at any meeting at which not less than seven members of the council shall attend: Provided that nothing herein contained shall extend to alter or affect the provisions of the thirty-sixth and sixty-fourth sections of this Act.

All questions to be decided by majority of votes.

Sections thirty-six and sixty-four not affected.

55. An ordinary meeting of the council shall take place at least once in every week, and all such ordinary meetings shall be open to the public.

Ordinary meetings of council.

56. The Mayor may at any time call a special meeting of the council; provided that he cause a notice of the time and place of such intended meeting, specifying the object thereof, and signed by him or by the Town Clerk, to be notified to every councillor, either personally or at his usual place of abode, twenty-four hours at least before such meeting.

Special meetings.

57. At every meeting of the council, the Mayor, if present, shall preside; in case of his absence, the councillors present shall elect a chairman from among themselves.

Who to preside.

58. In all cases of an equality of votes, the Mayor or chairman shall have a second or casting vote.

Chairman to have casting vote.

59. Minutes of the proceedings of every meeting shall be entered in a book to be kept for that purpose, and shall be read at the next succeeding meeting, and signed by the person presiding thereat.

Minutes of proceedings to be kept.

60. It shall be lawful for the council to appoint, out of their own body, such and so many committees, either of a general or

Appointment of committees.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1868.

special nature, and consisting of such number of members as may seem fit, for any purpose which, in the judgment of the council, would be better managed by means of a committee: Provided, always, that the proceedings of every such committee shall be submitted to the council for its approval. The Mayor to be *ex-officio* member of all such committees.

Mayor ex-officio a member.

Appointment and removal of officers.

61. It shall be lawful for the council, from time to time, to appoint fit persons (not being members of the council) to be Town Clerk and Treasurer, and also to appoint such other officers as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so to be appointed such salaries as the council shall deem reasonable; and, unless it shall be otherwise stipulated in the contract of service, to remove all such officers, upon a notice of not less than three months, or, in case of misconduct, without any notice.

Appointment of street-keepers, policemen, &c.

62. The said council are hereby empowered, from time to time, to appoint and employ such number of able-bodied street-keepers and policemen as shall be required for the protection of the inhabitants and property, streets and public places, within the municipality, by day and by night; and to provide all such street-keepers and policemen with such clothing, arms, ammunition, and weapons, and shall appoint to them such duties and hours or times of duty, and shall also make such rules, orders, and regulations, relative to such street-keepers and policemen and their duties, as shall be deemed fit.

Landlord's rate to be levied.

63. (1) For the purpose of raising the means for making new roads, streets, market-places, bridges, drains, sewers, watercourses, reservoirs, aqueducts, and other waterworks, for the purchase of such lands or erection of such buildings as may be required in or about the execution of the powers hereby given to the council, for the purchase of water-pipes, fire-engines, and appurtenances, and for the effecting of all other permanent public works and improvements within the municipality, the council shall have the power, as often as shall be deemed necessary, to make and levy, in manner hereinafter provided, a rate or assessment upon all immovable property within the limits of the municipality, such rate or assessment to be called the "landlords' rate," and to be made and levied on an estimate of the value of such property, to be made as hereinafter provided.

Market-dues, water rates, pound fees.

64. (2) For the purpose of raising the means for effecting the repairs of all such works as the council are hereby empowered to have made, for the maintaining of waterworks, fire-engines, police establishments, markets, and pounds, for the payment of salaries and all other ordinary current expenses required to be borne by the municipality, the council shall have power to impose, levy, and recover all such market dues, water rates, and pound fees as

[1] See also Act 25, 1873, § 20.
[2] See also Act 25, 1895.

Digitised by the University of Pretoria, Library Services, 2016

shall be deemed necessary and reasonable, and shall be authorised by any such municipal regulations as aforesaid; and shall also have the power, as often as shall be deemed necessary to make and levy, in manner hereinafter provided, a rate or assessment upon all immovable property within the municipality, such rate or assessment to be called the "tenants' rate," and to be made and levied on the annual value or rental of such property, to be ascertained in manner hereinafter provided: Provided that no such rate, whether "landlords' rate" or "tenants' rate" shall be made or levied by the council unless there shall be present at the meeting at which such rate shall be imposed at least fourteen members of the said council; nor on any immovable property belonging to Her Majesty the Queen, nor on public prisons or police stations, nor on any buildings appropriated to public worship, nor upon burial-grounds, nor upon any buildings solely appropriated to the purposes of education; and provided, also, that no tenants' rate or assessment shall be imposed upon unoccupied land.

Tenants' rate.

No rates to be levied unless fourteen members shall be present.

Certain property not rateable.

65. In order to ascertain the value of the rateable property within the municipality for the purpose of assessing the landlords' rate, the council shall, on or before the 31st day of January next, and thereafter on or before the 31st day of January in every third year, cause a valuation to be made of all such property, which valuation shall lie open for public inspection at the office of the council for a space of not less than one calendar month, of which due notice shall be given for not less than one month in one or more of the newspapers published in the town of Port Elizabeth.

Valuation of property for landlords' rate.

66. At any time within one calendar month from and exclusive of the day of the publication of such notice as aforesaid, it shall be lawful for any person who shall think himself aggrieved thereby, to appeal, in writing, against the same to the council, who shall hold a meeting or meetings, at which not less than five members shall be present, to hear all objections which may be urged against any valuation by any owner or occupier or other person on his behalf, and inquire into the merits of such objections, and shall confirm or correct any valuation objected to as truth and justice shall require: Provided that any such meeting may, if necessary, be adjourned from time to time upon the application of any person objecting who shall show reasonable ground for not being ready with his proofs, or for the purpose of obtaining further evidence in regard to any case which shall be partly heard. The decision of the council upon any objection to any valuation shall be final and conclusive, and shall not be capable of being reviewed or revised by any Court or proceeding whatsoever: Provided that notice of the holding of any meeting as aforesaid shall be published in one or more of the Port Elizabeth newspapers, and posted in some conspicuous place upon or near the Town-hall, fourteen days before the day appointed therein for the holding of any such meeting.

Appeal against valuation.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1868.

How tenants' rate to be assessed.

67. In order to ascertain the annual value or rental of the rateable property within the municipality for the purpose of assessing the tenants' rate, and also to procure the other information required under the provisions of this section, the council shall, in the month of January in each year, cause a printed schedule to be left at the house of every ratepayer, to be filled up by the occupier, under separate and distinct heads, setting forth the names of the proprietor, the occupier, and all inmates, also the annual rental, or, if no rent be paid, the estimated annual value of the property, and such other particulars as the council may, by any such municipal regulation as aforesaid, require; from which schedules, duly signed by the ratepayers, and to be returned or delivered by them, without demand, to the councillors of their respective wards, within seven days from the date of their being left as aforesaid, the council shall cause a roll of assessment to be made within one month from the said date, upon which the tenants' rate, or rates, of and for the current year shall be levied; and when, in any ward, any schedule shall not have been returned, or where any of the schedules shall appear to the council to misrepresent the value of the properties, or to be in any other respect incorrect, it shall be competent for the council to cite, by due notice, all persons whom they shall think necessary, to appear before them on a certain day, not earlier than three clear days from the service of such notice, in order to afford any evidence or information in regard to any property or other matter relative to any schedule which shall not have been returned by the ratepayer, or of which the correctness of the return made shall be questioned or disputed; and if such persons shall then neglect to attend for the aforesaid purpose, the council shall fix such annual value on all such properties as may appear just and reasonable, and the valuation so fixed shall be binding on all concerned, and be incapable of being appealed against: And provided that the roll of assessment aforesaid shall be open for public inspection at the office of the council for the space of one month; and the council shall give notice, in one or more of the newspapers of the municipality, that the same lies open for inspection; and the provisions of the sixty-sixth section of this Act shall apply to the hearing and deciding upon objections against such roll.

Assessment roll to be open for public inspection.

Estimates to be published. More rates than one may be assessed.

68. The council shall annually, in the month of February, make an estimate of the amount of money required for municipal purposes, and shall assess the landlords' rate and tenants' rate accordingly and give public notice thereof in one or more of the newspapers of the municipality, and shall in like manner, if any further or unforeseen expenditure shall become necessary during the same year, make a supplementary estimate thereof, and assess a second or further landlords' or tenants' rate, or landlords' rate and tenants' rate, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council in

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1868.

any one year to levy any landlords' rate or rates amounting in the aggregate to more than one penny in the pound on the value of the immovable property subject to such rates, nor any tenants' rate or rates amounting in the aggregate to more than sixpence in the pound on the annual value or rental of the immovable property assessed, without obtaining the consent of the majority of the ratepayers present and entitled to vote, according to the eighth section of this Act at a public meeting to be called for the purpose of considering such rate or rates; of the object and the time and place of holding such meeting, at least seven days' notice shall be given by publication in one or more of the Port Elizabeth newspapers: Provided, also, that the landlords' and tenants' rate so to be assessed and levied as aforesaid shall always bear the relative proportion of one penny to sixpence; and provided that correct accounts shall be kept, showing separately the mode in which the landlords' rate and the tenants' rate shall have been respectively expended; and all rates assessed under the provisions of this Act shall be and be deemed to be a charge upon the property, and recoverable against the present or any future owner or occupier thereof.

But under certain limitations.

Separate accounts of expenditure to be kept.

Rates to be charged on property.

69. As soon as any rate or rates shall have been assessed as aforesaid, the same shall be payable, and the council shall appoint, under the corporate seal, fit persons to collect such rate or rates, which shall, on non-payment thereof, be recoverable at the suit of any such collector, by action in the Court of the Resident Magistrate of Port Elizabeth, or in case any person liable for any rate shall reside within the district of Port Elizabeth, then either in the Court of the Resident Magistrate of Port Elizabeth, 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 district of Port Elizabeth shall be proceeded against in the Court of the Resident Magistrate of Port Elizabeth, 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.

Collection and recovery of rates.

70. In case by reason of the non-payment of any rate, whether landlords' or tenants', it shall be necessary to sue for the same as in the last preceding section mentioned, the council may, through its collector, and it is hereby authorised, to sue the owner or the occupier, either separately, or both of them in one and the same action, each for the whole rate: Provided, however, that the occupier of any property who shall not at the same time be the owner thereof, and who shall not have entered into such occupation in pursuance of a contract or agreement for becoming the owner of the same, shall, in the absence of any written agreement to the contrary, be entitled to retain or recover from such owner the amount of any landlords' rate as aforesaid which such occupier shall have paid; and the owner of any such property shall in like

Owner or occupier may be sued together or separately.

Owner or occupier may recover, one from the other, landlords' or tenants' rate.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1868.

manner be entitled to recover from the tenant thereof the amount of any tenants' rate levied during the occupancy of such tenant, which such owner may have paid.

Statement of rates in arrear to be published annually.

71. The council shall, once in every year, publish in one or more of the newspapers of the municipality a statement of every sum in arrear, and of the property in respect of which the same is due.

Council may impose tolls.

72. It shall be lawful for the council, by any such municipal regulation as aforesaid, to impose such toll or dues as may be reasonable upon all persons making use of any road, bridge, or market place within the municipality, which the council is hereby empowered to make and maintain; and in case of the non-payment of such tolls or dues, to recover the same by legal process, or in such other manner as may by the municipal regulations be in that behalf provided.

Who exempt from tolls.

73. No toll shall be payable by any officer or soldier, or member of any volunteer corps, being in proper staff or regimental or military uniform, dress or undress, and on duty, or by any judicial or civil officer, mail-carrier, or other Government servant, whilst travelling on public duty; and, further, that no more than one toll shall be payable in any one day, to be computed from twelve o'clock on one night until twelve o'clock on the next succeeding night, for or in respect of the same vehicle or animal.

Treasurer to furnish books for inspection of auditors.

74. The Treasurer of the said municipality shall, in books to be kept for that purpose, enter the accounts of all sums of money by him received and paid, and of the several matters in respect whereof such sums shall have been received and paid; all such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance sheet thereof, shall yearly, at such times as the council shall appoint, be handed by him to the auditors, and to such members of the council as the Mayor shall name, for the purpose of being examined and audited; and such abstract or balance sheet, when found correct, shall be signed by the auditors, and shall be forthwith published by the Treasurer in one or more of the newspapers published within the municipality.

Annual balance sheet to be published

How notices to be published.

75. Every notice calling a public meeting of the ratepayers, and every notice or other document or thing required by this Act to be published, shall be so published by causing a copy thereof to be inserted in one or more of the newspapers of the municipality, and a copy of the same shall also be affixed in some conspicuous place upon or near the Town-hall.

How fines and penalties to be prosecuted for.

76. All fines or penalties imposed by this Act, or by any municipal regulations made by virtue thereof, shall be prosecuted for in any competent Court by the council, by the name of "The Municipal Council of Port Elizabeth," and shall, when recovered, be paid to the Treasurer of the municipality for municipal purposes: Provided that no such prosecution as aforesaid shall be commenced

Digitised by the University of Pretoria, Library Services, 2016

later than three months from and after the date of the act or omission upon which such prosecution shall be grounded.

Storing of gunpowder, &c.

77. That the storing of gunpowder, or other explosive material, shall not be permitted, except in such places as may be approved of and licensed by the Town Council for that purpose.

Council may close burial-grounds.

78. That so soon as any burial-ground within the limits of the municipality, or portion thereof, shall become so crowded as to be, in the opinion of two-thirds of the council, dangerous to the public health, the council shall be empowered to give six months' notice that burials therein shall cease, and that, after the expiration of the said term of six months, any person or persons causing any interment to be made therein, shall be liable to pay a fine not exceeding fifty pounds, to be recovered in any competent Court.

Effect of Act upon existing contracts, agreements, &c.

79. All lawful contracts, engagements, debts and demands whatsoever, by or against the council in existence at the time of the taking effect of this Act, shall, upon and from and after the 1st day of January, 1869, be taken and judged of, and be of the same force and effect for or against the council created by this Act, as if such council had been elected under the Act aforesaid, No. 31 of 1860.

Mayor and councillors substituted for municipal commissioners in management of Provincial Hospital and Grey Institute.

80. For the purpose of the second section of the Act No. 5, 1856, entitled "An Act for regulating the Provincial Hospital for Port Elizabeth," and of the second section of the Act No. 6, 1856, entitled "An Act for regulating the Public Schools of Port Elizabeth upon the Grey Foundation," and of any other former Act or Ordinance by which any office, duty, power, or function has been conferred or imposed upon the municipal commissioners of Port Elizabeth for the time being, the Mayor and councillors created by the Act aforesaid, No. 31 of 1860, and after their retirement from office, then the Mayor and councillors created by this Act, shall be deemed and taken to be the persons meant and intended, precisely as if the words "Mayor and councillors" were, in the said Acts, substituted for the word "commissioners."

No. 15—1868.] [Sept. 2, 1868.

ACT

For the Encouragement of the Breeding of Horses.

Preamble.

WHEREAS by two several deeds, bearing date, respectively, the 24th day of February, 1863, and the 30th day of November of the same year, the Lieut-Governor of British Kaffraria did grant in freehold to the trustees of the King William's Town Grand Stand and Race-course Company two pieces of land, on certain conditions and for certain purposes: And whereas by a certain other deed, bearing date the 6th day of January, 1866, the Governor's Deputy

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1868.

of British Kaffraria did grant in freehold to the trustees of the King William's Town Stud Farm Company a certain other piece of land, on certain other conditions, and for certain other purposes: And whereas it appears that the objects of the said grants can be better attained by the transfer, with the consent of the hereinbefore mentioned companies, of the said lands to other parties: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor may under certain conditions, grant certain lands to the King William's Town Stock and Produce Company.

1. It shall be lawful for the Governor, provided that the trustees and shareholders in the existing companies consent thereto, to grant in freehold the three pieces of land in the preamble to this Act mentioned to the trustees of the King William's Town Stock and Produce Company (Limited), on the following conditions, that is to say: So much of the two pieces of land first hereinbefore mentioned as has heretofore been used as a public race-course shall be open to the public for use in like manner for such and so many days, not exceeding thirty days, in each year, as the Governor shall from time to time appoint: and the piece of land last hereinbefore mentioned shall be used for the purpose of breeding and rearing of horses; and on breach of any of the said conditions, the land to which the same shall apply with all buildings that may have been erected thereon, shall be forfeited to Her Majesty for the use of the Colony; but nothing herein contained shall be construed to prevent the said trustees from using the said lands, or any part of the same, for such purposes, in addition to the purposes hereinbefore mentioned, as may not be injurious to such last-mentioned purposes.

Previous grants cancelled on issue of such grant.

2. When and so soon as the lands in the preceding section mentioned shall have been granted as aforesaid, the grants previously made by the Lieutenant-Governor and the Governor's Deputy of British Kaffraria of the same, respectively, shall be cancelled.

Governor may grant lease of land on Thomas River to Company.

3. It shall be lawful for the Governor, if he shall see fit, to grant to the said last-mentioned trustees a piece of land on the Thomas River, in the division of Queen's Town, not exceeding in extent five thousand acres, on a lease for the term of twenty-one years, and on condition of payment of an annual rent of twenty-five pounds sterling, for the purpose of enabling the said trustees to form and maintain a depot for the rearing of young horses; and at the expiration of the said term of twenty-one years it shall be lawful for the Governor, if he shall see fit, to grant the said land to the said trustees, subject to such reasonable annual quitrent as he may see fit to impose, on payment by the said trustees of the sum of fifteen hundred pounds.

And on expiration of lease may grant land on quitrent.

Land to revert to Crown if conditions be not complied with.

4. If, during the said term of twenty-one years, the land in the preceding section mentioned shall cease to be used for the rearing of horses; or if, during the said term, the conditions of the lease

Digitised by the University of Pretoria, Library Services, 2016

shall be violated; or if, at the expiration of the said term, the said trustees shall fail or refuse to pay the sum of fifteen hundred pounds, then, and in either such case, such land, together with any buildings that may have been erected thereon, and any improvements that may have been made of the same, shall revert to Her Majesty for the use of the Colony.

No. 16—1868.] [Sept. 2, 1868.

ACT

For Enabling the Consistory of the Dutch Reformed Church at Adelaide to transfer to the Commissioners of the Municipality of Adelaide certain Immovable Property, and for other purposes connected with such transfer.

Preamble.

WHEREAS His Honour Colonel John Hare, C.B. and K.H., the then Lieut.-Governor of the Eastern Districts of the Colony, did, by grant bearing date the 31st of May, 1842, grant in freehold, to the officiating minister, elders and deacons of the Dutch Reformed Church at the Koonap River, a piece of land containing nine hundred and eighteen morgen and four hundred and five square roods, upon condition that the said land should be used exclusively for church purposes: And whereas His Excellency Sir George Grey, K.C.B., the then Governor of this Colony, did, by grant bearing date the 7th of June, 1856, grant in freehold to the churchwardens of the Dutch Reformed Church at Glen Lynden, three pieces of land, measuring together three thousand three hundred and eighty-six morgen and three hundred square roods, subject to a certain right of commonage, in the said last-mentioned grant set forth, in favour of the two congregations or worshipping societies in the said grant described: And whereas the grantees in the aforesaid grants mentioned, though therein differently designated, were and are the same body, which body is now called and known as the Consistory of the Dutch Reformed Church in Adelaide: And whereas the village of Adelaide, from which the Dutch Reformed Church formerly known as that at the Koonap River, and more recently as that at Glen Lynden, takes its name, was established upon part of the lands aforesaid, and in the year 1861 created a municipality: And whereas, on the 8th of February, 1862, the consistory aforesaid, by the name of the minister, elders, and deacons of the Dutch Reformed Church in Adelaide, entered into an agreement with the commissioners of the municipality of Adelaide, whereby the said consistory agreed to transfer to the said municipality the rest, residue, or remainder of the church lands vested in the said consistory by the respective

Digitised by the University of Pretoria, Library Services, 2016

No. 94.] [June 27, 1832.

Ordinance for fixing the Quantities of Wines and other Liquors allowed to be sold under Licence, and the Stamp Duties to be paid for Licences;—and for regulating certain matters in regard to the making and selling of such Liquors.

[Repealed by Ordinance No. 29, 1846; *vide* Ordinance No. 9, 1851.]

No. 95.] [August 7, 1832.

Ordinance for removing the restrictions in bringing Cape Wines to Market.

[Not printed.]

No. 96.] [Dec. 20, 1832.

Ordinance for altering and amending the Ordinance No. 94.

[Repealed in the repeal of Ordinance No. 94 by Ordinance No. 29, 1846; *vide* Ordinance No. 9, 1851.]

No. 97.] [February 14, 1833.

Ordinance for enabling certain persons having respectively the just, lawful, and undisputed Right to certain Lands and Houses, to procure the same to be enregistered as their Property in the Land Register.

[Repealed by Act 28, 1881.]

No. 98.] [May 30, 1833.

Ordinance for facilitating the apprehension and regulating the mode of conveyance of Deserters from His Majesty's Land Forces within this Colony to their respective Corps; and for the more prompt payment of Rewards and Expenses consequent thereupon.

[Repealed by Act No. 1, 1870.]

No. 99.] [June 6, 1833.

Ordinance for explaining and amending the Laws relative to Commandos.

[Disallowed.]

No. 100.—Sd. T. F. Wade.] [November 4, 1833.

Ordinance for the Prevention of the Discharge of Fire-arms within certain limits in Table Bay. (1)

Preamble.

WHEREAS it is expedient that the persons engaged in the fisheries in Table Bay should have every facility afforded them of pursuing their avocations free from molestation; and whereas they

[1] See also § 27, Act 16, 1857.

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1868.

grants aforesaid upon certain conditions and stipulations in the said agreement mentioned, as by the said agreement, of which a copy is set forth in the schedule to this Act, reference being thereunto had, will appear: And whereas doubts exist whether the said agreement can be carried out without the authority of Parliament: And whereas it is expedient to grant such authority, and also to provide that the transfer to be passed by the consistory aforesaid to the municipal commissioners aforesaid, not being a transfer in pursuance of a sale or exchange, but merely a transfer from one set of trustees for public purposes to another set of trustees for public purposes, should not be chargeable with transfer duty: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Consistory to transfer certain lands to commissioners of municipality.

1. It shall and may be lawful for the consistory for the time being of the Dutch Reformed Church in Adelaide, and it is hereby empowered and required, to make transfer to the commissioners for the time being of the municipality of Adelaide of all and singular the erven and lands which, under and by virtue of the agreement in the schedule to this Act set forth, the said consistory is to transfer to the said commissioners, and lawful, also, for the commissioners for the time being of the said municipality, and they are hereby required, to re-transfer to the consistory aforesaid for the time being all such lands as, under and by virtue of the said agreement, the said commissioners are to re-transfer to the said consistory: Provided that it shall be lawful for the said consistory, in case the said consistory and the said commissioners shall so agree, to reserve from and out of the transfer to be passed by the said consistory the lands lastmentioned in the said agreement, or any of them, instead of first transferring the same and afterwards obtaining re-transfer thereof.

And commissioners to re-transfer to consistory.

Unless otherwise agreed upon.

Who to execute power of attorney to effect transfer.

2. Any power of attorney or other instrument required for the passing of transfer from the consistory aforesaid to the commissioners aforesaid shall be signed on behalf of the consistory by the officiating minister for the time being of the church aforesaid, together with two other members for the time being of the said consistory: and any power of attorney or other instrument required for the passing of transfer from the commissioners aforesaid to the consistory aforesaid shall be signed on behalf of such commissioners by two of the commissioners for the time being, certified by the Resident Magistrate of the district of Fort Beaufort to be such commissioners.

Consistory competent to give transfer.

3. The consistory for the time being of the Dutch Reformed Church in Adelaide shall be competent, by that name, to transfer the land hereby authorised to be transferred, notwithstanding that the grants aforesaid were made to such consistory by other names or designations.

Transfer duty not chargeable.

4. No transfer made under the authority of this Act by the

Digitised by the University of Pretoria, Library Services, 2016

consistory of the Dutch Reformed Church of Adelaide to the commissioners of the municipality of Adelaide shall be subject to the payment of transfer duty.

Servitudes not affected.

5. Nothing in this Act, or in any transfer effected under this Act, shall extend to destroy or affect any condition or stipulation, whether by way of servitude or otherwise, to which any land comprised in any such transfer would have been liable in case this Act had not been passed, or such transfer had not been made, save and except only the condition that such land should be used exclusively for church purposes.

SCHEDULE.

Agreement between the undersigned Minister, Elders, and Deacons of the Dutch Reformed Church in Adelaide and the Commissioners of the same.

1. Churchwardens will cause to be sold such a number of the erven now surveyed as they may need in aid of their funds to complete their new church.

2. Churchwardens will immediately after the sale, with consent of Government, transfer to the municipality of Adelaide the rest of the ground granted to them for church purposes.

3. Churchwardens will transfer all such erven as they may not need for church purposes to the municipality, in order, by the proceeds of the sale of said erven, to enable them to improve and repair the water furrow.

4. The commissioners of the municipality, on their part engage to carry out the original agreement between the Rev. Mr. Welsh and the originators of the town of Adelaide, viz.:—that a portion of the grazing ground adjoining the property of Mr. F. W. Pohl, equal in extent to the original glebe ground now to be ceded to the municipality, be transferred to the church as glebe ground, the church bearing all expense of survey.

(Signed) G. W. STEGMANN, Minister,
on behalf of the Elders and Deacons of the Dutch Reformed Church at Adelaide.
(Signed) H. SPARKS, Chairman of Adelaide Municipality.

Adelaide, 8th February, 1862.

No. 17—1868.] [Sept. 2, 1868.

An Act to Continue to the end of 1869 the Act No. 10 of 1864. [Expired.]

No. 18—1868.] [Sept. 2, 1868

An Act to Provide for the Management of the Docks in Table Bay.

[Repealed by Act 22 of 1872.]

Digitised by the University of Pretoria, Library Services, 2016

No. 22—1868.

No. 19—1868.] [Sept. 2, 1868.

An Act to Amend Act No. 8 of 1855, entitled "An Act to Amend Ordinance No. 6 of 1853, entitled 'An Ordinance for the General Management and Regulation of the Customs in the Colony of the Cape of Good Hope.'"

[Repealed by Act 18, 1876.]

No. 20—1868.] [Sept. 2, 1868.

An Act to Repeal Act No. 5 of 1867, and to make provision relating to Contagious and Infectious Diseases affecting Cattle, Sheep, or other Domestic Animals.

[Repealed by Act 27, 1893.]

No. 21—1868.] [Sept. 2, 1868.

An Act for further facilitating the Naturalization of certain Aliens.

[Repealed by Act 2, 1883.]

No. 22—1868.] [Sept. 2, 1868.

ACT

To Remove Doubts as to the intent of the Act No. 19 of 1867.

Preamble.

WHEREAS doubts have arisen in respect to the true meaning and intent of the Act No. 19 of the year 1867, entitled "Act to amend Act No. 11 of 1866-'67," and it is expedient to remove the same: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Rights of Master to demand repayment of loans to Colonial Government not affected.

Nothing in the said Act No. 19 of the year 1867 contained shall be construed to diminish or impair the rights possessed before the passing of the Act No. 11 of the year 1866-'67, by the Master of the Supreme Court of demanding the repayment, at any time and at all times, when required, of any sums that may have been advanced by the said Master on loan to the Colonial Government, out of the moneys entrusted to him as custodian of the Guardians' Fund.

No. 23—1868.] [Sept. 2, 1868.

An Act to Amend the Act No. 12 of the year 1867.

[Lapsed.]

Digitised by the University of Pretoria, Library Services, 2016

No. 24.—1868.] [Sept. 2, 1868.

ACT

To Relax the Conditions of Grants of Crown Land in certain Divisions of the Colony. (1)

Preamble.

WHEREAS in times past grants of land in certain of the Eastern divisions of the Colony have been made by the Crown to private persons, on special conditions that they shall personally reside on such land, and be further liable to provide for the defence thereof, in manner set forth in the titles issued for the same: And whereas it does not appear to be necessary any longer to keep in force such special conditions, which have been found in certain respects irksome and vexatious: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Payment of quitrent.

1. The quitrent payable in respect to lands heretofore granted on condition of personal occupation by the owners thereof shall continue to be payable for the same, and the quitrent to be paid for all lands to be hereafter granted in any of the divisions mentioned in the thirteenth section of the Act No. 2 of 1860, or in the divisions of King William's (2) Town and East London, shall be fixed in manner provided by the said Act No. 2 of 1860.

Condition of personal occupation cancelled.

2. From the taking effect of this Act any special conditions which shall have been inscribed in any grant of land in this Colony in respect to the personal residence on such land of the owner thereof, or in respect to provision for the defence of the same, shall be held to be cancelled.

No. 25—1868.] [Sept, 2, 1868.

An Act to Prevent the Spread of Contagious Diseases of the Military and Naval Stations of this Colony.

[Repealed by Act 2, 1872.]

No. 26—1868.] [Sept. 2, 1868.

An Act for Raising the further Sum of Thirty Thousand Pounds for the Completion of the Dock in Table Bay.

[Spent.]

---

[1] See § 13 Sched. to Act 2, 1860.
[2] See § 1 Act 8, 1868.

Digitised by the University of Pretoria, Library Services, 2016

No. 27—1868.] [Sept. 2, 1868.

ACT

For the Better Protection of Her Majesty's Subjects on the Northern Frontier of this Colony. (1)

Preamble.

WHEREAS it is expedient that better provision should be made for the peace and good order of that part of the Northern Border of this Colony comprising certain portions of the divisions of Namaqualand, Calvinia, Fraserburg, Victoria West, and Hope Town: Be it hereby enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Formation of new district on northern border sanctioned.

1. It shall be lawful for the Governor, by proclamation to be by him issued and published in the *Government Gazette*, to define, and from time to time thereafter, if it shall seem to him fit, by a like proclamation, in like manner issued and published, to alter the limits of a district to comprise the whole or such portions of the divisions of Namaqualand, Calvinia, Fraserburg, Victoria West, and Hope Town, or of any of such divisions, as to the Governor shall seem fit.

Governor may establish court for such district.

2. It shall be lawful for the Governor to establish within such district such Court as hereinafter is described.

Governor may appoint officer to exercise jurisdiction within such district and preside in such court.

3. It shall be lawful for the Governor to appoint an officer to exercise within such district as aforesaid the jurisdiction hereinafter described, and to preside in such Court as is hereinbefore mentioned and hereinafter described, and such appointment shall be under the great seal of this Colony; and it shall be lawful for the Governor, when and so often as, by reason of the death, sickness, absence, or other incapacity of such officer, it shall appear to him to be necessary or expedient so to do, to appoint some fit and proper person to act as and in the stead of such officer within such district as aforesaid; and all deeds, acts, matters, and things which shall be done and performed by or before any person so appointed to act as aforesaid, under and by virtue of such his appointment, shall be as legal, valid, and effectual, to all intents and purposes, as if the same had been done and performed by or before such officer as aforesaid, instead of whom such person shall have been so appointed to act.

Oath to be taken by officer and recorded.

4. Every person who shall in manner aforesaid be appointed to be such officer as aforesaid, or to act as or in the stead of such officer, shall, before exercising any of the functions of his office, take the oath of office set forth in the schedule hereunto annexed, marked A, before the Chief Justice or any of the Judges of the Supreme Court, or before any Justice of the Peace for any of the divisions comprising any part of the district for or in which such person is appointed to act, who are hereby empowered and required

[1] See Acts 7, 1874; 29, 1868; 14, 1880.

Digitised by the University of Pretoria, Library Services, 2016

to administer the same; and every such person shall, so soon as he shall have duly taken the oaths aforesaid, cause such oaths to be recorded, and shall subscribe the same in the record book of the proceedings of his Court or of the Court in which he shall so have been appointed to act, as the case may be.

Nature and proceedings of court defined.

5. The Court to be established under the provisions of this Act shall be a Criminal Court of Record, and the pleadings and proceedings thereof shall be carried on, and the sentences, decrees, judgments, and orders thereof pronounced and declared, in open Court, and not otherwise; and the several pleadings and proceedings of the said Court shall be in the English language, and the witnesses shall in all cases deliver their evidence *vivâ voce* and in open Court.

Jurisdiction, powers, and duties of officer.

6. (1) Such officer as aforesaid shall have jurisdiction, without appeal or review, in all cases of crimes and offences wherein any person may be accused of any crime or offence not punishable by death, transportation, or banishment from this Colony; but it shall not be lawful for such officer to punish any offender in any higher or more severe manner than by a fine not exceeding twenty pounds, or 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 thirty-six, or by such imprisonment and such lashes, provided that in such last case the number of lashes shall not exceed twenty-four, and the period of imprisonment shall not exceed three months; and every prisoner sentenced to imprisonment shall be forthwith, or so soon as may be, sent to the gaol which shall happen to be nearest to or most easily accessible from the place where such prisoner shall have been tried; and there shall be forwarded along with such prisoner a copy of the sentence, which copy shall be signed by such officer as aforesaid, and may be supplemented by any remarks which such officer shall see fit to make upon the case, and shall be directed to the Resident Magistrate of the division within which such gaol shall be situate, who shall issue his warrant to the gaoler of such gaol to receive such prisoner and him safely to keep and deal with pursuant to the sentence passed upon him, in like manner as if such sentence were a lawful sentence to the same effect pronounced by such Resident Magistrate himself in his own Court; and such gaoler shall act in conformity with such warrant in like manner as if the same were issued by such Resident Magistrate in the ordinary performance of his duties as such.

Record of proceedings to be taken.

7. In the trial of all cases by such officer as aforesaid, the proceedings shall be taken down in writing, and duly recorded; including in such proceedings the charge or complaint, the plea of the prisoner, the evidence in the case, together with any statement

[1] See also Act 7, 1874.

Digitised by the University of Pretoria, Library Services, 2016

No. 27—1868.

the prisoner shall make on the case, the judgment, and if the judgment be a judgment of guilty, then also the sentence of the Court; and, further, there shall be entered in the record a statement of the manner in which such sentence shall have been executed by such officer, or those under his control, or what steps shall have been taken by him or them towards the execution of such sentence.

Females not liable to corporal punishment or to labour in public place.

8. It shall not be lawful for such officer to sentence any female to corporal punishment, or to hard labour on any road, street, or public place.

Accused person may make defence by counsel, attorney or agent.

9. Every person upon trial on any criminal charge in the Court of such officer as aforesaid shall be entitled to make his defence by counsel or by attorney, or by any agent enrolled, as in the thirty-sixth section of the Act No. 20 of 1856 is provided, in the Court of the Resident Magistrate within the local limits of whose jurisdiction the Court of such officer shall, for the time being, be holden; but nothing herein contained shall extend to entitle a prisoner as of right to the assistance of a legal adviser, while he shall be under any preparatory examination on any charge.

Report of trials to be forwarded to Attorney-General.

10. Such officer as aforesaid shall prepare and transmit to the Attorney-General of the Colony a report of every case adjudicated upon by him, showing the name and occupation of the party accused, the name and occupation of the complainant, the crime or offence charged, the judgment of the Court, and, in cases of conviction, the sentences.

Certain judgments to be subject to revision of a Judge of the Supreme Court.

11. When and as often as such officer as aforesaid shall sentence any person upon conviction to be imprisoned with or without hard labour for any period exceeding one month, or to pay any fine exceeding five pounds, he shall transmit a copy of the record of the trial, with the copy of the sentence, to the Resident Magistrate, and such Resident Magistrate shall, by the post next succeeding the time at which he shall receive such copy, transmit the same to the Registrar of the Supreme Court, and thereafter the same shall be dealt with as if the same and all proceedings to be had upon such conviction and sentence, respectively, were a record of the proceedings in the Court of a Resident Magistrate transmitted to such Registrar under the forty-seventh section of the Act 20 of 1856, and the proceedings to be had upon such record respectively; and if in any case such prisoner shall be sentenced to corporal punishment in addition to such imprisonment as in this section is mentioned, then such corporal punishment shall not be inflicted by such officer as aforesaid or those immediately under his control, but shall be deferred until a Judge of the Supreme Court shall have certified that the sentence is in accordance with real and substantial justice, or that such corporal punishment ought to be inflicted.

Corporal punishment not to be inflicted prior to revision.

Sections forty-eight and forty-nine of Resident Magistrates' Courts Act,

12. In any case in which the copy of the proceedings shall have been forwarded by any Resident Magistrate under the last fore-

Digitised by the University of Pretoria, Library Services, 2016

going section to the Registrar of the Supreme Court, the provisions of the forty-eighth and forty-ninth sections of the Act 20 of 1856, shall apply in all respects as if the proceedings had been originally taken in the Court of the Resident Magistrate who shall have forwarded the copy thereof, and such proceedings shall, for the purposes of this provision, be deemed to have been taken in such Court of Resident Magistrate.

1856, to apply in regard to proceedings forwarded for revision.

13. Whenever any crime or offence shall have been committed within a limit of ten miles outside the boundary of the district so to be limited by the Governor under the provisions of this Act, or having been begun within the limits of such district shall be completed beyond such limits, or having been begun beyond such limits shall be completed within them, then such officer shall have the like jurisdiction in the case of every such crime or offence as if the same had been begun and consummated altogether within the limits of such district; and in every case in which objection shall be taken to the jurisdiction of such officer, on the ground that any act, matter, or thing whereof he shall take or have taken cognizance occurred or was done or committed beyond the local limits of his jurisdiction, the onus of proving that such act, matter, or thing did occur or was done or committed beyond such local limits shall lie on the person taking such objection; and such objection, unless taken and proved at the time of any trial held before such officer, shall not be allowed to be valid in any Court.

Jurisdiction of officer when crime charged shall have been wholly or partly committed beyond limits of his district.

Onus of proving that offence was committed beyond limits of district to lie on person objecting.

14. Such officer shall have power to summon any person to give evidence on any case which shall come before him for trial, and to compel the attendance of every such person, and for such purposes shall have all the powers vested in the Resident Magistrates throughout this Colony for the like purposes; but no witness summoned to attend before such officer to give evidence shall be entitled to demand, as of right, either before or after his attendance, any payment or sum in respect of travelling expenses or maintenance in respect of such attendance

Power of summoning and compelling attendance of witnesses.

Witnesses not of right entitled to travelling expenses or maintenance.

15. Any person who shall wilfully insult such officer, during his sitting in his Court on any trial or examination lawfully held before him under this or any other Law or Ordinance, or any person lawfully acting as clerk or officer of such Court during his attendance as such clerk or officer on any such trial or examination, or shall wilfully interrupt the proceedings of such Court, or otherwise misbehave in such Court, may be forthwith arrested and detained by any person, under the order of such presiding officer, in custody until the rising of the Court; and such presiding officer is hereby empowered, if he shall see fit, to impose a fine on the person so offending, not exceeding five pounds, as and for contempt of Court, and in default of the said fine being paid, then to detain him in custody for any period not exceeding seven days unless the fine and the cost of the detention of such offender be sooner

Contempts of court, what, and how punishable.

Digitised by the University of Pretoria, Library Services, 2016

No. 29—1868.

paid; but in any case in which a person shall be fined under this section, a record shall be made of the proceedings upon which such fine shall be imposed, and such presiding officer shall enter upon such record the facts which constitute the contempt of Court, and the grounds and reasons of his proceedings, and shall deal with the case in other respects as hereinbefore provided with regard to criminal offences in cases in which a fine exceeding five pounds shall have been imposed.

Records, where to be kept.

16. The records of such Court shall be kept in such place as the Governor shall from time to time order.

Rules in resident magistrates' courts to apply.

17. The rules in force in the Courts of Resident Magistrates shall, save as herein is otherwise provided, as nearly as may be apply to the Court to be held by such officer as aforesaid.

Jurisdiction of resident magistrates not affected.

18. Nothing herein contained shall be held to limit or take away any jurisdiction of any Resident Magistrate conferred by any law in force in this Colony.

Short title.

19. This Act may be cited as the "Border Protection Act, 1868."

SCHEDULE A.

I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria. So help me God!

I, A. B., do promise and swear that I will faithfully and diligently execute, to the best of my abilities, the several duties of the office of Special Magistrate. So help me God!

No. 28—1868.] [Sept. 2, 1868.

An Act for applying a Sum not exceeding Four Hundred and Twenty-three Thousand Seven Hundred and Sixty-six Pounds Twelve Shillings and Nine Pence, for the Service of the Year 1868. [Spent.]

No. 29—1868.] [September 2, 1868.

ACT

For the Organization and Regulation of a Police Force for the Northern Border of the Colony.

Preamble.

WHEREAS it is expedient to provide for the organization and regulation of a Police Force to act on the Northern Border of this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Police force to be embodied.

1. It shall be lawful for the Governor to cause such a sufficient number of fit men as Parliament shall from time to time provide

Digitised by the University of Pretoria, Library Services, 2016

No. 29—1868.

for, to be embodied to serve as a police force, who shall be sworn before a Justice of the Peace to act as a police in the divisions of Namaqualand, Calvinia, Fraserburg, Hope Town, and Victoria West, for preserving the peace, and preventing robberies and other crimes, and apprehending offenders against the peace.

Governor may appoint and remove inspector.

2. It shall be lawful for the Governor, by warrant under his hand, to appoint an inspector for the general superintendence and management of the said force, and such inspector from time to time to displace and remove and to appoint another in his place, as to him shall seem meet.

Governor may make regulations.

3. It shall be lawful for the Governor, from time to time, to make such regulations respecting the training, arms and accoutrements, clothing and equipment of such force, and respecting all other matters connected therewith, as may be required for promoting the discipline and efficiency thereof; and also, when it shall appear necessary, to direct the employment and distribution of the said force beyond the limits of the divisions in the first section hereof mentioned, and also within or without the colonial boundary.

And employ force beyond limits of divisions named.

Penalty upon members of force for disobedience or breach of regulations.

4. Every member of the said force shall be bound to obey the regulations which shall from time to time be made or sanctioned by the Governor for maintaining the discipline thereof, and to obey all lawful orders to be given him by his officers or superiors in furtherance of such regulations, or of the purposes for which such force is or is to be embodied; and every member of the said force who shall contravene any of such regulations, or who shall disobey such lawful orders as aforesaid, shall forfeit and pay a fine not exceeding twenty pounds; and such offender shall, in addition to such fine, or in default of payment thereof, be liable to be imprisoned, with or without hard labour, or with or without spare diet, for any term not exceeding three months in any gaol or place of confinement in the Colony.

Penalties on member taking bribes or gratuities.

5. If any member of the said force shall take a bribe or any gratuity whatever for suffering any person lawfully in his custody to escape, or shall wilfully neglect to execute any warrant entrusted to him, every such member of the said force shall be liable for such offence to a fine not exceeding twenty pounds, or to be imprisoned, with or without hard labour, or with or without spare diet, for any term not exceeding six months, and in default of payment of the fine imposed to imprisonment, as already provided; but nothing herein contained shall exempt such offender from any higher or other punishment to which he may be subject by any other law in force in this Colony.

Penalty for desertion or refusal to serve during term of service.

6. If any member of such force shall during the period for which he shall have engaged to serve in the said force, and not being duly discharged from the same, desert from the same, or refuse to serve therein, or absent himself from duty without lawful cause or reasonable excuse, every such offender shall be

Digitised by the University of Pretoria, Library Services, 2016

are oftentimes disturbed and hindered, and their lives endangered by persons discharging fire-arms on the beach and in Table Bay: Be it enacted by His Excellency the Acting Governor in Council that from and after the passing of this Ordinance any person who shall discharge any musket or other fire-arm within two hundred yards of high-water mark on the sea shore extending between Three Anchor Bay and the mouth of the Salt River, or in the waters of Table Bay within two miles of such high-water mark as aforesaid, shall on conviction thereof pay a fine of not less than five shillings, and not exceeding one pound: Provided always, and be it enacted, that nothing herein contained shall be construed to prevent His Majesty's land and sea forces from discharging fire-arms in the execution of their duty.

Prohibition of discharge of fire-arms within certain limits.

No. 101.] [November 11, 1833.

Ordinance for Regulating the Trade in Gunpowder within this Colony.

[Repealed by Ord. 7, 1834.]

No. 102.] [December 13, 1833.

Ordinance for continuing the Provisions of the Ordinance No. 97 until the 31st December, 1834.

[Expired.]

No. 103.—Sd. G. Lowry Cole.] [July 5, 1833.

Ordinance for Abolishing the Orphan Chamber within this Colony, and for providing that the Duties heretofore performed by the said Orphan Chamber shall henceforth be performed by the Master for the time being of the Supreme Court of this Colony.

Preamble.

WHEREAS it has been enacted by His Majesty's Royal Charter of Justice, dated at Westminster, on the fourth day of May, 1832, that the Orphan Chamber within this Colony shall be abolished, and that the duties heretofore performed by the said Chamber should henceforth be performed by the Master for the time being of the Supreme Court of this Colony: Be it therefore enacted by His Excellency the Governor in Council that from and after the first day of March next the Orphan Chamber within this Colony, and the offices of the president, masters, secretary, bookkeeper, and clerks thereof, and of the agents thereof in the several districts of this Colony, shall be, and the same are hereby declared to be, abolished: Provided always, that it shall and may be lawful for the Governor of this Colony, by any proclamation to be by him issued for that purpose, to suspend the abolition of the offices of

Abolition of orphan chamber.

Digitised by the University of Pretoria, Library Services, 2016

No. 29—1868.

liable for every such offence to a fine not exceeding twenty pounds, and to imprisonment with or without hard labour, or with or without spare diet, for any period not exceeding six months, or to one or other of such penalties, or to such imprisonment in the alternative on non-payment of such fine.

Application of fines levied under this Act.

7. All fines to be levied under this Act, or any part thereof, may be allocated by the Governor to such purposes for the better efficiency of the said force as to him shall seem fit, or any portion thereof may be by him made payable as rewards to informers, and the residue thereof, not otherwise allocated by the Governor, shall be payable into the colonial revenue; and all rewards and gratuities which shall be payable under any law in force in this Colony to any member of the said force, except as hereinafter provided, or which shall be given by any private person to any member of such force for the performance of any duty as a member of such force, or of any service connected with such duty, shall be paid into a common fund for the benefit and efficiency of such force; but it shall be lawful for the Governor, or such persons as he shall authorise, out of such general fund to make allowances to individual members of such force for special services, and for such other purposes as shall be settled by regulations to be made or sanctioned by the Governor from time to time.

Disposal of gratuities or rewards.

Penalty for unauthorised sale or pledge of horse, equipments, &c.

8. No member of the said force shall, without permission of the inspector first had and obtained, sell, pledge, or otherwise dispose of any horse, saddle, bridle, gun, clothing, ammunition, or other article or equipment which, by the regulations of the said force for the time being, he shall be required to keep and possess; and every sale, pledge, or other disposition of any of the matters aforesaid shall be null and void; and any member of the said force who shall make or attempt to make any sale, pledge, or other disposition as aforesaid, in contravention of this section, shall incur and be liable to a fine not exceeding twenty pounds sterling, and in default of payment thereof shall be liable to be imprisoned and kept at hard labour for any period not exceeding three months.

Penalty for receiving horse or equipments disposed of without authority.

9. If any person shall, in consequence of any sale, pledge, or other disposition made by any member of the said force in contravention of the last preceding section, knowingly receive or have any animal, article, matter, or thing in the said section mentioned, such person shall incur and be liable to a fine not exceeding twenty pounds sterling, and in default of payment thereof shall be liable to be imprisoned and kept at hard labour for any period not exceeding three months.

Animals, equipments, &c., not liable to seizure under writ of execution or order for sequestration.

10. No animal, article, matter, or thing mentioned in the eighth section of this Act, and therein forbidden to be sold, pledged, or otherwise disposed of, shall be capable of being seized or attached by or under any writ of execution which may be sued out against any member of the said force, nor shall the same pass by or under

Digitised by the University of Pretoria, Library Services, 2016

any order made for the sequestration of the estate of any such member.

Sections 8, 9, and 10 not to apply to inspector.

11. Nothing in the three last preceding sections contained shall apply to the inspector of the said force.

Persons acting in execution of this Act to receive notice of action, and to be entitled to tender amends.

12. 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 fact 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 no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, together with the costs incurred up to that time; 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 execution, or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial shall be shall certify his approbation of the action and of the verdict obtained thereupon.

Costs of suit.

13. [Repealed by Act 14, 1880.]

Ordinance No. 25 of 1847 not to extend to the force embodied under this Act.

14. Nothing contained in the Ordinance No. 25 of 1847, entitled "Ordinance for improving the Police of the Colony," shall extend to the force aforesaid in this Act mentioned.

No. 30—1868.] [Sept. 2, 1868.

An Act for applying a Sum not exceeding two hundred and eight thousand four hundred and two pounds and nineteen shillings for the Service of the year 1869. [Spent.]

No. 31—1868.] [September 2, 1868.

ACT

For Enabling the Divisional Council of Worcester to borrow Moneys upon the security of Road Rates and Tolls, for the Improvement and Construction of the Road through Hex River Kloof.

Preamble.

WHEREAS it is expedient that the Divisional Council of Worcester should be empowered to borrow moneys upon the security of the road rates and tolls of the said division, for the purpose of improving the public road passing through what is

Digitised by the University of Pretoria, Library Services, 2016

No. 31—1868.

commonly called "the Hex River Kloof," commencing at the Hex River Bridge and ending a certain distance on the Karoo side of the Hex River Mountain, by which the inhabitants would be benefited: And whereas the annual amount of road rates to be levied under Act No. 9 of 1858 is not sufficient to meet the first outlay of this work: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant portions of Act No. 9 of 1858 repealed.

1. So much of Act No. 9 of 1858, entitled "An Act to provide for the management of the Public Roads of the Colony," as is repugnant to or inconsistent with any of the provisions of this Act shall, so far as regards the provisions of this Act, be, and the same is hereby repealed.

Council may raise loan.

2. It shall be lawful for the said Divisional Council to raise from time to time by way of loan, on the credit of any tolls to be levied or rates to be assessed under the Act No. 9 of 1858 aforesaid, or under the Act No. 10 of 1864, entituled "An Act to provide for the Construction and Maintenance of the Main Roads of the Colony," any sum or sums of money that may at any time be required by the said Divisional Council for the purpose of carrying into effect the object and purpose herein before mentioned: Provided that no such loan as aforesaid shall be capable of being effected except under and by virtue of a resolution of the said Divisional Council, at a meeting at which there shall be present not fewer than six members, exclusive of the chairman; and provided that no meeting shall be competent to pass any such resolution unless each of the members shall have had, for at least twenty-one days next before the day appointed for such meeting, a notice, signed by the Secretary to such Council, stating that the question of such loan will come under consideration of such meeting, which notice the said Secretary shall issue at the instance of any member of the said Council; and provided that no loan or loans or debts contracted by said Council under this Act shall at any time exceed the sum of six (1) thousand pounds sterling; and provided that no such loan as aforesaid shall be capable of being effected in any year in which the road rates levied and collected under the said Act No. 9 of 1858 shall be less than one penny in the pound on the value of the property liable to be rated in the said division of Worcester; and provided that, except as is hereinafter mentioned, no such loan shall be applied for the payment of any previous loan that may have been raised by the said Council.

Loan to be raised only under resolution of council after notice given.

Extent of loan limited.

And certain restrictions imposed.

Loan not available for paying off previous loan, except as hereinafter provided.

Mode of raising loan.

3. In every case in which it shall be resolved by said Council to raise any such loans as aforesaid, the said Council shall, by a notice in the *Government Gazette* and in some newspaper published in or near the said division of Worcester, call for tenders for the sum or sums required, and in case it shall accept any of the tenders sent in, shall accept that which specifies the lowest rate of

[1] Printed as amended by Act No. 19, 1875.

Digitised by the University of Pretoria, Library Services, 2016

interest; and the bond, declaration, or obligation pledging the tolls or rates agreed upon to be pledged for ensuring the repayment of the sum or sums borrowed by said Council, and the interest thereon, shall be signed by three members on behalf of such Council, of whom the Civil Commissioner of the division shall not be one.

Bond by whom to be signed.

4. And whereas the said Divisional Council has already borrowed a sum of one thousand pounds sterling upon the personal security of the different members of the said Council, in order that the aforesaid work may not be delayed, and which sum has been and is in the course of being expended upon the aforesaid road, be it enacted that it shall and may be lawful for the said Council to repay the aforesaid sum of one thousand pounds sterling out of the said sum of six ([1]) thousand pounds sterling authorised to be raised under this Act.

Moneys previously borrowed for carrying on work may be repaid from loan.

5. All moneys raised as aforesaid under this Act shall on receipt thereof be deposited in a bank, to be chosen for that purpose by the said Council, to the credit of a separate account, and all sums required shall be drawn by cheques signed by the secretary and countersigned by such one of its members, not being the Civil Commissioner, as shall be appointed so to do by the said Council.

Moneys raised on loan how to be administered.

6. The said Council shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the Colonial Secretary half yearly, showing all moneys received and expended up to the 30th of June and 31st December then preceding, and all liabilities and assets on the same days.

Separate account to be kept and half-yearly abstract forwarded to Colonial Secretary.

7. The accounts in the last preceding section mentioned shall be audited and examined by the auditors to be from time to time appointed under the provisions of the "Divisional Councils Act, 1865," and the provisions of the eighty-third and eighty-fifth sections of the said Act shall extend and apply to all accounts, books, and papers connected with the said road.

Audit of accounts.

8. It shall be incumbent on the said Council, and they are hereby required, after the payment of the interest on any loan or loans as aforesaid, and providing for the necessary repairs of the said road, to set apart the remainder, if any, of the tolls levied on the said road, and the further sum of two hundred pounds sterling annually from their general revenues, in order to provide a fund for the repayment of the capital sums of money raised as aforesaid, until the same are wholly paid off and discharged.

Repayment of loan provided for.

9. All the necessary costs and charges and expenses attending the procuring of this Act and carrying the provisions thereof into effect shall be paid out of the money to be received under the provisions of this Act.

Expenses of procuring Act to be charged to loan.

10. This Act may be cited for all purposes as the "Worcester Divisional Council Loan Act, 1868."

Short title.

[1] Printed as amended by Act No. 19, 1875.

Digitised by the University of Pretoria, Library Services, 2016

No. 32—1868.

No. 32—1868.] [September 2, 1868.

ACT

To Provide for the Maintenance of the Main Northern Road.(1)

Preamble.

WHEREAS it appears that the Main Northern Road over the Katberg Pass will shortly be completed and open for traffic, from the limits of the division of Fort Beaufort to Poplar Grove, in the division of Queen's Town, and it is necessary to make provision for the due maintenance and repair of the said road: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor may proclaim road from Blinkwater to Poplar Grove a main road.

1. It shall be lawful for the Governor, on receiving a certificate from the Chief Inspector of Public Works that the road from the limits of the division of Fort Beaufort, at Blinkwater, to Poplar Grove, in the division of Queen's Town, has been completed and rendered fit for traffic, to declare, by proclamation to be published in the *Government Gazette*, that such road is a main road; and thereupon the Divisional Councils of Stockenstrom and Queen's Town shall, in respect to the said road, be respectively invested with all the powers, and shall become subject to all the liabilities, created by any Act now in force relating to main roads, for so much of the said road as passes through their respective divisions.

Divisional councils of Stockenstrom and Queen's Town invested with all powers conferred by any existing Road Act.

Councils named may arrange for maintenance of road.

2. It shall be lawful for the Divisional Councils of Stockenstrom and Queen's Town, if to them it shall appear expedient, to make arrangements for entrustiug the maintenance of the whole of the said road to one or other of the said councils; and thereupon the proceeds of all tolls which may be established on any part of the said road shall become payable to the Divisional Council so entrusted with the maintenance of the road; and it shall be lawful for such last mentioned Divisional Council, with the consent of the Governor, to exercise, in respect to the whole of such road, all the powers relating to the imposition and collection of tolls which are by the Act 10 of the year 1864 conferred upon Divisional Councils.

Council maintaining road to receive toll revenues.

3. [Repealed by Act 26 of 1884.]

Duration of Act.

4. This Act shall be and continue in force to the 31st December, 1869, and no longer.

No. 33—1868. [September 2, 1868.

An Act to Make Provision for better defining the Boundaries of such Divisions of the Colony in which it may be necessary.

[Repealed by Act 32, 1885.]

---

[1] Continued to 31 Dec., 1870, by Act 22 of 1869, to 31 Dec., 1871, by Act 16 of 1870. Provisions extended and continued until the Legislature shall otherwise determine by Act 5 of 1871. But see Act 26 of 1884.

Digitised by the University of Pretoria, Library Services, 2016

No. 1—1869.] [October 18, 1869. No. 3—1869.

An Act to Amend the Ordinance No. 16 of 1847, intituled "An Ordinance for the better Regulation of Pounds and Prevention of Trespasses."

[Repealed by Act 15, 1892.]

No. 2—1869.] [October 18, 1869

An Act to Make Provision for the more easy Collection of Hut Tax.

[Repealed by Act 37, 1884.]

No. 3—1869.] [October 18, 1869.

ACT

For Regulating the Execution of Capital Punishment.

Preamble.

WHEREAS it is desirable that, whenever circumstances will admit of it, capital punishment should in this Colony be carried into effect within the gaols: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor may direct sentence of death to be carried out within walls of gaol.

1. In any and in every case in which, after the passing of this Act, any prisoner shall be sentenced to death, it shall be lawful for the Governor, if he shall be satisfied that fitting arrangements for the same can be made within the gaol in which such prisoner shall for the time being be confined, to order, by warrant under his hand, that the sentence of death shall be carried into effect within the walls of such gaol.

Who required to be present at such execution.

2. The High Sheriff or Deputy Sheriff charged with the execution, and the surgeon, gaoler, and such other officers of such gaol as the High Sheriff or Deputy Sheriff may require, shall be present at such execution, and any Justice of the Peace for the division in which such gaol may be situated, and any minister of religion residing therein, and such relatives of the prisoner or other persons as the High Sheriff or the Deputy Sheriff may deem proper, may be admitted within such gaol, for the purpose of being present at such execution.

And who may be admitted to witness execution.

Surgeon to certify death, and declaration to be signed by all persons present at execution.

3. As soon as may be after judgment of death has been executed on the offender, the surgeon of the gaol shall examine the body, and shall ascertain the fact of death, and shall sign a certificate thereof, and deliver the same to the High Sheriff or Deputy Sheriff; and all other persons who shall be present under the provisions of the preceding section, together with the High Sheriff or Deputy Sheriff, shall sign a declaration to the effect

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1869.

that judgment of death has been executed on the offender, and such certificate and declaration shall be forthwith transmitted to the Colonial Secretary, to be filed of record in his office.

Governor may make rules to be observed on execution of judgment of death.

4. The Governor may from time to time make such rules and regulations as to him may appear expedient, for the purpose of guarding against any abuse in such execution, and of giving greater solemnity to the same, and of making known without the walls of the gaol the fact that such execution is taking place.

Saving clause as to legality of execution.

5. The omission to comply with any provision of this Act shall not make the execution of judgment of death illegal in any case where such execution would otherwise have been legal.

No. 4—1869.] [October 18, 1869.

ACT

To Authorise the Cape Copper Mining Company (Limited) to construct a Tramway or Railway between Port Nolloth and Nonams, and to build a Jetty at Port Nolloth. (1)

Preamble.

WHEREAS it is desirable and expedient that greater facilities should be afforded for the transport of minerals from the mines in Namaqualand to Port Nolloth, and the shipment of the same at the said port, and also for the shipping and landing of passengers, goods, merchandize, and other articles at, and their transport to and from the said port: And whereas such facilities would be greatly promoted and the resources of the country developed by the construction of a tramway or railway between the said port and Nonams, and by the building of a jetty at the said port: And whereas the Cape Copper Mining Company (Limited), a company duly registered in England, and having a subscribed capital of one hundred and fifty thousand pounds sterling, is willing to undertake the construction and working of the said tramway or railway and the building of the said jetty, on being empowered for that purpose in manner hereinafter mentioned and provided: 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, as follows:—

Cape Copper Mining Company empowered to construct tramway or railway, and to build jetty according to certain plans.

1. The Cape Copper Mining Company (Limited) shall be, and they are hereby authorised and empowered to construct and work a tramway or railway between Port Nolloth and Nonams or any part thereof, and to build a jetty at Port Nolloth, as shown by the plans duly lodged with the Clerks of the Legislative Council and of the House of Assembly and with the Civil Commissioner for the Division of Namaqualand, on the terms and conditions hereinafter contained.

(1) See Acts 15, 1865; 3, 1871; 24, 1873.

Digitised by the University of Pretoria, Library Services, 2016

Powers granted to company to enter upon adjoining lands for purposes of excavation, &c.

2. It shall and may be lawful for the said company, and they are hereby authorised, to enter upon and to take possession of all such lands within the limits of deviation as shown by the said plans, and also to dig for, excavate, and carry away all such stones, clay, or other materials within or from waste Crown lands near to the said limits as may be required for the construction and maintaining of the said tramway or railway and jetty: Provided that the extent of land taken or used for the said tramway or railway shall not exceed the width of thirty feet, with sufficient additional width for slopes, drainage, stations, stopping places, approach-roads, and all other works, matters, and things which may be requisite or necessary for the efficient construction and working of the said tramway or railway: And provided, further, that no such materials shall be taken for the purpose of constructing or maintaining the said tramway or railway and jetty from any Crown land within the limits of the village of Port Nolloth, as the same are now or may hereafter be defined by Government, without the previous consent of the Government, nor from any private lands within the same limits without the previous consent of the owner thereof. And, further, it shall and may be lawful for the said company, and they are hereby authorised, to enter upon and take possession of all such beach and other lands lying above and below high-water mark, and as may be required for approaches to and site of the said jetty, as shown on the said plan, and also in like manner to enter upon and take possession of forfeited erf 1,799, marked 8 on the said plan, in block C, and also the road lying between blocks B and C, marked or numbered 14 on the said plan, and also the Government ground adjoining blocks B and C to the east, north, and west, as shown within the limits marked by a dotted line on the said plan: Provided that the proprietor or person holding by lease from the Crown the lands so taken possession of and of the materials so carried away and used shall be paid by the said directors the just value, by way of recompense or compensation for the interest of the said proprietors or lessees in such land or materials, or for any damage which may be done by reason thereof.

Extent to which such excavation, &c., may be carried on.

Materials not to be removed from Crown or private lands within limits of village of Port Nolloth, without consent previously obtained.

Company empowered to take possession of certain beach lands, &c.

Compensation to proprietors or lessees.

Disputes regarding compensation, how to be settled.

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

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1869.

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

Mode of proceeding in case of arbitration.

Award may be made rule of court.

How, where proprietor refuses or neglects to proceed to arbitration.

On settlement by arbitration, or otherwise, lands to become absolute property of company.

Costs of arbitration.

Digitised by the University of Pretoria, Library Services, 2016

Crown lands may be used for tramway or railway and jetty.

4. It shall and may be lawful for the said company to enter upon and take possession of, and to hold and retain for all the purposes of this Act, free of any charges, so much of any Crown lands as shall be required for the construction and maintaining of the said tramway or railway and jetty, or for any other purposes relating to the execution of this Act, and also to enter upon all Crown lands not previously leased by the Government to any lessee lying convenient to the said tramway or railway and jetty, and there to dig for, excavate, and carry away all such stones, clay, or other materials as may be required or be serviceable for the construction and maintaining of the said tramway or railway and jetty: Provided that nothing in this Act contained shall establish any servitude in favour of the said company for procuring materials for the said tramway or railway upon any land which may at any time hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.

Materials may be taken from unleased Crown lands.

But not to establish servitude.

Company to construct and maintain public road to jetty.

5. The company shall be bound to construct and maintain, and at all times to keep in good repair, a sufficient and convenient road not less than twenty feet in width for public use, from the public street at Port Nolloth to the said jetty; but in constructing the same, or the said jetty, or any other works at the shore at Port Nolloth, no stonework or embankment shall project or be carried further seaward than low-water mark at spring tide.

Extent to which works may be carried.

Route of tramway or railway.

6. The said tramway or railway shall commence from the said jetty at Port Nolloth, and shall proceed thence to Jules Hoogte, thence to the Kama River, thence to Oograbis, thence to Anna Poort, thence along the plain to Muishondfontein: [1] Provided, however, that it shall be lawful for the said company to deviate from and vary the said line within the limits of deviation shown by the said plans; and, further, that it shall and may be lawful for the said company to terminate the line at any point between Port Nolloth and Nonams: Provided such terminal point shall be at a distance of not less than twenty miles from Port Nolloth.

Certain deviation allowed.

Terminus of line.

Line may cross streets or roads.

7. At all places where the line of the said tramway or railway, or any deviation thereof within the limits of deviation hereinbefore provided, shall intersect or cross the line of any street or road, it shall be lawful for the said company to make and carry the said tramway or railway across such street or road, either by means of a level crossing or by a convenient and sufficient bridge or viaduct over or under the said street or road. And the said company shall be bound and obliged to make all such cuttings, embankments, and approaches, with all such culverts and drains as may be requisite to make good the said street or road across, or over, or under the said tramway or railway, at gradients not exceeding one foot in twenty feet. And the said company shall be bound and obliged to maintain and keep in repair all such crossings, bridges, viaducts, cuttings, embankments, and approaches, culverts and drains, as

Company to make and keep in repair all necessary crossings, &c.

[1] Printed as amended by Act No. 3, 1871.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 103—1833.

the secretary and bookkeeper thereof, and of such clerks and agents thereof, as to him shall seem fit, so long as the existence of such last-mentioned offices shall be necessary for the administration, distribution, and final settlement of all property, estates, matters, and things which previously to the said first day of March next, shall lawfully have come or been placed, and shall then be under the administration of the said Orphan Chamber. And every such office the abolition of which shall be suspended by the said Governor in manner aforesaid, shall be, and the same is hereby declared to be, finally abolished at such time as shall for that purpose be specified by the said Governor by any advertisement or advertisements inserted in the *Government Gazette* of this Colony; and the duties of all such offices the abolition of which shall be suspended in manner aforesaid shall be performed, so long as such offices shall continue to exist, under the superintendence and subject to the directions, orders, and absolute control of the Master of the Supreme Court, by the persons holding the same, or by such persons as shall hereafter be appointed by the said Governor to perform the duties thereof.

Temporary suspension of abolition of certain offices by the Governor.

Performance by Master of the supreme court of the duties of orphan chamber.

2. And be it further enacted that from and after the said first day of March next all the duties which have heretofore been performed by the said Orphan Chamber, except in so far as shall to the contrary be provided by this or any other Law or Ordinance, shall henceforth be performed by the Master for the time being of the Supreme Court of this Colony.

Transfer of administrations from orphan chamber to Master.

3. And be it further enacted that all persons, property, estates, matters, and things, which have at any time lawfully fallen or been placed and taken under, and which on the said first day of March next, shall respectively be under the guardianship, charge, or administration of the said Orphan Chamber, shall be, and the same are hereby declared to be, from and after the said day, placed respectively under the guardianship, charge, and administration of the Master of the Supreme Court.

Custody of books, accounts and documents.

4. And be it further enacted that on the said first day of March next all books, accounts, vouchers, and other documents, of whatsoever description, which, if the said Orphan Chamber had been in existence on that day, ought by law then to have been under the charge, control, or custody of the said Orphan Chamber, or of any of the officers thereof, shall be placed and shall thereafter be and remain under the charge, control, and custody of the Master of the Supreme Court.

Proceedings by Master to obtain possession of property, books, documents, &c.

5. And be it further enacted that from and after the said first day of March next, the Master of the Supreme Court shall, and he is hereby empowered and required to demand and receive delivery and to take and keep possession of all property, estates, matters, and things, books, accounts, vouchers and documents, which, under and by virtue of the provisions of this Ordinance, shall be placed

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1869.

aforesaid. And in all cases where any street or road shall cross the said tramway or railway, no engines, carriages, trucks, or other vehicles shall be allowed to remain athwart such crossing, but shall pass such crossing without unnecessary delay, so as to interrupt as little as possible the free use of such road.

Free use of road not to be unnecessarily interrupted.

Right to construct roads across line reserved.

8. Nothing in this Act contained shall hinder or prevent any public roads hereafter to be constructed under Act of Parliament or proclamation lawfully issued under Act of Parliament, from being made and carried across the said tramway or railway at all requisite and convenient points: Provided that as little damage as possible shall be caused to the said tramway or railway by such crossings.

Damage to roads, &c., to be made good.

9. All damage which may be caused by the construction of the said tramway or railway and jetty to any roads or streets shall be repaired and made good by the said company, so soon as practicable, at the cost and charge of the said company.

Jetty and twenty miles of line to be completed within three years.

10. The said company shall be bound, and are hereby required, to finish and complete the said jetty, and not less than twenty miles of the said tramway or railway, extending from Port Nolloth towards Nonams, and to open the same for public traffic within three years from the taking effect of this Act, failing which all and singular the powers, rights, and authorities conferred by this Act shall cease and determine.

Terms, conditions, and tariffs of charges to be framed, submitted for approval, and published in Gazette.

11. So soon as the line of tramway or railway, or any section thereof, or the said jetty, shall have been finished and in a fit condition for work, the said company shall frame terms and conditions and a tariff of charges for wharfage and for the landing or embarking of passengers, and another such tariff for the conveyance of passengers and goods; and such terms, conditions, and tariffs shall be submitted to the Governor for approval, and if approved, shall be published in the *Government Gazette* for general information; and the said tariffs, terms, and conditions shall be thenceforth binding upon the said company for such period as shall be fixed and determined by the Governor, and specified in his approval of the same respectively. And upon the publication of any such tariff, terms, and conditions in manner aforesaid, the company shall, and are hereby authorised and required to open for traffic the said jetty or the said tramway or railway, or so much thereof as is so completed, or both, as the case may be: Provided, always, that the said terms and conditions and the rates so chargeable may from time to time be altered by the said company, with consent of the Governor; and the said company shall be entitled to recover by legal process all such charges as shall be in force for the time being from all passengers landed at or embarked from the said jetty or conveyed on the said tramway or railway and the owner of, or the person liable to pay such charges on goods, merchandize, articles, or things landed on or shipped from the said jetty, or conveyed by the company on their said tramway or railway; and,

And on such publication, jetty or tramway or railway to be opened for traffic.

Terms, charges, &c., may be altered.

Charges, how recoverable.

Digitised by the University of Pretoria, Library Services, 2016

further, shall have the right of retaining such goods, merchandize, articles, or things, until the rates or charges due or payable for or in respect of the wharfage or carriage or conveyance thereof shall have been duly paid; and, further, on his or their failing to pay on demand such charges, it shall and may be lawful for the said company to sell by public auction at Port Nolloth such goods, merchandize, articles, or things, and out of the money arising from such sale to retain the charges payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus, if any, and such goods as shall remain unsold, to the person entitled thereto: Provided that fourteen days' notice of such sale shall have been previously given in the *Government Gazette*, and in any one or more newspapers published in Cape Town; and such notice shall be also affixed on some conspicuous part of the office of Customs at Port Nolloth.

Plan of jetty to be submitted for approval of Government.

12. The said jetty shall be erected and constructed upon plans to be previously submitted to and approved of by the Government. Nothing in this Act contained shall be construed as conferring upon the said company any exclusive right to landing and shipping goods or passengers at the jetty to be erected by them under the provisions of this Act, or to prevent the use by the public of all such portions of the beach at Port Nolloth as are not appropriated to the use of the said company by virtue of this Act, or the erection of a jetty or other works at such place or places on the said beach as shall be deemed expedient.

Company not to enjoy exclusive right of landing or shipping thereon.

Governor to regulate number of stopping places, goods stations, &c.

13. The said company shall be bound and obliged to establish and permit to be used so many stations or stopping-places upon the said line of tramway or railway for taking up and setting down passengers, and for receiving and delivering goods, merchandize, minerals, or other articles to be conveyed upon the said tramway or railway and any portion thereof, as the Governor shall from time to time direct to be established for public use, or for the use of any passengers or any proprietors or lessees of mines or minerals requiring to use the said tramway or railway. And the said company shall at all times thereafter allow to the public, and to proprietors and lessees aforesaid, free and convenient way-leave and access to all such stations or stopping-places over all lands belonging to or in the possession or occupation of the said company, with all cattle and vehicles to be used for conveying passengers, goods, merchandize, minerals, or other articles, to and from such stations.

Facilities for receiving, forwarding, &c., without undue preference, to be provided.

14. The said company shall afford all reasonable facilities for the receiving, storing, forwarding, and delivering of goods upon and from the said tramway or railway and jetty, and no undue or unreasonable preference or advantage to or in favour of any particular person or any particular description of traffic, in any respect whatsoever, shall be given; nor shall the said company subject any particular person or any particular description of traffic, to

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1869.

any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Tolls, fares, &c., to be charged equally to all persons without distinction.

15. All tolls, fares, or rates for passengers or goods shall be at all times charged equally to all persons, and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers, and of all goods of the same description and conveyed or propelled in a like carriage and by a like power, passing only over the same portion of the line of tramway or railway, under the same circumstances; and no reduction or advance in any such tolls, fares, or rates shall be made, either directly or indirectly, in favour of or against any particular company or person travelling upon or using the tramway or railway.

Steam power not to be used for passenger traffic before obtaining certificate of proper officer.

16. No steam power shall be used for the conveyance of passengers upon the said tramway or railway, or any section thereof, until the certificate of the Colonial Engineer or other officer appointed by the Governor shall have been obtained, at the expense of the company, that the said tramway or railway or such section thereof is in a fit and proper condition for the safe conveyance of goods or passengers by means of such steam power.

Provisions of Regulation of "Railways Act, 1861," may, by proclamation, be made applicable to line.

17. Such and so many of the provisions of the "Regulation of Railways Act, 1861," as the Governor, with the advice of the Executive Council, shall by any proclamation to be published in the *Government Gazette* specify and determine, shall come into force, and apply to the said tramway or railway hereby authorised to be constructed and made, as if the said provisions were herein separately set forth and made applicable to the same: Provided, however, and it is hereby declared, that sections 29 and 30 of the said Act shall not be made applicable to the said tramway or railway, save and except the proper and necessary fencing which the said company shall be bound to erect and maintain in and through the limits of the village of Port Nolloth.

Sections 29 and 30 excepted.

Right of sanctioning junction of branch lines reserved

18. The Colonial Government shall have the right of sanctioning any junction of branch lines communicating with the said line of tramway or railway and jetty, from or for the use of any mines which may be opened in Namaqualand, upon such terms and conditions as may be agreed upon between the person desiring to have and maintain such branch line and junction and the said company; and in case of any question or controversy as to such terms and conditions, such question shall be referred to three persons, one to be nominated by the Governor, one to be nominated by the said company, and the other to be nominated by the person seeking to establish such junction; and the decision of any two or more of such three persons shall be final. The cost of every such arbitration to be in the discretion of the arbitrators.

Disputes as to terms to be settled by arbitration.

Decision final.

Costs of arbitration.

Right of Government to purchase line and jetty at cost price.

19. At any time after the expiration of ten years from the date of opening for traffic of the said jetty, or of any section of the line of tramway or railway from Port Nolloth to Nonams, the Colonial Government shall have the right, if so disposed, to

Digitised by the University of Pretoria, Library Services, 2016

purchase from the said company, and the said company shall, if required thereto, be bound to sell to the Colonial Government, the said tramway or railway and jetty, together with all fixed property of the said company lying within the limits of deviation aforesaid, at the cost price of the construction and equipment of the said tramway or railway and jetty and of the purchase and erection of land and buildings, or at any less sum that may be agreed upon between the said company and the Colonial Government.

If Government waive right or decline to purchase, company may remove all plant and material of line.

20. If at any time after the said right of pre-emption in the last section contained shall have accrued to the Government, the Government shall have waived or declined to exercise the same, or if at the expiration of the further period of twelve months thereafter the said company and the Government shall have been unable to agree upon the terms of sale and purchase as aforesaid, then and thereafter it shall be lawful for the said company to remove and carry away all plant and material from the said tramway or railway, but not to remove the said jetty or any part thereof.

But may not remove jetty.

Company may dispose of its rights, &c., subject to sanction of Governor.

21. It shall be lawful for the said company with the previous sanction of the Governor at any time to sell, dispose of, and transfer all their right, title, and interest in and to the said tramway or railway and jetty, and other property acquired or erected, for the purposes of the said tramway or railway and jetty under the provisions of this Act, to any other company or companies or private individuals desirous of purchasing the same: subject, nevertheless, to the provisions, terms, and conditions of this Act, as it the purchaser or purchasers thereof had been herein expressly made liable thereto.

Act to apply to purchasers

Powers of company may be exercised through an agent.

22. It shall be lawful for the said company to exercise all and singular the power and authorities by this Act conferred upon the said company by or through the instrumentality of any agent in this Colony appointed under the seal of the said company to be the agent of the said company in this Colony: Provided that notice of every appointment of any such agent, and of his name and address in this Colony, shall be from time to time published in the *Government Gazette*.

Name and address of agent to be published in Gazette.

How company may sue and be sued.

23. The said company shall and may sue and be sued within this Colony by the name or style of the "Cape Copper Mining Company (Limited)," and service of process and of all notices or matters of the like nature required by this Act upon the said company, at any office or place of business of the said company in this Colony, shall be good service of such process, notices, and other matters.

Short title.

24. This Act may be cited for all purposes as "The Port Nolloth Tramway or Railway and Jetty Act."

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1869.] [October 18, 1869.

ACT

For Enabling the Commissioners of the Municipality of Beaufort to borrow a further Sum of Money, for the purpose of strengthening and otherwise improving the Beaufort Reservoir.

Preamble.

WHEREAS by the Act No. 4, 1866-'67, intituled "An Act for enabling the Commissioners of the Municipality of Beaufort to secure a Supply of Water for the Inhabitants of such Municipality," provision was made for enabling the said commissioners to secure to the Cape of Good Hope Savings Bank Society certain moneys lent and to be lent by the said Savings Bank Society to the said commissioners, not exceeding in the whole the sum of two thousand pounds sterling, for the purpose of constructing a reservoir capable of storing such supply of water; and it is expedient to empower the said commissioners to borrow and take up such moneys as may be required for strengthening and improving the said reservoir beyond the money secured under the said Act, but not exceeding, in the whole, another sum of two thousand pounds sterling: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Loan of £2,000 authorised.

1. It shall be lawful for the commissioners of the municipality of Beaufort to borrow and take up such sum or sums of money, not exceeding, in the whole, the sum of two thousand pounds sterling, as shall be required for further strengthening and improving the reservoir aforesaid.

First ten sections of Act 4 of 1866-'67 to apply to loan under this Act.

2. The first ten sections of the Act aforesaid, No. 4 of 1866-'67, shall apply to the money to be borrowed under this Act, by whomsoever the same shall be lent, whether by the said Savings Bank Society or by some other society, or by some company or co-partnership or individual, precisely as if the said sections were, *mutatis mutandis*, herein again set forth and word for word repeated.

Moneys borrowed under Act 4 of 1866-'67 to be first charge, and moneys borrowed under this Act to be second charge on revenue liable for payment.

3. That the sum of two thousand pounds sterling, secured by the Act aforesaid, No. 4, 1866-'67, and the interest payable thereupon, shall be a first and preferent charge upon all and singular the revenues, of every description, which are by the said last-mentioned Act made liable to the payment thereof, and the moneys to be borrowed under this Act, and the interest thereof, shall form a second preferent charge upon the said revenue.

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

4. Nothing in the "Public Bodies' Debts Act, 1867," shall interfere with the preference over the revenue to arise from the said reservoir given by this and the said Act No. 4, 1866-'67, nor with the powers given by the fourth to the eighth clauses inclusive of the said Act No. 4, 1866-'67, to assess a rate for payment of the money borrowed under the said Act, in case the revenue from

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1869.

the said reservoir shall be unequal to the repayment thereof; but on the contrary, the provisions of the said sections shall be applicable to the money to be borrowed under this Act: Provided that if, in the course of any proceeding under the "Public Bodies' Debts Act, 1867," at the instance of any creditor of the municipality of Beaufort, the Supreme Court shall make an order, under the fourth section of the said Act, directing the Master of the said Court to inquire whether any, and if so what, debts other than the debt then in question are due by the said municipality, then and in that case the creditors under the Act No. 4, 1866-'67, and under this Act, may appear and prove their debts respectively.

But creditors under this Act and Act No. 4 of 1866-'67 may prove claims on proceedings taken under Act named.

5. This Act may be cited for all purposes as the "Town of Beaufort Water Loan Act, 1869."

Short title.

No. 6—1869.] [October 18, 1869.

ACT

For Limiting the Operation of the Disabilities Removal Act, 1868.(1)

WHEREAS doubts have been entertained as to the effect of the Act 11 of 1868, called "The Disabilities Removal Act, 1868," and it is expedient that the same should be put at rest: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

The said Act 11 of 1868 shall not be deemed to defeat or take away any rights vested in any person at the time of the passing of the same, nor any contingent right limited to any person or class of persons, by virtue of any deed, will, contract, or other instrument of settlement actually executed and become binding on the person or persons executing the same before the passing of the same Act, anything therein appearing to be enacted notwithstanding: Provided that any such right be claimed within due time from the passing of this Act.

Rights existing, or contingent, at the time of passing of Act No. 11 of 1868 not affected.

No. 7—1869.] [October 18, 1869.

Act 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.

[Repealed by Act 40, 1889.]

[1] Extended by Proclamation No. 80 of 1890 to all the Native Territories.

Digitised by the University of Pretoria, Library Services, 2016

No. 8—1869.] [October 18, 1869.

ACT

For Enabling the Commissioners of the Municipality of the Paarl to borrow Moneys for increasing the Supply of Water for the Inhabitants of such Municipality.[1]

Preamble.

WHEREAS it is expedient to extend and improve the waterworks of the Municipality of the Paarl, by making a new reservoir and cleaning the existing pipes, in order to increase the supply of water to the town of the Paarl: And whereas it is expedient that the commissioners of the Paarl Municipality should be empowered to borrow for the purpose an amount of money which shall not exceed in the whole the sum of one thousand five hundred pounds sterling: 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:—

Municipal commissioners empowered to raise loan, and to impose rates to provide for payment of principal and interest.

1. It shall be lawful for the said commissioners to borrow, from time to time, such sum or sums of money not exceeding in the whole the sum of one thousand five hundred pounds sterling for the aforesaid purpose, and to impose, for the purpose of providing for the payment of the interest or principal, or interest and principal, of the moneys aforesaid rates upon the immovable property situate within the municipality and liable to be rated for municipal purposes; and every rate so imposed by the said commissioners shall be of the same force and effect, and be levied in the same manner, as if it had been a rate imposed under the provisions of Ordinance No. 9 of 1836, section 28.

Loan to be charged on rate levied.

2. The sum aforesaid of one thousand five hundred pounds sterling, or such lesser sum as shall have been borrowed, for the purpose aforesaid by the commissioners, is hereby charged upon and made payable out of all and singular the rates and revenues in the last preceding section mentioned: Provided that it shall be lawful for the said commissioners to apply to the payment of the interest or principal or interest and principal of the said debt any funds or moneys coming to them from any source whatever, and not specifically appropriated or required for any other object: Provided, also, that nothing in this section contained shall be construed so as to impair or affect the provisions of any of the next succeeding sections of this Act.

Other funds may be applied to payment of loan and interest.

Not to affect succeeding sections.

Commissioners to grant written acknowledgment of loan.

3. The commissioners aforesaid shall grant to the party or parties, or company, society, or co-partnership from whom they shall borrow such money aforesaid, a written acknowledgment of, or for, the moneys borrowed by the said commissioners for the purpose aforesaid, not exceeding, in the whole, the sum aforesaid of one thousand five hundred pounds sterling; which acknowledgment shall, in substance, be in the form annexed to this Act, and

Form of acknowledgment, and by whom to be signed

[1] See Act 17, 1879; 6, 1881.

Digitised by the University of Pretoria, Library Services, 2016

shall be signed, on behalf of the said commissioners, by three of the commissioners for the time being, of whom the chairman for the time being of the board of commissioners shall be one.

Provisions of "Public Bodies Debts Act, 1867," to apply.

4. All moneys borrowed for the purposes of this Act shall be borrowed under the provisions of the "Public Bodies Debts Act, 1867."

Separate and distinct accounts to be kept.

5. The commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys, and of all revenues arising from the waterworks contemplated by this Act, distinguishing sums received for private service pipes or private watercourses from sums received from rates imposed, under the first section of this Act, upon the rateable property of the municipality, and of all moneys expended upon the construction and maintenance of the waterworks contemplated by this Act; and the said commissioners shall yearly, and every year, as long as any part of any debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the municipality of the Paarl, for the inspection, at all reasonable times, of any resident householder of the municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the thirty-first day of December in each year, and shall be deposited in the office of the municipality not later than the first day of March of the year next succeeding.

Annual accounts to be deposited in office of municipality and be open for inspection.

When to be closed and deposited.

Expenses incurred in obtaining Act may be paid out of loan.

6. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said commissioners out of the money or moneys so to be borrowed as aforesaid.

Short title.

7. This Act may be cited for all purposes as "The Town of the Paarl Water Act, 1869."

SCHEDULE.

We, the undersigned, Commissioners of the Municipality of the Paarl, do hereby acknowledge that the said commissioners, in their said capacity, are indebted to ———— in the sum of ————, for so much money borrowed by the said commissioners for the purposes set forth in "The Town of the Paarl Water Act, 1869," and certify that the said sum is and stands secured by the said Act, in manner and form as by the said Act provided. And we further covenant and engage, for and on behalf of the said commissioners, that the interest and principal of the said debt shall be payable and paid in manner following, that is to say: (Here insert, according to agreement, the rate of interest and times of payment thereof, and the date or dates or other conditions upon which the principal of the debt shall become payable).

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1869.

Given under our hands at the Paarl, this —— day of ——, 18—.

A. B., Chairman of the Municipality.
C. D., }
E. F., } Commissioners.

Witnesses:
G. H., }
I. J. }

No. 9—1869.] [October 18, 1869.

ACT

For the Better Protection of Bees. (1)

Preamble.

WHEREAS it is expedient, with a view to increasing the production of honey and bees' wax in this Colony, to prevent, by legal enactment, the wasteful destruction of bees and the nests or hives of bees, whether wild or domesticated: 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:—

Property in nests or hives of bees vested in occupier of land on which formed.

1. Every nest or hive of bees, whether wild or domesticated, which shall be formed or made or kept on any land the property of a private individual, in this Colony, or on leased Crown land during the continuation of such lease, together with all the bees and honey and wax that may be contained in any such nest or hive, shall be deemed to be the property of the person occupying such land, unless by contract with the true owner of such nest or hive of bees, in case the same be domesticated, the person occupying such land shall have agreed that such nest or hive shall be or remain on such land without prejudice to the right of ownership of such owner in such nest or hive, and the bees, honey, and wax thereof, or any of such things respectively.

Exception.

Penalty for removing hives, or contents thereof, without permission, or injuring or destroying the same.

2. Any person who shall remove, or attempt to remove, any such nest, hive, bees' wax, or honey, not being the true owner thereof under contract as aforesaid, without the permission of such occupier, or who shall wilfully injure or destroy the same, may on conviction be fined any sum not exceeding three pounds sterling, and in default of payment of the same may be imprisoned, with or without hard labour, for any period not exceeding three months, or may be imprisoned, without the infliction of any fine, at the discretion of the Magistrate, with or without hard labour for any period not exceeding three months.

Penalty for unlawful possession of beehives or contents thereof.

3. Any person having in his possession or conveying in any manner any bees' nest or hive, or bees, or honey, or wax, which may reasonably be suspected to have been stolen or unlawfully

[1] Extended by Section 178 of the Native Territories Penal Code (Act 24, 1886,) to all the Native Territories.

Digitised by the University of Pretoria, Library Services, 2016

No. 10—1869.

obtained, and who shall not give an account to the satisfaction of the Resident Magistrate how he came by the same, may be fined any sum not exceeding three pounds sterling, and in default of payment of the same may be imprisoned, with or without hard labour, for any period not exceeding three months, or may be imprisoned, without the infliction of any fine, at the discretion of the Magistrate, with or without hard labour, for any period not exceeding three months.

Costs of prosecution.

4. No payment shall be made out of the public revenue for the expenses of any prosecution to be instituted under this Act; but it shall be lawful for the Magistrate, in any case in which he shall see cause, to adjudge the person convicted to pay the costs of prosecution.

Right of proceeding under common law of the Colony not affected.

5. Nothing in this Act shall be held to prejudice or affect the rights of any true owner of any hive of domesticated bees to assert his property therein, save as is hereinbefore expressly provided, at the common law of this Colony, or to alter the common law in respect to theft of any such hive, or the honey, wax, or bees thereof, or to injury done to any property therein, save that the remedies herein provided shall be deemed to be concurrent with and in addition to those provided by the common law.

No. 10—1869.] [October 18, 1869.

ACT

To Define, in certain cases, the meaning of the term "Hawkers or Travelling Traders" for the purpose of "The Stamp Act, 1864."

Preamble.

WHEREAS it is customary for unlicensed persons to carry about for sale divers articles of small value, suitable for household use, whereby the public convenience is promoted and many poor persons earn a livelihood: and whereas it is expedient that persons carrying about such articles for sale shall not be deemed to be hawkers or travelling traders for the purpose of "The Stamp Act, 1864": Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Who shall not be deemed a hawker or travelling trader.

1. No person carrying about for sale any of the following articles, namely: Fish, fruit, vegetables, milk, eggs, butter, poultry, wild fowl, not being game, cakes, confectionery, honey, flowers, brooms, charcoal, horse-bedding, lime, mats, baskets, straw hats of colonial make, or firewood shall, by so doing, be deemed to be a hawker or travelling trader, nor shall any such person be required to take out or possess for so doing the licence by the "Stamp Act,

Digitised by the University of Pretoria, Library Services, 2016

and become under his administration, charge, control, or custody. And that if any such property, estates, matters, or things, or books, accounts, vouchers, or documents shall be withheld or withdrawn, or if any attempt shall be made to withhold or withdraw the same from his possession, charge, control, or custody, the said Master shall and may summarily apply for redress according to law in the premises to the Supreme Court, or if the said Court shall not then be sitting to some one of the Judges thereof, who shall thereupon respectively make such order as to such Court or Judge respectively shall seem proper and necessary for carrying into effect the provisions of this Ordinance: Provided always, that nothing herein contained shall extend or be construed to extend to prevent the said Master from bringing any action or actions in regular form against any person or persons where such a mode of procedure shall be necessary or expedient for the better carrying into effect the aforesaid provisions of this Ordinance. And provided also, that all bonds and other vouchers of any debts thereon payable to the Orphan Chamber, or due or payable or belonging to any person or estate which having been under the guardianship, charge, or administration of the Orphan Chamber, shall by virtue of the provisions of this Ordinance have been placed under the guardianship, charge, or administration of the said Master, shall be delivered to and received by the said Master on inventory, which shall be signed by the said Master and by the person or persons by whom the said bonds or vouchers are delivered to the said Master, and shall thereupon be filed in the office of the Registrar of the Supreme Court.

Delivery of bonds, &c., to Master on inventory.

6. And be it further enacted that on the said first day of March next all sums of money which shall form part of any estate or estates, or of any fund under the administration of the said Orphan Chamber, and which shall then be in the charge, possession, or custody of any officer or officers of the said Orphan Chamber, shall by such officer or officers be paid over to the said Master, who shall grant to him or them a receipt for the same. And every such receipt by the said Master shall be a full and sufficient discharge to such officer or officers for the sums therein acknowledged to have been received by the said Master. And all sums of money which by virtue of the provisions of His Majesty's Order in Council dated 28th November, 1828, or otherwise, have been paid into the discount bank, and in the books of such bank have been carried to the account of the said Orphan Chamber, shall on the said first day of March next be in the books of the said bank carried to the account of the Master of the Supreme Court.

Payment of money to Master.

Transfer of bank account to Master.

7. And be it further enacted, that from and after the said first day of March next, the Master of the Supreme Court shall and he is hereby authorised and required to do, and cause to be done, every matter and thing, which by virtue of the provisions of His Majesty's Order in Council dated 28th November, 1828, the

Powers of Master.

Digitised by the University of Pretoria, Library Services, 2016

No. 12—1869.

1864," required to be taken out and possessed by hawkers or travelling traders.(1)

No. 11—1869.] [October 18, 1869.

An Act for Facilitating the Recovery of Survey Expenses incurred, and the Delivery of Title Deeds of Lands surveyed, under the Land Beacons Act, 1859.

[Lapsed.]

No. 12—1869.] [October 18, 1869.

ACT

For Facilitating the Dispatch of Business in the Courts of Resident Magistrates.

Preamble

WHEREAS by the Act No. 20 of the year 1856, entituled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," it is enacted that the taking down of evidence in civil and criminal cases, and other acts, shall be performed by the clerks of the said Resident Magistrates: And whereas it is desirable, with a view to economy and to the better transaction of the business of such Courts, that such acts should be done either by the Resident Magistrate or by his clerk, as may be found convenient: 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:—

Duties of magistrate's clerk under Act 20 of 1856 may be performed by magistrate.

1. Any act which by the said Act No. 20 of 1856, or any schedule thereto, or by any other Act now in force, is required to be done by the clerk to any Resident Magistrate may henceforth be done by such Resident Magistrate himself or by his clerk, anything in any such Act or schedule to the contrary notwithstanding.

No. 13—1869.] [October 18, 1869.

An Act to Empower the Governor to raise the Sum of Fifty Thousand Pounds Sterling, for the purpose of redeeming a like Sum raised by means of Debentures under authority of the Act No. 22 of 1859.

[Spent.]

No. 14—1869.] [October 18, 1869.

An Act to Continue to the End of 1870 the Act No. 10 of 1864.

[Spent.]

---

[1] See also Ord. 11, 1846, § 8, and Acts 11, 1871, and 20, 1884, Tariff 15; § 4, 36, 1886.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1869.] [October 18, 1869. No. 16—1869.

An Act to Repeal Act No. 14 of 1860, intituled "An Act for amending the Act No. 5, 1855, intituled 'An Act for creating Divisional Councils in this Colony,' and to amend the Act No. 4 of 1865, intituled 'An Act to consolidate and amend the several Acts relating to Divisional Councils.'"

[Repealed by Act 40, 1889.]

No. 16—1869.] [October 18, 1869.

ACT

For the Dissolution of the Kowie Harbour Improvement Company.

Preamble.

WHEREAS, by a Resolution of the House of Assembly, under date the 27th day of August, in the year 1868, the Governor was requested to ascertain if the Kowie Harbour Improvement Company would make over their works and property to the Government on the terms proposed by a select committee of the said House, under date the 26th August, 1868: and whereas it is expedient that the Governor should be authorised to carry into effect the arrangement proposed in manner aforesaid: Be it therefore enacted by tho Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant clauses of Ordinance No. 4 of 1852 repealed.

1. So much of the Ordinance No. 4 of the year 1852, intituled "An Ordinance for improving the Kowie Harbour," as is repugnant to or inconsistent with the provisions hereof, shall be and the same is hereby repealed.

Governor to call up claims against company.

2. The Governor shall, as soon as may be convenient, by notice to be published in the *Government Gazette*, call upon all persons having claims against the Kowie Harbour Improvement Company, or against the directors of the same, to transmit to the Colonial Secretary, on or before a day to be named in such notice, a statement setting forth the nature and amount of such claim.

Governor to call upon shareholders to state whether they are willing to surrender shares.

3. The Governor shall likewise and in like manner call upon all persons holding shares in the Kowie Harbour Improvement Company to declare, on or before some day to be named in the notice, not being earlier than forty-two days from the date of publication of such notice, whether they are severally willing to surrender to the Government of this Colony all rights, titles, and privileges which they may possess as such shareholders.

On surrender of shares, Governor may liquidate claims against company;

4. It shall be lawful for the Governor, as soon as he shall have received from shareholders in the said Company owning not less than four-fifths of the paid-up capital of the said Company the surrender of their rights, titles, and privileges as aforesaid, to apply any sum or sums of money, not exceeding twenty-five thou-

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1869.

sand pounds in all, to the extinction and satisfaction of all the claims against the said Company of which notice shall have been given to the Colonial Secretary, in terms of the second section hereof. And when and so soon as all such claims shall have been extinguished and satisfied, the Governor shall, by proclamation, (1) to be published in the *Government Gazette*, declare the said Kowie Harbour Improvement Company to be dissolved, and the same shall thereupon be deemed and taken to have been dissolved accordingly: Provided that if just and lawful claims against the said Company, or against the directors of the same, exceeding the sum of twenty-five thousand pounds, shall have been transmitted as aforesaid to the Colonial Secretary, then the said proclamation shall not be issued, unless and until the said directors shall pay over to the Colonial Government such a sum as shall, together with the aforesaid sum of twenty-five thousand pounds, be sufficient to discharge, in full, all just and lawful claims against the said Company, or against the directors of the same.

And declare company dissolved.

If claims exceed £25,000, directors to pay excess.

On dissolution of company, liabilities of shareholders and directors to cease. But Colonial Government not liable for past transactions.

5. From and after the publication of the said proclamation, the liabilities of the shareholders in, and the directors of, the said Company shall cease and determine: but nothing in this Act contained shall be construed to impose upon the Colonial Government any liability on account of the past transactions of the said Company over and above any guarantee which may have been given according to law for the payment of any sums that may have been borrowed for the use of the said Company, and of the interest falling due thereupon.

On dissolution of company, all property, rights, &c., to be vested in the Government.

6. From and after the publication of the said proclamation all the property, powers, rights, and privileges heretofore possessed and exercised by the shareholders and directors of the said Company in or in respect of the said Company or undertaking shall be deemed to be transferred to and vested in the Government of the Colony, and the Company shall be thereupon discharged from all liabilities to the Colonial Government in respect of moneys heretofore advanced to or incurred for the said Company by the Government and of all interest thereon. And it shall be lawful for the Governor, with the advice of the Executive Council, to make such regulations for the management of the affairs of the said Company as to him shall appear necessary, and which regulations shall have the force of law until an Act shall have been passed by the Parliament to alter or confirm the same.

And liability of company for moneys advanced by Government to cease.

Governor to make regulations for managing affairs of company.

7. [Repealed by Act 13 of 1876.]

SCHEDULE.

1. To be applied to or towards the extinction or satisfaction of the certain claims in the second section of this Act mentioned. a sum not exceeding £25,000

(1) See Proclamation of June 30, 1879.

Digitised by the University of Pretoria, Library Services, 2016

2. For repaying to the Colonial Government certain moneys heretofore advanced by the said Government to the Kowie Harbour Improvement Company for carrying on the works at the Kowie, a sum not exceeding 15,000

£40,000

No. 17—1869.][1] [October 18, 1869.

ACT

To Enlarge the Powers of the Borough Council of King William's Town to borrow Money.

Preamble.

WHEREAS it is expedient that money should be raised by the Borough Council of King William's Town for the purpose of paying off the existing debts of the council, raised on mortgage of borough lands and rates under and by virtue of the fifty-first and fifty-second sections of the Ordinance No. 9, 1864, of British Kaffraria, intituled "An Ordinance to repeal the Laws relating to the Corporation of King William's Town": And whereas it is also expedient that the said council should be empowered to raise such sum or sums of money as may be necessary to enable them to pay and satisfy such liabilities as may from time to time be incurred by the said Borough Council: Be it enacted by 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 portions of Ordinance No. 9, 1864, repealed.

1. So much of the Ordinance No. 9, 1864, aforesaid, and especially the fifty-first and fifty-second sections thereof, and so much of any other Ordinance, Law, or Proclamation as is repugnant to or inconsistent with any of the provisions of this Act, shall be and the same are hereby repealed.

Council may borrow money to pay off certain existing debts.

2. The Borough Council of King William's Town may with the consent of the Governor, raise, in this Colony or elsewhere, by way of mortgage of any land or property vested in the said council, or by debentures or other securities charged upon such land or property, such sum of money as may be needed to pay and discharge the existing debts due and owing by the said council, contracted under and in terms of the fifty-first and fifty-second sections of the said Ordinance No. 9 of 1864. And the said council may further raise, in the manner before described, any other or further sum of money which shall be required for any purpose of a municipal nature which the Borough Council shall deem desirable, and the said Governor shall approve of: Provided, always, that nothing in this or the preceding section enacted shall prejudice any rights which may have been acquired by creditors or others under the

And may further borrow money for municipal purposes.

Rights of existing creditors not prejudiced.

[1] See Acts 21, 1881, and 12, 1894.

Digitised by the University of Pretoria, Library Services, 2016

'No. 17—1869.

said fifty-first and fifty-second sections respectively: Provided, further, that the said council shall, before applying to the said Governor for his consent, give public notice, at least two months previously, in one or more of the local newspapers, of their intention to make such application, in which notice so published shall be given a full and clear statement of the purpose or purposes for which the money is required: Provided, also, that as often as the said council shall raise money by the issue of debentures to be charged upon any such land or property as aforesaid, the council shall execute, to and in favour of any person or persons whom the said council shall approve of, a mortgage of the land or property upon which it is intended that the said debentures shall be charged, to be held by such person or persons in trust for the holders of the debentures so issued, which holders shall, according to their respective amounts and interests, rank *pari passu* upon the proceeds of the land or property comprised in such mortgage: Provided, lastly, that no mortgage, debenture, or other security, in regard to which the Governor shall have given his consent to the execution or issue thereof, shall be impeached or questioned by reason or upon the ground that any of the conditions or provisions of this section have not been complied with.

Notice to be given of intention to apply for Governor's sanction to borrow.

Where debentures are charged on lands, mortgage to be executed.

Mortgage, &c., not impeached through non-compliance with provisions of this section.

Council may borrow on security of rates.

3. The council may, for any such purpose as is in the preceding section described, mortgage or charge by debentures the municipal rates of the Borough of King William's Town, in security for any sum of money to be borrowed by the said council, under the provisions of this Act: Provided that no sum of money shall be borrowed under the provisions of this section, unless with the previous consent of a majority of the ratepayers of the said borough present at a meeting to be convened by the council for the purpose of considering the subject; of the object, time, and place of holding which meeting not less than fourteen days' notice shall be given in one or more of the local newspapers as aforesaid.

But only with consent of majority of ratepayers.

Provisions of "Public Bodies Debts Act" applicable.

4. Every debt, liability, and obligation created by virtue of this Act shall be subject to the provisions of the Public Bodies Debt Act of 1867.

How borough may sue and be sued.

5. It shall be lawful for the borough of King William's Town to sue and be sued, in any action which may be brought under this Act by its corporate name, as the Mayor, Councillors, and Burgesses of King William's Town.

Digitised by the University of Pretoria, Library Services, 2016

No. 18—1869.] [October 18, 1869.

ACT

To make Provision for clearing the Anchorage of the Port of East London of Anchors and Cables left derelict.(1)

Preamble.

WHEREAS the anchorage of the port of East London is rendered to a great degree unsafe by reason of a number of anchors which have from time to time been left derelict therein, and it is expedient that provision should be made for clearing the said anchorage: 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:—

Who may search for and recover abandoned anchors.

1. It shall be lawful for such person as shall be thereto appointed by the Governor from time to time to search for and recover as speedily as possible all anchors and cables which may have been lost and abandoned by any ship or ships in the said anchorage, which anchors and cables, when recovered, shall be taken possession of for and on account of Her Majesty in her colonial revenue, and shall be sold or otherwise disposed of on such terms as to the Governor shall seem fit.

Disposal of anchors recovered.

When anchor shall be deemed to have been abandoned.

2. Every anchor and cable shall be deemed to be abandoned if within twenty-one days from the date of the loss thereof no effective measures shall have been taken by or on behalf of the owners of the ship by which the same shall have been lost to raise or recover the same, or if within six weeks from the date of such loss the same shall not actually have been raised and recovered by or on behalf of such owners.

Short title.

3. This Act may be cited for all purposes as the "East London Anchorage Clearance Act, 1869."

No. 19—1869.] [October 18, 1869.

An Act for Applying a Sum not exceeding Four Hundred and Twenty-seven Thousand Three Hundred and Seventy-six Pounds Six Shillings and Eleven Pence for the Service of the Year 1869.

[Spent.]

No. 20—1869.] [October 18, 1869.

An Act for Amending the Act No. 13, 1868, intituled "An Act for defining and establishing the Constitution of the Joint-stock Company or Co-partnership called 'The Eastern Province Bank.'"

[Lapsed.]

---

[1] See Act 18, 1893, § 25.

Digitised by the University of Pretoria, Library Services, 2016

No. 21—1869.] [October 18, 1869.

ACT

To make Better Provision for the Punishment of Juvenile Offenders convicted in Courts of Resident Magistrates.[1]

Preamble.

WHEREAS it is desirable to provide means for the more suitable punishment by Resident Magistrates throughout the Colony of juvenile offenders: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant portions of sections 42 and 43 of Act No. 20, 1856, repealed.

1. So much of the forty-second and forty-third sections of the Act No. 20, 1856, intituled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," as shall be repugnant to or inconsistent with the provisions of this Act, is hereby repealed.

Juvenile offender may on first or subsequent conviction be sentenced to private whipping.

2. As often as any male person not exceeding the age of fourteen years shall be convicted, by or before any Court of Resident Magistrate of any crime or offence[2] then it shall be in the discretion of the said Court, as well in the case of a first conviction as of any subsequent conviction, to sentence such offender to receive in private a moderate correction with a cane or rod, not exceeding fifteen cuts, which correction shall be administered by such person and in such place as the said magistrate shall appoint.

Father of offender may administer correction.

3. In case the father or reputed father of any such offender shall, in person, express a desire to correct such offender himself in the manner adjudged by the Court, it shall be lawful for the Resident Magistrate to permit him to do so, in the presence of any suitable person, to be selected by such magistrate, to witness the administration of such correction.

Where offender's age be unknown.

4. Should the age of any such offender be unknown, then it shall be lawful for the Court of Resident Magistrate before which he shall be tried to judge of the age of such offender by his appearance, or according to such other materials for forming a judgment upon the subject as shall exist; and no error which shall be *bonâ fide* made by any magistrate in judging of the age of any such offender shall vitiate or affect the sentence by which such offender shall be sentenced to receive, and shall have received, any such correction as aforesaid.

No. 22—1869.] [October 18, 1869.

An Act to Continue to the end of 1870 the Act No. 32 of 1868.

[Spent.]

---

[1] See Act 8, 1889.

[2] Printed as amended by Act 19, 1877.

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1869.] [October 18, 1869.

ACT

To Repeal the Act No. 29, 1861, intituled "Act for establishing a Municipality for the City of Graham's Town," and to make other provisions in lieu thereof.[1]

Preamble.

WHEREAS it is expedient to repeal the Act No. 29 of 1861, intituled "Act for establishing a Municipality for the City of Graham's Town," and to substitute other provisions in lieu thereof: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Act No. 29, 1861, repealed; but existing municipal regulations to continue in force until altered.

1. The Act No. 29, 1861, shall be and is hereby repealed: Provided, however, that such repeal shall not affect the municipal regulations at present in force, but the same shall continue to be in force and operative until such time as the same shall be altered or new ones published under this Act; and provided, also, that the present Mayor, councillors, and officers of the municipality shall, on the taking effect of this Act, until other persons shall be elected or appointed in their places respectively hereunder, be, and they are hereby declared to be the Mayor, councillors, and officers, respectively, of the municipality created by this Act; and shall, during the time aforesaid, do and perform all acts, matters, and things, and be vested with all the rights and powers, and be subject to all the liabilities which are authorised or required to be done or performed by, or are vested in or imposed upon the Mayor, councillors, or officers, respectively, of the municipality by this Act: Provided, also, that the assessment roll at the time of the taking effect of this Act shall be deemed and taken to have been framed under this Act, and that all municipal rates assessed before the taking effect of this Act, and then due and in arrear, shall be deemed and taken to have been assessed under this Act.

Present mayor, councillors, and officers to remain in office till election of others.

Existing assessment roll and rates assessed to be taken as framed and assessed under this Act.

Extent of municipality of Graham's Town.

Boundaries.

2. The municipality of Graham's Town shall comprehend the city of Graham's Town, including all common lands and property within the area formed by the boundaries hereinafter more particularly mentioned and described: to wit, on the south by the northern boundaries of Featherstone's and Amos's farms, to the south-western beacon of Mr. Fuller's farm; thence to the north-west corner of Mr. Fuller's farm, to the south-west corner of Hart's farm (now Carlisle); thence in a northerly direction along the western boundaries of Hart's and Fynn's farms (now Carlisle's) to the northern boundaries of Fynn's and junction of Burnet's farm (also now Carlisle's); thence in a northerly direction along the north-west and north boundaries of Burnet's farm (now Carlisle's), to a junction with Carlisle's farm, "Belmont"; thence

[1] See also Acts 2 of 1871, 12 of 1878, 10 of 1885, 21 of 1886, and 14, 1894.

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1869.

along the south-western boundary to the north-east corner beacon of "Belmont"; and thence along the north-east boundary of the said estate to a junction of "Grobbelaar's Kloof"; thence along the north-west and north-eastern boundaries of Grobbelaar's Kloof and R. H. Rubidge's farm to a junction beacon of W. Clark's and A. B. Diet's farms (now Carlisle's); thence along the south-western boundaries of Diet's (now Carlisle's) farm and Campbell's farm (now Cawood's) to the southern boundaries of "Saxfold" and "Burntkraal," to the north-east corner of "Zypherfontein"; thence in a southerly direction along the eastern boundaries of the said farm to the north junction beacon of Goodwin's Kloof; thence north-east along the east and southern boundaries of the said farm to the north-east beacon of "Howison's Poort"; thence along the south-east boundary of said last-mentioned farm to the south-western and north-western boundaries of Featherstone's farm (now Wood's).

Style of corporation.

3. There shall continue to be in the said city a body corporate, which shall take and bear the name of "The Mayor, Councillors, and Citizens of Graham's Town," and by that name shall have perpetual succession, and shall have a common seal, and shall by that name sue and be sued, and shall, by the council thereof, do all acts, and have and enjoy all the rights and privileges which bodies corporate, as such, may do and have.

Mayor and councillors.

4. The council of the said municipality shall consist of twenty-four councillors, one of whom shall be the Mayor

Municipality divided into eight wards.

5. The said municipality shall be divided into eight wards,—to wit:

Ward No. 1. Bounded south by Prince Alfred Row, New-street; east by Somerset-street; north by City Boundary and Bedford-street; and west by City Boundary.

Ward No. 2. Bounded south by High-street; east by Hill-street; north by City Boundary; west by Somerset-street and Bedford-street.

Ward No. 3. Bounded south by City Boundary; east by Hill-street; west by City Boundary; north by High-street.

Ward No. 4. Bounded south by High-street; east by City Boundary; north by City Boundary; west by Hill-street.

Ward No. 5. Bounded south by City Boundary; east by Bathurst-street; north by High-street.

Ward No. 6. Bounded south by Beaufort-street; east by City Boundary; west by Bathurst-street; north by High-street.

Ward No. 7. Bounded south by City Boundary; east by York-street; north by Beaufort-street; west by Bathurst-street.

Ward No. 8. Bounded south by City Boundary; east by

Digitised by the University of Pretoria, Library Services, 2016

City Boundary; north by Beaufort-street; west by York-street. No. 23—1869.

6. The said council shall from time to time, if they shall think fit, alter the boundaries of the said wards. Council may alter boundaries of wards.

7. Three councillors shall be elected for each ward in manner hereinafter mentioned. Three councillors to each ward.

8. Every male person of full age, being duly enrolled, in manner hereinafter mentioned, who is the occupier of any immovable property in any ward of the municipality, of the yearly value or rental of not less than ten pounds sterling, in regard to which property no municipal rate shall at the time of any election of councillors or a councillor of such ward be due and in arrear, shall be entitled and qualified to vote at such election. Who qualified to vote at election of councillors.

9. The following persons shall be disqualified from voting at any such election: Persons who have been convicted of treason, murder, rape, theft, receiving stolen goods knowing them to have been stolen, fraud, perjury, forgery, or any attempt to commit any of such offences, and who shall not have received a free pardon. Who disqualified.

10. When any such property as aforesaid is jointly occupied by more persons than one, each of such joint occupiers shall, being duly enrolled, be entitled to vote in respect of such property: Provided the yearly value or rental of such property shall be an amount, when divided by the number of such joint occupiers, equal to the sum of ten pounds for every and each such joint occupier. As to joint occupiers.

11. (1) No person shall be eligible to be elected a councillor for any ward who is disqualified from voting as in the ninth section is mentioned, or who has not been an occupier of immovable property within the municipality, of the yearly value or rental of not less than ten pounds sterling, for not less than twelve months next before the election, or who is the occupier of any such property in regard to which any municipal rate shall at the time of the acceptance by such person of such requisition as is mentioned in the next section be due and in arrear: Provided that different premises or properties, occupied in immediate succession, shall satisfy this section as to occupation as if they had been one and the same premises or properties. Who ineligible as councillor.

12. (1) No person shall be deemed a candidate at any election, nor qualified to be elected a councillor for any ward, unless he shall have been invited to become such candidate by a requisition, signed by at least three qualified voters of such ward, and shall have transmitted such requisition, with his acceptance thereof, to the Mayor, at least fourteen days before such election is appointed to take place. Candidates to have requisitions.

13. [Superseded by § 5 of Act 12, 1878.]

14. On or before the first Monday in September in every year List of voters to be framed annually.

[1] But see §§ 2 and 3 Act 12, 1878.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 103—1833.

said Orphan Chamber, or any of the members or masters thereof, is or are authorised or required to do, or to cause to be done.

Authority to Master to take up and carry on, and to institute actions.

8. And be it further enacted, that from and after the said first day of March next, it shall and may be lawful for the Master of the Supreme Court, as such, without any previous application to any Court or Judge, to take up, continue, and carry on all actions and other legal proceedings which shall have been instituted by or against the said Orphan Chamber, in respect of, or with relation to any person, property, estate, matter, or thing under the guardianship, charge, or administration of the said Orphan Chamber, and which shall on the said first day of March next be still pending in any Court in this Colony. And likewise to institute every action or other legal proceeding in respect of or with relation to any such person, property, estate, matter, or thing, which the said Orphan Chamber, if it had continued to exist, might lawfully have instituted in respect of or with relation to the same: Provided always, that it shall not be lawful for the said Master to institute any proceedings for calling in or enforcing payment from any person whose estate shall not be under sequestration as insolvent or who shall not have committed an act of insolvency, of any capital which shall have been lent out to such person by the said Orphan Chamber, without first advising thereupon with and obtaining the consent thereto of the Treasurer-General and Auditor-General of this Colony, or any other two persons holding civil offices under the Government of this Colony, who shall be from time to time appointed for that purpose by the Governor; or in the event of both or either of them refusing such consent unless he shall have applied to and obtained from the Supreme Court or any Judge thereof an order of such Court or Judge authorising the said Master to institute proceedings for the purpose aforesaid.

Proceedings to call in bonds, &c.

Transfer of immovable property.

9. And be it further enacted that from and after the said first day of March next the Master of the Supreme Court shall be and he is hereby empowered and required to execute legal transfers in favour of persons legally entitled thereto of all immovable property which having at any time been or placed or taken under the administration of the said Orphan Chamber, shall not previously to the said day have been duly transferred to the persons entitled by law to receive transfer of the same, and generally to execute every such deed and to do and cause to be done every such matter and thing touching and concerning any person, property, estate, matter, or thing, who or which shall under and by virtue of the provisions of this Ordinance be placed under his guardianship, charge, or administration, as the said Orphan Chamber, if it had continued to exist would have been legally authorised or could have been legally required to execute or to do or cause to be done touching and concerning the same.

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1869.

the Town Clerk shall cause a true list to be made, in alphabetical order, of all men qualified to vote at the election of councillors for the city of Graham's Town, setting forth the christian and surname of each at full length, the place of his abode, his business or quality, the nature of his qualifications, and the ward or wards in which he is entitled to vote, and shall transmit the same to the Mayor.

List to be published and day fixed for determining objections thereto.

15. The Mayor shall forthwith cause such list to be published by affixing it in some conspicuous place upon the municipal office, and to every list so published he shall subjoin a notice of not less than fourteen days that all objections thereto will be heard and determined at such time and place as he may fix for that purpose.

List to be revised and amended.

16. The Mayor, and two councillors to be elected for that purpose by the council, shall have the power, after hearing such objections in open court, to strike out of the lists the names of all persons not entitled to be therein, and also to insert in the said lists the names of any persons which have been improperly omitted.

Designation of list

17. The lists so settled shall be called the Citizens' Roll of Graham's Town, and shall be brought into use on the first Wednesday in November in each year, and shall continue to be used for one year thence next ensuing.

Roll to be posted.

18. The Mayor shall, immediately after the settlement aforesaid, cause such roll to be published by posting the same in front of the municipal office.

19. [Superseded by § 4, Act 12, 1878.]

Election of councillors.
Mayor to call meeting.

20. Within fourteen days after the publication of the names of the several candidates invited to stand as councillors, the Mayor shall, by a public notice of not less than fourteen days, in accordance with the eighty-second section of this Act, call separate meetings of the citizens of each of the wards respectively, to be holden at some convenient place or places, for the election of the councillors required to fill the vacant seats out of the number of candidates invited for each ward, except when the number of candidates does not exceed the number of vacancies, as hereinafter mentioned.

Who to preside at meeting.

21. Every such meeting for the election of any councillor or councillors shall be presided over by a returning officer, to be appointed for that purpose by the Mayor.

Duration of poll.

The poll shall commence at ten o'clock in the forenoon, and shall finally close at three o'clock in the afternoon of the same day.

Electors to vote in person.

22. At every meeting for the election of any councillor or councillors who shall have accepted a requisition in manner aforesaid every qualified citizen, duly enrolled as aforesaid, shall be entitled to vote in person, but not otherwise.

Manner of voting.

23. The votes shall be taken by ballot, and the person or persons having the greater number of votes shall be taken to be duly elected: Provided that all candidates shall have the right to be present, either personally or by proxy, during the whole time the voting is going on, and when the contents of each ballot-box are examined by the returning officer.

Candidates may be present during voting and examination of contents of ballot-box.

Digitised by the University of Pretoria, Library Services, 2016

24. If such ballot shall be rendered indecisive by reason of an equality of votes, the returning officer shall thereupon publicly determine by lot which of the persons shall be elected for whom an equal number of votes shall have been given. How in case of equality of votes.

25. [Superseded by § 4, Act 12, 1878.]

26. The returning officer for each ward shall immediately transmit the names of the persons elected, together with the final state of the poll, to the Mayor. Returning officer to transmit names of persons elected with final state of poll to mayor.

27. When the Mayor has received the names of the persons so elected, or when he himself has declared persons elected as aforesaid, he shall forthwith cause a list of all such persons, with the names of the wards for which they are elected, to be published by advertisement in one of the local newspapers. Names of persons elected to be published.

28. [Superseded by §§ 4 and 5, Act 12, 1878.]

29. If any councillor shall die, resign, or become insolvent or otherwise disqualified, or shall be absent from the meetings of the council for a period of four calendar months, his office shall be declared vacant, and another councillor shall be elected in his place and stead, in manner hereinbefore provided, who shall hold office 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: Provided, always, that if such absence as aforesaid arise from sickness or other sufficient cause, the council shall be empowered to extend the term for one month longer. Casual vacancies, how to be filled up.

30. At the second ordinary meeting after the annual election of the Mayor in July, the Mayor and council shall appoint from among the citizens two persons to be auditors of the accounts of the council, who shall continue in office until the same day in the year following. Auditors to be appointed.

31. No person shall be eligible as an auditor who shall not be a duly enrolled citizen, or who shall be a councillor, treasurer, clerk, or other officer of the municipality. Who ineligible as auditor.

32. If any auditor shall die, resign, or become insolvent, or otherwise become disqualified, another auditor shall be elected in his stead, on a day to be fixed by the Mayor. In case of vacancy fresh election to take place.

33. In case of an equality of votes at any election of auditors, the Mayor shall determine by his casting vote which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot be both or all of them elected. How in case of equality of votes.

34. On the Thursday following every yearly election of councillors, those of the councillors then in office, together with the newly-elected councillors, shall choose from amongst themselves, by ballot, the Mayor of the municipality for the following year, and such Mayor shall enter forthwith upon his office, and shall continue therein for one year then next ensuing, provided that the chair at such meetings of the council as shall be held for the purpose of such election shall be taken by some member of the council who is not a candidate for the office of Mayor. Election of mayor. Duration of office.

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1869.

Mayor may resign.

35. It shall be lawful for the Mayor to resign his office, provided that he shall give to the council not less than one calendar month's notice of his intention so to do.

When mayor shall be deemed to have vacated office.

36. If any Mayor shall die, or resign, or shall become insolvent or otherwise disqualified as a councillor, or shall be absent from the municipality without the permission of the council for one month, or shall neglect to attend the meetings of the council for the period of three months, such Mayor shall be held to have vacated office, and the council shall elect out of their own number a successor for the remainder of the year, a week's notice having been given to each councillor of such election.

Members or officers of council being interested in contracts with council to forfeit seats or office.

37. If any member of the council, or person holding any office in the gift or disposal thereof, shall directly or indirectly, as agent or otherwise, have any share or interest in any contract with or employment by the council, otherwise than as a shareholder in any bank with which such council may transact business, or in any joint-stock company which shall contract with the council for the lighting or supplying with water or insuring against fire any part of the municipality, or shall receive any fee, reward, or compensation for any vote given or act performed in his capacity of councillor or officer, he shall thenceforward cease to be a member of the council, or to hold such office as aforesaid; and shall, upon conviction, be liable to a penalty not exceeding fifty pounds sterling: Provided that the case of the receipt of salary by an officer for the performance of the duties of his office, and that the case of a lease between the council and a councillor, as landlord and tenant, be excepted.

And liable to penalty. Exceptions.

38. [Superseded by § 6, Act 12, 1878.]

Council to frame municipal regulations.

39. It shall be lawful for the council at any meeting, at which not less than sixteen of the members shall be present, to frame from time to time all such municipal regulations as may seem meet for the good rule and government of the municipality and all such as may be expedient for the more effectual working of the powers hereby given.

Regulations to be approved by Governor and published.

40. No municipal regulation shall be of force until it shall have been by the council submitted to the Governor, and shall have been approved of by him, with the advice of the Executive Council, and published in the *Government Gazette*.

Publication of regulations sufficient proof of validity.

41. After any municipal regulation shall have been so published as aforesaid, it shall not be necessary, in any proceeding founded upon it, to prove that sixteen members of council were present at the meeting at which it was framed, nor shall any evidence be received to prove the contrary.

Penalties for contravening regulations limited.

42. It shall not be competent by any municipal regulation to provide for punishing the contravention thereof in any higher or more severe manner than by a fine not exceeding ten pounds: Provided that it shall be competent for any such municipal regulations to provide that if the person convicted of contravening the

Digitised by the University of Pretoria, Library Services, 2016

same shall not forthwith pay the fine imposed on him, he shall be liable to be imprisoned, with or without hard labour, for any period prescribed by such municipal regulation: Provided, moreover, that such period shall not exceed three months.

All property vested in existing council vested in council under this Act.

43. All land or immovable property heretofore vested in the council of the municipality now existing for the city of Graham's Town shall, after this Act shall come into force, and by virtue thereof, be transferred to and vested in the corporation heretofore mentioned, upon the like trusts and purposes for which the same were originally granted or transferred; and in like manner all liabilities, debts, contracts, or engagements incurred, made, or entered into by the aforesaid council for the time being, or their predecessors, on behalf of the municipality of Graham's Town, shall become and be the liabilities, debts, contracts, and engagements of the said corporation.

Existing liabilities, contracts, &c., binding on new council.

Council may sell or mortgage lands.

44. The council may, with the consent of the Governor of this Colony, raise, by sale at public auction or by mortgage of any land or property belonging to the corporation, or by debentures on the security charged upon such land or property, any sum of money which shall be necessary in order to carry on any important public work, or other municipal purpose which the council shall deem desirable, and of which the Governor shall approve: Provided that the council shall, at least two months previously to such intended sale, or mortgage or issue of debentures, cause to be published a full and clear statement of the situation, nature, and extent of such land or property, and the object and purpose for which the money is required.

But not without previous public notice.

Where debentures are charged on lands, mortgage to be executed.

45. As often as the said council shall raise money by the issue of debentures, to be charged upon any such land or property as aforesaid, the council shall execute, to and in favour of any person or persons whom the said council shall select, a mortgage of the land or property upon which it is intended that the said debentures shall be charged, to be held by such person or persons in trust for the holders of the debentures so issued, which holders shall, according to their respective amounts and interests, rank *pari passu* upon the proceeds of the land or property comprised in such mortgage.

Council may borrow on security of rates.

46. The said council may for the like purpose in the preceding section mentioned, with the consent of the majority of the enrolled citizens of the said municipality present at such meeting, to be convened in manner hereinafter provided, mortgage, or charge by debentures, one-third of the rates of the said municipality for a period not exceeding ten years: Provided, nevertheless, that only one such loan shall exist at the same time, and that every such loan shall be called for by public tender.

Mortgages, how to be executed.

47. Every mortgage aforesaid, or power of attorney for authorising the execution of a mortgage of any land or property under this Act, shall be under the common seal of the corporation, and shall be executed by the Mayor and be countersigned by the Town

Digitised by the University of Pretoria, Library Services, 2016

No. —1869.

Clerk, and every debenture issued under this Act shall be executed in the same manner under the common seal.

New loans may be raised for purpose of paying off loans falling due.

48. As often as any mortgage granted or debenture issued under any of the preceding sections of this Act shall be called up, or any debenture shall become payable, it shall be lawful for the said council to raise by a fresh mortgage of the said land, property, or rates which was or were mortgaged by such mortgage, or to raise by the issue of fresh debentures, any sum not exceeding the sum then required to be paid off; and the council may raise upon debentures moneys required to pay off mortgages, and conversely may raise by mortgage moneys required to pay off debentures, so long as the same land, property, and rates which were charged by the one form of security, and none other, shall be charged by the other or substituted form of security: Provided that it shall not be necessary for the council to obtain the consent of the Governor aforesaid for the granting of any mortgage or the issue of any debentures under the provisions of this section.

As regards loan taken up from Frontier Commercial and Agricultural Bank.

And whereas the council of the municipality of Graham's Town, elected under the provisions of the Act aforesaid, No. 20 of 1861, and acting under the provisions of the said Act, heretofore borrowed and took up from a certain company or co-partnership, trading as bankers in Graham's Town under the style or title of the Frontier Commercial and Agricultural Bank, the sum of six thousand pounds sterling, which sum was borrowed and taken up for the completion of a certain reservoir and other works necessary for supplying water to the inhabitants of the said municipality, and which sum was applied to such purpose: And whereas there now remains due and owing to the said bank, upon or in regard to the said loan, a balance or sum of five thousand pounds sterling: And whereas it has become necessary that the said balance or sum now due to the said bank should be paid off and discharged, and that for the raising or obtaining of the necessary money the council to be elected under the provisions of this Act should be authorised and empowered to mortgage landed property by this Act vested in the corporation created by this Act: Be it therefore enacted as follows:

Powers to raise funds to pay off loan.

49 It shall be lawful for the council of the municipality created by this Act, and the said council is hereby empowered, to borrow or take up from any person or persons, or company, such sum, not exceeding five thousand pounds sterling, as shall be necessary for paying off or discharging the balance or sum now due as aforesaid to the bank aforesaid, and, for the purpose of securing the principal and interest of the sum so borrowed, to mortgage to the person, persons, or company lending the same so much of the landed property vested in the corporation created by this Act as shall be necessary and be agreed upon: Provided that the person, persons, or company lending the said sum shall not be bound to see to the application by the council of the sum so lent, nor shall

Lender not bound to see to application of sums lent.

Digitised by the University of Pretoria, Library Services, 2016

the mortgage granted by the said council for securing the principal and interest of such sum be impeached or questioned upon the ground of any irregularity which may be alleged to have been committed in regard to the borrowing from the bank aforesaid the sum which the council is by this section empowered to borrow money to discharge.

Mortgage not affected by irregularity in previous loan.

50. The council may lease any portion of the lands belonging to the municipality, or any buildings already erected thereon, for a period not exceeding twenty-one years: Provided that such leases shall be put up to public competition, after public notice of not less than fourteen days, and that they shall contain a power to re-enter for non-payment of rent or non-performance of covenants.

Municipal lands and buildings may be leased.

Mode of leasing and conditions of lease.

51. The council may by public sale or tender, after public notice, from time to time, lease the privilege of working any mines or quarries belonging to the municipality, for any term not exceeding five years.

Mines and quarries.

52. No lessee of any such lands, buildings, mines, or quarries as aforesaid shall assign or sublet the same without the previous consent, in writing, of the council; and any assignment or subletting, without such consent, shall, as against the council, be null and void.

Lessee not to sublet without consent of council.

53. In case the said council shall require to take or use any land with or without the buildings, if any, erected thereon, for the purpose of making, widening, or improving any street, market, or public building; or, for such purpose, to dig out or carry away any materials belonging to any person within the said municipality; or for the purpose of supplying the said city with water, to appropriate or make use of any springs, streams, or other supplies of water within the said municipality belonging to any person 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 said council, and it is hereby authorised and empowered, to treat and agree with every such person for the purchase or hire, as the case may be, of any such land, buildings, materials, springs, streams, or other supplies of water as aforesaid, or for the payment of consequential damages, and generally to enter into such contract or contracts relative to the obtaining of any such land, buildings, materials, springs, streams, or other supplies of water, upon such terms and conditions as the said council shall judge expedient. And in case any such person and the said council shall not agree upon the purchase money, hire, or recompense to be respectively given by the one party and accepted by the other, then the said council shall cause to be served upon such person a written notice offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state, in writing, to the said council, or to some person by it appointed, within a certain time to be specified in the said notice, not being less than fourteen days from the service of

Council may purchase or hire lands, buildings, materials, &c., for public improvements, and appropriate streams and fountains.

How where parties disagree as to terms of sale or purchase.

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1869.

the said notice, whether he is willing to accept the sum therein mentioned or not; and in case the person shall refuse to accept the sum offered, or shall neglect to reply to the said notice, the said council shall, by another notice in writing, call upon such person to refer to arbitration the amount of recompense or compensation to be paid to him by the said council, and for that purpose to transmit to the said council within a certain reasonable time, to be specified in the lastmentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration; and the said council, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed, on behalf of the said municipality, by the Town Clerk for the time being, and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators before commencing such arbitration to appoint an umpire, and their or his decision shall be final; and the award of such arbitrators or umpire, as the case may be, shall be made a rule of the Supreme Court, Eastern Districts Court, or any Circuit Court of this Colony, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the same subject matter. And in case such person as aforesaid claiming such recompense or compensation shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, it shall be lawful for the said council, and it is hereby authorised, to lodge in some joint-stock bank in the Eastern Province the sum of money offered by it, as aforesaid, in its first notice in this section mentioned, for or on account and at the risk of such person aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said council, upon so lodging the said sum, shall be authorised and entitled to take or use the said land, buildings, materials, springs, streams, or other supplies of water in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been an order by the arbitrators or umpire under the provisions of this section; and as if all acts by law required for vesting in the said council a sufficient title to the use of or property in the land, buildings, materials, springs, streams, or other supplies of water aforesaid had been duly done and performed.

Arbitration may be referred to.

How where owner of property neglects or refuses to name arbitrator.

How if owner of property be absent or not discoverable.

54. In case the said council shall, for any purpose in the last foregoing section in that behalf mentioned, require to take or use any of the land, with or without the buildings, if any, erected thereon, or to dig or carry away any of the materials, or to appropriate or make use of any springs, streams, or other supplies of water in the last preceding section mentioned, of which the

Digitised by the University of Pretoria, Library Services, 2016

owner shall be absent from the Colony, and not represented therein by any agent duly accredited, or shall not be discoverable, it shall be lawful for the said council, and it is hereby authorised, to cause a notice to be inserted in the *Government Gazette* and one or more local papers for four successive months, describing as accurately as may be, the materials, land, buildings, springs, streams or other supplies of water which are required to be taken or used, and calling by name on the owner of the said land, buildings, materials, springs, streams, or other supplies of water, if known, or, if not known, then upon the owner, whoever he may be, to take notice that the said council is ready and willing to treat with the owner, or any person duly authorised by him, for the recompense or compensation to be made or paid by the said council for the said land, buildings, materials, springs, streams, or other supplies of water, and requiring such owner to apply within six months from the date of such notice, which shall be the day of its first publication, to the said council, stating the recompense or compensation claimed, and if the owner shall so apply within the said period, then the like proceedings in regard to the agreeing for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken, which are prescribed in the last preceding section, precisely as if the said owner or owners had from the first been in actual occupation. And in case such owner shall not apply to the said council within the said period, then it shall be lawful for the said council to appoint some competent person, to be approved of by the Civil Commissioner of the division, to appraise the value of the land, buildings, materials, springs, streams, or other supplies of water required, and such person shall make oath before any Justice of the Peace that he hath to the best of his judgment fairly appraised such value; and thereupon it shall and may be lawful for the said council to pay whatever sum such person shall have valued the land, buildings, materials, springs, streams, or other supplies of water in question at, into the Guardian's Fund, to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to the persons absent from the Colony; and the said council, upon so paying the said sum, shall be authorised and entitled to take or use the land, buildings, materials, springs, streams, or other supplies of water in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of or property in the land, buildings, materials, springs, streams, or other supplies of water aforesaid had been duly done and performed.

Value to be paid into Guardian's Fund.

55. All acts, matters, or things hereby authorised or required to be done by the council, and all questions that may come before it,

Questions to be decided by majority of votes.

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1869.

shall, except as hereinafter excepted, be done and decided by the majority of councillors who shall be present at any meeting at which not less than seven members of the council shall attend:

But not to effect sections 39 and 40.

Provided that nothing herein contained shall extend to alter or affect the provisions of the thirty-ninth and fortieth sections of this Act.

Ordinary meetings.

56. An ordinary meeting of the council shall take place at least once in every week, and all meetings of the council shall be open to the public.

Special meetings.

57. The Mayor, or any three councillors, may at any time call a special meeting of the council, provided that he or they cause a notice of the time and place of such intended meeting, specifying the object thereof, and signed by him or them or by the Town Clerk, to be served on every councillor, either personally or by leaving the same at his usual place of abode, twelve hours at least before such meeting.

Who to preside.

58. At every meeting of council the Mayor, if present, shall preside; and in case of his absence, the councillors present shall elect a chairman from among themselves.

Chairman to have casting vote.

59. In all cases of equality of votes the Mayor, or chairman, as the case may be, shall have a second or casting vote.

Minutes of proceedings to be kept.

60. Minutes of the proceedings of every meeting of the council shall be regularly entered in a book to be kept for that purpose, and shall be read at the next succeeding meeting, and signed by the person presiding thereat.

61. [Superseded by § 7, Act 12, 1878.]

Appointment and removal of officers.

62. It shall be lawful for the council from time to time to appoint fit persons (not being members of the council) to be Town Clerk and Treasurer; and also to appoint such other officers as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so to be appointed such salaries as the council shall deem reasonable, and, unless it shall be otherwise stipulated in the contract of service, to remove all such officers upon a notice of not less than three months, or, in case of misconduct, without any notice.

Appointment of street-keepers and policemen.

63. The said council are hereby empowered from time to time to appoint and employ such number of able-bodied street-keepers and policemen as shall be required for the protection of the inhabitants and property, streets and public places within the municipality, by day and by night, and to provide all such street-keepers and policemen with such clothing, arms, ammunition, and weapons, and shall appoint to them such duties and hours and times of duty, and shall also make such rules, orders, and regulations relative to such street-keepers and policemen and their duties, as shall be deemed fit.

Street-keepers and policemen to act as constables.

64. All such street-keepers and policemen shall act as constables while in the execution of their duties under this Act, and are hereby invested with and shall have and enjoy the like powers and authorities, privileges, and immunities, and shall be subjected to

Digitised by the University of Pretoria, Library Services, 2016

such and the like penalties and forfeitures, as constables are invested with or shall or may have or enjoy or are or may be subject or liable to by law.

65. [Superseded by § 8, Act 12, 1878.]

66. [Superseded by § 9, Act 12, 1878.]

Who liable to be rated.

67. All persons owning or occupying property within the limits of the municipality, excepting such property as is hereinbefore exempted, shall be liable to be rated on account of such property to the city rate in such manner and to such extent as is hereinafter provided: Provided that nothing in this Act contained shall be taken to authorise the assessment of a rate both upon the owner and the occupier of any one property in respect of such property.

Owner and occupier not jointly liable to assessment in respect of same property.

Valuation of fixed property.

68. Within three months after the passing of this Act the council shall appoint one or more competent appraisers, not being members of such council, for the purpose of valuing all and singular the immovable property situate within the municipality.

69. [§§ 69 and 70 superseded by § 10, Act 12, 1878.]

Decision of court final.

71. The decision of the council upon any objection to any valuation shall be final and conclusive, and shall not be capable of being reviewed or reversed by any Court or proceeding whatsoever.

72. [Superseded by § 13, Act 12, 1878.]

When rate assessed shall become due.

73. Every rate so assessed as aforesaid shall become due and payable upon a certain day, to be fixed by the council, of which day and the amount of which rate the said council shall give at least fourteen days' notice in one of the local newspapers: Provided that it shall not be necessary, in any suit or proceeding for the recovery of any such rate, to prove anything further as to due notice having been given than the publication of the announcement thereof in one of the newspapers aforesaid.

Notice to be given.

Proof of publication of notice sufficient.

Collection and recovery of rates.

74. When the council shall have announced in one of the local papers the day on which any rate duly assessed under this Act will become due and payable, it shall be incumbent upon all persons liable to such rate to pay the amount thereof so due to any person whom the council may have authorised to receive the same on or before the day fixed in the said announcement for the payment of the same, on pain of being forthwith liable to legal proceedings, at the suit of the Town Clerk, for the recovery of the amount: Provided, also, that any occupier who shall have paid any such rate shall be entitled to recover the same from the owner, unless there be any agreement to the contrary.

Rates paid by occupier recoverable from owner.

Who may be sued for rates.

75. The council may, in suing for the recovery of rates, proceed against the owner, or in case of his absence from the Colony, his agent or the person receiving the rents for him, or the 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 that no occupier of any immovable property shall be liable for any rate

Occupier not liable for rates due previous to his occu-

Digitised by the University of Pretoria, Library Services, 2016

Ord. 103–1833.

Proceedings at law against Orphan Chamber to be brought or continued against Master, except actions for damages for misconduct by officers of the chamber.

10. And be it further enacted that from and after the said first day of March next it shall and may be lawful for any person who if the said Orphan Chamber had continued to exist might then lawfully have instituted any action or other legal proceeding against the said Orphan Chamber in respect of or in relation to any person, property, estate, matter, or thing, who or which shall by virtue of the provisions of this Ordinance have been placed under the guardianship, charge, or administration of the Master of the Supreme Court, to institute any such action or legal proceeding against the said Master as such, and in place of the said Orphan Chamber. As also to continue and carry on any action or other legal proceeding which previously to the said first day of March next any such person shall have instituted against the said Orphan Chamber in respect of or with relation to any such person, property, estate, matter, or thing as aforesaid against the said Master as such, and in the place of the said Orphan Chamber: Provided always, that nothing herein contained shall extend or be construed to extend to make it lawful for any person to continue and carry on, or to institute against the said Master any action or other legal proceeding which such person shall, previously to the said first day of March next have instituted, or, if the said Orphan Chamber had continued to exist, might have instituted against the said Orphan Chamber or any person or persons who shall at any time have been members or officers of the said Chamber, for reparation of any loss, damage, or injury which shall be alleged to have been at any time occasioned by any act improperly done or omitted to be done by the members or officers of the said Orphan Chamber or any of them in the performance of the duties of their office. And that nothing herein contained shall extend or be construed to extend to free, discharge, or relieve any person or the heirs, executors, or representatives of any person who shall at any time have been a member or officer of the said Orphan Chamber from any obligation, claim, or demand in or to which any such person has at any time made himself or his heirs, executors, or representatives, liable by reason of any act improperly done or omitted to be done by such person in the performance of the duties of his office of member or officer of the said Orphan Chamber.

Liability of heirs of such officers.

Duties of Master under Ordinance No. 105.

11. And be it further enacted that the Master of the Supreme Court, so soon after the said first day of March next as may be, shall in order to provide for the proper custody, care, control, maintenance, and education of all such persons as shall by virtue of the provisions of this Ordinance be placed under his guardianship and charge, do, and cause to be done, every act and thing which by the provisions of the Ordinance No. 105, he shall be authorised and required to do or cause to be done with reference to the custody, care, control, maintenance, and education of such persons as shall by virtue of the provisions of that Ordinance be placed under his guardianship and charge.

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1869.

which had become due and payable thereon at any time before he entered on the occupation thereof; and provided, further, that any person who, as occupier may have become liable for any rate as aforesaid shall continue to be liable for such rate, although he may have ceased to occupy the property in respect of which the rate had been imposed.

pation but former occupiers to remain liable.

Arrears of rates to be published.

76. The council shall, once in every year, publish in one or more of the local newspapers a statement of every sum in arrear, and of the property in respect of which the same is due.

77. [Superseded by § 14, Act 12, 1878.]

Valuation of buildings erected or improved during duration of list.

78. In case any new building shall be erected during any such period of five years, or in case of any addition to, or alteration of, any building then already rated, increasing the value thereof, the council shall proceed to have the land and such building thereon valued or re-valued, as the case may be, in the same manner as is hereinbefore provided with regard to the first valuation; and after such valuation is completed the property so valued or re-valued shall be in the same plight and condition as to future rates as if it had been included in the first or then preceding general valuation.

Council may adopt valuation of Albany Divisional Council.

79. Instead of the mode aforesaid of ascertaining the value of property within the said municipality to be rated as aforesaid, it shall be lawful for the council, by resolution to adopt the valuation of such property subsisting and in force for the time being made for road purposes by or under the direction of the Divisional Council of Albany; and such valuation shall thereupon become and be the valuation for the purposes of this Act, just as if it had been made by appraisers appointed by the council as aforesaid.

Council may establish tolls.

80. It shall be lawful for the council, by any municipal regulations as aforesaid, to impose such toll or dues as may be reasonable on all persons making use of any road, bridge, or market-place within the municipality, which the council is hereby empowered to make or maintain, and in case of the non-payment of such tolls or dues, to recover the same by legal process, or in such manner as may by the municipal regulations be in that behalf provided.

Who exempt from tolls.

81. No toll shall be payable by any officer or soldier or member of any Volunteer Corps, being in proper staff or regimental or military uniform, dress or undress, and on duty, or by any judicial or civil officer, mail-carrier, or other Government servant whilst travelling on public duty; and further that no more than one toll shall be payable in any one day, to be computed from twelve o'clock in one night to twelve o'clock in the next succeeding night, for or in respect of the same vehicle or animal.

Treasurer to keep accounts, which shall be audited and abstract published.

82. The Treasurer of the said municipality shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received and paid, and of the several matters in respect whereof such sums shall have been received and paid. All such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance-sheet thereof, shall yearly, at such

Digitised by the University of Pretoria, Library Services, 2016

times as the council shall appoint, be handed by him to the auditors, and to such members of the council as the Mayor shall name, for the purpose of being examined and audited; and such abstract or balance-sheet, when found correct, shall be signed by the auditors, and shall be forthwith published by the Treasurer in one or more of the local newspapers.

83. [Superseded by § 15, Act 12, 1878.]

84. [Superseded by § 16, Act 12, 1878.]

Storing of gunpowder, &c.

85. The storing of gunpowder or other explosive or inflammable material shall not be permitted, except by Her Majesty's Government for public purposes in such places as may be approved by Her Majesty's officers, or by other persons in such places as may be approved of and licensed by the Town Council for that purpose.

Council may close burial-grounds.

86. So soon as any burial ground or portion thereof shall become so crowded as to be, in the opinion of two-thirds of the council, dangerous to the public health, the council shall be empowered to give six months notice that burials therein shall cease; and after the expiration of the said term of six months any person causing any interment to be made therein shall be liable to pay a fine not exceeding fifty pounds, to be recovered in any competent court.

Short title

87. This Act may for all purposes be cited as "The Graham's Town Municipality Act, 1869."

No. 24—1869.] [October 18, 1869.

An Act to provide for the Expenses of the Survey of Crown Lands for Lease, and for other purposes.

[Repealed by Act 10, 1874.]

No. 1—1870.] [May 5, 1870.

ACT

To Regulate the Apprehension within this Colony of Deserters from Her Majesty's Land Forces.

Preamble.

WHEREAS it is expedient that better provision be made for the apprehension of soldiers deserting from Her Majesty's land forces within this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Ordinance No. 93, 1833, repealed.

1. The Ordinance No. 98 of the year 1833, intituled "An Ordinance for facilitating the Apprehension and regulating the mode of Conveyance of Deserters from His Majesty's Land Forces within this Colony to their respective Corps, and for the more

Digitised by the University of Pretoria, Library Services, 2016

No. 1—1870.

prompt payment of Rewards and Expenses consequent thereupon," shall be and the same is hereby repealed.

Authority for apprehending suspected deserters.

2. It shall be lawful, upon reasonable cause of suspicion that a person is a deserter from Her Majesty's land forces, for any peace officer or constable, or, in the absence of such peace officer or constable, for any officer or soldier in Her Majesty's service or other person to apprehend or cause to be apprehended such suspected person and forthwith to bring him or cause him to be brought before any Resident Magistrate or Justice of the Peace living in or near the place where he may be so apprehended; and

Proceedings of magistrate or justice of the peace before whom suspected person is brought.

such Magistrate or Justice shall inquire whether such suspected person is a deserter, and may from time to time defer the said inquiry and may remand the said person in manner prescribed for preliminary examinations in the case of persons accused of crimes: And if it shall appear to the satisfaction of such Magistrate or Justice, by the testimony of one or more witnesses, or by the confession of such suspected person, confirmed by some corroborative evidence, or by the knowledge of such Magistrate or Justice, that such suspected person is a deserter from Her Majesty's land forces, such Magistrate or Justice shall forthwith cause him to be conveyed to and delivered into custody at some military post, if at a reasonable distance, or otherwise to some public prison; and such Magistrate or Justice shall in every such case forthwith transmit to the officer commanding Her Majesty's forces in this Colony a descriptive return in the form prescribed in the schedule to this Act annexed, to the end that such person may in due course and with all reasonable speed be removed by order of such officer and proceeded against according to law. And such descriptive return shall, in the absence of proof to the contrary, be deemed sufficient evidence of the facts and matters stated therein, and such Magistrate or Justice shall also and at the same time send to the said officer a report stating the name or names of the person or persons by whom or by whose means the deserter was apprehended

Reward for apprehension of deserter.

and secured; and the said officer shall thereupon cause to be transmitted to the said Magistrate or Justice an order for the payment to such person or persons of such sum, not exceeding two pounds sterling, as such officer shall be satisfied he or they is or are entitled to according to the intent and meaning of the Mutiny Act

Fee for medical inspection of suspected person.

in force for the time being, and of this Act; and any medical practitioner who, in the absence of a miltary medical officer, may have been required to examine such suspected person and to give a certificate of such examination, shall be entitled to a fee of five shillings upon his notifying the fact to such officer.

Gaoler required to receive deserter, or suspected deserter.

3. Every gaoler, or keeper of any gaol or other public place of confinement, is hereby required to receive and confine therein every person suspected of being or being a deserter who shall be delivered into his custody in the course of his transmission under the second section of this Act upon production of the warrant of the Magis

Digitised by the University of Pretoria, Library Services, 2016

trate or Justice before whom such person shall have been taken, or of some order of the officer commanding Her Majesty's forces in the Colony, which order shall continue in force until such suspected deserter shall have arrived at his destination; and every such gaoler or keeper shall be entitled to such subsistence money for the maintenance of such person as shall be directed by Her Majesty's regulations.

Inquiry to be made to prevent collusion between suspected deserter and person apprehending.

4. Every Resident Magistrate or Justice of the Peace before whom any suspected deserter shall be brought shall investigate the circumstances attending his apprehension, in order to ascertain whether or not there is reason to suspect the existence of collusion between such suspected deserter and the person by or through whose means he shall have been apprehended, or whether such apprehension has been made in good faith; and such Magistrate or Justice shall briefly set forth such circumstances in the return in the second section hereof mentioned.

SCHEDULE.

No.—.

Description Return of ———, who was apprehended (or surrendered himself, as the case may be) on the —— day of ——, and was committed to confinement at ———, on the—— day of ——, as a Deserter (or suspected Deserter, as the case may be) from (insert Regiment or Corps).

Age	
Height..	feet inches
Complexion	
Hair	
Eyes	
Marks	
Probable date of enlistment, and where	
Probable date of desertion, and from what place	

Digitised by the University of Pretoria, Library Services, 2016

No. 1—1870.

Name and occupation and address of the person by whom, or through whose means the Deserter or suspected Deserter (as the case be) was apprehended and secured	
* Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner, and upon what ground	

* It is important for the Public Service, and for the interest of the Deserter (or suspected Deserter, as the case may be), that this part of the Return should be accurately filled up, and the details should be inserted by the Magistrate or Justice, in his own handwriting, or under his direction by his clerk.

I do hereby certify that the prisoner has been duly examined before me as to the circumstances herein stated, and that he has declared in my presence that he* a deserter from the abovementioned Corps.

Signature and address of the Magistrate or Justice.

Signature of the prisoner.

Signature of informant.

* Insert "is" or "is not," as the case may be.

I certify that I have inspected the prisoner and consider him* for military service.

Signature of the military medical officer, or of † private medical practitioner.

* Insert "fit" or "unfit," as the case may be; and if unfit, state the cause of unfitness.

† No fee will be allowed to a private medical practitioner where a military medical officer is stationed, unless it shall be shown that his services were not available.

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1870.] [May 5, 1870.

ACT

To Amend the Law relating to the Protection of Seamen's Clothing and Property.

Preamble.

WHEREAS the clothing and property of soldiers are protected by the restraint of the sale thereof, and it is expedient to make the like provisions with respect to seamen's clothing and property: Be it enacted by 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 Seamen's Clothing Act, 1870."

Places to which Act shall apply.

2. The places to which this Act extends are the places specified in the schedule to this Act, and for the purposes of this Act the limits of those places shall be the limits specified in the second column of the said schedule.

Interpretation of terms.

3. In this Act the term "the Admiralty" means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral. The term "seaman" means every person not being a commissioned, warrant, or subordinate officer who is in or belongs to Her Majesty's Navy, and is borne on the books of any one of Her Majesty's ships in commission, and every person not being an officer as aforesaid, who, being borne on the books of any hired vessels in Her Majesty's service in time of war, is by virtue of any Act for the time being in force for the discipline of the Navy, subject to the provisions of such Act. The term "seaman's property" means any clothes, slops, medals, and necessaries, or articles usually deemed to be necessaries for sailors on board ship which belong to any seaman.

Person knowingly detaining, buying, &c., seamen's property liable to penalty.

4. If any person in any place to which this Act extends detains, buys, exchanges, takes on pawn, or receives from any seaman, or any person acting for a seaman, any seaman's property, or solicits or entices any seaman, or is employed by any seaman, to sell, exchange, or pawn, any seaman's property, he shall, unless he proves that he acted in ignorance of the same being seaman's property, or of the person with whom he dealt being or acting for a seaman, or that the same was sold by order of the senior naval officer on the Cape of Good Hope Station, be liable, on conviction before the Resident Magistrate of the district in which such place shall be situate, to a penalty not exceeding twenty pounds sterling, and if convicted of a second offence, to a similar penalty, or, in the discretion of the Court, to be imprisoned for a term not exceeding six months, with or without hard labour, subject always to the provisions of the eighth section of this Act.

Person found in possession of seamen's property, and

5. If in any place to which this Act extends any seaman's property is found in the possession or keeping of any person, and

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1870.

not giving satisfactory account, liable to penalty.

he is taken or summoned before the Resident Magistrate of the district (which taking and summoning are hereby authorised), and such Magistrate sees reasonable grounds for believing the property so found to have been stolen, or to have been detained, bought, exchanged, pawned, or otherwise received contrary to the provisions of this Act, then if such person does not satisfy the Magistrate that he came by the seaman's property so found lawfully and without any contravention of this Act, he shall be liable, on conviction before such Magistrate, to a penalty not exceeding five pounds sterling; and for the purposes of this section seaman's property shall be deemed to be in the possession or keeping of any person if he knowingly has any such property in the actual possession or keeping of any other person, or in any house, building, lodging apartment, field, or place, open or enclosed, whether occupied by himself or not, and whether the same are so had for his own use or benefit, or for the use or benefit of another.

Accessory liable to same punishment as principal offender.

6. Every person who shall be convicted as an accessory in any offence under or in contravention of this Act, shall be liable to be punished in like manner as if he were a principal offender, and on every second or subsequent conviction shall be liable to be punished in like manner as if on a second or subsequent conviction for the principal offence; and every conviction of the principal offence, after the conviction of the same offender as an accessory shall be deemed a second or subsequent conviction for the principal offence, and every conviction as an accessory of any person who shall have been convicted of the principal offence shall be deemed a second or subsequent conviction.

Search warrant may be issued.

7. Seaman's property detained, bought, exchanged, pawned, or received, in contravention of this Act, shall, for the purposes of search warrant, be stolen property, within the provisions of section forty-two of Ordinance No. 40, and reasonable suspicion that any such property is concealed in any place shall, under the restrictions in such last mentioned section contained, justify the issue of a search warrant as in such section is provided.

In default of payment of fine, offender maybe sentenced to imprisonment, &c.

8. In default of the payment of any fine imposed on any offender under this Act such offender may be sentenced to imprisonment with or without hard labour, or with or without spare diet, subject to the Governor's regulations in respect thereof, for any period not exceeding three months.

Proceedings under other Acts not barred.

9. Nothing in this Act shall prevent any person from being indicted, or being liable under any other Act or otherwise to any other or higher penalty or punishment than is provided for any offence by this Act; provided, however, that no person be punished twice for the same offence.

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE.

No. 4—1870.

Names of Places.	Limits of Places.
Cape Town ..	The limits of the municipality of Cape Town, together with the municipality of Green Point and the district of the Resident Magistrate of Wynberg.
Simon's Town..	The limits of the district of the Resident Magistrate of Simon's Town.

No. 3—1870.] [May 5, 1870.

An Act to Render Lessees of Crown Lands leased under the Provisions of Act No. 19, 1864, liable to the payment of Road Rates, and qualified as Members of Divisional Council.

[Repealed by Act 40, 1889.]

No. 4—1870.] [May 5, 1870.

ACT

To Regulate the Disposal of certain Agricultural Lands in this Colony. (1)

Preamble.

WHEREAS it is expedient that increased facilities should be given to agriculturists and others of small means to become possessors of land on certain fair and reasonable conditions: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant portions of Acts No. 2 of 1860 and No. 19 of 1864, repealed.

1. So much of the Act No. 2, 1860, and of Act No. 19 of 1864, as is repugnant to or inconsistent with any of the provisions of this Act, shall be, and the same is hereby repealed.

Survey of lands.

2. The Governor may from time to time cause to be surveyed agricultural areas, taken from the Crown land of this Colony, such areas being as well watered as possible.

Mode of survey.

3. Such areas shall be surveyed in allotments of not more than five hundred acres, due regard being had to the capabilities of the ground.

---

[1] Repealed by Act 37, 1882, but re-printed in view of the provisions of § 1 of that Act.

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1870

Surveyed lands may be proclaimed open for selection.

4. When the survey of any such area is complete, it shall be lawful for the Governor to proclaim that the lands therein situated will within a certain time be open for selection in the manner and terms herein set forth.

Lands may be selected by absolute or conditional purchase.

5. The land comprised in any such proclaimed area shall thenceforth be open for selection either by absolute purchase or by conditional purchase in the manner hereinafter set forth.

Conditional purchase, how effected.

6. When any person desires to select any allotment in such agricultural area for conditional purchase, he may make a written application for such allotment to the Civil Commissioner of the district within which such area shall be situated, in the form set forth in the schedule hereunto annexed, and on paying the first year's rent for such allotment, and if no other application shall have been made for the same allotment, he shall become a conditional purchaser of such allotment.

Where two or more applications for same allotment, mode of procedure.

7. In the event of two or more applications being received by the Civil Commissioner on the same day, for the same allotment, the Civil Commissioner of the district in which such land is situated shall appoint a day upon which the applicants are to attend before him, either in person or by an agent duly authorised in writing, and such allotment shall then be put up, to be competed for by the said applicants, at an upset rent of one shilling per acre, and the highest bidder shall on payment of the first year's rent, together with such premium as he shall offer thereon, be declared the conditional purchaser.

Terms of lease to conditional purchaser.

8. The person who shall be declared the conditional purchaser of any allotment shall receive a lease on the following terms and conditions:

1. The term shall be for ten years, commencing from the first payment of rent.
2. The yearly rent shall be at the rate of one shilling per acre, or in the case above provided for by the sixth clause, at such sum as may have been bid by such conditional purchaser.
3. The rent for the second and each succeeding year shall be paid in advance into the office of the Civil Commissioner of the division in which such area is situated.
4. The lessee shall be bound within two years of obtaining such lease to cultivate at least one acre of every ten acres, or to erect a suitable dwelling-house thereon.
5. On failure of any of the conditions hereinbefore contained, the lease shall be forfeited, and the land and the improvements thereon shall revert to Government, but no forfeiture for non-payment of rent shall be enforced, provided such rent be paid into the office of the Civil Commissioner of the division within ninety days from the same becoming due: Provided, further, that when the lease of any such lands shall be forfeited as aforesaid,

Digitised by the University of Pretoria, Library Services, 2016

such lease shall be put up to sale by public auction within one hundred and eighty days of such forfeiture, and after deducting from the amount for which such lease shall be sold the arrears of rent and all other sums due or which may be due to the Government, as well as all expenses incurred in holding such sale, the sum of money remaining, if any, shall be paid to the lessee or to his lawful representatives.

6. So soon as a lessee shall have made the tenth annual payment of rent, he shall, on payment of the survey expenses and other expenses of title, receive a grant of the land at a perpetual quitrent of one per cent. per annum upon ten years' value thereof; provided, however, that in no case shall the quitrent chargeable be less than ten shillings per annum.

7. If at any time during the term of such lease the lessee shall pay into the Civil Commissioner's office the rent for the unexpired portion of such term, he shall receive a grant of the land under perpetual quitrent as aforesaid.

Absolute purchase, how effected.

9. Any person who, having selected an allotment in the manner hereinbefore provided, shall forthwith pay the whole purchase money thereof, at the rate of ten years' annual rent, and the expenses of survey and title, shall receive a grant of the said allotment on a perpetual quitrent as aforesaid.

No one person to hold more than five hundred acres.

10. It shall not be lawful for any one person or partnership to become, under the provisions of this Act, the lessee or holder of more than five hundred acres of land.

Short title.

11. This Act may be cited for all purposes as the "Agricultural Lands Act, 1870."

SCHEDULE.

FORM OF APPLICATION.

I, the undersigned, do hereby state my desire to become conditional purchaser of allotment No. ——, in area ————————, containing —— acres, and herewith tender the sum of £—— as and for the first year's rent thereof, and I do solemnly and sincerely declare that I apply for the above allotment on my own behalf, and for my own use and benefit only, and not as agent or trustee for any other person.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Ordinance No. 6, 1845, entitled "An Ordinance for substituting Declarations in the place of certain Oaths, and for the suppression of voluntary and extra-judicial Oaths and Affidavits."

Declared before me, ————————————

Digitised by the University of Pretoria, Library Services, 2016

Ord. 103—1833.

Administration, by Master in conformity with the laws governing administration, &c., by Orphan Chamber.

12. And be it further enacted that with respect to all property, estates, matters, and things which shall by virtue of the provisions of this Ordinance be placed under the administration of the Master of the Supreme Court, he shall proceed in the administration, distribution, and final settlement thereof in conformity with and according to the rules and regulations, in conformity with, and according to which the same ought by law to have been administered, distributed, and finally settled by the said Orphan Chamber, if it had continued to exist. And the said Master is hereby authorised and required from and after the said first day of March next to demand, exact, receive, and retain, in respect of such property, estates, matters, and things, and in respect of any proceedings touching or concerning the same all such fees as by law would have been due and could have been exacted by the said Orphan Chamber or any of the officers thereof, if such property, estate, matter, or thing had previously to the said day been administered, distributed, or finally settled by the said Orphan Chamber, or any of the officers thereof. And the said Master shall keep a separate and distinct account of all such fees so received or retained by him, and shall account for and pay over the same in like manner as is by law provided in respect of any other fees received or retained by him as Master of the Supreme Court: Provided always, that it shall and may be lawful for the said Master, in all cases in which it shall appear to him expedient so to do, to proceed in the administration, distribution, and final settlement of all such property, estates, matters, and things as aforesaid, in such manner and in conformity with and according to the rules and regulations which shall be provided respectively by the Ordinances Nos. 104 and 105, for the administration, distribution, and final settlement of any property, estate, matter, or thing which shall by the provisions of such Ordinances respectively be placed under the administration of the said Master. And provided also, that when under and by virtue of the provisions of this Ordinance there shall be paid to or received by the said Master any money belonging to any person or estate under his guardianship, then and in every such case it shall and may be lawful for the said Master to open a debit and credit account in the wards' book with the person or persons to whom, or the estate to which such money shall belong, and to pay such money into the discount bank, to be carried to the credit of the guardian's fund, in like manner in all respects as is provided by the twenty-sixth, twenty-seventh, twenty-eighth, and twenty-ninth sections of the Ordinance No. 105, touching and concerning any money therein mentioned.

Payment of fees.

Account of fees.

Administration under Ordinances Nos. 104 and 105.

Wards' book, guardians fund.

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1870.] [May 5, 1870.

ACT

To Amend in certain respects the Act No. 19 of 1864, intituled "An Act to provide for the Leasing of Crown Lands and other purposes." (1)

Preamble.

WHEREAS it is expedient that the Act No. 19 of 1864, commonly called "The Crown Lands Act, 1864," should be amended as hereinafter is provided: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Right of lessees to purchase.

1. It shall be lawful for the lessees of Crown lands leased under the provisions of the said Act No. 19 of 1864, at any time during the continuance of their respective leases, to purchase the property in the lands held by them respectively on lease, at such price as may be agreed on by and between such lessees respectively of the one part and the Colonial Government of the other part, not being in any case less than a sum which, reckoned as a principal sum after the rate of six pounds sterling per cent., would produce an amount of yearly interest equal to the rent reserved on such lease: Provided that in the event of the price demanded by Government being greater than such principal sum, in such case, at the request of the lessee, the matter may be submitted to arbitration, one arbitrator to be appointed by the lessee and one by the Government, with power to appoint a third as umpire, subject to the following conditions, that is to say:

Arbitration in certain case.

Conditions of sale.

1. In all sales of land under this Act the purchaser shall, in addition to the purchase price, pay to the Colonial Government an annual quitrent of one pound sterling for every one hundred pounds on the purchase amount, such annual quitrent to be paid in perpetuity.
2. The purchase money so to be paid as aforesaid, according to agreement, may be paid in cash, at the option of the purchaser, so soon as the amount shall be agreed upon, and such purchaser may upon payment thereof require a grant of title upon quitrent to the said lands theretofore held by him upon lease, which grant it shall be lawful for the Governor to make.
3. If the purchaser shall not forthwith pay the full amount of purchase money agreed upon in cash so soon as the said amount shall be agreed upon, he shall be allowed to pay the same in manner following, that is to say, by three annual instalments,—the first to be paid forthwith so soon as the amount of purchase money shall be agreed upon as aforesaid, and the other two at intervals of one year respectively.

[1] See Acts 15, 1887, and 19, 1889.

Digitised by the University of Pretoria, Library Services, 2016

4. If the purchaser shall fail to pay the second or subsequent instalments when the same shall become payable respectively, the money already paid by him shall be returned to him, deducting thereout, by way of liquidated damages for the breach of the contract to purchase, a sum equivalent to five pounds sterling per cent. on such amount of the purchase money as shall remain unpaid, together with such sum, if any, as may be due for rent and other charges, if any, upon the said land, under or by virtue of the lease thereof; and the said lease shall, unless otherwise vitiated, be regarded as though the same were all along subsisting, without any contract for purchase or sale having subsisted with regard to the same lands.
5. Until the entire purchase money shall be paid, the purchaser shall continue to pay rent under and by virtue of his lease, and to perform the other conditions, if any, of the same, which shall be deemed to be a subsisting lease, notwithstanding any such contract for purchase as aforesaid unless vitiated otherwise under the terms thereof, or of the said Act No. 19 of 1864.
6. Upon the payment by the purchaser, at the stated times agreed on, of all the purchase money, and of all rents and other payments due in respect of the said lease, he shall be allowed interest after the rate of six pounds per cent. per annum in respect of the several instalments of the purchase money deposited by him from the date of the deposit thereof, respectively, until such date of payment; and thereupon he shall be deemed from thenceforward as proprietor on quitrent of the land so purchased, and may require forthwith a grant of title upon quitrent to the said lands theretofore held by him upon lease, which grant it shall be lawful for the Governor to make.
7. In fixing the value of the land applied for under the above conditions, the value of the industrial improvements made by the lessee who applies shall not be taken into consideration.

2. [Repealed by Act 8, 1874.]

No. 6—1870.] [May 5, 1870.

An Act for applying a Sum not exceeding Three Hundred and Fifty-six Thousand Six Hundred and Fifty-nine Pounds Eighteen Shillings and Nine Pence for the Service of the Year 1870.

[Spent.]

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1870.] [May 5, 1870.

ACT

To Consolidate the Public Debts of the Colony payable in England.

Preamble.

WHEREAS the public debts of this Colony made payable in England amount in all to a sum of one million four hundred and twenty-three thousand four hundred pounds, with interest, whereof divers sums are payable, respectively, at divers times from the thirty-first day of January, one thousand eight hundred and seventy, to the thirty-first day of December, one thousand nine hundred, respectively, as will more fully appear in the statement thereof contained in the schedule hereto: And whereas provision has been already made for the payment of the sum of fifty thousand pounds sterling, due and payable in the course of the year one thousand eight hundred and seventy, and there remains the sum of one million three hundred and seventy-three thousand four hundred pounds, with the interest thereon, to be provided for: And whereas there is good reason to believe that the said debts, other than the said debt of fifty thousand pounds sterling last before mentioned, may be consolidated with advantage to this Colony, and that provision may be made by which the same may be fully consolidated, and by which, at the same time, the yearly interest thereon may be paid and the debts themselves may be gradually extinguished, so that within a term of thirty-seven years the same may be altogether discharged by means of an annual charge on the revenues of the Colony continued during the said term of thirty-seven years, not exceeding the sum of ninety thousand pounds: And whereas it is expedient that such consolidation should be effected as far as possible: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Agents for conversion of debts.

1. It shall be lawful for the Governor to appoint the Agents-General for the time being for the Crown Colonies in England, or such other person or persons as to him shall seem fit, as agents for the conversion of the said debts.

Funds for effecting conversion may be raised upon debentures.

2. It shall be lawful, for the purposes of such conversion, for the Governor, through such agent or agents, to raise and take up upon debentures, subject to such terms and conditions as shall seem best calculated to effect such conversion on the best terms for the Colony, such sum or sums of money as may be necessary to effect the same: Provided that the annual charge to be thereby imposed on the public revenues of the Colony for the purposes of paying the interest and providing for the extinction of the entire of the debt thereby created shall not at any time exceed such sum as, together with the interest due on the said public debts intended to

Annual charge on public revenue not to exceed £90,000.

Digitised by the University of Pretoria, Library Services, 2016

be consolidated, and for the time being remaining unconverted and unconsolidated, shall amount to a sum of ninety thousand pounds sterling yearly: And provided, also, that the terms on which such debentures shall be issued by the Governor as aforesaid shall provide for the complete extinction of the entire debt thereby created within the term of thirty-seven years, by means of such annual charge as aforesaid on the revenues of the Colony; after which period such annual charge shall cease and determine, unless Parliament shall otherwise direct.

Extinction of debt to be provided for.

3. The Governor shall, through such agent or agents as aforesaid, and subject to the conditions in the last foregoing section mentioned, have full power to prescribe the mode and conditions of repayment of the loan to be taken up on such debentures as are hereby authorised, and the terms and conditions of such debentures, and the time and place of such repayment, and the rate of interest thereon, and the time and place for payment of such interest.

Powers of Governor in regard to repayment of loan, terms of debentures, &c.

4. All sums of money borrowed under the authority of this Act, and the debentures upon which the same shall be raised respectively, shall be charged and chargeable on the revenues of this Colony.

Moneys borrowed under this Act chargeable on colonial revenue.

5. [Repealed by Act No. 14, 1872.]

6. As a fund for the payment of such interest and for the gradual extinction of the debt to be raised under authority of this Act, there shall be charged and chargeable upon, and set apart out of, the annual revenues of this Colony an annual sum equal to the interest on the whole amount of such debentures as shall be issued under authority of this Act, and a further sum equal to one pound sterling per centum on the total amount of the principal or capital sum which shall be raised under the authority of this Act; and such sum shall be annually charged on and payable out of the revenues of the Colony so long as any portion of the debt to be raised under authority of this Act, or any interest thereon, shall remain unpaid and unextinguished; and such annual charge shall, so soon as such debt and interest shall have been all paid and extinguished, cease and determine.

Fund for payment of interest and for extinction of debt.

7. Such portion of the fund which shall under the last foregoing section be charged and chargeable annually on the revenues of the Colony as shall not be required for the payment of the interest for the time being due upon the debentures to be issued under authority of this Act, or for the necessary expenses of such consolidation and conversion as aforesaid, shall be applied in redeeming and cancelling the debentures to be raised under authority of this Act, in such manner and form as shall be provided by the terms and conditions whereon and whereunder such debentures shall be issued respectively.

Application of fund.

8. All moneys to be raised under the authority of this Act shall be accounted for in a separate account, and shall be applied towards the conversion and consolidation, redemption, payment, and discharge of the said several public debts of this Colony proposed

Separate account to be kept and application of moneys raised under this Act

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1870.

to be consolidated, and to no other purpose; but it shall be lawful thereout to pay the necessary charges of effecting such conversion, consolidation, redemption, payment, and discharge.

Debentures specified in schedule may be taken in payment of debentures issued under this Act.

9. The Governor may, through such agent or agents as aforesaid, accept in payment for the debentures to be issued under the authority of this Act any debentures of the Government of this Colony specified in the schedule hereto, at such rates and on such terms as may be fixed by the Governor through such agent or agents as aforesaid; and all such rates and terms shall be notified by public advertisement in the London *Gazette* and in the *Government Gazette* of this Colony.

Agents may delegate their powers to others.

10. All the powers which under this Act may be exercised by the Governor through such agent or agents as aforesaid may be also exercised, wholly or in part, by any person or persons to whom such powers shall have been, wholly or in part, delegated by such agent or agents as aforesaid, subject to the conditions of such delegation imposed thereon by the person so delegating such powers.

Debentures chargeable only on colonial revenue to be cancelled when redeemed.

11. All such debentures of the Government of this Colony which shall be redeemed, or purchased, or converted under the authority of this Act, or by means of the moneys raised thereunder, and which are chargeable on the general revenues only of this Colony, shall immediately on the receipt thereof be cancelled by such agent or agents as aforesaid, and shall by him or them as soon as may be thereafter be transmitted to the Treasurer-General of the Colony

Debentures chargeable on other funds to be ceded to Treasurer-General when redeemed.

12. All such debentures of the Government of this Colony which shall be redeemed, or purchased, or converted under the authority of this Act, or by means of the moneys raised thereunder, which are chargeable on any funds other than and in addition to the general revenue of this Colony, shall be ceded by the holder thereof to the Treasurer-General of this Colony, and shall as soon as may be after the receipt thereof by such agent or agents as aforesaid, be transmitted to such Treasurer-General, to be by him held on account of the general revenue of this Colony, as a security against such funds other than such general revenue.

Accounts to be laid before Parliament.

13. A full account of all the moneys from time to time raised under the provisions of this Act, and of the application thereof, and of all debentures redeemed, or purchased, or converted by means thereof, shall be from time to time laid on the table of both Houses of Parliament at the commencement of each session thereof, or so soon thereafter as the same shall be prepared.

Short title.

14. This Act may be cited for all purposes as "The Public Debt Consolidation Act, 1870."

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE.

Number and date of Act.	Purpose of Loan.	Rate of Interest.	Amount of Debt.	When redeemable.
No. 4 of 1852	Kowie Harbour Improvement .	6 per cent.	£12,500	October, 1876.
,, 22 ,, 1859	Immigration	do.	50,000	January, 1870.
,, 6 ,, 1860	Table Bay Improvement .. .	do.	100,000	October, 1880.
,, 6 ,, 1860	Do. do .. .	do.	100,000	October, 1890.
,, 7 ,, 1860	Mossel Bay Improvement . .	do.	6,500	October, 1875.
,, 8 ,, 1860	General	do.	150,000	January, 1891.
,, 9 ,, 1860	Immigration	do.	25,000	June, 1881.
,, 26 ,, 1861	General	do.	200,000	December, 1873.
,, 17 ,, 1862	Port Elizabeth Improvement .	do.	29,500	October, 1892.
,, 14 ,, 1863	General	do.	150,000	April, 1891.
,, 18 ,, 1863	Kowie Improvement .. .	do.	24,000	October, 1884.
,, 22 ,, 1863	Mossel Bay Improvement .. .	do.	1,500	October, 1875.
,, 8 ,, 1864	General	5 per cent.	255,400	December, 1900.
,, 23 ,, 1864	Kowie Harbour Improvement .	6 per cent.	20,000	December, 1900.
,, 24 ,, 1864	Port Elizabeth Improvement .	do.	29,000	October, 1894.
,, 8 ,, 1865	Kowie Harbour Improvement .	do.	20,000	December, 1900.
,, 9 ,, 1866-'7 . ..	Table Bay Improvement .. .	do.	50,000	October, 1900.
,, 11 ,, 1866-'7	General	do.	200,000	October, 1900.
			£1,423,400	

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1870.

No. 8—1870.] [May 5, 1870.

An Act to Indemnify the Governor for the Expenditure incurred for the Railway Works in the Tulbagh Kloof.

[Spent.]

No. 9—1870.] [May 5, 1870.

An Act for Granting to Her Majesty in her Colonial Revenue certain Duties on Houses.

[Expired.]

No. 10—1870.] [May 5, 1870.

An Act to Provide for the Management of Native Locations and other Communities, and for the Regulation of Rights of Commonage.

[Repealed by Act 29, 1881.]

No. 11—1870.] [May 5, 1870.

An Act for Raising the further Sum of Twenty Thousand Pounds for the Completion of the Dock in Table Bay.

[Spent.]

No. 12—1870.] [May 5, 1870.

An Act for the Better Preservation of Wild Ostriches.

[Repealed by Act 33, 1889.]

No. 13—1870.] [May 5, 1870.

ACT

To Amend the Act No. 3, 1864, intituled "An Act for regulating the Duties upon Stamps and Licences." (1)

Preamble.

WHEREAS it is expedient to increase certain of the Stamp Duties imposed by the "Stamp Act, 1864," and to amend the said Act in other respects: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Portions of Stamp Act, 1864, and of schedule annexed thereto, repealed.

1. The following portions of the Stamp Act, 1864, and of the schedule annexed to the said Act are hereby repealed, that is to say:

The twenty-third and the twenty-ninth sections of the said Act.

[1] See Acts 20, 1884, and 38, 1887.

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1870.

The tariff numbered 2 in the schedule to the said Act, headed "Agreements."

The tariff numbered 4 in the said schedule, headed "Bills, Notes, Cheques, &c."

The tariff numbered 5 in the said schedule, headed "Ships, &c."

The tariff numbered 8 in the said schedule, headed "Transfers and Mortgages."

The tariff numbered 16 in the said schedule, headed "Miscellaneous Acts."

Repugnant portions of Act No. 3, 1864, repealed.

2. So much of the Act aforesaid No. 3, 1864, not hereinbefore repealed, as shall be repugnant to or inconsistent with any of the provisions of this Act, or of the schedule annexed to this Act, shall be, and the same is hereby repealed.

Tariffs contained in schedule to take place of repealed tariffs.

3. The several tariffs in the schedule to this Act contained, and numbered, respectively, with the same numbers as the tariffs repealed by this Act shall, number for number, and whether the heading of such tariff be the same or varied, take the place and be instead of the tariffs so repealed, and shall have the force of law accordingly. And all and singular the several explanations, conditions, directions, and provisions contained in the schedule to the Act shall have the same force and effect as if the same were contained in the body of this Act.

Notarial acts to be stamped on minute.

4. Every stamp provided by this Act, or by the said Act 3 of 1864, or by any schedule thereof, respectively, to be imposed on any notarial act, shall be upon the minute of such act. Every adhesive stamp on any such notarial deed as is not by this Act or by the said Act No. 3 of 1864 required to be written on stamped paper, or to be cancelled as in the fourteenth section of the said Act No. 3 of 1864 is provided, shall be cancelled [1] by the notary writing thereon his name, and the date on which he shall write the same.

Cancellation of adhesive stamps.

Cessions of policies of insurance to be stamped.

5. Every cession, whether notarial or underhand, of any policy of insurance against fire or life, and whether such cession be absolute or by way of pledge, shall bear a stamp of one-half the amount of the stamp to which such original policy was liable. All such cessions must be written either upon stamped paper or upon paper having an adhesive stamp affixed and cancelled as in the fourteenth section of the Act No. 3, 1864, mentioned, or upon the policy ceded. When written upon the policy ceded, an adhesive stamp of the required value must be affixed to or upon such cession, before delivery of the policy ceded to the cessionary. And the person ceding shall cancel such adhesive stamp by writing thereon his name and the date on which he shall write his name.

How to be stamped.

[1] See Act 20, 1884, § 3.

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1870.

Penalty on practice of any profession or on trading, &c., without required licence.

6. If any person who should, in obedience to or in conformity with the Act aforesaid, No. 3 of 1864, and the schedule thereunto annexed, take out and possess any licence authorising him to practise any profession or exercise any trade, business, occupation, or calling, or possess, or perform any particular matter or thing, shall be proved to have done or performed, without having previously taken out the particular licence in that behalf required, any act amounting to or in the way of the practice of any such profession, or the exercise of any such trade, business, occupation, or calling, or be proved to have possessed or performed any particular matter or thing for the possession or performance of which a licence shall be required, such person shall, in the absence of any special and greater penalty provided by any law now in force or hereafter to be passed in that behalf, for every such act forfeit any sum not exceeding five times the amount of the charge or duty payable for or in respect of the taking out of the particular licence which such person ought to have taken out and possessed. (1)

Licence may be cancelled on removal of business.

7. In case any person having taken out any licence in the schedule to the said Act 3 of 1864 mentioned, which may authorise the carrying on of any trade or business in any particular place, shall, during the continuance of such licence, wish to change the place at which such trade or business shall in future be carried on, it shall be lawful for such person to obtain from the officer whose duty it may be to issue licences of the same nature as that held by such person, on proof to such officer that such trade or business has been, in fact, discontinued at the place for which such licence was granted, and on bringing to such officer and leaving with him such licence for cancellation, a certificate that such licence has been cancelled; and it shall be the duty of such officer then and there to cancel such licence, and retain the same so cancelled as a voucher.

No business to be carried on under cancelled licence.

8. After such cancellation as aforesaid, it shall not be lawful for such person as aforesaid to carry on such trade or business at the place for which such cancelled licence shall have been granted, and from and after such cancellation, he shall, as to all future dealings in such place, be deemed and taken for all purposes to be dealing without having taken any licence, and shall be liable accordingly.

New licence may be issued on removal.

9. It shall be lawful for such person, upon obtaining such certificate of cancellation as aforesaid, to present the same to the officer whose duty it shall be to issue licences for the carrying on of the like trade or business at the place to which such person as aforesaid shall desire to remove his trade or business, and to deliver up such certificate to such officer who shall retain the same as a voucher; and such officer shall thereupon issue to such person a licence to carry on such trade or business in the place which such person shall name as the place in which he desires to carry on the same, on payment of a new licence duty of one shilling.

---

(1) Act 20, 1884, § 4.

Digitised by the University of Pretoria, Library Services, 2016

Penalties, how recoverable.

10. All fines and penalties imposed under or by virtue of this Act, or imposed and incurred under or by virtue of the said Act No. 3, 1864, and not yet recovered, may be recovered by criminal process in the Court of any Resident Magistrate having local jurisdiction in the matter in case the amount of such fine shall not exceed fifty pounds sterling, and in the Supreme or Eastern Districts or Circuit Courts, respectively, in case such fine shall exceed fifty pounds sterling; but in any case in which the local jurisdiction of any Resident Magistrate shall be, or shall appear to the public prosecutor to be, uncertain, then such fines or penalties, though less than fifty pounds sterling in amount, may be recovered in the said Supreme or Eastern Districts Court, or in any Circuit Court, as the case may be; and in every case where any such fine or penalty shall be recovered in any Court of Resident Magistrate, the person condemned may, if he feels himself aggrieved, appeal to the Supreme or Eastern Districts Court, as the case may be, first paying the penalty and giving security to the satisfaction of the Resident Magistrate for the costs of appeal.

Appeal.

Short title.

11. This Act shall commence and take effect from the first day of July, 1870, and may be cited as "The Stamp Act, 1870."

SCHEDULE.

2. Agreements.

[Repealed by Act 20, 1884, and Tariff 2 of that Act substituted.]

4. Bills, Notes, Cheques, &c.

Every bill of exchange, promissory note, bank post bill, or other negotiable instrument for any lawful amount not exceeding £50	£0	0	6
Exceeding £50 and not exceeding £100	0	1	0
And for every additional £100 or fraction thereof	0	1	0

Every bill of exchange drawn in the Colony, but payable out of the Colony, if drawn in sets of three or more, on each bill of the set, one third of the above rates.

Every cheque upon a bank	£0	0	1

1. Bank notes need not be stamped.

2. By cheques upon a bank are meant all drafts or orders upon any bank payable on demand or at sight either to bearer or to order.

3. If any bank shall pay or otherwise honour any cheque, bill, draft or note, not being a bank note, which shall not be written upon stamped paper, or have an adhesive stamp affixed and cancelled, the cashier of such bank, whether the person who paid or otherwise honoured such cheque, bill, draft, or note, or not, shall be liable to a penalty of two pounds sterling, to be recovered as is in this Act provided.

4. If any person shall contravene section 26 of the Act 3 of 1864, he shall be liable to a penalty not exceeding two pounds sterling, to be recovered as in this Act is provided, in lieu of any penalty by the said section of the said Act 3 of 1864 provided.

Digitised by the University of Pretoria, Library Services, 2016

No. 104.—Sd. G. Lowry Cole.] [July 5, 1833.

Ordinance for regulating the Registration of Wills and the Administration of the Estates and Property of Persons dying, either testate or intestate, in so far as the same are situated within this Colony. (1)

Preamble.

WHEREAS it has been enacted by His Majesty's Royal Charter of Justice dated at Westminster on the 4th day of May, 1832, that the Orphan Chamber within this Colony shall be abolished, and that the duties which have heretofore been performed by the said Orphan Chamber shall henceforth be performed by the Master for the time being of the Supreme Court: And whereas the registration of wills, and the administration of certain estates of persons dying within this Colony heretofore formed part of the duties of the said Orphan Chamber, and were performed by the said Orphan Chamber, and by the agents thereof according to certain regulations contained in certain "instructions" and "provisional instructions for the Orphan Chamber," and in certain "instructions for the agents to the board of Orphan Masters in the country districts of the Colony of the Cape of Good Hope," which have heretofore been in force, or have been enforced in this Colony, and in the Ordinance No. 42: And whereas, by reason that the duties hereinbefore specified are henceforth to be performed by the Master of the Supreme Court, instead of by the said Orphan Chamber, many of the said regulations have become impracticable or inexpedient: And whereas it is now expedient, in certain respects, to alter and amend the law of this Colony in so far as relates to the registration of wills, and the administration of the estates and property of persons dying, either testate or intestate, in so far as the same are situated within this Colony: Be it therefore enacted by His Excellency the Governor in Council, that from and after the first day of March next, the instructions and provisional instructions hereinbefore mentioned, as also the Ordinance No. 42, shall be and the same are hereby repealed, except in so far as it has been enacted and declared by the Ordinance No. 103, that the said instructions and provisional instructions, and Ordinance, or any of the provisions thereof, shall subsist and have force and effect for regulating the administration, distribution, and final settlement of such property, estates, matters, and things, as by virtue of the provisions of the said Ordinance No. 103 shall be placed under the administration of the Master of the Supreme Court: Provided always, that nothing herein contained shall extend, or be construed to extend, to repeal any of the enactments or provisions of His Majesty's Order in Council dated 24th November, 1828.

Repeal of instructions, &c., to Orphan Chamber, and of Ordinance No. 42.

[1] Ord. 6, 1843, to be read for Ord. 64 in this Ord. See § 134, Ord. 6, 1843, and Act 8, 1888: also § 1 et seq., Act 11, 1873.

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1870.

5. No "good-for," "I O U," or other acknowledgment of debt, not being a promissory note, and not being negotiable, shall require to be stamped so long as it shall be retained by the creditor to whom it was first delivered, and it may be paid by the debtor to such creditor without being stamped. But if such creditor shall cede or transfer the same, he shall before doing so, affix thereto an adhesive stamp of the value which would be necessary in case the same were a promissory note; and the cessionary, or transferee, shall cancel the said stamp in case the same be not already cancelled; and any person ceding or transferring any such instrument without first stamping the same, if it be not already stamped, shall be liable to a penalty not exceeding two pounds sterling; and every person receiving such instrument without cancelling such stamp shall be liable to a like penalty of two pounds sterling; such penalties to be recovered as in this Act is provided.

6. No person who shall have granted any such instrument as is described in paragraph 5 shall pay or satisfy the same to any person other than the person to whom it was first given, unless it shall be duly stamped, under a penalty of two pounds sterling, to be recovered as in this Act is provided.

7. Every adhesive stamp mentioned in this tariff shall be cancelled by placing in figures in ink, upon such stamp, the amount mentioned in any cheque, good-for, I O U, or other instrument, and by writing the name or the initials of the name of the person cancelling such instrument, together with the date of such cancellation, anything in the proviso in the 26th section of the Act No. 3 of 1864 to the contrary notwithstanding.

8. Every promise in writing by one person to pay money to another person named in such writing, whether at some time specified in such writing or on demand, and whether payable to the order of the payee or not, shall be deemed to be a promissory note for the purpose of this Act, so as to require to be stamped as such.

5. SHIPS, &c.

Bills of sale of any ship, where the consideration given shall not exceed £100	£0	5	0
For every additional £100 or fraction thereof	0	5	0
Bottomry bonds and mortgages of ships, where the sum secured shall not exceed £50	0	4	0
Exceeding £50 and not exceeding £100	0	7	0
,, £100 and not exceeding £200	0	10	0
For every additional £100 or fraction thereof	0	5	0
Bills of lading, each copy	0	0	6
Charter-parties of any ship of the burden of 25 tons of tonnage or upwards	0	5	0
For every 100 tons of tonnage or every fraction of 100 tons	0	5	0
For every certificate of survey of a ship, whether for the purpose of insurance or repairs or otherwise	0	1	0
Every act of abandonment of a ship	0	2	6
Every sea protest	0	10	0

1. Every bill of lading shall be written on stamped paper, and shall in no case be stamped after the same shall be executed, anything in the fourteenth section of the Act 3 of 1864 to the contrary notwithstanding.

Digitised by the University of Pretoria, Library Services, 2016

2. Every master of any ship who shall sign, and every shipper of goods who shall tender for signature, or shall cede, endorse, deliver, or negotiate any bill of lading executed within this Colony not written on stamped paper, shall be liable to a penalty not exceeding two pounds sterling, to be recovered as in this Act is provided.

3. Every person who shall cede, endorse, deliver, or negotiate any bill of lading not executed within this Colony which shall not be already stamped in this Colony and have the stamp duly cancelled, shall be bound, before ceding, endorsing, delivering, or negotiating the same, to place thereon an adhesive stamp of the value which would be required on the same bill if it were executed in this Colony, and to cancel such stamp in the manner required by the seventh paragraph of tariff No. 4. Every person who shall contravene this enactment shall be liable to a penalty of two pounds sterling, to be recovered as in this Act is provided.

4. The instruments mentioned in this tariff, other than bills of lading, must, as to some part thereof, be written upon, and not merely covered by, stamped paper, or otherwise they must have an adhesive stamp affixed and cancelled as in the fourteenth section of Act 3 of 1864 is mentioned.

8. TRANSFERS, BONDS, &c.

On all transfers passed before the Registrar of Deeds, value not exceeding £10						£0	2	0
Exceeding £10	and not exceeding	£20				0	3	0
,, 20	,,	35				0	4	0
,, 35	,,	50				0	6	0
,, 50	,,	100				0	8	0
,, 100	,,	150				0	12	0
,, 150	,,	200				0	15	0
,, 200	,,	300				1	0	0
,, 300	,,	400				1	5	0
,, 400	,,	500				1	10	0
,, 500	,,	700				2	0	0
,, 700	,,	1000				3	0	0
And for every additional £100 or fraction thereof						0	5	0
Cessions of mortgage bonds, notarial or otherwise, one-fourth of the stamp of the original bonds.								
On mortgage bonds[1] passed before the Registrar of Deeds and general mortgages, commonly called "notarial bonds":								
Amount secured not exceeding £10						£0	2	0
Exceeding £10	and not exceeding	£20				0	3	0
,, 20	,,	30				0	5	0
,, 30	,,	50				0	7	6
,, 50	,,	100				0	10	0
,, 100	,,	150				0	15	0
,, 150	,,	200				1	0	0
,, 200	,,	300				1	5	0
,, 300	,,	400				1	10	0
,, 400	,,	500				2	0	0
,, 500	,,	600				2	10	0
,, 600	,,	700				3	0	0

[1] See the Company Debenture Act 43, 1895, § 4.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1870.

Exceeding £700 and not exceeding	£800	..	..	..	£3	10	0
,, 800	,,	900	..	..	..	4	0	0
,, 900	,,	1000	..	..	..	5	0	0
And for every additional £100 or fraction thereof	..	..	..	0	6	0

On Deeds of Kinderbewys passed before notaries, for securing the portions of minors, half of the amount of stamps required on mortgage bonds passed before the Registrar of Deeds.

1. [Repealed by Act 17, 1873, § 1 and § 3 of that Act substituted.]

2. All notarial bonds shall be either written upon or covered by stamped paper.

3. Underhand cessions of mortgage bonds must be written either upon stamped paper or upon paper having an adhesive stamp affixed and cancelled as in the fourteenth section of the Act 3 of 1864 mentioned or upon the bond ceded. When written upon the bond ceded, an adhesive stamp of the required value must be affixed to or upon such cession before delivery of the ceded bond to the cessionary, and the person ceding shall cancel such adhesive stamp by placing thereon in figures, in ink, the amount of the debt ceded, and by writing thereon his name, or the initials of his name, and the date on which he shall write the same.

16. MISCELLANEOUS ACTS.

[Repealed by Act 20, 1884, and Tariff 16 of that Act substituted.]

No. 14—1870.] [May 5, 1870.

ACT

To Regulate the Removal of Cattle[1] within the Colony.[2]

Preamble.

WHEREAS in consequence of the frequency of stock thefts in certain of the divisions of the Colony, it is necessary that means should be devised for regulating the removal of stock from place to place, with the object of rendering the removal of stolen animals more difficult and the detection of offenders more easy: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Divisions to which Act shall apply.

1. This Act shall apply to such divisions of this Colony as shall be proclaimed in manner hereinafter mentioned, and no other.

Certificate for removal of stock beyond ten miles to be obtained.

2. It shall be the duty of every person desiring the removal of stock from any place to any other place,[3] to procure a certificate, signed by any Resident Magistrate, Justice of the Peace, Field-cornet, or Landholder, stating the date upon which the same is granted, the name of the owner, and the number and description

[1] The term Cattle, Stock or Animals in this Act to include Domesticated Ostriches, see Act 12, 1885.

[2] Amended by Acts 20, 1889, and 12, 1891. Extended by Proclamation No. 262 of 1891 to Transkei, Tembuland, and Griqualand East.

[3] Printed as amended by Act 20, 1889.

Digitised by the University of Pretoria, Library Services, 2016

of the stock to be removed, the name of the place from which the same is being removed, and of the place to which it is being sent; and also the name or names of the driver or drivers thereof.

Duty of landholder to grant certificate for removal of stock from his land.

3. It shall be the duty of any landholder to grant, free of charge, such certificate as aforesaid, written in such language, whether English, Dutch, or native, as such landholder may be able to write intelligibly, to any person who, being in the lawful possession of any stock, desires to remove the same from land occupied by such landholder; and the refusal by the master of any servant or apprentice to grant, in regard to any stock of such servant or apprentice lawfully running or being upon the land of the said master, such a certificate as is in this Act mentioned, shall be deemed and taken to be, for the purpose of the twenty-first [1] section of chapter 5 of the Act No. 15, 1856, commonly called the Masters and Servants Act, a refusal by such master to deliver such stock or to permit the same to be taken away; and the provisions of the said twenty-first section shall apply to such case as fully as if the same were herein again set forth.

How, if landholder refuses.

Who required to grant certificates.

4. It shall be the duty of any Magistrate, Justice of the Peace, Field-cornet, or Landholder, to whom application is made for such certificate as aforesaid, to grant a certificate, written in such language, whether English, Dutch, or native, as the person applied to may be able to write intelligibly, to the person applying for the same: Provided that the Magistrate, Justice of the Peace, Field-cornet, or Landholder to whom application is made shall be satisfied that the stock for the removal of which the certificate is required are the property or in the lawful possession of the person about to remove the same.

Persons driving stock may be required to produce certificate.

5. It shall be lawful for any Magistrate, Justice of the Peace, Field-cornet, Police Officer, Constable, or Landholder, who shall find any person driving stock, to call upon such person to produce such certificate as aforesaid, and if such person shall fail to produce such certificate, or if the stock being removed shall not correspond in all material respects with the certificate produced, or if the direction in which such person is proceeding with the stock shall not correspond with the direction indicated in such certificate, or if the name of the person driving the stock shall not correspond with that in the certificate, then such Magistrate, Justice of the Peace, Field-cornet, Police Officer, Constable, or Landholder, if he shall be able to read such certificate, [2] may take possession of such stock and cause the same to be conveyed to the nearest pound, there to remain until liberated by order of the Resident Magistrate, or otherwise disposed of as hereinafter provided. [3]

On failure to produce, &c., stock may be seized and impounded.

Particulars, &c., of stock impounded to be advertised by poundmaster.

6. [3] The person causing any stock to be impounded as aforesaid shall communicate to the poundmaster the circumstances under

[1] This section is repealed by § 21, Act 18, 1873, but see § 15 of latter Act.
[2] Printed as amended by Act No. 20, 1889.
[3] See § 24, Act 15, 1892.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1870.

which the same were seized, and the poundmaster shall forthwith notify, by advertisement to be published or made known in the manner in which the pound notices for such district are published or made known, the number and description of the stock, and such information regarding the same as the person impounding the stock shall have communicated to him.

Person claiming impounded stock, may apply to magistrate, and proceedings thereupon.

7. (1) Any person claiming stock so impounded as his property, or lawfully in his possession, may apply to the Resident Magistrate or any Justice of the Peace of the district for an order for the liberation thereof, and such Magistrate or Justice of the Peace shall inquire into the case, and if satisfied that such stock is the property of the claimant, or was lawfully in his possession, then such Magistrate or Justice of the Peace shall give an order, in writing, directing the poundmaster of the pound in which such stock shall be impounded to deliver the same to the claimant upon payment of the pound fees and charges; and the poundmaster shall, at the time of the delivery of the stock, grant a certificate for the protection of such stock until the arrival thereof at the place to which it is intended to remove the same.

Poundmaster to grant certificate for stock released.

Ordinance No. 16, 1847, to apply to stock not released.

8. (1) Should the person claiming any stock so seized and impounded as aforesaid fail to show to the satisfaction of such Magistrate or Justice of the Peace that the stock claimed is his property, or was lawfully in his possession, or should the stock be unclaimed for a period of one month after notice given by such poundmaster as aforesaid, then the same shall be dealt with in all respects as if such stock was impounded under the provisions of the Ordinance No. 16, 1847, entitled "Ordinance for the better regulation of Pounds and prevention of Trespasses," as the same Ordinance is, or may hereafter be, altered or amended by any Act or Acts of Parliament; and the proceeds of sale of any such stock shall be paid into the public treasury.

Owner entitled to compensation for stock wrongfully impounded.

9. If any person found driving stock shall, upon being thereto required, produce to the person requiring the same a certificate under the provisions of this Act, (2) and notwithstanding the stock found with such person shall be conveyed to the pound upon the allegation that the certificate produced is not proper and sufficient, (2) then the owner of the stock shall be entitled to recover compensation from such person for any damage which he shall have sustained by reason of the impounding of such stock, including all pound fees payable or already paid.

Penalty on wilful or malicious impounding of stock.

10. (3) Any person who shall wilfully and maliciously, and without probable cause, wrongfully impound any stock under colour of the provisions of this Act, shall be deemed guilty of a crime, and shall upon conviction be liable to be imprisoned, with or without hard labour, and with or without spare diet, for any

1 See § 24, Act 15, 1892.
2 Printed as amended by Act 20, 1889.
3 See § 5, Act 20, 1889.

Digitised by the University of Pretoria, Library Services, 2016

term not exceeding three months, or, if the Court shall see fit, to pay a fine not exceeding in amount ten pounds sterling, and further to pay to the owner of such stock such amount to cover expenses and damages as the Magistrate before whom the case is brought shall award, and as shall not have been awarded under the ninth section of this Act.

Penalty on forcible interference with stock proceeding to pound or rescuing impounded stock.

11. Any person who shall by force or violence, or by threatening to use force or violence, prevent or attempt to prevent any Magistrate, Justice of the Peace, Field-cornet, Police Officer, Constable, or Landholder from conveying to the pound any stock which he shall have a right under this Act to convey to the pound, or who shall rescue, or attempt to rescue, such stock against the will of the person in charge thereof, after the same shall have been impounded with any poundmaster, shall, upon conviction, be fined any sum not exceeding ten pounds, and shall, in default of payment, be imprisoned, with or without hard labour, for any term not exceeding two months.

Penalty on false certificate.

12. Any person who shall knowingly grant any such certificate as aforesaid which shall contain any wilfully false statement or description in respect of any matter material to be stated or described therein, or who shall fraudulently alter any such certificate as aforesaid, shall upon conviction be imprisoned, with or without hard labour, for a period not exceeding six months.

Definition of word "stock."

13. The word "stock" in this Act shall mean any horse, gelding, mare, colt, filly, mule, or ass, or any bull, ox, cow, heifer, or calf, or any sheep or goat: Provided that [1] cattle employed in drawing any vehicle, whether inspanned or outspanned, or stock in the possession of the police shall not be deemed to be stock within the meaning of this Act.

Exemptions.

Governor may proclaim Act to be in force, and may suspend its operation.

14. It shall be lawful for the Governor, at the request of the Divisional Council of any division, from time to time to put this Act in force in such division by proclamation published in the *Government Gazette;* and upon the like request, and in like manner, or when to the Governor it shall seem expedient, to suspend the operation of the Act for such time as the Governor may deem necessary: Provided that certificates for the removal of stock granted by Resident Magistrates, Justices of the Peace, Field-cornets, or Landholders in places where this Act shall not be in operation shall be good, valid, and effectual in any division in which this Act shall be in force; and as often as this Act shall be in force in any division of the Colony, then the third and fourth sections of this Act shall be in force throughout the entire Colony.

Certificates granted in places not under operation of Act, valid.

Sections 3 and 4 to apply to whole Colony.

Powers of seizing stock suspected to have been stolen not affected.

15. No certificate which shall be issued under the provisions of this Act shall be construed to prevent any Magistrate, Justice of the Peace, Police Officer, or Constable from seizing or detaining any stock which he may have reasonable ground for supposing to

[1] Printed as amended by Act 12, 1891.

Digitised by the University of Pretoria, Library Services, 2016

No. 18—1870.

have been stolen; but every such Magistrate, Justice of the Peace' Police Officer, and Constable shall possess such and the same powers in respect to the seizure and detention of such stock as he possessed before the passing of this Act.

Short title.

16. This Act may be cited for all purposes as "The Cattle Removal Act, 1870."

No. 15—1870.] [May 5, 1870.

An Act to Continue to the end of 1871 the Act No. 10 of 1864.

[Expired.]

No. 16—1870.] [May 5, 1870.

An Act to Continue to the end of 1871 the Act No. 32 of 1868.

[Expired.]

No. 17—1870.] [May 5, 1870.

An Act for Applying a Sum not exceeding Ten Thousand Three Hundred and Fifty-six Pounds Sterling for the Service of the Year 1870.

[Spent.]

No. 18—1870.] [May 5, 1870.

ACT

To enable the Governor to dispose, on certain terms, of certain Crown Lands, commonly called the Waschbank Lands.

Preamble.

WHEREAS certain Crown lands in the division of Aliwal North, commonly called the Waschbank Lands, have for a long period been occupied without title, and valuable improvements have in many cases been made thereon by the occupiers thereof, and it is expedient that such occupiers, on paying a reasonable price, should be confirmed in the occupation of such lands respectively by the issue to them of lawful title thereto: 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:—

Value of lands to be appraised and mode of appraisement.

1. It shall be lawful for the Governor to appoint one or more than one qualified and trustworthy appraiser, who shall visit the lands which shall have been so occupied as aforesaid on and up to the first day of January, 1869, and shall fairly and truly appraise the value of the lands respectively so occupied as aforesaid,

Digitised by the University of Pretoria, Library Services, 2016

dividing the same according to the occupation thereof, as the same have been already surveyed, and shall, in making such appraisement, take into consideration the value of the land only, as well as its original capacities for improvement, but not of any improvements which shall have been actually made thereon, and shall attest and sign his appraisement thereof, and shall submit the same to the Governor, either in parts or altogether, and the Governor on receiving and approving such appraisement, either of the whole or any part of such lands, may offer the same for sale to the occupiers respectively of the said lands at the sum at which the same shall have been so appraised, and if such occupiers shall accept such offer, and shall pay such sum or secure the same, with interest after the rate of six pounds sterling per centum per annum, to the satisfaction of the Governor, it shall be lawful for the Governor to grant such lands respectively to the said occupiers upon perpetual quitrent, reserving thereout such quitrent as to the Governor shall seem fit, not being less than a sum of one shilling for every ten morgen of land.

Terms on which occupier may obtain grant.

2. If any such occupier as aforesaid shall refuse or neglect within three months after such offer shall have been communicated to him to accept such offer or to pay or secure to the satisfaction of the Governor the purchase money aforesaid, then such of the said lands as shall have been occupied by him may be put up for sale to the highest bidder, on such conditions as to the Governor shall seem fit, without reference to the Act No. 2 of 1860, at an upset price not less than that at which the same shall have been offered to such occupier as aforesaid, under an annual quitrent of not less than one shilling per ten morgen, or for lease under or by virtue of Act No. 19 of 1864.

On non-acceptance of terms by occupier, land may be sold to highest bidder.

3. This Act may be cited as the "Waschbank Lands Act, 1870."

Short title.

No. 19—1870.] [May 5, 1870.

An Act for Applying a Sum not exceeding One Hundred and Seventy-nine Thousand Five Hundred and Eighty-nine Pounds Nineteen Shillings and Fourpence for the Service of the Year 1871.

[Spent.]

No. 20—1870.] [May 5, 1870.

An Act to Remove Doubts in respect to the Rates of Customs Duties payable on certain Articles under the provisions of "The Customs Tariff Amendment Act, 1866," and to amend the said Duties in other respects.

[Superseded by Act 13, 1884.]

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1871.

No. 1—1871.] [August 11, 1871.

An Act for Regulating the Retiring Pension of James Coleman Fitzpatrick, Esquire, one of the Judges of the Supreme Court of the Colony.

[Lapsed.]

No. 2—1871.] [August 11, 1871.

ACT

For Removing certain Doubts as to the Act No. 23 of 1869, commonly called "The Graham's Town Municipality Act, 1869."

Preamble.

WHEREAS certain doubts have arisen as to whether the provisions of the Act No. 11 of 1867, commonly called "The Public Bodies Debts Act," apply to debts due or hereafter to become due by a certain body incorporated by and under the Act No. 23 of 1869, commonly called "The Graham's Town Municipality Act"; and whereas it is expedient that such doubts should be removed: Be it therefore declared and enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Public Bodies Debts Act to extend to debts of municipality.

1. All and singular the provisions of the Act No. 11 of 1867, commonly called "The Public Bodies Debts Act," apply and extend to all debts now due or hereafter to become due by the body incorporated under and by the Act No. 23 of 1869, commonly called "The Graham's Town Municipality Act," anything contained in either of the said Acts to the contrary notwithstanding.

No. 3—1871.] [August 11, 1871.

ACT

To Authorise the Cape Copper Mining Company (Limited) to extend the Line of Tramway or Railway authorised by Act No. 4 of 1869; "The Port Nolloth Tramway or Railway and Jetty Act."

Preamble.

WHEREAS greater facilities than at present exist for the transport of minerals from the mines in Namaqualand to Port Nolloth, and also for the transport of passengers, goods, merchandize, and other articles to and from the said port would be afforded and the resources of the country be still further developed, by the extension of the line authorised by the said Act No. 4 of 1869, and the construction of the portion of tramway or railway herein-

Digitised by the University of Pretoria, Library Services, 2016

after mentioned and described: And whereas the said company is willing to undertake the construction and working of the said portion of tramway or railway upon being empowered for that purpose in manner hereinafter mentioned and provided: 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 :—

Part of section 6 of Act 4, 1869, repealed.

1. So much of the sixth section of the aforesaid Act as empowers the said company to continue the construction of the said tramway or railway beyond the point hereinafter mentioned, distant from Port Nolloth forty-eight miles, "to foot of mountain at Nonams," is hereby repealed.

Direction and terminus of extension.

2. The Cape Copper Mining Company (Limited) is hereby empowered to extend the line of tramway authorised by the aforesaid Act, and to construct, maintain, and work a portion of tramway or railway for a distance of twelve miles, or thereabouts diverging from the present existing line at a point near Muishondfontein, distant from Port Nolloth forty-eight miles, and extending from such point along and up the mountain side in a north-easterly direction, by Klipfontein, and terminating at a point to the north of the Mission Station at Kookfontein, or Steinkopff, in accordance with plans and sections deposited in the office of the Clerk of the House of Assembly.

Powers granted to company to enter upon lands for purposes of excavation, &c.

3. The said company is hereby authorised to enter upon and to take possession of and retain all such land within the limits of deviation, as shown by the said plans; and also to dig for, excavate, and carry away all such stones, clay, or other materials within or from waste Crown lands near to the said limits as may be required for the construction and maintaining of the said tramway or railway free of charge: Provided that the extent of land taken or used for the said tramway or railway shall not exceed the width of thirty feet, with sufficient additional width for terminus, slopes, drainage, stations, stopping-places, approach-roads, and all other works, matters and things which may be requisite or necessary for the efficient construction and working of the said portion of tramway or railway: Provided, also, that the proprietor, lessee, or other person holding from and under the Crown any lands so taken possession of, or of the materials so carried away and used, shall be paid by the said directors the just value, by way of recompense or compensation, for the interest of the said proprietor or lessees, or others holding land under the Crown as aforesaid, in such land or materials, or for any damage which may be done by reason thereof.

Extent to which excavation may be carried on.

Compensation to proprietors or lessees.

Crown lands may be used for purposes of extension.

4. The said company is hereby authorised to enter upon and take possession of, and to hold and retain, for all the purposes of this Act, free of any charges, so much of any Crown lands as shall be required for the construction and maintaining of the said portion of tramway or railway or for any other purpose relating to

Digitised by the University of Pretoria, Library Services, 2016

Ord. 104—1833.

Lodging of wills, &c., with Master.

2. And be it further enacted, that from and after the said first day of March next, it shall and may be competent for any person, to lodge in the office of the Master of the Supreme Court, enclosed under a sealed cover, any will, codicil, or testamentary instrument, executed by him; and the said Master shall keep, or cause to be kept, a register of the names and descriptions of the persons lodging every such deed, and of the date of lodging the same; and every such deed shall be kept under the charge and custody of the said Master, unopened, until the death of the maker thereof, unless re-delivery of the same shall be demanded by the said maker, or in his lifetime by his lawful attorney, specially authorised for that purpose by any deed duly executed by the said maker; and when any such deed shall be re-delivered in manner aforesaid, the maker, or his attorney, as the case may be, shall sign a receipt for the same in the margin of the aforesaid register, opposite to the entry of such deed.

Register and custody of such testamentary deeds.

Persons in possession of wills, &c., on testator's death, bound to transmit them forthwith to the Master in Cape Town, or the resident magistrate in the country districts.

3. And be it further enacted, that from and after the said first day of March next, every person, who shall, at the time of the death of the maker thereof, have in his possession any deed being, or purporting to be, or entitled the last will, codicil, or other testamentary instrument of any other person, or into whose possession any such deed shall come after the death of the maker thereof shall forthwith, by the first opportunity, deliver or transmit every such deed (1) at or to the office of the Master of the Supreme Court, when such possessor shall reside in Cape Town, or the district thereof, or the Cape district, or the district of Stellenbosch; and when such possessor shall reside in any other district of the Colony, then to the Resident Magistrate of the district in which he shall reside. And every such Resident Magistrate shall cause a copy of every such deed so delivered or transmitted to him to be made, and shall authenticate such copy with his signature, and shall forthwith, by the first opportunity, transmit the original deed to the office of the said Master of the Supreme Court, and shall keep and preserve the aforesaid copy thereof, until he shall receive information from the said Master that such original deed has been safely lodged in his office; and when any such Magistrate shall receive information, that any deed transmitted by him as aforesaid to the office of the Master, has not arrived there, but has been lost or has miscarried, he shall forthwith, from the copy in his custody, cause another copy to be made, and shall authenticate such copy with his signature, and shall, by the first opportunity, transmit the same to the office of the said Master, and he shall proceed in like manner so often as may be necessary, until he shall receive information from the said Master that the copy so transmitted has been safely lodged in his office; and so soon as he shall be so informed that such original deed or copy thereof has been safely

Transmission of copy in case of loss of original.

[1] And also a duplicate or fair copy thereof, § 5, Act 11 of 1873.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1871.

the execution of this Act, and also to enter upon all Crown lands, not previously leased by the Government to any lessee, lying convenient to the said portion of tramway or railway, and there to dig for, excavate, and carry away all such stones, clay, or other materials as may be required or be serviceable for the construction and maintaining of the said portion of tramway or railway; and, further, to allow the horses, mules, or cattle required for the purpose of working the said tramway or railway to graze on any Crown lands adjoining the line between Port Nolloth and the terminus near Kookfontein, and also to obtain water from any part of such lands where it can be found: Provided that nothing in this Act contained shall establish any servitude in favour of the said company for such privilege, or for procuring materials for the said tramway or railway upon any land which may at any time hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.

Materials and water may be taken from, and animals grazed on, unleased Crown lands.

But not to establish servitude.

Certain sections of Act No. 4, 1869, to apply.

5. All and singular the provisions contained in the third, seventh, eighth, ninth, eleventh, thirteenth, fourteenth, fifteenth, sixteenth, eighteenth, nineteenth, twenty-first, twenty-second, and twenty-third sections of the said Act No. 4 of 1869 shall apply to the said portion of tramway or railway hereby authorised, precisely as if the said sections were, *mutatis mutandis*, herein again set forth, and word for word repeated.

Provisions of Regulation of Railways Act, 1861, may by proclamation be made applicable to extension.

6. Such and so many of the provisions of the Regulation of Railways Act, 1861, as the Governor, with the advice of the Executive Council, shall, by any proclamation to be published in the *Government Gazette*, specify and determine, shall come into force, and apply to the said extended railway or tramway hereby authorised to be extended or made as if the said provisions were herein separately set forth and made applicable to the same: Provided, however, and it is hereby declared that sections twenty-nine and thirty of the said Act shall not be made applicable to the said tramway or railway, save and except the necessary and proper fencing, which the said company shall be bound to erect and maintain, in and through the limits of the village of the Missionary Station of Steinkopff, whenever thereto required by the Governor.

Sections 29 and 30 excepted.

Extension to be completed within three years.

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

Short title.

8. This Act may be cited for all purposes as "The Port Nolloth Tramway or Railway Extension Act, 1871."

No. 4—1871.] [August 11, 1871.

An Act to Continue to the end of 1872 the Act No. 10 of 1864. [Expired.]

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1871.] [August 11, 1871.

ACT

To Provide for the Maintenance of the Great Northern Road, extending from Blinkwater, in the Division of Stockenstrom, to Summit of Penhoek, in the Division of Queen's Town. (1)

Preamble

WHEREAS it is expedient that the provisions of an Act passed in the Session of Parliament holden in the year 1868, numbered 32, and entituled "An Act to provide for the Maintenance of the Main Northern Road," and continued by Acts No. 22 of the year 1869, and No. 16 of the year 1870, should be further continued, and that its provisions should extend to the Section of the Main Northern Road between Poplar Grove and Penhoek, in the Division of Queen's Town: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Act No. 32 of 1868 continued.

1. The provisions of the Act No. 32 of the year 1868 shall be continued until the Legislature shall otherwise determine.

Act to apply to portion of road between Poplar Grove and Penhoek.

2. The provisions of the said Act shall extend and apply to that portion of the Main Northern Road between Poplar Grove and Penhoek, in all respects, as if that section of the road had been specified in the said Act; and the Divisional Council of Queen's Town shall, in respect to the said road, be invested with all the powers, and shall become subject to all the liabilities created by any Act now in force relating to main roads, for so much of the said road as passes through that division.

3. [Repealed by Act 26 of 1884.]

No. 6—1871.] [August 11, 1871.

ACT

To Erect the District of Wodehouse into a Fiscal Division. (2)

Preamble.

WHEREAS it is expedient that the lately proclaimed district of Wodehouse should be constituted a Fiscal Division: 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:—

District of Wodehouse created a fiscal division.

1. From and after the first day of January, 1872, the District of Wodehouse as defined by the Governor, by proclamation in the

[1] Portion of this road has now ceased to be main road. Act 26 of 1884.
[2] Constituted an Electoral Division by Act 7, 1872. See also Act 3, 1872.

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1871.

Government Gazette, dated the fifth day of January, 1871, shall become and be a division for fiscal purposes, and for every purpose other than the election of members of Parliament.

Constitution of existing electoral divisions not affected

2. The persons now entitled or hereafter becoming entitled to vote for members of Parliament to represent the now existing divisions, respectively, parts whereof constitute, or partly constitute, the said district of Wodehouse, shall not be in anywise disfranchised as to voting for members of Parliament to represent such divisions respectively, but the said parts of the said divisions respectively, shall, for the purpose of the election of members of Parliament, and as far as may be necessary for that purpose only, be deemed to be, and to remain, respectively, parts of the several divisions whereof they now form parts respectively, notwithstanding the passing of this Act.

Divisional councils in existing divisions dissolved, and Act 4 of 1865 to apply to both new and existing divisions.

3. From and after the said first day of January, 1872, the several Divisional Councils of the said now existing divisions, parts whereof constitute, or partly constitute, the said district of Wodehouse, shall stand dissolved, and the provisions of the "Divisional Councils Act, 1865," and of the several Acts amending the same, shall apply to the said new division of Wodehouse, and to the several divisions whereof parts now constitute or partly constitute, the said district of Wodehouse, excluding, however, from the limits of those divisions respectively, the parts now included in the district of Wodehouse, which parts shall cease to form parts of the said divisions respectively, for all purposes save as aforesaid, and shall, for all fiscal and other purposes, save only as aforesaid, form parts of the new division of Wodehouse; but all persons for the time being registered as voters for members of Parliament for any of the said divisions respectively, who shall be resident within such parts thereof respectively as shall form part of the said new division of Wodehouse, shall be entitled to vote at any election for members of the Divisional Council of the said division of Wodehouse.

No. 7—1871.] [August 11, 1871.

ACT

To Provide for Raising a Sum of One Hundred Thousand Pounds Sterling, to improve the Harbour of East London, and for Levying Wharfage Dues at the said Harbour. (1)

Preamble.

WHEREAS it is expedient that the harbour of East London should be improved and rendered more commodious and secure for shipping, and it is estimated that a sum of one hundred thousand

(1) See Acts 12, 1876; 22, 1878; 18, 1881; § 25, 18, 1893.

Digitised by the University of Pretoria, Library Services, 2016

pounds sterling will be required to effect such works as will be necessary for that purpose: And whereas it is expedient that the said sum of one hundred thousand pounds sterling should be raised in such manner as is hereinafter described, but so that out of the entire sum of one hundred thousand pounds sterling so to be raised not more than fifteen thousand pounds sterling shall be raised in any one period of twelve months: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Loan of £100,000 upon stock or perpetual annuities authorised.

1. It shall be lawful for the Governor to raise and take up, upon the security of the public revenue of this Colony, and upon stock ([1]) or perpetual annuities, such sum or sums of money as from time to time shall seem to him fit and necessary for the purposes aforesaid, not exceeding in the whole the sum of one hundred thousand pounds sterling for the harbour of East London. ([2])

2. [Repealed by Act 17, 1888.]

Rate of interest, and where payable.

3. Such stock shall bear interest after the rate of five pounds ([3]) sterling per centum of the nominal amount of such stock from the first day of January, or the first day of July next, before the issue of the said scrip certificates respectively, which shall last happen, and such interest shall be payable thereafter half-yearly, on the first day of July and the first day of January in each year, the first of such payments to be made on the half-yearly day which shall happen next after the opening of such credit in the books of the Treasurer-General as aforesaid, and shall be paid on such days respectively, or so soon thereafter as demand shall be made therefor by the lawful holder for the time being of such stock, to such lawful holder or his duly authorised attorney, at the office of the Treasury in Cape Town.

Interest charged on general revenue.

4. All such interest shall be charged and chargeable on and payable out of the general revenue of the Colony.

5. [§§ 5, 6 and 7 repealed by Act No. 17 of 1888.]

Power to pay interest and buy up stock out of current revenue.

8. The Governor shall, from time to time, out of current revenue of the Colony, pay the interest upon the said stock: and may also, out of such current revenue, from time to time, buy up and cancel any part of such stock.

Moneys realised to be carried to separate account, and how applied.

9. The moneys realized from time to time by the issue of such stock, shall be carried to a separate account, and shall be expended so far as may be necessary in the prosecution of the harbour works before mentioned, and not otherwise.

Accounts to be laid before Parliament.

10. An account showing the amount of all such stock as may, from time to time, be issued under the authority of this Act, and of the moneys from time to time realized thereby, and the expenditure thereof, or of so much thereof, as shall have been expended for the time being, vouched by the Auditor-General of the Colony

[1] See § 2, Act 26, 1875.
[2] Printed as amended by Act No. 26, 1875.
[3] But see § 4, Act 26, 1875.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1871.

shall be laid before both Houses of Parliament within fourteen days after the commencement of each such session of Parliament as shall have been held next after the notice of the issue of any such stock shall be published, and an account of the amount of the same stock for the time being outstanding, and of all such sums thereof as shall have from time to time been bought in and cancelled, if any, shall also be laid before Parliament in each succeeding session thereof.

Wharfage dues to be levied.

11. And whereas for the purpose of reimbursing to the Government, wholly or in part, the interest upon the moneys to be expended under this Act at the harbour of East London, it is expedient that wharfage dues shall be levied at the said harbour, be it enacted as follows: There shall be levied and paid to the principal officer of Customs, East London, upon all goods, articles, matters and things landed or shipped at or in the harbour of East London, and not by the schedule to this Act exempted from the payment of wharfage dues, the several dues of wharfage set forth in the tariff constituting the schedule to this Act.

SCHEDULE No. 1.

Upon all wool shipped or landed at East London harbour there shall be payable and be paid sixpence for and upon every one hundred pounds of the weight thereof.

Upon all goods, articles, matters, or things, except wool, shipped or landed at the said harbour, dues shall be payable and be paid at and after the rate of ten shillings for every one hundred pounds of the value thereof.

EXEMPTIONS.

1. All public stores, naval and military baggage, and personal baggage of passengers.
2. Ships stores outwards.
3. All goods shipped upon which dues had been paid on importation under this Act.
4. [Repealed by § 3 Act No. 22, 1878.]

SCHEDULE No. 2.

I, A. B., do hereby declare that I am cognizant of the value of the following articles about to be shipped by me (or by C.D., according to the fact) on board the ——, in East London harbour, namely (here describe the articles, with marks and numbers, if any); and I do further declare that the said articles are of the value of ——.

(Signed) A.B.

The above declaration under the Act No. —,
was made and subscribed this — day
of ——, 187—, in the presence of ———
C. D.

(*** When the articles are landed, or about to be landed, the above form will be altered according to the facts.)

Digitised by the University of Pretoria, Library Services, 2016

No. 8—1871.] [August 11, 1871. No. 11—1871.

An Act to Incorporate the Port Elizabeth and Uitenhage Railway Company (Limited).

[Lapsed.]

No. 9—1871.] [August 11, 1871.

An Act for applying a Sum not exceeding Four Hundred and Five Thousand Five Hundred and Eighty-two Pounds Fifteen Shillings and Five Pence for the Service of the Year 1871.

[Spent.]

No. 10—1871.] [August 11, 1871.

An Act for the Protection of Private Property in Domesticated Ostriches.

[Repealed by Act 24, 1875.]

No. 11—1871.] [August 11, 1871.

ACT

To amend in certain respects the provisions of Act No. 3 of 1864, by exempting Persons carrying about or hawking Colonial Produce from the Provisions of the aforesaid Act. (1)

Preamble.

WHEREAS it is expedient to amend in certain respects the provisions of Act No. 3, 1864, by exempting persons carrying about or hawking Colonial Produce from the provisions of the aforesaid Act: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Persons hawking colonial produce exempted from provisions of Stamp Act, 1864.

1. (2) No person hawking or carrying about for sale any article being the produce or manufacture of this Colony or British Bechuanaland, shall, by so doing, be deemed to be a hawker or travelling trader; nor shall any such person be required to take out or to possess, for so doing, the licence by the Stamp Act of 1864 required to be taken out and possessed by hawkers or travelling traders: Provided that nothing in this Act contained shall be held to interfere with the operation of any laws regulating the sale of wines, spirits, or fermented liquors.

Laws regulating sale of wine, spirits &c., not affected.

---

[1] See Act 20, 1884, Tariff 15. See also Act 10, 1869.

[2] See Act 36, 1886, as to hawking of game. Printed as amended by Act 15, 1890.

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1871. No. 12—1871.] [August 11, 1871.

An Act for the Annexation to the Colony of the Cape of Good Hope of the Territory inhabited by the Tribe of People called Basutos.

[Repealed by Act 24, 1883.]

No. 13—1871.] [August 11, 1871.

ACT

To Empower the Governor to Raise the Sum of Fifty Thousand Pounds Sterling for the purpose of redeeming a like Sum raised by means of Debentures, under authority of the Act No. 12 of 1866-67.

Preamble.

WHEREAS a sum of fifty thousand pounds sterling was, under authority of Act No. 12 of 1866-67, raised by means of debentures charged on the revenues of this Colony, bearing interest at the rate of six pounds sterling per cent. and redeemable on the first day of January, 1872; and whereas it is expedient that the same should be redeemed, and that a sum of fifty thousand pounds sterling should be raised or taken up by the Governor, as hereinafter is provided, for the purpose of redeeming the said debentures: 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:—

Loan of £50,600 upon stock or perpetual annuities authorised.

1. It shall and may be lawful for the Governor to raise and take up upon stock or perpetual annuities such sum of money not exceeding in the whole the sum of fifty thousand pounds sterling, to be applied in redeeming the said debentures issued under the authority of the said Act No. 12 of 1866-67.

2. [Repealed by Act 17 of 1888.]

Rate of interest, and when and where payable.

3. Such stock shall bear interest after a rate of five pounds sterling per centum of the nominal amount of such stock, from the first day of January or the first day of July next, before the issue of the said scrip certificate, which shall last happen. (1)

Interest charged on general revenue.

4. All such interest shall be charged and chargeable on, and payable out of the general revenue of the Colony.

5. [§§ 5, 6 and 7 repealed by Act 17, 1888.]

Power to pay interest and buy up stock out of current revenue.

8. The Governor shall from time to time, out of the current revenue of the Colony, pay the interest upon the said stock, and may also, out of such current revenue, or any moneys to be appropriated for that purpose, from time to time, buy up and cancel any part of such stock.

---

[1] Printed as amended by Act 17, 1888.

Digitised by the University of Pretoria, Library Services, 2016

9. The moneys realized by the issue and sale of such stock shall be carried to a separate account, and shall be expended so far as shall be necessary in redeeming the said debentures issued under the authority of the said Act No. 12 of 1866-67.

Moneys realized to be carried to separate account, and how applied.

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

Accounts to be laid before Parliament.

No. 14—1871.] [August 11, 1871.

An Act for applying a Sum not exceeding One Hundred and Eighty-eight Thousand and Ninety-one Pounds Nineteen Shillings and Five Pence for the Service of the Year 1872.

[Spent.]

No. 15—1871.] [August 11, 1871.

ACT

To Promote the Construction of a Bridge or Bridges over the Orange River. (1)

Preamble.

WHEREAS it is expedient that a bridge or bridges should be erected across the Orange River at some convenient place between this Colony on the one side, and the territory of the Orange Free State on the other side, by some person or persons or joint-stock company or companies willing to erect the same, and that powers should be given to the Governor to enter into a valid treaty or convention with the Government of the Orange Free State, binding on this Colony, as to the terms on which such person or persons or joint stock company or companies as aforesaid shall be authorised to erect such bridge or bridges; and, further, in concert with such Government of the Orange Free State to conclude an agreement binding on this Colony and on the Orange Free State with such person or persons or joint-stock company or companies as to the terms on which such such bridge or bridges shall be erected and maintained: Be it therefore enacted by the Governor of the

[1] See Acts 12, 1872; 26, 1874.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1871.

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

Governor may enter into convention with Orange Free State.

1. (1) It shall be lawful for the Governor to enter into a convention or treaty with the Government of the Orange Free State, which shall be binding on this Colony, for the purpose hereinafter stated, that is to say:

Purposes of convention.

1. Subject to the conditions hereinafter contained to determine with the consent and concurrence of such person or persons or company or companies as shall be willing, on the terms to be agreed on, to erect such bridge or bridges as aforesaid, the place or places at which such bridge or bridges shall be erected, such place or places being between the Colony on the one side, and the territory of the Orange Free State on the other side; and

To determine on site of bridge or bridges.

2. [Sub-sections 2 and 3 repealed by Act 17, 1889.]

To determine by what courts disputes shall be settled.

4. To determine by what Courts disputes between travellers passing over the said bridge or bridges or over or across the said river as hereinafter mentioned, of the one part, and such person or persons or company or companies, and his or their servants, of the other part, shall be determined, and in what Courts and in what manner the payment of the tolls to be levied shall be enforced, and also by what Courts questions between such person or persons or company or companies as aforesaid, and other persons, shall be litigated where needful, and by what Courts sequestration, or receipt of the tolls aforesaid or possesion of the bridge or bridges may be decreed in case of lawful necessity; and any jurisdiction which shall by such treaty or convention be conferred on any Court, or Judge, or Magistrate in this Colony shall be deemed the lawful jurisdiction of such Court or Judge, or Magistrate, respectively.

5. [Sub-sections 5 and 6 repealed by Act 17, 1889.]

Power to contract for erection of bridge or bridges.

2. It shall be lawful for the Governor, in concert with the Government of the Orange Free State, to contract with any person or persons or joint-stock company or companies who shall be willing to erect such bridge or bridges as aforesaid, in manner to be approved by the said Governor and the Government of the Orange Free State, that such person or persons or company or companies shall be at liberty so to do, and to have the privileges so to be provided by such convention as aforesaid and hereinbefore mentioned, upon erecting the said bridge or bridges in a workmanlike and substantial manner, to the satisfaction of an inspector to be appointed by the Governor of this Colony, also of an inspector to be appointed by the Government of the Orange Free State, unless they shall appoint one and the same person as inspector on behalf of both, considering the nature of the traffic; and, further,

[1] See Act 26, 1874, § 2.

Digitised by the University of Pretoria, Library Services, 2016

upon giving proper security to maintain such bridge or bridges in a good and substantial state of repair, and subject to such penalties as may be agreed on, and to be enforced as may be agreed on in case the same be not kept in a good and substantial state of repair; any question of good and substantial repair of the said bridge or bridges shall be determined by the judgment of two inspectors, one to be appointed by the Governor and the other by the President for the time being of the Orange Free State.

Free occupation of public lands may be granted.

3. The Governor and the Government of the Orange Free State respectively, may agree that such lands, the property of the Crown and of the said Government of the Orange Free State respectively, as may be reasonably required by such person or persons or company or companies as aforesaid, for the necessary building and maintenance of the said bridge or bridges, and of the toll-houses and other buildings, if any required, may be occupied and enjoyed by such person or persons, or company or his or their or its servants and agents, free of any charge to be made by either the Government of this Colony or of the said Orange Free State: Provided, nevertheless, that in case any property not that of the Crown nor that of the Orange Free State, respectively, shall be required for the aforesaid purposes, the person or persons or company or companies aforesaid shall be entitled to purchase, and the owner of the said land shall be bound to sell the same; and in case of any difference of opinion between the said parties as to the value of the land so required, such value shall be determined by the arbitration of three persons one to be appointed by the person or persons or company or companies aforesaid, another by the owner of the land aforesaid, and the third to be chosen by the persons so appointed before proceeding in the reference; and the award of such arbitrators, or any two of them, shall be binding upon all parties concerned.

Where required land is private property, sale compulsory.

Disputes as to value, how to be settled.

Right of purchase of property in bridge or bridges reserved.

4. It shall be lawful for the Governor of the Colony to agree with the Government of the Orange Free State, that, either alone or in concert with the Government for the time being of the Orange Free State, he shall be entitled to buy the entire property in the said bridge or bridges, and the tolls and rights thereon of the person or persons or company or companies who may for the time being be entitled to the property therein respectively, at any time after the period of twenty-one years shall have expired, from the day on which the said bridge or bridges shall have been first opened for traffic, upon a notice published in the *Government Gazette*, not less than six months before the time to be fixed for such purchase, notifying the intention of the Governor to purchase the same for any sum not exceeding the capital sum which at the rate of five pounds per centum would produce a yearly income equal to the average of the net receipts arising from the tolls of the said bridge or bridges, after deducting therefrom the cost of repairs and maintenance of the said bridge or bridges

Digitised by the University of Pretoria, Library Services, 2016

lodged in the said office, the copy kept by the said Resident Magistrate in manner aforesaid, shall be delivered to any person having an interest therein, who shall apply for the same, or shall be destroyed if no such application be made within twelve months after the original shall have been lodged with such Resident Magistrate. (1)

Penalty for theft, destruction or concealment of wills, &c.: seven years' imprisonment with hard labour.

4. And be it further enacted, that if any person shall, either during the life of the testator or testatrix, or after his or her death, steal, or for any fraudulent purpose destroy or conceal any will, codicil, or other testamentary instrument, every such offender shall, being convicted thereof, be liable, at the discretion of the Court before which he shall be so convicted, to transportation from this Colony for seven years, or such other punishment by imprisonment with or without hard labour, for any period not exceeding seven years, or by fine, or by both, as the said Court shall award; and it shall not in any indictment for such offence be necessary to allege that such will, codicil, or other instrument, is the property of any person, or is of any value: Provided always, that nothing herein contained, relating to the said offences, nor any proceeding, conviction, acquittal, or judgment, to be had or taken thereupon, shall prevent, lessen, or impeach any remedy which any person aggrieved by any such offence might or would by law have had by means of any civil action, suit, or proceeding, if this Ordinance had not been passed; but nevertheless, the conviction of any such offender shall not be received as evidence against him, nor his acquittal as evidence for him, in any such civil action, suit, or proceeding against him. And no person shall be liable to be convicted of the offence aforesaid, by any evidence whatever, in respect of any act done by him, if he shall at any time previous to his being indicted for such offence have disclosed such act on oath, in consequence of any compulsory process of any competent Court in any civil action, suit, or proceeding, which shall have been *bona fide* instituted by any party thereby aggrieved, or if he shall have disclosed the same in any examination which he may have undergone under and by virtue of the provisions of the sixty-first and sixty-fourth sections of the Ordinance No. 64.

Civil actions.

Warrants to search for stolen or concealed wills by judges, magistrates, &c.

5. And be it further enacted, that the Chief Justice of the Colony, every Judge of the Supreme Court, and every Resident Magistrate or Justice of the Peace within the Colony, upon an information taken on oath, being transmitted to him by the Attorney-General, or any Clerk of the Peace, or upon the information of any person, made on oath before any such Judge or Magistrate, that there is reason to suspect that any will, codicil, or other testamentary instrument, stolen or concealed for any fraudulent purpose, is concealed in any place within the jurisdiction of such Judge or

[1] But see § 5, Act 11, 1873.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1871.

its approaches, toll-houses, and bars, and of the collection of the said tolls and all other necessary expenses incidental to the earning of such receipts calculated for the three years next before the day of the publication of the notice to purchase aforesaid, and that upon the payment of the purchase money, to be agreed on between the Governor and the person or persons or company or companies aforesaid, or, in default of such agreement on the payment of such sum as hereinbefore fixed, as the maximum price to the directors of the said company or companies, if any, or to the person or persons entitled to such property, if no company or companies be entitled thereto, or of the shares of them as are *sui juris* to them respectively, and of the shares of such of them as shall not be *sui juris*, to the Guardian's Fund, on behalf of such persons respectively, the said bridge or bridges and the tolls and right belonging thereto by virtue of this Act, and any undertaking or agreement to be made thereunder, theretofore the property of such company or companies, person or persons, shall vest in the Governor of this Colony, to be held by him either altogether for the benefit of Her Majesty in her Colonial Government, or in such shares for the benefit of her said Majesty as aforesaid and for the benefit of the Orange Free State as may be fixed by convention between her said Majesty on the one hand and the Government for the time being of the said Orange Free State on the other hand.

Act when to take effect.

5. This Act shall not take effect unless and until it shall be notified to the Governor by the Government of the Orange Free State that an Act or Ordinance to the same effect has passed the Legislature of the Orange Free State, and become law in that State, giving the like powers to the President, or some officer of the Government of the said State, to conclude such convention as is hereinbefore mentioned, and proclamation shall have been made in the *Government Gazette*, that such Act or Ordinance has been so passed and become law as aforesaid.

SCHEDULE.

[Repealed by Act 17, 1889.]

Digitised by the University of Pretoria, Library Services, 2016

Ord. 104—1833.

Magistrate, may, by warrant under his hand, cause every such place to be searched during the day time.

Application by Master to the Court or a Judge for an order on persons refusing to give up wills.

6. And be it further enacted, that, if any person, who shall be in possession of any will, codicil, or testamentary instrument shall, after the death of the testator or testatrix, refuse or fail to deliver or transmit the same in manner hereinbefore provided, at or to the office of the Master of the Supreme Court, or to the Resident Magistrate of the district in which such person shall reside, the said Master is herewith authorised and required forthwith summarily to apply to the Supreme Court, or any Judge thereof, for an order of such Court or Judge, on such person, forthwith to deliver to the said Master such will, codicil, or other instrument; and further, on proof that any such person hath refused or failed to obey such order, to apply for and obtain from the said Court, or any Judge thereof, a warrant for the imprisonment of such person, until he shall deliver up to the said Master every such will, codicil, or other instrument in his possession, or under his control. And every such warrant shall and may be executed in like manner in all respects as any arrest may be made under and by virtue of the provisions of the nineteenth section of the Ordinance No. 73.

Enregisterment of wills, &c., at testator's death.

7. And be it further enacted, that every deed, being or purporting to be, the will, codicil, or other testamentary instrument of any person which shall have been lodged in or delivered at or transmitted to the office of the Master of the Supreme Court in any manner hereinbefore provided, shall after the death of the maker thereof, in the original be enregistered by the Master in a register to be by him for that purpose kept in his said office, and to be called the Register of Wills, for which purpose the said Master is hereby authorised and required to open or cause to be opened every such deed which may be sealed up: Provided always, that notwithstanding any such registration, all questions as to the validity and legal effect of every such deed, shall be reserved and remain for the decision of the Supreme Court, or any Circuit Court, in which any action or suit shall be brought or shall depend touching or concerning the validity and effect of any such deed.

Inspection and copies and extracts of wills.

8. And be it further enacted, that it shall and may be lawful for any person, on any day, Sundays and holidays excepted, at any hour, when according to any regulation made by competent authority for that purpose, the office of the Master of the Supreme Court shall be directed to be kept open, to apply at the said office, and to demand inspection of any deed enregistered in the Register of Wills aforesaid, and to demand any copies or extracts thereof; and for every such inspection, copy, or extract, there shall be paid by the person demanding the same such fee as is specified in the schedule hereunto annexed, marked A: Provided always, that every person holding office under the Government of this Colony

Digitised by the University of Pretoria, Library Services, 2016

shall be and they are hereby authorised without the payment of any fee or charge whatever to inspect any such deeds as aforesaid, and to take copies or extracts thereof, whenever it shall be necessary or expedient that the same should be done by any such person in the discharge of the duties of his office.

Death notices to minister, magistrate, or field-cornet.

9. And be it further enacted, that whenever any death shall occur the nearest relative or connection of the deceased who shall at the time be at or near the place of death, and in default of any such near relative or connection, the person who at or immediately after the death, shall have the chief charge of the house in or of the place on which, the death shall occur, shall cause notice ([1]) of the death to be given in manner following, that is to say,—where the death shall occur in Cape Town or within six hours' distance thereof, at the office of the Master of the Supreme Court; where the death shall occur elsewhere and in, or within six hours' distance of any town or village in which the office of any Resident Magistrate shall be holden, at such office; and where the death shall occur at any place situated at a greater distance from any such town or village, to the Field-cornet of the Field-cornetcy in which the death shall occur. And every person herein required to cause such notice as aforesaid to be given, who shall without some lawful and sufficient excuse fail to do so, shall, on conviction thereof before the Resident Magistrate of the district, at the instance of the Clerk of the Peace thereof, incur a penalty not exceeding five pounds sterling nor less than five shillings, to be levied out of the movable property of such person. And every Field-cornet within the Cape district and the district of Stellenbosch, to whom any such notice as aforesaid of any death shall be given, shall forthwith transmit the same to the office of the Master of the Supreme Court; and every Field-cornet in any other district to whom any such notice shall be given, shall forthwith transmit the same to the Resident Magistrate of such district; and every Resident Magistrate to whom any such notice shall be transmitted, shall forthwith transmit the same to the Master of the Supreme Court: Provided always, that it shall not be necessary for any person to cause notice of any death to be given under and in terms of the provisions of this Ordinance before the lapse of the period within which it is hereinafter provided that inventories taken of the property left by deceased persons shall be transmitted in manner hereinafter ([2]) mentioned, and that such notices may at all times be transmitted along with such inventories in manner hereinafter mentioned, anything herein contained to the contrary notwithstanding.

Particulars of death notices.

10. And be it further enacted, that all such notices of death as are hereinbefore required to be given, shall contain and set forth the

[1] Duplicate or fair copy of death notice also to be furnished. See § 5, Act 11 of 1873.

[2] See §§ 14 and 16.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 104—1833.

following particulars, in so far as the same shall be known to the person giving the same, that is to say:

1. The name and birth-place and names of the parents of the deceased.
2. His or her age.
3. His or her condition.
4. Whether married or unmarried or widower or widow.
5. The day of the decease.
6. At what house or where the person died.
7. Names of the deceased's children, and whether they are majors or minors.
8. Whether deceased has left property of any kind.

Provided always, that in such notice it shall not be necessary to specify the nature or amount of such property.

Death register.

11. And be it further enacted, that a register, to be called the "Death Register," shall be kept in the office of the Master of the Supreme Court, in which the said Master shall cause to be inserted every notice of death which shall be transmitted to him in manner hereinbefore provided, together with all the particulars therein contained.

Preference on estate for funeral expenses.

12. And be it further enacted, that every person, by whom the funeral of any deceased person shall be performed, or caused to be performed, shall, for the amount of the expenses of such funeral, in so far as the same were suitable to the condition of the deceased, have a preference on the property and assets of the estate of the deceased, before any other debt or claim which may have been owing by the deceased at the time of his death, or which may arise against his estate after his death.

Possession by survivor of estate in community until institution of proceedings under Ordinance No. 105.

13. And be it further enacted, that when one of two spouses who have been married in communion of property shall die, the joint estate shall remain under the charge of the survivor until the executors of the deceased, or the tutors testamentary, or dative, of the minor children of the marriage, or the Master of the Supreme Court, or curator bonis lawfully appointed to such minor children, shall institute proceedings for the administration, distribution, and final settlement of the said joint estate, under and by virtue of the provisions of this Ordinance, or of the Ordinance No. 105: Provided always, that nothing herein contained shall extend, or be construed to extend, to prevent any such joint estate from being placed under sequestration as insolvent, at the instance either of the surviving spouse, or of any creditor or creditors on such estate, in like manner as the same might have been done under and by virtue of the provisions of the Ordinance No. 64, prior to the passing of this Ordinance.

Inventory of estate in community by surviving spouse within six weeks of the death.

14. And be it further enacted, that, when one of two spouses who have been married in community of property shall die, the survivor shall within six weeks after the death of the deceased, cause an inventory of all property, goods, and effects, movable and immova-

Digitised by the University of Pretoria, Library Services, 2016

ble, of what kind soever, which at the time of the death shall have formed part or belonged to the estate possessed in community between the predeceasing and surviving spouses, to be made in presence of two witnesses, being persons qualified by law to serve on juries in the Supreme or Circuit Courts of this Colony, and of such persons having an interest in the distribution of the joint estate, as heirs or legatees of the predeceased spouse, who shall attend. And every such inventory shall be subscribed by the surviving spouse, the witnesses aforesaid, and such heirs or legatees as shall be present at the making thereof. Provided always, that it shall be lawful for the Supreme Court and Circuit Courts or any Judge of the Supreme Court on cause being shown by the Master of the Supreme Court, or any person having an interest in such joint estate, respectively, to order that an inventory thereof shall be taken by any person or persons named in such order, or to appoint a curator to take the charge and custody of any such joint estate at any time either before or after the lapse of the said period of six weeks.

Penalties on omission of inventory.

15. And be it further enacted, that every surviving spouse, who shall wilfully neglect to cause an inventory of the joint estate to be made, in manner and within the period hereinbefore provided, or shall knowingly omit to enter in such inventory any article of property, of whatsoever kind, shall in the distribution of such estate forfeit all right to, and share in, any thing which may accrue to the joint estate after the death of the predeceasing spouse, and in and to such property so omitted in the inventory, and every loss which shall have been caused by the destruction or deterioration of any such property so omitted in the inventory, or which shall have accrued to the joint estate after the death of the predeceasing spouse, by the loss or deterioration of any part thereof, shall in the distribution of the estate fall upon and be borne by such surviving spouse solely and exclusively: Provided always, that nothing herein contained shall extend, or be construed to extend, to free or exempt any person who shall for any fraudulent purpose make, or cause to be made, any false inventory of any such joint estate, from any penalty or punishment hereinafter, or by any other law or Ordinance provided, with respect to the offence of making false inventories for fraudulent purposes.

Inventory on the death of persons not being spouses married in community.

16. And be it further enacted, that on the death of any person not being one of two spouses married in community of goods, the wife or husband of the deceased, and in default or absence of the wife or husband, the child or children of the deceased, or in default, absence, or minority of the child or children, the next of kin of the deceased, or in default, absence, or minority of the next of kin, the person who at or immediately after the death, shall have the chief charge of the house in, or of the place on which the death shall occur, shall secure and take charge of all goods and effects, of whatever description, belonging to the deceased, and

Digitised by the University of Pretoria, Library Services, 2016

Ord. 104—1833.

being in the house or upon the premises at the time of the death of the deceased, and shall retain the same in his or her custody and possession until delivery thereof shall be demanded by the executor or executors of the deceased, or by any person lawfully appointed by the Supreme Court, or by a Judge, or the Master thereof to receive delivery of the same, and shall within six days after the death, make or cause to be made in the presence of two witnesses, being persons qualified by law to serve on juries in the Supreme or Circuit Courts of this Colony, an inventory of all such goods and effects as aforesaid and of all others known by the person making, or causing such inventory to be made, to have belonged to the deceased. And every such inventory shall be subscribed by the person making or causing the same to be made and by the witnesses aforesaid.

Penalty for false inventory, two years' imprisonment or fine

17. And be it further enacted, that if any person required and directed under and by virtue of the provisions of the fourteenth and sixteenth sections of this Ordinance, to make or cause to be made, an inventory of any estate, goods, or effects, shall, for any fraudulent purpose, make a false inventory thereof, every such offender being convicted thereof, shall be liable, at the discretion of the Court before which he shall be so convicted, to punishment by imprisonment, with or without hard labour, for any period not exceeding two years, or by fine, or by both, as the said Court shall award.

Transmission of inventory to Master or resident magistrate.

18. And be it further enacted, that every person hereinbefore required or directed to make or cause to be made any such inventory as aforesaid, shall, so soon as the same has been made, forthwith by the first opportunity deliver or transmit every such inventory (1) at or to the office of the Master of the Supreme Court, when such person shall reside in Cape Town or the district thereof, or the Cape district, or the district of Stellenbosch; and when such person shall reside in any other district, then to the Resident Magistrate of such district. And every such Resident Magistrate shall cause a copy or copies of every such inventory so delivered or transmitted to him to be made, and shall authenticate such copy or copies with his signature, and shall transmit the original of every such inventory to the office of the said Master: Provided always, that when such inventory as aforesaid shall have been made by the survivor of two spouses, to whom the predeceasing spouse shall by will have lawfully bequeathed all the share of the said joint estate belonging to such predeceasing spouse, or whom the predeceasing spouse shall by will or other lawful instrument have appointed the executor of his or her will, and the tutor of his or her minor children, and the administrator (boedelhouder) of the said joint estate during the minority of such children, then and in every such case it shall and may be

[1] And also a duplicate or fair copy thereof, see Act 11 of 1873, § 5.

Digitised by the University of Pretoria, Library Services, 2016

lawful for such spouse, if he or she shall think fit so to do, to transmit every such inventory as aforesaid, sealed up, to the office of the Master of the Supreme Court, or to the Resident Magistrate of the district respectively, in manner hereinbefore provided. And when any such inventory, so sealed up, shall be transmitted to any Resident Magistrate, there shall also be transmitted to such Magistrate a duplicate and triplicate of such inventory, also sealed up. And such Resident Magistrate shall transmit the original of every such sealed inventory to the office of the said Master, and for and with respect to the transmission of such original inventory, whether sealed up or open, and of such copy or copies thereof as aforesaid, and of such duplicate and triplicate thereof as aforesaid, shall do and cause to be done, everything which, under and by virtue of the provisions of the third section of this Ordinance, such Resident Magistrate is required to do, or cause to be done, for the transmission of the originals and copies of wills, and shall proceed in all respects in like manner as is therein directed: Provided always, that no such duplicate or triplicate shall be re-delivered by such Resident Magistrate to any person, except the surviving spouse by whom the same was transmitted to him, or to some person authorised by such survivor to receive the same; and that no such sealed inventory, or duplicate or triplicate thereof, shall be opened, except by virtue of an order of the Supreme Court, or some Judge thereof, on sufficient cause for opening the same being shown by the Master of the Supreme Court, or by some person having an interest in the said joint estate.

Transmission of original by resident magistrate to Master.

19. And be it further enacted, that the estates of all persons dying either testate or intestate, in so far as the same shall be situated within this Colony, shall be administered and distributed according to law under and by virtue of letters of administration ([1]) to be granted in the form contained in the schedule hereunto annexed, marked B, by the Master of the Supreme Court, to the testamentary executors duly appointed by such deceased persons, or to such persons as shall in default of testamentary executors be appointed executors dative to such deceased persons, in manner hereinafter mentioned: Provided always, that in all cases where the same may be necessary or expedient, the Master of the Supreme Court shall and may appoint a curator bonis, to take the custody and charge of any such estate, until letters of administration shall be granted to executors testamentary or dative, for the due administration and distribution thereof. And that every appointment so made by the said Master of any curator bonis, shall, on the application of any person having an interest in such estate, be subject to be reviewed and confirmed, or set aside by the Supreme Court, or any Judge thereof; and such Court or Judge

Letters of administration.

Appointment of curator bonis until issue of letters of administration.

[1] As to estates of natives, see Act 18 of 1864. Act 8, 1888, provides for the recognition in this Colony of Letters of Administration granted in other States.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 104 1833.

by whom any such appointment shall be set aside, shall and may appoint some other fit and proper person to be curator bonis.

Letters of administration to executors appointed by will.

20. And be it further enacted, that in all cases in which any deceased person shall by his will have duly appointed any person or persons to be his executor or executors, the Master of the Supreme Court shall, upon the application of such executor or executors, forthwith grant letters of administration to him or them, so soon as the will of the deceased shall have been lodged in the office of the said Master, in manner hereinbefore mentioned: Provided always, that if it shall appear to the said Master, or if any person by writing lodged at the office of the said Master shall object that any deed by virtue whereof any person or persons shall claim to be the testamentary executor or executors of any person deceased is not in law sufficient to warrant and support such claim, then and in every such case letters of administration shall not be granted until the validity and legal effect of such deed shall have been determined by the judgment of some competent Court, or until such objection as aforesaid shall have been withdrawn by the party by whom the same was made.

Proceedings on failure of appointment of executors, or on death, incapacity or refusal to act.

21. And be it further enacted, that when any person shall have died without having by any valid deed appointed any person or persons to be his executor or executors, or where any person or persons duly appointed to be the executor or executors of any deceased person shall have predeceased him, or shall refuse, or become incapacitated to act as such, then and in every such case the Master of the Supreme Court shall cause to be published in the *Gazette* of this Colony, and in such other manner as to him shall seem fit, an edict, calling the surviving spouse (if any), the next of kin, legatees, and creditors of the deceased, to attend at his office at the time therein specified, not being less than six weeks from the day of publication, to see letters of administration granted to such person or persons as shall then be appointed by him executor or executors dative to the estate of such deceased person: Provided always, that when it shall appear to the said Master necessary or expedient so to do, it shall and may be lawful for him, in such edict, to call such persons as aforesaid to attend at the office of any Resident Magistrate at such time as aforesaid, for the purpose of proposing some person or persons, to be by such Magistrate reported to the Master as fit and proper to be by him appointed executor or executors dative. And the said Master shall, at the meeting so to be holden at his office, or upon receiving the report of such Resident Magistrate, appoint such person or persons as to him shall seem fit and proper to be executor or executors dative of the estate of the deceased, and shall grant letters of administration accordingly, unless it shall appear to him necessary or expedient to postpone such appointment, and to call another or other such meeting or meetings as aforesaid. And provided also, that when it shall appear to the satisfaction of the said Master that the estate of any

Proceedings on insolvency of estate.

Digitised by the University of Pretoria, Library Services, 2016

such deceased person as is hereinbefore mentioned is manifestly insolvent, then and in every such case it shall not be necessary for the said Master to take any such proceedings as aforesaid for the appointment of an executor or executors dative, and no such proceedings shall by him be taken for that purpose; and it shall and may be lawful for him, and he is hereby declared and required to take the necessary proceedings for having such estate placed under sequestration as insolvent, under and by virtue of the provisions of the third section of the Ordinance No. 64.

Competition for office of executor dative.

22. And be it further enacted, that in every case in which a competition shall take place for the office of executor dative, the surviving spouse, whom failing, the next, or some of the next of kin, whom failing, a creditor or creditors, whom failing, a legatee or legatees, shall be preferred by the Master of the Supreme Court to the office of executor dative. Provided always, that nothing herein contained shall prevent any one or more of the above-mentioned classes of persons from being conjoined in the said office with any one or more of any other of the above-mentioned classes of persons. And that, when it shall appear to the Master or to the Supreme Court, or any Judge thereof, on reviewing the appointment of the Master, that any valid objection exists to the appointment of all or any of the above-mentioned persons, or classes of persons, as executor or executors dative, such objectionable person or class of persons shall be passed by, and some other fit and proper person or persons shall by the said Master, or by such Court or Judge, be appointed executor or executors dative. And provided also, that every such appointment so made by the said Master shall, on the application of any person having an interest in such estate, be subject to be reviewed and confirmed, or set aside by the Supreme Court or any Judge thereof; and such Court or Judge by whom any such appointment shall be set aside shall and may appoint some other fit and proper person or persons to be executor or executors dative.

Review of Master's appointment by court or judge.

Appointment of tutors of minors, where minors would have been entitled to appointment.

23. And be it further enacted, that when it shall happen that any of the next of kin, or creditors, or legatees, of any deceased person shall be minors under the guardianship of any tutor or tutors duly appointed, then and in every such case such tutor or tutors shall be entitled to be preferred to the office of executor or executors dative, under the provisions of the immediately preceding section of this Ordinance, in like manner in all respects as the minor or minors whose tutor or tutors he or they are, would, if of full age, have been entitled to be preferred to that office under the provisions of the said section.

Assumption of executors under power contained in will.

24. And be it further enacted, that nothing herein contained shall extend or be construed to extend to prevent any testamentary executor or executors of any testator from assuming any other person or persons as executor or executors of such testator, under and by virtue of any power for that purpose to him or them committed

Digitised by the University of Pretoria, Library Services, 2016

Ord. 104—1883.

by such testator, by his will, or by any other deed duly executed by him: Provided always, that no person shall be entitled or qualified to act as assumed executor until letters of administration shall have been granted to him as such by the Master of the Supreme Court, who is hereby directed and required to grant the same, on production to him of the will or other deed by which the assumption of such executor is authorised, and of the deed by which such testamentary executor or executors has or have assumed such person as executor. And every provision of this and of every other Law or Ordinance, applicable or relating to or affecting executors dative, shall be deemed and taken to, and shall apply and relate to and affect every such executor so assumed.

Letters of administration to assumed executors.

Proceedings in case of death, incapacity or removal of testamentary or assumed executors.

25. And be it further enacted, that when, by reason of any testamentary or assumed executor to whom letters of administration shall have been granted for the administration of any estate, having died or become incapacitated to act as such, or having been removed from his office by the decree of any competent Court, there shall not remain, for the administration of such estate, any executor whatever, or so many executors, either testamentary or assumed, as by the provisions of the deed by which such executors were appointed or permitted to be assumed, shall be required to form a quorum of executors for the administration of such estate, and when it shall happen that any executor dative shall, after letters of administration have been granted to him, die or become incapacitated, or be removed in manner aforesaid, then and in every such case proceedings, in order to the appointment of an executor dative, in place of such executor so dying or becoming incapacitated or removed, shall be had and taken by the Master of the Supreme Court, in like manner in all respects as is hereinbefore provided by the provisions of the twenty-first, twenty-second, and twenty-third sections of this Ordinance.

Revocation of letters of administration by decree of court, or in some instances by Master.

26. And be it further enacted, that letters of administration granted to any person as testamentary executor, shall at all times be subject to be revoked and annulled by the decree of the Supreme or of any Circuit Court on the proof to the satisfaction of such Court that the deed in respect of which such letters have been granted to such persons is null, or has been revoked, either wholly or in so far as relates to the nomination and appointment of such executor: and that letters of administration granted to any person as executor dative shall be at all times subject to be revoked and annulled by the order of the Master of the Supreme Court, on production to him of any valid deed, by which any other, who shall then be legally capable and qualified, and who shall consent to act as executor, has been legally nominated and appointed testamentary executor to the estate to which such executor dative has been appointed to administer: Provided always, that, if the non-production of such deed, prior to letters of administration having been granted to the executor dative has been owing to

Digitised by the University of Pretoria, Library Services, 2016

the fault or negligence of the person therein appointed testamentary executor, such person shall be personally liable for all expenses which have been incurred in respect of and with reference to the appointment of the executor dative.

Security by executor dative for due administration.

27. And be it further enacted, that every executor dative shall, before he shall be permitted to enter on the administration of the estate, find security to the satisfaction of the Master of the Supreme Court, for the due and faithful administration of the estate of which he has been appointed executor dative, to such amount as in the circumstances of each particular case shall be reasonable.

Inventory by executors.

28. And be it further enacted, that every executor, whether testamentary or dative, shall, so soon as letters of administration shall have been granted to him in manner aforesaid, forthwith make an inventory of all property, goods, and effects, movable and immovable, of what kind soever, belonging to, or forming part of, the estate which such executor shall have been appointed to administer, and shall, in like manner, from time to time, thereafter and so soon as such executor shall find or know of any other such property, goods, or effects, belonging to, or forming part of, such estate, and not contained in such first-mentioned inventory make an additional inventory or inventories of all such last-mentioned property, goods, and effects. And every such executor, either testamentary or dative, shall forthwith cause every such inventory and additional inventory to be transmitted to the office of the said Master. And when any such additional inventory shall be so transmitted by any executor dative, he shall find such further security as aforesaid as shall be required of him: Provided always, that when the person by whom any testamentary executor has been appointed shall, by any deed duly executed by him, have directed that such testamentary executor shall not transmit to the office of the said Master any such inventory or additional inventory as aforesaid, then and in every such case no such executor shall be required,—and that the survivor of any two spouses, married in community of property, to whom the predeceasing spouse shall by will have lawfully bequeathed all the share of the said joint estate belonging to such predeceasing spouse, or whom the predeceasing spouse shall by will or other lawful instrument have appointed the executor of his or her will, and the tutor of his or her minor children, and the administrator (boedelhouder) of the said joint estate during the minority of such children, shall not in any case be required,—to transmit to the office of the said Master, or to produce any such inventory as aforesaid, except when an order for the production of the same shall have been made by the Supreme Court, or any Judge thereof, on sufficient cause for the production of the same being shown by the Master, or by some person having an interest in the said joint estate; anything to the contrary herein contained notwithstanding.

Transmission of inventory to master.

Cases in which inventory need not be transmitted.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 104—1833.

Liability in certain cases for debts and legacies by persons who previously to the granting of letters of administration have intermeddled with estates, and by persons to whom letters have been granted,—in respect of property not contained in inventory.

29. And be it further enacted, that if previously to letters of administration being granted by the Master of the Supreme Court to any executor or executors, testamentary or dative, for the administration of any estate, any person shall take upon himself to administer, distribute, or in any wise dispose of such estate or any part thereof, except in so far as may be absolutely necessary for the safe custody or preservation thereof, or for providing a suitable funeral for the deceased, or for the subsistence of the family or household or livestock left by the deceased, or if any person to whom letters of administration have been granted either as executor testamentary or dative shall administer, distribute, or in any wise dispose of any property or effects belonging to the estate of which he is the executor, and which shall not have been contained in the inventory or inventories of such estate lodged in the office of the said Master, previously to the granting of the said letters of administration, or shall not be contained in any additional inventory or inventories made by him and transmitted by him to the said office, in terms of the provisions of the twenty-eighth section of this Ordinance; every such person shall thereupon and in respect and by reason of such undue administration, distribution, or disposal of any such estate or any part thereof become and be personally liable to pay to the creditors and legatees of the deceased all debts due by the deceased at the time of his death, or which have thereafter become due by his estate, and all legacies left by the deceased, in so far as the proceeds and assets of such estate shall be insufficient for the full payment of such debts or legacies: Provided always, that when any person who shall be sued for the payment of any debt or legacy which he shall have rendered himself personally liable to pay in manner aforesaid, shall prove to the satisfaction of the Court before which he shall be sued, that the true amount and value of the property which has actually been unduly administered, distributed, or disposed of by him, did not exceed a certain sum, and that his administration, distribution, or disposal of the same was not fraudulent, then and in every such case such person shall only be personally liable for the amount of such sum, or for such part thereof as he shall fail to prove has been distributed or disposed of in such manner and for such purposes as by law the same ought to have been distributed or disposed of, and for the amount of the costs by him incurred in and concerning such suit, as well as for the amount of the taxed costs incurred in and concerning such suit by the plaintiff therein, notwithstanding that by reason of such person's personal liability have been restricted in manner aforesaid such plaintiff shall not have recovered from such person any part of the debt or legacy sued for.

Public notice by executors to creditors and others to lodge their claims.

30. And be it further enacted, that every executor, whether testamentary or dative, shall so soon as he shall have entered on the administration of any estate, forthwith cause a notice to be

Digitised by the University of Pretoria, Library Services, 2016

published in the *Gazette* of this Colony, and in such other manner as may be deemed expedient, calling upon the creditors of and all others having claims against the deceased or his estate, to lodge the same with such executor within such period from the date of the publication thereof, as shall be therein specified, not being less than six weeks, or more than four calendar months, as in the particular circumstances of each case shall by such executor be deemed proper.

Suspension of execution of judgments against deceased until expiration of period of notice.

31. And be it further enacted, that it shall not be lawful for any person who shall have obtained the judgment of any Court against any deceased person in his lifetime, or against his executor or executors, in any suit or action commenced against such executor or executors, or which having been pending against the deceased at the time of his death, shall thereafter have been continued against the executor or executors of such person, to sue out or obtain any process in execution of any such judgment before the expiration of the period notified in the *Gazette* in manner hereinbefore provided. As also, that it shall not be lawful for any such person as aforesaid, to sue out or obtain any process in execution of any such judgment as aforesaid, within six months from the time when letters of administration shall have been granted to the executor or executors against whom execution of such judgment is sought, without first obtaining an order from the Supreme Court or some Judge thereof for the issuing of such process.

Order of court or of a judge for execution within six months after date of letters of administration.

Duties of executors after expiration of period for lodging claims.

32. And be it further enacted, that on the expiration of the period notified in the *Gazette* in manner hereinbefore provided, every such executor or executors as aforesaid shall forthwith proceed to rank, according to their legal order of preference, all such debts and claims against the deceased, or his estate, as have been lodged with them, or of the existence of which they shall have knowledge, and shall pay off and discharge the same so soon as the funds necessary for that purpose shall have been realized out of the estate. And if the proceeds of such estate shall be found to be insufficient for the payment of all the just and valid claims to which it is liable, the executor or executors thereof shall be liable to pay to any person having any such just and valid claim, the amount to which such person would have been entitled to receive in respect of such claim if ranked according to the legal order of preference, in so far as such executor or executors shall have within the said period last-mentioned, or afterwards, at any time when he or they knew of the existence of such claim, paid such amount to any person or persons, the payment of whose claims against the deceased, or his estate, according to the legal order of preference, ought to have been postponed until such just and valid claim as aforesaid had been satisfied; reserving always to such executor or executors recourse against the person or persons to whom payment of their claims may have been improperly made. Provided always, that, when

Payment of debts.

Liability of executors in regard to preferent debt.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 104—1833.

such notice to creditors as aforesaid shall have been duly published as aforesaid no creditor or claimant on the estate of any deceased person, who shall not have lodged the same with the executor or executors within such period as aforesaid, or thereafter before the distribution of the funds of the estate, shall, in respect thereof, be entitled to recover from any person having a just and valid claim against such estate, restitution of any part of such funds which may have been paid to such person in satisfaction thereof, after the expiry of such period, and before the claim of the person seeking such restitution was lodged with the executor or executors, although, if lodged in due time, such last-mentioned claim would, according to the legal order of preference, have been preferent to that of the person to whom such payment had previously been made, nor shall such person have any claim against any executor or executors in respect of any such distribution as aforesaid of the funds of any such estate made by him or them after the expiry of such period as aforesaid, and before the claim of such person shall have been made known to such executor or executors.

Filing of account of administration by executor with the master and resident magistrate.

33. And be it further enacted, that every executor, whether testamentary or dative, shall so soon as the estate under his administration shall have been fully administered and distributed, lodge with the Master of the Supreme Court, and the Resident Magistrate of the district within which such estate was situated, who shall respectively cause the same to be preserved and registered in their offices for the inspection of all concerned, a full and true account of the whole administration and distribution of such estate.

Summons if account has not been lodged within six months.

(1) And every person having an interest in such estate, shall and may, at any time after the expiration of six months, from the day on which the letters of administration were granted to such executor or executors, summon him or them to show cause before the Supreme Court, or any Circuit Court, why such account as aforesaid has not been lodged with the said Master and the said Resident Magistrate. And every executor who shall fail to lodge such account as aforesaid, in manner herein provided, and who shall have no lawful and sufficient excuse for such failure, shall by reason thereof forfeit all claim to any fees which he might otherwise be entitled to receive in respect of his administration of such estate.

Forfeiture of fees.

Appointment by master of executors to intestate estates under £40.

34. And be it further enacted, that, when any person shall die intestate, whose estate, in so far as situated within this Colony, shall appear to the Master of the Supreme Court to be under the value of forty pounds, then and in every such case the said Master shall and may cause such estate to be administered and distributed according to law by an executor dative, to be by him summarily appointed by letters of administration granted by him for that purpose.

[1] See Act 14 of 1864; Act 5 of 1864, § 7; and Act 11 of 1873, § 2.

Digitised by the University of Pretoria, Library Services, 2016

sect. 8 act 27 - 1895

Movable property of officers, crew, passengers, &c., of ships in colonial harbours dying on land not affected by this ordinance.

35. And be it further enacted, that none of the provisions of this Ordinance shall extend or apply to the estate, property, or effects actually on board any vessel lying or being in any harbour, port, or place of, or within the limits of this Colony, or the dependencies thereof, and belonging to any person who, being one of the officers or crew of, or passengers by, such vessel, shall die on land within this Colony, or on board of any such vessel while lying or being in any such harbour, port, or place, as aforesaid, unless such person so dying shall at the time of his death have left property situated on land within this Colony, not being wearing apparel, bedding, or other articles of the like nature, or unless it shall be shown to the Supreme Court, or one of the Judges, or the Master thereof, that for the preservation or due administration and distribution of such property, it is necessary or expedient that such property and effects should be administered, distributed, and disposed of under and by virtue of the provisions of this Ordinance; and that none of the provisions of this Ordinance shall extend or apply to the estate, property, or effects (except immovable property situated within this Colony) of any officer employed on of belonging to the staff, or of any commissioned or non-commissioned officer or private soldier, present with or belonging to any regiment or corps of His Majesty's Army serving in this Colony who shall die whilst so employed or belonging to the said staff, regiment, or corps.

Officers in the army, soldiers, &c.

Invalidity of appointment after 1st March 1834, of the orphan chamber or the master as executor.

36. And be it further enacted, that if any person who shall die after the first day of March next, shall by any will of a testamentary nature, unrevoked at the time of his death, have appointed the Orphan Chamber or the Master of the Supreme Court, to be the executor of his estate, then and in every such case such person shall be deemed and taken in law to have died without having appointed any executor, and the like proceedings shall be had and taken for and in respect of the appointment of executors to administer and distribute his estate, as would have been had or taken under and by virtue of the provisions of this Ordinance, if no such deed had ever been executed by such deceased person.

Retention of colonial law as to duties of executors and as to "boedelhouderschap," except where expressly repealed.

37. And be it further enacted, that the law respecting the duties, powers, rights, relief, and responsibility of executors, and touching and concerning the administration by the survivor of two spouses of the joint estate of such spouses during the minority of the children of the predeceased spouse (boedelhouderschap) in force within this Colony, prior to the passing of this Ordinance, shall, except in so far as the same has been expressly repealed or altered by the provisions of this Ordinance, remain in full force and effect in like manner as if this Ordinance had not been made, anything to the contrary herein contained notwithstanding: Provided always, that every executor, either testamentary or dative, shall in respect of his administration, distribution, and final settlement of any estate, be entitled to claim, receive, or retain out of the assets of such estate, or from any person who, as heir, legatee, or creditor,

Digitised by the University of Pretoria, Library Services, 2016

Ord. 104—1833.

shall be entitled to the whole or any part of such estate, such fees only as are specified in the tariff contained in the schedule hereunto annexed, marked C, and shall not be entitled to claim, receive, or retain any other reward or remuneration whatever for his trouble or personal expenses touching or concerning the same.

Transmission by executors to the master of claims of unrepresented minors and lunatics against the estates administered by them.

38. And be it further enacted, that every executor, either testamentary or dative, who shall, in administering, distributing, and settling any estate find that any minor not having a tutor testamentary or dative, or any lunatic, not having a lawful curator, or any person absent from this Colony, and not having a lawful representative within the same, has, any just and lawful right or claim to such estate, or any part thereof, such executor shall forthwith transmit in writing, to the office of the Master of the Supreme Court, a statement containing the name of such minor, lunatic, or absent person, and specifying the nature and amount of the property to which such minor, lunatic, or absent person has such right or claim as aforesaid.

Register of executors and of their sureties.

39. And be it further enacted, that the Master of the Supreme Court shall cause to be kept in his office a register, containing the names of every executor, either testamentary or dative, to whom any letters of administration shall have been granted, and of every surety for any executor dative. And whenever any order for sequestration shall, under and by virtue of the provisions of the nineteenth section of the Ordinance No. 64, be delivered to the said Master, he shall cause such register to be examined, and if upon such examination it shall appear that the person, whose estate has been placed under sequestration by such order, is either an executor or the surety of an executor, of any estate not previously administered, distributed, and finally settled, the Master shall in the first notice of such sequestration, which shall be published in the *Gazette* of this Colony, insert a statement of every such estate as aforesaid, of which such insolvent is an executor, or for the executor of which such insolvent is a surety; and specifying whether he is the executor or the surety for the executor of such estate.

Notice in Gazette by the master in case of the insolvency of executors or their sureties.

Master's fees.

40. And be it further enacted, that the Master of the Supreme Court shall, and he is hereby authorised and required to charge and to demand, receive, retain, or recover, in respect of the acts, matters, and things done or caused to be done by him, or in his office, under and by virtue of the provisions of this Ordinance, all such fees as are specified in the tariff contained in the schedule hereunto annexed, marked A, and shall account for and pay over the same in like manner as is by law provided in respect of any other fees received or retained by him as Master of the Supreme Court.

Retention of stamp law except where expressly altered in tariff.

Provided always, that nothing herein contained shall extend or be construed to extend to repeal any law now in force requiring any stamp to be used for any purpose or any stamp duty to be paid in respect of any proceeding except in so far as any such

Digitised by the University of Pretoria, Library Services, 2016

alteration shall be expressly made in the tariff of fees hereinbefore mentioned. Ord. 104—1833.

41. And be it further enacted, that whenever and so often as the words "any law in force within this Colony prior to the passing of this Ordinance" occur in any of the provisions of this Ordinance, then and in every such case the said words shall be construed and deemed and taken to mean, such law as was then in force within this Colony, independently and exclusively of the provisions or enactments of the instructions and of the Ordinance No. 42, hereinbefore repealed, and of any other instructions or regulations which had at any previous time been in force within this Colony, touching or concerning the functions, duties, or powers of the Orphan Chamber. Interpretation of words "any law in force within this colony prior to the passing of this Ordinance."

SCHEDULE A.

[Repealed by Act 20, 1884.]

SCHEDULE B.

These are to certify that A. B. has been duly appointed the executor testamentary (or dative, as the case may be), and is hereby authorised as such to administer the estate of C. D., deceased. Form of letters of administration.

(Signed) E. F.,
Master of the Supreme Court.

Cape Town, —— day of ——— 18—.

SCHEDULE C.

Section 37.—To be paid out of the assets of the estate, a reasonable compensation, to be assessed and taxed by the Master; subject, nevertheless, to the review of the Supreme Court, upon the petition of the executor testamentary or dative, or any person having an interest in the estate. Assessment of executors' compensation by master.

No. 105.—Sd. G. Lowry Cole.] [July 5, 1833.

Ordinance for providing for the due Administration and Management of the Estate and Property of Minors, Lunatics, and persons absent from the Colony, and for the proper Care of the Persons of Minors and Lunatics. (1)

WHEREAS it has been enacted by His Majesty's Royal Charter of Justice dated at Westminster on the 4th day of May, 1832, that the Orphan Chamber within this Colony shall be abolished and that the duties which have heretofore been performed by the said Orphan Chamber shall henceforth be performed by the Master for the time being of the Supreme Court; And whereas the administration of the estates and property of minors and in certain cases of persons absent from the Colony, and the care of Preamble.

[1] Ord. 6, 1843, to be read for Ord. 64 in this Ord. See § 134 Ord. 6, 1843.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 105—1833.

the persons of minors heretofore formed part of the duties of the said Orphan Chamber; And whereas, by the Ordinance No. 103 the regulations according to which such duties were performed by the said Orphan Chamber have from and after the first day of March next been repealed, and it has now become expedient to provide for the due administration and management of the estate and property of minors, lunatics, and in certain cases of persons absent from this Colony, and also for the proper care of the persons of minors and lunatics: Be it therefore enacted by His Excellency the Governor in Council, that from and after the first day of March next it shall not be lawful for any person except the father of any minor or mother of any minor whose father is dead, by any will or other deed to nominate and appoint any tutor or tutors to administer and manage the estate or to take care of the person of such minor: Provided always, that nothing herein contained shall extend, or be construed to extend to prevent any person, who shall give or bequeath any property to any person to appoint any curator or curators to administer and manage such property during the minority or during the continuance of the insanity of the person to whom the same shall be given or bequeathed in like manner and as fully in all respects as the same might lawfully have been done prior to the passing of this Ordinance; and that all curators so appointed for any such purpose shall be called and known in law by the style and appellation of curators nominate.

Appointment by father or mother only of tutors to minors.

Curators nominate.

Tutors testamentary.

2. And be it further enacted that all tutors nominated and appointed by fathers or mothers in manner aforesaid to their minor children shall be called and known in law by the style and appellation of tutors testamentary, whether such tutors shall have been nominated and appointed by wills, or by any other deeds duly executed by such fathers or mothers; and that no tutor testamentary shall assume or enter upon the administration or management of the estate or property of any minor, except in so far as may be necessary for the preservation and safe custody of the same, until letters of confirmation shall have been granted to him by the Master of the Supreme Court in the form contained in the schedule hereunto annexed marked A.

Confirmation of tutors testamentary by master.

Mode of granting letters of confirmation.

3. And be it further enacted, that the Master of the Supreme Court shall, on application in writing being made to him for that purpose, grant letters of confirmation as tutor testamentary to every person who shall have been lawfully nominated and appointed tutor testamentary to any minor by any valid deed produced by such person together with his application or which shall previously have been registered in the office of the said Master under and by virtue of the provisions of the Ordinance No. 104. And it shall and may be lawful for any person who shall have been appointed tutor testamentary to any minor by any will codicil, or other testamentary instrument, which such person shall under and by virtue of the provisions of the said Ordinance No. 104 be required

Digitised by the University of Pretoria, Library Services, 2016

to transmit or to cause to be transmitted to the office of the said Master to transmit to the Master together with such deed an application for letters of confirmation as tutor testamentary. And whenever it shall come to the knowledge of the said Master that any person who has been duly nominated and appointed tutor testamentary by any valid deed has not applied for letters of confirmation, the said Master shall by writing require of such person to inform him whether he is willing to act as such tutor testamentary, and if he shall consent so to do shall grant him letters of confirmation accordingly: Provided always, that letters of confirmation as tutor testamentary shall not in any case be granted to any person who shall at the time be by law incapacitated or disqualified to hold the office of tutor.

Letters of confirmation to curators nominate.

4. And be it further enacted, that no curator nominate shall assume or enter upon the administration or management of such estate or property, except in so far as may be necessary for the preservation and safe custody of the same, until letters of confirmation shall have been granted to him by the Master of the Supreme Court. And in order to the granting of such letters of confirmation proceedings shall be had and taken by any such person and by the Master, in like manner in all respects as is hereinbefore provided by the provisions of the third section of this Ordinance as to the granting of letters of confirmation to tutors testamentary, and such letters shall be in the form contained in the schedule hereunto annexed marked B.

Security "*rem pupilli salvam fore*" by tutors and curators nominate in like manner as before the passing of this ordinance.

5. And be it further enacted, that it shall and may be lawful for the Supreme Court or any Judge thereof on the application of the Master thereof or of any relation or of any person having an interest in the due administration of the estate or property of any minor, in every case in which prior to the passing of this Ordinance any tutor testamentary might by law have been required to give security *rem pupilli salvam fore*, to make an order that letters of confirmation shall not be granted to any such tutor testamentary or curator nominate as aforesaid until he shall have found security to the satisfaction of the said Master to such an amount as in the circumstances of each particular case shall be reasonable, for the due and faithful administration and management of such estate or property.

Appointment of tutors dative by master.

6. And be it further enacted, that in every case in which it shall come to the knowledge of the Master of the Supreme Court, that any estate or property within this Colony has devolved on or come to belong to any minor, being within this Colony, and not being at the time under the natural guardianship of his or her father or mother, or of a tutor or tutors testamentary duly confirmed, then and in every such case the said Master, except when it shall be known to him that a tutor or tutors testamentary has or have been duly nominated and appointed to such minor by any valid deed (in which case he shall proceed in manner for that purpose provided by the third section of this Ordinance), shall cause to be

Digitised by the University of Pretoria, Library Services, 2016

Ord. 105—1835.

Publication of an edict.

published in the *Gazette* of this Colony and in such other manner as to him shall seem fit an edict calling on the relations of the minor, both paternal and maternal, to attend at his office at the time therein specified, not being less than three weeks or more than eight weeks from the day of the publication thereof, to see letters of confirmation granted to such persons as shall therein be appointed by him tutor or tutors dative of such minor: Provided always, that when it shall appear to the said Master necessary or expedient so to do, it shall and may be lawful for him in such notice to call on the relations of such minor, both paternal and maternal, to attend at the office of any Resident Magistrate at the time therein specified for the purpose of stating any objections which may exist to any of the next of kin or other person being appointed tutor dative, or of proposing some person or persons to be by such Magistrate reported to the Master as fit and proper to be by him appointed tutor or tutors dative. And the said Master shall at the meeting so to be holden at his office, or upon receiving the report of such Resident Magistrate, appoint such person or persons as to him shall seem fit and proper to be the tutor or tutors dative of such minor, and shall grant to him or them letters of confirmation as such, unless it shall appear to him necessary or expedient to postpone such appointment, and to call another or other such meeting or meetings as aforesaid. And provided also, that when any such minor shall not be possessed of or have claim to any other estate or property except such as shall have been given or bequeathed to such minor by some person who has duly appointed a curator or curators nominate to administer and manage the same during the minority of such minor, it shall not be necessary for the said Master to take any such proceedings as aforesaid for the appointment of a tutor dative, and no such proceedings shall by him be taken for that purpose.

Selection of persons to be appointed tutors dative.

7. And be it further enacted, that when it shall be necessary to appoint a tutor dative to any minor in manner hereinbefore provided, the Master of the Supreme Court shall appoint as tutor or tutors dative the mother and one or two or more of the nearest male relations, paternal or maternal, of such minor, who shall have attained the age of twenty-one years, and shall be willing to act as such: Provided always, that when it shall appear to the Master, or to the Supreme Court, or any Judge thereof, on reviewing the appointment of the Master, that any valid objection exists to the appointment of all or any of such relations to be the tutor or tutors dative of such minor, such objectionable person or persons shall be passed by, and some other fit and proper person or persons shall by the said Master, or by such Court or Judge, be appointed tutor or tutors dative. And provided also, that every such appointment so made by the said Master shall, on the application of any of the relations, either paternal or maternal, of or of the curator or curators nominate of any estate or property belonging

Review of appointment.

Digitised by the University of Pretoria, Library Services, 2016

to such minor, be subject to be reviewed and confirmed or set aside by the Supreme Court or any Judge thereof, and such Court or Judge by whom any such appointment shall be set aside shall and may appoint some other fit and proper person or persons to be the tutor or tutors dative of such minor.

Assumption, under power in will or deed, of other persons by tutors testamentary and curators nominate.

8. And be it further enacted, that nothing herein contained shall extend or be construed to extend to prevent any tutor or tutors testamentary of any minor, or curator or curators nominate of any estate, from assuming respectively any other person or persons as tutor or tutors of such minor, or curator or curators of such estate, under and by virtue of any power for that purpose to him or them committed by the will of or any other deed duly executed by the person by whom such tutor or tutors testamentary or curator or curators nominate shall have been appointed: Provided always, that no person shall be entitled or qualified to act as assumed tutor or curator until letters of confirmation shall have been granted to him as such by the Master of the Supreme Court, who is hereby directed and required to grant the same on production to him of the will or other deed by which the assumption of such tutor or curator is authorised and of the deed by which such tutor or tutors testamentary or curator or curators nominate has or have respectively assumed such person as tutor or curator. And every provision of this and of every other Law or Ordinance applicable or relating to or affecting tutors or curators dative, shall be deemed and taken to and shall apply and relate to and affect every such tutor or curator so assumed respectively.

Confirmation by master of assumed tutor or curator.

Proceedings in case of death, incapacity, or removal of tutors or curators.

9. And be it further enacted that when by reason of any tutor of any minor, either testamentary or assumed, or of any curator of any estate, either nominate or assumed, to whom letters of confirmation shall have been granted, having died, or become incapacitated to act as such, or having been removed from his office by the decree of any competent Court, there shall not remain for the guardianship of such minor or for the administration or management of such estate, respectively, any tutor or curator whatever or so many tutors, either testamentary or assumed, or curators nominate or assumed, as by the provisions of the deed by which such tutors or curators were respectively appointed or permitted to be assumed shall be required to form a quorum of tutors or curators of the guardianship of such minor, or for the administration and management of such estate respectively, and when it shall happen that any tutor dative shall after letters of confirmation have been granted to him die or become incapacitated or be removed in manner aforesaid, then and in every such case proceedings in order to the appointment of a tutor dative in place of the person so dying or becoming incapacitated or removed shall be had and taken by the Master of the Supreme Court, in like manner and in all respects as is hereinbefore provided by the provisions of the sixth and seventh sections of this Ordinance.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 105—1883.

Revocation of letters of confirmation by supreme or circuit court; and, as to tutors dative, by master on production of a valid deed appointing a tutor testamentary.

10. And be it further enacted that letters of confirmation granted to any person as tutor testamentary or as curator nominate of the estate of any minor shall be at all times subject to be revoked and annulled by the decree of the Supreme Court or of any Circuit Court on proof to the satisfaction of such Court that the deed in respect of which such letters have been granted to such person is null or has been revoked either wholly or in so far as relates to the appointment of such tutor or curator, and that letters of confirmation granted to any person as tutor dative shall be at all times subject to be revoked and annulled by the order of the Master of the Supreme Court on production to him of any valid deed by which any other person, who shall then be legally capable and qualified and who shall consent to act as tutor, has been legally appointed tutor testamentary of the minor to whom such tutor dative had been appointed: Provided always, that if the non-production of such deed prior to letters of confirmation having been granted to the tutor dative has been owing to the fault or negligence of the person therein appointed tutor testamentary, such person shall be personally liable for all the expenses which have been incurred in respect of and with reference to the appointment of the tutor dative.

Appointment of curators dative for the benefit of lunatics, by the court on the application of the master or other persons interested.

11. And be it further enacted, that in every case in which it shall come to the knowledge of the Master of the Supreme Court that any estate or property within this Colony (not being an estate or property for the administration and management of which a curator nominate has been duly appointed in manner hereinbefore mentioned) has devolved on or come to belong to any lunatic or insane person being within this Colony and not being at the time under the guardianship of some person lawfully appointed his curator dative, then and in every such case the said Master shall apply to the competent Court to appoint some fit and proper person or persons to be the curator or curators of such lunatic or insane person, and to make an order for the safe custody of such lunatic or insane person; and every such application shall be made by the Master, and every such appointment and order shall be made by such Court, in like manner in all respects as the same ought by law to have been made prior to the passing of this Ordinance. And all curators so appointed to any lunatic or insane persons shall be called and known in law by the style and appellation of curators dative: Provided always, that nothing herein contained shall extend or be construed to extend to prevent any person other than the said Master from making such application for the appointment of a curator dative to any lunatic or insane person in like manner as the same might by law have been made by any such person prior to the passing of this Ordinance. And provided also, that it shall and may be lawful for the said Master or any other person at any time to apply to any competent Court to make an order for the safe custody of any lunatic or insane person,

Custody of lunatic.

Digitised by the University of Pretoria, Library Services, 2016

although such lunatic or insane person shall not be possessed of or have right to any estate or property, or although any property or estate of which he may be possessed or to which he may have right shall be under the administration and management of any curator or curators nominate duly appointed for that purpose.

Proceedings on death, incapacity, or removal of curator dative of lunatic or curator nominate of his property.

12. And be it further enacted, that, when after any person shall have been found and declared by the decree of any competent Court to be a lunatic or insane, and shall have had a curator dative appointed to him, or an order shall have been made for his safe custody, it shall happen that the curator dative of such lunatic or insane person or the curator nominate of any estate or property which has been given or bequeathed to such person shall die or become incapacitated to act as such or be removed from his office by the decree of any competent Court, then and in every such case proceedings in order to the appointment of a curator dative to such lunatic or insane person in place of the person so dying or becoming incapacitated or removed shall be had and taken by the Master of the Supreme Court in like manner in all respects as is hereinbefore provided by the provisions of the sixth and seventh sections of this Ordinance as to the appointment of tutors dative to minors.

Appointment of curator dative of property belonging to absent person not having a legal representative in the colony.

13. And be it further enacted that in every case in which it shall come to the knowledge of the Master of the Supreme Court that in consequence of the death of any person any estate or property hath devolved on or come to belong to any person absent from this Colony and not having a legal representative within the same, then and in every such case the said Master shall cause to be published in the *Gazette* of this Colony, and in such other manner as to him shall seem fit, an edict calling on all whom it may concern to attend at his office at the time therein specified, not being less than six weeks from the day of the publication thereof, to see letters of confirmation granted to such person as shall then be appointed by him curator dative of the estate or property of such absent person. And the said Master shall at the meeting so to be holden at his office appoint some fit and proper person to be such curator dative as aforesaid: Provided always, that when the only property known by the said Master to belong to any such absent person shall consist of a sum or sums of money due and payable to him by the executor of any deceased person or by the trustee of the sequestrated estate of any insolvent person it shall not be necessary for the said Master to take any such proceedings as aforesaid for the appointment of a curator dative, and no such proceedings shall be had or taken, but it shall and may be lawful for the said Master to demand, recover, and receive payment of all such sums of money, to be after the same are so received by him disposed of in manner hereinafter provided.

Appointment of curator ad litem by supreme or circuit court:

14. And be it further enacted that nothing herein contained shall extend or be construed to extend to prevent the Supreme Court or any Circuit Court after the passing of this Ordinance

Digitised by the University of Pretoria, Library Services, 2016

Ord. 105—1833.

from appointing a curator ad litem to any person in every case and in the same manner in all respects in which such appointment might by law have been made by such Court prior to the passing of this Ordinance. And that in all cases when the same may be necessary or expedient the Master of the Supreme Court shall and may appoint a curator bonis to take the custody and charge of any estate or property until, in order to the due administration and management of the same, letters of confirmation shall be granted to some person as tutor testamentary or dative or as curator nominate or dative in manner hereinbefore provided. And every such appointment as curator bonis so made by the said Master shall on the application of any person having an interest in such estate be subject to be reviewed and confirmed or set aside by the Supreme Court or any Judge thereof; and such Court or Judge by whom any such appointment shall be set aside shall and may appoint some other fit and proper person to be curator bonis.

and of curator bonis by master, subject to review by the court or judge.

Retention of colonial law as to powers, &c., of curators ad litem and curators bonis, except where specially repealed.

15. And be it further enacted, that nothing herein contained shall extend or be construed to extend to repeal or alter the law in force within this Colony prior to the passing of this Ordinance in so far as relates to the powers, rights, duties, obligations, and liabilities of curators ad litem or curators bonis, except in so far as the same is hereinbefore or hereinafter expressly repealed or altered by any special provision of this Ordinance.

Security for due administration by tutor dative and curator dative.

16. And be it further enacted that every tutor dative and every curator dative who shall be appointed by the Master of the Supreme Court or any Court or Judge to administer the estate or property of any minor or lunatic or insane or absent person shall, before he shall be permitted to enter on the administration of such estate or property, find security to the satisfaction of the Master of the Supreme Court to such amount as in the circumstances of each particular case shall be reasonable for the due and faithful administration and management of such estate and property.

Disqualifications of persons as tutors or curators.

17. And be it further enacted, that every person shall be deemed incapacitated and disqualified to hold and shall be incapable of holding the office of tutor, either testamentary or dative, or of curator, either nominate or dative, in every case and by and for every cause in, by, and for which any person appointed tutor testamentary would previously to the passing of this Ordinance have been deemed incapacitated and disqualified to hold and would have been incapable of holding the office of tutor testamentary under and by virtue of any law then in force within this Colony.

Removal *ipso facto* of insolvent tutors and curators.

And that every tutor, either testamentary or dative, and every curator, either nominate or dative, whose estate shall be placed under sequestration as insolvent, under and by virtue of the provisions of the Ordinance No. 64 shall cease to exercise or hold, and shall thereupon be deemed to have been removed and shall *ipso facto* be removed from his office as tutor or curator aforesaid so soon as the order for such sequestration has been made when

Digitised by the University of Pretoria, Library Services, 2016

the same has been made on the petition of the insolvent himself, and so soon as the sequestration has been adjudged by the competent Court when the order for the same has been made on the petition of any creditor or creditors of the insolvent. And every such tutor or curator as aforesaid shall be subject to be removed from his office by the Supreme Court or any Circuit Court or to be suspended therefrom by any judge of the Supreme Court in every case and for every cause in or for which any tutor testamentary might previously to the passing of this Ordinance have been removed or suspended from his office by any Court or Judge under and by virtue of any law then in force within this Colony.

Removal and suspension for cause of tutors and curators.

18. And be it further enacted, that all tutors, either testamentary or dative, and all curators, either nominate or dative, shall within eight weeks at most after entering upon the administration of their office make or cause to be made and shall subscribe, an inventory of all property, goods, effects, movable and immovable, forming part of or belonging to the estates or persons under their guardianship in the same manner and form in all respects in which any tutor testamentary ought prior to the passing of this Ordinance to have made any such inventory under and by virtue of any law then in force within this Colony. And every such tutor and curator shall thereafter from time to time and so soon as any other such property, goods, or effects as aforesaid shall come into his possession or to his knowledge make in like manner and form as aforesaid an additional inventory thereof. And every such tutor or curator shall respectively, forthwith transmit all such inventories to the office of the Master of the Supreme Court: Provided always, that when the person by whom any tutor testamentary or curator nominate has been appointed shall in the deed by which such appointment is made or in any other deed duly executed by him have directed that the inventory and additional inventories to be made by such tutor or curator in manner hereinbefore provided shall be transmitted to the said Master sealed up, then and in every such case it shall and may be lawful for such tutor or curator,—and when any such inventory shall have been made by the survivor of two spouses whom the predeceasing spouse shall by will or other lawful instrument have appointed the tutor of his or her minor children and the administrator (boedelhouder) of the joint estate of such spouses during the minority of such children, then and in every such case it shall and may be lawful for such spouse, if he or she shall think fit so to do,—to transmit every such inventory, sealed up, to the office of the said Master. And no such sealed inventory shall be opened except by virtue of an order of the Supreme Court or some Judge thereof, on sufficient cause for opening the same being shown by the said Master or by some person having an interest in the said joint estate. And with every such inventory, whether sealed or unsealed, there shall be

Inventory within eight weeks, by tutors and curators.

Additional inventories.

Transmission of sealed inventory by tutor testamentary or curator nominate; and by surviving parent to master.

Order of court or judge for opening of sealed inventory.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 105—1833.

transmitted a list of the names of every person who shall by virtue of any bond or other written instrument be indebted to the estate to which such inventory relates and of every surety for every such debtor.

Penalties on failure of tutors and curators to make and transmit inventory.

19. And be it further enacted, that every tutor or curator who shall fail to make up and transmit any such inventory as aforesaid in manner hereinbefore provided and who shall have no lawful and sufficient excuse for such failure shall by reason thereof and in addition to every other liability, consequence, and penalty which he shall thereby by law subject himself to and incur be liable to pay all the expenses which shall have been and shall be incurred as well with reference to his own appointment as to the appointment of the tutor or curator who shall on his removal be appointed in his place.

Penalty on conviction of tutor or curator for making false inventory.

20. And be it further enacted, that if any tutor or curator required and directed under and by virtue of the seventeenth section of this Ordinance, to make or cause to be made an inventory of any estate, goods, or effects, shall for any fraudulent purpose make a false inventory thereof, every such offender being convicted thereof shall be liable at the discretion of the Court before which he shall be so convicted, to punishment by imprisonment with or without hard labour for any period not exceeding two years, or by fine or by both as the said Court shall award.

Duties and liabilities of tutors and curators after confirmation.

21. And be it further enacted that when letters of confirmation shall have been granted to any tutor, either testamentary or dative, or to any curator, either nominate or dative, then and in every such case, except in so far as shall to the contrary herein be provided, every such tutor shall in all respects and for all intents and purposes, and every such curator shall in so far as relates to the particular estate or property which has been placed under his guardianship, have every power, right, and privilege, and shall do and cause to be done, every act, matter, and thing, touching and concerning the inventorisation, administration, and management of the estate or property under their guardianship, and every such tutor or curator and his estate shall in respect and by reason of every act, matter, or thing done or omitted to be done by him, incur and be subject to every liability, obligation, and penalty, which by any law in force within this Colony, prior to the passing of this Ordinance, any tutor testamentary would then respectively have had, or have been directed or required to do, and which he and his estate would then in respect and by reason of any such act, matter, or thing done or omitted to be done by him, have incurred or been subject to: Provided always, that nothing herein contained shall extend, or be construed to extend, to give any curator nominate or dative, any power or authority as to the maintenance, education, or custody of the person of any minor or lunatic or insane person, except in so far as the same may have been specially given and committed to him by the decree or order

Powers of curators nominate and tutors dative as to maintenance, &c., defined by order of court or judge.

Digitised by the University of Pretoria, Library Services, 2016

Obligation of tutors testamentary and curators nominate to conform to directions in deed of appointment.

of any competent Court or Judge. And provided, also, that every tutor testamentary and curator nominate shall, in the discharge of such their office and in the administration of the estate and property respectively under their guardianship, conform and obey every lawful direction touching and concerning the same, which shall have been given by the person by whom such tutor or curator shall have been appointed in the deed by which such appointment was made or in any other writing duly executed by such person.

Proceedings by tutor of minor to cause inventory of estate in community to be made by surviving parent:

22. And be it further enacted, that when, by reason of the death of one of two spouses who have been married in community of property, any part of the joint estate of such spouses shall devolve to any minor, then and in every such case, except when the survivor shall have been by the pre-deceasing spouse appointed the tutor of his or her children, and the administrator (boedelhouder) of the joint estate of such spouses during the minority of such children, the tutor either testamentary or dative or curator nominate of such minor shall and he is hereby authorised and required to take such proceedings as may be necessary to cause the surviving spouse to make an inventory of the joint estate in such manner and form as is provided by the fourteenth section of the Ordinance No. 104 or when such inventory has been made before letters of confirmation have been granted to such tutor, to cause an additional inventory to be made of all property, goods, or effects movable or immovable of what kind soever which at the time of the death shall have formed part or belonged to the estate possessed in community between the predeceasing and surviving spouses, and which shall have been omitted in the inventory made by the surviving spouse. And so soon as the amount and extent of such property, goods, or effects as aforesaid, which shall have formed part of or belonged to the said joint estate shall have been ascertained by the inventory or inventories hereinbefore mentioned every such tutor as aforesaid shall forthwith take such proceedings for ascertaining and securing the share of such estate to which such minor shall have right as shall be in conformity with any lawful directions for that purpose given by the deceased spouse in any will or other deed duly executed by such spouse, or in default of such directions as shall be most expedient for the interest of the minor and as shall be consistent with the lawful rights of the surviving spouse: Provided always, for the more effectual securing the interest of such minors, that no Matrimonial Court within this Colony shall authorise or permit, and all such Courts are hereby prohibited to authorise or permit, the father or mother of any such minor heirs, to re-marry, until there shall be produced to such Court a certificate under the hand of the Master of the Supreme Court or of such person or persons as shall have been duly appointed tutor or tutors testamentary or dative, or curator or curators bonis, to such minors that the shares due to such minors out of such joint estate

and to ascertain and secure minor's share.

Prohibition of re-marriage of surviving parent until minor's shares have been secured.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 105—1833.

as aforesaid, have been ascertained and secured according to law; (1) and every such father or mother who shall re-marry before the shares due to their minor children out of such joint estate as aforesaid have been ascertained and secured in manner aforesaid, shall forfeit one-fourth part of his or her share in the said joint estate for the benefit of his or her aforesaid minor children.

Retention (except when expressly repealed) of colonial law relative to "boedelhouderschap."

23. And be it further enacted, that nothing herein contained shall extend or be construed to extend to repeal or alter any law in force within this Colony prior to the passing of this Ordinance, touching and concerning the administration by the survivor of two spouses of the joint estate of such spouses during the minority of the children of the predeceased spouse (boedelhouderschap), or

"Kinderbewyzen."

touching and concerning the execution, requisites, and privileges of bonds passed by surviving spouses previously to their re-marriage for securing the inheritance due to the minor children of their predeceased spouse (kinderbewyzen) or touching and concerning the

Paternal and maternal authority,—

paternal power, guardianship, duties, and obligations of fathers and mothers over, and to their legitimate children, and of mothers over, and to their illegitimate children, or touching and concerning the

Maintenance and education,

maintenance and education of minor children, either by their parents or others, and either out of the interest accruing from the paternal or maternal inheritance to which such children have succeeded or otherwise,—or touching and concerning the charge

and custody of minors.

and custody of the persons of minors,—or touching and concerning

Rights and privileges, and actions competent to minors.

the rights, privileges, remedies, or obligations of minors or other persons under the guardianship of tutors or curators, or touching and concerning any action competent to such minors against their tutors or curators, or competent to their tutors or curators against such minors or other persons as aforesaid, except in so far as any such law is hereinbefore or hereinafter expressly repealed or altered by any special provision of this Ordinance: Provided always, that when any question shall arise touching and concerning the

Temporary order by a judge as to maintenance, custody, &c., of minor.

maintenance or education, or the charge or custody of the person of any minor, then and in every such case it shall and may be lawful for any Judge of the Supreme Court, to make such temporary order as to him shall seem necessary, to provide for the due maintenance, education, and the charge and custody of the person of such minor until such question shall be decided by the decree of the Supreme Court or any Circuit Court.

Prohibition of alienation of immovable property by tutor or curator, except by order of court, or of a judge, or by direction in deed of appointment.

24. And be it further enacted, that no tutor, either testamentary or dative, and no curator, either nominate or dative, or curator bonis shall sell, alienate, or mortgage any immovable property belonging to any minor, or forming part of any estate under the guardianship of such tutor or curator, unless the Supreme Court or any Judge thereof shall by any order made by such Court or Judge have authorised such sale, alienation, or mortgage, or unless

[1] See § 6, Act 9 of 1882 and Act 12 of 1856.

Digitised by the University of Pretoria, Library Services, 2016

the person by whom any such tutor testamentary or curator nominate shall have been appointed shall have directed such sale, alienation, or mortgage to be made.

Payment to master by tutors dative and curators dative and curators bonis, of all moneys except as far as required for instant payment of debts.

25. And be it further enacted, that every tutor dative and every curator dative or curator bonis shall forthwith pay over to the Master of the Supreme Court, all moneys belonging to the person or estate under his guardianship, so soon as the same shall be received by or come into the possession of such tutor or curator, except in so far as the same may be required for the instant payment of debts due by such estate or for the immediate maintenance of such person. And if any such tutor or curator shall without any lawful and sufficient excuse retain and fail to pay over to the said Master any such moneys as it is herein directed, shall be so paid over to the said Master, every such tutor or curator shall be liable to pay to and for the benefit of the person or estate to whom or which such money belongs interest on the same at the rate of ten per cent. per annum for the whole period during which such money shall be so improperly retained and shall not be paid over to the Master; and shall be liable to be removed from his office of tutor or curator by the decree of any competent Court if it shall appear expedient to such Court so to do; and whenever it shall come to the knowledge of the said Master that any such money has been so retained and not paid over to him by any such tutor or curator, he shall forthwith institute an action against such tutor or curator in order to recover payment thereof and of the above-mentioned penal interest due thereon.

Penalty, interest at ten per cent. for the period during which such money has been improperly retained.

Action by master to recover amount with penal interest.

Liberty to tutor testamentary or curator nominate to pay moneys in their possession to master.

26. And be it further enacted, that it shall and may be lawful for any tutor testamentary or curator nominate to whom it shall seem expedient so to do, except where the person by whom such tutor or curator has been appointed shall have directed that the same shall not be done, to pay over to the Master of the Supreme Court any money belonging to the person or estate under the guardianship of such tutor or curator and which by law such tutor or curator might lend out on interest.

Wards' book.

Separate accounts.

27. And be it further enacted, that the Master of the Supreme Court shall so soon as any money shall be paid over to or received by him under the provisions of the thirteenth, twenty-fifth, and twenty-sixth sections of this Ordinance open in a book to be kept for that purpose, and which shall be called and known in law by the style and appellation of the "Wards' Book," a debit and credit account with the person or persons to whom or with the estate to which such money shall belong, and in this account shall enter to the credit of such person or estate all such money then or which may hereafter be paid over to him or received by him on account of such person or persons or estate. And when such money shall belong to more persons than one the said Master shall ascertain the amount of the share actually belonging to each of such persons, and shall open such account as aforesaid with each of such persons

Digitised by the University of Pretoria, Library Services, 2016

Ord. 105—1833.

separately and not with the whole collectively, and shall in such account place to the credit of each the amount of the share actually belonging to each respectively. And when it shall not be known to what person or persons any such money or any part thereof shall belong, then the account aforesaid in so far as relates to the share or shares of such unknown person or persons shall be opened in the name of the estate of which such money formed part or from which it has proceeded.

Interest on accounts in "Wards' Book."

28. And be it further enacted, that every sum which shall be placed to the credit of any person or estate in any such account so to be opened as aforesaid shall bear interest from the first day of the second month which shall occur after such money shall have been entered in such account, and such interest shall be at the rate of one per cent. less than the legal rate of interest current at the time within this Colony. [1] And on the first day of January in each year all such interest as shall have become due to any such person as aforesaid and shall not have been paid to him or on his account shall be accumulated with the capital then due to such person: and the accumulated sum shall be placed to his credit in such account, and bear interest in like manner as is hereinbefore mentioned: Provided always, that no such money as aforesaid shall bear interest after the period at which the person to whom it shall belong being or having a legal representative within this Colony might by reason of his or her having attained the age of majority, or otherwise, have demanded and received payment of the same. And provided also, that when such money shall belong to any person absent from this Colony and not having any known legal representative within the same or to any unknown person or persons, such interest shall so long as such person shall be unknown or absent from the Colony without having a legal representative within the same, provided such period shall not exceed five years, be at the rate of one half of the legal rate of interest current at the time within this Colony; and such interest shall on the first day of January in each year be placed to the credit of the person to whom it has become due or of the estate on which it has accrued; but it shall not be accumulated with the capital nor bear interest. And after the lapse of such period of five years, if the person or persons to whom it shall belong shall so long continue to be unknown or absent from the Colony without having a legal representative within the same, no such money as aforesaid shall bear any interest whatever.

Accumulation of interest.

Cessation of interest.

Interest on money belonging to 'absent persons.'

Cessation of interest after lapse of five years.

Rate of interest for purposes of twenty-eighth section, six per cent. per annum.

29. And be it further enacted, that for the purposes of the provisions of the twenty-eighth section of this Ordinance the legal rate of interest current within this Colony shall be deemed and taken to be and shall be calculated at the rate of six per cent. per annum, until some other rate of interest shall by any law

[1] Such interest may be at the rate of 4 per cent. § 3 Act 1 of 1874.

Digitised by the University of Pretoria, Library Services, 2016

hereafter to be made be declared and established for the purposes aforesaid.

Establishment of 'Guardian's Fund.'

30. And be it further enacted, that of the moneys which shall be paid over to or received by the Master of the Supreme Court in manner before provided there shall be formed a fund which shall be called and known in law by the style and appellation of the "Guardian's Fund," and that immediately after the promulgation of this Ordinance a debit and credit account shall be opened in the books of the discount bank of this Colony with and in the name of the said guardian's fund; and the Master of the Supreme Court shall on every day on which the said discount bank shall be open for the transaction of business and before the hour of closing the same for the day pay or cause to be paid into the said bank to be carried to the credit of the guardian's fund all moneys which on or previously to every such day shall have been paid to or received by him under and by virtue of the provisions of the thirteenth, twenty-fifth, and twenty-sixth sections of this Ordinance, as also all such moneys as shall have been so paid to or received by him in payment of the interest or repayment of the principal of money belonging to the said guardian's fund, and lent out on bond by him in manner hereinafter provided. And it shall and may be lawful for the said Master from time to time to withdraw the whole or any part of the moneys so paid into the said discount bank and placed to the credit of the guardian's fund upon cheques signed by him, and specifying the purpose for which the sum contained in every such cheque is to be appropriated, and no part of such moneys as aforesaid shall be withdrawn from the said bank otherwise than upon such cheques as aforesaid.

Payment by master to pay moneys placed to the credit of persons or estates to persons entitled to receive the same or to tutors or curators.

31. And be it further enacted, that it shall and may be lawful for the Master of the Supreme Court to pay any sum of money which in the wards' book aforesaid is placed to the credit of any person or of any estate to the person (or legal representative of the person) by law entitled to demand and receive the same as also to pay to any tutor or curator (upon the written order or receipt of such tutor or curator) of any minor, lunatic, insane, or absent person or of any estate, the whole or any part of such sum of money as in the wards' book aforesaid shall at the time be placed to the credit of such minor, lunatic, insane, or absent person or such estate as aforesaid, and as such tutor or curator is by law authorised or required to expend or dispose of for any purpose touching or concerning or in respect of or with reference to the person or estate under the guardianship of such tutor or curator: and when it shall appear to the said Master that it is either unnecessary or illegal for such tutor or curator to expend or dispose of any such sum of money for the purpose for which it is alleged that the same is to be appropriated it shall and may be lawful for the said Master to refuse or to suspend making such payment until

Review by court or judge of master's refusal to make such payment.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 105–1833.

the Supreme Court or some judge thereof shall have made an order directing such payment to be made.

Loans on mortgage by master of moneys to the credit of guardian's fund.

32. And be it further enacted, that the Master of the Supreme Court shall from time to time and so soon as he shall find opportunity so to do lend or cause to be lent on the mortgage of immovable property situated within this Colony [1] and with or without additional security, as may in each particular case be deemed expedient, all such money as shall at the time be placed to the credit of the guardian's fund in account with the said discount bank and as shall not be required to meet the current expenditure of the said guardian's fund: Provided always, that no such loan shall be made by the said Master without first advising thereupon with the Treasurer-General and Auditor-General of this Colony or any other two persons holding civil offices under the Government of this Colony who shall be from time to time appointed for that purpose by the Governor, or in the event of both or either of them refusing such consent unless he shall have applied to and obtained from the Supreme Court or any judge thereof an order of such Court or Judge authorising the said Master to make such loan. And provided also, that it shall not be lawful for any such loan to be made to or in favour or on account of the said Master or of any of the two civil officers of Government appointed for the time being in manner aforesaid for the purpose of advising with the said Master touching and concerning such loan.

Advice thereupon of treasurer and auditor-general.

Bonds to be payable to guardian's fund.

33. And be it further enacted, that all bonds which shall be taken for any money so to be lent out shall be taken payable to the guardian's fund, and it shall and may be lawful for the said Master to demand, receive, recover, and enforce, by proceedings at law, payment of all such bonds and of the interest which may be due thereon, in like manner to all intents and purposes as if the said bonds had been taken payable to the Master of the Supreme Court; and he shall pay or cause to be paid all sums received by him either as the principal or interest due on any such bonds into the discount bank, to be placed to the credit of the guardian's fund: Provided always, that it shall and may be lawful for the said Master to assign any such bond to any person lawfully entitled to demand and receive payment of any sum which shall be placed to the credit of any person or estate in the wards' book aforesaid in payment of the same, if such first-mentioned person shall consent to receive such bond in payment of his just demand, but not otherwise.

Assignment of bonds.

Regulation of duration of loans so as to have sufficient to make payment to minors on attaining majority.

34. And be it further enacted, that it shall be the duty of the Master of the Supreme Court, and he is hereby required and directed so to regulate the amount and duration of the loans to be made of the money belonging to the guardian's fund, as that when any sum placed in the wards' book to the credit of any minor shall

[1] Master may also invest in Government Stock or Debentures. Acts 18 of 18 and 1 of 1874.

Digitised by the University of Pretoria, Library Services, 2016

become payable by reason of such minor having attained majority, there shall then be money sufficient for the payment of the sum placed to the credit of the guardian's fund, in account with the discount bank: Provided always, that if it shall at any time happen that there shall not be so placed to the credit of the guardian's fund money sufficient to make any payment or payments which ought to be made by the said Master out of the guardian's fund, then and in every such case it shall and may be lawful for the said Master to overdraw by such cheques as aforesaid the account of the guardian's fund with the discount bank to any amount not exceeding two thousand pounds to be employed by him in making such payment or payments, and the amount so overdrawn shall be paid by the said bank and shall in the said account be placed to the debit of the guardian's fund, and no interest shall be charged by the bank in respect of any money so overdrawn.

Balancing of wards' book in July of each year.

35. And be it further enacted, that on the first day of July, in the year 1834, or so soon thereafter as may be within the said month of July, and at the same period in every succeeding year the Master of the Supreme Court, the Treasurer-General [1] and the Auditor-General shall balance the wards' book and ascertain the total amount of principal and interest due on the thirtieth day of June preceding to all the persons and estates with whom or with which such accounts as aforesaid shall then be open in the said book, and they shall also ascertain the amount which shall on the said day have been placed to the credit of the guardian's fund in account with the discount bank, as also the amount of all sums belonging to the guardian's fund which shall have been lent on bonds in manner hereinbefore provided and of the repayment of which when due there shall then appear to be no reason to doubt. And they shall grant a certificate in writing signed by them of the amount of the sum, if any, by which the total amount of the money due to the guardian's fund by the discount bank and in virtue of such bonds as aforesaid, shall on the said thirtieth day of June have exceeded the total amount then placed to the credit of persons and estates, with whom and with which accounts shall then have been open in the wards' book, and the said certificate shall thereupon be filed in the office of the Registrar of the Supreme Court. And the sum the amount of which shall be so certified shall thereupon be appropriated in the first place to replace any sums which prior to the said first day of July have been withdrawn from the ten thousand pounds placed in deposit in the discount bank under and by virtue of the provisions of His Majesty's Order in Council dated 24th November, 1828, and the balance of the sum so certified remaining after replacing the sums so withdrawn from such deposit fund as afore-

Ascertaining of amount to credit of guardian's fund:

And of amount of moneys lent on bonds.

Certificate of excess of moneys due to guardian's fund above the amount to the credit of persons and estates in wards' book.

[1] Assistant Treasurer, or such other officer as the Governor may appoint, substituted for Treasurer-General—See § 13, Act 32, 1888.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 105—1833.

Appropriation of such excess.

said shall thereupon and in respect of such certificate become due and payable out of the guardian's fund to the public revenue of this Colony. And the Master of the Supreme Court shall and he is hereby authorised and required to draw by such cheque or cheques as aforesaid for such amount on the account of the guardian's fund with the discount bank and to pay the same to the Treasurer-General or to assign over to the Treasurer-General any good bond or bonds due to the guardian's fund, in order that the Treasurer-General may, as he is hereby authorised and required to do, demand, receive, and recover payment of the same; and the Treasurer-General shall grant a receipt for such money so paid or such bonds so assigned to him by the said Master as aforesaid.

Lapse to the crown of moneys unclaimed for forty years.

36. And be it further enacted, that when any money which shall have been placed in the wards' book to the credit of any person or estate shall remain and shall not have been claimed by any person having a just and lawful right thereto for the period of forty years from the date of the entry of such money in the wards' book then and in every such case every account with such person or estate shall be closed, and all such money shall in respect of the lapse of such period become and be forfeited to the Crown, and shall be applied by the Master of the Supreme Court or be by him paid over to the Treasurer-General for the like purposes and in the like manner in all respects as by the provisions of the thirty-fifth section of this Ordinance is hereinbefore provided with respect to any sum or sums of money certified in manner aforesaid as being the amount of the excess of the guardian's fund over the total amount due to the persons and estates having at the time open accounts in the wards' book aforesaid.

Master to publish annually list of moneys belonging to absent or unknown heirs.

37. [1] The Master of the Supreme Court shall in the month of April in each year cause to be drawn up a full and exact account of the amount of all estates or property which shall be entered in the wards' book and shall belong to any persons unknown, or not residing and not having any known legal representative in this Colony, with a statement of the names and designations of the persons so far as known who are supposed to be interested therein, and shall cause the same to be inserted in the *Gazette* of this Colony, and shall forthwith deliver two or more copies thereof to the Attorney-General who may cause the same or any portion thereof, to be published in such manner as shall be deemed most expedient in any country or countries to which any person or persons interested in such estates or property may be supposed to belong; and in the said advertisements all persons shall be required to submit their claims to the Master of the Supreme Court, and the expenses of such advertisements shall be borne proportionately by the estates to which they relate.

[1] Printed as amended by § 2, Act 22, 1887.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 105—1833.

Accounts of administration by tutors and curators.

38. And be it further enacted, that every tutor, either testamentary or dative, and every curator, either nominate or dative or bonis, shall on or before the fifteenth day of February in every year lodge with the Master of the Supreme Court (who shall cause the same to be preserved and registered in his office for the inspection of all concerned) a just, true, and exact account of his administration of the estate or property under his guardianship up to the thirty-first day of December preceding. [1] And every such tutor or curator who shall fail to lodge such account as aforesaid in manner herein provided, and who shall have no lawful and sufficient excuse for such failure shall by reason thereof forfeit all claim to any fees which he might otherwise be entitled to receive in respect of his administration of such estate during the year preceding the said thirty-first day of December: Provided always, that when the person by whom any testamentary tutor or curator nominate has been appointed, shall by any deed duly executed by him have directed that such tutor or curator shall not lodge with the said Master any such annual account of his administration as aforesaid, then and in every such case no such tutor or curator shall be required to lodge any such annual account in manner aforesaid. And that the survivor of two spouses whom the predeceasing spouse shall by will or other lawful instrument have appointed the tutor of his or her minor children and the administrator (boedelhouder) of the joint estate of such spouses during the minority of such children shall not in any case be required to lodge any such annual account in manner aforesaid; anything to the contrary herein contained notwithstanding.

Penalty on failure of due lodging of account.

Exception in favour of tutors testamentary and curators nominate by direction of deeds of appointment,

and in favour of surviving spouses administering the joint estate.

Compensation of tutors and curators.

39. And be it further enacted, that every tutor either testamentary or dative, and every curator either nominate or dative, shall in respect of his administration and management of any estate be entitled to claim, receive, or retain out of the assets of such estate a reasonable compensation for his care and diligence in the said administration, to be assessed and taxed by the Master of the Supreme Court, subject to the review of the said Court upon the petition of any such tutor or curator or of any person having an interest in the said estate.

Nullity of appointment of orphan chamber or of master as tutor or curator.

40. And be it further enacted, that if any person who shall die after the first day of March next shall by any deed unrevoked at the time of his death have appointed, or if any person who shall after the said day give any estate or property to any minor, lunatic, or insane person, shall appoint the Orphan Chamber or the Master of the Supreme Court to be the tutor testamentary of any minor or curator nominate of any estate or property given or bequeathed by him to any minor or lunatic or insane person, then and in every such case every such appointment shall be null and void and of no effect. And the like proceedings shall be had and

[1] And also a duplicate or copy of such account, § 2, Act 11 of 1873. See also Act 14 of 1864.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 105—1833.

taken for and in respect of the appointment of tutors dative, or curators dative to such minor, lunatic, or insane person as would have been had and taken under and by virtue of the provisions of this Ordinance if no such appointment of the Orphan Chamber or of the Master of the Supreme Court had ever been made.

Register of tutors and curators and their sureties and of debtors to minors.

41. And be it further enacted, that the Master of the Supreme Court shall cause to be kept in his office a register containing the names of every tutor, either testamentary or dative, and of every curator, either nominate or dative, to whom any letters of confirmation shall have been granted, and of every surety for every such tutor or curator, and of every person who shall by virtue of any bond or other written instrument be indebted to any minor, lunatic, insane or absent person whose estate has by virtue of letters of confirmation been placed under the guardianship of any tutor or curator, and of every surety for any such debtor; and whenever any order for sequestration shall under and by virtue of the provisions of the nineteenth section of the Ordinance No. 64 be delivered to the said Master, he shall cause such register to be examined, and when upon such examination it shall appear that the person whose estate has been placed under sequestration by such order is then either a tutor or curator to any minor, lunatic, or insane or absent person, he shall forthwith take such proceedings in order to the appointment of a tutor or curator dative in the place of such insolvent as are hereinbefore directed for that purpose; and when it shall appear that such insolvent is then the surety for any tutor or curator, he shall forthwith require such tutor or curator to give such other additional security as in the circumstances of the case shall be reasonable for the due and faithful administration and management of the estate or property under his guardianship; and when it shall appear that such insolvent is the debtor of any minor, lunatic, or insane or absent person, or is then surety for any such debtor, the Master shall in the first notice of such sequestration which shall be published in the *Gazette* of this Colony insert a statement containing the name of the person or persons to whom such insolvent is indebted as aforesaid or for whose debtor such insolvent is a surety; and specifying whether he is the debtor or surety for the debtor of any such person or persons as aforesaid.

Proceedings by master in case of insolvency of tutors or curators or of sureties to tutors or curators.

Master's fees.

42. And be it further enacted, that the Master of the Supreme Court shall and he is hereby authorised and required to charge and to demand, receive, retain, or recover in respect of the acts, matters, and things done or caused to be done by him or in his office under and by virtue of the provisions of this Ordinance, all such fees as are specified in the tariff contained in the schedule hereunto annexed, marked D, and shall account for and pay over the same in like manner as is by law provided in respect of any other fees received or retained by him as Master of the Supreme Court: Provided always, that nothing herein contained shall extend or be construed to extend to repeal any law now in force

Digitised by the University of Pretoria, Library Services, 2016

requiring any stamp to be used for any purpose or any stamp duty to be paid in respect of any proceeding except in so far as any such alteration shall be expressly made in the tariff of fees hereinbefore mentioned.

Liability of master for costs of actions by or against him.

43. And be it further enacted, that when the Master of the Supreme Court shall be plaintiff or defendant in any action instituted by him or against him in his official capacity and with reference to any matter or thing placed under his guardianship, control, or superintendence or which he is required to do or cause to be done under and by virtue of the provisions of this Ordinance, and the party against whom such action has been instituted by the said Master or by whom it has been instituted against him shall have his or their costs in and with respect to such action adjudged to him or them by the Court before which such action shall have depended, then and in every such case such Court shall cause the Registrar thereof to certify on the record thereof whether in opinion of such Court the said costs so adjudged to the said party shall be paid by the Master out of his private funds or out of the guardian's fund. And when it shall be certified as the opinion of such Court that the said costs should be paid out of the guardian's fund such certificate shall be a sufficient warrant to the said Master to draw the amount of such costs from the guardian's fund by any such cheque or cheques as aforesaid, and with the money so drawn to pay the same: Provided always, that although it shall be certified as the opinion of such Court that the said costs should be paid by the Master out of his private funds, it shall and may be lawful for the Governor of this Colony by any writing under his hand to authorise (and any such writing shall have the effect of authorising,) the said Master to draw the amount of such costs out of the guardian's fund and to pay the same in manner aforeaid.

Appointment of appraisers for the valuation of estates and property.

44. And be it further enacted, that it shall and may be lawful for the Master of the Supreme Court and he is hereby authorised and required from time to time to appoint such and so many persons as to him shall seem fit and as shall be necessary to act as appraisers for the valuation of all estates and property the appraisement of which shall become necessary or shall be had for the better ascertaining of the amount of the share or shares thereof which may belong or be due to any person or persons who, or to any estate or estates which shall at the time be under the guardianship of the said Master, or of any tutor, either testamentary or dative, or curator nominate or dative or bonis. And every such appraiser shall in respect of every such appraisement so to be made by him be entitled to demand and receive, and shall be paid out of the estate or property by him appraised, a reasonable compensation, to be assessed and taxed by the Master of the Supreme Court: Provided always, that no person shall act as such appraiser in any case in which he has an interest in the estate to be valued or appraised.

Payment of appraisers.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 105—1833.

Oath of appraisers before judge, magistrate, or justice of the peace.

45. And be it further enacted, that every person who shall be appointed by the Master of the Supreme Court to act generally as an appraiser of such estates or properties as aforesaid shall, before he shall proceed to act in virtue of such appointment, take an oath before any Judge of the Supreme Court, Resident Magistrate, or Justice of the Peace, that he will appraise all such estates or properties as may be submitted to his valuation according to the just, proper, and true valuation thereof, to the best of his skill and knowledge, and shall transmit the said oath so taken by him and certified by the Judge, Magistrate, or Justice of the Peace before whom the same shall have been taken to the office of the said Master; and when any such person or persons shall be appointed in manner aforesaid to appraise any particular estate or property, it shall and may be lawful for the said Master in such his appointment, to direct whether such person or persons shall be required before proceeding to make such appraisement, to take such oath as aforesaid or not: Provided always, that when any such person or persons as last above mentioned shall have made such appraisement, without having taken such oath as aforesaid, it shall and may be lawful for the said Master, or any person having an interest in the estate or property appraised, to require that the person or persons by whom the same has been appraised shall before such appraisement shall be received and acted on take an oath in manner aforesaid that such estate and property has been by him or them appraised according to the just, proper, and true valuation thereof, to the best of his or their skill and knowledge.

Laws, &c., repealed by Ordinances Nos. 103 and 104 not revived, except where expressly re-enacted in this Ordinance.

46. And be it further enacted, that nothing herein contained shall extend or be construed to extend to revive or preserve in force or effect the "provisional instructions for the Orphan Chamber," or the "instructions for the agents to the Board of Orphan Masters in the country districts of the Colony of the Cape of Good Hope," or the Ordinance No. 42, or any other Law or Ordinance repealed or altered by the provisions of the Ordinances Nos. 103 and 104, except in so far as any of the provisions of such instructions, laws, or ordinances so repealed or altered shall have been expressly re-enacted by some special provision of this Ordinance. And that, whenever and so often as the words "any law in force within this Colony prior to the passing of this Ordinance" occur in any of the provisions of this Ordinance, then and in every such case the said words shall be construed and deemed and taken to mean such law as was then in force within this Colony, independently and exclusively of the provisions or enactments of the said instructions and of the said Ordinance No. 42, so repealed or altered as aforesaid, and of any other instructions or regulations which had at any previous time been in force within this Colony touching or concerning the functions, duties, or powers, of the Orphan Chamber.

Interpretation of words,—"any law in force prior to the passing of this ordinance."

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE A.

Form of Letters of Confirmation of Tutors.

Letters of confirmation of tutors.

These are to certify that A. B. has been duly appointed and is hereby authorised to act as the tutor testamentary (or dative, as the case may be) of C. D.

(Signed) E. F., Master of the Supreme Court.

Cape Town, the —— day of —— 18—.

SCHEDULE B.

Form of Letters of Confirmation of Curators.

of curators.

These are to certify that A. B. has been duly appointed and is hereby authorised to act as the curator nominate of the estate given (or bequeathed, as the case may be) to C. D. by G. H. (here describe the deed of gift or bequest by its date and otherwise, or as the case may be), as the curator dative of the estate of C. D.

(Signed) E. F., Master of the Supreme Court.

Cape Town, —— day of —— 18—.

SCHEDULE C.

Fees of tutors and curators.

Tariff of Fees to be taken by Tutors and Curators, under and by virtue of the provisions of this Ordinance.—(See Section 39.)

SCHEDULE D.

[Repealed by Act 20 of 1884.]

SCHEDULE E.

Fees of appraisers.

Tariff of Fees to be paid to Appraisers, under and by virtue of the provisions of this Ordinance.—(See Section 44.)

No. 1.] [August 31, 1826.

For establishing a Toll at Du Toit's Kloof in the District of Stellenbosch.

[Expired in 1831.]

No. 2.] [Dec. 5, 1826.

For preserving the Brushwood along the coast at Port Elizabeth.

[Lapsed in the disallowance of Ordinance No. 1 of 1825.]

No. 3.] [Dec. 29, 1826.

For the better regulation of the Turnpikes on the Road leading from Cape Town to Simon's Town, through the Upper and Lower Gates of the Military Lines, and for fixing the Tolls to be levied thereat.

[Repealed by Ordinance No. 3, 1845.]

Digitised by the University of Pretoria, Library Services, 2016

No. 4. (Local).—Sd. G. Lowry Cole.] [Sept. 1, 1829.

ORDINANCE

For authorising a Sum of Money to be raised in Shares for Erecting an English Church at Cape Town.

Preamble.

WHEREAS several persons have subscribed certain sums of money for the purpose of erecting a church at Cape Town for the celebration of divine service according to the rites of the United Church of England and Ireland as by law established, on the site consecrated for that purpose by the late Lord Bishop of Calcutta, upon the principle that such subscribers should have a right of property in the pews of the said church, and in or about the month of October, in the year of our Lord 1827, a committee of management was appointed for carrying their intention into effect, which committee hath received part of the said subscriptions together with several sums of money from various persons by way of donations for furthering the building of the said church: And whereas His Excellency the Governor hath agreed to grant from the treasury of this Colony towards the building and completing the said church, to the persons who shall undertake and become bound for completing the same, a sum not exceeding the sum of five thousand pounds sterling, in manner following,—that is to say, the sum of five hundred pounds when the foundations are up to the surface and completed; five hundred pounds when the walls are as high as the bottom of the windows; five hundred pounds when the walls are as high as the tops of the windows; one thousand pounds when the walls are roof high, the wall-plates on, and the roof in frame; one thousand pounds when the mason's and bricklayer's work is completed, including the tower; five hundred pounds when the plastering inside and outside is completed; five hundred pounds when the joiner's work is completed; and the remainder of the said sum of five thousand pounds to be paid when the whole building is taken over from the contractors in a complete state: And whereas the said committee have received and approved of a plan and specification for building the said church, together with tenders for the building thereof according to the said plan and specification, but the several sums before mentioned have been found to be insufficient for completing the said building; whereupon at a public meeting of the said subscribers and committee of management, holden pursuant to advertisement and notice thereof in the *Commercial Advertiser* newspaper on the twenty-seventh day of August now last, it was agreed and resolved by the said subscribers and committee of management (amongst other things) that the said scheme should be peremptorily relinquished, and that in order to raise a sum of money amounting together with the said sum to be granted by His Excellency the Governor as aforesaid and the said donations to the sum of twelve thousand and seventy

Digitised by the University of Pretoria, Library Services, 2016

pounds, being near or about the estimated cost of building and completing the said church, a certain number of shares should be disposed of,—that is to say, the number of two hundred and fifty shares at twenty-five pounds each: And whereas several of the said subscribers and other persons have agreed to take shares in the said loan as aforesaid,—that is to say, the Honourable Sir John Wylde, Knight (Chief Justice of this Colony), the Honourable Lieutenant-Colonel John Bell, C.B., and the Reverend George Hough, M.A., ten shares each; Lieutenant-Colonel William Hopper, eight shares; Rice Jones Jones and Hamilton Ross, six shares each; George Thompson and John Bardwell Ebden, five shares each; William Hayward (Assistant Commissary-General), the Reverend Edward Judge, M.A., William Scott, Laurence Twentyman, Hudson, Donaldson, and Dixon, and William Hawkins, (agent to the Honourable the East India Company), four shares each; Ewan Christian and Samuel Olivier, three shares each; Thomas Kift Deane, William Hutchons, George Greig, John Deane, Francis Collison, James Horne, George Wilson Prince, John Blore, John Robert Thomson, William Heyward, Edward Durham & Co., Charles Baron de Lorentz, William Wilberforce Bird, Henry Buckton, John Barker, Joseph Simpson, John Thomas Buck, the Honourable William Westbrook Burton (one of the Judges of the Supreme Court), Antonio Chiappini, Edward Smith, William Hunt, Benjamin Phillips, Charles Mackenzie, Isaac Manuel, Carel Ferdinand Heinrich von Ludwig, Robert Waters, Edward George, Lieutenant James Bance (of the Royal Navy), Robert Reeves, Major George Jackman Rogers, the Honourable Joachim Willem Stoll, Anthony Oliphant (His Majesty's Attorney-General for this Colony), Charles Dixon, Daniel Jacob Cloete, Henry Hewitt, James Smith, William Billingsley, Thomas Fairclough, Clerke Burton (Master of the Supreme Court), the Honourable George Kekewich (one of the Judges of the Supreme Court), Hendrik Cloete, L.'s son, Herman Schutte, Major Charles Cornwallis Michell, Thomas and John Sinclair, Lieutenant-Colonel William Cuthbert Elphinstone Holloway (of the Royal Engineers), James Carfrae & Company, and James Carey, two shares each; William John Mackrill, Frederick Dickinson, William Lawson, John Hartfield Tredgold, George William Silberbauer, George Herbert, Frederik Stephanus Watermeyer, Hercules Tennant, Captain William Ronald, James Duff Watt (Deputy Assistant Commissary-General), William Benson, Pieter Gerhard Brink (Auditor-General), Joseph Dixie, John Brown, Mrs. Johanna Adriana Hardman, Samuel Capon, William Gadney, Thomas Elliott, Thomas Hall, Andries Thomas Stadler, Willem Anthon Joseph Liesching, Edwin Oldham, Andrew Steedman, Richard Stone, Joseph Sturgis, John Syme, Thomas Heyward, John William Lolley, Thomas Ansdell, Daniel Mills, jun., Robert Crozier, Pieter Donald Hohne, Joseph True-

Digitised by the University of Pretoria, Library Services, 2016

Ord. 4—1829.

man. William Bridekirk, Egbert Andries Buyskes, John Marshall, Jacob Davies Gregory, Adriaan Christian Deneys, Edward Eagar, Joseph Day, Thomas Henry Bowles (Registrar of the Supreme Court), Petrus Borchardus Borcherds (Judge of Police), Thomas Tennant, Harrison Watson, Alexander Thomson, John Fairbairn, Michiel Christian Wolff, James Molton, Frederick Venables, Richard Huntley, Michiel de Kock, Johannes Henoch Neethling, the Honourable Sir Johannes Andreas Truter, Knight, Major Abraham Josias Cloete, John Skirrow, Abraham de Smidt, William McDonald Mackay, Edwin Maude, Frederick Wilhelm Heideman, Ker Bailie Hamilton, Lancelot Cooke, John Chisholm, senior, Ralph Rogerson, Carel Gerhard Blanckenberg, John Samuel Merrington, and Howson Edward Rutherfoord, one share each: And whereas the said persons have made application that an Ordinance may be passed to sanction and confirm the plan adopted at the said meeting and to provide for carrying the same into effect: Now, therefore, be it enacted by His Excellency the Governor in Council that from and after the passing of this Ordinance the said first-mentioned scheme shall and may be abandoned and relinquished; and that it shall and may be lawful for the said persons who have already agreed and all such as shall by virtue of any of the provisions of this Ordinance hereafter agree to take shares in the said loan to raise amongst themselves, in manner and for the purpose aforesaid, such a sum of money as, together with the said sum so to be granted from the Colonial Treasury and the said donations shall amount to the sum of twelve thousand and seventy pounds; and it shall and may be lawful for such persons to become shareholders in the said loan and to take such shares therein (not exceeding by any one person the number of ten shares) as such persons have already agreed or shall hereafter agree to take in the said loan, until the whole number of two hundred and fifty shares shall have been disposed of.

Authority to raise money on loan by shares.

Power to transfer shares.

2. And be it enacted that no share shall be transferable by any holder thereof, nor any right nor interest therein, until all the calls thereon shall have been paid as hereinafter mentioned; but after the said calls shall have been paid it shall and may be lawful for any shareholder to sell or transfer his share or shares and all his right and interest in respect thereof to any other person by endorsement on the said share or otherwise as he shall see fit: Provided, however, that no sale of any such share shall take place by public auction, but shall be by private contract only; and that the person to whom any share or shares shall be sold or transferred as aforesaid shall forthwith give notice thereof to the trustees to be elected in manner hereinafter mentioned.

Sale by private contract only.

Interest.

3. And be it enacted that the sums advanced by shareholders in respect of their several shares shall bear interest from and after the day on which the said church shall be opened for divine service therein, and not sooner.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 4—1829.

Preference in allotment of shares to subscribers to original plan for building the church.

4. And be it enacted that all persons who have subscribed to the original plan for building the said church and have already paid the first instalment of their subscription shall until and upon the fourth day of September next be entitled to become shareholders in the said loan, in preference to all others who have not so subscribed and paid as aforesaid; and all those subscribers who shall decline to take shares in the said loan shall be entitled to demand and receive back from the committee of management during the time of their continuance in office, and afterwards from the trustees, all such sums of money as they shall have paid as aforesaid.

Diminution of number of shares of individual holders under certain circumstances.

5. And be it enacted that if it should happen that the whole number of two hundred and fifty shares shall be taken before the fourth day of September next, and there should then be other persons desirous of taking shares, those who have agreed to take more than five shares shall relinquish each one share, beginning with the holder of the greatest number of shares, until the required number of shares shall be provided; and the order in which such shares shall be relinquished by the holders of an equal number of shares shall, if need be, be determined by ballot amongst them: Provided, however, that the original holder of a greater number of shares who shall in manner before mentioned have been reduced to be the holder of a smaller number shall not be again obliged to relinquish or give up a share, nor be included in any such ballot as aforesaid, until all the original holders of such smaller number shall each have relinquished and given up a share.

Rights of shareholders to vote in election of trustees, &c.

6. And be it enacted that all the shareholders in the said loan shall have the right of voting in the election of trustees and in all matters relating to the erection of the said church and the management of the funds thereof until the said loan shall have been wholly repaid and discharged, according to the number of their respective shares,—that is to say, the holder of one share shall be entitled to one vote; the holder of two or three shares shall be entitled to two votes; the holder of four or five shares, to three votes; the holder of six or seven shares, to four votes; and the holder of eight, nine, or ten shares, to five votes.

Preference of shareholders in renting pews.

7. And be it enacted that on the completion of the said church and after the proper number of pews shall have been set apart and allotted for the use of the Governor, minister, and churchwardens as hereinafter mentioned, all shareholders shall have a right to become each the renter of a pew in preference to any other persons who possess no shares; and the shareholders shall amongst themselves have priority in the choice of pews of whatever size or seats not exceeding six according to the number of their shares, the holder of the greater number of shares to have the prior choice; and the choice of holders of an equal number of shares to be determined if need be by ballot amongst them: Provided, however, that

Digitised by the University of Pretoria, Library Services, 2016

Ord. 4—1829.

it shall and may be lawful for the trustees at their discretion, upon the application of any shareholder whose family may require a greater number of seats in the said church than six, to permit and allow such shareholder to choose two adjoining pews, such two pews containing not more than ten sittings.

Pew-book.

8. And be it enacted that the trustees shall keep a book or plan wherein shall be entered the names of all shareholders in the order of the number of shares taken by them, the numbers of their said shares respectively, and the number or description of the pew chosen by each shareholder in respect thereof; and every shareholder shall on making his choice as aforesaid sign his name in a column opposite to the said entry in acknowledgment of the truth thereof; and no second choice shall be afterwards made by any holder of the same shares or any of them except upon the pew or pews so chosen as aforesaid being first relinquished and given up.

Second choice of pew.

Right of shareholder, his heirs and assigns in pew.

9. And be it enacted that upon any shareholder having duly made choice of a pew, the said shareholder, his heirs and assigns shall and may for ever afterwards possess and occupy the same without the hindrance or disturbance of any person whatsoever, so long as he or they shall continue to pay the rent affixed thereon when and as the same shall become due and payable, and shall continue to hold the share or shares in respect of which the said pew was chosen, or the same shall have been paid off by the trustee by virtue of any of the provisions of this Ordinance.

General meetings of shareholders.

10. And be it enacted that a general meeting of the shareholders shall be holden on the first Monday of October in every year, at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this Colony fourteen days at least before the same is to be holden; and it shall and may be lawful for the trustees or the auditors, or either of the auditors, to be elected as hereinafter mentioned at any time to call a general meeting of the shareholders upon giving the like notice thereof.

First general meeting for election of trustees and auditors.

11. And be it enacted that on the ninth day of September now next a general meeting of the shareholders shall be holden at some convenient place in Cape Town, notice whereof shall be given by the said committee of management by advertisement in one of the public papers of this Colony six days at least before the said meeting is appointed to be holden, for the purpose of electing trustees and auditors; and it shall and may be lawful for the said shareholders, or the greater part assembled at such meeting, to elect out of the said shareholders any number of persons not exceeding nine to be trustees, and two other persons to be auditors of the accounts of the said trustees.

Duration of office of trustees.

12. And be it enacted that the trustees so elected by the shareholders, and such as shall be afterwards elected upon the death, resignation, or removal of any trustee as hereinafter-mentioned, shall continue in office until the first Monday in October next after

Digitised by the University of Pretoria, Library Services, 2016

the said church shall be erected and completed; and that upon the said first Monday in October, and yearly afterwards on the same day, three of the said trustees shall go out of office, and three other trustees shall be elected instead of them, by and out of the shareholders in manner aforesaid, until the whole of the first appointed and preceding trustees shall have been relieved; and the order of their so going out of office shall if necessary be determined by ballot amongst them.

Annual election of auditors.

13. And be it enacted that two persons not being trustees, shall be elected by and out of the shareholders yearly on the first Monday in October, to be auditors of the accounts of the said trustees.

Delivery of books, papers, &c., by committee of management to trustees.

14. And be it enacted that the said committee of management shall, upon the election of trustees as aforesaid and upon their acceptance of the said office, deliver over to the said trustees all deeds, books, plans, papers, and vouchers relating to the said church in their custody or power and all and any sums of money, donations, or subscriptions given or subscribed for the purpose aforesaid in their possession or control, and the said committee of management and the office and duties thereof shall thereupon cease and determine.

Powers and duties of trustees in the possession and application of church funds.

15. And be it enacted that the said trustees and all others who shall from time to time be hereafter elected as trustees under any of the provisions of this Ordinance shall during the time of their continuance in office stand and be possessed of all the said sums of money, donations, and subscriptions (except such part thereof as shall be liable to be returned to subscribers demanding the same as aforesaid), and of all such sums of money as shall at any time hereafter be granted to them from the Colonial Treasury as aforesaid or shall arise from payments made by the shareholders in respect of their said shares or otherwise; and of all such donations and subscriptions as shall at any time hereafter be given or subscribed for the purpose aforesaid, or in aid of the fund of the said church; and of all rents and revenues arising from the letting of pews, fees for placing monuments in the said church or in the enclosed ground about the same, or in the burial-ground belonging to the said church as hereinafter mentioned, and for digging vaults in the said burial-ground, upon trust in the first place, and until the said church shall be erected and completed, to cause the said church to be erected and completed according to the said plan and specification thereof; and from and after the erection and completion of the said church upon trust to pay and apply the said sums of money, donations, subscriptions, rents, and revenues in manner following, that is to say,—in the first place, to pay thereout the cost of all necessary repairs and expenses in and about the said church for repairing, keeping up, and maintaining the same; secondly, in payment of the interest together with any arrears thereof due to the several shareholders on the sums advanced by

Digitised by the University of Pretoria, Library Services, 2016

Ord. 4—1829.

them on their respective shares in an equal rate, when and as the funds at their disposal shall enable them so to do; and, lastly, upon trust to pay and apply the residue thereof in discharge of the loan advanced by the shareholders whenever and as often as the said residue shall be sufficient to pay off a part of the said loan at a rate of not less than one pound sterling upon each share, until the whole of the said loan shall be paid off and discharged.

Power of trustees to compel payment, enter into contracts, &c.

16. And be it enacted that it shall and may be lawful for the trustees to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to them under and by virtue of any of the provisions of this Ordinance; and in their own names to make and enter into, perform and execute, and compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for erecting and completing the said church as aforesaid.

Power to bring actions.

17. And be it enacted that it shall and may be lawful for the trustees as such at all times and from time to time as they shall see fit to commence and maintain all such suits and actions in any competent Court in this Colony as they shall deem necessary, in performance of the trust reposed in them, against any shareholder or other person whatsoever; and all such suits and actions shall and may be brought by them in the names of the "trustees of the English Church at Cape Town," or "the trustees of Church at Cape Town" (describing the same by its name, after it shall have been named), as the case may require, without specifying the christian or surnames of the trustees; and no action shall abate by reason of the death or removal or going out of office of any trustee.

Mode of bringing actions against trustees.

18. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or agreement or any other matter or thing made or entered into, done or performed by the said trustees in the execution of the said trust, or which shall arise or accrue to any person whatsoever against the said shareholders jointly, shall be brought by such person against the said trustees in manner and in the names aforesaid, and not against any individual shareholder or shareholders.

Calls upon shares.

19. And be it enacted that it shall and may be lawful for the trustees from time to time to call upon the shareholders for such payments in respect of their said shares as together with the donations and sum of money to be granted from the Colonial Treasury as aforesaid they may deem necessary for carrying on the building and completing the said church as aforesaid: Provided, however, that no such call shall at any one time exceed one-fifth part of the amount of the said shares, and that the whole of such calls shall not, except in the case hereinafter provided for, exceed the amount of twenty-five pounds in respect of each share:

Digitised by the University of Pretoria, Library Services, 2016

Provided, always, and be it further enacted that if the expense of building and completing the church according to the said plan and specification should exceed the sum of twelve thousand and seventy pounds, then it shall and may be lawful for the trustees to make a further call on each shareholder for a proportional part of the said deficiency; such last-mentioned call, however, in no case to exceed the sum of five pounds sterling in respect of each share. In case of deficiency.

20. And be it enacted that the trustees shall cause all calls made by them to be advertised in the public newspapers of this Colony, together with the time and place appointed by them for payment thereof, fourteen days at least before the said time. Advertisement of calls.

21. And be it enacted that if any shareholder shall neglect or refuse to pay at the time and place appointed for that purpose his proportion of any lawful call made by the trustees upon the shareholders as aforesaid, and the same shall be in arrear for the space of fourteen days next after the said day appointed for payment, it shall and may be lawful for the said trustees, if they shall think fit, to declare and pronounce the share or shares of such shareholder to be forfeited, and the same shall thereupon be forfeited accordingly; and it shall and may be lawful for the said trustees to dispose of such forfeited share or shares to any other person who may be desirous of possessing the same: Provided, however, that nothing herein contained shall extend or be construed to prevent the said trustees from bringing and maintaining their action against any shareholder refusing or neglecting to pay as aforesaid if they shall think fit so to do, instead of declaring and pronouncing his share or shares to be forfeited as aforesaid. Forfeiture of shares on neglect of payment of calls.

22. And be it enacted that the trustees shall keep an account, wherein they shall enter all money received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times; and the said account, together with any report of the auditors or either of them thereon, shall be laid before the shareholders for their inspection at their general annual meetings, and the said accounts shall be thereupon published in one of the public newspapers of this Colony. Mode of keeping accounts.

23. And be it enacted that the trustees shall as soon as they shall receive any sum of money exceeding twenty pounds open an account with the Government Discount Bank [1] in this Colony in the names of the trustees; and such sum and every other sum exceeding twenty pounds so received by them shall be forthwith paid into the said bank, to be placed to the credit of such account; and all cheques or orders for payment of any such money out of the said bank shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the trustees, or by two of them for themselves and co-trustees. Bank account.

[1] See Ord. 5, 1842, § 6.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 4 –1829.

Penalty on improper retention of money by trustees.

24. And be it enacted that any trustee who shall retain in his hands or knowingly permit any co-trustee so to retain any sum of money exceeding twenty pounds, part of the church fund, longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum or cause it to be paid into the said bank, or shall employ for his own benefit or knowingly permit any co-trustee so to employ any sum of money, part of the church fund, shall and may be removable by the said shareholders from his said office, and shall, moreover, forfeit and pay, for the benefit of the church fund, double the amount of the sum so retained or employed, and which shall and may be recovered by the other trustees by action in any competent Court.

Winding up of accounts on completion of church.

25. And be it enacted that as soon as the said church shall be erected and completed as aforesaid the accounts of the said trustees shall thereupon be finally wound up and audited, and laid before the shareholders for their inspection; and no further call shall be afterwards made upon the shareholders in respect of their shares.

Death, resignation, or removal of trustee.

26. And be it enacted that in case any trustee shall die or desire to resign his said office or shall be removed as aforesaid, the surviving or other trustees shall forthwith call a meeting of the shareholders for the purpose of electing a new trustee in the place of the one so dying or desiring to resign or being removed as aforesaid; and the same notice shall be given of the time and place of the said meeting and the same proceedings shall be observed thereat as upon the original election of trustees: Provided, however, that no trustee shall be permitted to resign his office until he shall have duly accounted to the satisfaction of the shareholders for all sums of money at any times received by him.

Formation of vestry.

27. And be it enacted that as soon as the said church shall be erected and completed as aforesaid the trustees shall take over and enter upon the same; and the care and government of the said church shall thenceforward, and until the said loan shall have been wholly paid off in manner hereinbefore provided together with the interest thereon as aforesaid, be committed to a vestry consisting of the officiating minister for the time being and the trustees elected by the shareholders in manner aforesaid; and the said minister shall when he is present preside at the said vestry, and when he is absent then one of the trustees elected by them; and in case of an equality of votes at any meeting of such vestry, the president shall have a casting vote.

Duty of vestry.

28. And be it enacted that the duty of the said vestry shall be to provide the said church with necessary and customary furniture for the performance of divine worship and the use of the officiating minister therein, and to keep the same clean and in proper repair.

Election of churchwardens out of vestry.

29. And be it enacted that there shall be two churchwardens chosen yearly, on the first Monday in October, by the vestry from their own number, who shall perform and execute all lawful acts, matters, and things necessary for the good order and decency of

Digitised by the University of Pretoria, Library Services, 2016

behaviour to be kept and observed in the said church by the congregation thereof, and for preserving to all persons their rights in the said pews and sittings. Ord. 4—1829.

30. And be it enacted that before any choice of pews by the shareholders shall take place there shall be set apart and allotted by the vestry a pew sufficient to hold ten persons at least for the use of His Excellency the Governor of this Colony, another pew sufficient to hold six persons for the minister, and a third sufficient to hold four persons for the churchwardens; and there shall be also set apart in some convenient part of the said church three hundred free seats at the least for the use of poor persons. Pews for governor, minister, and churchwardens. Free seats.

31. And be it enacted that as soon as may be after the erection and completion of the said church the trustees shall call together the shareholders of each class according to their number of shares, for the purpose of exercising their right in the choice of pews; and the rents of all such pews as shall be chosen by shareholders shall be fixed according to the number of sittings at which such pews respectively shall be rated at fifteen shillings yearly for each sitting, and no more. Selection of pews. Rent.

32. And be it enacted that after the shareholders shall have chosen their pews in manner provided for that purpose the trustees shall give notice of all the pews and seats which are then vacant, by affixing the same in writing upon the door of the said church and otherwise as they shall see fit; and the said trustees shall give the like notice for six successive weeks at the end of each year of all the pews which are vacant or will become vacant at the commencement of the next year. Notice of vacant pews.

33. And be it enacted that all the pews and seats in the said church except the pews set apart for His Excellency the Governor, the minister, and churchwardens, and the said free seats and the pews chosen by shareholders shall and may be let by the said trustees by the year or for any shorter period to any person desiring to take the same at a rent to be affixed to the same respectively by the vestry, and payable at such times and in such manner as shall be appointed by the trustees; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns, without any hindrance or disturbance by any person whatsoever until the end of the said term; provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable. Letting of pews.

34. And be it enacted that it shall and may be lawful for the trustees, whenever and as often as it shall happen that the rent of any pew is in arrear and unpaid for the space of twenty-eight days after the same is due and payable, to give notice to the possessor of such pew forthwith to quit and give up the possession thereof; and thereupon it shall and may be lawful for the said trustees to re-enter into the possession of the said pew for the Proceedings in case of arrear pew rent.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 4—1829.

purposes of this Ordinance without any other form or proceeding whatever, and no person having been so dispossessed of his pew for non-payment of rent shall be entitled afterwards to any priority in the choice of a pew: Provided, however, that nothing herein contained shall extend or be construed to deprive the trustees from recovering the amount of such rent in arrear by action as aforesaid in any competent court.

Burials.

35. And be it enacted that no burial shall take place within or under the said church, or any part of the enclosed ground about the same; but the burials of all persons according to the rights and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted, or which may hereafter be consecrated and allotted, to the said church for that purpose.

Monuments, vaults, &c.

36. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monuments to be erected or placed in such convenient parts of the said church, or of the enclosed ground about the same, or in the burial-ground belonging thereto, or vaults to be dug and made in the said burial-ground, upon the payment to the fund of the said church for such permission by the person or persons desiring to erect and place any monument in the said church or enclosed ground about the same, or in the said burial-ground, or to dig and make any vault in the said burial-ground of such a reasonable fee as shall be affixed by the said vestry for such permission, according to the terms and extent thereof.

Rights of owner of monument, vault, &c.

37. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or enclosed ground about the same, or in the said burial-ground, or digging and making any vault in the said burial-ground by and with such permission as aforesaid, to have, maintain, and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever.

Determination of office of trustees, auditors, &c.

38. And be it enacted that on the first Monday in the month of October next after the whole of the said loan and the interest thereon shall have been paid off and discharged as aforesaid, the office of the trustees and auditors shall thereupon cease and determine, and in the place of the said trustees there shall be elected on the said first Monday in October, and yearly afterwards on the same day, by and out of the resident inhabitants of Cape Town, being members of and holding communion with the United Church of England and Ireland as by law established, a like number of persons, who shall together with the officiating minister for the time being form a vestry for the future care and government of the said church, and a like number of other persons to be auditors of the accounts of the said vestry; and the trustees last in office as aforesaid shall upon the last-mentioned vestry entering upon their said office surrender and give up to the said last-

Election of vestry.

Digitised by the University of Pretoria, Library Services, 2016

mentioned vestry all documents, books, plans, papers, and vouchers relating to the said church and the administration of the funds thereof, and all sums of money in their custody, possession, or control arising from and belonging to the church fund. Ord. 4—1829.

39. And be it enacted that the said vestry so from time to time constituted and elected by such inhabitant householders as aforesaid shall and may have and exercise all the same powers, rights, and duties respecting the said church, and the care and government thereof, and the administration of the funds, rents, and revenues thereof, and all other matters and things relating to the same as shall and may be exercised by the trustees and vestry or either of them constituted and elected by such shareholders as aforesaid under and by virtue of any of the provisions of this Ordinance, in so far as the said powers, rights, and duties shall be applicable to the then existing circumstances of the said church. Powers and duties of vestry.

40. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance, and shall be judicially taken notice of as such by all Judges, Magistrates, and others, without being specially pleaded. Public ordinance.

No. 5. (Local).—Sd. G. Lowry Cole.] [June 13, 1832.

For Authorising a Sum of Money to be raised in Shares for Building a Church at Bathurst.

Whereas several persons being desirous of erecting a church at Bathurst for the celebration of divine service according to the rites of the United Church of England and Ireland as by law established, and being ready and willing to raise and provide by way of loan for that purpose a certain sum of money as hereinafter mentioned, at a public meeting of the said persons, holden at Bathurst on the 27th day of April, in the year of our Lord 1829, a committee of management was appointed for carrying their intention into effect: And whereas His Excellency the Governor hath agreed to grant from the treasury of this Colony, as a donation towards the building and completing the said church, to the persons who shall undertake and become bound for completing the same, the sum of two hundred and fifty pounds in manner following, that is to say: the sum of two hundred pounds when and as soon as the sum of five hundred pounds of the said loan so to be raised and provided by the said persons as aforesaid shall have been paid by them, and the remainder of the said sum of two hundred and fifty pounds when the whole building shall be taken over from the contractors in a complete state: And whereas the venerable Society in England for the Promoting of Christian Knowledge hath agreed to grant and place at the disposal of His Excellency the Governor a certain sum of money for furthering Preamble.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 5—1832.

the religious interests of this Colony, according to a mode of appropriation to be recommended by His Excellency and subject to the approval of the said Society: And whereas His Excellency the Governor hath recommended to the said Society that a sum of two hundred and fifty pounds or three hundred pounds of their said grant, according as the said Society shall think fit, shall be appropriated as a donation towards the building of the said church at Bathurst, and His Excellency hath also accordingly agreed to pay to the persons who shall undertake and become bound for completing the said church the said sum of two hundred and fifty pounds or three hundred pounds, or such other sum as shall be approved of and granted by the said Society for this purpose, when and as the said money shall be received by him from the said Society: And whereas several other persons have agreed to subscribe certain sums of money by way of donations for furthering the building and completing of the said church: And whereas at a public meeting of the persons interested in the said church, holden pursuant to notice thereof on the 14th day of September in the year of our Lord 1831, it was agreed and resolved by the said persons, that in order to raise a sum of money amounting together with the said sum of money agreed to be granted by His Excellency the Governor from the Colonial Treasury as aforesaid and the said sum of money agreed to be granted by the Society for Promoting Christian Knowledge as aforesaid, and the said other donations to the sum of one thousand pounds being near or about the estimated cost of building and completing the said church, a certain number of shares should be disposed of, that is to say, one hundred and four shares at five pounds each: And whereas the following persons have agreed to take shares in the said loan as aforesaid,—that is to say, the Reverend William Wright, Walter Currie, the Reverend William Carlisle, and the Honourable Captain Andrew Stockenstrom, four shares each; John Smith, three shares; James Corbould Wilmot, Thomas Hartley, George Anderson, William John Earle, Henry Augustus Crause, William Burnet Biddulph, Joseph Weakley, Alexander Bisset, Thomas Frederik Cowderoy, William Gilfillan, Robert Wood Bagot, William Austin, Donald Moodie, William Waddel, John Carlisle, Benjamin Norden, Thomas Hewson, Jonathan Wainwright, John Norton, and Richard Peacock, two shares each; Samuel Harper Bradshaw, Richard Bradshaw, John Centlivres Chase, John Morris, Edward Hunt Dell, William Lyall, George Mugglestone, William Roberts, William Rowland Thompson, Robert Godlonton, George Gilbert, William Edward Crout, James Boardman, Isaac Dyason, John Henry Dixon, John Mandy, Peter Campbell, George Fredrik Stokes, Leopold Schmidt, Ralph Goddard William Edward Smith, Charles Stone, Richard Stone, George Edward Joseph, John Rafferty, John M'Kenny, Mynhardus Johannes van Nuldt Onkruydt, the Reverend George Morgan,

Digitised by the University of Pretoria, Library Services, 2016

Philip Richard Marillier, Robert O'Connor, the Reverend John Philip, D.D., the Reverend George Shepheard Porter, William Ayton, Charles Maynard, Henry Maynard, George Palmer, William Lucas, George Dyason, John Pratt, William Thomas Allen, William Forward, John Crause, William Turkington, Thomas Phillips, and John Holt, one share each: And whereas the said persons have made application that an Ordinance may be passed to sanction and confirm the plan adopted at the last mentioned meeting and to provide for carrying the same into effect: Now, therefore, be it enacted by His Excellency the Governor in Council that from and after the passing of this Ordinance it shall and may be lawful for the said persons who have already agreed and all such as shall by virtue of any of the provisions of this Ordinance hereafter agree to take shares in the said loan to raise and provide in manner and for the purpose aforesaid such a sum of money as, together with the said sum so to be granted from the Colonial Treasury and the said sum so to be granted by the Society for Promoting Christian Knowledge and the said donations, shall amount to the requisite sum for building and completing the said church; and it shall and may be lawful for such persons to become shareholders in the said loan, and to take such shares therein (not exceeding by any one person the number of ten shares), as such persons have already agreed or shall hereafter agree to take in the said loan until the whole number of one hundred and four shares shall have been disposed of.

Capital to be raised by shares and loan.

2. And be it enacted that no share shall be transferable by any holder thereof, or any right or interest therein, until all the calls thereon shall have been paid as hereinafter mentioned; but after the said calls shall have been paid it shall and may be lawful for any shareholder to sell or transfer his share or shares and all his right and interest in respect thereof to any other person by endorsement on the said share or otherwise as he shall see fit: Provided, however, that no sale of any such share shall take place by any public auction, but shall be by private contract only; and that the person to whom any share or shares shall be sold or transferred as aforesaid shall forthwith give notice thereof to the trustees to be elected in manner hereinafter mentioned.

Shares saleable and transferable.

3. And be it enacted that the sums advanced by shareholders in respect of their several shares shall bear interest from and after the first Wednesday in October next after the said church shall be erected and completed and opened for divine service therein, and not sooner.

Interest upon capital paid up.

4. And be it enacted that all shareholders in the said loan shall at all public meetings of the shareholders have the right of voting in the election of trustees and in all matters relating to the erection of the said church and the management of the funds thereof, until the said loan shall have been wholly repaid and

Shareholders' rights of voting.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 5—1832.

discharged, according to the number of their respective shares; that is to say, the holder of one share shall be entitled to one vote; the holder of two or three shares to two votes; the holder of four or five shares to three votes; the holder of six or seven shares to four votes; and the holder of eight, nine, or ten shares to five votes.

Free sittings.

5. And be it enacted that on the completion of the said church a part of the whole number of sittings shall be appropriated to the use of the public as free sittings, and that the number of free sittings shall bear the same proportion to the whole number of sittings as the sum raised by donations shall bear to the whole sum raised by shares and donations together.

Sittings for shareholders.

6. And it be enacted that on the completion of the said church and after the proper number of pews and sittings shall have been set apart and allotted for the use of the minister and the churchwardens and public aforesaid, all shareholders shall have a right to become each the renter of a pew in preference to any other persons who possess no shares; and the shareholders shall amongst themselves have priority in the choice of pews of whatever size or seats not exceeding six according to the number of their shares, the holder of the greater number of shares to have the prior choice, and the choice of holders of an equal number of shares to be determined if need be by ballot amongst them: Provided, however, that it shall and may be lawful for the trustees at their discretion, upon the application of any shareholder whose family may require a greater number of seats in the said church than six, to permit and allow such shareholder to choose two adjoining pews.

Records of sittings.

7. And be it enacted that the trustees shall keep a book or plan wherein shall be entered the names of all shareholders in the order of the number of shares taken by them, the numbers of their said shares respectively, and the number and description of the pew chosen by each shareholder in respect thereof; and every shareholder shall on making his choice as aforesaid sign his name in a column opposite to the said entry in acknowledgment of the truth thereof; and no second choice shall be afterwards made by any holder of the same shares or any of them except upon the pew or pews so chosen as aforesaid being first relinquished and given up.

Rights of shareholders in pews.

8. And be it enacted that upon any shareholder having duly made choice of a pew the said shareholder, his heirs and assigns, shall and may for ever afterwards possess and occupy the same without the hindrance or disturbance of any person whatever so long as he or they shall continue to pay the rent affixed thereon when and as the same shall become due and payable, and shall continue to hold the share or shares in respect of which the said pew was chosen, or the same shall have been paid off by the trustees by virtue of any of the provisions of this Ordinance.

Digitised by the University of Pretoria, Library Services, 2016

General meetings of shareholders.

9. And be it enacted that a general meeting of the shareholders shall be holden on the first Wednesday of October in every year at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this Colony twenty-one days at least before the same is to be holden; and it shall and may be lawful for the trustees or the auditors, or either of the auditors to be elected as hereinafter mentioned, at any time to call a general meeting of the shareholders upon giving the like notice thereof.

First election of trustees and auditors.

10. And be it enacted that as soon as conveniently may be after the passing of this Ordinance a general meeting of the shareholders shall be holden at Bathurst, notice whereof shall be given by the said committee of management by advertisement in one of the public papers of this Colony twenty-one days at least before the said meeting is appointed to be holden, for the purpose of electing trustees and auditors; and it shall and may be lawful for the said shareholders or the greater part assembled at such meeting to elect out of the said shareholders any number of persons, not exceeding nine, to be trustees and two other persons to be auditors of the accounts of the said trustees.

Time of first trustees holding office.

11. And be it enacted that the trustees so elected by the shareholders, and such as shall be afterwards elected upon the death, resignation, or removal of any trustee as hereinafter mentioned, shall continue in office until the first Wednesday in October next after the said church shall be erected and completed; and that upon the said first Wednesday in October, and yearly afterwards on the same day, three of the said trustees shall go out of office and three other trustees shall be elected instead of them by and out of the shareholders in manner aforesaid until the whole of the first appointed and preceding trustees shall have been relieved; and the order of their so going out of office shall if necessary be determined by ballot amongst them.

Annual election of trustees.

Election of auditors.

12. And be it enacted that two persons, not being trustees, shall be elected by and out of the shareholders, yearly on the first Wednesday in October, to be auditors of the accounts of the said trustees.

Custody of books, papers, and funds, &c.

13. And be it enacted that the said committee of management shall upon the election of trustees as aforesaid and upon their acceptance of the said office deliver over to the said trustees all deeds, books, plans, papers, and vouchers relating to the said church in their custody or power, and all and any sums of money, donations, or subscriptions given or subscribed for the purpose aforesaid, or securities for the same, in their possession or control, and the said committee of management and the office and duties thereof shall thereupon cease and determine.

Application of the church funds.

14. And be it enacted that the said trustees and all others who shall from time to time be hereafter elected as trustees under any of the provisions of this Ordinance shall during the time of their

Digitised by the University of Pretoria, Library Services, 2016

Ord. 5—1832.

continuance in office stand and be possessed of all the said sums of money, donations, and subscriptions, and of all such sums of money as shall at any time hereafter be granted to them from the Colonial Treasury as aforesaid or from the Society for Promoting Christian Knowledge, or shall arise from payments made by the shareholders in respect of their said shares, or otherwise and of all such donations and subscriptions as shall at any time hereafter be given or subscribed for the purpose aforesaid or in aid of the funds of the said church, and of all rents and revenues arising from the letting of pews, fees for placing monuments in the said church or in the burial-ground belonging thereto, or for digging vaults in the said burial-ground, or otherwise, upon trust, in the first place and until the said church shall be erected and completed, to cause the said church to be erected and completed according to such plan and specification thereof as shall be approved of and adopted by them, and from and after the erection and completion of the said church upon trust to pay and apply the said sums of money, donations, subscriptions, rents, and revenues in manner following, that is to say,—in the *first* place, to pay thereout the cost of all necessary repairs and expenses in and about the said church for repairing, keeping up, and maintaining the same; *secondly*, in payment of the interest together with any arrears thereof due to the several shareholders on the sums advanced by them on their respective shares in an equal rate, when and as the funds at their disposal shall enable them so to do; and, *lastly*, upon trust to pay and apply the residue thereof in discharge of the loan advanced by the shareholders whenever and as often as the said residue shall be sufficient to pay off a part of the said loan, at a rate of not less than five shillings sterling upon each share until the whole of the said loan shall be paid off and discharged.

Power of trustees to compel payment of church funds and to make contracts, &c.

15. And be it enacted that it shall and may be lawful for the trustees to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to them under and by virtue of any of the provisions of this Ordinance, and in their own names to make and enter into, perform and execute and compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for erecting and completing the said church as aforesaid.

Actions by trustees.

16. And be it enacted that it shall and may be lawful for the trustees as such at all times and from time to time as they shall see fit to commence and maintain all such suits and actions in any competent Court in this Colony as they shall deem necessary in performance of the trust reposed in them against any shareholder or other person whatsoever: and all such suits and actions shall and may be brought by them in the name of "the trusteees of Bathurst Church," or "the trustees of Church at Bathurst" (describing the same by its name after it shall hav

Digitised by the University of Pretoria, Library Services, 2016

been named), as the case may require, without specifying the christian or surnames of the trustees; and no action shall abate by reason of the death or removal or going out of office of any trustee.

Actions against trustees or shareholders.

17. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever, from or by reason of any contract or agreement or any other matter or thing made or entered into, done or performed, by the said trustees in the execution of the said trust or which shall arise or accrue to any person whatsoever against the said shareholders jointly shall be brought by such person against the said trustees in manner and in the name aforesaid, and not against any individual trustee or trustees, shareholder or shareholders.

Power of the trustees to make calls upon shares.

18. And be it enacted that it shall and may be lawful for the trustees from time to time to call upon the shareholders for such payments in respect of their said shares as together with the donations and sums of money to be granted from the Colonial Treasury and by the Society for Promoting Christian Knowledge as aforesaid they may deem necessary for carrying on the building and completing the said church as aforesaid: Provided, however, that no such call shall at any one time exceed one-third part of the amount of the said shares, and that the whole of such calls shall not exceed the amount of five pounds in respect of each share.

Advertisement of calls.

19. And be it enacted that the trustees shall cause all calls to be made by them to be advertised in one of the public newspapers of this Colony, together with the time and place appointed by them for payment thereof, twenty-one days at least before the said time.

Shares upon which calls not paid may be forfeited and disposed of.

20. And be it enacted that if any shareholder shall neglect or refuse to pay at the time and place appointed for that purpose his proportion of any lawful call made by the trustees upon the shareholders as aforesaid, and the same shall be in arrear for the space of fourteen days next after the said day appointed for payment, it shall and may be lawful for the said trustees, if they shall think fit, to declare and pronounce the share or shares of such shareholder to be forfeited, and the same shall thereupon be forfeited accordingly; and it shall and may be lawful for the said trustees to dispose of such forfeited share or shares to any other person who may be desirous of possessing the same; Provided however, that nothing herein contained shall extend or be construed to prevent the said trustees from bringing and maintaining their action against any shareholder refusing or neglecting to pay as aforesaid if they shall think fit so to do, instead of pronouncing and declaring his share or shares to be forfeited as aforesaid.

Consequences of non-payment of calls.

Accounts of trustees.

21. And be it enacted that the trustees shall keep an account wherein they shall enter all money received and paid by them

Digitised by the University of Pretoria, Library Services, 2016

Ord. 5—1932.

under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times; and the said account, together with any report of the auditors or either of them thereon, shall be laid before the shareholders for their inspection at their general annual meetings.

Receipts by trustees exceeding £10.

22. And be it enacted that the trustees shall as soon as they shall receive any sum of money exceeding ten pounds open and keep an account with any person or persons not being trustees who shall be appointed by the shareholders for that purpose at any general meeting; and every other sum of money exceeding ten pounds so received by the said trustees shall be forthwith paid into the hands of the person or persons so to be appointed by the shareholders for that purpose, to be placed to the credit of such account; and all cheques or orders for payment of any such money thus deposited shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the trustees or by two of them for themselves and co-trustees.

Drafts by trustees.

Penalty for retaining or employing funds.

23. And be it enacted that any trustee who shall retain in his hands or knowingly permit any co-trustee so to retain any sum of money exceeding ten pounds, part of the church fund, longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum or cause it to be paid to the person or persons appointed as aforesaid, or shall employ for his own benefit or knowingly permit any co-trustee so to employ any sum of money, part of the church fund, shall and may be removable by the said shareholders from his said office, and shall, moreover, forfeit and pay, for the benefit of the church fund, double the amount of the fund so retained or employed, and which shall and may be recovered by the other trustees by action in any competent Court.

Final accounts of trustees.

24. And be it enacted that so soon as the said church shall be erected and completed as aforesaid the accounts of the said trustees shall thereupon be finally wound up and audited, and laid before the shareholders for their inspection; and no further call shall be afterwards made upon the shareholders in respect of their shares.

Death, resignation, or removal of trustees.

25. And be it enacted that in case any trustee shall die or desire to resign his said office or shall be removed as aforesaid, the surviving or other trustees shall forthwith call a meeting of the shareholders for the purpose of electing a new trustee in the place of the one dying or desiring to resign or being removed as aforesaid; and the same notice shall be given of the time and place of the said meeting and the same proceedings shall be observed thereat as upon the original election of trustees: Provided, however, that no trustee shall be permitted to resign his office until he shall have duly accounted to the satisfaction of the shareholders for all sums of money at any time received by him.

Digitised by the University of Pretoria, Library Services, 2016

Temporary care and government of church.

26. And be it enacted that as soon as the said church shall be erected and completed the trustees shall take over and enter upon the possession of the same; and the care and government of the said church shall thenceforward, and until the said loan shall have been wholly paid off in manner hereinbefore provided, together with the interest thereon as aforesaid, be committed to a vestry consisting of the officiating minister for the time being and the trustees elected by the shareholders in manner aforesaid; and the said minister shall when he is present preside at the said vestry, and when he is absent then one of the trustees elected by them; and all the members of the said vestry shall have an equal right of voting in matters belonging to it, except that in case of an equality of votes the president shall likewise have a casting vote.

Duty of the trustees' vestry.

27. And be it enacted that the duty of the said vestry shall be to provide the said church with necessary and customary furniture for the performance of divine worship and the use of the officiating minister therein, and to keep the same clean and in proper repair.

Churchwardens, election and duties of.

28. And be it enacted that there shall be two churchwardens chosen yearly on the first Wednesday in October by the vestry from their own number, who shall perform and execute all lawful acts, matters, and things, necessary for the good order and decency of behaviour to be kept and observed in the said church by the congregation thereof, and for preserving to all persons their rights in the said pews and sittings.

Free pews.

29. And be it enacted that before any choice of pews by the shareholders shall take place there shall be set apart and allotted by the vestry a pew sufficient to hold six persons for the minister and another sufficient to hold four persons for the churchwardens; and there shall also be set apart in some convenient part of the said church the due proportion of free seats for the use of poor persons.

Choice of pews by shareholders, and rent thereof.

30. And be it enacted that as soon as may be after the erection and completion of the said church the trustees shall call together the shareholders of each class according to their number of shares, for the purpose of exercising their right in the choice of pews; and the rents of all such pews as shall be chosen by shareholders shall be fixed by the vestry according to the number of sittings therein.

Notice of vacant pews.

31. And be it enacted that after the shareholders shall have chosen their pews in manner provided for that purpose, the trustees shall give notice of all the pews and seats which are then vacant, by affixing the same in writing upon the door of the said church and otherwise as they shall see fit; and the said trustees shall give the like notice for six successive weeks at the end of each year of all the pews which are then vacant or will become vacant at the commencement of the next year.

Renting of unappropriated pews.

32. And be it enacted that all the pews and seats in the said church, except the pews set apart for the minister and churchwardens and the said free seats and the pews chosen by shareholders,

Digitised by the University of Pretoria, Library Services, 2016

Ord. 5—1832.

shall and may be let by the trustees by the year or for any shorter period to any person desiring to take the same at a rent to be affixed to the same respectively by the vestry, and payable at such times and in such manner as shall be appointed by the trustees; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hindrance or disturbance by any person whatsoever until the end of the said term; provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable.

Remedy for non-payment of pew rent.

33. And be it enacted that it shall and may be lawful for the trustees, whenever and as often as it shall happen that the rent of any pew is in arrear and unpaid for the space of twenty-eight days after the same is due and payable, to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said trustees to re-enter into the possession of the said pew for the purpose of this Ordinance without any other form or proceeding whatever; and no person having been so dispossessed of his pew for non-payment of rent shall be entitled afterwards to any priority in the choice of a pew: Provided, however, that nothing herein contained shall extend or be construed to deprive the trustees from recovering the amount of such rent in arrear by action as aforesaid in any competent Court.

No burials within the church.

34. And be it enacted that no burial shall take place within or under the said church, but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted or which hereafter may be consecrated and allotted to the said church for that purpose.

Erection of monuments and vaults.

35. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monuments to be erected or placed in such convenient parts of the said church or of the enclosed ground about the same or in the burial-ground belonging thereto or vaults to be dug and made in the said burial-ground upon the payment to the fund of the said church for such permission by the person or persons desiring to erect or place any monument in the said church or enclosed ground about the same or in the said burial-ground or to dig and make any vault in the said burial-ground, of such a reasonable fee as shall be affixed by the said vestry for such permission, according to the terms and extent thereof.

Rights in monuments or vaults.

36. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or enclosed ground about the same or digging and making any vault in the said burial-ground, by and with such permission as aforesaid, to have, maintain, and keep up such monument or vault according to the terms of such permission, to

Digitised by the University of Pretoria, Library Services, 2016

and for the sole and separate use of the said person or persons and his or their heirs for ever. Ord. 5—1822.

Permanent care and government of church.

37. And be it enacted that on the first Wednesday in the month of October next after the whole of the said loan and the interest thereon shall have been paid off and discharged as aforesaid the office of the trustees and auditors shall thereupon cease and determine, and in the place of the said trustees there shall be elected on the said first Wednesday in October, and yearly afterwards on the same day, by and out of the resident inhabitants of Bathurst and of the parochial limits thereof, being members of and holding communion with the United Church of England and Ireland as by law established, a like number of persons who shall together with the officiating minister for the time being form a vestry for the future care and government of the said church, and two other persons to be auditors of the accounts of the said vestry; and the trustees last in office as aforesaid shall, upon the lastmentioned vestry entering upon their said office, surrender and give up to the said lastmentioned vestry all documents, books, plans, papers, and vouchers relating to the said church and to the administration of the funds thereof, and all sums of money in their custody, possession, or control, arising from and belonging to the church fund.

Powers and duties of shareholders' vestry.

38. And be it enacted that the said vestry so from time to time constituted and elected by such inhabitant house-holders as aforesaid shall and may have and exercise all the same powers, rights, and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof, and all other matters and things relating to the same as shall and may be exercised by the trustees and vestry or either of them constituted and elected by such share-holders as aforesaid, under and by virtue of any of the provisions of this Ordinance, in so far as the said powers, rights, and duties shall be applicable to the then existing circumstances of the said church.

Public ordinance.

39. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance, and shall be judicially taken notice of as such by all Judges, Magistrates, and others, without being specially pleaded.

No. 6.] [Nov. 11, 1833.

For authorising a Sum of Money to be raised in shares for building a Church at Wynberg.

[Repealed by Act 9 of 1891.]

No. 7.] [Dec. 18, 1833.

For erecting a Toll on the New Road through Howison's Poort.

[Repealed by Ordinance No. 3, 1845.]

Digitised by the University of Pretoria, Library Services, 2016

No. 8.] [Jan. 7, 1834

For regulating the Toll at Port Elizabeth.

[Repealed by Ordinance No. 3, 1845.]

No. 1.] [June 3, 1834

Ordinance for altering and amending an Ordinance entitled "Ordinance of His Honour the Lieutenant-Governor in Council, for making Regulations for the Conduct and Proceedings of the Masters and Crews of Merchant Vessels arriving in the Ports of this Colony," dated the 27th day of November, 1827.

[Repealed, in the repeal of Ordinance No. 29, which it amended, by Ordinance No. 4, 1844.]

No. 2.] [June 4, 1834.

Ordinance for altering and amending an Ordinance entitled "Ordinance of His Excellency the Governor in Council, for fixing the Quantities of Wines and other Liquors allowed to be sold under Licence, and the Stamp Duties to be paid for Licences; and for regulating certain matters in regard to the making and selling of such Liquors," dated the 27th day of June, 1832.

[Repealed by Ordinance No. 29, 1846. *Vide* Ordinance No. 9, 1851.]

No. 3.] [June 11, 1834.

Ordinance for altering and amending the Ordinances entitled respectively, "Ordinance of His Honour the Lieutenant-Governor in Council, for the better regulation of the Post Office in the Colony of the Cape of Good Hope," dated the 9th day of October, 1826, and "Ordinance of His Excellency the Governor in Council, for altering and amending the Ordinance No. 25, entitled 'An Ordinance for the better regulation of the Post Office in the Colony of the Cape of Good Hope,'" dated the 9th day of February, 1829.

[Repealed by Ordinance No. 1, 1846.]

No. 4.] [July 31, 1834.

Ordinance for erecting, constituting, and establishing Police Courts to be holden in Cape Town and Simon's Town respectively, and for defining the Duties and Jurisdiction of the Judge and Superintendent of Police of Cape Town, and of the Justice of the Peace of Simon's Town, respectively.

[As to Simon's Town repealed by Ordinance No. 14, 1847 wholly repealed by Act No. 11, 1860.]

Digitised by the University of Pretoria, Library Services, 2016

No. 5.] [December 3, 1834.

Ordinance for applying a Sum not exceeding £40,590 1s. 8½d. to the Contingent Services of the Year 1835. [Spent.]

No. 6.] [December 3, 1834.

Ordinance for continuing the Provisions of an Ordinance, bearing date the 14th day of February, 1833, entitled "An Ordinance for enabling certain Persons having respectively the just, lawful, and undisputed right to certain Lands and Houses to procure the same to be enregistered as their Property in the Land Register."

[Expired.]

No. 7.—Sd. B. D'Urban.] [December 3, 1834.

Ordinance for regulating the Trade in Gunpowder within this Colony. (1)

WHEREAS it is expedient to remove the restrictions which now exist upon the purchase and sale of gunpowder within this Colony, and to render the dealing therein as free as a due regard to the public safety will admit; and also to make provision for the prevention of accidents in storing and transporting the same: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that, from and after the passing of this Ordinance, the proclamation of the 27th June, 1797, and all other laws, ordinances, and proclamations relating to the trade in gunpowder in so far as they relate thereto, and in so far as they have not been repealed by the Order of His Majesty in Council bearing date the 22nd day of February, 1832, shall be and the same are hereby repealed accordingly.

Repeal of former laws.

---

[1] By Ordinance No. 5, 1851, the dealing in gunpowder was regulated for one year, and all provisions of Ordinance No. 7, 1834, repugnant to or inconsistent with Ordinance No. 5, 1851, were repealed. Ordinance No. 5, 1851, with Ordinance No. 7, 1852, which amended it, was repealed, except in as far as it repealed former laws, by Ordinance No. 2, 1853, regulating the dealing in gunpowder, firearms, and lead, until the expiration of 1854. Act No. 5, 1854, continued Ordinance No. 2. 1853, in force to the end of 1855; Act No. 7, 1855, to the end of 1856; Act No. 19, 1856, to the end of 1857, with some amendments; Act No. 14, 1857, to the end of 1858, with further amendments; Act No. 8, 1858, to the end of 1859; Act No. 5, 1859, to the end of 1860; and Act No. 20, 1860, to the end of 1861; Act 12, 1861, to the end of 1862; Act 14, 1862, to the end of 1863; Act 6, 1863, to the end of 1864; and Ordinance 2, 1853, as amended by Act 14, 1857, made perpetual by Act 28, 1864. In this Ordinance and in all other laws relating to the dealing in gunpowder, the word "gunpowder" shall include cartridges, § 5, Act 13, 1877. See Acts 4, 1887; 9, 1888; 39, 1889; 17, 1892.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1831.

2-5 [Repealed by Act 17, 1892, § 2.]

Regulations for the landing and removal of powder.

6. And be it further enacted that all gunpowder shall be landed and removed to and from the powder magazines under the regulations hereinafter mentioned, that is to say :—

1st. No gunpowder shall be landed before the hour of nine in the morning nor after three in the afternoon.

2d. Before the magazine of the vessel containing any gunpowder is opened all fire and light in the said vessel shall be extinguished.

3d. During the removal of the gunpowder from such vessel all other work therein shall be suspended.

4th. The bottom of the boat in which any gunpowder is landed shall be covered with hides, sails, cloth, or other proper substance by which the casks containing the gunpowder shall be prevented from coming in contact with the bottom of the boat.

5th. If the proper means of conveyance should not be in attendance so that the gunpowder when landed may be removed immediately, the gunpowder shall be carefully placed upon hides, sails, cloth, or other fit substance spread upon the beach, and shall be left in charge of some proper person until the means of conveyance shall arrive.

6th. If the gunpowder shall be removed from the place of debarkation in wagons or carts, there shall be spread on such wagons or carts, hides, sails, or cloth, so that the casks containing the powder shall not come in contact with the wood or iron-work of the wagon or cart.

7th. Every such wagon or cart shall be driven at a walking pace to and from the powder magazine whilst proceeding through any town or village.

Private magazines permitted.

7. And be it further enacted that it shall be lawful for any person or persons, in any place which he or they shall deem expedient, to erect a private magazine or magazines for the storing of gunpowder for colonial consumption, and to store gunpowder within the same : Provided always, that the site and plan of every such private magazine shall first have been approved of by the Governor on the report of some fit person by him appointed to report thereon. ([1])

Magazine keeper to be appointed.

8. And be it enacted that the proprietor or proprietors of every such private magazine shall appoint such proper person, to be remunerated by them, and who shall be approved by the Governor, to be the storekeeper thereof, and who before entering upon his said office shall be sworn duly and honestly to discharge the duties thereof, and whose name and appointment shall be thereupon published in the *Government Gazette*.

Accounts of receipts and issues of powder to be kept and transmitted to magistrate.

9. And be it further enacted that the storekeeper of every private magazine shall keep an exact and true account of all gunpowder received into and issued ([2]) from his magazine, and which

[1] See Act 19, 1856.

[2] See also § 12, Ord. 2, 1853.

Digitised by the University of Pretoria, Library Services, 2016

shall contain the quantities of gunpowder received and the time when and by whom the same was stored, as also the quantities issued and the time when and to whom the same were issued respectively. And whenever any gunpowder shall be so received into or issued from any such magazine, such storekeeper shall within fifteen days transmit to the Resident Magistrate of the district within which such magazine is situate a true copy of such account as aforesaid of all such gunpowder so received or issued; as also all such certificates hereinafter mentioned as shall have been delivered to him under and by virtue of the provisions of the twenty-second section of this Ordinance. And every person hereinbefore required to keep and transmit such accounts and certificates as aforesaid who shall fail so to do in manner hereinbefore provided shall incur and be liable to a fine not exceeding twenty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding four months; and every person who shall make any false entry in any such account or who shall transmit to the Resident Magistrate any paper purporting to be a true copy of any such account kept by him which shall not be a true copy thereof shall incur and be liable to a fine of fifty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for a period of six months.

10. [Repealed by Act 13, 1877.]

Licences for dealing in powder to be granted.

11. And be it enacted that it shall and may be lawful for the commissioners of stamps in Cape Town and the distributors of stamps in the several districts of the Colony respectively, and they are hereby authorised and required, to grant to all persons residing within their respective districts who shall apply for the same [1] licences in the form set forth in the schedule hereunto annexed, marked A, on paper stamped of the value of three [2] pounds, to deal in gunpowder and to sell the same at such places as are mentioned in the said licence: Provided always, that persons in partnership and carrying on business under one firm, and proving such partnership, shall not be required to take out more than one licence to deal in gunpowder at any one place: and provided also, that if any person to whom any such licence as aforesaid shall have been granted, and which shall then be in force for any one place, shall desire to remove and to deal in gunpowder at any other place, it shall and may be lawful for such person to apply to the commissioner or distributor of stamps for the district in which such last-mentioned place shall be situate, who are hereby respectively on such application authorised and required to make and sign an endorsement on such licences, setting forth that from the date of such endorsement such licence shall no longer be in force for the place or premises originally specified therein, but shall

[1] But see § 14, Ord. 2, 1853.
[2] Five, see Tariff 15, Sched. 2, Act 20, 1884.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1831.

henceforth be in force for the place or premises specified in such endorsement. (1)

Transference of licences.

12. And be it further enacted that if any person who shall have obtained any such licence to deal in gunpowder as aforesaid shall die or shall wish to assign the same before the expiration of the period of such licence, it shall and may be lawful for the person authorised to grant any such licence in manner aforesaid to transfer such licence by endorsement to the assignee of such person or to the heirs, executors, or administrators of such person in the case of his death.

Notice to public of the licence.

13. And be it further enacted that every person who shall have obtained any such licence to deal in gunpowder as aforesaid shall cause to be painted on some conspicuous place on the wall or on a board affixed to some such conspicuous place on the wall, outside and over or near the door of the premises specified in his licence in letters publicly visible and legible at least one inch long, his name at full length (or where there are partners the name or style of the firm or partnership), and after such name or style the words "licensed dealers in gunpowder"; and in default of having such name or style and such words as aforesaid so painted as to be publicly visible and legible in manner aforesaid at any time during the continuance of such licence such person shall incur and be liable to a fine not exceeding ten pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding two months.

Penalty for fixing notice without having licence.

14. And be it further enacted that every person who shall not have obtained any such licence to deal in gunpowder as aforesaid and who shall paint on his premises or give any other notice importing that he is a dealer or is licensed to deal in gunpowder shall for every such offence incur and be liable to the pains and penalties imposed on persons convicted of dealing in gunpowder without a licence.

List of holders of licences to be published.

15. And be it further enacted that a list of the names of all persons who shall take out such licences to deal in gunpowder as are hereinbefore mentioned shall from time to time as occasion may require be published in the *Government Gazette*, and the commissioner and distributors of stamps respectively shall upon the taking out of every such licence forthwith transmit the name of the person taking out the same to the Colonial Secretary, who shall make publication thereof in the said *Gazette*, and give due information thereof to the respective storekeepers of every powder magazine within the Colony.

Powder to be issued only to holders of licences.

16. And be it further enacted that if any such storekeeper of any such private magazine as aforesaid shall deliver out of such magazine any gunpowder to any person not being at the time of such delivery duly licensed to deal in gunpowder in manner

[1] But see §§ 7, 8, 9, Act 13, 1870.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1834.

aforesaid, or not having from some person so licensed as aforesaid an order to receive such gunpowder, he shall incur and be liable to a fine not exceeding fifty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for a period not exceeding six months.

Powder not to be sold without a licence beyond ten pounds weight.

17. And be it further enacted that if any person who shall not have taken out such licence as aforesaid shall sell, purchase, or barter gunpowder in any quantity exceeding ten pounds in any one day except in such cases as are hereinafter excepted, he shall incur and be liable to pay a fine not exceeding one hundred pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding one year; and all gunpowder so sold, purchased, or bartered shall be forfeited to His Majesty: Provided, always, and be it enacted that nothing herein contained shall extend or be construed to extend to prevent any person who is the importer or consignee of gunpowder imported into this Colony from selling and transferring the same in bond to any person whatever, or from selling and transferring the same in any quantity whether in bond or not to any such licensed dealer as aforesaid, without taking out the licence hereinbefore mentioned. ([1])

Exception as to importer.

Extent of sales by persons holding licences.

18. And be it further enacted that from and after the passing of this Ordinance it shall and may be lawful for any person who shall have taken out such licence as aforesaid, to sell gunpowder in any quantity to any other person licensed to deal in gunpowder in manner aforesaid, and in any quantity not exceeding ten pounds in any one day to any person who is not such licensed dealer as aforesaid: Provided always, that if any such licensed dealer shall sell any gunpowder to any person who is not such licensed dealer as aforesaid excepting on the premises specified in his licence or at some such private magazine as aforesaid, or shall sell any gunpowder in any quantity exceeding ten pounds in any one day to any person who is not such licensed dealer as aforesaid, or who is not a field-cornet, to whom is hereby authorised to sell any quantity not exceeding twenty-five pounds, or who is not, as being the agent of any other person or persons, authorised under and by virtue of the provisions of the twenty-second section of this Ordinance to purchase and receive any such quantity of gunpowder, he shall incur and be liable to a fine not exceeding one hundred pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding one year, and shall forfeit his licence. ([2])

Proceedings for discovery of illegal sales of powder.

19. And be it further enacted that if any person shall make information on oath before any Resident Magistrate, and show probable cause for suspecting that any person has sold, purchased or bartered any gunpowder in contravention of any of the

[1] See § 13, Ord. 2, 1853.
[2] See § 13, Ord. 2, 1853.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1834.

provisions of this Ordinance, it shall and may be lawful for such Magistrate within his jurisdiction to summon such suspected person before him, and also to summon any other person to be examined and give evidence upon the charge against such suspected person; and if such persons so summoned as witnesses shall fail to appear in obedience to such summons or shall refuse to be examined on oath and give evidence as aforesaid, it shall and may be lawful for the said Magistrate to commit every such person so failing or refusing as aforesaid to prison for a period not exceeding one month, or until such person shall no longer refuse to be examined and give evidence as aforesaid.

Storing of powder by unlicensed persons.

20. (1) And be it further enacted that if any field-cornet shall store or have any quantity of gunpowder exceeding twenty-five pounds, and if any other person except as is hereinafter excepted shall store or have any quantity of gunpowder exceeding ten pounds in any building of what kind or description soever, not being a public magazine, or a private magazine, approved of by the Governor in manner aforesaid, unless by special permission to that effect given by the Governor, he shall incur and be liable to a fine not exceeding fifty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding six months: Provided always,

Storing of powder by licensed dealers.

that it shall and may be lawful for any licensed dealer in gunpowder to store in the premises specified in his licence any quantity of gunpowder not exceeding fifty pounds where such premises are situated in any of the towns or villages of this Colony, and not exceeding one hundred pounds where such premises are situated elsewhere than in any such town or village: Provided also, that every such dealer so storing in any such premises as aforesaid any quantity of gunpowder exceeding fifty

Account of receipts and deliveries of powder.

pounds shall keep an exact and true account of all gunpowder received into and issued from the said premises, and which shall contain the quantities in which and the time when the same was so received and the quantities in which and the time when and the person to whom the same was issued; and shall on the first day of each month transmit to the Resident Magistrate of the district in which such premises shall be situated a true copy of such account as aforesaid of all the gunpowder by him received into or issued from the said premises; as also all such certificates hereinafter mentioned as shall have been delivered to him under and by virtue of the provisions of the twenty-third section of this Ordinance during the preceding month; and every person hereinbefore required to keep and transmit such account and certificates as aforesaid who shall fail so to do in manner hereinbefore provided shall incur and be liable to a fine of twenty pounds, and in default of payment or satisfaction thereof by legal process shall be subject

[1] See § 15, Ord. 2, 1853, and §§ 4 and 5, Act 14, 1857.

Digitised by the University of Pretoria, Library Services, 2016

to imprisonment for any period not exceeding four months; and every person who shall make any false entry in any such account or who shall transmit to the Resident Magistrate any paper purporting to be a true copy of any such account kept by him which shall not be a true copy thereof shall incur and be liable to a fine of fifty pounds, or in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding six months.

Conveyance of powder by unlicensed persons.

21. [1] And be it further enacted that if any field-cornet shall convey or cause to be conveyed any quantity of gunpowder exceeding twenty-five pounds, and if any other person shall convey or cause to be conveyed any quantity of gunpowder exceeding ten pounds, at one time in any one wagon, cart, vehicle, or other conveyance from any place to any other place, except in removing gunpowder from the place of landing to some public magazine or to any such private magazine as aforesaid, or from any such public or private magazine to the premises specified in the licence of any such licensed dealer in gunpowder as aforesaid, or from any such last-mentioned premises to any such public or private magazine as aforesaid, or to the premises of any other such licensed dealer, and except where any such person so conveying or causing to be conveyed any quantity of gunpowder exceeding ten pounds shall, as being the agent of any other person or persons, be authorised under and by virtue of the provisions of the twenty-second section of this Ordinance to convey any such quantity exceeding ten pounds at one time in one conveyance, then and in every such case every such offender shall incur and be liable to a fine not exceeding twenty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding four months; and all such gunpowder so illegally conveyed or caused or attempted to be conveyed, and the wagon, cart, vehicle, or other conveyance used in conveying the same being the property of any person conveying or knowingly causing or suffering such gunpowder to be so conveyed therein, shall be forfeited to His Majesty.

Transmission of powder to purchasers living at a distance from licensed dealer's premises.

22. Provided always, and be it further enacted that if any person who shall reside at a greater distance than can be travelled in an ox wagon at the rate of travelling usual in this Colony in forty-eight hours from the premises of the nearest licensed dealer in gunpowder shall desire to procure gunpowder through the agency of any other person, it shall and may be lawful for every such first-mentioned person to apply for and obtain from the field-cornet of the field-cornetcy in which he resides, who is hereby authorised and required on such application to grant the same, a certificate in the form set forth in the schedule hereunto annexed, marked B, signed by such field-cornet, certifying the name and

[1] See § 21, Ord. 2, 1853.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1834.

residence of such person and the distance of his residence from the premises of the nearest licensed dealer in gunpowder, and the quantity of gunpowder required by him, and that no similar certificate has been granted to him within the last six months previous to the date of the certificate; and every such certificate shall authorise any person to whom the same shall be delivered to act as the agent of the person therein named, in procuring gunpowder for him, for a period not exceeding two months from the date thereof; and it shall and may be lawful for every such agent so authorised on production of such certificate or certificates to any licensed dealer in gunpowder to procure and receive from such dealer, by purchase, barter, or otherwise, any such quantity of gunpowder, not exceeding ten pounds on each certificate, as in addition to any gunpowder which such agent shall procure and receive on his own account shall not exceed in the whole the quantity of twenty-five pounds, and it shall and may be lawful for any such agent as aforesaid to remove, transport, convey, and store any such quantity of gunpowder so procured by him as aforesaid in like manner as he might lawfully remove, transport, convey and store any quantity of gunpowder not exceeding ten pounds and every such certificate shall be delivered to the dealer from whom any gunpowder is so procured, or when the same is issued from any private magazine, to the storekeeper thereof, and such dealer or storekeeper shall give to such agent a permit in the form set forth in the schedule hereunto annexed marked C, specifying the amount of gunpowder so procured, and shall note on the certificate the quantity of gunpowder delivered by him in respect of such certificate, and shall transmit the same to the Resident Magistrate together with the copy of the account of gunpowder received and issued by him, which he shall next transmit to such Magistrate. And if any field-cornet shall grant any such certificate to the same person oftener than once within the same period of six months, or if any person shall knowingly use or attempt to use for the purpose of procuring gunpowder or shall knowingly deliver any gunpowder in respect of more than one such certificate for the same person within the same period of six months, every field-cornet or other person so offending shall incur and be liable to a fine not exceeding five pounds.

No licence required for judicial sales.

23. And be it further enacted that nothing contained in this Ordinance shall extend or be construed to extend to require any Sheriff or other officer to take out any licence for the sale of any gunpowder made by such Sheriff or other officer while acting under the authority of any Court, Judge, or Magistrate.

Ordinance not to apply to military or government officers acting in discharge of public duty.

24. And be it further enacted that nothing in this Ordinance contained shall extend or be construed to extend to any case in which any gunpowder shall within this Colony be landed, bought, sold, bartered, stored, issued from store, removed, transported, or conveyed by the order of the Governor or any officer belonging

Digitised by the University of Pretoria, Library Services, 2016

to His Majesty's naval or military service, or by any officer in the service of the Government of this Colony, while acting in the discharge of his duty, nor to any such officer or any other person in respect of any thing done by such officer or by such other person under and by virtue of and in obedience to any lawful orders given by any such officer while acting in the discharge of his duty.

Prosecutions under this Ordinance.

25. And be it further enacted that all offences committed in contravention of this Ordinance may lawfully be prosecuted in the Court of the Resident Magistrate for the district within which the same shall have been committed; and that it shall and may be lawful for the Governor of this Colony in each particular case to determine, award, and direct what share if any of the amount of any fine or forfeiture imposed in respect of any conviction for any such offence as aforesaid shall be paid to any person who may have given information concerning the same.

Disposal of fines.

SCHEDULE A.

Form of Licence to Deal in Gunpowder.

I, ———, commissioner (or distributor) of stamps in ———, (or in the district of ———), on this ——— day of ———, 18—, do hereby authorise and empower ———, residing at ——— ——, to deal in gunpowder, and to sell or barter the same at any private magazine duly approved of by the Governor of this Colony, and on his premises situate at ——— ———, and not elsewhere, for one whole year from the —— day of ———, 18—, and no longer

(Signed)

———

Certificate for [2]
Pounds of Gunpowder.

SCHEDULE B.

Form of Certificate for Field-cornet.

No. [1]—

I, [3] ———, field-cornet of [4] ———, in the district of [5] ——, hereby certify, that [6] ——— resides at [7] ———, situate within the said field-cornetcy, and that the said place [7] ——— is at the distance of —— hours' travelling by ox-wagon, from the nearest licensed dealer in gunpowder, and that I have granted him no certificate of this kind within the last six months previous to the date hereof.

(Signed)
(Dated)

(1) Here insert number of certificate.
(2) Here insert quantity of gunpowder.
(3) Here insert the name of the field-cornet.
(4) The name of the field-cornetcy.
(5) The name of the district.
(6) The christian name or names at full length and surname of the applicant.
(7) Name of applicant's residence.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1834.

SCHEDULE C.

Form of Permit of Dealer or Storekeeper.

I, [1] ————————, licensed dealer (or storekeeper, as the case may be), hereby certify that [2] ——— has received from me, [3] —— lbs. of gunpowder, on account of the certificate No. [4] —, for [5] ——, of [6] —.

([1]) Here insert name of dealer or storekeeper. ([2]) Name of agent.
([3]) Quantity. ([4]) Number of certificate.
([5]) Persons named in the certificate. ([6]) Residence of ditto.

No. 8.] [Dec. 10, 1834.

Ordinance to abolish the present Rates of Dues payable at the Public Wharfs at Cape Town and Simon's Town, and to substitute others in lieu thereof.

[Repealed by Ordinance No. 34, 1846, but that Ordinance not having been confirmed by the Home Government, Ordinance No. 8, 1834, revived until it was finally repealed by Ordinance No. 6, 1851.]

No. 9.] [Dec. 10, 1834.

Ordinance for discontinuing the Tithe Duty and altering the Market Duties on Ordinary Wines brought into Cape Town and Simon's Bay.

[Lapsed.]

No. 1.] [Jan. 5, 1835.

Ordinance for giving due effect to the Provisions of an Act of Parliament, passed in the third and fourth Years of the Reign of His Majesty King William the Fourth, entitled "An Act for the abolition of Slavery throughout the British Colonies, for promoting the Industry of the manumitted Slaves, and for compensating the Persons hitherto entitled to the services of such Slaves," and dated the 28th day of August, 1833.

[Lapsed.]

No. 1.] [May 26, 1836.

Ordinance for continuing and extending the Provisions of an Ordinance bearing date 14th day of February, 1833, entitled "An Ordinance for enabling certain persons having respectively the just, lawful, and undisputed Right to certain Lands and Houses to procure the same to be enregistered as their Property in the Land Register."

[Lapsed.]

Digitised by the University of Pretoria, Library Services, 2016

No. 2.—Sd. B. D'Urban.] [May 26, 1836.

Ordinance for rendering valid and effectual, all such Acts, Transfers, Mortgages, and other Deeds, as have been made and passed in the Register Office, between the 16th day of October, 1835, and the 31st day of March, 1836, and which have been certified and enregistered before and subscribed by Jan Godlieb Brink, Esq., and William John Mackrill, Esq., and to authorise and empower the Governor to appoint an Acting Registrar of Deeds. (1)

Preamble.

WHEREAS the Hon'ble Joseph Harvey, Esq., the Treasurer and Accountant-General and Registrar of Deeds of this Colony, obtained leave to absent himself from the duties of his office, and did on the 16th day of October, 1835, retire from the performance of his said duties, and the duties required to be done and performed by the Registrar of Deeds have, from the said 16th day of October, 1835, until the 31st day of March, 1836, been done and performed by Jan Godlieb Brink, Esq., and William John Mackrill, Esq.: And whereas doubts have arisen as to the validity of all such acts and deeds as were certified and enregistered before and subscribed by the said Jan Godlieb Brink, Esq., and William John Mackrill, Esq., between the said 16th day of October, 1835, and the 31st day of March, 1836; and it is expedient to declare and establish the legality and validity of all such acts and deeds:

Deed certified during absence of registrar of deeds validated.

1. Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all acts, transfers, mortgages, and other deeds which were certified and enregistered before and subscribed by the said Jan Godlieb Brink, Esq., and William John Mackrill, Esq., respectively, as performing the duties which ought to have been done and performed by the Registrar of Deeds between the 16th day of October, 1835, and the 31st day of March, 1836, shall from the respective times of their having been so certified, enregistered, and subscribed, be and be deemed and taken to be as legal, valid and effectual, to all intents and purposes as if the same had been certified and enregistered before and subscribed by the Registrar of Deeds for this Colony.

Acting registrar may be appointed.

2. And be it further enacted, that it shall be lawful for the Governor, when and so often as occasion shall require, in case of the absence, sickness, or other disability of the Registrar of Deeds for the time being, to appoint some other fit and proper person to act as, and in lieu of, the said Registrar; which appointment shall be duly notified in the *Government Gazette*; and all acts, transfers, mortgages, and other deeds, which shall be certified and enregistered

(1) See Act 19, 1891.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 5—1836.

before, and subscribed by, such person, during the subsistence of such his appointment, shall be, and be deemed and taken to be as legal, valid, and effectual, to all intents and purposes, as if the same had been certified and enregistered before and subscribed by the Registrar of Deeds for this Colony. (1)

No. 3.] [May 26, 1836.

Ordinance for appointing and authorising certain Persons to be Commissioners and to act as Guardians to Emigrants, being minors, sent to this Colony from the United Kingdom by a Society known as the Children's Friends Society.

[Lapsed by dissolution of the Society.]

No. 4.] [May 26, 1836.

Ordinance to Indemnify the Special Justices and other persons in respect of acts done under and by virtue of certain Rules bearing date the 15th January, 1835, and a certain Proclamation bearing date the 1st May, 1835, made and published by the Provisional Government, and to make those acts valid.

[This Indemnity Ordinance, having reference to proceedings under the Acts for the Abolition of Slavery, has no further applicability.]

No. 5.—Sd. B. D'Urban.] [June 1, 1836.

Ordinance for defining the Limits of and securing from injury the Cape Flats and Downs. (2)

Preamble.

WHEREAS the provisions of a publication bearing date the 29th September, 1803, for the preservation of the tract of country commonly called "the Cape Flats and Downs," have been found to be insufficient; And whereas many parts of the said lands are unlawfully used and occupied by various persons who, by rooting up the bushes growing thereon, have caused great damage and injury to the said lands, inasmuch as the drifting sands have so greatly accumulated as to threaten to lay waste great part of that country, and the farms contiguous thereto, thus increasing the difficulties of land carriage and endangering the maintenance of the baiting or outspan-places and watering dams established on the lines of public roads through those flats and downs; And whereas it is expedient to fix and define the limits of the said tract of country, and to provide for its security from further damage and injury;

Repeal of previous proclamation.

Be it therefore enacted by the Governor of the Cape of Good Hope,

[1] Assistant Registrar provided for by § 3, Act 19, 1891.
[2] See Ordinance No. 28, 1846.

Digitised by the University of Pretoria, Library Services, 2016

with the advice and consent of the Legislative Council thereof, that from and after the 1st of July next, the publication of the Governor J. W. JANSENS in Council, bearing date the 29th September, 1803, shall be and the same is hereby repealed save in so far as the same repealed the several Laws and Ordinances therein set forth. Ord. 5—1836.

2. And be it further enacted that from and after the date of this Ordinance, all the lands situate to the eastward of the Salt and Swart Rivers to the Sand Valley near Muizenberg; thence along the shore of False Bay to the mouth of the Eerste River; thence ascending the right bank of the Eerste River to the place of Mr. Faure, at the lower drift of that river; thence to the place of Mr. Neethling, at the Kuils River; thence to Stickland; thence to Tyger Valley and the place the Grendel, at the foot of Tygerberg; and thence to the Compagnies Dam, under the Blueberg, to the sea, shall for the purposes of this Ordinance, be deemed and taken to be included in the general terms of the Cape Flats and Downs. Cape Flats and Downs defined.

[§§ 3 and 4 repealed by Ord. 28 of 1846.]

5. And be it further enacted that any person who shall drive or send or cause to be driven or sent any sheep, goats, or swine, to graze on the aforesaid Crown lands, save and except such sheep, goats, or swine as may be going to or from a market, shall be liable upon conviction to a fine not exceeding five pounds. Grazing of sheep, &c., prohibited.

6. And be it further enacted that it shall and may be lawful for the Civil Commissioners of the Cape and Stellenbosch districts respectively, to grant to any person applying for the same a licence to graze horned cattle, horses, or mules for one whole year upon the aforesaid Crown lands not being outspan-places; which licence shall commence and take effect from the first day of July of each year, and shall set forth the greatest number of cattle, horses, or mules allowed to graze under and by virtue of the same; and which licence shall be paid for at and after the rate of sixpence sterling for every horse, mule, or head of horned cattle. Licences for grazing cattle, &c.

7. And be it further enacted that it shall be lawful for the said Civil Commissioners respectively to grant to any person applying for the same a licence to cut and carry away from such Crown lands, thatching reeds or rushes; which said licence shall set forth the quantity of bundles of reeds or rushes intended to be cut, and which licence shall be paid for at and after the rate of ninepence sterling for every one thousand bundles, and which licence shall have effect for the term or space of three calendar months and no more from the date of the said licence. Licences for cutting reeds, &c.

8. And be it further enacted that any person who shall graze horned cattle, horses, or mules, or cut thatching reeds or rushes upon any part of the said Crown lands without having taken out a licence as hereinbefore mentioned, or who shall graze a greater number of horned cattle, horses, or mules upon the aforesaid lands, or who shall cut or carry away therefrom a larger quantity of thatch- Penalty for being without or abusing licences.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 5—1836.

ing reeds or rushes than is set forth in his said licence, or who shall make use of the said licence after the expiration of the term for which it shall have been granted, shall be liable upon conviction to a fine not exceeding five pounds for each offence.

Publication of licences.

9. And be it further enacted that the Civil Commissioners aforesaid shall as soon as may be after granting the said licences, transmit to the Secretary to Government for publication in the *Government Gazette*, a list of all persons having taken out licences for grazing and cutting thatching reeds; and the said Civil Commissioners shall transmit a like notice to the several Field-cornets whose wards or any part thereof are situated within the Cape flats and downs; and the said Field-cornets are hereby expressly enjoined and required to enforce to the utmost of their power the provisions of this Ordinance, and to report to the respective Clerks of the Peace for immediate prosecution all persons who shall be found contravening or who shall have contravened the same.

Enforcement of licences.

Outspan-places to be defined.

10. And be it further enacted that the Civil Commissioners aforesaid shall fix the boundaries of the several outspan-places now existing in the said Crown lands and situate within their respective districts, and shall cause the extent thereof to be marked and defined in such manner as to afford to all persons having lawful occasion to use the same the full benefit of such outspan-places.

Illegal use of outspan-places.

11. And be it further enacted that any person (*bona fide* travellers excepted) who shall graze any animals whatsoever upon those parts of the said Crown lands which now are or may hereafter be appropriated as outspan-places, or who shall water such animals at any of the public watering dams attached or hereafter to be attached to such outspan-places, shall be liable upon conviction to a fine not exceeding five pounds; and it shall be lawful for any person whomsoever who shall find any such animals trespassing on the said outspan-places or watering dams, to seize and drive them, or cause them to be seized and driven, to the nearest pound..

Enforcement of Ordinance.

12. And be it further enacted that all offences under this Ordinance shall be tried before the Resident Magistrate of the district within which the offence shall have been committed; and in default of payment of any fine imposed, it shall be lawful for the said Magistrate to sentence the person adjudged and making default to pay such fine, to imprisonment with or without hard labour as such Magistrate shall direct, for any period not exceeding three calendar months.

No. 6.] [June 27, 1836.

Ordinance for incorporating and establishing the South African Association for the Administration and Settlement of Estates.

[Repealed by Act No. 9, 1855]

Digitised by the University of Pretoria, Library Services, 2016

No. 7.—Sd. B. D'Urban.] [June 27, 1836.

Ordinance for explaining and extending the Powers of the Trustees appointed for the Management of a Mercantile Establishment at Port Beaufort.

Preamble.

WHEREAS several persons, being desirous of forming a mercantile establishment at Port Beaufort situate at the mouth of the Breede River, have built by subscription at that place a store or warehouse: And whereas upon the thirty-first day of January, one thousand eight hundred and thirty-one, His Excellency General the Honourable Sir Galbraith Lowry Cole, then Governor of this Colony, was pleased to grant in freehold unto Messrs Ewan Christian, Joseph Barry, and Francis Collision, as trustees for the management of a mercantile warehouse for themselves and the subscribers thereto, a piece of land situate at the mouth of the Breede River, for the purpose of maintaining thereupon a warehouse on the following conditions, to wit: That the right of access over this ground to Port Beaufort and to the subscription store, and to any public passage which is or may hereafter be established over the Breede River, as well as of unyoking cattle on such unoccupied land as shall be fixed upon for that purpose, shall be secured to the public; that the part adjoining the river in front of the said store shall neither be cultivated nor built upon; and with full powers and authority to them or to the trustees to be from time to time chosen by the subscribers to the said grant to possess said piece of land for the above purpose, and such further purposes as to a majority of a meeting of subscribers to be called for the purpose by public advertisement may appear to them most for the general interest; and for the greater security and convenience of the several shareholders to authorise and direct the trustees to grant a certificate to each holder of a share, which certificate will be transferable by endorsement, and the property in the said land as also a share of the said buildings and the remaining unappropriated land thereby vested in the said endorsee, provided such endorsement be first registered in the office of the Registrar of Deeds, and that the usual duties of transfer be previously paid thereon. The land granted being further subject to such duties and regulations as are either already or may in future be established with regard to such land. And whereas doubts have arisen as to the nature and the extent of the powers to be exercised by the said trustees under and by virtue of the said grant: And whereas the said trustees have made application that an Ordinance be passed to explain more fully the objects of the said grant and to give further and more ample powers to the said trustees, and to provide for carrying the same into effect: Be it therefore enacted by His Excellency the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the passing of this Ordinance it shall and may be lawful

Shares in warehouse, &c., legalized.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1836.

for the said subscribers, their heirs and assigns to become shareholders of the said mercantile establishment and land in the said grant contained, according to the number of shares for which such persons respectively shall have subscribed, and to make application to the trustees for that purpose: Provided however, that if any such subscriber shall have failed to signify his desire to become such shareholder and shall have failed to pay his proportion, according to his number of shares, of the expenses which have been already incurred or which shall be incurred in obtaining the said grant, and in securing to such subscriber his share or shares therein at the expiration of one year after the passing of this Ordinance, such subscriber shall forfeit all claim to become such shareholder.

Unpaid shares to be sold.

2. And be it further enacted that it shall and may be lawful for the said trustees to dispose of such shares as shall after the expiration of one year after the passing of this Ordinance not have been paid for by any subscriber to such persons as shall apply for the same, and on such terms as to the said trustees shall appear expedient; and the person so purchasing any shares shall in such case enjoy the same privileges under the said grant as the original subscribers.

Roads may be marked off.

3. And be it further enacted that it shall and may be lawful for the trustees to mark off so much of the land in the said grant contained and in such direction as they shall deem fit and expedient for a road or roads from any part of the said land to any other part thereof; Provided that if such land so marked off shall form part of the erf of any shareholder in manner hereinafter provided to be allotted, such reasonable satisfaction shall be given for the damage which such shareholder shall thereby sustain as shall be agreed upon between the trustees and such shareholder; and if the said trustees and such shareholder cannot agree concerning the amount of such damages, then the same shall be finally assessed, determined, settled, and adjusted by arbitration in manner provided by the twentieth section of this Ordinance.

Division of erven.

4. And be it further enacted that as soon as conveniently may be after the passing of this Ordinance, a general meeting of the subscribers shall be holden at Cape Town, notice whereof shall be given by advertisement in one of the public newspapers of this Colony, twenty-one days at least before the said meeting is appointed to be holden, for the purpose of submitting to the subscribers for their ratification a plan for dividing so much of the said land as to the said trustees shall appear expedient into eighty-five erven to be allotted among the said subscribers according to the number of shares which each subscriber respectively shall have agreed to take, the same to be held by them in freehold; and in case the subscribers at such meeting by a majority of votes shall not ratify the said plan, it shall and may be lawful for the trustees to adjourn the said meeting to a future time, and from time to

Digitised by the University of Pretoria, Library Services, 2016

time and as often as shall be necessary to submit an amended plan and to obtain a vote of the majority of the subscribers present at such adjourned meeting ratifying such amended plan. Ord. 7—1836.

5. And be it further enacted that at such meeting or adjourned meeting after such plan shall have been ratified, so many erven as there shall be subscribers who shall have signified their desire to become shareholders and who shall have paid each his proportion of the expenses then incurred shall be allotted among such subscribers, of each of which erven the choice shall be determined by ballot; Provided that the partners belonging to the firm of Robertson, Venning, and Moodie, and Joseph Barry, shall respectively be entitled to select for their erven the land upon which they have respectively built stores; upon condition, however, that the said firm of Robertson, Venning, and Moodie, and Joseph Barry, in consideration of such preference, shall pay a fine the amount of which shall be fixed by the decision of two indifferent persons, one to be chosen by the said trustees and the other by the said Robertson, Venning, and Moodie, and the said Joseph Barry, respectively. Allocation of erven.

6. And be it further enacted that it shall and may be lawful for any subscriber who shall after the said meeting or adjourned meeting and before the expiration of one year after the passing of this Ordinance express his desire to the trustees to become a shareholder and pay his proportion of the expenses at such time incurred according to the priority of his application, to select such erf or erven as shall then have been unallotted. Future shareholders.

7. And be it further enacted that the said trustees shall keep a book wherein shall be entered the names of all the shareholders and the description of each erf, and every shareholder respectively shall sign his name in a column opposite to the said erf in acknowledgment of the truth thereof; and the said trustees shall deliver to every shareholder of every such erf a certificate thereof signed by the said trustees; which certificate the shareholder, his heirs, executors, administrators, or the holder, may transfer by endorsement, and the property in the said erf; and his interest as a shareholder under the said grant shall be thereby vested in the said endorsee, provided such endorsement be registered in the book so kept by the trustees and in the office of the Registrar of Deeds, and provided the duties of transfer be paid thereon. Registry of erf and shareholders. Transfer of erven.

8. And be it further enacted that a general meeting of the shareholders shall be holden on the first Wednesday of August in every year at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this Colony twenty-one days at least before the same is to be holden; and it shall and may be lawful for the trustees at any time to call a general meeting of the shareholders upon giving the like notice thereof; and it shall and may be lawful for the said trustees and they are hereby Annual and other general meetings of shareholders.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1836.

required to call a general meeting, being thereunto required by any writing signed by ten of the shareholders and delivered to the said trustees, upon the like notice thereof being given by the said trustees.

Resolution of meetings, effect of.

9. And be it further enacted that the resolutions of the shareholders at any public meeting duly called carried by a majority of votes shall be binding upon the whole of the shareholders, in like manner as if each had been present and had consented to such resolution; and in every case in which the votes of any such meeting shall be equally divided the person who shall preside at such meeting shall have a casting vote.

Votes of shareholders.

10. And be it further enacted that the subscribers at the first general meeting and the shareholders at all subsequent public meetings of the shareholders shall have the right of voting in all matters relating to the objects of this Ordinance according to the number of their respective shares, that is to say,—the holder of one share shall be entitled to one vote; the holder of three shares to two votes; the holder of ten shares to three votes; and the holder of eleven or more shares to five votes; and it shall and may be lawful for any shareholder to empower any other shareholder by authority in writing to that effect given, to vote in his absence: but such shareholder so empowered shall be entitled to one vote and no more for every such shareholder being absent; provided that no shareholder shall be entitled to vote for a greater number than ten, such shareholders being absent.

Votes by proxy.

Accounts of trustees.

11. And be it further enacted that the trustees shall keep a book wherein they shall enter all money received and paid by them under and by virtue of the provisions of this Ordinance, which account shall be laid before the shareholders for their inspection at the general annual meetings.

Quorum of trustees.

12. And be it further enacted that two trustees shall be a quorum and shall be competent to do and perform all matters and things which may be done under and by virtue of this Ordinance by the trustees, and that the vote of two trustees shall in all cases be deemed to be and shall have effect as the vote or resolution of the trustees; Provided however, that in the event of the death, resignation, or removal from office of two of the said trustees it shall and may be lawful for the remaining trustee to call a public meeting of the shareholders upon giving the like notice thereof; and it shall and may be lawful for any ten of the shareholders to call a public meeting in the event of the death, resignation or removal from office of all the trustees upon giving the like notice thereof as the trustees would have been required to give.

Calling of meetings.

Tenure of office by trustees.

13. And be it further enacted that the said trustees shall continue in office until the first Wednesday of August, one thousand eight hundred and thirty-seven, and that at the annual public meeting then to be holden three trustees shall be elected in their place and stead from the whole number of shareholders, and the

Digitised by the University of Pretoria, Library Services, 2016

trustees then to be elected and all others who shall afterwards be elected shall continue in office for the period of three years, and shall be succeeded by three trustees to be elected at the annual public meeting to be holden upon the first Wednesday of August in the year when such period expires: Provided however, that nothing herein contained shall prevent the said trustees or any shareholder afterwards to be elected to such office from being elected or re-elected to the said office; and provided that in the event of the death, resignation, or removal from office of any trustee or trustees before the expiration of such period, it shall and may be lawful for the shareholders at a public meeting for that purpose called to elect a trustee or trustees in his or their place and stead, such trustee or trustees to continue in office until the expiration of the period for which such trustee or trustees so dying, resigning, or being removed had been elected, and no longer.

Vacancies in office of trustee.

14. And be it further enacted that it shall and may be lawful for the trustees for the time being to let on lease for a period not exceeding nineteen years the whole or any part of the land in the said grant contained and not appropriated for the purposes hereinbefore mentioned, and to authorise any person or persons to graze their cattle upon the said land, and also to dig for, work, and carry away any limestone or other stone for the purpose of building that may be found upon the said land; and it shall and may be lawful for the said trustees, upon being duly authorised by the shareholders at a public meeting to be held for that purpose, to sell to any person or persons the whole or any part thereof and to deliver to such person or persons a certificate of such purchase, which certificate the purchaser, his heirs, executors, administrators, or the holder may transfer by endorsement, and the property therein shall be vested in the said endorsee, provided such endorsement be registered in a book to be kept by the trustee for that purpose and in the office of the Registrar of Deeds, and provided the duties of transfer be paid thereon.

Leases of unappropriated land.

Sales of unappropriated land.

15. And be it further enacted that it shall and may be lawful for the said trustees to repair, alter, or enlarge the said store or warehouse, and to let the same or any part thereof to any person for the purpose of receiving any goods or merchandize, and also to receive into the said store or warehouse the goods and merchandize of any person or persons, and to receive a reasonable sum for warehouse-room for the same.

Repairing and leasing of warehouse.

16. And be it further enacted that the trustees for the time being shall stand and be possessed of all sums of money received for any of the purposes aforesaid, upon trust, to pay and apply the same in the first place, to pay thereout all expenses incurred or which shall be incurred in obtaining the said grant and in securing to each shareholder his respective share; secondly, to keep in proper repair the said subscription store or warehouse; thirdly, to

Trusts of moneys received.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1836.

pay such sums as they shall be authorised by the shareholders at any public meeting; fourthly, to pay to each shareholder in an equal rate according to each share such dividends of profits or gains as may hereafter arise, after payment of all expenses incurred on account of and in discharge of their trust.

Actions by trustees.

17. And be it further enacted that it shall and may be lawful for the trustees as such, at all times when they shall see fit, to commence and maintain all such suits and actions in any competent Court in this Colony as they shall deem necessary in performance of their trust against any person whatsoever, and such suits and actions shall and may be brought by them in the name of the trustees without specifying the names of the said trustees, and no action shall abate by reason of the death or removal or going out of office of any trustee.

Actions against trustees or shareholders.

18. And be it further enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or agreement, or any other matter or thing made or entered into, done or performed by the said trustees in the execution of the said trust, or shall arise or accrue to any person whatsoever against the said shareholders or purchasers or other persons claiming under the said grant or under any of the provisions of this Ordinance jointly with the said shareholders, shall be brought by such person against the said trustees in manner and in the name aforesaid, and not against any individual trustee or trustees, shareholder or shareholders, or other persons as aforesaid; and in the event of such trustees having no funds to enable them to defray the expenses of such suits or actions they shall be authorised and empowered to call upon each shareholder to pay the same according to his respective number of shares, and to call upon each purchaser as aforesaid for a just proportion thereof.

Removal of trustees.

19. And be it further enacted that it shall and may be lawful for the shareholders at any public meeting duly called for that purpose to remove any trustee or trustees for insolvency or any misconduct in the discharge of his or their trust, or on account of absence from the Colony for a period not less than three months.

Differences between trustees and shareholders.

20. And be it further enacted that in case any difference shall arise between and amongst the trustees or between the trustees and any of the shareholders or any other person claiming under any of the provisions of this Ordinance, touching or concerning any matter or thing under and by virtue of any of the provisions thereof, the same shall be finally determined, settled and adjusted by the award, determination or arbitrament in writing of two indifferent persons, one to be chosen by each party in dispute; and in case the said arbitrators shall not make or deliver their award, determination, or arbitrament within such time as they shall be limited for doing thereof then the said parties shall abide by and perform such award, umpirage and final determination in writing of such umpire as shall be chosen by the said arbitrators,

Digitised by the University of Pretoria, Library Services, 2016

made and delivered within such time as shall be limited by the said arbitrators touching all such matters in difference between the said parties. Ord. 9—1836.

21. And be it further enacted that such provisions of the said grant as are at variance with or repugnant to the enactments of this Ordinance shall be null and void, and the remainder of the said grant shall continue in full force and effect. Repugnant provisions of grant to be void.

22. And be it further enacted that nothing herein contained shall extend or be construed to extend to interfere with or in any way affect the rights of our Sovereign Lord the King, his heirs and successors, or of any body, politic or corporate, or of any other person or persons excepting those for whose especial benefit this Ordinance is made, and all persons claiming by, from, through, and under them. Saving rights of others.

No. 8.] [July 25, 1836.

Ordinance for providing for the better and more effectual Management of the Public Library in Cape Town.

[Repealed by Act No. 33, 1893.]

No. 9.—Sd. B D'Urban.] [August 15, 1836.

Ordinance for the creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded. (1)

WHEREAS it is expedient that due provision should be made for the better regulation of certain matters and things of a local nature within the several districts, towns, and villages in this Colony, and that municipal boards should be constituted and established therein for that purpose: Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that from and after the first day of October next it shall and may be lawful for any Resident Magistrate or Justice of the Peace within the limits of his jurisdiction, and he is hereby required upon a requisition made to him in writing to that effect by any number of resident householders, (2) not less than twenty-five, and severally paying taxes to an amount exceeding six shillings sterling per annum, and resident respectively within one mile of any one central place which shall be specified in the said requisition, to call a meeting of Requisition for municipal regulations.

[1] This Ordinance and Ord. 2, 1844, Ord. 8, 1848, Ord. 5, 1852, Act 15, 1860, and Act 13, 1864, are repealed by Act 45, 1882, but they are reprinted in view of the provisions of § 4 of that Act.

This Ordinance with Ord. 2, 1844, revived by Ord. 3, 1853, and made perpetual by Act 15, 1860.

[2] As to qualification of Householders, see § 6, Ord. 2, 1844, and § 7, Act 13, 1864.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1836.

householders paying such amount of taxes as aforesaid and resident within the limits aforesaid to determine whether municipal regulations shall be adopted for the town, village, or place intended to be erected into a municipality. (1)

Notice for public meeting.

2. And be it further enacted that three weeks' notice at the least of the time and place of holding such meeting shall be given by the Resident Magistrate or Justice of the Peace calling the same by a printed or written notice affixed to some conspicuous place or places of public resort within the limits aforesaid.

Majority of votes at meeting to decide.

3. And be it further enacted that the chairman who shall preside at any meeting assembled as hereinbefore directed shall read or cause to be read the requisition whereupon the meeting shall have been summoned, and shall require such resident householders as aforesaid assembled thereat to determine by majority of votes whether municipal regulations shall or shall not be adopted and acted upon within the said intended municipality.

Meeting of householders for choosing committee.

4. And be it further enacted that if at any such meeting it shall be determined by a majority of votes that municipal regulations shall be adopted then and in such case any such Resident Magistrate or Justice of the Peace as aforesaid to whom such determination shall be notified by the chairman of such meeting shall forthwith call another meeting of such resident householders as aforesaid to be holden within seven days thereafter, in order to elect and appoint a committee of so many of such resident householders as aforesaid as the said meeting shall deem expedient to frame and draw up municipal regulations.

Committees for framing regulations.

5. And be it further enacted that the committee so to be elected and appointed shall be chosen by such resident householders assembled at such meeting by majority of votes.

Preparation of regulations.

6. And be it further enacted that the committee so chosen as aforesaid shall forthwith proceed to frame and draw up such municipal regulations as they may deem expedient, and shall submit the same when prepared to a meeting of such resident householders as aforesaid to be called by the said committee upon seven days' notice to be given in manner aforesaid: Provided, always, that such committee shall submit such regulations to such meeting as aforesaid within one month from the date of their appointment, otherwise the said committee shall be *ipso facto* dissolved, and a new committee shall then and in every such case be chosen in manner and for the purpose aforesaid, at a meeting to be called by any such Resident Magistrate or Justice of the Peace as aforesaid to whom such dissolution of the committee shall have been notified.

What shall be embraced by the regulations.

7. And be it further enacted that in such regulations it shall be the duty of such committee to fix the limits (2) of the municipality and to divide the municipality into wards if necessary, and

[1] See § 2, Ord. 2, 1844.
[2] See Ord. 2, 1844, § 2.

Digitised by the University of Pretoria, Library Services, 2016

to fix the number of commissioners and wardmasters for the municipality or the several wards thereof, and to make rules for the classification and valuation of the immovable property therein, and to frame all other regulations which shall be necessary to enable the said commissioners to carry into effect the provisions of this Ordinance or such of them as the said committee shall think expedient and necessary for the municipality.

Chairman of meeting of householders.

8. And be it further enacted that at the meeting to which such regulations as aforesaid shall be submitted by such committee any Resident Magistrate or Justice of the Peace residing at or near such proposed municipality shall preside as chairman: Provided however, that such Magistrate or Justice shall not be a member of the said committee; and when there shall not be any such Resident Magistrate or Justice of the Peace not being a member of such committee present, then and in every such case any such resident householder as aforesaid not being a member of such committee present at such meeting may be elected to preside as chairman at such meeting.

How questions to be put to meeting.

9. And be it further enacted that at such meeting the question shall be put by the chairman on each and every clause contained in the regulations submitted by the committee *seriatim*, and afterwards on the whole of the regulations jointly; and a majority of votes shall decide whether such clause or the whole of the regulations jointly as the case may be shall or shall not be adopted.

Approval of regulations by Governor.

10. And be it further enacted that the regulations adopted at such meeting shall forthwith be transmitted to the Governor of the Colony for the time being, for the approval, amendment, or disallowance thereof of the said Governor, by and with the advice of the Executive Council; and in case such regulations shall be approved, notice of such approval shall be given by proclamation to be made in that behalf; and the said regulations shall be published in the *Government Gazette*, and shall thereupon become as legal, valid, and effectual as if the same had been inserted herein; and in the event of the said regulations being amended by the said Governor by and with the advice of the Executive Council, the regulations so amended shall be forthwith transmitted to the chairman of such meeting as last aforesaid, and in his absence to any Resident Magistrate or Justice of the Peace residing in or near the said intended municipality who shall forthwith upon a notice of not less than seven days call a meeting of such resident householders as aforesaid, and who shall by a majority of votes decide whether the said regulations so amended shall be adopted or not; and if the regulations be adopted, the chairman of such meeting shall forthwith communicate such adoption to the said Governor, who shall forthwith give notice thereof by proclamation and cause the same to be published in the *Government Gazette*, and upon such publication the same shall

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1836.

become as legal, valid, and effectual as if the same had been inserted herein.

Alteration of regulations from time to time.

11. (1) And be it further enacted it shall be lawful for the commissioners of any municipality, and they are hereby required upon a requisition made to them in writing to that effect by any number of such resident householders as aforesaid not less than twenty-five to call a meeting of such resident householders as aforesaid upon seven days' notice to be given in manner aforesaid for the purpose of adding to, amending, or repealing the existing regulations or any of them by a majority of persons present and entitled to vote at such meeting; and the said regulations after being so reformed shall be forthwith transmitted by the said commissioners to the Governor for the approval or disallowance thereof or of any part thereof of the said Governor by and with the advice of the Executive Council; and such of the said reformed regulations as shall be approved of shall be published in the *Government Gazette* forthwith; and proclamation of such approval shall be made, and the said reformed regulations so approved of as aforesaid shall thereupon become as legal, valid, and effectual as if the same had been inserted herein, and the former regulations shall become null and void: Provided, always, that nothing in any municipal regulations contained shall be repugnant to or inconsistent with the true intent and meaning of the provisions of this Ordinance.

Election of commissioners.

12. And be it further enacted that so soon as such original regulations as aforesaid shall have appeared in the *Government Gazette* the Resident Magistrate of the district shall and he is hereby required, by a notice of not less than ten days in manner hereinbefore provided, to call a meeting of such resident householders as aforesaid residing within the limits of such municipality, to be holden for the election and choice of so many commissioners as shall have been specified in the said regulations to carry the same into effect; and the said commissioners for the municipality or the wards thereof respectively shall be elected by a majority of votes of such resident householders as aforesaid present at such meeting; and any such Resident Magistrate or Justice of the Peace shall preside as chairman at such meeting.

Qualification of commissioners.

13. (2) And be it further enacted that any person residing within the municipality and being the proprietor of a house situate within the same and who shall pay annually a sum not less than one pound sterling in taxes shall be eligible to be elected a commissioner for the purposes of this Ordinance, and shall be proposed at the said meeting by some person duly qualified to vote thereat and shall be seconded by some other person in like manner qualified.

---

[1] Printed as amended by Ord. 2, 1844, § 5.
[2] Amended by § 7, Ord. 2, 1844.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9 -1836.

Triennial retirement of commissioners.

14. And be it further enacted that every person who shall be elected a commissioner in any municipality in manner aforesaid shall go out of office at the end of the third year from the said first election; and in place of such commissioners so going out of office a like number of other commissioners to be elected as hereinafter provided shall come into office, and remain in office for three years; and at the expiration of such last-mentioned term of three years shall in like manner go out of office and be succeeded by other commissioners, who shall remain in office for a like term of three years, and so on for ever: Provided, always, that any of such out-going commissioners shall be re-eligible and may be re-elected, and shall in such case continue to act and remain in office, anything herein contained to the contrary notwithstanding.

Election to supply triennial vacancies in commissionership.

15. And be it further enacted that on the Monday immediately preceding the day on which any such term of three years shall expire a meeting shall be holden at such hour and place as shall be duly notified by the said commissioners for the election of commissioners for the three years next succeeding; and such election shall proceed in such manner as is hereinbefore provided for the election of the first commissioners under this Ordinance.

Vacating of office by commissioners.

16. (1) And be it further enacted that any commissioner who shall cease to possess any of the qualifications in the thirteenth section required for the eligibility of commissioners, or shall absent himself from the municipality for any period exceeding three months, or shall become incapacitated from fulfilling the duties of his office by mental or bodily infirmity or disease, shall *ipso facto* vacate his office; and that in case any person so elected a commissioner shall die, or become disqualified in manner aforesaid, or shall resign or refuse to accept the office of commissioner, or in case of any casual vacancy happening in any manner whatever in such office, notice shall be forthwith given by the acting commissioners to any such Resident Magistrate or Justice of the Peace as aforesaid, who shall forthwith in the manner hereinbefore directed by this Ordinance call a meeting of such resident householders as aforesaid for the purpose of filling up such vacancy or vacancies.

Regular meeting of commissioners.

17. And be it further enacted that the said commissioners shall meet at such times as are specified in the municipal regulations respectively at some convenient place or office previously publicly notified; and at such meetings it shall be lawful for any person to appear there and prefer any matter of complaint which he may think proper to make concerning any matter or thing done by force or in pursuance of or under pretence of the provisions of this Ordinance or the municipal regulations.

Occasional meeting of commissioners.

18. And be it further enacted that such commissioners shall meet at all other times and so often as at any previous meeting shall be determined upon, and it shall be at all times competent

[1] Amended by Act 13, 1864, § 4, and Act 9, 1885, § 2.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1836.

for any one commissioner when three commissioners only shall have been appointed, and in all other cases for any two commissioners, by writing under his or their hands to summon, upon at least forty-eight hours' notice, the commissioners for any special purpose therein named; and that at all meetings of such commissioners any number not less than one-third of the whole number when more than three commissioners shall have been appointed, and when only three commissioners shall have been appointed then not less than two commissioners, shall constitute a quorum for transacting business.

Treasurer and other officers.

19. And be it further enacted that it shall be lawful for the said commissioners elected in any municipality for the time being, acting in pursuance of any municipal regulations to that effect, and they are hereby authorised and required to appoint during pleasure such Treasurer and other officers as shall be specified in any such regulations and to remove and displace the same.

Security by Treasurer.

20. And be it further enacted that it shall be lawful for the said commissioners or any two or more of them and they are hereby required to take security from the Treasurer to be appointed by virtue of this Ordinance, before he enters on the duties of his office for the due execution of his office of Treasurer, which security shall be to the full amount of the sum likely to be in the hands of the said Treasurer at any one time; and in case any such Treasurer shall neglect or refuse for the space of one week next after his appointment to give such security to the satisfaction of the said commissioners, then the appointment of every such person so neglecting or refusing shall be null and void to all intents and purposes, and the said commissioners shall within three weeks then next assemble and appoint some other fit and proper person to the office of Treasurer, instead of the person so refusing or neglecting as aforesaid, and shall so assemble and appoint from time to time until security shall be given to their satisfaction as aforesaid.

Account to be kept by Treasurer.

21. And be it further enacted that every such Treasurer and other officer appointed by virtue of this Ordinance shall under his hand and at such time or times and in such manner as the said commissioners shall direct, deliver to the said commissioners or such person as they shall appoint true and perfect accounts in writing of all matters and things committed to his charge by virtue of this Ordinance, and also of all moneys which shall have been by such officer received by virtue or for the purposes of this Ordinance, and of how much thereof shall have been expended or disbursed, and for what purposes, together with proper vouchers for such payments; and that every such officer shall pay all such moneys as shall remain due from him to the Treasurer for the time being or to such person or persons as the said commissioners shall appoint to receive the same; and if any such Treasurer, officer, or other person shall refuse or neglect to make and render such account, or refuse to deliver up the vouchers

Digitised by the University of Pretoria, Library Services, 2016

relating to the same or to make payment as aforesaid, or shall refuse or wilfully neglect to deliver to the said commissioners or to such person or persons as they shall appoint to receive the same within three days after being thereunto required by the said commissioners by notice in writing under the hands of any two or more of the said commissioners, given to or left at the last or usual place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this Ordinance, or to give satisfaction to the said commissioners or such other person or persons as aforesaid respecting the same, then and in every such case upon complaint made by the said commissioners or by such person or persons as they shall appoint for that purpose of any such refusal or wilful neglect as aforesaid to the Resident Magistrate of the district within which such Treasurer or other officer resides, such Resident Magistrate may and he is hereby authorised and required to summon the officer so refusing or neglecting to appear before him; and if it shall appear to the said Magistrate upon the hearing of the case that any moneys remain due from such officer, or if it shall appear to such Magistrate 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 relating to the execution of this Ordinance remained in the hands or in the custody or power of such officer and he refused or wilfully neglected to deliver or give satisfaction respecting the same, as aforesaid, then and in every such case such Magistrate shall and he is hereby required to commit such offender to the common gaol or house of correction for such district, 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 said commissioners or to such other person or persons as aforesaid; but no such offender shall be kept or detained in such common gaol or house of correction under such commitment as aforesaid for any longer space of time than three calendar months.

Imprisonment of treasurer, effects to his sureties.

22. And be it further enacted that no prosecution or commitment under the provisions of this Ordinance of any Treasurer or other officer or person to be appointed under the powers of this Ordinance shall acquit or discharge any surety or security that shall or may have been taken by or given to the commissioners 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.

Office of commissioner gratuitous.

23. And be it further enacted that no person elected and appointed under and by virtue of this Ordinance a commissioner for the purpose of carrying into effect the provisions thereof shall have or receive or be entitled to have or receive any salary, or

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1836.

shall exact, take, or accept any fee or reward whatsoever for or on account of anything done or to be done by him by virtue of this Ordinance or on any account whatsoever relative to putting this Ordinance into execution.

Actions by and against commissioners.

24. And be it further enacted that 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 Ordinance, or for or in respect of any property movable or immovable vested in the said commissioners, or for any other matter or thing relating to this Ordinance by or against the said commissioners, it shall and may be lawful for the said commissioners to sue or be sued by the style or description of "the commissioners for the municipality of ————": Provided, always, that every such commissioner may and shall (if not otherwise interested or objectionable) be a good, examinable, and competent witness in every action or suit either for or against the said commissioners; and all the affidavits of debt or service which may be necessary or expedient to be made preparatory to or in the prosecution or defence of any such action, suit, or proceeding shall and may be lawfully made by any such commissioner; and provided, also, that the said commissioners shall always be reimbursed and paid out of the moneys to arise by virtue of this Ordinance all such costs, charges, and expenses as they shall be put to or become chargeable with by reason of bringing or defending such action or suit, and shall not 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 their or any of their own wilful neglect or default.

Minute book of commissioners.

25. And be it further enacted that all acts, orders, and proceedings of the said commissioners at any of their meetings shall be entered in a book to be kept by them for that purpose, and shall be signed by two of the commissioners then present; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings; and such books shall and may be produced and read as *primâ facie* evidence of all such acts, orders, and proceedings upon any appeal, or trial, or information, or any proceeding civil or criminal, and in any court or courts of law or equity whatsoever.

Books of account of commissioners.

26. And be it further enacted that the said commissioners shall and they are hereby required from time to time to order and direct a book or books to be provided and kept in which shall be entered true and regular accounts of all sums of money received, paid, and expended for or on account of the purposes of this Ordinance and of the several articles, matters, and things for which such sums of money shall have been disbursed and paid; and such book or books shall at all reasonable times be open to the inspection of the said commissioners and of every such resident householder as aforesaid without fee or reward; and the said commissioners and other persons aforesaid or any of them shall or may take

Digitised by the University of Pretoria, Library Services, 2016

copies of or extracts from the said book or books without paying for the same; and in case the said commissioners shall refuse to permit or shall not permit the said persons aforesaid to inspect the same or take copies or extracts as aforesaid, such commissioner shall forfeit and pay any sum of money not exceeding five pounds for each default.

Annual account on oath by commissioners.

27. And be it further enacted that in the month of September in every year a true account shall be made in writing of all moneys received and paid by virtue of this Ordinance during the preceding year ending on the 31st day of August in every year; and a copy or duplicate of such account, verified on oath before any Justice of the Peace by the said commissioners, or any two of them, shall be deposited with the said commissioners and shall be open to the inspection of all parties interested.

Meeting for assessing rates.

28. (1) And be it further enacted that it shall and may be lawful for the said commissioners when they shall see fit, and they are hereby required upon a requisition made to them in writing to that effect by any number of such resident householders as aforesaid, not less than twenty-five, to call a meeting of such resident householders as aforesaid, upon seven days' notice to be given in manner aforesaid, for the purpose of assessing any such rate or rates on the immovable property situate within the municipality, and to endure for such period not exceeding twelve months as the majority of persons present and entitled to vote at such meeting shall deem necessary for all or any of the purposes of this Ordinance.

Collection of rates.

29. And be it further enacted that after the rates to be levied by virtue of this Ordinance shall have been assessed in manner aforesaid it shall and may be lawful for the said commissioners to appoint a collector for the purpose of collecting the amounts due and payable upon the property so assessed by the proprietors thereof; and the said collector is hereby authorised to demand and receive the amounts so to be collected: Provided, always, that the said collector shall be furnished with an order under the hands of the said commissioners or any two of them, directing the said collector to levy the amount mentioned in the said order; and provided also that the said order shall specify the rate in the pound at which the sum mentioned therein shall be computed.

Payments by collector to treasurer.

30. And be it further enacted that the said collector to whom any such order as aforesaid shall be issued shall pay over the amount collected under such order to the Treasurer to be appointed in the said municipality under this Ordinance within forty days from the delivery of such order to the said collector; and at the time of making any payment to the said Treasurer the said collector shall deliver to him a note in writing signed by him,

[1] Printed as amended by Act 13, 1864, § 12. See also §§ 10 and 11 of that Act.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1836.

specifying the amount so paid, which note shall be kept by the Treasurer as a voucher for his receipt of that particular amount; and the receipt of the said Treasurer specifying the amount paid to him by the collector shall be a sufficient discharge to the collector for such amount, and shall be allowed as such in passing his account with his municipality.

Police and watchmen.

31. (1) And be it further enacted that the said commissioners, acting in pursuance of any such regulations as aforesaid are hereby empowered from time to time to appoint and employ such number of able-bodied watch-house keepers, sergeants of the night, watchmen, patrols, street-keepers, and other persons as shall be sufficient for the proper protection of the inhabitants, houses and property, streets and other places within the limits of the municipality, by day and by night, and provide all such watchmen, watch-house keepers, sergeants of the night, patrols, and persons as aforesaid with such clothing, arms, ammunition, and weapons, and shall assign to them such beat and rounds and duties, and appoint such hours for them to be on duty, and also make such rules, orders, and regulations relative to such watch-house keepers, sergeants of the night, watchmen, patrol, street-keepers, and other persons, and their duties, as shall be deemed fit.

Powers of police.

32. And be it further enacted that all watchmen, sergeants of the night, and patrols shall act as constables while in execution of the powers and authorities of this Ordinance, and they are hereby invested with and shall have and enjoy the like powers and authorities, privileges and immunities, and shall be subject and liable to such and the like penalties and forfeitures as any constable or constables is or are invested with or shall or may have and enjoy, or is or are or shall be subject or liable to by law.

Fire-engines.

33. And be it further enacted that it shall be lawful for the said commissioners acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to provide and keep up fire-engines, with pipes and other utensils proper for the same, for the use of the respective municipalities.

Lighting.

34. And be it further enacted that it shall be lawful for the said commissioners acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to cause such lamp-irons or lamp-posts, or other posts, to be put or fixed upon or against the walls or palisadoes of any houses, tenements, buildings, or enclosures (doing as little damage as may be practicable thereto), or to be put up or erected in such other manner within all or any of the said roads, streets, and places within the limits of the respective municipalities as shall be deemed proper, and also to cause such number of lamps of such sizes and sorts to be provided and affixed and put upon such lamp-irons and

[1] See also Act 15, 1857.

Digitised by the University of Pretoria, Library Services, 2016

lamp-posts as shall be necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with oil or otherwise during such hours as shall be necessary; and also to cause such a number of watch-houses or watch-boxes to be provided, erected, or affixed as shall be necessary for watching all or any of the streets, roads, and places within the limits of the municipality. Ord. 9—1836.

35. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to provide and to carry and lay any pipe or pipes for the conveyance of water to which the inhabitants of the municipality shall at any time have or acquire a common right from any reservoir, river, or spring to any house, building, or other place within the limits of the municipality, and the said commissioners shall, acting in pursuance of any such regulations as aforesaid, and they are hereby authorised from time to time to make such regulations touching the quantity of water to be supplied to the inhabitants and the time or times at which such supply is to be received as shall be proper and necessary. Supply of water.

36. And be it further enacted that the said commissioners, acting in pursuance of any such regulations as aforesaid, shall and they are hereby empowered to cause to be made, provided, erected, and built such bridges, sluices, dams, reservoirs, watercourses, pumps, wells, fountains, drains, and ditches as shall be deemed necessary within the municipality, and shall cause the same to be kept at all times in good and sufficient repair. Drains, &c.

37. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered to cause the public streets, roads, and places within the limits of the municipality to be at all times kept in good and sufficient repair, and as occasion shall require to cause such new streets and roads to be made within the limits aforesaid as may be legally made and shall be necessary for the public use, and to be kept at all times in like good and sufficient repair. Making and repairing of streets, &c.

38. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time as occasion may require to establish within the limits of the respective municipalities a market or markets for the sale of cattle, fish, poultry, vegetables, fruit, and the like, and to cause suitable houses or other buildings to be built and erected for the convenience of persons attending such market or markets and to cause the same to be kept in good and sufficient repair; and also to enforce such municipal regulations as shall be made and recover such fines as shall be imposed thereby for ensuring order and cleanliness on the part of the persons attending such market. Markets, establishment of.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1836.

Common pasture lands, protection of.

39. (1) And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to enforce all municipal regulations which shall be made for the due and proper care of the common pasture lands the property of any municipality, and which regulations shall specify and regulate the quantity of cattle which each inhabitant shall be allowed to keep and depasture on the said common lands, and of what kinds; and also to recover fines which shall be imposed by the said regulations on any person contravening the same: Provided, always, that the said commissioners shall not be authorised or permitted to dispose of, alienate, (1) build upon, inclose, or cultivate any such common pasture lands, nor suffer any other person to build upon, inclose, or cultivate the same; and any such alienation by sale, gift, or otherwise shall be and is hereby declared to be null and void.

Miscellaneous regulations.

40. And be it further enacted that it shall and may be lawful for the said commissioners and they are hereby authorised to enforce all such regulations as aforesaid which shall be framed relative to the assizing and examining of weights and measures, the time when and the places where cattle may be slaughtered or driven to be slaughtered, and the state and condition of the slaughter-houses, the registration, rates of charge, and conduct of coolies, the registration and improper driving or loading of carts and carriages, the undue obstruction of the streets by carriages, repairing of houses or otherwise, the confining or killing of dogs, and to recover all fines imposed by the said regulations for contravening the same.

Municipal property, protection of

41. And be it further enacted that if any person shall wilfully break, throw down, spoil, or damage any watch-house or watch-box, or lamp, lamp-iron, lamp-post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any such lamp, or shall break, spoil, or damage any building the property in which is by the provisions of this Ordinance vested in the said commissioners, or shall wilfully break or damage any public watercourse, bridge, sluice, dam, reservoir, pump, well, fountain, drain, or ditch, or shall wilfully waste any public water within the limits of any municipality, it shall be lawful for any person or persons who shall see the offence committed to apprehend and also for any other person or persons to assist in apprehending the offender or offenders, and by the authority of this Ordinance and without any warrant to deliver him, her, or them to any constable, who is to keep him, her, or them in safe custody, and with all reasonable dispatch to convey him, her, or them before the Resident Magistrate of the district within which any such offence shall have been committed or any Justice of the Peace

[1] See however Ord. 8, 1848, § 2.

Digitised by the University of Pretoria, Library Services, 2016

having jurisdiction; and if the party accused shall be convicted of any such offence by such Resident Magistrate, he, she, or they shall forfeit severally any sum not exceeding two pounds for every such offence, and shall also make full satisfaction for the damage which shall have been done thereby.

Nuisances, protection against.

42. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby authorised to remove, put down, and abate all nuisances of a public nature within any such municipality as aforesaid, and which may tend either to injure the health, destroy the comfort, or in any way affect the rights of the inhabitants at large, and if need be to proceed at law against any person or persons so committing any such nuisance for the abatement thereof and for damages; and further that the said commissioners shall and they are hereby required to cause all streets, watercourses, drains, roads, and places within any such municipality to be kept clean and free from dirt or rubbish; and any person convicted upon the complaint made by the said commissioners of throwing dirt or rubbish into any such street, road, watercourse, drain, or place as aforesaid shall forfeit and pay any sum of money not exceeding two pounds; and such forfeiture shall be paid into the Colonial Treasury.

Streets, &c., cleansing of.

Contracts, power to enter into.

43. (1) And be it further enacted that it shall and may be lawful to and for the said commissioners, acting in pursuance of any such regulations as aforesaid, from time to time to 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 said commissioners for the purposes of this Ordinance; 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, and shall be signed by two or more of the said commissioners 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; but no contract above the value of ten pounds shall be entered into unless eight days' notice be previously given and affixed to some conspicuous place within the municipality 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 said commissioners at a certain time and place in such notice to be mentioned: Provided, always, that if the said commissioners shall be of opinion that it will not be advantageous to contract with the person offering the lowest price it shall be lawful for the said commissioners to contract with such other person or persons as they shall think proper.

44. [Repealed by Ord. 5, 1852.]

[1] See Act 13, 1864, § 9.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1836.

Property of lands, &c., in whom vested.

45. And be it further enacted that the property of and in all lands, streets, roads, and buildings to which the inhabitants of any municipality shall at any time have or acquire a common right shall be vested in the commissioners of such municipality for the time being.

Property of lamps, &c., in whom vested.

46. And be it further enacted that the property of and in all the lamps, lamp-irons, lamp-posts, watch-houses, watch-boxes, bridges, sluices, dams, pumps, wells, fountains, sewers, drains, watercourses, market-houses, pipes, posts, chains, pales, and rails, in, about, or belonging to the said streets and places within the limits of the respective municipalities, and of and in all the iron, timber, stone, bricks, and other materials and furniture and things of, in, and belonging thereto (except when the same shall be otherwise regulated by contract with the said commissioners) shall be vested in the said commissioners, and may be sold and disposed of by them from time to time as they shall be permitted or required to do in pursuance of any such regulations as aforesaid;

Criminal actions for protection of.

and the said commissioners are hereby authorised and empowered to bring or cause to be brought any criminal action in manner as hereinbefore is 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 hereby vested in the said commissioners, subject, however, to the provisions of the Ordinances Nos. 40 and 73, or of any Law or Ordinance which may hereafter be created or then be in force in that behalf; and in all such actions 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 shall be brought is the property of the commissioners, without particularly stating or specifying the name or names of all or any of the commissioners.

Offences, before whom to be prosecuted.

47. And be it further enacted that all offences committed in contravention of this Ordinance or of any municipal regulation may lawfully be prosecuted in the Court of the Resident Magistrate for the district within which the same shall have been committed; and if any person shall be duly convicted of any such offence and shall not pay or satisfy the amount of the fine imposed upon him it shall be lawful for the Resident Magistrate before whom the case was tried to sentence such offender to any period

Fines.

of imprisonment not exceeding three months; and the amount of all such fines then recovered shall be paid into the Colonial Treasury (1): Provided, always, that it shall be lawful for the Governor of this Colony in each particular case to determine, award, and direct what share if any of the amount of any fine imposed in respect of any conviction for any such offence as aforesaid shall be paid to any person who may have given information concerning the same.

[1] Into Treasury of Municipality, Act 13, 1864, § 15.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1886.

48. *And be it further enacted that every person who is the occupier of any dwelling-house either as proprietor or renter of the yearly value or rent of not less than ten pounds sterling shall be and be deemed and taken to be a resident householder within the meaning of this Ordinance; and that at the several meetings of such resident householders as aforesaid hereinbefore appointed or authorised to be holden every such householder who shall be personally present shall have and be entitled to one vote and no more.* (1)

Householders, who to be considered.

Votes of householders.

Meeting of householders, chairman of.

49. And be it further enacted that, unless where provision has been hereinbefore made to the contrary at any of the meetings hereinbefore mentioned and appointed or authorised to be holden, such person as may be elected by the majority of persons present entitled to vote shall preside as chairman and shall have and be entitled to a casting vote, and shall determine in the first instance upon the qualification or right of voting of any person claiming to vote and eligibility of any candidate proposed at any such meeting: Provided, always that no person shall be deemed competent to vote at any meeting appointed or authorised to be held under the provisions of this Ordinance who shall fail to produce (whenever required thereto by the chairman at any such meeting) proof of the payment of his or her taxes due and payable for the year last past.

Qualification for votes at.

Saving of rights.

50. And be it further enacted that nothing herein contained shall extend or be construed to extend to injure or impair the rights which any person or persons may have in, to, or in respect of any of the matters aforesaid; and in every case in which any such commissioners as aforesaid shall commit any act under and by virtue of this Ordinance or of any municipal regulation by which the right of any person or persons is injured or impaired, such commissioners shall be liable to make compensation to such person or persons for the same: Provided, always, that nothing herein contained shall be deemed, construed, or taken to extend to render the said commissioners personally or any of their goods and chattels (other than such as may be invested in them in pursuance of this Ordinance) liable to the payment of any sum of money as or by way of compensation or satisfaction in the cases in which such compensation or satisfaction is hereby directed to be made by the said commissioners.

Liabilities of commissioners.

Expenses how to be provided.

51. And be it further enacted that all the necessary costs, charges, and expenses attending the carrying the provisions of this Ordinance into effect shall be paid out of the money authorised to be received by the commissioners under the provisions of this Ordinance.

Witnesses, competency of householders to be.

52. And be it further enacted that no inhabitant of any municipality shall on that account be deemed an incompetent witness in any action, suit, or information, complaint, appeal, prosecution, or

[1] See § 7, Act 13, 1864.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1836.

proceedings to be had, made, prosecuted, or carried on under the authority of this Ordinance.

Cape Town, ordinance not to extend to.

53. And be it further enacted that nothing herein contained shall extend or be construed to extend to Cape Town and the district thereof.

No. 10.] [August 29, 1836.

Ordinance to indemnify the Governor of the Colony and all persons acting under his authority against certain acts done during the existence of Martial Law in certain parts of the Colony. [Lapsed.]

No. 11.] [Sept. 29, 1836.

Ordinance for rendering valid acts done and duties performed by persons appointed to act as and for certain Magistrates, and to empower the Governor to appoint Assistant Magistrates.

[Repealed by Act No. 20, 1856, except in as far as it enacts that certain acts done previously to its passing shall be legal, valid, and effectual.]

No. 12.] [Dec. 15, 1836.

Ordinance for altering and amending the Laws and Regulations relating to Medical Practitioners, Apothecaries, Chemists, and Druggists in this Colony. (1)

[This Ordinance not having been confirmed by the Home Government within three years of its enactment ceased to have legal effect.]

No. 13.] [Dec. 15, 1836.

Ordinance for applying a sum not exceeding £128,628 15s. 5⅞d. to the service of the year 1837. [Spent.]

No. 14.] [Dec. 31, 1836.

Ordinance for abating the Nuisance occasioned by Dogs roaming at large in and about Cape Town. (2) [Obsolete.]

No. 1.] [Feb. 6, 1837.

Ordinance for erecting certain Resident Magistrates' Courts within the Eastern Division of this Colony, and for defining the Jurisdiction thereof.

[Repealed by Act No. 20, 1856.]

---

[1] See Act 34, 1891.
[2] See Act 26, 1893, § 170, sub-§ 18.

Digitised by the University of Pretoria, Library Services, 2016

No. 2.—Sd. B. D'Urban.] [June 21, 1837.

Ordinance for the more effectual prevention of Crimes against Life and Property within the Colony. (1)

Death while enforcing arrest justifiable.

WHEREAS it is expedient to make further provision for the prevention of crime against life and property in this Colony: Be it therefore enacted and declared by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that where any officer of the law, or private person who, by the provisions of the Ordinance No. 73, entitled "An Ordinance of His Excellency the Governor in Council for explaining, altering, and amending the Ordinance No. 40," and bearing date the fifteenth day of April, one thousand eight hundred and thirty, is authorised and required to arrest, or assist in arresting, any person who has committed, or is on reasonable grounds suspected to have committed, any murder, culpable homicide, rape, robbery, or assault with intent to commit any of those crimes, or in which a dangerous wound is given, arson, housebreaking with intent to commit any crime, or theft of any cattle, sheep, or goat, or any other crime of equal degree of guilt with any of the crimes aforesaid, (2) shall attempt to make such arrest, and the person so attempted to be arrested shall fly or resist, and cannot be apprehended and prevented from escaping by other means than by such officer or private person killing the person so flying or resisting, such homicide shall be deemed in law to be justifiable homicide.

Property, recovery of beyond boundary.

2. And whereas certain treaties have been entered into between Andries Stockenstrom, Esquire, Lieutenant-Governor of the Eastern Division of the Colony of the Cape of Good Hope, on the part of His Britannic Majesty, and the Kafir chiefs of the tribes of T'Slambie, the Kafir chiefs of the tribe of Gaika, the Kafir chiefs of the tribe of Congo, the Fingo chiefs Umklambiso and Iokwani, and the Tambookie chief Mapassa, in which treaties certain regulations and provisions have been agreed upon and made, as to the way and manner of recovering, and as to the particular means to be adopted for the recovery within the territory occupied by any such chiefs, or their tribes respectively, of property, which shall have been stolen, and shall not have been retaken or recovered within the Colony, and shall have been traced into any such territory: And whereas it is expedient to provide in the most effectual manner, for the enforcement of such regulations and provisions: Be it enacted, that any person, who shall pass out of the Colony over the boundary between the Colony, and any such territory as aforesaid, for the purpose, or with the intent, of recovering any such property so stolen, and not retaken or recovered, and

[1] See Ordinance No. 40, 1828, and notes.
[2] See note to § 14, Ord. 73.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1887.

so traced as aforesaid, except in the manner, and under, and in strict conformity with the regulations, conditions, and restrictions agreed upon, prescribed, made, and declared, in and by such treaties respectively, shall, on conviction, be subject to the payment of a fine not exceeding fifty pounds or to imprisonment for any time not exceeding six months.

Native tribes not to enter the Colony with arms.

3. And be it further enacted that it shall not be lawful for any Kafir, Gonaqua, Tambookie, Griqua, Boschjesman, Bechuana, Mantatee, Namaqua, or other natives of Africa not being natives of the Colony to cross from without to within the boundary line of the Colony armed with any assegaai, spear, battle-axe, fire-arms, or other weapon, or to be found in the Colony so armed; and all Justices of the Peace, Field-commandants, Field-cornets, and military officers are hereby authorised and required to prevent any such person as aforesaid so armed as aforesaid from entering the Colony; and to disarm or cause to be disarmed any such persons so found within the Colony; and in case such persons shall resist when an attempt is made to disarm them it shall be lawful to kill or disable them if they cannot be disarmed by other means: Provided always, that nothing herein contained shall be construed to prevent any such foreigner as aforesaid, actually in the service or employment of any inhabitant of the Colony from being armed in such manner as his employer may think proper.

Natives not to be without passes.

4. ([1]) And be it further enacted that if any such foreigner as aforesaid shall be found within the Colony without a pass, or if under contract without a written authority from his employer, on being required by any Justice of the Peace, Field-commandant, Field-cornet, Constable, or Landholder to show the same, or after receiving a pass for the purpose of procuring employment in the Colony, shall be discovered wandering without any certain occupation or honest means of livelihood, having received his pass as aforesaid, or having been absent from his last employer for a longer period than fourteen days, then in any and in each of such cases it shall be lawful for any Justice of the Peace, Field-commandant, or Field-cornet immediately to apprehend such person, and inquire summarily into the case, and for any constable or landholder immediately to apprehend and convey such person to the Resident Magistrate of the district or to any Justice of the Peace, Field-commandant, or Field-cornet, within the district, in which such person was so apprehended, who shall inquire summarily into the case; and if such foreigner be under contract of service, shall forthwith direct him to be returned to the service of his employer, or shall place such person, with his consent, in the employment of some creditable inhabitant under contract of service for twelve calendar months in the manner directed by the Ordinance No. 49, or shall otherwise cause him to be removed beyond the limits of the

[1] See Act 22 of 1867, §§ 3 and 8.

Digitised by the University of Pretoria, Library Services, 2016

Colony, resuming any pass that may be found in his possession, and notifying or causing to be noted such removal in the registry of the district wherein the pass was originally granted; and if any such foreigner as aforesaid so removed beyond the limits of the Colony shall return again and be found wandering within the same, such person shall on conviction thereof be sentenced to imprisonment with hard labour for any period not exceeding twelve calendar months. Ord. 2 1837.

5. And be it further enacted, that when any officer of the law, or private person who in virtue of the provisions of this Ordinance is authorised and required to arrest or remove, or to assist in arresting or removing, any such foreigner as aforesaid, shall attempt to make such arrest or removal, and such foreigner so attempted to be arrested or removed shall resist, it shall be lawful for such officer or person if such arrest or removal cannot be effected by other means to kill or disable such foreigner so resisting as aforesaid. Arrest of Natives.

6. And be it further enacted that if any body of such armed foreigners as aforesaid, consisting of three or more, shall enter the Colony under any pretext whatever, they shall be deemed and taken to be enemies, and it shall be lawful for any person to repel them by force of arms. Armed Natives entering the Colony in numbers to be deemed enemies.

7. And be it further enacted, that every male inhabitant between the ages of sixteen and sixty, who shall be called upon by any officer of the law to assist in carrying into effect any of the provisions of this Ordinance, or of the said Ordinance No. 73, which it is the duty of any such officer to carry or cause to be carried into effect, and who shall, without sufficient excuse, refuse so to do, shall on conviction thereof be liable to a fine of not less than one pound nor exceeding twenty pounds or to imprisonment for any period not exceeding three months. All persons to aid officers of law.

No. 3.] [June 28, 1837.

Ordinance for altering the Ordinance No. 105, entituled "Ordinance of His Excellency the Governor in Council for providing for the due Administration and Management of the Estates and Property of Minors, Lunatics, and Persons absent from the Colony, and for the proper care of the Persons of Minors and Lunatics," and dated the 5th day of July, 1833.

[Repealed by Act No. 1, 1874.]

No. 4.] [August 28, 1837.

Ordinance for the better Observance of the Lord's Day in this Colony.

[Repealed by Ordinance No. 1, 1838.]

Digitised by the University of Pretoria, Library Services, 2016

No. 5.—Sd. B. D'Urban.] [August 23, 1837.

Ordinance for appointing Assistant Field-cornets within the Colony. (1)

WHEREAS within certain Field-cornetcies the duties of the Field-cornets are very burthensome, and it is expedient that persons should be appointed to assist them in performing the duties of their office: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the passing of this Ordinance it shall be lawful for the Governor and Lieutenant-Governor, and they are hereby authorised to appoint within the Western and Eastern Divisions of the Colony respectively, from time to time as occasion may require, such persons to be called assistant Field-cornets as they may see fit, to aid and assist Field-cornets in the execution of the duties of their office; and the said persons to remove from such office whenever they shall see cause.

2. And be it enacted, that it shall be lawful for the said assistant Field-cornets, acting in assistance of and subject to the directions of their respective Field-cornets, and they are hereby required, to do and perform all such matters and things as their respective Field-cornets might do and perform in the execution of the duties of their office. And the said assistant Field-cornets shall so long as they continue in office be entitled to all such exemptions and immunities as are now enjoyed by Field-cornets.

No. 6—Sd. B. D'Urban.] [August 23, 1837.

Ordinance to Authorise the Governor of the Colony, by and with the advice of the Executive Council, to establish Markets and provide Regulations for the same in Villages or other places not being Municipalities (2)

WHEREAS it is expedient to establish markets in certain villages and other places convenient for holding the same in which resident householders are not sufficiently numerous to form municipalities, and to frame regulations for the same: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the passing of this Ordinance it shall be lawful for the Governor of the Colony, by and with the advice of the Executive Council, by any proclamation to be published in the *Government Gazette*, in that behalf from time to time as occasion may require to establish a market at any village or place not being a municipality as he

[1] See Ordinance No. 9, 1848.
[2] See Ordinance No. 20, 1847.

Digitised by the University of Pretoria, Library Services, 2016

shall deem expedient, and to provide all necessary regulations for the same, and such regulations to alter and the said markets to abolish when and so often as he shall deem expedient: Provided, always, that the tariff of dues to be taken at any such market shall not exceed the highest tariff of market dues taken in any municipality. Ord. 7 1837.

No. 7.—Sd. B. D'Urban.] [September 6, 1837.

Ordinance for declaring at what stage of the Procedure Criminal Actions and Suits shall be deemed to be pending in the Supreme Court and Circuit Courts of the Colony. ([1])

WHEREAS doubts may be entertained at what stage of the procedure criminal actions or suits brought in the Supreme Court or Circuit Courts of this Colony, shall in law be deemed and taken to be pending therein; and it is expedient to remove such doubts: Be it therefore enacted and declared, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that whenever, and as soon as the indictment or information in any criminal action or suit which may and shall be brought in the Supreme Court or any Circuit Court of the Colony, shall have been duly filed with the Registrar of such Court, such action or suit shall become and be deemed and taken to be pending in such Court. Preamble. When action deemed to be pending.

No. 8.] [Nov. 8, 1837.

Ordinance for releasing certain Property bequeathed to Esther Andrietta Constantia de Roos, from the entail of Fidei Commis.

[Private. Does not require re-publication.]

No. 9.] [Nov. 8, 1837.

Ordinance for altering and amending the Ordinance entituled "An Ordinance for altering and amending the Ordinances entitled respectively 'Ordinance of His Honour the Lieutenant-Governor in Council, for the Better Regulation of the Post Office in the Colony of the Cape of Good Hope,' dated the 9th day of October, 1826,—an Ordinance of His Excellency the Governor in Council, for altering and amending the Ordinance No. 25, entitled 'An Ordinance for the better Regulation of the Post Office in the

[1] See Ordinance No. 40, 1828, and notes.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1837. Colony of the Cape of Good Hope,' dated the 9th day of February, 1829," bearing date the 11th day of June, 1834.

[Repealed in the repeal of Ordinances No. 25, No. 56, and No. 3, 1834, by Ordinance No. 1, 1846.]

No. 10.] [Nov. 29, 1837.

Ordinance for limiting the Duration of the Powers granted by the Ordinance No. 6 of 1836, entituled "Ordinance for incorporating and establishing the South African Association for the Administration and Settlement of Estates," and dated the 27th day of June, 1836, to the said Association.

[Repealed by Act No. 9, 1855.]

No. 11.] [Dec. 21, 1837.

Ordinance for establishing, regulating, and providing for the South African College.

[Repealed by Act No. 15, 1878.]

No. 12.] [Dec. 21, 1837.

Ordinance for continuing the Toll at Kaayman's Gat, until the First day of February, 1840.

[Expired.]

No. 13.] [Dec. 28, 1837.

Ordinance for applying a Sum not exceeding £144,038 7s. 2d. to the Service of the Year 1838.

[Spent.]

No. 1—Sd. G. Napier.] [March 22, 1838.

Ordinance for repealing the Ordinance entituled "An Ordinance for the better Observance of the Lord's Day in this Colony," and dated the 23rd day of August, 1837, and for making other provisions instead thereof. (1)

Preamble. WHEREAS it is expedient to repeal the Ordinance No. 4 of 1837, entituled "An Ordinance for the better Observance of the Lord's Day in this Colony," and dated the 23rd day of August, 1837,

---

1 Amended by Act 35, 1888.

The first Sunday Law, A.D. 321.—On the venerable day of the Sun let the Magistrates and people residing in cities rest, and let all workshops be closed. In the country, however, persons engaged in agriculture may freely and lawfully continue their pursuits, because it often happens that another day is not so suitable for grain sowing or vine planting; lest by neglecting the proper moment for such operations the bounty of heaven be lost. Given the 7th day of March, Crispus and Constantine being Consuls, each of them for the second time. (Schaff's Church History, Vol. 3.)

Digitised by the University of Pretoria, Library Services, 2016

No. 1—1838.

and to make other provisions for the better observance of the Lord's Day in this Colony instead thereof: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council, that from and after the passing of this Ordinance the said Ordinance No. 4 of 1837, shall be and the same is hereby repealed.

Dealings forbidden on the Lord's day.

2. And be it enacted that from and after the passing of this Ordinance it shall not be lawful for any person to sell or offer for sale any goods, merchandize, cattle, or other live-stock, or to trade or deal or keep open any shop, store, or other place for the purpose of trade or dealing; or to cut or carry any fuel or to engage in field labour, except for the preservation of the fruits of the earth in cases of urgent necessity, or (except upon some lawful occasion) to discharge any gun or other fire-arm on the Lord's Day. And any person who shall sell or offer for sale any goods, merchandize, cattle, or other live-stock, or shall trade or deal or keep open any shop, store, or other place for the purpose of trade or dealing, or shall cut or carry any fuel, or shall engage in any field labour except as aforesaid, or shall discharge any gun or other fire-arm, except as aforesaid, on the Lord's Day, shall for each offence incur and be liable to a fine not exceeding three pounds nor less than five shillings, or to imprisonment for any period not exceeding fourteen days. And it shall be lawful for any constable or police officer to seize any such goods, merchandize, cattle, or live-stock, or any fuel or fire-arm as aforesaid; and the same shall on the conviction of the offender be and become forfeited to Her Majesty.

Dealings permitted on the Lord's day.

3. Provided always and be it enacted that it shall be lawful for any apothecary, chemist, or druggist to vend any medicines or drugs, and to keep open his shop, store, or other place for the purpose of vending the same on any part of the Lord's Day. And provided, also, that it shall be lawful for any licensed inn-keeper or eating-house-keeper to keep open any inn or eating-house and to supply any person who is a traveller or lodger at such inn or eating-house with the necessary provisions on any part of the Lord's Day. And provided, also, that it shall be lawful for any butcher (1) or baker respectively to vend meat and bread and to keep open any shop, store, or other place for the purpose of vending the same on the Lord's Day at any time before nine o'clock in the morning; and for any dairyman or fishmonger respectively to vend milk and fish and to keep open any shop, store, or other place for the purpose of vending the same on the Lord's Day at any time before nine o'clock in the morning and after four o'clock in the afternoon.

Naval and military supplies.

4. And be it enacted that nothing herein contained shall extend to prevent any contractor from supplying on the Lord's Day Her Majesty's naval or military forces with any article specified in his

(1) Sale of meat prohibited under certain circumstances.—See Act 35, 1883.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 1—1838.

Ship supplies.

contract; nor to prevent any ship-chandler from supplying any ship with anchors, cables, or anything which they may stand in need of in cases of necessity.

Markets on Lord's day prohibited.

5. And be it enacted that no market shall be held nor shall any goods, merchandize, cattle, or other live-stock be allowed to be sold or offered therein for sale on the Lord's Day. And any market master or other person in charge of any market who shall knowingly permit any market to be held or shall wilfully suffer any goods, merchandize, cattle, or other live-stock to be sold or offered for sale in any such market upon the Lord's Day shall for each offence incur and be liable to a fine not exceeding three pounds nor less than five shillings, or to imprisonment for any period not exceeding fourteen days.

Amusements prohibited on Lord's day.

6. And be it enacted that the owner or occupier of any public billiard room, skittle-ground, or other public place of amusement who shall permit or suffer any one to play in his house or premises at any game on the Lord's Day shall incur and be liable to a fine not exceeding ten pounds nor less than five shillings, or to imprisonment for any period not exceeding one month. And it shall be lawful for any Resident Magistrate, Justice of the Peace, field-cornet, or police officer to disperse all persons gathering together on the Lord's Day in any public or open place for the purpose of gambling, fighting dogs or cocks, or playing at any game; and to take and seize any implements, instruments, or animals used therein, and to destroy or carry away the same. And all persons actually gambling, fighting dogs or cocks, or playing as aforesaid he shall arrest or cause to be arrested; and the said person shall on conviction thereof be sentenced to a fine not exceeding three pounds nor less than five shillings, or to imprisonment with or without hard labour for any period not exceeding fourteen days.

Offences, before whom to be tried.

7. And be it enacted that all offences against this Ordinance shall be cognizable by the Court of the Resident Magistrate of the district or place in which such offences shall be committed; and by the Resident Justice of the Peace of Simon's Town if committed within his jurisdiction; and that it shall and may be lawful for the said Governor in each particular case to determine, award, and direct what share if any of the amount of any fine or forfeiture recovered in respect of any conviction for any such offence as aforesaid shall be paid to any person who may have given information concerning the same.

Fines, application of.

Sections of police ordinance repealed.

8. And be it enacted that the fourteenth, fifteenth, and sixteenth sections of the Ordinance No. 48, ([1]) entituled "Ordinance of His Honour the Lieutenant-Governor in Council for establishing an Executive Police in Cape Town and the district thereof, and for consolidating and amending the laws and regulations relating thereto," and dated the 3rd day of July, 1828, shall be and the same are hereby repealed.

[1] This Ordinance was repealed by Ord. 2, 1840.

Digitised by the University of Pretoria, Library Services, 2016

No. 2.—Sd. George Napier.] [Sept. 26, 1838.

Ordinance for Regulating the Sale of Bread. (1)

WHEREAS it is expedient that bread should be sold by weight within this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the fifteenth day of October next it shall not be lawful for any baker or vendor of bread to sell any bread other than French or fancy bread and rolls except by weight; any law or usage to the contrary notwithstanding. Bread to be sold by weight.

2. And be it enacted that all bread except French or fancy bread and rolls shall be stamped with figures denoting one or other of the following weights, to wit,—¼ lb., ½ lb., 1 lb., 2 lbs., and 4 lbs., and which said weights shall respectively be of the standard Dutch (2) weight of this Colony. And if any baker or vendor of bread shall sell any bread except as aforesaid which shall not weigh so much as the figures stamped thereon indicate he shall forfeit a sum not exceeding two pounds sterling for each offence. Weight to be stamped on bread.

3. And be it enacted that every baker or vendor of bread shall cause to be fixed in some conspicuous part of his shop on or near the counter a beam and scales with standard Dutch (2) weights or other sufficient balance, in order that all bread except as aforesaid there sold may from time to time be weighed in the presence of the purchasers thereof if they shall so require; and if any baker or vendor of bread shall neglect to fix such beam and scales or other sufficient balance in manner aforesaid, or to provide and keep for use a proper beam and scales and proper weights or balance, or shall use any false weight, or shall not weigh bread sold in his shop when required so to do by a purchaser, he shall forfeit a sum not exceeding five pounds sterling for each offence. Means of weighing to be provided.

4. And be it enacted that nothing herein contained shall extend or be construed to extend to the sale of bread supplied for the use of Her Majesty's naval or military service. Ordinance not to apply to navy or army.

No. 3.] [Sept. 29, 1838.

Ordinance for fixing the Termination of certain Apprenticeships and for providing for the destitute Children of Apprenticed Labourers.

[Expired. As to destitute children, *vide* Act No. 15, 1856.]

No. 1.] [Jan. 23, 1839.

Ordinance for erecting certain Resident Magistrates' Courts within the Western Division of this Colony and for defining the Jurisdiction thereof.

[Repealed by Act No. 20, 1856.]

---

1 See Ordinance No. 1[illegible], 1846, and § 145, Act 26, 1893.
2 Dutch weights abolished by Act 11 of 1858.

Digitised by the University of Pretoria, Library Services, 2016

No. 2.—Sd. George Napier.] [January 23, 1839.

Ordinance for authorising the appointment of a Vestry and Churchwardens for St. George's Church, Graham's Town.

Preamble. WHEREAS it is expedient that the inhabitants of Graham's Town and the parochial limits thereof being members of and holding communion with the United Church of England and Ireland as by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with the church of Graham's Town commonly called St. George's Church, and that the said vestry and churchwardens after having been duly appointed should possess certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said United Church of England and Ireland: And whereas on the appointment of the said vestry and churchwardens it is expedient that the office of church committee as at present constituted should cease and determine:

Vestry, appointment of. 1. Now, therefore, be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that on the first Tuesday in March after the passing of this Ordinance and annually afterwards on the same day a general meeting of the male inhabitants of Graham's Town aforesaid and of the parochial limits thereof being members of and holding communion with the United Church of England and Ireland as by law established shall be holden in Graham's Town, notice whereof shall be given by the minister of the said church for the time being by advertisement in one of the public papers of this Colony at least fourteen days before the said meeting is to be holden, for the purpose of electing a vestry; and it shall and may be lawful for the inhabitants as aforesaid or the greater part assembled at such meeting to elect from among themselves any number of persons not exceeding eight, in manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereinafter mentioned.

Auditors. 2. And be it further enacted that two other persons not being members of the said vestry shall likewise be elected to be auditors of the accounts of the said vestry.

Qualification of vestrymen. 3. And be it further enacted that every male inhabitant householder being a member of and holding communion with the church aforesaid and resident in Graham's Town or within the parochial limits thereof shall be eligible to be a member of the said vestry.

Digitised by the University of Pretoria, Library Services, 2016

List of persons qualified.

4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing section shall be prepared by the officiating minister so long as there are no churchwardens appointed, and when churchwardens shall have been appointed as is hereinafter provided then by the minister and churchwardens conjointly, and shall be open for the inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place.

Voting, mode of.

5. And be it further enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitants as aforesaid respectively and containing the names of the persons for whom they vote to be elected as vestrymen and as auditors.

Chairman of vestry.

6. And be it further enacted that the officiating minister for the time being shall preside as chairman at the meetings of the said vestry, provided that in his absence from any such meeting one of the other members shall be chosen to act as chairman; and in case the votes of the said vestry be equally divided the chairman or acting chairman shall have a casting vote in addition to his own.

Quorum of vestry.

7. And be it enacted that five members of the said vestry or four members besides the chairman shall form a quorum and shall be competent to perform all matters and things which may be done by the vestry under and by virtue of any of the provisions of this Ordinance.

Powers of vestry as to rules, &c.

8. And be it further enacted that it shall and may be lawful for the said vestry so from time to time constituted and appointed to frame, adopt, alter, or rescind such rules, orders, and by-laws as may to them appear expedient for their guidance in the discharge of their duties, and for more effectually executing the provisions of this Ordinance, and also to take such order for the management of the said church as shall to them seem expedient, provided that the said rules, orders, or by-laws contain nothing repugnant to law or the tenor of this Ordinance or to the customs and usages of the United Church of England and Ireland as by law established.

Custody of papers, &c.

9. And be it enacted that the said church committee shall upon the appointment of the said vestry deliver over to the said vestry all deeds, books, and papers relating to the church in their custody or power and all sums of money in their possession or control, and the said church committee and the office and duties thereof shall thereupon cease and determine.

Powers of vestry as to church.

10. And be it enacted that the said vestry so from time to time constituted and elected by such members of the said church as aforesaid shall and may have and exercise all the same powers, and rights, and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof and all other matters and things relating to the same as are now possessed and exercised by the church com-

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1839.

mittee together with such other laws and rights and duties as are hereinafter specified.

Powers of vestry as to money and contracts.

11. And be it enacted that it shall and may be lawful for the said vestry for the time being to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to their order, and by virtue of any of the provisions of this Ordinance and in their own names to make and enter into, perform and execute, or compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for the good of the church aforesaid.

Actions by vestry.

12. And be it enacted that it shall and may be lawful for the said vestry as such from time to time to commence and maintain all such suits and actions in any competent Court in this Colony as they shall deem necessary in performance of the trust reposed in them against any person whatsoever, and all such suits and actions shall and may be brought by them in the name of the vestry of St. George's Church at Graham's Town, without specifying the christian or surnames of the members of the vestry, and no action shall abate by reason of the death or removal or going out of office of any individual members thereof.

Actions against vestry.

13. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or other matter or thing made or entered into or performed by the said vestry in the execution of the said trust, or shall arise or accrue to any person whatsoever against the said vestry, shall be brought by such person in manner and in name aforesaid, and not against any individual member of the said vestry.

Accounts of vestry.

14. And be it enacted that the said vestry shall keep an account wherein they shall enter money received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times. And the said account together with any report of the auditors or either of them thereon shall be laid before the members holding communion with the said church at the general annual meeting aforesaid and published if requisite for general information.

Churchwardens, appointment and duties of.

15. And be it enacted that the said vestry shall forthwith on their appointment or as soon after as conveniently may be choose out of their own number two persons to be churchwardens, who shall perform and execute all lawful acts and matters and things for the good order and decency of behaviour to be kept in the said church by the congregation thereof, and for preserving to all persons their rights in the pews and sittings thereof, and for providing the said church (by order and at the charges of the said vestry) with necessary and customary furniture for the performance of divine service, and for keeping the same clean and in proper repair, and for keeping the burial-ground attached to the said church in decent order and properly fenced, and for discharging all other

Digitised by the University of Pretoria, Library Services, 2016

duties which usually devolve on churchwardens in the United Church of England and Ireland so far as the same may be applicable to this Colony. Ord. 2—1859.

16. And be it further enacted that the said churchwardens shall keep an exact account of all collections of money made from time to time in the said church for any charitable or religious purposes connected with the said church and congregation; and the said churchwardens together with the officiating minister for the time being shall faithfully administer the same or see that they be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same. And the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations as the general church fund and accounts of the vestry. Accounts of churchwardens.

17. And be it enacted that the churchwardens appointed as above shall continue in office until after the next general annual election of the vestry is completed, when they shall deliver up to the said vestry all accounts of such charities as aforesaid duly audited, together with all vouchers, sums of money, or securities held by them in virtue of their office; and the vestry shall then proceed to nominate other churchwardens for the ensuing year: Provided, always, that the churchwardens thus vacating office shall be re-eligible in case they are continued as members of the vestry. Tenure of office by churchwardens.

18. And be it further enacted that in case any member of the vestry shall die, or desire to resign, or shall be removed, or for any other lawful cause shall vacate his office it shall and may be lawful for the surviving or other members of the said vestry to decide whether a special general meeting shall be called for the purpose of electing another member in the place of the one so dying, or desiring to resign, or being removed, or whether his place shall remain vacant until the next general annual meeting to be holden as aforesaid: Provided, always, that in case the members of the said vestry decide that a special general meeting shall be holden for the purpose aforesaid the same notice shall be given thereof and the same proceedings shall be observed thereat as in case of the general annual meeting is provided. Vacancies in vestry.

19. And be it enacted that there shall be set apart in the said church and allotted to the chief civil and military authorities resident at Graham's Town and to the minister of the said church respectively a pew sufficient to contain eight persons, and likewise for the use of the officers of the garrison pews sufficient for sixteen persons; and there shall likewise be reserved in some convenient part of the church an adequate number of free sittings for the use of the troops and the accommodation of poor people. Free sittings.

20. And be it further enacted that all the pews and sittings in the said church, with the exception of those allotted and reserved Sittings to let.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1839.

as aforesaid, shall and may be let by the vestry by the year or for any shorter period to any person desiring to take the same at a rent to be affixed to them respectively by the vestry, and payable at such times and in such manner as shall be appointed by the vestry; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hindrance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable: Provided, always, that nothing in this section shall be construed to interfere with any persons at present holding free sittings on the ground of office.

Non-payment of rent.

21. And be it enacted that it shall and may be lawful for the vestry whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same is due and payable, to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said vestry to re-enter into the possession of the said pew for the purposes of this Ordinance, without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive from recovering the amount of such rent in arrear by action in any competent Court.

Burial-places.

22. And be it further enacted that no burial shall take place within or under the said church, but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground unconsecrated and allotted or which may hereafter be consecrated and allotted to the said church for that purpose.

Monuments and vaults, erection of.

23. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monument to be erected or placed in such convenient parts of the said church or of the enclosed ground about the same, or in the burial-ground belonging thereto, or vaults to be dug and made in the said burial-ground, upon payment to the fund of the said church for such permission of such reasonable fee as shall be affixed by the said vestry for such permission according to the terms thereof.

Monuments and vaults, maintenance of.

24. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or digging or making any vault in the said burial-ground by and with such permission as aforesaid to have, maintain and keep up such monument or vault according to the terms of such permission, to and for the sole and separate use of the said person or persons and his or their heirs for ever: Provided, always, that in case any such monument as aforesaid is suffered to fall into decay, and the person or persons to whom the said monument appertains neglects to repair the same it shall and may be lawful after a general notice of such intention to remove the same.

Digitised by the University of Pretoria, Library Services, 2016

25 And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance and shall be judicially taken notice of by all Judges, Magistrates, and others without being specially pleaded. Ord. 2—1839. Public ordinance.

MARRIAGE ORDER IN COUNCIL IN FORCE IN THIS COLONY FROM THE 1ST FEBRUARY, 1839. (1)

At the Court at Windsor, the 7th Day of September, 1838.

PRESENT:

The QUEEN'S Most Excellent Majesty.

The Lord Chancellor.	The Viscount Palmerston.
Earl of Albemarle.	Viscount Melbourne.
Viscount Falkland.	Lord Glenelg.

WHEREAS since the abolition of slavery throughout the British colonies, plantations, and possessions abroad the marriage laws of the said colonies, plantations, and possessions have been found inappropriate to the altered condition thereof and inadequate to the increased desire for lawful matrimony therein: And whereas it is expedient and necessary to amend the said marriage laws and to adapt the same to the altered state and condition of society in the said colonies, plantations and possessions:—

2. It is therefore hereby ordered by the Queen's Most Excellent Majesty, by and with the advice of her Privy Council, that from and after the taking effect of this Order it shall be lawful for any minister of the Christian religion, ordained or otherwise set apart to the ministry of the Christian religion, according to the usage of the persuasion to which he may belong, to publish within the colonies of British Guiana, Trinidad, St. Lucia, the Cape of Good Hope, and Mauritius, or any of them, banns of marriage between persons desirous of being joined together in matrimony, and such publication shall be made in an audible manner some time during public divine service on a Sunday in the face of the congregation before whom such minister shall officiate in the parish in which both or one of the parties to be married shall dwell, and shall contain the Christian and other name and surname and place of abode of each of the said parties, and shall be so published by some such minister for three Sundays preceding the solemnization of the marriage during the morning service if there be service in the morning, or if there shall be no morning service then during the evening service. Banns, publication of, before marriages.

3. And if the parties to be married shall dwell in different parishes the banns shall be published in like manner in both such parishes; and if the said parties shall be of different persuasions Publication of banns in different parishes and churches

[1] See Order in Council 20th Feb., 1839; 3rd April, 1840; Ord. 4, 1848; Acts 12, 1856; 16, 1860; 9, 1882; 13, 1857; 21, 1875; 40, 1892.

Digitised by the University of Pretoria, Library Services, 2016

Order in Council, 7th Sept., 1838.

the banns shall be published in like manner before each of the congregations to which the said parties may respectively belong, whether both the said congregations shall assemble in the same parish or not.

Publication of banns in extra-parochial places.

4. And where one or both of the parties shall dwell in any extra-parochial place, then if there be a congregation of the persuasion to which any such party shall belong assembling for public divine worship as aforesaid in such extra-parochial place the banns of the party or parties dwelling in such extra-parochial place shall be published in manner aforesaid in such extra-parochial place.

Publication of banns in extra-parochial places, continued.

5. And if there shall be no such congregation in such extra-parochial place then the banns of such of the parties to be married as shall dwell in such extra-parochial place shall be published in manner aforesaid in some parish next adjoining to such extra-parochial place.

Certificate of proclamation.

6. And in cases where the banns shall have been published in different places the officiating minister at either of the said places shall on the request of both or either of the parties whose banns shall have been published as aforesaid give to the party requiring the same a certificate of the banns having been duly published in the place of which he is an officiating minister, and on the production of such certificate to the officiating minister of the other place where the banns were published or of such certificates to any other such minister as aforesaid in the parish or extra-parochial place to which one of the parties shall belong it shall be lawful for such minister where the banns were published on receiving such certificate from such other minister where the banns were published, or for such minister as aforesaid to whom the certificates of such ministers of both places where the banns were published [shall be produced] on receipt of such certificate or certificates (as the case may be) to solemnize matrimony between the said parties according to such form and ceremony as shall be in use or be adopted by the persuasion to which the minister solemnizing such marriage shall belong.

Celebration of marriage.

Declaration by parties.

7. Provided that whenever the form and ceremony used shall be other than that of the United Church of England and Ireland (1) each of the parties shall in some part of the ceremony make the following declaration:

> "I do solemnly declare that I know not of any lawful impediment why I, A.B., may not be joined in matrimony to C.D., here present."

And each of the parties shall say to the other:

> "I call upon these persons here present to witness that I, A.B., do take C.D. to be my lawful wedded wife (or husband)."

Notice of names and abode of parties.

8. And it is hereby further ordered that no minister shall be obliged to publish banns between any person whomsoever unless

[1] See Order in Council, April 3. 1840.

Digitised by the University of Pretoria, Library Services, 2016

Order in Council, 7th Sept., 1888.

the persons to be married shall two days at least before the time required for the first publication of such banns respectively deliver or cause to be delivered to such minister a notice of their true Christian and other names and surnames, and a description of their place or respective places of abode in such parish or extra-parochial place as aforesaid, and of the time during which they have dwelt in such place or places.

Marriage to be within three months of publication of banns.

9. And that it shall not be lawful for any minister to solemnize any marriage after three calendar months from the last publication of banns of such marriage; and in all cases where three calendar months shall have elapsed without the marriage having been solemnized, the publication of such banns shall be void; and before the said parties can be married by banns it shall be necessary to republish the banns anew in manner and form aforesaid as if no banns had ever been published between them.

Marriage of minors.

10. And be it further enacted that no such minister as aforesaid who shall solemnize any marriage after due publication of banns as aforesaid between persons both or one of whom (not being a widow or widower) shall at the time of such marriage be under legal age, shall be answerable or responsible or liable to any pains penalty, or proceeding for having solemnized such marriage without the consent of the parents or guardians or other person (if any) whose consent is required by law, unless such parents or guardian, or other person or one of them shall forbid the marriage, and give notice thereof to such minister before he has solemnized the same; and in case such marriage shall be forbidden as aforesaid and such notice shall be given as aforesaid the publication of the banns for such marriage shall be absolutely void.

Special licences.

11. And it is hereby further ordered that where by any law in force or which may hereafter be in force in any of the Colonies to which this order applies by which licences [1] for marriage without the publication of banns may be granted or issued in any such Colony by the Governor thereof or any other civil authority therein, it shall be lawful for the parties intending marriage or either of them to require that such licence shall authorise the solemnization of the marriage in respect of which such licence is applied for in any place where and by any minister by whom such marriage could have been solemnized by virtue of this Act if banns thereof had been published as aforesaid.

Marriage officers, appointment of.

12. [2] And whereas it may happen that in some of the Colonies to which this order applies or in some parts thereof respectively there may not be any such minister as aforesaid or not a sufficient number of such ministers to afford convenient facilities for marriage, and it is expedient to provide for such cases, it is therefore further ordered that in every such case and whenever the same shall happen in any of the said Colonies it shall be lawful for the

[1] As to Special Licences see Act 9, 1882.
[2] See §§ 1, 3, and 4, Act 16, 1860.

Digitised by the University of Pretoria, Library Services, 2016

Order in Council, 7th Sept., 1838.

Governor of such Colony to appoint by writing under his hand and official seal one or more such fit and proper person or persons as he shall from time to time deem necessary or expedient, to be called the marriage officer, to solemnize marriages within such part or parts of the Colony in which such appointment shall be made as the Governor shall from time to time direct; and it shall be lawful for the Governor at any time and from time to time to revoke and cancel any such appointment or appointments, and to alter, vary, enlarge, or contract the district or districts in which any person so appointed shall have power or jurisdiction to celebrate marriage for any cause which to him shall seem meet; and every such appointment shall specify the part or district within which the person thereby appointed shall have power and jurisdiction to celebrate marriage.

Marriage before marriage officer.

13. And until some law shall be made, passed, allowed, and promulgated for regulating marriages by persons so appointed, it shall be lawful for the Governor and he is hereby required to direct, declare, and promulgate the manner by which the intention of parties to marry before any such marriage officer shall be made public.

Marriage of minors before officer.

14. Provided, always, that it shall not be lawful for any such marriage officer to solemnize marriage between persons one or both of whom shall be under lawful age (unless in the case of a widow or widower) after such marriage shall be forbidden, and notice thereof given to him by any person having lawful authority to forbid the same.

Declaration by spouses before officer.

15. Provided, always, that in every marriage before any such marriage officer not celebrated according to the form of the United Church of England and Ireland the parties shall in some part of the ceremony respectively make the declarations hereinbefore set forth as in the case of marriage by any such minister as aforesaid.

Marriage officer co-ordinate with ministers.

16. Provided, also, that every such minister as aforesaid may nevertheless publish banns and celebrate marriage under and by virtue of this order in any part or district within which any such marriage officer shall have power or jurisdiction to celebrate marriage as fully as if no such marriage officer had ever been appointed.

When consent of parents, &c., cannot be had, judicial consent may be given.

17. And whereas it may happen that the parents or parent, guardians or guardian, of one or both of the parties to be married may be *non compos mentis* or absent from the Colony or otherwise incapable in law or in fact of consenting or may be induced unreasonably and improperly to withhold his, her, or their consent to a proper marriage, or may be dead, it is therefore hereby ordered that in case any such parent or guardian whose consent is necessary to a marriage shall be *non compos mentis* or absent from the Colony or otherwise incapable as aforesaid of consenting or shall withhold his, her, or their consent to any marriage or in case there shall be no one capable of consenting, it shall be lawful for

Digitised by the University of Pretoria, Library Services, 2016

Order in Council, 7th Sept., 1838.

any person desirous of marriage, to whose marriage such consent is necessary but cannot be given or is withheld, to apply by petition to the chief civil judge or person officiating as such for the time being of the Colony, who is hereby empowered to proceed upon such petition in a summary way; and in case the marriage proposed shall upon examination appear to him to be proper the said chief civil judge or person officiating as such shall judicially declare by his order in writing that such marriage is proper and may be solemnized forthwith; and every marriage duly solemnized in pursuance or under the authority or direction of such order shall be as good, valid and effectual to all intents and purposes whatsoever as if such consent as aforesaid had been duly given thereto.

Matters not necessary to be proved in regard to a marriage duly solemnized.

18. And it is hereby further ordered that after the solemnization of any marriage under or by virtue of this Act it shall not be necessary in support of such marriage or in any action, suit, or proceeding when the same may come into question, to give any proof of the actual dwelling of the parties married or of either of them before the marriage or that the banns were published or that the marriage was solemnized in the place and by a person where and by whom the same ought to have been published and solemnized respectively, nor shall any evidence be received to prove the contrary.

Actions to compel marriage.

19. And it is hereby further ordered that in no case whatsoever shall any suit or proceeding be had in any Court or before any jurisdiction whatsoever to compel the celebration of any marriage by reason of any promise or marriage-contract entered into or by reason of seduction or of any cause whatsoever which shall arise after the taking effect of this order, any law or usage to the contrary notwithstanding.

Damages in default of marriage.

20. Provided, always, that nothing herein contained shall prevent any person aggrieved from suing for or recovering damages in any Court or by any proceeding wherein and whereby damages may be lawfully recovered for breach of promise of marriage or for seduction or other cause as aforesaid.

Hours for marriage.

21. And in order to preserve evidence of marriages and to make the proof thereof certain and easy and for the direction of such ministers and marriage officers as aforesaid in the registration thereof, it is hereby further ordered that from and after the passing and taking effect of this order all marriages (except marriages by special licence to marry at any time and place where such special licences can be lawfully granted) shall be solemnized with open doors between the hours of eight in the forenoon and four in the afternoon, in the presence of two or more credible witnesses beside the minister or marriage officer who shall solemnize the same; and that immediately after the solemnization of every marriage an entry thereof shall be made in a marriage-register book to be kept for that purpose by some such minister or marriage officer as

Register of marriages.

Digitised by the University of Pretoria, Library Services, 2016

Order in Council, 7th Sept., 1838.

aforesaid, or in some safe custody for the place in which marriages may be solemnized, and in every such entry in every such register it shall be expressed that the marriage was had by banns or licence; and if both or either of the parties married by licence be under age and not a widow or widower, that it was had with the consent of the parents or guardians, or other person or persons having lawful authority to withhold consent to the marriage, or after such order of the chief civil judge or other person officiating as such as aforesaid, and shall be signed by the minister or marriage officer as the case may be with his proper addition, and by the parties married, and shall be attested by such two witnesses; and every such entry shall be in the form or to the effect of the following specimen:

ORIGINAL REGISTER.

1838. Marriages solemnized at George Town, in the Parish of in the County of 1838.

No.	When married.	Names and Surnames.	Ages.	Condition.	Rank or Profession.	Residence at the time of marriage.	After Banns or Licence.	Consent, by whom given, or Judge's Order.
1	1st Aug. 1838.	John Williams. Lucy Chambers.	Full Age. Minor.	Bachelor. Spinster.	Carpenter.		After Banns.	Henry Chambers Father.

Married in the Wesleyan Chapel, at George Town aforesaid, after banns by me,

A.B., Wesleyan Minister.

This marriage was solemnized between

us, { John Williams, / Lucy Chambers, } In the presence of us, { C. D. / E. F.

and of every such entry, at the same time, before the parties depart shall then and there be made in a separate piece of paper, parchment, or vellum a duplicate original register, in which the same matter shall be entered and signed, and attested by the same parties in manner or to the effect of the following specimen:

Digitised by the University of Pretoria, Library Services, 2016

DUPLICATE ORIGINAL REGISTER.

Order in Council, 7th Sept., 1838.

1838. Marriages solemnized at George Town, in the Parish of in the County of 1838.

No.	When married.	Names and Surnames.	Ages.	Condition.	Rank or Profession.	Residence at the time of marriage.	After Banns or Licence.	Consent, by whom given, or Judge's Order.
1	1st Aug. 1838.	John Williams. Lucy Chambers.	Full Age. Minor.	Bachelor. Spinster.	Carpenter.		After Banns.	Henry Chambers Father.

Married in the Wesleyan Chapel, at George Town aforesaid, after banns, by me,

A.B., Wesleyan Minister.

This marriage was solemnized between

us, { John Williams, / Lucy Chambers, } In the presence of us, { C. D. / E. F.

Examined with the original register by me, and found to be correct.

A. B.

Which said duplicate original register shall be left in the hands of the minister or marriage officer by whom the marriage was solemnized; and every such duplicate original register shall within one calendar month from the date thereof be transmitted to the Colonial Secretary of the Colony, if there be one, and all such duplicates shall be filed and safely preserved by him in his office; and every such original register and also every copy thereof, certified under the hand of the minister or marriage officer who for the time being shall have the lawful custody of the original to be a true copy, and every such duplicate original register and also every copy thereof, certified under the hand of such Colonial Secretary to be a true copy, shall respectively be good evidence of the facts therein recorded in pursuance of this order in and before all Courts and proceedings whatsoever in which it shall be necessary to give evidence of the marriage to which the same shall relate.

22. And it is hereby further ordered that it shall be lawful for all persons at all reasonable times in the day (except Sundays) to search the original register-book and also the file of duplicate original registers, in the presence of the person for the time being

Searches in register.

Digitised by the University of Pretoria, Library Services, 2016

Order in Council, 7th Sept., 1838.

having the care of the same respectively or his deputy, and to have a true copy or true copies of any entries or entry therein or filed as aforesaid certified under the hand of the minister, marriage officer, or officer for the time being respectively having the custody of the original or duplicate original register as aforesaid (as the case may be), which true copies or copy such minister, marriage officer, or Colonial Secretary is hereby required to make and certify under his hand to be a true copy in the form of the duplicate original register, except that the same shall be headed "certified copy (or copies) of original (or duplicate original) marriage register" (as the case may be), and shall be dated on the day, month, and year when the same shall be delivered.

Fees payable.

23. ([1]) And it is hereby further ordered that in order to meet the expense and as a remuneration for the trouble occasioned by the performance of any duty under this order the following fees shall be demandable and payable before the performance of the duty to which the same respectively relate, that is to say:

For solemnizing and registering a marriage and transmitting the duplicate original to the Colonial Secretary, *four shillings*.

For every general search not directed to any particular entry, *four shillings*.

For every search for a particular entry, *two shillings*.

For every search for two or more particular entries, and not exceeding four entries, *one shilling* each.

For every search for any number of particular entries exceeding four, *four shillings*.

For every such certified copy as aforesaid, *two shillings*.

Customary fees to clergy.

24. ([1]) Provided, always, that nothing herein contained shall prevent any clergyman of the Established Church of England and Ireland from receiving for any duty performed by him under this order such fees or payments as have heretofore been customarily paid to such clergyman according to the rules of the said church for the performance of such duties respectively.

Marriages by clergy to be according to rubric.

25. Provided, always, that nothing in this order contained shall authorise or require any clergyman of the established church aforesaid to solemnize marriage in any other manner than is prescribed by the rubric.

Remuneration of marriage officers.

26. Provided, also, that it shall be lawful for the Governor to authorise such marriage officers as aforesaid to receive such further or other remuneration as he shall from time to time think the nature of their duties shall reasonably require.

Injury to marriage register.

27. And it is hereby further ordered that if any person shall unlawfully and maliciously erase, obliterate, or destroy, or cause or procure to be erased, obliterated, or destroyed, any such original register or duplicate original register as aforesaid, such person shall

[1] See Order in Council, 20th Feb., 1839.

Digitised by the University of Pretoria, Library Services, 2016

be deemed guilty of a misdemeanour, and on being duly convicted thereof shall be liable to be imprisoned in the common gaol in the jurisdiction in which he shall be tried and convicted thereof for any term not less than three nor exceeding twelve calendar months. Order in Council. 7th Sept., 1838.

28. And if any person shall unlawfully and wilfully forge or alter or falsely make or cause or procure or permit to be forged or altered or falsely made any such original register or duplicate original register or any certified copy thereof respectively, or shall knowingly and wilfully deliver, offer, alter, or put off any such forged, false, or altered copy, he shall be liable for such his offence on conviction thereof to be imprisoned in such gaol as aforesaid for any term not exceeding eighteen months nor less than six months. Falsification of register or certificate.

29. And it is hereby further ordered that it shall and may be lawful for the respective local Legislatures of the said Colonies of British Guiana, Trinidad, St. Lucia, Cape of Good Hope, and Mauritius, by any Ordinance to be by them for that purpose made, to provide for the better adaptation of this present order to the local circumstances of such Colonies respectively: Provided that such Ordinance be not in contradiction or repugnant to any of the provisions of this order, and that all such Ordinances be made, confirmed, or disallowed as the case may be in the manner and according to the rules provided by the law in reference to any other Ordinances of the said respective local Legislatures. Legislation colonies.

30. And whereas since the abolition of slavery in the British Colonies, plantations, and possessions abroad doubts have arisen and exist as to the validity of certain marriages contracted and solemnized previous to the abolition of slavery in the said Colonies, plantations, and possessions between slaves and between parties one of whom was a slave, and also in some cases between free persons of colour, and since the abolition of slavery between apprentices and other persons of free condition by ministers of the Christian religion other than clergymen of the United Church of England and Ireland, and it is expedient and necessary that all such doubts shall be removed and such marriages and reputed marriages should be ascertained and confirmed, and that all persons who may have solemnized any such marriages or reputed marriages or who have in any manner assisted thereat should be indemnified from and against all pains, penalties, forfeitures and proceedings to which such persons or any of them may be liable therefor:

31. It is therefore further ordered that all marriages which at any time before the taking effect of this order shall have been solemnized in any of the Colonies to which this order applies by or before any such ministers of the Christian religion as aforesaid shall be and the same are hereby declared to be and to have been from the time of the solemnization thereof respectively good, valid, and effectual to all intents and purposes whatsoever, any law or usage to the contrary thereof in any wise notwithstanding; and all pains, Confirmation of marriages doubtful as to solemnization.

Digitised by the University of Pretoria, Library Services, 2016

Order in Council, 7th Sept., 1888.

penalties, forfeitures, and proceedings of whatsoever kind or description which any such Christian minister may have incurred or become liable to before the taking effect of this order by reason of his having solemnized or assisted at any marriage whatsoever or in any wise in relation thereto is and are hereby remitted, released, repealed, and made void.

Registers and certificates of such doubtful marriages.

32. And whereas in the Colonies in which marriages have been celebrated as aforesaid registers thereof have been duly made and kept by such ministers as aforesaid who officiated thereat, it is therefore further ordered that all such registers and all copies thereof respectively certified under the hand of the person for the time being having the lawful care of the same to be true copies shall be and are hereby declared to be good evidence of such marriages as aforesaid respectively as fully as if such registers had been made and kept and such certified copies had been made respectively by persons appointed by law to make and keep the same, and shall be received in evidence in all Courts and before all Judges and Magistrates.

Record of such registers.

33. And it is hereby further ordered that the better to preserve evidence of marriages so registered and to facilitate the proof thereof, every person in whose custody any register lawfully is or shall be at the time shall within six months after the promulgation of this order, to which the same extends, respectively make or cause to be made a fair and correct copy of every such register and of every entry therein contained, and it shall be lawful for any such Christian minister as aforesaid to examine, verify, and correct (if and where found incorrect) by the original any such copy of a register kept by the persuasion to which he belongs, and to take the same before any Magistrate, and make and sign the following declaration, which any Magistrate to whom the same shall be tendered is hereby authorised and required to receive and to certify, in manner following, that is to say:—

I, A. B. (describe the persuasion to which he belongs), do hereby solemnly, sincerely, and truly declare that I have carefully examined this copy beginning the day of (month and year) and ending on the day of (month and year), and containing pages and entries of marriage, with the original register, and I believe the same to be throughout a true and faithful copy of the original register of which it purports to be a copy.

(Signed) A.B.

The said A.B. appeared this day of before me, C.D., one of Her Majesty's Justices of the Peace in and for and made and signed the above declaration in my presence.

(Signed) C. D.

Digitised by the University of Pretoria, Library Services, 2016

Which declaration and Magistrate's certificate thereof shall be entered and signed at the end of the copy to which it relates, and the copy shall be then securely sealed up and forthwith sent to the Colonial Secretary as aforesaid to be by him kept with the registers of marriages in his office, where the same may be searched, and every copy of any entry therein certified under his hand to be a true copy shall be of the same force and effect as any certified copy whatsoever made by him is or can be, and which certified copies he is hereby required to make and may receive payment for as in other cases. Order in Council, 7th Sept., 1838.

34. And if any such minister as aforesaid shall wilfully make and sign any such declaration knowing the same to be false he shall be liable to the pains and penalties to which persons guilty of wilful and corrupt perjury are liable. False declaration by minister as to such registers.

35. And whereas in consequence of imperfect instruction in the Christian religion and from other causes many marriages *de facto* have taken place between persons one or both of whom were in the condition of slavery but which marriages *de facto* have never been sanctioned by any public ceremony or formally registered, and in many such cases the parties have had offspring of such last-mentioned marriages, and it is expedient that provision should be forthwith made for enabling such persons to confer upon their children the benefit of children born in lawful wedlock: Marriages *de facto* without celebration.

36. It is therefore further ordered that it shall be lawful for all persons having contracted marriage as last aforesaid at any time within one year after the coming into operation of this order, duly to solemnize the marriage ceremony before any clergyman of the established church or in any other manner authorised by this order, and every person so recognizing a previous marriage *de facto* shall at the same time make and sign the following declaration, which shall also be attested by the witnesses present and signed by the minister or marriage officer before whom the ceremony is performed:

> We, A. B. and C. D., do hereby severally solemnly, sincerely, and truly declare that on the day of in the year or thereabout, at we, the said A. B. and C. D., intermarried with each other, and that we have had issue of the said marriage children and no more, namely: (here state the names and ages of the children, and if any be dead, state the fact).
>
> (Signed) A. B.
> C. D.
>
> X. Y.

37. And such marriage ceremony shall have relation back to the time of marriage *de facto*, and all such children shall be deemed and taken to have been born in holy wedlock and shall possess and enjoy all the rights, privileges, and advantages of persons born in lawful wedlock; and to preserve evidence thereof a duplicate original declaration shall then and there, before the parties Relation back of ceremony as to *de facto* marriages.

Digitised by the University of Pretoria, Library Services, 2016

Order in Council, 7th Sept., 1838.

depart be made, signed, and attested in the same manner, and the original declaration shall be appended to and kept with the original register and the duplicate original declaration shall be appended to, sent and kept with the duplicate original register, and shall for all purposes of evidence be deemed part thereof respectively: Provided, always, and it is hereby declared that such last-mentioned ceremony and declaration may be performed and made without the previous publication of banns or a licence.

Translation of this order where English language not used.

38. And it is hereby further ordered that where in any Colony to which this order applies any other language than English shall be commonly used, the Governor shall cause a true and faithful translation of this order, and particularly of the several forms and declarations herein contained, to be made, expressing the true intent and meaning thereof; and such translation when promulgated by the Governor may be lawfully used by all persons speaking such language; and everything done under this order by means of such translation shall be as valid and effectual to all intents and purposes whatsoever as if the same had been done in the original language of this order, any law or custom to the contrary notwithstanding.

Interpretation of terms used.

39. And it is hereby further ordered that the word "Governor" in this order shall be taken to mean the Governor or other officer lawfully administering the Government of such Colony; and the word "parish" in Colonies divided into parishes shall be taken in its ordinary sense, and in Colonies not divided into parishes shall be taken to mean such other districts or divisions as for civil purposes are equivalent to parishes; and the term "extra-parochial place" shall be taken to mean any place not included in any such parish, district, or division; and if in any case there be no such district or division, or if it be uncertain to what kind of district or division the word "parish" is hereby intended to apply the same shall be determined and officially declared by the Governor.

First operation of order.

40. And it is further ordered that this order shall take effect and come into operation in the Colony of Mauritius on the first day of February one thousand eight hundred and thirty-nine; in the Colony of the Cape of Good Hope on the said first day of February one thousand eight hundred and thirty-nine, and in all other Colonies to which it applies or extends on the first day of December one thousand eight hundred and thirty-eight.

Local operation of order.

41. And it is further ordered and declared that within the meaning and for the purposes of this order all Islands and Territories dependent upon any of the Colonies to which this order applies or extends and constituting parts of the same Colonial Government shall respectively be taken to be parts of such respective Colonies.

42. And the Right Honourable Lord Glenelg, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

C. GREVILLE.

Digitised by the University of Pretoria, Library Services, 2016

Order in Council, February 20, 1839.

Fees of clergy.

Whereas on the 7th day of September, 1838, an order was passed by Her Majesty with the advice of her Privy Council for giving validity to certain marriages contracted within the Colonies of British Guiana, Trinidad, Saint Lucia, the Cape of Good Hope, and Mauritius, and for regulating the celebration of marriages therein hereafter in certain cases: And whereas doubts have arisen whether according to the right construction of the said order the legal effect thereof is not to take away the right theretofore vested in the clergy or ministers of religion within the said Colonies to the fees heretofore payable to them on the celebration of marriages therein: Now, therefore, for the removal of such doubts it is hereby declared and ordered by the Queen's Most Excellent Majesty, with the advice of her Privy Council that nothing in the said recited order contained extends or shall be construed to extend to deprive any clergyman or minister of religion in any of the said Colonies hereafter celebrating any marriages therein of any fee, perquisite, or emolument on such celebration which would have been legally payable to him thereupon if the said recited order had not been made, or to take away from any such clergyman or minister any right of action or other remedy which could have been had by him for the recovery of any fee, perquisite, or emolument on any marriage hereafter to be celebrated by him if the said recited order had not been made, anything in the said recited order contained to the contrary notwithstanding.

And the Most Noble the Marquess of Normanby, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

C. GREVILLE.

ORDER IN COUNCIL. (1)

April 3, 1840.

At the Court at Buckingham Palace, the 3rd day of April, 1840.

PRESENT:

The Queen's Most Excellent Majesty.

Lord Chancellor,	Earl of Minto,
Lord President,	Viscount Palmerston,
Lord Privy Seal,	Viscount Melbourne,
Marquis of Normanby,	Viscount Duncan,
Lord Steward,	Viscount Morpeth,
Lord Chamberlain,	Lord Holland,
Earl of Albemarle,	Mr. Macaulay.

Marriages according to ritual of Dutch Reformed Church.

Whereas by an Order made by Her Majesty in Council on the 7th day of September, 1838, it was, amongst other things, ordered that whenever the form and ceremony used in the solemnization

[1] Published in *Gazette* of 31st July, 1840.

Digitised by the University of Pretoria, Library Services, 2016

Order in Council, Apr. 3, 1840.

of marriages at the Colony of the Cape of Good Hope should be other than that of the United Church of England and Ireland, each of the parties should in some part of the ceremony, make a certain declaration therein set forth, and should each address to the other certain words therein prescribed;—and whereas it has been represented to Her Majesty, that the ceremonial of marriage previously in use by the Reformed Dutch Church in the said Colony prescribes the making of a declaration and the use of words by parties contracting marriage, equivalent to the declaration and the words as prescribed as aforesaid by the said Order of Council,—It is therefore ordered by the Queen's Most Excellent Majesty, by and with the advice of Her Privy Council, that so much of the said recited Order in Council shall be, and the same is hereby, repealed, so far as the said Order requires, that at marriages celebrated at the Cape of Good Hope according to the forms and ritual of the Dutch Reformed Church, the before-mentioned declaration shall be made, and the before-mentioned words spoken.

And the Right Honourable Lord JOHN RUSSELL, one of Her Majesty's Principal Secretaries of State, having the Department of the Colonies, is to give the necessary directions herein accordingly.

(Signed)

C. GREVILLE.

No. 3.] [Feb. 12, 1839

Ordinance for the Creation of a Municipal Board for Cape Town and the vicinity thereof.

[Repealed by Ordinance No. 1, 1840, except in as far as former laws are thereby repealed.]

No. 4.] [Feb. 12, 1839.

Ordinance for the Creation of a Municipal Board for the Districts of Green Point and Sea Point.

[Expired.—*Vide* Act No. 14, 1859.]

No. 5.] [Feb. 20, 1839.

Ordinance for applying a Sum not exceeding £151,405 6s. 1d. to the Service of the Year 1839. [Spent.]

Digitised by the University of Pretoria, Library Services, 2016

No. 6.—Sd. George Napier.] [August 14, 1839.

Ordinance for the more effectual Recovery of Fines and Penalties before Justices of the Peace and Resident Magistrates on conviction of Offenders in this Colony; and for the application of the same in certain cases. ([1])

Preamble.

WHEREAS in some of the Laws and Ordinances which are now in force in this Colony whereby fines and penalties are imposed on persons for certain offences therein mentioned no adequate provision is made for the recovery of the said fines and penalties: And whereas it is expedient that all fines and penalties not exceeding forty pounds sterling which have been or shall be imposed on offenders by any Law or Ordinance in this Colony for the recovery of which no provision has been or shall be expressly made in such Law or Ordinance should be recovered before the Resident Magistrate of the district or place in which the respective offences shall be committed: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the passing and publication of this Ordinance all fines and penalties not exceeding forty pounds sterling which have been or shall be imposed on persons for offences by any Law or Ordinance which now is or at any time hereafter shall be in force in this Colony for the recovery of which no provision has been or shall be expressly made in such Law or Ordinance shall be recovered before the Resident Magistrate of the district or place in which the respective offences shall be committed, and shall in case of non-payment thereof be levied by warrant of distress and sale of the goods and chattels of the offender or offenders or enforced at the discretion of such Resident Magistrate by such special commitment in execution as is hereinafter prescribed for and declared to be generally applicable to the recovery of fines and penalties inflicted by any of the laws of this Colony.

Fines and penalties not exceeding forty pounds, recovery of.

2. And whereas by several Laws and Ordinances which are now in force in this Colony certain fines and penalties are inflicted on persons convicted of certain offences which are directed to be recovered before a Justice of the Peace or Resident Magistrate within their respective jurisdictions, who is authorised to issue forth his warrant for levying such fines and penalties by distress and sale of the goods and chattels of the offender or offenders, but no further remedy is provided in case no sufficient goods and chattels of such offender or offenders can be found whereon to levy such fines and penalties, for remedy whereof be it further enacted that from and after the passing and publication of this Ordinance, whenever it shall appear to any such Justice of the Peace or

Imprisonment substituted where *nulla bona* for payment of fine.

[1] See Ordinance 5, 1848; Act 20, 1856; Act 9, 1857; Act 12, 1860; Act 10, 1865; Act 12, 1869; Act 21, 1869; Act 21, 1876; Act 19, 1877; Act 16, 1882; Act 43, 1885; Act 17, 1886, §§ 12 and 13; Act 31, 1886; Act 8, 1889; Act 1, 1894.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1839.

Resident Magistrate by whom any fine or penalty shall be adjudged to be paid upon the return of any such warrant of distress that no sufficient goods and chattels of the offender or offenders can be found whereon to levy such fine or penalty within the jurisdiction of such Justice of the Peace or Resident Magistrate, it shall be lawful for such Justice of the Peace or Resident Magistrate to issue forth his warrant for committing such offender or offenders to the common gaol for any term not exceeding three calendar months, unless such fine or penalty shall be sooner paid; or in case it shall appear to the satisfaction of such Justice of the Peace or Resident Magistrate, either by the confession of the offender or offenders or otherwise, that he, she, or they hath not or have not sufficient goods or chattels within the jurisdiction of such Justice of the Peace or Resident Magistrate whereon to levy such fine or penalty, such Justice of the Peace or Resident Magistrate may at his discretion without issuing any warrant of distress proceed to the commitment of such offender or offenders in such and the like manner as if a warrant of distress had been issued and a return of *nulla bona* made thereon as aforesaid.

Release from imprisonment on payment of fine.

3. And be it further enacted that in any case any offender or offenders committed to the common gaol for non-payment of any such fine or penalty shall at any time during the period of his, her, or their imprisonment pay or cause to be paid to the keeper of such common gaol the full amount of such fine or penalty it shall be lawful for such keeper of such common gaol and he is hereby required forthwith to discharge such offender or offenders from his custody.

Application of fines.

4. And be it further enacted that all fines and penalties recovered under any of the Laws or Ordinances of this Colony shall unless it be otherwise expressly provided by such Laws or Ordinances respectively be paid and applied as follows, that is to say, a part not exceeding one-half or less than one-fourth thereof shall be paid to the informer and the remainder into the Colonial Treasury.

No. 7.—Sd. George Napier.] [Sept. 11, 1839.

Ordinance for reviving certain sections of the Ordinance No. 48, entituled "Ordinance of His Honour the Lieutenant-Governor in Council for establishing an Executive Police in Cape Town and the district thereof, and for consolidating and amending the laws and regulations relating thereto," and continuing the same until the regulations of the Municipal Board for Cape Town and the vicinity thereof shall have been duly framed, adopted, approved, and carried into effect according to the provisions of the Ordinance No. 3, 1839, entitled "Ordinance enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for the creation of a Municipal Board for Cape Town and the vicinity thereof."

[Repealed by Ordinance No. 2, 1840.]

Digitised by the University of Pretoria, Library Services, 2016

No. 8.] [October 31, 1839.

Ordinance for enabling the Board of Executors to sue and be sued in the name of their Secretary.

[Expired.—*Vide* Act No. 17, 1859.]

No. 9.] [Nov. 27, 1839.

Ordinance for amending Ordinance No. 60, entitled "An Ordinance for preventing the Mischiefs arising from the printing and publishing Newspapers and Papers of a like nature by persons not known, and for regulating the printing and publication of such Papers in other respects, and also for restraining the abuses arising from the publication of blasphemous and seditious Libels."

[Repealed inferentially by Act No. 8, 1859, which repeals Ordinance No. 60.]

No. 10.] [Nov. 27, 1839.

Ordinance for opening and improving the River Kowie.

[Expired.]

No. 1.] [March 3, 1840.

Ordinance for the better regulation of the Municipal Board for Cape Town and the vicinity thereof.

[Expired.]

No. 2.—Sd. George Napier.] [April 6, 1840.

Ordinance for improving the Executive Police of Cape Town and the District thereof, for defining the Powers and Duties of the said Police in certain cases, and for promoting the Peace and Good Order of the said Town. (1)

WHEREAS the systems of police and nightly watch heretofore existing in Cape Town and the district thereof have from the want of due connection and co-operation with each other and from other causes proved insufficient for the purposes for which they were intended: And whereas it is expedient to substitute for the said systems of police and nightly watch one united body of police for

[1] By § 2, Act 31 of 1883, the powers and authorities vested in the Judge and Superintendent of Police by Ord. 2 of 1840, are vested in the Chief of Police for the police district comprising the divisions of the Cape and Simon's Town, &c. See Ord. 25, 1847; Acts 15, 1857; 11, 1860; 13, 1860; 8, 1873; 12, 1874; 12, 1882; 27, 1882; 31, 1883; 23, 1885; 13, 1886, §§ 1-3; 21, 1894.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1840.

day and night under a new and more effective organisation: And whereas it is also expedient that certain matters and things connected with the powers and duties of the said last mentioned body of police and the peace and good order of the town aforesaid should be herein provided for or declared: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the taking effect of this Ordinance the Ordinance No. 7, 1839, entitled "An Ordinance for reviewing certain sections of the Ordinance No. 48, entitled 'An Ordinance of His Honour the Lieutenant Governor in Council for establishing an Executive Police in Cape Town and the district thereof, and for consolidating and amending the Laws and Regulations relating thereto,'" and continuing the same until the regulations for the municipal board for Cape Town and the vicinity thereof shall have been duly framed, adopted, approved, and carried into effect according to the provisions of the Ordinance No. 3, 1839, entitled "An Ordinance enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for the creation of a Municipal Board for Cape Town and the vicinity thereof," shall be repealed, together with the said Ordinance No. 48, save and except so far as the forty-seventh section of the said Ordinance No. 48 repeals any former laws, rules, orders, or regulations, and both the said Ordinances are hereby declared to be from and after the time aforesaid repealed accordingly.

Ordinances No. 7 of 1839, and No. 48 repealed.

2. [This section empowers the Governor to appoint a "Judge and Superintendent of the Police of Cape Town," and a "Deputy" Superintendent of the Police of Cape Town. Both these offices were however abolished by Act No. 11 of 1860.]

Powers and jurisdiction of judge and superintendent.

3. (1)And be it enacted that the said Judge and Superintendent of Police of Cape Town shall discharge all the duties and possess all the powers and jurisdiction imposed or conferred by any Law or Ordinance now in force in this Colony (save and except the aforesaid Ordinance No. 48 and No. 7, 1839) upon the functionary called in any such Law or Ordinance the Judge and Superintendent of Police of Cape Town or the Superintendent of Police for Cape Town and the district thereof and the Port of Table Bay.

4. [This section defines the powers of the Deputy Superintendent of Police which office was abolished by Act 11 of 1860.]

Inspector of police, appointment of.

5. (2) And be it enacted that it shall and may be lawful for the Governor of this Colony from time to time as a vacancy may occur or occasion may require to nominate and appoint some fit and proper person who shall be called and styled the Inspector of Police of Cape Town, to be under the control and command of the Judge and Superintendent of Police aforesaid for the time being and to discharge such duties as shall in the rules and regulations

[1] See § 3, Act 11 of 1860, and § 2, Act 31 of 1883.
[2] See § 4, Act 12 of 1882, and § 2, Act 31 of 1883.

Digitised by the University of Pretoria, Library Services, 2016

hereafter mentioned be allotted and appointed for such inspector to perform.

Constables, appointment of.

6. And be it enacted that it shall and may be lawful for the said Judge and Superintendent for the time being subject to the approval of the Governor of this Colony for the time being to nominate and appoint from time to time a sufficient number of fit and able men, who shall be sworn in by the said Judge and Superintendent to act as constables for preserving the peace, preventing the commission of crimes, and apprehending offenders when crimes have been committed, and the men so sworn shall within the Cape district have all such powers, authorities, privileges and advantages, and perform all such duties and incur all such responsibilities as any constable duly appointed now has or hereafter may have within his constablewick or assigned district by virtue of any Law or Ordinance existing or to exist in this Colony, and shall obey all such lawful commands touching the manner in which they shall conduct themselves in the execution of their office as they may from time to time receive from their lawful superiors as the latter shall be constituted, named, and specified in the rules and regulations to be hereafter framed; but the stated and ordinary duties of the members of the said police force shall be confined within the limits of the municipality of Cape Town, and they shall only proceed and act beyond the said limits when engaged in the pursuit of an offender flying from justice or when the exigency of some particular occasion shall induce the chief officer of police for the time being to order one or more members of the said force to repair to and perform duty at some place other than the said municipality within the said district. (1)

Powers, &c., of constables.

Limits of powers of constables.

Rules and regulations for police.

7. (2) And be it enacted that the said Judge and Superintendent for the time being, subject to the approval of the Governor of this Colony for the time being, shall and may from time to time frame such rules and regulations as the said Judge and Superintendent shall deem expedient relative to the general government and management of the men so as aforesaid to be appointed members of the police force under this Ordinance, the classification, rank, and particular duty of the several members, their distribution and inspection, the description of arms, accoutrements, and other necessaries to be furnished to them, and which of them shall be provided with horses for the performance of their duty, the peculiar books and forms to be respectively kept and used at the Police station and all such other rules and regulations relative to the said police force as the said Judge and Superintendent shall from time to time deem expedient for preventing neglect of duty or abuse of authority, and for rendering such force as efficient as possible for the performance of its duties; and the said Judge and Superintendent may at any time suspend

[1] See Act 12 of 1882, and Act 31 of 1883.
[2] See § 10, Act 12 of 1882.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1840.

or dismiss from his employment any man belonging to the said police force (except the Deputy Superintendent and the Inspector of Police, who may be suspended or dismissed only by the Governor of this Colony for the time being) whom he shall think negligent or remiss in the discharge of his duty or otherwise unfit for the same; and when any man shall be dismissed or cease to belong to the said police force all powers vested in him as a constable by virtue of this Ordinance shall immediately cease and determine.

Penalty on constables for neglect, &c., of duty.

8. ([1]) And be it enacted that any constable belonging to the said force save and except the inspector (who is either here or elsewhere in this Ordinance comprehended under the term constable) who shall be guilty of any neglect or violation of duty in his office of constable, as the same shall be defined by the rules and regulations to be hereafter framed, shall be liable to a penalty not exceeding ten pounds, which penalty may be deducted from any salary then due to such offender, or such offender may in the discretion of the Judge and Superintendent of Police, who is hereby authorised and empowered to enforce in a summary manner all penalties to be incurred under this section as well as sections nine and ten next succeeding, be imprisoned for any term not exceeding one month;[1] but no such penalty or punishment shall be held or taken to exempt such constable from any other penalty or punishment which may by any other law be affixed to any illegal act or acts of which he may be guilty.

Resignation of constables.

9. ([2]) And be it enacted that no constable belonging to the said police force shall be at liberty to resign his situation or withdraw himself from the duties thereof unless expressly permitted so to do by the Judge and Superintendent of Police in writing, or unless he shall give to such Judge and Superintendent two full months' notice of his intention; and every constable who shall so resign or withdraw himself without such leave or notice shall be liable to forfeit all arrears of pay then due to him or to a penalty not exceeding ten pounds or to imprisonment for any term not exceeding one month, as to the said Judge and Superintendent may seem best and most expedient.

Delivery up of clothing, &c., by constables.

10. ([3]) And be it enacted that every constable belonging to the said police force who shall be dismissed from or shall cease to hold and exercise his office and who shall not forthwith deliver over to the said Judge and Superintendent all the clothing, accoutrements, appointments, and other necessaries which may have been supplied to him for the execution of his duty, or who shall wilfully or maliciously injure any of the said articles so as to render the same valueless or of less value before delivering the same over, shall be liable to imprisonment for any time not exceeding two months;

[1] See § 11, Act 12 of 1882, and 31 of 1883, § 3.
[2] See §§ 8 and 29, Act 12, 1882.
[3] See § 31, Act 12 of 1882.

Digitised by the University of Pretoria, Library Services, 2016

and it shall be lawful for the said Judge and Superintendent to issue his warrant to search for and seize for the use of the said police force all the clothing, accoutrements, appointments, and other necessaries which shall not be so delivered over wherever the same may be found. Ord. 2—1840.

11. (1) And be it enacted that every person not being a member of the said police force who shall have in his possession any article being part of the clothing, accoutrements, or appointments supplied to such member and who shall not be able satisfactorily to account for his possession thereof shall be liable to a penalty not exceeding ten pounds, or in the discretion of the Magistrate before whom he shall be convicted to imprisonment for any term not exceeding one month. Possession of clothing, &c., of constables by third parties.

12. (2) And be it enacted that if any owner or keeper of any house, shop, store, or other place for the sale of any liquors whether spirituous or otherwise shall harbour or entertain any constable belonging to the said police force or permit such constable to remain in his house, shop, store, or other place as aforesaid for any part of the time during which to his knowledge such constable should be on duty, every such owner or keeper as aforesaid shall for every such offence be liable to forfeit and pay any sum not exceeding ten pounds, and in default of payment thereof shall be liable to imprisonment for any term not exceeding one month. Harbouring of constables.

13. [Repealed by Act 27 of 1882.]

14. And be it enacted that the said Judge and Superintendent and the police under his command shall as much as in them lies suppress all tumults, riots, affrays, or breaches of the peace within the limits of the said municipality and enforce every Law or Ordinance made or to be made for the due observance of the Lord's Day; for the regular and decent conduct of houses licensed to retail wines or other liquors, for preventing the opening of such houses on improper days and at improper hours, for the punishment of drunkenness, and generally for every purpose connected with the good order and tranquillity of the Municipality of Cape Town. Duties of police.

15. [Repealed by Act 27 of 1882.]

16. [Repealed by Act 27 of 1882.]

17. (3) And whereas under and by virtue of the Ordinance No. 1, 1840, entituled "An Ordinance for the better regulation of the Municipal Board of Cape Town and the vicinity thereof," certain municipal regulations have been or will be duly framed, approved of, and established in which will be specified amongst other things certain acts and omissions which when done or made in the streets, thoroughfares, or public places of the said municipality shall be deemed and taken to be public nuisances or offences, and shall be Suppression of nuisances, &c.

[1] See § 35, Act 12 of 1882.
[2] See § 34, Act 12 of 1882.
[3] Ord. 1 of 1840 has expired, but see Act 26, 1893.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1840.

punished as such; and whereas a list or catalogue of all such acts and omissions so being such nuisances or offences shall from time to time be duly furnished by the municipal commissioners who are hereby required to furnish the same to the Judge and Superintendent of Police for the information of the force under his command: Be it enacted that it shall and may be lawful for the members of the said police force to prevent, abate, and suppress all such nuisances and offences, and they are hereby empowered to arrest without warrant any person whom they shall see in the actual commission of any nuisance or who shall be charged by any street-keeper or other officer of the said municipality or any other credible person with having recently committed any nuisance: Provided there shall exist reasonable ground for apprehending that except by arresting the party so offending within view of the said constable or so charged as aforesaid with having offended when not within such view such party could not be found or made answerable to justice without delay, trouble, or expense.

18. [Repealed by Act 27 of 1882.]

19. [Repealed by Act 27 of 1882.]

Diseased and destitute persons, removal of from streets, &c.

20. And be it enacted that it shall and may be lawful for any member of the said police force to remove any outcast or destitute person found in any of the streets or public places of the said municipality labouring or supposed to labour under any infectious or contagious disease, and to conduct such person to such hospital as the Judge and Superintendent shall direct, and such person may be lawfully detained in hospital until the medical officer in charge thereof shall see fit to order his or her discharge.

21. [§§ 21-23 repealed by Act 27 of 1882.]

Damage to person or property.

24. (1) And be it enacted that every person who by committing any offence herein or in the list and catalogue hereinbefore mentioned made punishable or forbidden shall have caused any hurt or damage to any person or property and who shall not upon demand make amends for such hurt or damage to the satisfaction of the person aggrieved shall upon conviction pay such sum not exceeding ten pounds as shall appear to the Court before which he shall be convicted to be reasonable amends to the person aggrieved, besides any penalty to which the party offending may be liable for the offence: Provided, always, that if the person aggrieved shall be the only witness who gives proof of the offence the sum ordered as amends instead of being paid to such person shall be paid and applied in the same manner as the penalty: Provided that nothing in this section contained shall be construed to alter the sixty-first, sixty-second, or sixty-third sections of Ordinance No. 1, 1840, entituled "An Ordinance for the better regulation of the Municipal Board for Cape Town and the vicinity thereof," or any of the said sections.

[1] See note to § 17.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2 –1840.

Fines, &c., appropriation of.

25. (1) And be it enacted that all fines, penalties, and forfeitures to be levied for or on account of offences specified herein shall be paid and handed over to the Treasurer of this Colony for the time being and shall be by him duly entered in a separate account under the head of "Moneys received under Ordinance No. 2, 1840."

26. [Repealed by Ord. 1 of 1844. See Act 12 of 1874, and Act 12 of 1882, § 22].

27. [Repealed by Ord. 1 of 1844 and Act 12 of 1874].

Before what courts offences to be tried.

28. And be it enacted that all persons charged with any of the offences mentioned in this Ordinance or in the list or catalogue of nuisances or offences hereinbefore mentioned may be proceeded against either in the Court of the Resident Magistrate for Cape Town or in the Police Court of Cape Town as the case may be, reference being had, however, to the extent of the fine, penalty, forfeiture, or punishment sought to be imposed and to the extent of the jurisdiction of the said Courts respectively in all cases in which the latter of the said Courts is not specially empowered and directed by this Ordinance to impose some given fine or punishment exceeding its ordinary jurisdiction, anything contained in the sixth section of the Ordinance No. 1, 1840, in anywise to the contrary notwithstanding.

29. [Repealed by Act 27 of 1882].

Coolies to be licensed.

30. And be it enacted that every person desirous of plying for hire as a coolie shall upon being approved of by the Judge and Superintendent of Police register his name and place of abode at the police office, and shall thereupon receive a badge which he shall wear firmly sewed to his coat or jacket on the left breast; and any person who shall so ply without such registration or without a badge so sewed as aforesaid shall forfeit the sum of ten shillings sterling for every offence; and for such registration and badge each coolie shall pay the sum of two shillings, and every coolie on application at the police office, shall receive a printed card of the rates of hire signed by the Judge and Superintendent of Police, which he shall at all times carry with him and show on demand to any person employing him; and if he shall refuse so to do he shall forfeit the sum of ten shillings sterling, and for every such card required each coolie shall pay sixpence.

Badge of coolie, wearing of by unlicensed persons.

31. And be it enacted that any person not being duly registered as aforesaid who shall wear a badge or represent himself to be a coolie duly registered shall forfeit a sum not exceeding twenty shillings for every offence; and any coolie who shall be duly convicted of lending his badge to be worn by any other person shall forfeit a sum not exceeding twenty shillings for every offence.

Deprival of coolie licence.

32. And be it enacted that the Judge and Superintendent of Police shall have the power of depriving of his badge any coolie

[1] See Act 12 of 1874, § 7. These fines form part of general revenue now. See also § 22, Act 12 of 1882.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1840.

who shall be found guilty of dishonest or improper conduct upon complaint laid before the Judge and Superintendent of Police.

Rates of coolie-hire.

33. And be it enacted that it shall be lawful for the Governor of this Colony for the time being to nominate and appoint such a number of fit and proper persons as he shall deem expedient, of whom the Judge and Superintendent of Police shall be always one, to fix a table of rates for coolie hire, and a scale of the weights to be carried for the same, and to publish the same in the *Government Gazette*, and to cause the same to be posted at the Town-house of the municipality of Cape Town and at such other places as may appear desirable; and it shall be further lawful for the persons so nominated and appointed or for such other persons as may be appointed from time to time by the said Governor in their room and stead when and so often as such persons shall think it right and fitting to revise the said table of rates, and to make such alterations therein either by raising or lowering the rates of hire therein mentioned as they shall deem expedient, and every change and alteration so made shall be forthwith published and posted in the manner herein directed with respect to the first table to be framed under the provisions of this section.

Refusal of duty or extortion by coolies.

34. And be it enacted that any coolie plying for hire who shall refuse his services at the rates fixed by the table for the time being or who shall demand more than accorded to such table he is entitled to require or who shall refuse to carry his appointed burden shall forfeit for every such offence any sum not exceeding two pounds, and in default of payment thereof may be imprisoned for any period not exceeding fourteen days.

Refusal to pay coolie-hire.

35. And be it enacted that in case of complaint made by any coolie to the Judge and Superintendent of Police that any person by whom he was employed as such coolie has refused to pay him his just and legal hire according to the tariff of rates to be by him produced, it shall be lawful for the said Judge and Superintendent to summon the person so refusing to pay the same to appear before him, and whether the said person shall duly appear according to the exigency of the summons or not to inquire into the case, and if it should be made apparent to his satisfaction that payment has been refused or delayed without any just or proper reason he is hereby empowered to order in a summary manner the payment of whatever sum he shall think right and just; and if the said person so unjustly withholding such sum shall not pay the same when demanded by the messenger or other officer of the Police Court, then the said Judge and Superintendent shall issue his warrant for the apprehension of the person so as aforesaid refusing to obey the said order of the said Judge and Superintendent and shall commit such person to prison for any term not exceeding one week; provided, however, that if such person shall sooner obey the said order of the said Judge and Superintendent he shall be forthwith entitled to his discharge.

Digitised by the University of Pretoria, Library Services, 2016

Police contracts, &c.

36. And be it enacted that the Judge and Superintendent for the time being shall make all such contracts and disbursements as shall be necessary for purchasing or renting any land or building or for erecting, fitting up, furnishing, or repairing any building for a Police Station or any other purposes connected with this Ordinance in such manner as the Governor of this Colony for the time being shall approve of or direct, and of all lands and buildings so to be purchased or rented and of the fixtures or furniture thereof, and of all goods and chattels whatsoever to be from time to time held or purchased for the purposes of this Act; the property and lawful possession shall be deemed and taken to be vested in the said Judge and Superintendent, whom in all legal proceedings whatsoever regarding his public character and office it shall be sufficient to style "the Judge and Superintendent of Police," without any other or more particular description, and in which Judge and Superintendent also shall be vested the property and lawful possession of all watch-houses and watch-boxes mentioned in the Ordinance No. 1, 1840, and thereby vested in and made over to the Governor of this Colony, and in all the arms, accoutrements, and other necessaries furnished or to be furnished to the members of the said police force, and the said Judge and Superintendent for the time being may by the direction of the Governor for the time being sell, assign, or dispose of the whole or any part of any such property as aforesaid.

Vesting of police property.

Interpretation of words.

37. And be it further enacted that in the construction of this Ordinance, unless there be something in the context repugnant thereto, any word denoting the singular number or the male sex shall be taken to extend to any number of persons or things and to both sexes; that the word "month" wherever the same occurs shall be taken to mean a calendar month; and that any imprisonment by this Ordinance contemplated and authorised may be either with or without hard labour as the functionary directing such imprisonment shall adjudge and declare.

Imprisonment with or without hard labour.

38. And be it enacted that this Ordinance shall commence and take effect from the first day of May now next ensuing.

No. 3.] [June 9, 1840.

Ordinance for applying a Sum not exceeding £156,174 12s. 11d. for the Service of the year 1840. [Spent.]

No. 1.] [March 22, 1841.

Ordinance for the better Collection, as regards the Town of Cape Town, of Certain Taxes and Duties due and in arrear.

[Expired.]

Digitised by the University of Pretoria, Library Services, 2016

No. 2.] [April 27, 1841.

Ordinance for applying a Sum not exceeding £157,944 8s. 6d. for the service of the year 1841. [Spent.]

No. 3.] [June 26, 1841.

Ordinance for re-establishing the Toll at Kaayman's Gat, until the first day of February, 1855.

[Lapsed.]

No. 4.] [October 13, 1841.

Ordinance for applying a Sum not exceeding £155,879 6s. 7d. for the Service of the year 1842. [Spent.]

No. 1.—Sd. George Napier.] [March 3, 1842.

Ordinance for authorising the appointment of a Vestry and Churchwardens for St. Mary's Church at Port Elizabeth.

Preamble.

WHEREAS it appears expedient that the inhabitants of Port Elizabeth and the parochial limits thereof being members of the United Church of England and Ireland as there by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with the Church at Port Elizabeth commonly called St Mary's Church, and that the said vestry and churchwardens should possess certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said United Church of England and Ireland: And whereas on the appointment of the said vestry and churchwardens it appears expedient that the control over the affairs of the said church which has been hitherto exercised by the original church committee and since the dissolution of that body by the officiating minister and churchwardens or warden should cease and determine:

First election of vestry.

1. Now therefore be it enacted by the Governor of the Cape of Good Hope, by the advice and consent of the Legislative Council thereof, that on the Easter Monday ensuing next after the passing of this Ordinance and on each succeeding Easter Monday a general meeting of the male inhabitants of Port Elizabeth and the parochial limits thereof being of the age of twenty years or upwards who shall be holders of sittings in St. Mary's Church aforesaid or who shall be entitled *ex officio* to occupy seats in the pews already set apart for the accommodation of the churchwardens and strangers, the officers of the garrison, and the Chief Civil

Digitised by the University of Pretoria, Library Services, 2016

Magistrate of the district, such *ex officio* holders of seats being members of the aforesaid United Church of England and Ireland, shall be holden in the vestry of St. Mary's Church in Port Elizabeth, fourteen days' notice whereof shall be given during divine service by the minister for the time being and by notice posted on the church doors for the purpose of electing a vestry; and it shall and may be lawful for the inhabitants aforesaid or a majority of them at such meeting assembled to elect from among themselves any number of persons not exceeding eight in the manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereafter specified.

Auditors of accounts.

2. And be it further enacted that two other persons not being members of the said vestry shall likewise be elected at such meeting as aforesaid as auditors of the accounts of the said vestry.

Qualification of voters and of vestrymen.

3. And be it enacted that no male inhabitant shall be competent to vote at any such meeting for the election of a vestry who shall have allowed the rent of his pew or sitting to continue in arrear and unpaid for twenty-eight days after the same shall have become due and payable and shall have been legally demanded; nor shall any male inhabitant be qualified to be elected as a member of the vestry unless he be a resident householder in the town of Port Elizabeth or within the parochial limits thereof and unless he be a member of the United Church of England and Ireland.

List of voters.

4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing sections shall be prepared by the officiating minister so long as there are no churchwardens appointed under the provisions of this Ordinance, and when churchwardens shall have been so appointed as is hereinafter provided then by the minister and churchwardens conjointly, which list shall be open for the inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place.

Election of vestry by lists.

5. And be it enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitants as aforesaid respectively and containing the names of the persons for whom they vote to be elected as vestrymen or as auditors.

Chairman of vestry.

6. And be it enacted that the officiating minister for the time being shall preside as chairman at all meetings of the said vestry, provided that in case of his being absent from any such meeting one of the other members shall be elected to act as chairman, and in case of the votes of the said vestry being equally divided the chairman or acting chairman shall have a casting vote in addition to his own.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 1—1842.

Quorum of vestry.

7. And be it enacted that five members of the said vestry or four members in addition to the chairman or acting chairman shall form a quorum which shall be competent to perform all matters and things which may be done by the entire vestry under and by virtue of any of the provisions of this Ordinance.

Rules, &c., for vestry.

8. And be it further enacted that it shall and may be lawful for the said vestry so from time to time constituted and appointed to frame, adopt, amend, alter, or rescind any rules, orders, or by-laws which may to them appear expedient for their guidance in the discharge of their duties and for more effectually executing the provisions of this Ordinance, and also to take such order for the management of the said church as they shall deem expedient: Provided that the said rules, orders, or by-laws contain nothing repugnant to law or to the tenor of this Ordinance or to the customs and usages of the United Church of England and Ireland as there by law established.

Deeds, &c., to be handed over to vestry.

9. And be it enacted that the officiating minister and churchwardens or warden officiating at the time of the election of the first vestry under this Ordinance shall upon the appointment of the said vestry deliver or cause to be delivered over to the said vestry all deeds, accounts, documents, and papers relating to the church which shall be at the time in their custody or power, or authentic copies of the same, and all sums of money in their possession or subject to their control, and that their management of the affairs of the said church which since the dissolution of the church committee devolved upon them shall thereupon cease and determine.

Vestry to take up powers of church committee.

10. And be it enacted that the said vestry so from time to time constituted and appointed by such competent electors as hereinbefore specified shall and may have and exercise all the same powers, privileges, rights, and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof and all other matters and things relating to the same as were originally possessed by the church committee, and are at present possessed by the officiating minister and churchwardens or warden, together with such other powers, privileges, rights, and duties as are hereinafter specified.

Election and powers, &c., of churchwardens.

11. And be it enacted that the said vestry shall forthwith on their appointment choose out of their own number two persons as churchwardens who shall perform and execute or cause to be performed and executed all lawful acts, matters and things for the good order and decency of behaviour to be observed in the said church by the congregation thereof, and for providing the said church (by order and at the charge of the said vestry) with necessary and customary furniture for the performance of divine service, and for keeping the same clean and in proper repair, and for furnishing the officiating minister with robes suited to his rank or degree in any university or college of the United Kingdom, and

Digitised by the University of Pretoria, Library Services, 2016

for preserving to all persons their rights in the pews and sittings in the said church, and for keeping the burial-ground appertaining to the said church in decent order, and for discharging all other duties which usually devolve on churchwardens of the United Church of England and Ireland so far as the same may be applicable to this Colony.

Accounts of churchwardens.

12. And be it enacted that the said churchwardens shall keep an account wherein they shall enter or cause to be entered all sums of money received or paid by them for and on account of the aforesaid church and under and by virtue of the provisions of this Ordinance, which account shall be opened for the inspection of one or both of the auditors at all reasonable times between the hours of nine o'clock in the fore and five o'clock in the afternoon, and the said account or a copy thereof together with any report of the auditor or auditors thereupon shall be laid before the annual meeting which shall be holden in conformity with the provisions specified in the first clause of this Ordinance, and published for general information in case of such publicity being deemed requisite by the persons assembled at such meeting or a majority of them.

Churchwardens to collect money and make contracts.

13. And be it enacted that it shall and may be lawful for the said churchwardens for the time being to call in and compel or enforce payment of all sums of money which are or shall be at any time hereafter due and payable on account of the said church and by virtue of any of the provisions of this Ordinance, and in their own names for and on behalf of the said vestry to make and enter into, perform and execute or compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem beneficial to the Church aforesaid.

Churchwardens to sue actions.

14. And be it enacted that it shall and may be lawful for the said churchwardens for the time being acting as such to commence and maintain from time to time any suit or action which they may deem necessary in conformity with the trust reposed in them against any person or persons whatsoever; and all such suits or actions shall and may be brought by them in the name of the churchwardens acting for and on behalf of the vestry of St. Mary's Church at Port Elizabeth, and no action shall abate by reason of the death, removal, retirement, or resignation of any individual churchwarden or vestryman.

Actions against churchwardens.

15. And be it further enacted that all suits or actions which shall arise or accrue to any person or persons whatsoever from or by reason of any contract or other matter or thing made or entered into by the said churchwardens in execution of the trust reposed in them shall be brought by such person or persons in manner and in name aforesaid and not against any individual churchwarden or member of the said vestry: Provided, always, that no such suit or action shall hold or be maintainable against the said churchwardens as such for or on account of any thing done or of any debt contracted by the original church committee and since the

Digitised by the University of Pretoria, Library Services, 2016

Ord. 1—1842.

dissolution of that body by the officiating minister and churchwardens or warden acting as such previously to the taking effect of this Ordinance.

Accounts of charitable collections.

16. And be it enacted that the said churchwardens shall keep or cause to be kept an exact account of all collections of money made from time to time in the said church for or on account of any charitable or religious purposes connected with the said church and congregation thereof, and of all disbursements made from the same; and the said churchwardens together with the officiating minister for the time being shall faithfully administer the same or cause the same to be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same. And the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations and opened for like inspection as the accounts of the general church fund.

Tenure of office by churchwardens.

17. And be it enacted that the churchwardens appointed as above shall continue in office until the next general annual election of the vestry shall be completed, when they shall deliver up or cause to be delivered up to the said vestry all accounts relating to the general church fund and to such charities as aforesaid together with all vouchers, sums of money, or securities held by them in virtue of their office, and the vestry shall then proceed to nominate other churchwardens for the ensuing year: Provided, always, that the churchwardens thus vacating office shall be eligible to be re-elected in case they shall be continued as members of the said vestry.

Occasional vacancies in vestry.

18. And be it enacted that in case any member or members of the vestry shall die or desire to resign or shall be removed or for any other lawful cause shall vacate his or their office a special general meeting of the surviving or other members of the said vestry shall be called for the purpose of filling up any and all such vacancies as may arise from death, resignation, or removal.

Occasional vacancies in churchwardenship.

19. And be it enacted that if either of the said churchwardens shall die or resign or be removed by the said vestry or shall from any other lawful cause vacate his office the meeting of vestry in the last preceding section mentioned which shall be called for the purpose of filling up the vacancy thereby created in the said vestry shall also proceed to choose out of the number of the said vestry in the room of the churchwarden who shall have ceased to hold the office a new churchwarden, who shall continue in office until the time herein fixed for the annual election, and shall in the meantime possess all the powers and perform all the duties appertaining to the said office.

Free sittings.

20. And be it enacted that the four pews already set apart and appropriated to the use of the officers of the garrison, the chief

Digitised by the University of Pretoria, Library Services, 2016

civil authority of the district, the minister and the churchwardens all for the time being shall still continue so set apart and appropriated; and that there shall likewise be reserved in some convenient part of the church an adequate number of free sittings for the accommodation of the troops and of poor people; and further that strangers visiting Port Elizabeth shall be considered as entitled to reasonable accommodation in the pew set apart and appropriated to the churchwardens.

Sittings to be let.

21. And be it enacted that all the pews and sittings in the said church excepting those appropriated and reserved as aforesaid shall and may be let by the said churchwardens by the year or for any shorter period to any person desiring to take the same at a rent to be affixed to them respectively by the vestry and payable at such times and in such manner as shall be appointed by the vestry; and the holder of such pew or sitting so rented shall and may possess and occupy the same by himself, herself, or by his or her assigns without hindrance or disturbance by any person whatsoever until the end of the said term: Provided that the holder of such pew or sitting shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable; and provided, always, that nothing in this section shall be construed to interfere with any persons who do at present or who may hereafter hold free pews or sittings on the ground of office.

Remedy where pew-rents in arrear.

22. And be it enacted that it shall and may be lawful for the churchwardens whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same shall have become due and payable, and shall have been legally demanded, to give notice to the possessor of such pew or sitting forthwith to quit and give up possession of the same; and thereupon it shall and may be lawful for the said churchwardens acting as aforesaid to re-enter into possession of the said pew or sitting for the purposes of this Ordinance without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive the said churchwardens of the right to recover the amount of such rent so in arrear by action as aforesaid in any competent Court.

Order in which pews to be let.

23. And be it enacted that the said churchwardens acting as aforesaid shall keep a book to be called the "Pew-book," wherein they shall enter or cause to be entered the name of every person applying for either a pew, sitting, or sittings in the said church together with the date of such application, and that on any pew, sitting, or sittings becoming vacant either by death, resignation, removal, or in any other way or in case of the erection of any new pew or pews or seats in any part of the said church the churchwardens for the time being shall forthwith apprise the applicant whose name shall stand first on the pew-book of the vacancy so caused or of the new pew, pews, or seats so erected, and shall offer

Digitised by the University of Pretoria, Library Services, 2016

Ord. 1-1842.

the said pew, seat, or seats to such applicant on condition that he or she shall covenant and engage to pay the rent of the same affixed and made payable as hereinbefore mentioned, and that the said pew, sitting, or sittings so becoming vacant, or the said pew or pews, seat or seats so newly erected shall not be offered to any person whatsoever whose application for the same or any portion of the same shall bear a later date, until it shall have been declined by every applicant preceding such person on the pew-book.

Burials to be after rites of Church of England.

24. And be it further enacted that no burial shall take place in the burial-ground at present unconsecrated and allotted or which may hereafter be consecrated and allotted as burying-ground to the said church unless the said burial be performed after the rites and ceremonies of the United Church of England and Ireland, and that no burial shall take place in or under the said church.

Monuments and vaults, erection of.

25. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monument or inscription to be erected or placed in such convenient parts of the said church or of the ground which may be enclosed about the same or in the burial-ground belonging thereunto or vaults to be dug and made in the said burial-ground upon payment to the funds of the said church for such permission such a sum as shall be affixed by the said vestry for such permission according to the terms thereof.

Monuments and vaults, maintenance of.

26. And be it enacted that it shall and may be lawful for any person or persons erecting or placing any monument or inscription in the said church or within the ground which may be inclosed about the same or in the burial-ground belonging thereunto, or digging or making any vault in the said burial-ground by and by virtue of such permission as aforesaid, to have, maintain, and keep up such monument, inscription, or vault according to the terms of such permission to and for the sole and separate use of the said person or persons, and his or their heirs for ever: Provided, always, that in case of any such monument, inscription, or vault as aforesaid be suffered to fall into decay or to become effaced or neglected, and the person or persons at whose cost and charges the said monument, inscription, or vault was erected, placed, or constructed shall decline to repair and keep the same in proper order, it shall and may be lawful for the officiating minister and churchwardens for the time being after a general notice of their intention to remove and efface the same.

Public ordinance.

27. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance, and as such shall be judicially taken notice of by all Judges, Magistrates, and others without being specially pleaded.

Digitised by the University of Pretoria, Library Services, 2016

No. 2, 1842.—Sd. George Napier.] [March 3, 1842.

Ordinance for authorising the appointment of a Vestry and Churchwardens for Sidbury Church.

Preamble.

WHEREAS it is expedient that the inhabitants of Sidbury and the parochial limits thereof being members of and holding communion with the United Church of England and Ireland as there by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with the Episcopal Church at Sidbury recently erected ; and that the said vestry and churchwardens after having been duly appointed should possess certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said United Church of England and Ireland : And whereas on the appointment of the said vestry and churchwardens it is expedient that the office of trustees as at present constituted should cease and determine :

Election of vestry.

1. Now, therefore, be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that on the first Tuesday in Easter week after the passing of this Ordinance, and annually afterwards on the same day, a general meeting of the male inhabitants of Sidbury aforesaid and of the parochial limits thereof being of the age of twenty-one years or upwards and members of and holding communion with the United Church of England and Ireland as there by law established shall be holden at Sidbury, fourteen days' notice whereof shall be given by the minister of the said church for the time being by promulgation during divine service and by notice posted on the doors of the church or by advertisement in one of the public papers of this Colony, for the purpose of electing a vestry ; and it shall and may be lawful for the inhabitants as aforesaid or the greater part assembled at such meeting to elect from among themselves any number of persons, not exceeding eight, in manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereinafter mentioned.

Auditors of vestry accounts.

2. And be it further enacted that two other persons not being members of the said vestry shall likewise be elected at such meeting as aforesaid to be auditors of the accounts of the said vestry.

Qualification for vestryship.

3. And be it further enacted that every male inhabitant householder being of the age of twenty-one years or upwards and a member of and holding communion with the church aforesaid and residing at Sidbury or within the parochial limits thereof shall be eligible to be a member of the said vestry. Provided always, that

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1842. no person shall be entitled to vote at such election or be eligible to be chosen a member of the vestry or an auditor of accounts thereof so long as (legal demand having previously been made) any just claim had upon him by the said vestry as such shall remain unsatified.

Lists of vestrymen 4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing section shall be prepared by the officiating minister so long as there are no churchwardens appointed, and when churchwardens shall have been appointed as is hereinafter provided then by the minister and churchwardens conjointly, and shall be open for the inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place.

Election to be by lists. 5. And be it further enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitants as aforesaid respectively and containing the names of the persons for whom they vote to be elected as vestrymen and as auditors.

Chairman of vestry. 6. And be it further enacted that the officiating minister for the time being shall preside as chairman at the meetings of the said vestry, provided that in his absence from any such meeting one of the other members shall be chosen to act as chairman; and in case the votes of the said vestry be equally divided the chairman or acting chairman shall have a casting vote in addition to his own.

Quorum of vestry. 7. And be it further enacted that five members of the said vestry or four members besides the chairman shall form a quorum, and shall be competent to perform all matters and things which may be done by the vestry under and by virtue of any of the provisions of this Ordinance.

Rules,&c,, for vestry. 8. And be it further enacted that it shall and may be lawful for the said verstry so from time to time constituted and appointed to frame, adopt, alter, or rescind such rules, orders, and by-laws as may to them appear expedient for their guidance in the discharge of their duties and for more effectually executing the provisions of this Ordinance, and also to take such order for the management of the said church as shall to them seem expedient: Provided that the said rules, orders, or by-laws contain nothing repugnant to law or to the tenor of this Ordinance or to the customs and usages of the United Church of England and Ireland as there by law established.

Trustees to deliver deeds, &c., to vestry. 9. And be it enacted that the said trustees shall upon the appointment of the said vestry deliver over to the said vestry all deeds, books, and papers relating to the church in their custody or power and all sums of money in their possession or control; and the office and duties of the said trustees shall thereupon cease and determine.

Powers, &c., of vestry. 10. And be it enacted that the said vestry so from time to time constituted and elected by such members of the said church as

Digitised by the University of Pretoria, Library Services, 2016

aforesaid shall and may have and exercise all the same powers, and rights, and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof, and all other matters and things relating to the same as are now possessed and exercised by the trustees, together with such other laws, and rights, and duties as are hereinafter specified.

Power of vestry to call in money and make contracts.

11. And be it enacted that it shall and may be lawful for the said vestry for the time being to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to their order by virtue of any of the provisions of this Ordinance, and in their own names to make and enter into, perform and execute or compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for the good of the church aforesaid.

Power of vestry to sue.

12. And be it further enacted that it shall and may be lawful for the said vestry as such from time to time to commence and maintain all such suits and actions in any competent Court in this Colony as they shall deem necessary in performance of the trust reposed in them against any person whatsoever; and all such suits and actions shall and may be brought by them in the name of the vestry of the Episcopal Church Sidbury without specifying the christian or surnames of the members of the vestry, and no action shall abate by reason of the death or removal or going out of office of any individual members thereof.

Actions against vestry.

13. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or other matter or thing made or entered into or performed by the said vestry in the execution of the said trust or shall arise or accrue to any person whatsoever against the said vestry shall be brought by such person in manner and in name aforesaid, and not against any individual member of the said vestry.

Accounts by vestry.

14. And be it enacted that the said vestry shall keep an account wherein they shall enter money received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times. And the said account together with any report of the auditors or either of them thereon shall be laid before the members holding communion with the said church at the general annual meeting aforesaid, and published if requisite for general information.

Election of churchwardens and their powers, &c.

15. And be it enacted that the said vestry shall forthwith on their appointment or as soon as conveniently may be choose out of their own number two persons to be churchwardens, who shall perform and execute all lawful acts and matters and things for the good order and decency of behaviour to be kept in the said church by the congregation thereof, and for preserving to all persons

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1842.

their rights in the pews and sittings thereof and providing the said church (by order and at the charges of the said vestry) with necessary and customary furniture for the performance of divine service, and for keeping the same clean and in proper repair, and for keeping the burial-ground attached to the said church in decent order and properly fenced, and for discharging all other duties which usually devolve on churchwardens in the United Church of England and Ireland so far as the same may be applicable to this Colony.

Accounts of charity collections.

16. And be it further enacted that the said churchwardens shall keep an exact account of all collections of money made from time to time in the said church for any charitable or religious purposes connected with the said church or congregation; and the said churchwardens together with the officiating minister for the time being shall faithfully administer the same or see that they be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same. And the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations as the general church fund and accounts of the vestry.

Tenure of office by churchwardens.

17. And be it enacted that the churchwardens appointed as above shall continue in office until after the next general annual election of the vestry is completed, when they shall deliver up to the said vestry all accounts of such charities as aforesaid duly audited, together with all vouchers, sums of money, or securities held by them in virtue of their office; and the vestry shall then proceed to nominate other churchwardens for the ensuing year: Provided, always, that the churchwardens thus vacating office shall be eligible to be re-elected in case they are continued as members of the vestry.

Occasional vacancies in vestryship.

18. And be it further enacted that in case any member of the vestry shall die or desire to resign or shall be removed or for any other lawful cause shall vacate his office it shall and may be lawful for the surviving or other members of the said vestry to decide whether a special general meeting shall be called for the purpose of electing another member in the place of the one so dying or desiring to resign or being removed, or whether his place shall remain vacant until the next general annual meeting to be holden as aforesaid: Provided, always, that in case the members of the said vestry decide that a special general meeting shall be holden for the purpose aforesaid the same notice shall be given thereof and the same proceedings shall be observed thereat as in case of the general annual meeting is provided.

Free sittings.

19. And be it enacted that there shall be set apart in the said church two free pews, one to be allotted to the use of the minister and the other to that of the churchwardens, and that a proportion

Digitised by the University of Pretoria, Library Services, 2016

namely one-third of the remaining accommodation in the church, be reserved as free sittings for the poor.

Pews to be let.

20. And be it further enacted that all the pews and sittings in the said church with the exception of those allotted and reserved as aforesaid shall and may be let by the vestry by the year or for any other shorter period to any person desiring to take the same at a rent to be affixed to them respectively by the vestry, and payable at such times and in such manner as shall be appointed by the vestry; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hindrance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable: Provided, always, that nothing in this section shall be construed to interfere with the claims of any person at present holding sittings in the church.

Remedy when pew-rent in arrear.

21. And be it enacted that it shall and may be lawful for the vestry whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same is due and payable to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said vestry to re-enter into the possession of the said pew for the purposes of this Ordinance without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive from recovering the amount of such rent in arrear by action in any competent Court.

Rites of burial.

22. And be it further enacted that no burial shall take place within or under the said church, but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted or which may hereafter be consecrated and allotted to the said church for that purpose.

Monuments and vaults, erection of.

23. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monument to be erected or placed in such convenient parts of the said church or of the enclosed ground about the same or in the burial-ground belonging thereto, or vaults to be dug and made in the said burial-ground, upon payment to the fund of the said church for such permission of such reasonable fee as shall be affixed by the said vestry for such permission according to the terms thereof.

Monuments and vaults, maintenance of.

24. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or digging or making any vault in the said burial-ground by and with such permission as aforesaid to have, maintain, and keep up such monument or vault according to the terms

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1842.

of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever: Provided, always, that in case any such monument as aforesaid is suffered to fall into decay and the person or persons to whom the said monument appertains neglect to repair the same it shall and may be lawful after a general notice of such intention to remove the same.

Public Ordinance.

25. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance and shall be judicially taken notice of by all Judges, Magistrates, and others without being specially pleaded.

No. 3.] [March 26, 1842.

Ordinance for continuing the provisions of an Ordinance bearing date the 14th day of February, 1833, entituled "An Ordinance for enabling certain Persons having respectively the just, lawful, and undisputed Right to certain Lands and Houses to procure the same to be enregistered as their property in the Land Register."

[See Ordinance 9, 1853 and Act No. 4, 1860.]

No. 4.] [March 26, 1842.

Ordinance to declare certain Immovable Property belonging to the Colonial Government to be exempt from Municipal Taxation.

[Repealed by Ordinance No. 3, 1843.]

No. 5.] [May 4, 1842.

Ordinance to provide for the Lodgment elsewhere than in the Government Discount Bank of this Colony of certain Moneys now by Law required to be lodged in the said Bank.

[Repealed by Act 33, 1893.]

No. 6.] [May 25, 1842.

Ordinance for applying a Sum not exceeding £155,199 7s. for the service of the year 1843. [Spent.]

Order in Council.] [Aug. 27, 1842.

Order of Her Majesty in Council passed on the 27th August, 1842, and promulgated in this Colony on the 14th December, 1842, "For amending and consolidating the Law regulating the Rights and Duties of Masters, Servants, and Apprentices."

[Repealed by Act No. 15, 1856.]

Digitised by the University of Pretoria, Library Services, 2016

No. 1.] [April 22, 1843.

Ordinance for amending the Law relative to the Qualification of Jurors.

[Repealed by Act 22, 1891.]

No. 2.] [April 22, 1843.

Ordinance for establishing a Toll at the Pass called Platte Kloof in the Division of Swellendam, and for keeping in repair the Road over the said Pass.

[Expired.]

No. 3.—Sd. George Napier.] [May 4, 1843.

Ordinance for repealing the Ordinance No. 4 of 1842, entituled an Ordinance to declare certain Immovable Property belonging to the Colonial Government to be exempt from Municipal Taxation. (1)

Preamble.

WHEREAS a certain Ordinance was made and passed in this Colony bearing date the 26th day of March, 1842, and numbered 4, 1842, and entituled "An Ordinance to declare certain Immovable Property belonging to the Colonial Government to be exempt from Municipal Taxation": And whereas it is expedient to repeal the said Ordinance: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the consent of the Legislative Council thereof, that the said Ordinance No. 4, 1842, shall be repealed and the same is hereby repealed accordingly.

Ord. 4 of 1842 repealed.

No. 4.] [May 4, 1843.

Ordinance for establishing the validity of certain Writings Testamentary and Powers of Attorney, executed without being witnessed as by Law required, and for other purposes.

[Amended and repealed in part by Ordinance No. 11, 1845, and *in toto* by Ordinance No. 15, 1845.]

No. 5.] [June 21, 1843.

Ordinance for applying a Sum not exceeding £161,039 19s. 5d. for the service of the year 1844. [Spent.]

---

[1] See also Section 115, Act 45, 1882.

Digitised by the University of Pretoria, Library Services, 2016

No. 6.—Sd. George Napier.] [October 24, 1843.

Ordinance for Regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony. (1)

WHEREAS the law as contained in the Ordinance No. 64, bearing date the 6th of August, 1829, and entituled "An Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony," requires certain additions and alterations: And whereas it is expedient in order that the said additions and alterations may most conveniently be made that the said Ordinance No. 64 should be repealed and a new Ordinance enacted in its stead: And whereas it is also expedient that all insolvent estates within this Colony should be hereafter administered under one uniform system of law, and to that end that the benefit or relief of cession of goods and property commonly called the *cessio bonorum* now available to insolvent debtors in this Colony should be abolished: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that from and after the passing of this Ordinance the Ordinance aforesaid, No. 64, and the publication of the 4th of September, 1805, respecting transfers, cessions, pledges, and other securities entered into by debtors within twenty-eight days previous to their insolvency, and so much of Ordinance No. 5, 1842, entituled "An Ordinance to provide for the Lodgment elsewhere than in the Government Discount Bank of this Colony of certain Moneys now by law required to be lodged in the same Bank," as is in substance hereinafter set forth and re-enacted, and all laws and customs heretofore in force within this Colony in so far as the same are repugnant to or inconsistent with any of the provisions of this Ordinance shall be and the same are hereby respectively repealed.

Repeal of former laws.

Cessio bonorum abolished.

1. And be it enacted, that from and after the passing of this Ordinance, it shall not be lawful for any person or persons to obtain from any Court within this Colony, or for any such Court to grant to any person or persons, the benefit or relief of cession of goods and property, commonly called the *cessio bonorum*, as heretofore known to and allowed by the law of this Colony: Provided, however, that nothing herein contained shall be deemed or taken to affect in any way the estate or condition of any person to whom, before the passing of this Ordinance, the said benefit or relief shall have been duly granted, which estate shall be administered, and which condition shall be judged of, precisely as if this Ordinance never had been made.

Voluntary surrender.

2 (2) And be it enacted, that it shall and may be lawful for the Supreme Court, or any Circuit Court, or for the Chief Justice of

[1] See Acts 15, 1859; 38, 1884; 17, 1886, § 11; 22, 1887

[2] See Act 38 of 1884, §§ 1 and 2, and § 11, Act 17, 1886

Digitised by the University of Pretoria, Library Services, 2016

this Colony, or any other of the Judges of the Supreme Court, upon the petition, in writing, of any person, setting forth that he is insolvent, and desirous of surrendering his estate for the benefit of his creditors, to direct such person to appear before him, to be examined touching his said insolvency, or to require such other proof thereof, by affidavits of the said insolvent and others, as to the said Court or the said Judge may seem fit; or to direct such petitioner to appear before any person, duly appointed by the Supreme Court its commissioner for such purposes, and to direct such commissioner to examine the petitioner in manner aforesaid, and to take such proof of the matters aforesaid, as to the said commissioner shall seem fit; and to make out and transmit to the Registrar of the Supreme Court a report of such examination and proof taken as aforesaid. And it shall and may be lawful for the said Court or Judge, before whom such examination is taken, or for the said Court, or the Chief Justice, or any Judge of the Supreme Court, on considering the report of any such commissioner, made in manner aforesaid, upon proof of the matter aforesaid to his satisfaction, to accept the surrender of such estate, and by order, under his hand, to place the same under sequestration in the hands of the Master of the said Court. Provided also, that any person authorised by power of attorney to administer the estate of any person absent from the Colony may present, in the name of such last-mentioned person, such petition as aforesaid, and thereupon the same proceeding shall, as near as may be, be had and taken as if the person so absent from the Colony had himself petitioned.

Voluntary surrender by attorney.

3. And be it enacted, that it shall in like manner be lawful for the Supreme or any Circuit Court, or for the Chief Justice, or any other of the Judges of the Supreme Court, upon the like petition of any person legally vested with the administration of the estate of any person deceased, or of any person legally or actually incapable of the administration of his estate, situated within this Colony, stating the insolvency of such estate; or upon the like petition, stating the insolvency of the estate of any company trading or having an estate or effects within this Colony, made by the greater number of the partners of such company, who, at the time of presenting the petition, are within this Colony, to examine the petitioner or petitioners, or cause him or them to be examined in manner aforesaid, or to take or cause to be taken proof of the matters aforesaid, in manner hereinbefore provided. And it shall be lawful for the Judge before whom such examination is taken, or for the Chief Justice, or any Judge of the Supreme Court, on considering the report of any commissioner of the said Court, made in the manner aforesaid, upon proof of the matters aforesaid to his satisfaction, to accept the surrender of any such estate, and to place the same under sequestration in manner aforesaid And after the order for any such sequestration is made, the like proceedings shall and may be had and take place concerning such estates, and

Voluntary surrender by executors, &c.

Or by trading companies.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

the persons in whom the administration thereof is legally vested, and the partner or partners of such companies, as are herein provided concerning other estates and other insolvents.

Circumstances constituting insolvency.

4. And be it enacted, that if any person having any property, movable or immovable, personal or real, within this Colony, shall depart therefrom, or being out of this Colony, shall remain absent therefrom, or shall depart from his dwelling-house, or otherwise absent himself with intent to defeat or delay his creditors in obtaining payment of their debts; or having against him the sentence of any competent Court, being thereunto required, shall not satisfy the same, or shall not point out to the officer charged with the execution thereof, sufficient disposable property to satisfy the same: if it shall appear from the return made by such officer or his affidavit, that he has not found sufficient disposable property of such person to satisfy such sentence: or shall make, or cause to be made, either within this Colony or elsewhere, any alienation, transfer, gift, cession, delivery, mortgage, or pledge of any of his goods or effects, movable or immovable, personal or real, with intent, or in such manner as, to defeat or delay his creditors in obtaining payment of their debts, or with intent to prefer one creditor before his other creditors, such person shall be deemed thereby to have committed an act of insolvency. ([1])

Compulsory sequestration at instance of creditor.

5. ([2]) And be it enacted, that it shall and may be lawful for the Supreme or any Circuit Court, or for the Chief Justice of this Colony, or any other of the Judges of the Supreme Court, upon petition made in writing against any person having committed any act of insolvency, by any creditor or creditors whose debt or debts amount to the value hereinafter provided, and setting forth the amount of the debt of such creditor and the cause thereof, and the alleged act of insolvency, and praying that the estate of such person may be sequestrated for the benefit of his creditors, upon proof thereof to the satisfaction of the said Judge, provided there shall be produced to the said Judge, together with such petition, the affidavit or affidavits and certificate hereinafter required, by order, under his hand, to place the estate of every such person or persons under sequestration, in the hands of the Master of the said Court, until the same shall, in manner hereinafter mentioned, be adjudged to be sequestrated, or the said petition shall be discharged.

Debt of creditor petitioning for sequestration.

6. And be it enacted, that no estate shall be placed under sequestration, unless the debt of a single creditor, petitioning that the same may be sequestrated, shall amount to fifty pounds, or unless the debts of two or more creditors, so petitioning, shall jointly amount to one hundred pounds. And every person who is the creditor of another, upon valuable consideration, for any sum payable at a certain time, which time shall not have arrived when the act of insolvency was committed, may so petition, or join in

[1] For further acts of insolvency see §§ 21 and 129.
[2] See § 3 Act 38 of 1884.

Digitised by the University of Pretoria, Library Services, 2016

petitioning as aforesaid, whether he shall have any security for the same or not. Ord. 6—1843.

Affidavit of and security by petitioning creditor.

7. And be it enacted that every petitioning creditor shall, before presenting any petition for having any estate placed under sequestration, make an affidavit in writing before one of the Judges of the Supreme Court, or a commissioner of the said Court appointed to take affidavits, (which affidavits shall be filed with the proceedings in the estate) of the truth of his debt and the cause thereof; and shall likewise give security, to the satisfaction of the Master of the Supreme Court, or of the Resident Magistrate of the district in which such petition shall be presented, for payment of the necessary fees and charges for prosecution of the said sequestration, until the choice or appointment of trustees. And the Master of the said Court, or Resident Magistrate as the case may be, shall forthwith endorse on every such petition, a certificate that such security has been found, and shall sign the same.

Petitioning creditor to prosecute sequestration.

8. And be it enacted that the creditor or creditors on whose petition any order for sequestration shall be made, shall, at his or their own cost, prosecute all the proceedings in the said sequestration, until the election or appointment of trustees in manner hereinafter mentioned; and the same having been first taxed and ascertained by the Master, the said trustees shall reimburse the said creditor or creditors out of the first money that shall be received. And the costs incurred under any sequestration, after the election or appointment of trustees, in rendering any part of the insolvent estate over which any creditor shall hold any special mortgage, pledge, hypothec or lien available for the payment of the debt thereby secured, shall be paid out of the proceeds of the property over which any such security extends, when the proceeds shall be sufficient for the same; and when the proceeds shall be insufficient, such creditor shall be personally liable for the same. And no creditor holding any such security shall be liable to pay, or to have deducted from the proceeds of any such property, any part of the costs of sequestration incurred for any other purpose: and all costs incurred previous to the election or appointment of trustees as aforesaid, in all cases in which upon the petition of the insolvent any estate has by order been placed under sequestration, together with all costs incurred in every case of the sequestration of estates as insolvent, (whether the same has been ordered, or petition as aforesaid is adjudged, at the instance of the creditors,) for any other purpose than as aforesaid, after the election or appointment of trustees as aforesaid, shall, in the first place, and before any other debt, be paid out of the free residue of the insolvent estate when it shall be sufficient for the same: and when the said free residue shall be insufficient for the payment thereof, all the creditors who have proved against the insolvent estate debts not secured as aforesaid, shall be personally liable for the same, in proportion to such

Costs of realizing property mortgaged.

Liability of mortgagee as to costs of sequestration.

Costs of sequestration, how to be paid.

Liabilities of creditors for the costs

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

debts. (1)Provided, however, that no person shall, by merely proving a debt, or receiving a dividend, or appearing or voting at a meeting of creditors as a creditor, be so liable for any claim by any person employed by the trustee in relation to any action or suit at law affecting the said estate, or for any portion of the compensation or remuneration the trustee for his care and diligence, reserving always, to every person employed by the trustee, such recourse against the said estate or the said trustee as may be competent to him, and reserving also to such trustee recourse against the said estate and against such creditors thereof, or others, as may on other grounds be liable to such recourse.

Sequestration of company estates.

9. And be it enacted, that any creditor or creditors of any company may, in like manner as aforesaid, petition against the partners of any such company, to have the estate of such company placed under sequestration; in case any such company have, by any one or more of its partners, committed any act of insolvency, with intent or in such manner as to defraud the creditors of such company, or to defeat or delay them in obtaining payment of the debts due by such company; or provided the sentence of any competent Court has been obtained against such company, and the partners thereof, being thereunto required, have not satisfied the same, or pointed out, to the officer charged with the execution of such sentence, sufficient disposable property to satisfy the same; and provided it shall appear from the return made by such officer, or his affidavit, that he has not found sufficient disposable property of such company to satisfy such sentence; and every order for sequestration issued upon such petition shall be valid, although it do not include all the partners of the company. And after the order for sequestration of such estate is made, the like proceedings shall and may be had and take place concerning such estate, and such partner or partners, as are herein provided to be had and take place concerning other estates and other insolvents: Provided always, that nothing herein contained shall extend, or be construed, to prevent the creditor or creditors of any company from proceeding against any partner, or the separate estate of any partner thereof, in respect of debts due by such company, in the same way in which it is herein provided that the creditors of any person may proceed against him and his estate, in respect of debts due by such person in his individual capacity. And provided, also, that it shall be lawful, upon such petition and proof as last aforesaid, and such other proof, if any, as may be required, to include in the same order for sequestration, (should the Chief Justice or other Judge aforesaid making the same see fit so to do) as well the separate estate or estates of any partner or partners of any company as the joint estate of such company. But the separate estate of a partner shall not be entered upon or attached by virtue merely of an order for

Effect of sequestration of company estate on proceedings against its partners.

Conjunction of company with partnership estates.

[1] See Act 38 of 1884, § 3.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6–1843.

the sequestration of the estate of the company to which such partner belongs, and when any separate estate or estates shall be included together with the estate of the company in the same order for sequestration, the creditors of the separate estate or estates, and of the estate of the company respectively, shall, together and indifferently, vote in the election of the trustee or trustees, and in all matters relating to the said estates so included, in the same order just as if the debt of every such creditor were due and owing by one single and undivided estate. Provided always, that the trustee or trustees of any sequestrated estates so consolidated, and the trustee or trustees of every joint and separate estate which may be included, as aforesaid, in the same order for sequestration, shall be bound to keep separate and distinct accounts of the joint estate and of each separate estate, and shall rank the respective creditors, and frame the account and plan of distribution hereinafter mentioned, and award dividends, and generally dispose and arrange the respective rights and claims of the consolidated estate, and settle the affairs thereof according to the provisions hereinbefore in that behalf set forth, precisely as if each of the consolidated estates were under a separate administration.

Separate accounts where estates conjoined.

Sequestration of estates of deceased or incapable persons.

10. ([1]) And be it enacted, that any creditor or creditors of the estate of any person deceased, or of any person legally or actually incapable of the administration of his estate, situated within this Colony, may, in like manner as aforesaid, petition to have such estate placed under sequestration as insolvent, provided the person in whom the administration of such estate is legally vested, has either in his individual or in his fiduciary capacity, committed any act of insolvency, with intent, or in such manner, as to defraud the creditors of such estate, or to defeat or delay them in obtaining payment of the debts due by such estate; or provided the sentence of any competent Court has been obtained against any such estate, and the person in whom the administration thereof is legally vested, has not satisfied the same, or, being thereunto required, pointed out to the officer charged with the execution of such sentence, sufficient disposable property to satisfy the same; and provided it shall appear, from the return made by such officer, or his affidavit, that he has not found sufficient disposable property belonging to such estate to satisfy such sentence; and after the order for any such sequestration is made, the like proceedings shall and may be had and take place concerning such estates and the persons in whom the administration thereof is legally vested, as are herein provided to be had and take place concerning other estates and other insolvents.

Privileges, &c., given to individual creditors extended to partners of companies and administrators of estates of third persons.

11. And be it enacted, that every privilege and power given by this Ordinance to any creditor, in respect of any debt due to him individually by any insolvent, and every liability or penalty imposed by this Ordinance on any such creditor, shall be, and

[1] See Act 38 of 1884, § 3.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

is hereby declared to be, given to and imposed on the partner or partners of any company in respect of any debt due to such company by any insolvent, and to be given to and imposed on every person legally vested with the administration of the estate of any person deceased, or of any person legally or actually incapable of the administration of his estate, situated within this Colony, in respect of any debt due to such estate, by any insolvent: Provided always, that, in reckoning the number of votes at any meeting of creditors, or the number of creditors who have signed the certificate of any insolvent, the partners of any company, and any persons in whom the joint administration of any estate is vested, as aforesaid, shall be entitled to only one vote, and shall be considered as one person.

Order of sequestration, deposit of with sheriff.

12. And be it enacted that the party obtaining any order for sequestration shall forthwith lodge the same with the Sheriff of this Colony, at his office in Cape Town, or with the Deputy Sheriff of the district in which such order has been obtained, and the said Sheriff or Deputy Sheriff shall enregister the said order, and note thereon the day and hour of its production, and the Deputy Sheriff shall forthwith deliver, or cause to be delivered, to the Sheriff, at his office in Cape Town, every order lodged with him, after the same shall have been enregistered as aforesaid; and the Sheriff shall at his said office enregister every such last mentioned order, and note thereon the day on which he received the same, and the Sheriff shall forthwith deliver, or cause to be delivered, to the Master of the Supreme Court, every order as aforesaid, whether lodged with himself or received from any deputy, and the said Master shall, when the order has been made at the instance of creditors, cause the same to be notified in the *Government Gazette* of the Colony; and every insolvent obtaining any order for sequestration shall also lodge with the Master of the Supreme Court, a list, containing, to the best of his knowledge and belief the names and places of abode of his several creditors.

Registration of by sheriff.

Transmission of by sheriff to master.

Publication of by master.

Attachment and inventory of estate by master.

13. And be it enacted, that the Master of the Supreme Court, upon any estate being placed under sequestration in his hands, shall by his messenger enter and lay an attachment on the estate, under inventory thereof; and when the same shall be sequestrated upon the petition of any creditor, the said messenger shall be accompanied by the petitioning creditor, or someone authorised by him, on behalf of himself and the other creditors of the said estate; and when the said estate shall be sequestrated upon the surrender of any insolvent, it shall be lawful for any of the creditors, or for the agent of any of the creditors of the insolvent, to accompany the messenger, and to be present with him while making out the inventory aforesaid.

Intermeddling with property attached.

14. And be it enacted, that, when any movable property belonging to any insolvent estate is attached as aforesaid, in virtue of any order for the sequestration thereof, the messenger making

Digitised by the University of Pretoria, Library Services, 2016

such attachment shall leave with the person in whose possession any such property is attached, a copy of the said inventory, having subjoined thereto a notice, both in the English and Dutch languages, that the property therein specified has been attached by the said messenger, by virtue of an order for the sequestration thereof; and that any person who, knowing the same to have been so attached, shall dispose of, remove, conceal, or receive the same, or any part thereof with intent to defeat the said attachment is liable, on conviction of such offence to be transported for any period, not exceeding seven years, or to be imprisoned, with or without hard labour, for any period not exceeding five years: Provided always, that it shall be lawful for such messenger to secure on the premises by sealing up any repository, room, or closet, any articles which, in the discharge of his duty, it shall seem to him expedient so to secure, causing no unnecessary hindrance or inconvenience to any party by so doing or to leave some person on the premises in custody thereof, and the said messenger shall forthwith report his execution of the said attachment to the Master of the Supreme Court, who shall take such measures, and give such directions for the safe custody of the said property as to him shall seem fit.

Securing by master of property attached.

Report of attachment to the master.

15. And be it enacted, that the Resident Magistrates of this Colony, in their respective districts, shall aid and assist in carrying this Ordinance and the provisions thereof into effect; and, for that purpose, shall do and execute all such matters and things as they shall be required to do and execute by any rule or order of the Supreme Court by virtue of this Ordinance.

Resident magistrates, duty of, in regard to sequestration.

16. And be it enacted, that the Sheriff of this Colony, either by himself or by his deputy, and the messengers of the Courts of the Resident Magistrates, being thereunto required by the Master of the Supreme Court, shall, within the districts in which they have respectively been appointed to act, do and execute the duties directed by this Ordinance, or by any rule or order of the Supreme Court in pursuance of this Ordinance, to be done and executed by a messenger: and shall receive to their own use for such service, out of the assets of any insolvent estate as to which they may be so employed, such reasonable fees as are, or shall be, allowed by the Supreme Court for their service.

Sheriff, his deputies and messengers of magistrates, their duties in regard to sequestration.

17. And be it enacted, that it shall and may be lawful for every petitioning creditor who shall duly obtain any order for placing the estate of his debtor under sequestration, thereupon to take out the process of the Supreme Court, to summon the debtor that he appear before the Supreme Court, or the Circuit Court of the district within which the debtor's ordinary place of residence is, on a certain day, to be appointed by the Judge making such order, as to the said Judge shall seem fit, to show cause why his estate should not, by sentence of the said Court, be adjudged to be sequestrated for the benefit of his creditors; and the service of the said process shall be made in the same manner as is or shall be by law

Summons of insolvent for adjudication or sequestration.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

provided for the service of any other process of the said Court: Provided, that, if any debtor has been forty days absent from his usual place of residence or business within the Colony, copies of the said summons shall also be affixed upon the outer door of the Supreme Court, and inserted in the *Government Gazette* of this Colony.

Adjudication on petition for sequestration.

18. And be it enacted, that, upon the day appointed for any person to show cause why his estate should not be adjudged to be sequestrated, it shall and may be lawful for the Court to receive proof of the matters aforesaid, and to adjudge thereon, whether the said person having been thereto lawfully summoned, shall appear to the said summons or not; or upon sufficient cause being shown to their satisfaction, to delay the said adjudication for any reasonable time, at their discretion. And, if the petitioning creditor shall make default in appearing, or prove his said debt or the act of insolvency to the satisfaction of the Court, it shall and may be lawful for the said Court to supersede the said order for sequestration, and to dismiss the said petition, or to require further proof of the matters contained therein, as to the said Court shall seem fit. And whenever any petition shall be dismissed by the said Court, all questions affecting the estate of any person against whom it was presented, or any right of such person, or of his creditors or debtors, or the validity of any alienation, transfer, gift, cession, delivery, mortgage, pledge, payment, acquittance, surrender, or discharge, made by such person, or payment made to such person, shall be judged of and determined as if such petition had never been presented.

Where petition vexatious or malicious.

19. And be it enacted, that if it shall appear to the Court before whom any person has been so summoned upon such petition for sequestration, that the said petition was unfounded, and vexatious, or malicious, it shall and may be lawful for the said Court to allow the said person, on his application for the same forthwith to prove any damage alleged to have been by him sustained thereby, and to award to the said person such satisfaction for the said damage, as the said Court shall deem fit, or otherwise to leave the said party to his action for the said injury.

Sequestration may be followed out by other than petitioning creditor.

20. And be it enacted, that if, after any order has been made for the sequestration of any estate, the debts of the petitioning creditors, or any of them, be found insufficient to entitle such creditors to apply for and obtain such order for sequestration, or if such order shall be superseded in consequence of the consent or default of the petitioning creditor or creditors, or his or their collusion with the insolvent, it shall be lawful for the Supreme Court, or such Circuit Court as aforesaid, upon the application of any other creditor or creditors whose debt or debts amount to the value hereinbefore provided, and have been incurred prior to the said order for sequestration, and who shall produce at the time of making such application, the affidavit or affidavits, and the certificate hereinbefore

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

required, to order that the said sequestration shall be revived and be proceeded in, as if it had been originally obtained on the petition of the creditor or creditors last mentioned; and thereafter the said sequestration shall be revived with all the consequences and effects thereof, as if it had never been superseded; save only, that when the sequestration shall be revived after the same shall have been superseded, the validity of every alienation, transfer, gift, cession, delivery, mortgage, pledge, payment, acquittance, surrender and discharge made by such insolvent, and every payment to and dealing with the said insolvent between the time of the superseding of the order for sequestration and the time of the making of the order for reviving the same, shall be judged of and decided upon, on such and the like grounds and principles, and no other as would by law have been applicable to the same in case such order for revival were a primary and original order for sequestration.

Collusive agreement between insolvent and petitioning creditor.

21. And be it enacted, that if any person against whom any order for sequestration has been made, shall pay any money to the person who obtained the same, or give or deliver to any such person any satisfaction or security for his debt, or any part thereof, whereby such person may receive more in the pound in respect of his debt, than he would be entitled to receive if the sequestration were proceeded in, and the estate distributed among the creditors thereof, according to their legal rights and preferences, such payment, gift, delivery, satisfaction, or security, shall be a new act of insolvency. And every person so receiving such money, gift, delivery, satisfaction, or security, shall, in the event of the sequestration being afterwards proceeded in by any other creditor or creditors, in manner hereinbefore mentioned, or of a new order for sequestration being issued upon such new act of insolvency, deliver up such security, and shall repay the said money, gift, or the full value thereof to such person or persons as the Court shall appoint, for the benefit of the creditors of such insolvent, and shall pay all the costs which shall be incurred by any other creditor in obtaining the revival of the said sequestration, and shall forfeit the whole of the debt due and owing to him by such insolvent.

Effect of order of sequestration upon judgments, &c.

22. (1) And be it enacted, that further execution of any judgment against any insolvent, or his estate, for the amount of any debt or sum of money, shall, after any order for sequestration of such estate is lodged with the Sheriff, or any such Deputy Sheriff, as aforesaid, for registration, be stayed during the pendency of such sequestration, and the insolvent, if in prison in virtue of any decree of civil imprisonment given in respect of any judgment, debt or costs, or any order for committal made in respect of disobedience to any order for the payment of money made in any civil suit or proceeding, may be released from his imprisonment, in

[1] See Act 38 of 1884, § 2.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

so far as the same is occasioned by reason of any such decree, order, or arrest as aforesaid, by the order of the Supreme Court, or of any Judge thereof, or of any Circuit Court, in case such Court or Judge shall not see cause to refuse to make such order, shall be discharged therefrom. And it shall and may be lawful for the person having right to such judgment, to prove the debt, and costs secured thereby, against the sequestrated estate, and to take the benefit thereof upon distribution of the said estate; and where any property has been attached by legal process for satisfaction of any judgment, and has not been sold, or, having been sold, the proceeds thereof remain undistributed in the hands of the Sheriff or other officer of the law, such property or such proceeds shall be placed under sequestration in the same manner as any other part of the insolvent estate, and the person holding such judgment, shall, on the distribution of the said estate, be entitled to be preferred over the proceeds of the property attached or sold, as the case may be, at the time of the lodgment, with the Sheriff or Deputy Sheriff, of the order aforesaid, for the costs incurred by him, for and in respect of the writ of execution, and the execution of the same, but not for the amount of his judgment debt, or of his costs of suit by him incurred before the suing out of such writ of execution.

Effect of order of sequestration upon actions against insolvent.

23. And be it enacted, that all actions pending against any insolvent for any debt or demand provable against his estate, and all proceedings therein, shall, upon any order being made for the sequestration of such estate, in virtue thereof, be stayed: and the insolvent, if in prison under any arrest granted in security of any debt or demand in regard to which any such action shall have been instituted, may, by the authority and under the condition in the last preceding section mentioned, be discharged therefrom, and it shall and may be lawful for the plaintiff in such action to prove his debt, together with the taxed costs of suit then incurred against the sequestrated estate, and to take the benefit thereof upon distribution of the said estate: Provided, however, that all actions pending against any insolvent for damages alleged to have been sustained from any injury or wrong, or breach of any contract, committed by him, such damages being uncertain, or for recovery of any claim unliquidated as to its amount, and all proceedings therein, shall, upon any order being made for the sequestration of his estate, be stayed until a trustee shall be elected for the administration thereof, if the sequestration shall remain in force so long; and thereupon, the plaintiff in such action, after summoning the trustee to take up and defend the said action, may proceed to obtain the judgment of the Court thereon, and the said judgment, when recovered, together with the taxed costs of suit, shall be a debt provable against the said estate.

Effect of order of sequestration upon actions by insolvent.

24. And be it enacted, that all actions commenced by any person whose estate shall afterwards be placed under sequestration

Digitised by the University of Pretoria, Library Services, 2016

as insolvent, for any debt or demand due to the said estate, and all proceedings therein, shall, upon the order for such sequestration being made, be stayed, until the trustee thereafter chosen for the administration of the said estate shall make election to prosecute or discontinue the same, and the trustee shall be bound to make such election within six weeks after notice to that effect shall be served upon him by any defendant in any such action, or otherwise shall be deemed to have abandoned the same. Provided, however, that any insolvent shall be permitted to continue, in his own name and for his own benefit, any action commenced by him previous to his insolvency, for any personal injury or wrong done to himself, or any of his family, and any damages which may be recovered in any such action shall not go or belong to the insolvent estate, nor shall any property proved to have been purchased or obtained by the insolvent with any such damages.

Damages for personal injury saved from sequestration.

25. And be it enacted, that the Master of the Supreme Court shall, after any estate has been placed under sequestration, upon surrender thereof as insolvent, or has been adjudged to be sequestrated, forthwith cause notice thereof to be given in the *Government Gazette* of this Colony, and shall thereby appoint two public meetings of the creditors of such estate, at such times and places as he shall deem most convenient for all the parties concerned, the first for receiving proof of debts against the said estate, and the second for the same purpose, and for electing a trustee for the collection, administration, and distribution thereof. And such publication shall be deemed notice thereof to all persons who may reasonably be presumed to have seen the same. And the times and places so fixed for the holding of any of the meetings aforesaid, may, on cause shown to the said Master, or to the Supreme Court, by any party dissatisfied with the appointment made by the said Master, be altered; of which alteration notice shall be forthwith given in the *Government Gazette:* Provided always, that if it shall appear to the said Master, before causing notice to be given as aforesaid, that the goods and effects of the insolvent available for the payment of his debts are not the value of seventy-five pounds sterling, he shall specify the same in the said advertisement: and shall therein also give notice, that unless it shall be shown at the first meeting, called as aforesaid, that the goods and effects of the insolvent exceed the value of seventy-five pounds sterling, the Master, or Resident Magistrate holding such meeting will summarily proceed to rank the debts which shall be proved at such meeting according to their respective preferences and to direct the proceeds of the insolvent estate to be forthwith distributed accordingly, by a trustee to be then elected by the greater part of the creditors in number and value attending at such meeting. And in such case, the said insolvent shall at such first meeting attend before the creditors to account for his insolvency, and shall, being thereunto required, do and perform thereat all such other

Calling of first and second meeting of creditors.

Election of trustee.

When value of estate not above £75

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

matters and things as are hereinafter required to be done and performed by him at any meeting of creditors, under the provisions of this Ordinance. And if at the said first meeting, which meeting may be adjourned from time to time, if the said Master or Resident Magistrate shall deem it necessary to adjourn the same, it shall still appear to the said Master or Resident Magistrate, as the case may be, before whom the same is holden, that the available assets of the said estate do not exceed the amount of seventy-five pounds sterling, it shall and may be lawful for the said Master or Resident Magistrate to rank the creditors who shall prove their debts at such meeting, according to the legal order of their preference, and for the creditors to elect a trustee for the collection, administration, and distribution of the estate of the said insolvent according to the order of ranking; and to direct the said trustee forthwith to collect, administer, and distribute the same accordingly. And further at the said first meeting the said Master or Resident Magistrate shall and may respectively execute all the powers and authority which may be executed by them at any meeting of creditors under the provisions of this Ordinance, and shall also do and perform thereat all matters and things required to be done for the final settlement of the said estate. And the creditors present at the said first meeting shall then determine what part of the wearing apparel, bedding, household furniture, and tools of trade of the insolvent shall be excepted from the sale of his movable property, and shall be allowed to him; and shall also give to the said trustee such directions as to the management of the said estate as to them shall seem fit. And no other meeting shall be thereafter holden, unless, upon cause shown to the said Master by any trustee or creditor of the said estate, the said Master shall think fit to order the same.

Before whom meetings of creditors to be held.

26. And be it enacted that in all cases where any meeting of creditors for the proof of debts or for the election of trustees shall be appointed to be holden in Cape Town, the same shall take place before the Master of the Supreme Court; and if in any district of the Colony other than the Cape District, then before the Resident Magistrate of such district, under the direction of the said Master; and the said Master or Resident Magistrate shall respectively take the votes of the creditors, and declare the party so elected trustee of the said estate; and in all cases where such meeting shall be holden before the Resident Magistrate of any district, he shall forthwith certify to the said Master the proceedings thereat.

Proof of debts.

27. And be it enacted, that every creditor shall prove his debt against the said estate to the satisfaction of the Master or Resident Magistrate, as the case may be, who shall admit any debt, or reject the same as not proved. And every creditor shall prove his debt by affidavit, which shall be sworn before the Master or Resident Magistrate, or some commissioner appointed by the Supreme Court for taking affidavits, or some Justice of the Peace,

Digitised by the University of Pretoria, Library Services, 2016

and which shall state the nature of the alleged debt, and when such debt accrued originally to the deponent himself, that the same is a just, true and lawful debt, and, when such debt has accrued to the deponent by cession, or otherwise, from any other person, then that the said debt is a just, true, and lawful debt to the best of the deponent's knowledge and belief, and such affidavit shall state what other persons, if any, are, besides the insolvent, liable for the said debt or any part thereof, or that there are no such persons so liable, and shall state all pledges or security which the deponent, or any person for his use, holds from the insolvent for the said debt or any part thereof, and shall depose to the genuineness of all vouchers or evidences of debt which the deponent shall produce with his said affidavit. Provided always, that it shall be lawful for the said Master or Resident Magistrate, in case he shall find that any clerk, agent, or other person is more fully cognizant of the nature of the debt sought to be proved than the creditor is, to allow such clerk, agent, or other person to swear the affidavit aforesaid with such alterations as will thereby become necessary. And provided that any creditor who is out of or absent from this Colony may, in case he have no known agent or mandatory in this Colony cognizant of and capable of proving the alleged debt, make the necessary affidavit before some person duly qualified to administer oaths in the place where he resides, such person being certified to be so qualified by some sufficient authority in that behalf, should such creditor reside or be in any part of Her Majesty's dominions, and if such creditor should reside or be elsewhere than in those dominions, then the said person shall be certified as aforesaid by a British Minister, or a British Consul, or by a notary public; and provided that it shall and may be lawful for the Supreme Court, or any Circuit Court, on the application of any party interested, finally to admit or reject any debt admitted or rejected by the said Master or Resident Magistrate, or to allow any action, which may have been instituted for the proof or recovery of any such debt against the insolvent, prior to the sequestration, and which has, in consequence thereof, been stayed, to be proceeded in after the election of a trustee shall have taken place, and after the trustee so elected shall have been duly summoned to take up and defend such action; and if the plaintiff shall thereafter obtain judgment thereon, he shall be ranked on the insolvent estate for the amount of such judgment. And provided, also, that any such Court as aforesaid, before adjudging finally as to the admission or rejection of any debt, may remit such case to the Master or Resident Magistrate for further proof, or may direct any question of fact to be tried by pleadings and proofs, or adopt such other course as to such Court shall seem fit.

Ord. 6—1843.

Proof by agent.

Disposal of proofs by supreme court.

Resumption of actions against insolvent.

28. And be it enacted, that all debts due by any insolvent at the time of adjudication or surrender, may be proved against his estate; and when there has been mutual credit given by the

Nature of proof where mutual credits between insolvent and creditor.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

insolvent and any other person, upon which compensation can by law be pleaded on either side, the Master of the Court, or Resident Magistrate, taking the proof of debt, shall thereupon state the account between them, and shall set one debt or demand against the other; and what shall appear due on either side on the balance of such account, and no more, shall be allowed to be proved or claimed, or paid on either side respectively; Provided, that the person claiming the benefit of such set-off, had not, when such credit was given, or when the cause of his debt accrued, notice of the order for sequestration having been made, or of any act of insolvency in virtue of which such order shall have been made; and provided always, that it shall and may be lawful for the Supreme Court, on the application of any person interested, who shall consider himself aggrieved by any such decision of the said Master or Resident Magistrate, to review the same, and to pronounce such judgment or to direct or allow such further proceedings, as to the Court shall appear just and proper.

Proof of debts not yet due.

29. And be it enacted, that in all questions upon this Ordinance, every person, to whom the insolvent was, at the time of the surrender or adjudication or sequestration of his estate, under any legal obligation to pay money, at a certain future time, shall be accounted creditor *de præsenti*, and shall be entitled to prove his debt for the amount of the money specified in the obligation. But in case the said debt shall not have become payable at the date of the order for sequestration, and shall not bear interest until the term of payment, or shall bear interest at a less rate than six per cent. per annum, the same debt shall be valued in voting, and such creditor shall receive payment thereof, or dividend thereon only, after deduction thereout of a rebate of interest of six per cent. per annum, or of so much per cent. per annum as shall correspond with the difference between the rate of interest payable on such debt and the rate of six per cent. per annum, as the case may be, to be computed from the date of the order for sequestration, to the time when such debt would have become payable according to the terms on which it was contracted.

Dividend on debts not yet due.

Creditors holding lien, their rights as to proof of debt, &c.

30. And be it enacted, that any creditor who shall hold a preferable security or lien upon any part of the insolvent estate, shall, when he is the petitioning creditor, be obliged upon oath in the affidavit accompanying the petition, and when he is not the petitioning creditor, in the affidavit produced by him at the time of proving his debt, to put a value upon such security, so far as his debt may thereby be covered, and to deduct such value from the debt proved by him, but shall have the right to vote for trustees and commissioners, and in all matters regarding the property over which he shall have such security or lien, both in number and value for the full and entire amount of his debt, and in all other matters respecting the insolvent estate he shall vote as creditor only for the balance; which balance shall be specified in his affidavit, without

Digitised by the University of Pretoria, Library Services, 2016

prejudice to such valuation being afterwards corrected, and without prejudice to the amount of the said debt, in other respects: And, in case any creditor shall hold any preferable security or lien for payment of his debt, obtained prior to the order for sequestration of the insolvent estate, and not liable to be set aside in virtue of this Ordinance, upon any part of the said estate, the amount or value of such security or lien shall be deducted from his debt, and he shall only be ranked for, or receive payment of, or a dividend for, the balance after such deduction; and if any dispute shall arise about the value of such security, the creditor or claimant shall, upon oath, put a value upon it, and the trustees shall then have an option, either of taking an assignment of the security for the benefit of the creditors at large, on payment of the value so estimated out of the first assets of the insolvent estate, or of reserving the full effect of it to the creditor himself; and, in either case, the creditor shall be ranked on the divisible fund for the balance of his debt, so ascertained, together with the other creditors, such creditor being, in no event, entitled to draw more than full payment of the debt, but being, at the same time, entitled to vote both in number and value, according to the provisions and within the limits hereinbefore set forth.

Contingent creditors, proof by and ranking of.

31. And be it enacted, that no person whose debt depends upon a contingency or an uncertain condition, shall be entitled to petition, or join in the petition, for sequestration of any estate, or to vote in the choice of trustee, or any of the other proceedings herein specified, so long as the contingency shall not happen, or the condition shall not be performed. Provided always, that the creditor in any such debt, contracted before the order for sequestration shall have been made, may if he think fit, while the contingency or condition upon which such debt depends shall not have happened, or shall not have been performed, apply to the trustee to set a value upon such debt, and the trustee is hereby required to ascertain the value thereof and to admit such creditor to prove the amount so ascertained; and such creditor shall thereafter be entitled to vote, and to receive dividends or payment, as in respect of a debt of the value of the amount so ascertained; but whether such value shall or shall not be so ascertained, before the contingency shall have happened, or the condition shall have been performed, such creditor may, whenever such contingency shall have happened, or such condition shall have been performed, prove in respect of his whole debt and receive dividends or payments, thereon with the other creditors. Provided always, that when the creditor in any such debt or claim, the contingency of which shall not have happened, or the condition of which shall not have been performed, and the value of which shall not have been ascertained, as aforesaid, shall enter a claim on the estate in respect of such debt, the trustee shall rank the claimant as if the contingency had happened, or the condition had been performed; and shall forthwith apply to the Supreme Court to make

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6 -1843.

an order, and the said Court shall make such order, for securing the dividend or sum which the claimant would be entitled to draw until the contingency or condition upon which the debt depends, shall happen or be performed, or until it shall have become certain, that such contingency or condition shall never happen or be performed when the sum so secured shall be paid to the claimant, or to the other creditors, as the case may be; and any interest which may in the meantime arise and be received thereupon shall belong to and be paid to the other creditors. And provided, also, that the holder of any such contingent debt or claim, of which the value shall not have been ascertained, and who has been ranked as a claimant as if the contingency had happened or the condition been performed, shall, for the purpose of agreeing to or dissenting from any offer of composition, or the certificate of the insolvent as hereinafter mentioned, be deemed and taken to be creditor for whatever sum the Master of the Supreme Court shall, under the circumstances of the said debt, fix and allow, subject to appeal from his decision to the Supreme Court.

Allowance of claim where debt not yet proved.

32. And be it enacted, that, when by reason of the absence of any person from this Colony or for any other cause appearing to the Supreme Court, the said Court shall be of opinion, that a claimant who has not proved a debt to the satisfaction of the Court, may eventually be able to establish the same, it shall and may be lawful for the said Court to allow such claim to be entered on the proceedings in the insolvent estate, and to give reasonable time for proving the same; and in the meantime to make such order for securing the amount thereof, in case the said claim shall be afterwards established, as the said Court shall see fit.

How interest upon claims to be ranked and paid.

33. And be it enacted, that the mode of settling claims and the interest upon them shall be as follows, viz.: The principal sum of each debt on which interest is chargeable, together with the arrears of interest, if there be any due upon it, at the time the order for sequestration was made, shall be accumulated as at the date of the said order, for the purpose of the claimant being ranked for, and receiving payment of, such accumulated sum, together with the principal sums of such debts as do not bear interest, or from which there may be a rebate of interest, as not being payable till an after period; and the assets of the insolvent estate shall be applied.—1st. In payment according to the legal order of preference, of all the preferent debts and the interest which shall have been due thereon prior to the date of the said order to the extent to which such interest is, by law entitled to a preference; and every creditor shall have the same preference for the interest which shall have accrued on his debt between the date of the said order and the time of payment, to which he may be entitled for any part of the interest which may have become due prior to the said order. And 2dly, in payment of all the other accumulated sums so ranked, without allowing any interest upon them from and after the date

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

of the said order, if the said assets shall not be sufficient to discharge all the claims due to the insolvent estate; but if after discharging the whole of such claims there shall be any residue left of the sequestrated estate, the creditors as well as those from whom interest has been deducted on account of the provisions of the twenty-ninth section of this Ordinance, as all others, shall be entitled to claim, out of such residue, any arrear of interest which may be due on them, as arising since the date of the order for sequestration, upon the respective sums ranked as hereinbefore mentioned.

Ranking and administration of company and partners' estates.

34. And be it enacted, that in every case in which it shall happen that the estate of any company, and the estate or estates of any one or more of the partners of such company, shall be concurrently under administration as insolvent,—the creditors of the said company shall prove their debts against, and rank upon the estate of the company, and the creditors of each partner, in respect of debts due by such partner separately from the other partners, shall prove their debts against and rank upon the estate belonging to their debtor separately from the other partners, and the estate of the company, shall be first applied in satisfaction of the creditors of the company and each separate estate shall be first applied in satisfaction of the separate creditors of that estate. And if the estate of the company shall prove insufficient to satisfy the creditors of the company, or if there be no such estate, then each creditor of the company shall rank upon the surplus of each separate estate, which may remain after satisfying the separate creditors of that estate, either for the residue or entire of his debt, as the case may be, but so, however, as not to receive, in all, more than the whole of their debts respectively. And if the separate estate of any partner shall prove insufficient to satisfy the separate creditors who have claimed upon it, then the separate creditors upon that separate estate shall rank upon the surplus, if any, of the company's estate which shall remain after satisfying the creditors of that estate in proportion to the share in such surplus belonging to, or claimable in right of, the particular partner whose separate estate has so as aforesaid proved deficient. And whenever the company's estate shall prove insufficient to satisfy the company's creditors, and the latter shall thereupon receive satisfaction, wholly or in part, out of the surplus of the separate estate of any of the partners of such company, the trustee of the separate estate so satisfying, wholly or in part, any of the creditors of the company shall be entitled to rank upon the separate estate of any other partner of such company for amount of whatever the contribution in respect of the debts of the company wholly or in part discharged, such trustee may, by law, be authorised to claim. Provided however, that no partner, if insolvent, and no trustee of the insolvent estate of any partner shall, under any circumstances, rank for the amount of any such claim for contribution, upon the insolvent estate of any other

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

partner in competition or concurrence with any of the creditors of the company claiming upon any such last-mentioned estate, which creditors are hereby declared to be entitled to be paid in preference and priority to any such partner or trustee. And provided, also, that nothing herein contained shall be construed so as to abridge or affect the rights which the creditors of any insolvent company may, by law, possess to seek satisfaction for their debts from any partner of such company whose estate shall not have been sequestrated, or to abridge or affect the rights which any such solvent partner may, by law, possess in regard either to the insolvent estate of the company or to that of any of his partners whose estate may have been sequestrated.

Company creditors may vote in sequestration of partners' estates.

35. And be it enacted, that in every case in which the separate estate of any partner of a company shall be sequestrated as insolvent, and whether the estate of such company shall also be or have been sequestrated or not, any creditor to whom the insolvent is indebted, jointly with the other partner or partners of the company, shall be entitled to prove his debt under the sequestration of such separate estate, for the purpose of voting in the election of trustees, and of agreeing to or dissenting from any offer of composition, and the certificate and discharge of the insolvent as hereafter mentioned, but no further. And such creditor shall not receive any dividend out of the separate estate of the insolvent until all the separate creditors shall have received the full amount of their respective debts; unless such creditor have been a petitioning creditor, in regard to the sequestration of such separate estate, in which case such creditor may vote and receive dividends in respect of his debt in the same manner as the separate creditor of such estate.

Law to prevail in cases not provided for as to competition between creditors of company and of partners.

36. And be it enacted, that in every case not hereinbefore expressly provided for, and relating to the ranking and priority of the joint creditors of any company, in competition with the separate creditors of any of the partners of such company, or relating to the reciprocal claims of any such insolvent estates in reference to or in relief of each other, the rule for the time being in respect of the like case, according to the law and administration of bankruptcy in England shall first be resorted to, and failing any such rule, the common law of the Colony shall be applied.

Within what period debts may be proved.

37. And be it enacted, that any debt which was due, or the cause of which arose prior to the order for sequestration of any estate may be proved at any meeting of the creditors appointed before the Master or a Resident Magistrate, at any time before the final distribution of the estate; and any creditor may, after the second meeting called by the Master of the Supreme Court in manner hereinbefore provided, at his own expense call such meeting expressly for the purpose of proving his debt: Provided always, that when any debt is so proved after any dividend has been paid to the creditors, such dividend shall not in any way be dis-

If dividend disturbed.

Digitised by the University of Pretoria, Library Services, 2016

turbed or affected by or in respect of any such debt: and provided also, that, when any such debt is proved after the plan of distribution of such estate has been confirmed, and in consequence of the proof of such debt, any alteration in such plan of distribution or any further proceedings in the sequestration shall be rendered necessary, the creditor proving such debt shall be liable for all expenses which may be incurred in consequence of any such alteration or proceedings.

How votes of creditors to be reckoned as to number and value.

38. And be it enacted, that in all cases of votes given by creditors under this Ordinance, when the creditors are to be counted in number, no creditor whose debt is below thirty pounds sterling shall be reckoned in number, but the debt due to such creditor shall be computed in value; and that, in all cases in which any deduction is directed by the provisions of this Ordinance, to be made from the amount of the debt of any creditor, the vote of such creditor shall still be counted in value to the extent of the balance remaining after such deduction; and such creditor shall also be reckoned in number, provided such balance amounts to thirty pounds, and upwards.

Vote of creditors by agent.

39. And be it enacted, that in all cases where, under the provisions of this Ordinance, the creditors of any insolvent estate are required or entitled to meet and to vote in any matter regarding such estate, any creditor so entitled may attend and vote at such meeting personally, or by agent, authorised by any power of attorney to that effect duly executed, upon proof thereof to the satisfaction of the Master of the Supreme Court, Resident Magistrate, or other person presiding at such meeting, and all questions at any meeting of creditors shall be determined by a majority in value of those present and entitled to vote, in case a majority both of number and value shall not, in respect of any such question, be by law (1) specially required.

What votes to determine.

Election of trustee.

40. And be it enacted, that at the second meeting called as aforesaid, or any adjournment thereof, (if the said Master or Resident Magistrate shall find it necessary to adjourn the same, which they are hereby authorised and empowered to do,) a trustee, or trustees, not exceeding three in number, shall be chosen for the collection, administration, and distribution of the insolvent estate and effects; and all creditors who have proved debts against the insolvent estate shall be entitled to vote in such choice; and creditors holding any preferable security on lien shall vote in manner and form hereinbefore provided; and the choice shall be made by the votes of the greater part in number and value of the creditors, or their agents present and entitled to vote: Provided, however, that it shall be competent to any person interested in any such insolvent estate, or the due administration thereof, and who shall complain of any such election, upon giving, within two days after the said election,

Complaint against election.

[1] See §§ 40, 98, 99, 106 and 117.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6–1843.

a notice in writing of the particulars of such complaint to the said Master or Resident Magistrate, as the case may be, at any time before the election is confirmed, in manner hereinafter mentioned, to bring the same under review of the Supreme Court, who shall summarily or otherwise as such Court shall see fit, decide and make such order thereon as the justice of the case may require: Provided always, that it shall be lawful for any person interested in the due administration of the estate, at any time after the confirmation, to apply to the Court to recall the confirmation, and set aside the election, on the ground that such election was fraudulently or unduly made.

Recall of election.

Persons disqualified from being trustee.

41. And be it enacted, that in no case shall it be competent for the creditors to elect as trustee, the insolvent himself, or any person related to the insolvent by consanguinity or affinity within the fourth degree; nor any minor, nor any attorney, [1] nor any person, who having had his estate, at any time, placed under sequestration shall not have obtained the sequestration to be superseded, or who shall not have been rehabilitated under the provisions of the law heretofore in force within this Colony, or shall not have obtained his certificate and allowance thereof, as hereinafter provided, nor any person not resident within the jurisdiction of the Supreme Court, nor any person having an interest opposed to the general interest of the creditors in the insolvent estate, nor any person declared to be incapable of being elected by virtue of the provisions in the next succeeding section contained.

Acts by trustee inferring his disqualification.

42. And be it enacted, that if any person elected a trustee shall be proved, to the satisfaction of the Supreme Court, or of any Circuit Court, holden for the district in which the election of trustee was had, to have procured or been privy to the omission from the schedule of the insolvent of the name of any creditor of the insolvent, with intent thereby to obtain some peculiar advantage in regard to the election of trustee, or to have, either directly or indirectly, given or promised to give to any creditor of the insolvent, any species of valuable consideration whatsoever, in order to obtain the vote of such creditor at the election of trustee, or to have agreed to secure and make good to any creditor some certain sum or dividend in discharge or diminution of his debt, upon condition or in order that such creditor should give his vote to such trustee; or to have offered or agreed, in case any creditor of the insolvent should consent to vote for such trustee, to abstain from opening up or investigating some previous transactions between such creditor and the insolvent, which were, or were supposed to be of questionable validity, or to have contrived, or been privy to, any plan or arrangement by which debts or securities really belonging to some one or more persons have been divided amongst a greater number of persons, for the purpose merely of

[1] Restrictions as to Attorney removed, Act 38 of 1884, § 6.

Digitised by the University of Pretoria, Library Services, 2016

increasing the number of votes at the election for trustee, and thereby influencing the same, or to have undertaken to share with any creditor or creditors of the insolvent, in return for his or their votes, the commission or remuneration to be awarded to him as such trustee;—then such Supreme or Circuit Court as aforesaid, shall, whether before or after the decree confirming the appointment of such trustee, declare such trustee to have forfeited the office of such trustee in regard to the insolvent estate for which he shall have been elected, and to be incapable of being again elected thereto, and it shall and may be lawful for such Court, if it should so think fit, to further declare, that the person so offending shall be incapable of being elected a trustee under the provisions of this Ordinance, for and during his natural life, or such period as such Court shall determine and adjudge: and any person interested in the due administration of the insolvent estate may apply by motion to such Supreme or Circuit Court as aforesaid, either before or after the decree confirming the appointment of any trustee, to declare any such trustee to have forfeited his office by reason of any such misconduct as aforesaid; and as often as a vacancy in the office of trustee shall be created by any such forfeiture, the Court declaring the same shall order a new trustee to be elected, and the same proceedings shall be had thereon as on the original election of trustee. Ord. 6—1843.

43. And be it enacted, that it shall and may be lawful for the Supreme Court, or for any Judge thereof on circuit, and whether sitting in any Circuit Court or not, on cause shown by the Master of the said Court, or any person interested in the due administration of the insolvent estate, by order of Court to appoint one or more fit person or persons to be trustee or trustees of any insolvent estate provisionally, and until the creditors of the said estate shall make choice of a trustee; which trustee or trustees may be removed at the meeting of creditors for the choice of a trustee, if the said creditors shall think fit, but shall and may, until so removed, act in the collection, administration, and distribution of the said estate, in all respects the same as trustees elected by the creditors are by this Ordinance authorised or required to do. Provided however, that no such trustee or trustees shall proceed to make sale of any part of the said estate without the authority for that purpose of the Supreme Court, or of some Judge thereof, or of some Circuit Court, or of the Master of the Supreme Court, first had and obtained. Provisional trustee, appointment of. Powers of.

44. ([1]) *And be it enacted, that all trustees so appointed by the Court, or elected by the creditors, shall receive and be paid out of the assets of the said estate a reasonable compensation for their care and diligence in the said trust, to be assessed by the Master of the said Court, subject to the review of the said Court, upon the petition of any* *Trustees, remuneration of*

[1] Superseded by § 13 Act 38, 1884.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

creditor, or of any of the said trustees, or of any person having any interest in the said estate.

Confirmation of election of trustee.

45. And be it enacted, that so soon as the trustees elected by the creditors shall have accepted their office, it shall and may be lawful for the Supreme Court, upon the report of the Master, to make a decree confirming the appointment of such trustee.

Vesting of insolvent's rights in master of court.

46. And be it enacted, that every order made for placing any estate under sequestration as insolvent shall, so soon as made, have the effect in law to divest the insolvent and all persons administering the whole or any part of his estate for his use and behoof, and to vest in the Master of the Supreme Court, for the uses and purposes of the sequestration, all the present and future estate, movable and immovable, personal and real, and every right, title, and interest in and to any property, movable or immovable, personal or real, wheresoever the same may be known or found, which shall belong or be due to such insolvent at the date of making such order, or as to which any right of reversion shall then be vested in him, or which may thereafter be purchased or acquired by, or may revert, descend, or be devised, or come, to the insolvent, at any time before the making of the order of Court, allowing and confirming, as hereinafter mentioned, the account and plan of distribution to be framed by the trustees, (except as in the forty-ninth section is excepted), together with all deeds, vouchers, papers, or writings respecting the same: and after the said order for sequestration has been made, neither the insolvent nor any person claiming through or under him shall have power to alienate, give, cede, deliver, mortgage, pledge, or to recover, or to release or discharge the same, or of any part thereof; neither shall the same be attached by any person, as the property of or belonging to the insolvent.

Vesting of insolvent's rights in provisional trustee.

47. And be it enacted, that every order of Court appointing any provisional trustee or trustees shall, so soon as made, have the effect in law to divest the Master of the Supreme Court, and to vest in such provisional trustee or trustees, for the uses and purposes of the sequestration, and until their removal, or until the making of the order of Court, allowing and confirming as hereinafter mentioned the account and plan of distribution, (whichever shall first happen), all the present and future estate of the insolvent as fully, as completely, to all intents and purposes, as the said estate, is by virtue of the next succeeding section of this Ordinance, vested in the trustee or trustees elected by the creditors, by the decree of the Court confirming the appointment of the same. And whenever any provisional trustee or trustees shall die or be removed before the making of the decree aforesaid for confirming the appointment of any trustee or trustees elected by the creditors, then the whole present and future estate of the insolvent for the time being, shall vest again in the said Master, precisely as if the same had never been divested.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

Vesting of insolvents' rights in the permanent trustee.

48. And be it enacted, that every decree made as herein directed, for confirming any trustee or trustees, shall, so soon as made, have the effect in law, to divest the Master of the Supreme Court, or any provisional trustee, and to vest in the trustee or trustees thereby confirmed, for the uses and purposes of the sequestration, and so long as such trustee or trustees shall continue to hold their office, all the present and future estate, movable and immovable, personal or real, which shall have belonged or been due to such insolvent at the time when the order for placing his estate under sequestration was made, or as to which any right of reversion shall then be vested in him, or which may thereafter be purchased, or acquired by, or may revert, descend, or be devised, or come, to the insolvent, during the continuance of the sequestration, and before the making of the order of Court allowing and confirming the account and plan of distribution, as hereinafter provided, wheresoever the same may be found or known, (except as in the forty-ninth section is excepted) together with all deeds, vouchers, papers, or writings respecting the same; and the said trustee or trustees shall have the like remedy to recover the said estate of the insolvent, or any part thereof in their own names for the purposes of the sequestration, as the insolvent himself might have had if his estate had not been sequestrated; and all powers vested in any insolvent at the time the order for placing his estate under sequestration was made, or which may thereafter become vested during the continuance of the sequestration, and before the making of the said order allowing and confirming the account and plan aforesaid, which such insolvent might have legally executed for his benefit, shall, after the said order for placing his estate under sequestration, and until an order of Court appointing a provisional trustee or trustees, or until a decree be made for confirming the appointment of a trustee or trustees elected by the creditors, be executed by the Master of the Supreme Court, and may, after such order appointing a provisional trustee or trustees be executed by such provisional trustee or trustees until their removal, and may after their removal be executed by the said Master until a decree be made for confirming the appointment of such trustee or trustees as aforesaid, and after such decree is made for confirming such appointment as aforesaid may be executed by the trustee or trustees whose appointment is thereby confirmed, for the benefit of the creditors, in such manner as the insolvent might have executed the same, and the said insolvent is hereby declared to be incapable to exercise or execute any such powers, as aforesaid.

Execution after order for sequestration of powers vested in the insolvent.

Insolvent incapacitated from acquiring property.

49. And be it enacted, that during the time which shall intervene between the time of the making of the order for the sequestration of any insolvent estate and the making of the order allowing and confirming the account and plan of distribution, as hereinafter provided, the insolvent so long as he shall remain without his certificate, shall (except in the certain cases hereinafter excepted), be absolutely

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

disqualified and incapacitated to acquire or possess as against the person in whom, for the time being, the insolvent estate shall by law be vested, any property, goods or effects, movable or immovable, personal or real, or any right to any such property, goods or effects; and shall in like manner be absolutely disqualified and incapacitated to cede, transfer or convey, so as to bind the person in whom, for the time being, the insolvent estate shall by law be vested, any property, goods or effects, or any debt, claim or demand, or any bond, bill of exchange, promissory note, or other security for money, and as against or in question with such last-mentioned person every such attempted cession, transfer or conveyance shall be totally null and void. And no person who shall have sold and delivered

From contracting;

upon credit any goods, wares, merchandize, or other matter or things, to any such insolvent shall be entitled to reduce or set aside the sale, or to claim the amount of the purchase money from the person in whom the insolvent estate shall, for the time being, by law be vested, by reason merely that the said insolvent was, at the time of the contract of sale, so disqualified and incapacitated as aforesaid, or that the articles sold and delivered have been taken possession of by such person in whom the said estate was vested as aforesaid, for the benefit of the said estate. And no such insolvent shall be deemed or taken to have any power to bind any such last-mentioned person, or the insolvent estate in him vested, by any sort or description of dealing, contract or transaction whatsoever, unless the same shall have been entered into by virtue of an authority to

But not from acting as an agent.

that effect from such person in writing: Provided always, that nothing herein contained shall be construed so as to prevent any such insolvent from passing a valid title by any such cession, transfer, or conveyance as aforesaid, while acting, so far as he shall be authorised in writing so to do, as the mandatory or agent of his trustee, or from acting as the mandatory or agent of any other person by whom such insolvent shall be authorised in writing so to act, and for whom he shall have been in writing permitted so to act by the person in whom, for the time being, the insolvent estate

Or completing delivery of goods sold and paid for.

shall be vested: Provided also, that nothing herein contained shall be construed so as to prevent any insolvent whether acting as such mandatory or agent as aforesaid or not, from well and effectually passing title to any person whatever, by the delivering to him of any movable goods or effects which were next before such delivery in the actual possession of such insolvent, in pursuance of any real and *bona fide* purchase from such insolvent for a just price duly paid, or to prevent any such insolvent from well and effectually passing title to any money paid by him in cash down for any matter, or thing purchased by him at the time of such payment, or to prevent any such insolvent from receiving, suing

Or from working for hire.

for and recovering, in his own name and for his own personal and exclusive use, and free from the control of his trustee, the hire, wages, or reward of his work and labour, or that any of his

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

family, by him or them bestowed during the intervening time aforesaid, or any part thereof, or any damages claimable by reason of any personal wrong or injury done to such insolvent or any member of his family. And provided that whenever any property, goods, or effects shall be proved by such insolvent to have been purchased or obtained by means of any moneys receivable or recoverable as aforesaid for his own personal use, such property, goods, or effects shall also be free from the control of his trustee, in like manner as the moneys were by which they were purchased or obtained.

Or from vindicating personal wrongs.

Power of election by trustee as to actions in favour of or against estate.

50. And be it enacted, that it shall and may be lawful for the trustees to take up, and continue in their own names, the process in any action commenced for any debt or demand due to the estate, before their appointment, or to discontinue the same, as they shall see fit; and also to commence any new suit or action in any competent Court, for any debt or demand due to or affecting the estate of any insolvent person; and also to defend any action brought against them, or pending against the insolvent, relating to or affecting the said estate.

Insolvent competent witness in suits affecting estate.

51. And be it enacted, that in every such action as in the last preceding section mentioned, and in every action between any parties for determining the validity of the claim of any person claiming to be a creditor in the insolvent estate, or the right of any person or persons to or of preference over any part of the assets of the insolvent estate, the insolvent, whether he shall have obtained his certificate or not, shall not be deemed or taken to be an incompetent witness either for or against the said trustees, or either of the parties in any such action as aforesaid, by reason of any interest which he may have, or be presumed to have, in the event of the suit.

Causes for removal of trustee.

52. And be it enacted, that it shall and may be lawful for the Supreme Court, or any Circuit Court, on cause shown by the Master of the said Court, or by any person interested in the due administration of the insolvent estate, to remove any trustee or trustees for insolvency, or for any misconduct in the said trust, or on account of absence from this Colony; and thereupon, and as often as any trustee shall die, or obtain leave from the said Court to resign, or shall become incapacitated, it shall and may be lawful for the said Court, or any Judge thereof, to order a new trustee to be elected, and the same proceedings shall be had thereon as on the original election of trustees; and it shall and may be lawful for the said Court, or any Judge thereof, in the mean time, to make such order as may be necessary or expedient for the preservation of the insolvent estate, until such new trustee shall be elected and confirmed.

When office of trustee vacant, how to be supplied.

Vesting of estate in trustees newly appointed.

53. And be it enacted, that whenever, on the death or removal of any trustee, any new trustee shall be elected and confirmed in manner hereinbefore provided, the decree confirming the appointment of such new trustee shall have the effect in law to vest in the new

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

trustee the whole insolvent estate, present or future, as hereinbefore particularly described, and every power, right, title, privilege, and remedy vested in or competent to the former trustee, as trustee, before his death or removal, as fully and to the same extent as the same was vested in the former trustee by the decree made for confirming his appointment, in manner aforesaid: Provided always, that the death or removal of any trustee shall not affect the validity or force of any lawful act done by him as trustee for the purposes of the sequestration, prior to his death or removal. And during any period of time which shall elapse between the death or removal of any trustee, and the making of the decree for confirming the election of the trustee confirmed in his place, and no longer, the whole of the then existing insolvent estate shall, except when notwithstanding such death or removal there shall remain in office one or more of the trustees of the said estate, be vested in the Master of the Supreme Court.

Death of trustee not to affect his acts.

Vesting of estate during vacancy in office of trustee.

Death of trustee not to abate actions.

54. And be it enacted, that whenever a trustee shall die, or a new trustee shall be chosen, no action relative to the insolvent estate shall be thereby abated; but the Court in which any such action is depending, may, upon the suggestion of such death or removal, or that a new trustee has been chosen and confirmed, allow the name of the surviving or new trustee or trustees to be substituted in the place of the former; and the said action shall proceed as if such surviving or new trustee or trustees had originally commenced or defended the same.

Gazette notice of sequestration and of appointments or removal of trustees.

55. And be it enacted, that every trustee, on being confirmed, shall forthwith cause notice of the sequestration and of his appointment to be given by advertisement in the *Government Gazette*, and the Master of the Supreme Court shall cause notice of every order made for the removal of any trustee to be given by advertisement in the *Government Gazette*.

Power of trustees to call meetings of creditors.

56. ([1]) And be it enacted, that it shall and may be lawful for any trustee or trustees, at any time, to call a general meeting of the creditors, and to require their directions concerning the collection or sale of any part of the estate, or concerning any matter or question relating to the administration of the said estate, and the trustee or trustees shall call such meeting whenever they are thereto required by one fourth of the creditors in value who have produced and proved their claims; and the said trustees shall pursue the directions of the greater part of the creditors attending such meeting: Provided always, that twenty-eight days' notice, at the least, shall be given of every such meeting, and of the purpose thereof, in the *Government Gazette*, unless in any particular case the Master or Resident Magistrate shall authorise the trustee or trustees to call a meeting upon some shorter notice: And provided also, that no such meeting shall be competent to direct the said

Gazette notice of meetings.

Saving of rights of creditors holding liens.

[1] See also §§ 77 and 98 as to instructions of creditors.

Digitised by the University of Pretoria, Library Services, 2016

trustees to do any thing calculated to interfere with or injure the just rights of any creditor who shall hold any preferable security or lien upon any part of the insolvent estate; and in case any direction shall be given by any such meeting calculated to interfere with or injure such rights, such creditor may apply by motion to the Supreme Court, to set aside such direction, and thereupon the said Court shall make such order in the premises as shall to justice appertain. Ord. 6-1843.

57. And be it enacted, that all meetings of creditors called by virtue of this Ordinance, and appointed to be holden in Cape Town, shall take place before the Master of the Supreme Court; and if appointed to be holden in any district of the Colony other than the Cape district, then before the Resident Magistrate of such district or the person acting as such, who shall forthwith certify to the said Master the proceedings thereat. Before whom meetings of creditors to be held.

58. And be it enacted, that it shall and may be lawful for the trustees, to take legal advice on any legal question affecting the insolvent estate, or the administration thereof, and to employ an attorney for the conducting and defending all actions and suits for or against the insolvent estate, and to charge against the insolvent estate all such fees as shall thereby be incurred and shall be allowed upon taxation by the Master of the Supreme Court, subject to the review of the Supreme Court, upon the complaint of the attorney so employed, or if any person having an interest in the due administration of the estate under sequestration; and when it shall be made to appear to the Supreme Court, that any attorney has improperly advised, commenced, conducted, or defended any such action or suit, or incurred any improper or unnecessary expense therein, with the purpose of thereby benefiting himself, and not with the *bonâ fide* purpose of thereby benefiting the insolvent estate, it shall and may be lawful for the said Court, to order the whole or any part of the costs of such action to be paid by such attorney, as the said Court shall think fit. Legal advice may be taken by trustees.

59. And be it enacted, that it shall and may be lawful for the Master of the Supreme Court and for any trustees, whether provisional or elected, respectively, to grant and allow to the insolvent, out of the assets of the insolvent estate, such moderate sum or sums as the said Master or the said trustees, respectively, shall find to be indispensably necessary for the support of the insolvent and his family, pending the decision of the creditors in regard to such support, and the said Master and such trustees as aforesaid, may, if they shall, respectively, see fit, employ the insolvent, or any other person, in the gathering and preservation of any crops or produce, for any reasonable time necessary for the gathering and preservation thereof; and also leave the said insolvent, or place any other person, in the charge of any property, manufactory, or concern, belonging to the insolvent estate, until the same shall be sold, disposed of, or wound up, and make to the Interim allowance to insolvent by master or trustees. Interim care of estate.

Digitised by the University of Pretoria, Library Services, 2016

[Ord. 6—1843.

said insolvent, or other person, so employed, a reasonable allowance, per diem, for his labour: Provided that the amount of every such allowance, whether for support or labour, as the case may be, granted before the meeting of creditors which shall be first holden after the second meeting of creditors by this Ordinance directed, shall be submitted to such meeting, which meeting shall have power to decide whether any such allowance shall be continued, and if so, for what length of time, and what shall be the amount thereof. And provided, also, that every trustee who shall make any such allowance to an insolvent, except with the consent of the creditors assembled at such meeting as last aforesaid, or at some other meeting duly convened, shall forthwith report to the Master of the Supreme Court the amount and grounds of such allowance. And provided, that every such allowance made by any trustee, without the consent of the creditors, shall be subject to the review of the Supreme Court upon the application of the said Master or of any person interested in the due administration of the insolvent estate.

Insolvent to attend meetings of creditors.

60. And be it enacted, that the insolvent or legal administrator of any insolvent estate shall attend before the creditors at the first, second, and third meetings of creditors to be holden by virtue of this Ordinance, and at every adjournment of the said second meeting, unless authorised by the Master or Resident Magistrate, as the case may be, not to attend any such adjourned meeting, and shall also attend before the creditors at every other meeting of creditors held by virtue of this Ordinance, whenever he shall be required to do so by a notice in writing signed by the Master of the Supreme Court or by the Resident Magistrate before whom such meeting is to be held, (which notice the said Master and Resident Magistrate are hereby respectively authorised to give), and shall, at every meeting of creditors which he shall attend,

To answer questions.

answer all such lawful questions as shall be put to him by the said Master or the said Resident Magistrate, as the case may be, touching and concerning his affairs and estate and the cause and ground of his insolvency, and shall, at the said second meeting,

To give account of his estate.

being thereunto required by the creditors, lodge with the Master or Resident Magistrate, as the case may be, to be by him delivered to the trustee or trustees when appointed or confirmed, a true inventory of the whole of such estate and effects, movable and immovable, personal and real, wheresoever the same may be situated, and of all estates and effects in expectancy or contingency, or to which the insolvent may have any eventual right, and all debts due to and by him, to the best of his knowledge and belief, and all books of accounts, papers, writings, documents, bills, and vouchers, relating to the said estate, which are in his custody or

And to deliver up papers, &c.

power; and the said insolvent or administrator shall, upon being thereunto required, surrender the said books, papers, writings, documents, bills, and vouchers, to the said Master or Resident

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

Magistrate, as the case may be, to be by him delivered to the trustee or trustees when appointed or confirmed.

Examination of insolvent by officer presiding at meetings.

61. (1) And be it enacted, that it shall and may be lawful for the Master of the Supreme Court and for the Resident Magistrate, when they shall respectively preside at any meeting of creditors before which the insolvent shall attend, to examine the insolvent upon oath, if they shall see fit so to do, touching all matters relating to his trade, dealings, or estate, or which may tend to disclose any secret alienation, transfer, cession, delivery, or concealment of his estate and effects, movable or immovable, personal or real, and to cause his examination to be reduced to writing, and signed by him and annexed to the proceedings in the said estate.

Special examination of insolvent as to estate, &c.

62. And be it enacted, that it shall and may be lawful for the Supreme Court, or any Circuit Court, upon the application of the trustee or trustees, whenever and so often as they shall see fit, to summon any insolvent before the Supreme Court, or any Circuit Court, or any commissioner of the Supreme Court, if the said Court shall see fit so to order, whether the said insolvent shall have obtained his certificate and allowance thereof or not. And it shall be lawful for such Court, or commissioner, to examine him upon oath touching all matters relating to his trade, dealings, or estate, which may tend to disclose any secret alienation, transfer, cession, delivery, or concealment of his estate or effects, movable or immovable, personal or real, and to cause his examination to be reduced to writing, and signed by him, and annexed to the proceedings in the said estate.

Consequence to insolvent of not obeying summons for examination.

63. And be it enacted, that if any insolvent, being lawfully summoned as aforesaid to appear before the Supreme Court, or any Circuit Court, or any commissioner of the Supreme Court, shall not, at the time and place appointed in the summons for his appearance, come before such Court or commissioner, (having no lawful impediment at such time made known to and allowed by such Court or commissioner), it shall be lawful for such Court or for such commissioner, under his hand, to grant warrant, authorising any officer of the law or other person to apprehend such insolvent, and forthwith to bring him before such Court or commissioner, or to lodge him in any prison, therein to be detained until the time which such Court or commissioner, as aforesaid, shall have appointed anew, on the application of the trustee or trustees, for his examination: and the gaoler of every such prison shall cause him to be brought before such Court or commissioner, at the time and place specified in such warrant: and every insolvent aforesaid, who, being summoned as aforesaid, shall depart from the Colony, or abscond, or conceal himself within the same, with the purpose and intent to evade appearing at any such examination to which he was summoned, or to prevent any warrant hereinbefore mentioned

And of absconding,

[1] Any creditor or agent of creditor may also examine the insolvent. Act 38 of 1884, § 7.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

from being executed upon him, shall be deemed guilty of the crime of fraudulent insolvency: and shall, on conviction thereof, suffer transportation for any period not exceeding seven years, or imprisonment, with or without hard labour, for any period not exceeding five years.

Consequence to insolvent of not lodging inventory of estate, &c.

64. And be it enacted that if any insolvent shall at the second meeting of his creditors, or any adjournment thereof held as aforesaid, being thereunto required, refuse to lodge a true inventory of his estate and effects, or to surrender the books, papers, writings, documents, bills, or vouchers, relative to his estate as aforesaid; or shall, at his examination before any Court or commissioner before mentioned, or any meeting of creditors which he shall attend as aforesaid, refuse to be sworn, or shall refuse to answer any lawful questions put to him by such Court or commissioner, or by the said Master or Resident Magistrate touching any of the matters aforesaid; or shall refuse to sign or subscribe his examination so reduced into writing as aforesaid, (not having any lawful objection to so doing), it shall be lawful for such Court, or commissioner, or for such Master, or such Resident Magistrate, by warrant under his hand to commit him to such prison as they shall think fit, there to remain without bail, until he submit to do the matters aforesaid, or to be sworn, or make answer to such lawful questions as shall by them be put to him, or sign and subscribe such examination as aforesaid.

And of refusing to be examined.

Examination of third parties in regard to estate.

65. And be it enacted, that after surrender or adjudication of sequestration of any estate as insolvent, it shall and may be lawful for the Supreme Court, or any Circuit Court, upon the application of the said trustee or trustees, to summon before the said Court, or any Circuit Court or any commissioner of the Supreme Court, the wife of the insolvent, or any person known or suspected to have in possession any of the estate of the insolvent, or to be indebted to the insolvent, or any person whom the said Court may see reason to believe capable of giving information concerning the person, trade, dealing, or estate of such insolvent, or any information material to the full disclosure thereof: and also to require such person to produce any books, papers, deeds, writings, or other documents, in his or her custody, which may appear to the said Court necessary to the verification or disclosure of any of the matters aforesaid; and it shall and may be lawful for the said Supreme Court, or Circuit Court, or commissioner, to examine every such person, upon oath, concerning the person, trade, dealings, or estate of such insolvent, and to cause his or her examination to be reduced to writing, and signed by him or her, and annexed to the said proceedings; and, if any such person shall, upon being lawfully summoned to appear to be examined, fail so to appear, (having no lawful impediment made known to the Court or commissioner, before whom such person is summoned at such time, and allowed by them,) it shall be lawful for such Court, or for such commissioner under his hand to grant warrant, authorising and directing

Consequence to third parties of refusing to be examined.

Digitised by the University of Pretoria, Library Services, 2016

any officer of the law, or other person, to apprehend the person so summoned and failing to appear, and to bring the said person before such Court or commissioner, or to lodge the said person in any prison, therein to be detained until the time which such Court or commissioner shall, on the application of the trustee or trustees, have appointed anew for his or her examination: and the gaoler of any such prison shall cause such person to be brought before such Court or commissioner at the time and place specified in such warrant. And if any such person, so summoned or brought before such Court or commissioner for examination, shall refuse to be sworn, or shall refuse to answer any lawful question put by such Court or commissioner touching any of the matters aforesaid, or shall refuse to sign his or her examination so reduced into writing as aforesaid, (not having any lawful objection allowed by such Court or commissioner), or shall not, being thereunto required, produce any books, papers, deeds, writings, or other documents in his or her custody or power, relating to any of the matters aforesaid, and to the production of which he or she shall not state any objection allowed by them, it shall be lawful for such Court or for such commissioner by warrant under his hand, to commit him to such prison as they shall think fit, there to remain without bail, until such person shall submit to be sworn, or make answers to all such lawful questions, as shall by such Court or commissioner be put, or sign such examination, or produce such books, papers, deeds, writings, or other documents as aforesaid, in his or her custody or power, to the production of which no such objection as aforesaid shall be allowed.

Tender of expenses to parties to be examined.

66. And be it enacted, that the insolvent and every other person summoned before the Supreme Court, or Circuit Court, or any commissioner, by order of the said Court to be examined or give evidence, or make disclosure of the trade, dealings, estate, or effects of any insolvent, under or by virtue of this Ordinance, shall have his necessary expenses tendered to him by the trustee or trustees of such insolvent estate, in like manner as is by law required upon service of a subpœna to a witness in any civil suit. And such necessary expenses shall also be tendered to every insolvent who is required by any notice in writing, signed by the Master of the Supreme Court, or by any Resident Magistrate, to attend any meeting of creditors other than the first, second, and third meetings as aforesaid, or some adjournment of the second meeting.

Penalty of false answers during examination.

67. And be it enacted, that every insolvent or other person sworn by or before any Court, or commissioner, or by the Master of the Supreme Court, or by any Resident Magistrate, by virtue of any of the provisions of this Ordinance, who shall wilfully make any false answer to any lawful question put by such Court, Commissioner, Master, or Resident Magistrate, such person shall be deemed guilty of the crime of perjury, and on conviction thereof shall suffer any punishment provided by law for such crime.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1813.

Warrant of commitment at examination.

Proceedings on application to be discharged.

68. And be it enacted, that if any person whatsoever be committed by any Court or commissioner, or by the said Master, or by any Resident Magistrate, for refusing to answer, or not fully answering, any question put to him by them, they shall, in their warrant of commitment, specify every such question: and if any person, so committed as aforesaid, shall make any application to any Court or Judge, competent to entertain the same, in order to be discharged from such commitment, and there shall not appear to such Court or Judge any insufficiency or informality in the form of the warrant, whereby such person was committed, by reason whereof he might be discharged, it shall be lawful for such Court or Judge, and such Court or Judge is hereby required, to recommit such person to the same prison, there to remain until he shall conform as aforesaid; unless it be shown to such Court or Judge by the party committed, that he has fully answered all lawful questions put to him on his examination as aforesaid; or, if such person was committed for refusing to be sworn, or for not signing his examination, unless it shall appear to such Court or Judge, that he had a sufficient reason for the same: Provided also, that such Court or Judge shall, if required thereto by the party committed, consider the whole examination of such party, whereof any such question was a part, and, if it shall appear from the whole examination, that the answer or answers of the party committed is or are satisfactory, such Court or Judge shall and may order the party so committed to be discharged.

Master, &c., same protection as justices of peace in action brought against them.

69. And be it enacted, that in case any suit or action shall be instituted, or sought to be instituted against the Master of the Supreme Court, or any commissioner of the said Court, or any Resident Magistrate, by reason or on account of any commitment to prison of the insolvent or other person, the said Master, Commissioner, and Resident Magistrate shall respectively possess and enjoy, in reference to such action, and the process and proceedings therein, every right, privilege and provision, and be subject to every liability which do, or shall by law, belong and pertain to suits or actions instituted or sought to be instituted against Justices of the Peace, for anything done by them in the execution of their office; Provided also, that the Court before which any action founded upon a commitment for refusing to answer, or not fully answering, any question or questions put to the plaintiff, is tried, shall, if required thereto by the defendant, consider the whole examination of the plaintiff, whereof such question was, or such questions were, a part; and if it shall upon such consideration appear to such Court that the plaintiff was lawfully committed, the defendant shall have the same benefit therefrom as if the whole of such examination had been set forth in the warrant of commitment.

What acts constitute fraudulent insolvency.

70. And be it enacted, that if any insolvent whose estate shall have already been, or shall hereafter be, surrendered or adjudged to be sequestrated as insolvent, shall either before or after the making

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

of the order for sequestration, have alienated, transferred, given, ceded, delivered, mortgaged, or pledged, or shall have embezzled, concealed, or removed, any part of his estate or effects, to the value of ten pounds sterling or upwards; or shall have concealed, removed, destroyed, falsified, or mutilated any books of accounts, papers, writings, documents, bills, or vouchers relating thereto with intent to defraud his creditors; or shall have fraudulently contracted any debt; or if any such insolvent shall, at the second meeting of his creditors, or any adjournment thereof, holden before the Master of the Supreme Court, or any Resident Magistrate, for the purposes aforesaid, wilfully lodge any inventory containing any false statement of his estate or effects, or any part thereof, or with respect to any debt due to or by him, or shall produce any books of accounts, papers, writings, documents, bills, or vouchers, which are false, or on which any erasure or alteration has been made, or caused to be made by him, or with his knowledge, with intent to defraud his creditors; or, if any such insolvent shall, at any time when examined in manner aforesaid before any Court or commissioner, or by the Master of the Supreme Court, or by any Resident Magistrate, wilfully make any false answer to any lawful questions then put to him, with intent to defraud his creditors, or shall have connived at or concealed from the trustee, his knowledge of the proof, by any person, of a false debt against his estate, he shall be deemed to be guilty of the crime of fraudulent insolvency, and, on conviction thereof, shall suffer transportation for life or for any shorter period not less then five years, or imprisonment, with or without hard labour, for any period not exceeding five years.

What acts constitute culpable insolvency.

71. (1) And be it enacted, that if any insolvent whose estate shall hereafter be surrendered or adjudged to be sequestrated as insolvent, shall fail to atten l before his creditors at the first, second, and third meetings thereof, or shall fail to attend at any adjournment of the said second meeting, unless authorised by the Master or Resident Magistrate, as the case may be, not to attend the same, or shall, without good and lawful reason for absenting himself, fail to attend before his creditors, at any meeting thereof, after having been personally served with a notice in writing signed by the Master or the Resident Magistrate, as the case may be, requiring him to attend such meeting, or shall not, in case his estate is deficient to the amount of five hundred pounds, or upwards have kept, or caused to be kept, such reasonable and proper books or accounts containing all such entries belonging to, and exhibiting the nature of, his dealings and transactions as (regard being had to his particular trade or calling), might reasonably be expected and required; or shall not, when thereto required by the said Master or the Resident Magistrate, as the case may be, at any meeting of his creditors, account for or dis-

[1] Amended by Act 38 of 1884, §§ 9, 10.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

cover what has become of any money, or valuable security, or other property or effects, which shall have been proved to have been in his possession so recently before the sequestration as to make it his duty so to do; or shall not, when thereto required by such Master or Resident Magistrate as aforesaid, give a true and sufficient explanation of the cause or causes of his insolvency; or if he shall have given to any of his creditors an undue preference as the same is hereinafter defined; or shall have contracted any debt without any reasonable or probable expectation, at the time of contracting the same, of being able to pay the same; or shall have incurred any debt by reason of any breach of trust; or shall, without having obtained his certificate and the allowance thereof, between the time of the making of the order for the sequestration of his estate and the time of the making of the decree confirming the account and plan of distribution as hereinafter mentioned, have entered into any dealing or business, or taken upon him the buying and selling of any goods, wares, or merchandize, whether for himself or any other person whatsoever, without the authority in writing of the person in whom the insolvent estate shall, for the time being, by law be vested, first had and obtained; or shall have granted, made, or promised any gratuity, payment, security, or other undue consideration in order to procure or obtain the concurrence or assent of any creditor either to any offer of composition, or to the certificate, as the same are hereinafter mentioned, such insolvent shall be deemed to be guilty of the crime of culpable insolvency, and, upon conviction, be imprisoned with or without hard labour, for any period not exceeding six months.

Jurisdiction of magistrate in culpable insolvency.

72. And be it enacted, that it shall and may be lawful for the Courts of the Resident Magistrates in this Colony, respectively, on the conviction before any such Court of any person of any of the offences set forth in the last preceding section mentioned, to sentence such person to the punishment in the said section provided.

Prosecution of culpable insolvency by creditors.

73. And be it enacted, that every trustee and every creditor of or on the estate of any insolvent shall, with regard to any of the offences set forth in the seventy-first section of this Ordinance, have the same right of prosecution which any private person has by law with regard to any offence committed against his person or property, and no other right; Provided always, that no creditor or creditors shall be entitled to exercise any such right of prosecution for any such offence without first obtaining from the trustee, and producing, a certificate that the trustee declines to prosecute for that offence.

Fraudulent alienation, &c., by insolvent in favour of third parties.

74. And be enacted, that if any person shall receive or accept any alienation, transfer, gift, cession, delivery, mortgage, or pledge made by any insolvent of any part of his estate or effects, with intent to defraud the creditors of the insolvent, knowing, at the time, the same to be fraudulently made, such person shall, on conviction thereof, suffer transportation for life, or for any period not

Digitised by the University of Pretoria, Library Services, 2016

less than five years, or imprisonment, with or without hard labour, for any period not exceeding five years.

Removal, &c., of effects sequestrated.

75. And be it enacted, that if any person shall dispose of, remove, conceal, embezzle, or receive, any movable property belonging to any insolvent estate, which has been attached by virtue of any order for the sequestration thereof, or any movable property, which has been attached by process of any competent Court, knowing the same to have been so attached and with intent to defeat the said attachment, such person shall, on conviction thereof, suffer transportation for any period not exceeding seven years, or imprisonment with or without hard labour, for any period not exceeding five years.

Recovery of sequestrated effects concealed.

76. And be it enacted, that in all cases when, on the application of the Master of the Supreme Court, or any trustee or trustees of any insolvent estate, it shall, on oath, be made to appear to the satisfaction of any Judge of the Supreme Court, or Resident Magistrate, or Justice of the Peace, that there is reason to suspect or believe that property of any insolvent is concealed in any house or other place not belonging to the insolvent, it shall and may be lawful to the said Judge, Magistrate, or Justice of the Peace, to grant a warrant to search for and take the said property; which warrant shall be executed in like manner as is by law allowed in execution of a search warrant for property reputed to be stolen and concealed: and any property of the insolvent so found shall forthwith be delivered, if no trustee or trustees have hitherto been confirmed, to the Master of the Supreme Court, or otherwise, to the trustee or trustees who have been confirmed, or to any person appointed by the said Master, or trustee or trustees, to receive the same.

Third meeting of creditors.

77. And be it enacted, that it shall be lawful for the Master of the Supreme Court, and he is hereby required, so soon as the trustee or trustees, chosen at the second meeting of the creditors of any insolvent estate in manner aforesaid, have been confirmed, forthwith to appoint the third meeting of the creditors of the insolvent to be holden before himself, or any Resident Magistrate, at such time, and at such place, as he shall deem most expedient for all parties concerned, for the purpose of receiving proof of debts and for receiving the report of the trustee or trustees as to the condition of the insolvent estate, and for giving directions to the trustee or trustees as to the management thereof; and the said trustee or trustees shall give notice of the time and place at which, and of the purposes for which, such meeting is to be held, in the same advertisement in the *Government Gazette*, in which notice is hereinbefore required to be given by them to the creditors, of their confirmation as trustee or trustees.

For proof of debts. And report as to condition of estate.

Commissioner, election of.

78. And be it enacted, that it shall and may be lawful for the creditors of any insolvent estate present at such third meeting as aforesaid, or at any other subsequent meeting, to elect, if they shall

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6–1843.

by a majority determine so to do, one commissioner, who shall be either a creditor or the mandatory of a creditor, and the same proceedings shall take place, and the same regulations apply, in regard to his election, as are hereinbefore provided in regard to the election of trustees except that no decree of the Supreme Court confirming his appointment shall be necessary. Provided that no person shall be eligible to be a commissioner who is disqualified to be a trustee, and provided that after every such election of a commissioner, the Master of the Supreme Court, or the Resident Magistrate, as the case may be, shall annex a record thereof to the proceedings in the insolvent estate; and provided that the trustee shall, in all cases when a commissioner has declinsd to act, or died, or resigned, or become incapacitated, call a meeting of creditors for the purpose of electing, should they, by a majority think proper so to do, a new commissioner, and such new commissioner shall be elected in the manner hereinbefore provided:—and provided that no commissioner shall be entitled to or receive any species of salary, commission, allowance, or remuneration whatever from the insolvent estate for his services as such commissioner. And provided, that, when the question of electing a commissioner shall be sought to be submitted to any meeting of creditors other than the third meeting, a public notice of not less than fourteen days shall be given in the *Government Gazette*, that such a question will be submitted to such meeting.

Duties of commissioner.

79. And be it enacted, that it shall and may be lawful for the said commissioner, when such shall be elected as aforesaid, to superintend the proceedings of the trustee, give his advice and assistance in the management of the estate, inquire from time to time, into the situation thereof, and of every part thereof, examine all the accounts of the trustee regarding the said estate, require from the trustee all such reasonable explanation or information as he or they may, from time to time, demand, touching any matter or thing belonging to the administration of the said estate, and assist the Master of the Supreme Court in assessing the compensation to be paid to the trustee.

Power of commissioner to call meetings and report.

80. And be it enacted, that it shall and may be lawful for the commissioner, to call at any time, a general meeting of the creditors, and to make to such meeting such reports or representations in regard to any matter or question respecting the administration of the insolvent estate as he shall deem necessary or expedient; and the trustee shall pursue the directions of the greater part of the creditors attending such meeting: Provided always, that twenty-eight days' notice at the least, shall be given of every such meeting, and of the purpose thereof, in the *Government Gazette*.

Trustee to furnish information to commissioner.

81. And be it enacted, that any trustee who shall neglect or refuse to give to any commissioner any such information concerning the situation and administration of the insolvent estate, or any such insight into the accounts thereof, as the said commissioner is,

Digitised by the University of Pretoria, Library Services, 2016

as aforesaid, authorised and empowered to demand and require, shall be deemed and taken to have misconducted himself in his trust, and may thereupon be removed in manner and form as hereinbefore provided, from the office of trustee. (1) Ord. 6—1843.

Getting in of debts by the trustee.

82. And be it enacted, that the trustee or trustees shall, after being confirmed, forthwith call in and collect all debts due to the estate, and, for that purpose, they shall, by advertisement in the *Government Gazette*, summon all debtors to pay, or cause the same to be paid to them at such time and place, as shall be therein appointed for that purpose; and any person neglecting or refusing to make such payment, and being afterwards sued for any such debt, shall, if the said trustee or trustees obtain a judgment against him, and if he shall not show cause, to the satisfaction of the Court awarding such judgment, for such neglect or refusal, pay to the said trustee or trustees double costs of suit, for the benefit of the said estate: and the said publication shall be deemed notice thereof to all persons who may reasonably be presumed to have seen the same. And the said trustee or trustees shall also proceed to set aside, and if necessary, by legal process, all such payments, alienations and pledges, made by any person whose estate shall be sequestrated as insolvent, as are hereinafter particularly described, and declared to be null and void, precisely as if the money, or other property delivered or pledged, had belonged to the said trustee or trustees at the time of the making of such payments, alienations or pledges respectively.

Gratuitous alienations by insolvent.

83. And be it enacted, that every alienation, transfer, gift, cession, delivery, mortgage, or pledge of any goods or effects, movable or immovable, personal or real, made by any insolvent, at a time when it shall be made to appear by proof, that his liabilities fairly calculated exceeded his assets fairly valued, shall, unless the same shall have been made *bonâ fide*, and upon just and valuable consideration, be null and void. And whenever the immediate and necessary effect of any such alienation, transfer, gift, cession, delivery, mortgage, or pledge, as aforesaid, shall be to cause such an excess of liabilities over assets, then the same, to the extent to which such excess shall have been thus produced, shall be null and void.

Undue preference of creditors.

84. And be it enacted, that every alienation, transfer, cession, delivery, mortgage, or pledge of any goods or effects, movable or immovable, personal or real, and every payment made by any insolvent to any creditor, such insolvent at the time contemplating (2) the sequestration, either voluntary or otherwise, of his estate, and intending thereby to prefer directly or indirectly such creditor before his other creditors, shall be deemed to be an undue preference, and is hereby declared to be null and void. And every such alienation, transfer, cession, delivery, mortgage, or pledge as

[1] See § 52.

[2] See § 8, Act 38 of 1884.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1847.

aforesaid, made by any insolvent to any person whatever, such insolvent at the time contemplating, as aforesaid, the sequestration of his estate, and intending thereby to prefer directly or indirectly any creditor before his other creditors, shall be deemed to be an undue preference of such creditor in so far as he shall have been benefited thereby, and the trustee or trustees shall be entitled to recover the amount or value of such undue preference from the creditor so preferred.

Undue preference of sureties for insolvent.

85. And be it enacted, that every alienation, transfer, cession, delivery, mortgage, or pledge of any goods or effects, movable or immovable, personal or real, and every payment made by any insolvent, with the intention of thereby benefiting any person, who, not being a creditor of such insolvent, would yet have become liable for the amount paid, satisfied, or secured by the insolvent, in case it had not been so paid, satisfied, or secured, either in the character of a surety for such insolvent, or in some character by law analogous thereto, such insolvent at the time contemplating [1] the sequestration, either voluntary or otherwise, of his estate, shall be deemed to be an undue preference, and the trustee or trustees shall be entitled to claim and recover from the person so intended to be benefited whatever amount the insolvent shall have paid, satisfied or secured, in discharge or relief of such persons' liability.

Transactions in ordinary course of trade.

86. And be it enacted, that every alienation, transfer, cession, delivery, mortgage or pledge as aforesaid and every payment made by any insolvent to any creditor in the usual and ordinary course of trade or business, shall, *prima facie*, be held and taken to have been made or given *bonâ fide*, and without an intention to give to such creditor any preference, although such insolvent may, at the time, contemplate the sequestration of his estate as insolvent, and in every such case it shall be necessary for the trustee or trustees seeking to set the same aside, to show the existence of some collusive arrangement, mutual understanding, or common consent, between the insolvent and the creditor, the one to give and the other to get a preference over the other creditors of the insolvent, under colour of a transaction in the usual and ordinary course of trade or business.

Collusive payments to creditors under execution before sequestration.

87. And be it enacted, that every payment obtained by any creditor before the making of the order for sequestration, by means or under colour of legal process against the insolvent, shall be deemed an undue preference, and be null and void, when and as often as such payment shall have been obtained or facilitated by connivance of the insolvent, or by collusion between such insolvent and such creditor, such insolvent, when so conniving or colluding contemplating [1] the sequestration of his estate, and intending to give such creditor, or allow such creditor to get, a preference above the other creditors of such insolvent.

[1] See § 8, Act 38 of 1884.

Digitised by the University of Pretoria, Library Services, 2016

Forfeiture by creditors where undue preference collusive.

88. And be it enacted, that, in every case in which any person, whether actually a creditor or not, shall be obliged, by virtue of the eighty-fourth or eighty-fifth or eighty-seventh sections of this Ordinance, to restore or repay, as the case may be, for the benefit of the insolvent estate, any alienation, transfer, cession, delivery, mortgage or pledge, or any payment as having been an undue preference, such person shall not be allowed to claim or prove as a debt the amount of what he shall have so restored or repaid, but shall wholly forfeit such amount as regards the insolvent estate, in case such undue preference was received by such person by or through any collusive arrangement, mutual understanding, or common consent between such person and the insolvent, the one to give and the other to get such undue preference.

How question as to forfeiture in 88th section may be raised.

89. And be it enacted, that it shall and may be lawful for the trustee or trustees of any insolvent estate, in any suit or action which he may cause to be instituted against any person for the restoration or repayment of any matter, money or thing alleged to have been given or paid by the insolvent by way of undue preference, to claim amongst other things, that the defendant in such suit or action may be declared by the judgment of the Court in which such suit or action shall be pending, to have forfeited, in regard to the insolvent estate, the amount in which he shall be found to have been unduly preferred by reason of the collusive arrangement, mutual understanding, or common consent, in the last preceding section mentioned, and the question of such forfeiture shall be tried and determined together with the other questions in the case. And in case it shall not be necessary to institute any suit or action against persons who shall be alleged by the trustee or trustees to have been unduly preferred, the right of any such last-mentioned persons to prove a debt in respect of the amount or value of the matter, money, or thing by them restored or repaid shall, if disputed, be determined in manner and form as is hereinbefore provided for the regulation of the proof of debts.

If no forfeiture under 88th section, creditor before restoring preference to be indemnified as to his recourse on third parties.

90. And be it enacted, that in case any creditor of any insolvent shall have received from such insolvent an undue preference, but under circumstances which do not, by force and virtue of the eighty-eighth section of this Ordinance, occasion a forfeiture of the value or amount of such preference, then in case such creditor shall have received such undue preference in respect of any bill of exchange or promissory note, with recourse on other parties, which was payable by the insolvent, and held by such creditor, or in any respect of any debt of the insolvent for which such creditor had any security, which, by reason of the act of the insolvent constituting the undue preference, such creditor has *bonâ fide* given up, discharged, or in law, precluded himself from enforcing, such creditor shall not be liable to restore or repay to the trustee or trustees the value or amount of such undue preference, unless the trustee will indemnify and save him harmless in respect of

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

whatever loss such creditor would sustain in case he were unconditionally condemned and adjudged to restore the value or amount aforesaid, and which loss such creditor would not have sustained in case he had never received from the insolvent the payment or other satisfaction constituting such preference.

Bonâ fide purchases by third parties of subject of undue preference from creditor preferred.

91. And be it enacted, that if any person shall lawfully, *bonâ fide*, and without notice, purchase or acquire any bills of exchange, promissory notes, or other securities for money, or any goods or effects, movable or immovable, personal or real, which have been alienated, transferred, given, ceded, or delivered by any insolvent, under circumstances or in a manner declared by any of the preceding or succeeding sections of this Ordinance to be null and void, from any person to whom such bills, notes, goods, or effects, were so alienated, transferred, given, ceded, or delivered, by any true bargain or agreement upon just and valuable consideration, nothing contained in this Ordinance shall extend or be construed to extend to annul or affect any right which any such person has lawfully, *bonâ fide*, and without notice, purchased or acquired in such bills or notes, goods, or effects. But in all such cases the persons to whom the same were alienated, transferred, given, ceded, or delivered by the insolvent, shall be bound and obliged to pay the true value of all such goods and effects, by them disposed of to the third party, to the trustee or trustees of the insolvent estate for the benefit of the creditors thereof.

Collusive and fraudulent discharge of debt given by insolvent.

92. (1) And be it enacted, that all acquittances, surrenders, or discharges of any just debt, or of any security for any just debt, or other matter or thing, payment or delivery of which has not been actually and *bonâ fide* received, made by any insolvent while contemplating the sequestration of his estate, having the effect to deprive his creditors of the benefit of any debt or other matter or thing, shall be, and are hereby declared to be, as against the trustee or trustees of such insolvent, null and void. And in every case in which the person accepting from the insolvent any such acquittance, surrender or discharge as aforesaid had, at the time of accepting the same, actual knowledge or reasonable notice that the effect of the same, if undetected, would be to deprive the creditors in the insolvent estate of the debt or other matter or thing in question, such person, shall besides making good such debt, matter or thing to the trustee or trustees of the insolvent estate, be also bound and obliged to pay to such trustee or trustees a further sum equal to the value of the debt or other matter or thing, originally due and owing, and wrongfully acquitted, surrendered or discharged, or attempted so to be.

Dealings with insolvent estate after the order of sequestration.

93. (1) And be it enacted, that all alienations, transfers, gifts, cessions, deliveries, mortgages, or pledges of any goods or effects, movable or immovable, personal or real, belonging to the insolvent

[1] See Act 38 of 1884, § 8.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

estate, and all payments, and all acquittances, surrenders, and discharges of any just debt due to such insolvent estate, or of any security for any such just debt, or of any other matter or thing belonging or owing to the said estate, made by any insolvent after any order for the sequestration of his estate has been made, and before the making of the order of Court allowing and confirming, as hereinafter mentioned, the account and plan of distribution to be framed by the trustees, shall be and are hereby declared to be null and void, the several payments and alienations which such insolvent is by virtue of the forty-ninth section of this Ordinance rendered competent to make, alone excepted.

Bona fide payments by debtors to insolvent after the order of sequestration.

94. And be it enacted, that all payment or satisfaction made to any insolvent by any person who was the debtor of such insolvent at the time of the making of any order for the sequestration of the insolvent's estate, after the making such order shall be null and void; except only that where the sequestration of such estate shall have been adjudged at the instance of the creditors thereof, all payment or satisfaction really and *bonâ fide* made to any such insolvent or to any person legally entitled to receive the same on his behalf, before such sequestration has been adjudged, shall be valid and effectual, in case any such person as aforesaid making such payment or satisfaction had not, when so doing, notice of any order for the sequestration of the estate of the insolvent having been made.

Undue preferences given by executors and the like persons.

95. [1] And be it enacted, that every provision hereinbefore contained relative to what shall be deemed to be undue preferences made by persons. contemplating the sequestration of their own estates, and to the avoiding of the same, and to the forfeiture, under certain circumstances, of the amount of every such preference, shall be deemed and taken to apply, *mutatis mutandis*, to preferences given out of the assets of the estates which they administer by persons legally invested with the administration of the estates of deceased persons, and of persons legally or actually incapable of the administration of their estate, when such persons, so invested, contemplating the sequestration of the estates which they administer and intend to prefer some one or more creditors of any such estate before the other creditors thereof.

Recovery of preferences given by executors and the like persons.

96. And be it enacted, that it shall and may be lawful for the trustee or trustees of the insolvent estate of any deceased person, or of the insolvent estate of any person legally or actually incapable of the administration of his estate, to demand and recover either from the person legally administering such estate before the sequestration thereof, and by whom any such undue preference shall have been given, out of the assets of such estate, or from the person to whom, or for whose benefit, such undue preference shall have been given, the value or amount of such undue preference, or such

[1] See Act 38 of 1884, § 8.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

trustee or trustees may sue such persons successively. Provided always, that it shall not be competent for any such trustee or trustees to require the restoration or repayment of such undue preference, or of the amount thereof, from both such persons as aforesaid concurrently, or to recover from them both, when sued successively, more than the single value or amount of such undue preference, together with the costs and charges of such trustee or trustees.

Transaction by trustee of claims by estate on third parties.

97. And be it enacted, that it shall and may be lawful for the trustee or trustees, subject to the directions of the creditors given in the manner hereinbefore mentioned, to agree, if he or they should think fit, to any offer of composition made by any debtor of the insolvent estate who is himself insolvent, or to the certificate of any such insolvent, and to compound with any debtor to the insolvent estate, and take any reasonable part of the debt in discharge of the whole, or to give a reasonable time or take security for the payment of such debt, or to submit any dispute between them and any person concerning or affecting the said estate to the determination of arbitrators, to be chosen by the trustee or trustees and the party with whom they shall have such dispute; and the award of such arbitrators shall be binding on all the creditors: Provided always, that previous notice of their intention so to agree to any offer of composition, or to any certificate, or to compound any debt, or submit any dispute to arbitration has been given for twenty-eight days, at least, by advertisement in the *Government Gazette*. And for the purpose of such offer of composition or certificate, the trustees signing, if more than one, shall reckon only as one creditor in number and value.

Reference to arbitration.

Sale by trustee of sequestrated estate.

98. (1) And be it enacted, that the trustee or trustees shall, subject to the directions of the creditors given in the manner hereinbefore provided, forthwith proceed to make sale of all the property belonging to the said estate, movable and immovable, giving due notice thereof in the *Government Gazette*, and also such other notice as they shall think fit: Provided, that from the sale of the said movable property shall be excepted, until the creditors shall determine thereon, the wearing apparel, bedding, household furniture, and tools of trade of the insolvent and his family; and provided, that the sale of all immovable property shall take place in such manner and under such conditions as shall be determined on by the greater part in number and value of the creditors present at any meeting duly summoned: provided, however, that such conditions shall be subject to the approval or disapproval of the Supreme Court, or of any Circuit Court, on the application of any person interested in the due administration or reversion of the estate under sequestration.

Exceptions.

Retention of wearing apparel, &c., by insolvent.

99. And be it enacted, that it shall and may be lawful for the said trustee or trustees, with the consent of the greater part in

(1) See also §§ 39 and 56.

Digitised by the University of Pretoria, Library Services, 2016

number and value of the creditors who shall have proved their debts, present at any meeting, whereof and of the purpose of which twenty-eight days' notice shall have been given in the *Government Gazette*, to permit the said insolvent to retain for his own use the whole or such part of his wearing apparel, bedding, household furniture, and tools of trade, excepted from the sale of his movable property, as the said creditors shall agree to allow to the said insolvent. Provided that every such permission shall be subject to the approval or disapproval of the Supreme or any Circuit Court, on the application of any person interested in the due administration of the estate.

Choice by creditors of bank for deposit of moneys of estate.

100. And be it enacted, that it shall and may be lawful for, and shall be the duty of the creditors of any insolvent estate, at the meeting held for the election of trustees, immediately after such election, in case such election shall take place at such meeting, and in case such election shall not then take place, then immediately after the votes of the said creditors in regard to such election shall have been given, to nominate and appoint some certain bank or banks within this Colony, with which bank or banks it shall be the duty of the trustee or trustees of such estate to open an account, and, in case of a difference of opinion amongst the said creditors assembled at such meeting, the greater part in value of the said creditors shall determine upon the bank or banks to be so nominated and appointed as aforesaid, and from and after any such nomination and appointment of any such bank or banks, the trustee or trustees of such insolvent estate, whether chosen by the creditors or provisionally appointed, shall, as soon as he or they shall receive any sum of money exceeding twenty pounds belonging to such estate, open an account with such bank or banks in the name of the insolvent estate, and such sum and every other sum exceeding twenty pounds so received by him or them shall, with all convenient speed, be paid into such bank or banks, to be placed to the credit of such account, and all checks or orders for the payment of any such money out of the said bank or banks shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the trustees or by one of them for himself and co-trustees. Provided that in case the creditors of any insolvent estate shall neglect, in manner aforesaid, to nominate any such bank or banks as aforesaid, it shall be lawful for the trustee or trustees aforesaid to open an account with, and pay all such moneys as aforesaid into, any such bank or banks in this Colony as he or they shall select. And provided that every provisional trustee appointed under this Ordinance before the meeting of creditors for the election of trustees shall, pending such meeting, open an account with, and pay all such moneys as aforesaid into, any such bank or banks in this Colony as he shall select. And provided that all trustees whether provisional or elected, shall, in regard to the bank or banks with which such account as aforesaid

Deposit of sums exceeding £20.

Cheques upon bank account.

Choice of bank by trustee.

Opening of bank account by provisional trustee.

Digitised by the University of Pretoria, Library Services, 2016

[Ord. 6—1843.

shall be kept, and such moneys as aforesaid lodged, pursue such directions as they shall, from time to time, receive from any general meeting of the creditors of the insolvent estate.

Non-deposit or use by trustee of sums exceeding £20.

101. And be it enacted, that any trustee who shall retain in his hands, or knowingly permit any co-trustee so to retain, any sum of money exceeding twenty pounds sterling, part of any insolvent estate, longer than until the first day after his receiving the same, upon which it shall be possible for him to pay the said sum, or cause it to be paid, into some such bank or banks as aforesaid, and who shall not have any just and lawful cause for so retaining the same, or shall employ for his own benefit, or knowingly permit any co-trustee so to employ, any sum of money, part of any insolvent estate, shall forfeit and pay, for the benefit of the said estate, double the amount of the sum so retained or employed: and the said sum so forfeited shall be deducted out of any claim the said trustee may have against the said estate, and the surplus, if any, shall be recovered by action in any competent Court.

Accounts to be kept by trustee.

102. And be it enacted, that the trustee or trustees shall keep an account, wherein they shall enter all property of the insolvent received by them, and all payments made by them on account of the insolvent's estate; which account every creditor who shall have proved, may inspect at all reasonable times. And it shall and may be lawful for the Master of the said Court, whenever he shall think fit, to summon the said trustee or trustees, by writing under his hand, to produce the said book, and the said Master shall, as often as he shall see fit examine and inspect the same.

Election by trustee as to adopting purchases by insolvent of immovable property.

103. And be it enacted, that if any insolvent shall have entered into any agreement for the purchase or exchange of any estate or interest in any immovable property, it shall and may be lawful for the trustee or trustees of such insolvent, either to abide by, execute, and sue for performance of such agreement, or abandon ([1]) the same; and, if the said trustees shall not (upon being thereto required) elect whether they will abide by and execute such agreement, or abandon the same, the vendor, or person having made such agreement as aforesaid, or any one legally claiming under him, shall be entitled to apply, by motion, to the Supreme Court, or to any Circuit Court, who may thereupon order the said trustees to deliver up any such agreement, and the possession of the premises to the vendor or person so agreeing as aforesaid, or any one claiming under him, or may make such other order therein, as the said Court shall think fit: Provided, that nothing herein contained shall prevent such vendor, or person having made such agreement as aforesaid, from suing the trustee or trustees in any competent Court, and recovering judgment against the insolvent estate for any damage which he shall prove to the satisfaction of such Court to have been by him sustained by the non-fulfilment, on the part of the insolvent,

Right of action reserved to vendor.

[1] See Act 5, 1884, § 19 sub. § 15.

Digitised by the University of Pretoria, Library Services, 2016

of any such agreement, or deprive the said trustee or trustees of their legal defence against such suit.

Leases terminated by sequestration.

104. And be it enacted, that if any insolvent, shall be entitled to any lease, or agreement for any lease of immovable property, such lease or agreement for lease shall, upon the surrender or adjudication of sequestration of the estate of such insolvent, cease and determine: ([1]) Provided, that nothing herein contained shall prevent the lessor, or person having made such agreement, from suing the trustee or trustees in any competent Court, and from recovering judgment against the insolvent estate for any rent which he shall prove to the satisfaction of such Court to have been due by the insolvent prior to the surrender or adjudication of sequestration of his estate, or for any damage which he shall prove to the satisfaction of such Court to have been by him sustained, in consequence of the non-performance of the conditions of such lease or agreement for a lease during the full period of the stipulated endurance thereof, or to deprive the trustee or trustees of their legal defence against such suit; or to prevent such trustee or trustees from suing the lessor or person having made such agreement in any competent Court, for the amount of any ameliorations made on the subject, and in contemplation of such lease or agreement, by the insolvent, prior to the surrender or adjudication of sequestration of his estate, or to deprive such lessor or person of his legal defence against such suit; and provided also that it shall be lawful for such trustee or trustees, when sued for damages for the non-fulfilment of such lease or agreement for a lease, to offer to take over and accept the same, and to perform the conditions thereof, during the full period of the stipulated endurance thereof; and that it shall be lawful for such lessor or person having made such agreement, when sued for the amount of such ameliorations as aforesaid, to offer to receive the trustee or trustees, as lessors in the place of the insolvent, under the conditions and for the full period of the stipulated endurance of such lease; and if such offer shall be refused, the party who has made it shall be absolved from the suit in which it has been made, and shall be entitled to his costs.

Saving rights of action to lessor.

Saving claim of trustee for meliorations.

Action upon lease may be avoided by adopting it.

Reclamation by vendors of property sold to insolvent but not paid for.

105. And be it enacted, that no person from whom any insolvent shall have purchased any property, movable or immovable, personal or real, and who shall have delivered or caused or permitted such property to be delivered to such insolvent, shall be entitled either to claim such property being in the sequestrated estate, or to claim to be preferred, in any way, for the price or value thereof, by reason alone that such property was sold by such person to such insolvent without any period having been stipulated, until the expiration of which period the price should not be

[1] But see § 7, Ord. 16, 1880, Griq. West Statute Law p. 386, as to non-termination of leases of claims by insolvency.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

payable, or upon any actual agreement or tacit understanding that such price should be paid or payable forthwith. Provided that nothing herein contained shall be deemed or taken to alter or affect any previous law in force in this Colony, in regard to the right of a vendor to rescind any sale and reclaim his property on account of fraud and circumvention practised upon him by the purchaser, except only in so far as the matters aforesaid hereby declared to be of themselves not sufficient to entitle any such vendor to claim again property sold and delivered, shall have been deemed to amount to, or to be conclusive evidence of, such fraud and circumvention; and provided, also, that nothing herein contained shall apply to any case in which any such vendor shall, within three ([1]) days of the delivery of any property sold as aforesaid, reclaim by notice in writing, the possession of the said property, and proceed thereafter, without any unnecessary delay to enforce the re-delivery of the said property by means of legal process.

Offer of composition by or for insolvent.

106. And be it enacted, that, if at the third public meeting of the creditors, appointed by the Master of the Supreme Court, as aforesaid, or at any subsequent meeting of the creditors assembled together by advertisement in the *Government Gazette*, stating the purpose of such meeting, the insolvent, or any person on his behalf, shall make an offer of composition, or security for composition, which nine tenths of the creditors in number and value assembled at such meeting shall agree to accept, the trustee or trustees shall

Meeting of creditors upon.

forthwith call another meeting for the purpose of deciding upon such offer, whereof at least forty-two days' notice shall be given by advertisement in the *Government Gazette*, specifying the time, place, and purpose of such meeting; and if, at such second meeting, nine tenths in number and value of the creditors then present shall also agree to accept such offer, then upon such acceptance being certified to the Supreme Court, by the Master of the said Court,

Oath to be taken by insolvent.

and upon oath of the insolvent, that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, or made or promised any payment, or entered into any secret or collusive agreement or transaction, to obtain the concurrence of any creditor to the said offer of composition, it

Discharge by court.

shall be lawful for the said Court, upon motion, to pronounce, if it should so think fit, a decree discharging the insolvent from all debts due by him at the time his estate was surrendered or adjudged to be sequestrated, and from all claims and demands proved or hereby made provable or claimable against his estate, and declaring the sequestration at an end, and the insolvent re-invested with his estate, but reserving, however, always the claims of the creditors for such composition, or security for composition, as may have been

Previous notice to creditors.

agreed for and be still unexecuted. Provided that at least twenty-one

[1] Ten days. § 11, Act 38 of 1884.

Digitised by the University of Pretoria, Library Services, 2016

days' notice of the day on which such motion as aforesaid is to be made shall have been given by advertisement in the *Government Gazette*, and that the said Court shall hear any objection which may be made by any creditor against the pronouncing of such decree, and shall determine thereupon as the justice of the case shall require. Provided also, that if the creditors present at any such second meeting as aforesaid, and agreeing to the offer of composition, do not amount in number and value to four fifths in number and value of the whole of the creditors who have proved debts against the insolvent estate, then the acceptance of such offer of composition by at least four fifths in number and value of such lastmentioned creditors must be certified to the said Court by the said Master at the time of the making of the said motion. And provided, that nothing in this section contained shall be construed so as to affect the right of any creditor entitled by law to be paid in preference, in so far as such creditor shall be so entitled, unless such creditor shall expressly consent to give up his preference, and be bound by the said composition, and no creditor by accepting any such offer of composition shall be deprived of his right to claim from any person bound to him as surety for the insolvent, the balance of the debt secured. And provided that the Court aforesaid shall not, in any case, pronounce the decree aforesaid until it shall be satisfied that no injury or injustice will thereby be done to any person who has been allowed by the said Court to enter a claim upon the insolvent estate, and who shall not, at the time of the making of such motion as aforesaid, have yet proved his debt, and until the said Court shall have made or caused to be made inquiry, by taking the oath of the insolvent, or otherwise, whether there are not other creditors having just and lawful debts and claims against the estate of such insolvent, and who, by reason of absence from the Colony or other causes, may not have proved or claimed against the said estate. And provided that if, upon such inquiry, it shall appear to the said Court that there are such just and lawful debts and claims, it shall not be competent for the said Court to pronounce such decree as aforesaid, until it shall have been certified to such Court by the said Master that there has been paid to or deposited with him, or to or with some other person or persons with his approbation, for and on account of such other just and lawful creditors as aforesaid, whatever amount, according to the terms of the composition, they would have been entitled to receive in case they had proved their debts. And provided that no sum of money or other matter or thing which shall be impounded or secured for any person who has entered a claim upon the insolvent estate, or any such creditor as last aforesaid, shall, after any discharge of the insolvent as in this section provided, revert to such insolvent, but the same, in case the person or persons on whose behalf it was so impounded or secured, shall not, within such reasonable time as the Supreme Court shall fix, prove title to and

Ord. 6—1843.

Objections by creditors.

Effect of composition upon preferences or securities.

Upon claims reserved to be proved.

Inquiry for absent creditors.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

claim the same, shall be ordered by the said Court, upon the motion of any person interested, to be divided ratably amongst the remaining creditors and claimants, the costs of the motion last mentioned being first deducted and paid to the party making the same.

Release of estate from sequestration.

107. And be it enacted, that it shall and may be lawful for the Supreme Court, upon the application of any insolvent, to release, if it should so think fit, the estate of such insolvent from sequestration, whenever it shall be certified to the said Court by the Master of the said Court, that all creditors who have proved debts or entered claims against such estate, have testified in writing, their consent to such release, or whenever it shall be certified by the said Master that all the creditors who have proved debts or entered claims as aforesaid, have been paid, or have had tendered to, or deposited for them, as the case may be, the full amount, as well principal as interest, of their several demands. Provided that no such application to release any such estate from sequestration under the provisions of this section shall be capable of being granted until after the third meeting of creditors as hereinbefore mentioned shall have been held. And provided that it shall be lawful, for the said Court, before granting any such application as aforesaid, to make or cause to be made such inquiry relative to the existence of other just and lawful creditors who have neither proved nor claimed as is in the last preceding section mentioned, and thereupon to grant or refuse such application, and that either absolutely or conditionally, as to the said Court shall seem just. And provided that no such release as aforesaid shall be construed to be a discharge of the insolvent, or to alter or affect, in any way, the rights of any creditors of any such insolvent who have neither proved debts nor entered claims upon the insolvent estate, which rights shall be judged of after any such release exactly as if such estate had never been surrendered.

Not before third meeting.

Not before inquiry as to other creditors.

Account of estate to be rendered by trustee to the master.

108. (1) And be it enacted, that the trustee or trustees of any insolvent estate shall, as soon as may be, and not later than six months after their appointment, unless upon application to the Supreme Court, upon sufficient cause to the satisfaction of the said Court, further time be given for that purpose, frame and lay before the Master of the said Court, an exact account and balance of the said estate, containing the proceeds of all sales and debts then collected, and an account of all debts still outstanding, and an inventory of all property and effects still unsold, and also all debts due by the said estate; and shall also form a general plan for distribution of the assests of the said estate, specifying, first, such creditors as are preferent by law in the order of their legal preference, and, secondly, the concurrent creditors, and as nearly as may be, the probable balance which will remain for division amongst

Plan of distribution.

[1] See Acts 38 of 1884, § 15, and 11 of 1873, § 2.

Digitised by the University of Pretoria, Library Services, 2016

them. And when and as often as the usual place of residence of any insolvent shall be in any district of this Colony, other than Cape Town and the district thereof, or the Cape Division, the trustee or trustees of that insolvent shall, before laying the account and plan aforesaid before the said Master, lay the same before the Resident Magistrate of such district, in whose office it shall remain for the inspection of creditors, for at least seven days, and every such Resident Magistrate shall cause to be affixed in some public place in or about his said office, a list of all insolvent estates in which such account and plan as aforesaid remains, for the time being, for inspection, together with the date of its intended transmission.

Account and plan to be exhibited in magistrate's office.

109. And be it enacted, that, as soon as the Master shall receive from the trustees any such account of the estate and plan for distribution, the same shall lie open in his office, for the inspection of the creditors, a reasonable time, to be appointed by the said Master, not being less than fourteen days from the advertisement thereof, according to the distance from Cape Town of the residence of any creditor who has proved a debt against the said estate; and the said trustee or trustees shall cause notice thereof to be given in the *Government Gazette*, and that the Supreme Court will thereupon be moved to confirm and allow the said account and distribution of the estate.

Plan and account also to lie in master's office.

110. And be it enacted, that it shall and may be lawful for the insolvent or any party interested in the estate under sequestration, and for any creditor who may consider himself aggrieved by the said plan of distribution, within the time aforesaid, to enter his objection in writing with the said Master, stating the grounds thereof; and, also, it shall and may be lawful for the Supreme Court to permit such objection to be entered at any time before the final confirmation of the said plan upon sufficient cause to be shown to the satisfaction of the said Court, and upon such terms as the said Court shall impose.

Objections to plan of distribution.

111. And be it enacted, that any person objecting to the said account or plan of distribution shall apply to the Supreme Court, on motion, calling upon the trustees, and also upon the party whose interest might be affected thereby, to show cause why the said plan should not be altered or amended, as the case may be, and thereupon it shall and may be lawful for the said Court, upon hearing the said parties, to make such order thereon, as to the said Court shall seem fit: Provided that, when any alteration or amendment shall be ordered in the said plan, whereby the interest of any party who has not made appearance in the said Court shall be affected, the same shall again lie open for inspection of the creditors, and notice thereof shall be given as aforesaid.

Disposal of objections.

Exhibition of plan after alterations upon it.

112. And be enacted, that it shall and may be lawful for the trustee or trustees, after the expiration of the time appointed for the inspection of the said account and plan of distribution, and no

Confirmation of account and plan.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

objection being entered thereto, or if any objection has been stated, after the Court has made order thereon, as aforesaid, to apply to the Supreme Court, on motion, praying that the said plan may be allowed and confirmed by the Court, and thereupon it shall and may be lawful for the said Court to allow and confirm the same; and such allowance and confirmation shall have the effect of a final sentence of the said Court except against such creditors as shall afterwards be admitted by the said Court, in manner hereinbefore provided, to prove their debts, and rank upon the said estate at any time before the final distribution thereof.

Effect of confirmation.

Distribution of estate.

113. And be it enacted, that after confirmation and allowance of the said account and plan of distribution, the trustees shall, upon the demand of the said creditors, distribute the said estate according thereto, and the remedy of any creditor to obtain payment of any dividend due to him shall be, during the continuance in office of the said trustee or trustees to the Supreme Court, or any Circuit Court, by motion.

Scheme of division.

114. And be it enacted that if it shall, from the nature and circumstances of the insolvent estate, be found impracticable to frame the plan of distribution aforesaid, so as to arrange the distribution according thereto, of the whole of the insolvent estate, then the trustee or trustees shall, as soon as may be, after the allowance and confirmation of the said plan, and not later than six months after such allowance and confirmation, unless upon application to the Supreme Court, upon sufficient cause to the satisfaction of the said Court, further time be given for that purpose, frame and lay before the Master a scheme of division which shall contain an account of such of the matters hereinbefore required in regard to the account and plan of distribution in the one hundred and eighth section of this Ordinance mentioned, as the then state and condition of the assets of the insolvent estate shall permit, and shall duly apportion the funds in hand amongst the creditors, and the like proceedings in all respects shall be had and taken relative to the said scheme of division as are hereinbefore prescribed in regard to the said account and plan of distribution, and after the allowance and confirmation of such scheme of division, the dividends declared thereby shall be distributed, and there shall be the like remedy as aforesaid for obtaining the same.

Successive schemes of division.

And if it shall happen that the whole of any insolvent estate shall not be included in one such scheme or division as aforesaid, then as soon as may be after the framing of the same, but not later (except as hereinbefore excepted) than six months after the date on which the six months above fixed for the framing of the first scheme of division shall have expired, a second such scheme of division shall, in like manner and form be framed and proceeded on, and so on from six months to six months until the whole estate shall have been wound up, and finally distributed.

Digitised by the University of Pretoria, Library Services, 2016

115. And be it enacted, that the trustee or trustees shall, whenever any dividend is payable, give a public notice in the *Government Gazette*, stating that such dividend is in course of payment, and calling upon all creditors entitled thereto, to apply for, and receive the same; and in case any dividend or dividends shall remain unclaimed for the space of six months from the date of such notice, then it shall be the duty of the trustee or trustees, should he or they still continue in office, or of the Master of the Supreme Court, should the said trustee or trustees have been discharged, to pay such unclaimed dividend or dividends into the guardian fund to the credit of the parties entitled, there to be subject to the same provisions, in all respects, which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony. And if any trustee or trustees shall neglect to pay, in manner aforesaid into the said fund, by the hands of the said Master, any dividend remaining unclaimed for the space and term aforesaid, such trustee or trustees shall forfeit and pay, for the benefit of the Colonial Treasury, any sum not exceeding the amount of the dividend or dividends unduly retained, which shall be awarded by the Supreme Court, and it shall be lawful for the said Master to summon any such trustee or trustees to show cause before the said Court, why he or they should not be adjudged to pay to him the amount of any such dividend or dividends, as also the fine or forfeiture aforesaid, and the said Court shall summarily make such decision thereon as to it shall seem meet. And the said Master shall be, at all times, after the confirmation and allowance of the plan of distribution, authorised and entitled to call upon such trustee or trustees to show, by vouchers or other sufficient proof, what number of the dividends payable are actually paid; and for the purpose of the penalty hereby imposed, any neglect or refusal to produce such vouchers, or other sufficient evidence to prove the payment of any given dividend, shall amount to *prima facie* proof that the same is still unclaimed. And it shall be lawful for the Supreme Court, in case of disobedience, by any such trustee or trustees, to any order or decision of such Court, made by virtue of this, or of the one hundred and thirteenth section, to direct the sum in question to be levied by attachment and sale of the goods of the offender, or otherwise to commit such offender to prison until he shall obey such order, or until the said Court shall order his liberation, or otherwise, to apply both remedies, and that either concurrently or successively, as the Court shall see fit.

Advertisement of dividends.

Unclaimed dividends.

Penalty on trustees not paying over unclaimed dividends.

Master to require account of dividends paid.

116. And be it enacted, that when any trustee desires to resign his office, or so soon as the plan of distribution of the insolvent estate has been confirmed, it shall be lawful for such trustee to apply to the Supreme Court, by motion, for leave to resign his office, and to be discharged and acquitted of the said trust; and, if no valid objections be stated, and if the Court be satisfied that the trustee has complied with the regulations of this Ordinance, so far as regards

Discharge of trustee.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

him, his application may be granted by the said Court; but if any objection be stated thereto, the Court shall proceed to determine the same in a summary manner, and shall make such order thereon as they shall think fit. And if the application of the trustee for leave to resign be granted, the said Court shall thereupon make such order as they shall see fit, for the preservation and administration of the estate, until a new trustee be chosen and confirmed, and for the discharge and acquittance of the said trustee, and for the security and payment of any unclaimed dividends to the parties entitled to the same. Provided always, that no order of the said Court allowing the said trustee to resign, shall prevent the trustee thereafter chosen and confirmed in his stead from calling upon him to account for any part of his conduct as trustee prior to his resignation: and provided always, that before making any application for leave to resign, the trustee shall make out a full statement of his accounts, and of the situation of the insolvent estate, and shall call a meeting of the creditors to consider the same, of which meeting at least twenty-eight days' notice shall be given by advertisement in the *Government Gazette*, intimating the purpose of the meeting, and also, that the aforesaid statement, will, in the mean time, lie open for their inspection in the office of the Master of the Supreme Court.

Trustee to account with successor.

Account by trustee before discharge.

Discharge of insolvent.

117. (1) And be it enacted, that any insolvent may, after the third public meeting of his creditors called by the Master of the Supreme Court as aforesaid, and after his examination (if any has been applied for and ordered as aforesaid) apply to his creditors for a certificate, testifying their consent to the discharge of the insolvent being granted by the Court, in manner hereinafter mentioned; and every insolvent who shall have obtained such certificate (2) signed by four fifths in number and value of the creditors who have proved debts against his estate, or after six months from the date of the confirmation, in manner aforesaid, of the plan of distribution, then either by three fifths in number and value of such creditors, or by nine tenths in value alone, (2) and who shall make oath, in writing, that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, or made or promised any payment, or entered into any secret or collusive agreement or transaction, in order to obtain the consent and certificate of his creditors or of any of them, may apply to the Supreme Court, by motion, to have his certificate allowed. Provided, that at least six weeks' notice of the day on which such motion is to be made shall have been given by advertisement in the *Government Gazette;* and if no objection be made thereto by any of the creditors of the insolvent, the said Court shall make an order, allowing such certificate; but, if any objection shall be made by any creditor, the

Consent of creditors.

Notice of application for.

[1] Repealed by Act 15 of 1859, which is repealed by Act 38 of 1884, and this section re-enacted.

[2] Four years after insolvency Court may discharge insolvent without production of this certificate, Act 38 of 1884, § 14.

Digitised by the University of Pretoria, Library Services, 2016

said Court shall judge and determine thereon, and shall refuse or suspend the said certificate, or allow the same absolutely or conditionally, as the justice of the case shall require. Provided always that where in consequence of the goods and effects of the insolvent being under the value of seventy-five pounds sterling, the proceedings in such case directed by the thirty-second clause of this Ordinance shall have taken place, it shall be lawful for such insolvent at any time, not being less than three months after the said first meeting, to apply to his creditors for a certificate as aforesaid.

Fraudulent insolvent not to have discharge.

118. And be it enacted, that, if any insolvent shall have committed any act herein declared to amount to the crime of fraudulent insolvency, such insolvent shall not be entitled to his certificate or allowance, and any certificate and allowance, which such insolvent may have obtained, shall be null and void.

Collusive agreements with creditors as to composition or discharge.

119. And be it enacted, that all preferences, gratuities, securities or payments granted, made, or promised by any insolvent, to or in trust for any creditor of such insolvent, and all secret and collusive agreements and transactions intended to persuade any such creditor to accept any offer of composition, or security for composition, or to consent to sign such certificate shall be, and are hereby declared to be null and void: and any creditor who shall have received any money, matter, or thing, or promise of the same, as a consideration for or inducement to such creditor to accept any such composition, or sign any such certificate as aforesaid, shall forfeit a sum equal to the amount of whatever debt such creditor originally proved upon the insolvent estate, together with the amount of whatever money, matter, or thing he may have received from such insolvent, as such consideration or inducement as aforesaid, and also the amount of any composition which may have been paid or secured to such creditor: and all such moneys, matters, or things hereby declared to be claimable or recoverable from any such creditor, shall and may be sued for and recovered in any competent Court by any person who was a creditor of such insolvent estate at the time of the acceptance of any such composition, or the signing of any such certificate, for the use and benefit of such person jointly with that of all such other persons who were also creditors at the time aforesaid, as shall within twenty-eight days after a public notice in the *Government Gazette*, signed by the person purposing to sue, join and concur in the bringing of such suit, and agree to contribute to the expense thereof; but no such notice need set forth the name of the party intended to be sued, or state more than that legal proceedings are intended to be taken under this section in a certain case of which the particulars may be learned from the person signing the said notice.

Forfeiture by the creditors.

Action for recovery of forfeiture.

Effect of discharge of insolvent.

120. And be it enacted, that every such certificate, when allowed by the Supreme Court, shall have the effect to discharge the insolvent from all debts due by him at the time his estate was surrendered or adjudged to be sequestrated, and from all claims or

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

demands proved or hereby made provable, or in any manner claimable against his estate; but no such certificate and allowance thereof shall have effect to release or discharge any person who was partner with such insolvent at the time of his insolvency, or who was then jointly bound, or who had made any joint contract with such insolvent, or who was a surety for him.

Residue of estate.

121. And be it enacted, that in every case any residue of the insolvent estate which may remain after the payment of all claims thereupon, shall be paid to the insolvent or his legal representatives, to whom shall also be restored the property of, and in all debts and assets belonging to the estate which may, after the satisfaction as aforesaid, of all claims, remain or be outstanding.

Trustee becoming insolvent, as such, effect of as to his discharge.

122. And be it enacted, that any trustee becoming insolvent, and being indebted to the estate, of which he was trustee, in respect of any sum of money improperly retained or employed by him, if he shall obtain his certificate and allowance thereof shall not be discharged thereby, as to his future effects, in respect of the said debt, and such insolvent shall be for ever incapable of being again elected a trustee under this Ordinance.

Discharge answers to action for previous debts.

123. And be it further enacted, that any insolvent, who, after his certificate has been allowed, shall have any action brought against him for any debt, claim, or demand due by him at the time his estate was surrendered or adjudged to be sequestrated, proved or hereby made provable, or in any manner claimable, against his estate, may plead in general that the cause of action accrued before he surrendered his estate, or the same was sequestrated aforesaid, and may give this Ordinance and the special matter in evidence; and such insolvent's certificate and allowance thereof shall be sufficient evidence of the insolvency, surrender, or adjudication, and other proceedings precedent to the obtaining the said certificate and allowance thereof; and if any such insolvent shall be taken in execution, or detained in prison for such debt, claim, or demand, where judgment has been obtained before the allowance of his certificate, it shall be lawful for any Judge of the Court wherein judgment has been obtained (or for any Judge of the Supreme Court) on such insolvent's producing his certificate and allowance thereof, to order any gaoler or officer who shall have the said insolvent in custody by virtue of the said execution, to discharge him therefrom, so far as regards such estate, without exacting any fee from the defendant, and the said gaoler or officer shall be and is hereby indemnified for so doing.

And ground for release from execution.

Imprisonment of insolvent.

124. And be it enacted, that at any time after the plan for distribution of any insolvent estate has been confirmed in manner hereinbefore mentioned, or after the distribution of the said estate has been directed to be made under the provisions of the twenty-fifth clause of this Ordinance and before the insolvent shall have obtained his certificate and allowance thereof, it shall and may be lawful for the trustees, or any creditor of the said estate, to apply

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

to the Supreme Court or any Circuit Court, by motion, for the process of the said Court for the civil imprisonment (1) of the said insolvent; provided the said insolvent shall first have been duly summoned to appear before such Court on the day whenever the said motion shall be made, to show cause why process of civil imprisonment should not be issued against him, and thereupon, and upon proof, to the satisfaction of the said Court, that the said estate is not sufficient to discharge the debts proved or provable against the said estate as aforesaid, it shall and may be lawful for the Court to which such application shall be made, to grant the same absolutely or conditionally, or to refuse the same, as to the said Court shall seem just. Provided that, when the application for civil imprisonment has been made by one or more creditors, and the said Court shall suspend the same upon the condition of the insolvent paying any sum of money, such payment shall be made to the trustees or to the Master of the Court, as the case may be, for the benefit of the creditor or creditors making the application, and of such other creditors as shall, before distribution, claim to be admitted to a share thereof.

Application by insolvent to be freed from imprisonment.

125. And be it enacted that at any time after the plan for the distribution of any insolvent estate has been confirmed in manner hereinbefore mentioned, or after the distribution of the said estate has been directed to be made under the provisions of the twenty-fifth clause of this Ordinance, and before the insolvent shall have obtained his certificate and the allowance thereof, it shall and may be lawful for any insolvent to apply to the Supreme or any Circuit Court, by motion, for a decree of such Court, declaring such insolvent not liable to process of civil imprisonment for or in respect of any debt, claim or demand, proved or provable, or in any manner claimable against the insolvent estate. Provided that at least six weeks' notice of the day on which such motion is to be made shall have been given by advertisement in the *Government Gazette;* and upon the making of such motion, any creditor of the insolvent estate who has not been fully paid and satisfied, may be heard against making the said decree, and such Court having regard to the conformity of the insolvent to the provisions of this Ordinance, and to his conduct, as well before as since the sequestration of his estate, and to his ability to pay from time to time or otherwise any sum or sums of money for the benefit of such creditors as aforesaid, and, generally to the justice of the case, shall judge of any objection against the making of such decree, and either find the insolvent entitled thereto, and make the same, or refuse or suspend the making thereof, or annex such conditions thereto as circumstances shall render just. And every such decree declaring any insolvent not liable to the process of civil imprisonment in respect of any of the matters aforesaid, shall have the same effect in protecting his person

Opposition of creditors.

Effect of order relieving insolvent from imprisonment

[1] But see Act 38 of 1884. § 17.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

from such process as his certificate and the allowance thereof would have had. But no such decree shall have any effect whatever, either upon the assets of the insolvent estate, or upon the right and power of any such creditor to proceed, in manner and form as hereinafter mentioned, against the future acquired property of such insolvent (so long as he shall remain without his certificate and the allowance thereof), in order to obtain payment of his debt. Provided, that upon cause shown to the satisfaction of such Court, establishing that any such decree as aforesaid was fraudulently or unduly obtained, it shall be competent for such Court to recall the same, and thereupon the condition of the insolvent shall be judged of precisely as if it never had been made.

Competency of insolvent to acquire property.

126. And be it enacted, that from and after the making of the decree aforesaid, confirming the account and plan of distribution of the insolvent estate aforesaid, the insolvent, although he shall not have obtained his certificate and the allowance thereof, shall be competent to acquire and possess, for his own use and as his own property, all such goods and effects, movable or immovable, personal or real, as may be purchased or acquired by him, or may revert, descend, or be devised or come to him in manner whatsoever other than by virtue of any right of reversion which was vested in the insolvent at the date of the order for the sequestration of his estate, precisely as if the estate of such insolvent had never been placed under sequestration.

Execution against insolvent for deficiency of estate.

127. (1) And be it enacted, that in every case in which any insolvent shall not have obtained the allowance of his certificate as hereinbefore mentioned, it shall and may be lawful for the trustee or trustees of the insolvent estate, should any such be, or for the Master of the Supreme Court, or for any creditor of the insolvent estate, to whom it shall appear by such account and plan as aforesaid or any such scheme of division as aforesaid, that any portion of his debt is still due and owing, to apply to the Supreme Court or any Circuit Court, by motion, of which notice shall be given to said insolvent, for leave to issue execution against such insolvent, for any sum not exceeding the whole amount of the deficiency which shall at the time of making such application exist in the insolvent estate; and the said Court, upon being satisfied by affidavit or otherwise, that a certain deficiency does so exist, and that there are reasonable grounds for believing that there are assets belonging to the insolvent capable of satisfying the same, wholly or in part, shall allow a writ of execution to be issued, and such writ of execution shall be executed in the like manner as writs of execution issued upon judgments of the said Court, and every attachment or levy made thereunder, and every incident belonging thereto, as well in regard to the right of other writs of execution lodged in the hands of the Sheriff, or other proper officer

[1] But see Act 38 of 1884, § 17.

Digitised by the University of Pretoria, Library Services, 2016

of the law, to share in the proceeds levied and made, as otherwise, shall be judged of upon the same principles which do or shall by law belong to ordinary writs of execution; and the proceeds of every execution levied under the provisions of this section shall be paid by the Sheriff or other proper officer of the law to the trustee or trustees of the insolvent estate, if such there be, or, if there be none such, to the Master of the Supreme Court, and every such payment by the said Sheriff or other proper officer of the law shall be deemed in law to be the distribution of the proceeds of the writ of execution, and the amount of any such proceeds which shall be so paid to any such trustee or trustees, or to the said Master, after deducting thereout any costs which shall have been properly incurred by the party realising the same, shall be divided amongst all such creditors of the insolvent estate as shall before the distribution thereof claim to be admitted to participate in the same; Provided that the said trustee or trustees, or the said Master, as the case may be, shall distribute such proceeds ratably and proportionably amongst the creditors so claiming, except that if the said proceeds shall have arisen out of an execution issued at the instance of any concurrent creditor, such creditor shall receive a dividend greater by five shillings in the pound than that receivable by any other creditor of equal rank, and if by reason of there being preferent creditors in the said estate, or from any other cause the said recompense shall be deemed inadequate, it shall be lawful for the Master of the Supreme Court to award to such concurrent creditor such reasonable commission in lieu thereof as he shall think fit, subject to an appeal to the Supreme Court: provided also, that no division of such proceeds shall be made by any such trustee or trustees, or by the said Master, until after twenty-one days' previous notice shall have been given in the *Government Gazette.*

Proceeds of execution how to be applied.

128. And be it enacted, that it shall and may be lawful for the Chief Justice of this Colony, or any other of the Judges of the Supreme Court, to accept, if he shall see cause so to do, the surrender of the estate of any insolvent who shall not have obtained his certificate and the allowance thereof, at any time after the making of the decree of Court confirming the plan of distribution as aforesaid, and the estate of any such insolvent may be adjudged to be sequestrated at the instance of his creditors, as well those whose debts remain unsatisfied from any former sequestration (if there shall have been more sequestrations than one), as those whose debts have been incurred since the making, for the last time, of such decree as aforesaid, precisely as if the estate of such insolvent had never been placed under sequestration.

Fresh surrender by undischarged insolvents.

129. And be it enacted, that in addition to the several matters and things hereinbefore mentioned and declared to be respectively acts of insolvency, all of which are hereby declared to be applicable to the case of every such insolvent as is in the last preceding section

Compulsory sequestration against undischarged insolvents.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

mentioned, equally with every other person, the suffering of any attachment to be laid on, under and by virtue of any writ of execution issued under and by virtue of the one hundred and twenty-seventh section of this Ordinance, and the subjecting himself by any such insolvent to the issuing against him of the process of civil imprisonment, under and by virtue of the one hundred and twenty-fourth section of this Ordinance, shall be deemed to be, respectively, acts of insolvency in the case of every such insolvent as aforesaid, and shall entitle any creditor or creditors whose debt or debts is or are of the competent amount, and has or have accrued since the making of the last decree confirming such account and plan of distribution as aforesaid, to petition in manner and form as by this Ordinance is provided, to have the estate of such insolvent as aforesaid sequestrated for the benefit of his creditors. But no order for sequestration issued in regard to the estate of any such insolvent shall discharge or affect any process of civil imprisonment which may have been issued under and by virtue of the one hundred and twenty-fourth section of this Ordinance, unless the Chief Justice, or other Judge making such order should, as he is hereby authorised to do, otherwise direct.

Ranking under fresh sequestration of creditors under former sequestration

130. And be it enacted, that as often as the estate of any insolvent, remaining as aforesaid uncertificated, shall be again sequestrated as insolvent, the creditors under any former sequestration shall prove debts and rank upon the insolvent estate for whatever balance shall still be due and owing to them, respectively, according to the nature of their respective debts, whether preferent or concurrent, just as if the last order for sequestration had been the only such order ever issued.

Preferences by undischarged insolvent.

131. And be it enacted, that in determining all questions relating to undue preferences given by any insolvent remaining as aforesaid uncertificated, and the proceedings thereon, and the consequences thereof, the creditors under any former sequestration, and those who have first become such since the making of the last decree confirming the account and plan of distribution, shall be considered as one body and without difference or distinction, except in so far as in particular cases, the circumstances of the one class of creditors or of the other may affect, as matter of evidence, the application of the principles hereinbefore, in regard to such questions as aforesaid, stated and set forth.

Master to publish certain lists every six months.

132. (1) The Master of the Supreme Court shall, as soon as may be after the 31st day of March and the 30th day of September in each year, cause to be published in the *Gazette* two lists, showing respectively

(1) The name and residence of every uncertificated insolvent whose estate shall have been placed under sequestration during the preceding six months and in whose estate

[1] Printed as amended by § 1 Act 22, 1887.

Digitised by the University of Pretoria, Library Services, 2016

the account and plan of distribution shall not have been confirmed, together with the date of the order for the sequestration of the estate of such insolvent: Ord. 6 1843.

(2) The name and residence of every uncertificated insolvent in whose estate the account and plan of distribution shall have been confirmed during the preceding six months together with the date of the decree confirming the same:

And the cost of publishing such lists as well as of inserting all such notices required by the said Ordinance to be given by the said Master by advertisement in the *Gazette*, shall be defrayed by Government.

Ordinance to regulate sequestrations under Ordinance No. 64.

133. And be it enacted, that all the provisions of this Ordinance shall apply to and regulate all estates placed under sequestration in pursuance of Ordinance No. 64, in so far as the provisions of this Ordinance, or any part thereof, shall be applicable thereto in the situation and condition in which such estates shall be, at the time of the passing of this Ordinance: Provided always, that nothing in this Ordinance contained shall be applied to, or affect in any way, the rights of any person at whose suit any property shall have been attached by legal process at the time of the promulgation of this Ordinance, or the determination of any actions or suits which shall be pending at the time of the promulgation thereof, all which rights, suits, and actions shall be determined according to the principles and provisions of Ordinance No. 64, precisely as if this Ordinance never had been passed. And provided also, that all crimes created or declared by the said Ordinance No. 64, and committed before the promulgation of this Ordinance, may, notwithstanding the repeal of the said Ordinance, be prosecuted and punished precisely as if the said Ordinance remained in full force and effect.

This Ordinance to be read for Ordinance No. 64 in certain Ordinances.

134. And be it enacted, that as often as the Ordinance No. 64 is mentioned in Ordinances Nos. 104 and 105, or in any other former Ordinance, or any of the clauses or provisions of the said Ordinance No. 64 mentioned or referred to, every such former Ordinance shall be construed as if this Ordinance were therein mentioned, instead of Ordinance No. 64, and as if the provision of this Ordinance corresponding to that provision of Ordinance No. 64 which is in such former Ordinance referred to, were expressly substituted in lieu and stead thereof.

Custody of proceedings in insolvencies.

135. And be it enacted, that the Master of the Supreme Court shall enter of record, and have the custody, of all proceedings relating to any insolvency under and by virtue of this Ordinance: and the insolvent, or any creditor who has proved, shall at all reasonable times have inspection of the same, and be permitted to take extracts or copies therefrom; and extracts of such proceedings, signed by the said Master, shall be received as evidence in all Courts of Justice within the Colony.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1843.

Substitution of commissioner for master or magistrate.

136. And be it enacted, that whenever it shall be made to appear to the Supreme Court, or any Circuit Court, that the Master of the said Court or Resident Magistrate, as the case may be, is prevented by illness, or any unavoidable cause, from holding any meeting under the provisions of this Ordinance, it shall and may be lawful for the said Court to appoint a commissioner for the special purpose of holding such meeting, who shall have, for the purpose of such meeting, the same powers and authorities as are by this Ordinance given to the said Master or Resident Magistrate in the like cases, and failing such appointment, the Chief Clerk of any Resident Magistrate is hereby authorised to exercise, for the purpose of any such meeting, the powers and authorities of such Magistrate.

What things may be done by one judge.

137. And be it enacted, that for the hearing and determination of all questions, matters, and things, as to which jurisdiction is given to the Supreme Court in virtue of the clauses of this Ordinance hereinafter enumerated, that is to say, the twenty-second, twenty-fifth, thirty-first, fortieth, forty-fifth, sixty-second, sixty-third, sixty-fourth, sixty-fifth, ninety-eighth, one hundred and thirteenth, one hundred and sixteenth, one hundred and seventeenth, one hundred and twenty-fourth, one hundred and twenty-fifth, and one hundred and thirty-sixth clauses, except as to so much of the fortieth clause as relates to recalling the confirmation, and setting aside the election of any trustee or trustees, on the ground that such election was fraudulently or unduly made, the said court shall and may be holden in Cape Town, before any one or more of the Judges thereof, at such times as the said Supreme Court shall by any rule or order of Court appoint.

Rules to be framed by Supreme Court.

138. And be it further enacted, that it shall and may be lawful for the Supreme Court, from time to time, as they shall think fit, to make such rules, orders, and regulations, for carrying this Ordinance into effect, and also touching the form and manner of proceeding under the same, as to the said Court shall seem fit.

First operation of Ordinance.

139. And be it enacted, that this Ordinance shall be in full force and effect from and after the date of publication hereof, from and after which day the Ordinance No. 64 shall stand repealed.

No. 7.—Sd. George Napier.] [Nov. 8, 1843.

(1) Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their stead.*

Whereas the church regulations made and published by the Commissioner-General of the then Batavian Government of the Cape of Good Hope, J. A. de Mist, LL.D., bearing date the 25th of July, 1804, have in many respects ceased to be suitable either to the Dutch Reformed Church or to the ecclesiastical condition of

[1] See Ordinance 16, 1845.
* Revived by Ord. No. 2, 1851.

Digitised by the University of Pretoria, Library Services, 2016

this Colony in general: And whereas it is expedient in order that other and more suitable provisions should be substituted for such portions of the regulations aforesaid as have become obsolete or inapplicable that the said regulations should be wholly repealed and the substance of such of them as it is desirable to preserve expressly re-enacted: Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said church regulations of the 25th of July, 1804, and all other laws or customs heretofore in force in this Colony so far as the same are repugnant to or inconsistent with any of the provisions of this Ordinance shall be and the same are hereby repealed.

Previous laws repealed.

2. And be it enacted and declared that no religious community or denomination within this Colony is or shall be entitled to claim as matter of right from or out of Her Majesty's revenue in this Colony any pecuniary contribution or allowance for or towards the support of the ministry of any such community or denomination or any other object whatsoever, and that all such sums as shall from time to time be granted from and out of the said revenue to or in behalf of any such community or denomination shall be deemed to be merely voluntary and gratuitous, and as such to be at all times and exclusively under the absolute disposition and control of Government, and revocable at Her Majesty's will and pleasure.

No government church contributions to be demandable as of right.

3. And whereas it is expedient that the religious community or denomination commonly called the Dutch Reformed Church in South Africa should be invested with the power of regulating its own internal affairs: And whereas the general assembly or synod of the said church is the natural and proper ecclesiastical authority by which rules and regulations for the government of the said church in its own internal affairs may rightfully be made: And whereas the last general assembly or synod of the said church which was held in Cape Town in the month of November, 1842, did agree upon and desire to have duly authorised and established a number of rules and regulations having for their object the proper direction and management of the said church in its own internal affairs: And whereas it is expedient in order to prevent delay and inconvenience that the said last-mentioned rules and regulations should with some exceptions be forthwith established and declared to form and be the rules and regulations for the time being of the said church: Be it enacted that all former rules and regulations for the government of the said church whensoever and by whomsoever made shall be and the same are hereby declared to be repealed, and that the several rules and regulations in the schedule to this Ordinance contained shall be, and the same are hereby declared to be the rules and regulations for the time being of the said church and shall be duly observed as such.

Previous regulations of Dutch church repealed.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1843.

General assembly or synod may alter or improve rules, &c.

4. And be it enacted that it shall be lawful for the general assembly or synod of the said church from time to time duly assembled, and proceeding in conformity with the rules or regulations for the time being in regard to the manner and form of altering, enlarging, or improving church laws and ordinances to add to, annul, alter, enlarge, or improve the rules and regulations contained in the said schedule and any further or other rules and regulations which may from time to time be successively established: Provided, always, that any rule or regulation of the said general assembly or synod repugnant to or inconsistent with any of the provisions of this Ordinance shall be null and void.

5. [Repealed by Ord. 16, 1845.]

Doctrine and government of the church.

6. And be it enacted that the said Dutch Reformed Church shall be and remain a church exercising its discipline and government by consistories, presbyteries, and a general assembly or synod and acknowledging, receiving, and professing in regard to the doctrine thereof the doctrines contained in the confession of the synod of Dort and in the Heidelberg catechism; and if any questions or divisions respecting church government discipline, or doctrine should hereafter arise between any members or reputed members of the said church or of any congregation, consistory, presbytery, or general assembly of the same then those persons adhering to and professing respectively the said discipline and government and the doctrines of the said confession and catechism shall be deemed and taken as against all persons who shall adhere to and profess any different discipline, government, or doctrines to be the true congregation, consistory, presbytery, or general assembly as the case may be of the said church, and as such of right entitled to the possession and enjoyment of any funds, endowments, or other property or rights by law belonging to the said church or to the congregation, consistory, presbytery, or general assembly in which any such questions or divisions shall have arisen.

Constitution of general assembly.

7. And be it enacted that the general assembly or synod of the said church shall at all times be composed of all acting ministers of the said church and an acting or retired elder to be nominated by each consistory, but the consistory of Cape Town may at all times nominate two elders.

Force of rules and regulations.

8. And be it enacted that no rule or regulations of the said church whether contained in the schedule to this Ordinance or to be afterwards framed shall have or possess any direct or inherent power whatever to affect in any way the persons or properties of any persons whomsoever; but all such rules and regulations shall be regarded in law in like manner as the rules and regulations of a merely voluntary association, and shall be capable of affecting the persons or properties of such persons only as shall be found in the course of any action or suit before any competent Court to have subscribed, agreed to, adopted or recognized, the said rules.

Digitised by the University of Pretoria, Library Services, 2016

and regulations or some of them in such manner as to be bound thereby in virtue of the ordinary legal principles applicable to cases of express or implied contract.

Protection against legal proceedings for things done in church proceedings.

9. And be it enacted that no person or persons composing, complaining to, or giving testimony before any duly constituted judicatory of the said church shall be liable to any action, suit, or proceeding at law, civil or criminal, at the instance of any member of the said church for or on account of any matter or thing written or spoken by any such person or persons *bonâ fide* and without malice in reference to or upon the occasion of any scandal, offence, or other matter, real or alleged, which by the rules and regulations of the said church for the time being should be reported to any such judicatory and which any such judicatory is empowered to investigate, nor shall any action, suit, or proceeding at law be instituted for the purpose of preventing any such judicatory from pronouncing in the case of any scandal or offence which shall be brought before it and proved to its satisfaction such spiritual censure as may in that behalf be appointed by the said church or for the purpose of claiming any damages or relief in regard to such censures if the same shall have been pronounced.

Actions by and against persons in whom church property vested.

10. And be it enacted that it shall be lawful for the person or persons in whom by the rules and regulations of the said church for the time being the possession or administration of any buildings, lands, funds, moneys, goods, or effects belonging to any congregation or presbytery, or to the general assembly shall respectively be vested to sue and be sued in all actions and suits relating to any matter or thing by any such officer or officers respectively possessed or administered as if the same were his or their private property, and in any criminal proceeding the property of any of the matters or things aforesaid may be laid in the person or persons who in any civil action or suit might sue or be sued in respect thereof.

SCHEDULE.

[As the synod has the power from time to time to annul, or alter rules, the regulations in this Schedule are omitted. See § 4 *supra*.]

No. 8.] [Nov. 22, 1843.

Ordinance for improving the Public Roads of the Colony.
[Repealed by Act No. 9, 1858.]

No. 1.] [Jan. 30, 1844.

Ordinance for creating a Police Superannuation Fund.
[Repealed by Act 12, 1874.]

Digitised by the University of Pretoria, Library Services, 2016

No. 2.—Sd. George Napier.] [Jan. 30, 1844.

Ordinance for amending the Ordinance No. 9, 1836, entituled "An Ordinance for the creation of Municipal Boards in the Towns and Villages of this Colony on which the Local Regulations of each shall be founded." (1)

Laws repealed.

WHEREAS doubts are entertained in regard to the limits which according to the provisions of the Ordinance No. 9, 1836, entituled "An Ordinance for the creation of Municipal Boards in the Towns and Villages of this Colony on which the Local Regulations of each shall be founded," may lawfully be assigned to any municipality constituted and established under and by virtue of the said Ordinance: And whereas it is expedient to remove the said doubts and to amend the said Ordinance in other respects: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that every matter or thing in the said Ordinance contained repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, and the same is hereby repealed accordingly.

Limits of municipality how to be fixed.

2. And be it enacted that it shall and may be lawful for the committee in the said Ordinance mentioned in framing and drawing up the municipal regulations for framing and drawing which such committee has been elected and appointed to fix the limits of the municipality at and by such convenient boundaries, whether beyond or within the extent in any direction of one mile from the certain central place in the first section of the said Ordinance mentioned as the said committee shall choose and determine.

Limits already fixed.

3. And be it enacted that no limits fixed for any municipality in and by any municipal regulations duly published before the promulgation of this Ordinance shall be deemed or taken to be illegal or invalid by reason that the said limits go beyond or fall short in any direction of the extent of one mile from the certain central place in the first section of the said Ordinance mentioned.

What householders entitled to fix regulations.

4. And be it enacted that the meeting of resident householders in the eighth section of the said Ordinance mentioned to which the municipal regulations framed and drawn up by the committee or any amendment of such regulations made under and by virtue of the tenth section of the said Ordinance by the Governor of the Colony for the time being by and with the advice of the Executive Council shall be submitted, shall be a meeting of householders resident within the limits fixed by the said committee, and every other meeting of resident householders directed or contemplated by any succeeding section of the said Ordinance, shall be convened

(1) Made perpetual by Act No. 15, 1860. See note to Ord. 9, 1836. See Act 45, 1882.

Digitised by the University of Pretoria, Library Services, 2016

and composed of the resident householders within the limits fixed for the municipality by the municipal regulations for the time being. Ord. 3—1844.

5. And be it enacted that so much of the eleventh section of the said Ordinance as is comprised in the words following, that is to say, "that at any time within one month after the expiration of each and every year from the publication of any such regulations as aforesaid," be repealed, and the same is hereby repealed accordingly. Section 11 of Ordinance 9 of 1836 repealed in part.

6. (1) And be it enacted that the paying of taxes to the amount of six shillings sterling per annum or any other amount shall from and after the promulgation of this Ordinance cease to be a qualification of the resident householders in the first section of the said Ordinance mentioned, and that in lieu and stead of such qualification the qualification in the forty-eighth section of the said Ordinance mentioned shall be substituted as if the same were in the said first section set forth and described. Qualification as householder.

7. And be it enacted that the being proprietor of a house within the municipality and the paying annually a sum of not less than one pound sterling in taxes shall from and after the promulgation of this Ordinance cease to be a qualification to be elected a commissioner for the purposes of the said Ordinance, and that henceforth any person being the proprietor of immovable property situated within such municipality of the value of not less than three hundred pounds, and no other shall be qualified and eligible to be elected a commissioner for the purpose of the said Ordinance. Qualification as commissioner.

8. And be it enacted that no commissioner heretofore elected in any municipality for the purpose of the said Ordinance shall be deemed or taken to have been illegally or improperly elected by reason merely that he did not possess either the qualification in the forty-eighth section of the said Ordinance mentioned or the qualification by the last preceding section of this Ordinance substituted in its stead. Elections of commissioners already made.

No. 3.—Sd. George Napier.] [January 30, 1844.

Ordinance for amending the Law relating to the Rights of Execution Creditors.

WHEREAS by the law of this Colony all creditors whose writs of execution against the property of their debtor, are lodged with the Sheriff or other proper officer for executing such writs at any time before the proceeds realized in respect of the earliest or other of such writs shall have been paid over by the said Sheriff or other officer to the party or parties entitled thereto, are entitled to rank

[1] But see § 7, Act 13, 1864.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1844.

pari passu upon such proceeds and to claim that the same may be distributed amongst them *pro rata*, as if the same had been levied under all the said writs collectively and without any distinction. And whereas this rule of law above mentioned is productive in practice of delay and inconvenience and it is expedient to modify the same: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the promulgation of this Ordinance all other laws and customs heretofore in force within this Colony in so far as the same are repugnant to or inconsistent with the provisions of this Ordinance shall be repealed, and the same are hereby repealed accordingly.

Laws repealed.

What creditors entitled to benefit of executions already levied.

2. And be it enacted that from and after the promulgation of this Ordinance no creditor lodging any writ of execution with the Sheriff or any other officer of the law proper for the execution of writs shall be entitled to share in or receive any part of the proceeds levied under any writ or writs of execution previously lodged, unless such creditor shall have lodged his said writ within ten days from the day on which was or were lodged the writ or writs under and in virtue of which the levy in the proceeds of which such creditor or creditors claim to share was made.

No. 4.] [Jan. 30, 1844.

Ordinance relating to Merchant Vessels arriving in the Ports of this Colony.

[Repealed by Act No. 16, 1857.]

No. 5.] [1844.

Ordinance to prevent the spread of the Horse Disease called Glanders.

[Repealed by Act 27, 1893.]

No. 6.—Sd. George Napier.] [Feb. 28, 1844.

Ordinance for regulating Sales by Auction. (1)

WHEREAS the law as contained in Ordinance No. 31, 1827, entituled "An Ordinance for abolishing the Office of Vendues, and for imposing certain Duties on Licences to be taken out by all persons acting as Auctioneers, and on Property sold by Auction," requires

[1] The same duties upon auction sales as may from time to time be payable in the rest of the Colony are made payable in the districts of Idutywa, Butterworth, Nqamakwe, and Tsomo by paragraph 79 of Proc. No. 110 of 1879; in Griqualand East by paragraph 72 of Proc. No. 112 of 1879; and in Tembuland and the districts of Kentani and Willowvale by paragraph 71 of Proc. No. 140 of 1885.

See Act 5 of 1858; Act 3 of 1876; Ord. 44 of 1828, § 17; Ord. 92 of 1832; Ord. 6 of 1848; Act 28 of 1883, §§ 2, 9, 16; Act 5 of 1884, §§ 24-28, Act 11, 1888; Act 15 of 1892, § 68.

Digitised by the University of Pretoria, Library Services, 2016

to be amended: And whereas the said law may be most conveniently amended by repealing the said Ordinance, and enacting other provisions in its room and stead: Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the first day of July, 1844, the said Ordinance No. 31, 1827, shall be, and the same is hereby repealed, save and except in so far as the same repeals any former laws before that time in force in this Colony, and in so far as relates to, or concerns, the recovery of any duties imposed by virtue of the said Ordinance, or of any sum or sums of money due upon vendue notes or rolls, or in any manner become due by reason of, or in connection with, any public sale which shall be unpaid and in arrear on the said first day of July, 1844.

Ord. 6—1844.

Ordinance No. 31 of 1827 repealed.

2. And be it further enacted, that from and after the said first day of July, 1844, it shall be lawful for any person complying with the regulations hereinafter mentioned, to exercise the trade or business of an auctioneer, upon taking out a licence, which shall be in force for one year from the date thereof (1), and no longer, from the commissioner of stamps in Cape Town, or the distributors of stamps in the several districts of the Colony, within their respective districts, on paper stamped, to the value of (1) three pounds sterling, and which shall contain the true name and residence of the person taking out such licence; and if any person shall exercise the said trade or business of an auctioneer, without having a licence in force at the time when he shall so exercise the said trade or business, or sell by way of auction as aforesaid, he shall, for every such offence, incur and be liable to the payment of a fine not exceeding one hundred pounds sterling, (2) to be recovered in any competent court, one-half of which shall be paid to the informer, and the other half to the Colonial Treasury.

Business of auctioneer to be under licence

Penalty.

3. [Lapsed.]

4. [Repealed by Act 5 of 1858.]

5. And be it enacted, that when and as often as any machinery, implements, utensils, or other matters or things belonging to, or intended for, any trade or manufacture, and whether the same shall be fastened to the ground or building upon or in which the same shall be placed, or separable or separated therefrom, as the case may be, or any movable property whatever, shall be put up and sold in one lot together with any immovable property, (whether the immovable property upon or in which the same shall be at the time of the sale or not), then the whole of the said lot shall for the purpose of the payment of auction duty, and of transfer duty, be deemed and taken to be immovable property, and be chargeable as such.

Things to be deemed immovable property.

[1] But see Tariff 15, Schedule 2, Act 20 of 1884.
[2] See also § 6, Act 13 of 1870.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6–1844.

Duty a charge against auctioneer.

6. And be it enacted, that the several duties aforesaid shall be a charge upon the auctioneer, after the knocking down of the hammer or other closing of the bidding, at every sale by way of auction.

Licence to be given after security found.

7. And be it enacted, that no such licence as aforesaid shall be granted by the commissioner of stamps aforesaid, or any distributor of stamps to any person, until such person shall have produced to such commissioner or distributor, a certificate under the hand of the collector of taxes ([1]) in Cape Town, or the Civil Commissioner of the division, as in the next succeeding section mentioned, that such person has given the security in the said section described, and the said collector of taxes or Civil Commissioner, as the case may be, is hereby authorised and required to accept such security from every person desiring him so to do, and thereupon to grant a certificate under his hand.

Amount for which security to be found.

8. And be it enacted, that every person about taking out such licence as aforesaid, shall enter into a recognizance before the collector of taxes, ([1]) in Cape Town, if such person shall reside in Cape Town, and before the Civil Commissioner of the division in which such person resides, if he reside in the country ([1]) in the sum of one thousand pounds sterling, with two sufficient sureties in the sum of five hundred pounds sterling each, which recognizance, with the condition thereof, shall be in the form in the schedule to this Ordinance prescribed and set forth; and such recognizance shall be acknowledged in the presence of, and shall be signed by, the said collector of taxes or Civil Commissioner as the case may be.

Accounts of sale to be upon oath.

9. And be it enacted, that every person who shall have received such licence as aforesaid, or otherwise, the person who acted as his clerk at the sales in the account in the condition of the said recognizance mentioned and set forth, shall make oath ([2]) to the truth of every such account, and every person making such oath, shall, in case the same be false, be deemed to be guilty of the crime of perjury.

By whom security may be enforced.

10. And be it enacted, that every such recognizance as aforesaid may be put in suit by the collector of taxes, or Civil Commissioner, as the case may be, before whom the same was acknowledged, or by the officer for the time being acting as such collector or Civil Commissioner; and in case of judgment being given against the defendant the licence granted upon such recognizance shall become void.

11. [Repealed by Act 28 of 1883 (Liquor Licensing Act).]

Relief from duty when sale fairly from want of title.

12. And whereas it may sometimes happen, that sales at auction of property may be rendered null and void, by reason that the

[1] See §§ 3 and 4, Act 3 of 1876. These recognizances to be taken before the Civil Commissioner of the division or the Resident Magistrate of the district in which the person requiring a licence resides.

[2] Declaration substituted for oath by Ord. 6 of 1845, repealed by Act 18, 1891, but see § 9 of latter Act.

Digitised by the University of Pretoria, Library Services, 2016

person for whose benefit the same shall be sold, had no title or no right to dispose of the same; be it further enacted, that from any after the said 1st day of July, 1844, if any sale by auction of and estate, goods, or chattels, shall be rendered void by reason that the person for whose benefit the same was so sold, had no title to the same, or no right to dispose thereof, then in every such case it shall be lawful for the auctioneer who paid the duty for the property so sold, or for the person for whose benefit the same was so sold, to lay his complaint before the (1) collector of taxes, or Civil Commissioner within whose jurisdiction respectively such sale was made, who are hereby required and empowered to hear all such complaints, and to examine all witnesses produced upon oath, and shall report the case for the information of the Governor of this Colony for the time being, in order that the party may be relieved of so much of his payment as shall appear to have been overpaid.

No duty payable on purchases made by the exposer.

13. And be it enacted that in case the real owner of any property put up to sale by auction shall become the purchaser by means of his own bidding, or the bidding of any other person on his behalf, without fraud or collusion, then the said collector of taxes (1) and Civil Commissioner respectively, shall make an allowance to such owner of the duties hereby imposed upon such bidding, provided notice be given to the auctioneer before such bidding, both by the owner and the person intending to be the bidder, of the latter being appointed by the former, and having agreed accordingly to bid at the sale on behalf of the seller, and provided such notice be verified by the oath of the auctioneer, as also the fairness and reality of the said transaction, to the best of his knowledge and belief; and in case any dispute shall arise, whether such purchase by the owner was not made by collusion, or in order to lessen the full sum hereby appointed to be paid, or concerning the fairness of such transaction, then and in such case proof thereof shall lie upon the person acting as auctioneer, and on failure thereof, or in case of any unfair practice, then no such allowance shall be made as aforesaid.

Sales for government may be made without licence.

14. And be it enacted that it shall and may be lawful for any person appointed by His Excellency the Governor in that behalf, to sell by public sale for or on account of the Government of this Colony any property, movable or immovable, belonging to the said Government, without taking out any licence to exercise the trade or business of an auctioneer, or entering into any recognizance or being bound to comply with any of the regulations of this Ordinance, anything contained in any of the former clauses of this Ordinance to the contrary notwithstanding.

See note to § 7. Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1844.

SCHEDULE. (1).

Form of recognizance.

Division of (or Cape Town as the case may be).

Before me (Collector of Taxes in Cape Town or Civil Commissioner for the Division of ———) on the —— day of ——— 18—, A. B., of ———, C. D., of———, and E. F., of ———, acknowledge themselves to owe to our Sovereign Lady the Queen, that is to say, the said A. B. the sum of £1,000, and the said C. D. and E. F. each the sum of £500, to be made and levied of their goods and chattels respectively.

The condition of the above written recognizance is such that if the said A. B. shall by virtue of or in reference to these presents obtain a licence to exercise the trade or business of an auctioneer, he shall render (to the said collector of taxes or Civil Commissioner as the case may be) an exact and true account in writing of the total amount of the money bid at each sale, and of the several lots which have been there sold, and the price thereof respectively, and for that purpose shall produce to the said collector of taxes or Civil Commissioner (as the case may be) all books kept by him relative to his trade or business on the first day of every month (if to the collector of taxes in Cape Town, but if in a country division, then say, "on the first day of every quarter, to be computed from the first day of July, 1844,") and shall within three months from the date of every such sale make payment of all sums of money imposed upon him by way of duty by this Ordinance; and shall (whenever thereto required by the said collector of taxes or Civil Commissioner as the case may be) truly and justly declare under his hand whether or not he has in any specified period held any sale as such auctioneer as aforesaid; and if he shall so do as aforesaid, then this recognizance to be void, but otherwise to be of full force and effect.

No. 7.] [February 28, 1844.

Ordinance for the Discipline and Safe Custody of Convicts employed upon the Public Roads.

[Repealed by Act 23, 1888.]

No. 8.] [June 27, 1844.

Ordinance for applying a Sum not exceeding £172,179 10s. 3d. for the service of the year 1845. [Spent.]

No. 9.—Sd. P. Maitland.] [July 4, 1844.

Ordinance for facilitating the Recovery of Land-rents in this Colony. (2)

Preamble.

WHEREAS it is expedient to facilitate the recovery of land-rents belonging to the Colonial Government, due and in arrear, and for that purpose to remove certain difficulties of a legal nature which now exist and generally to make such provision for the recovery

[1] Amended by § 4, Act 3 of 1876.

[2] See Ord. 7, 1846, and Acts 3, 1879, and 18, 1870.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1844.

of the said rents as may prove effectual and at the same time free as far as may be from delay and expense : Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the consent of the Legislative Council thereof, that from and after the promulgation of this Ordinance all laws and customs heretofore in force in this Colony in so far as the same are repugnant to or inconsistent with any of the provisions of this Ordinance shall be and the same are hereby repealed.

Previous laws repealed.

Notice to pay arrears.

2. And be it enacted that it shall and may be lawful for the Civil Commissioner of each division of this Colony in every case in which any land-rent payable or belonging to the Colonial Government shall by the books of such Civil Commissioner's office appear to be due and in arrear to prepare or cause to be prepared a notice addressed to the person who shall by the books aforesaid appear to be the owner of the place or property in respect of which such land-rent shall have accrued due, and to all others whom it may concern ; and such notice shall in substance be in the form in the first schedule hereunto annexed is set forth ; and such notice shall be served by leaving the same with the person in actual occupation of the said place or property, or in case such person cannot be found at his usual place of residence then by leaving the same at the residence of such person with the wife of such person or any child or servant of such person who shall appear to be of the age of sixteen years or upwards. And it shall be the duty of the person employed to serve any such notice, to have and preserve a copy thereof, to mark upon such copy as speedily as may be the time at which and the place and manner in which the original notice was served, by way of a memorandum to refresh if needful the memory of the person so serving the said notice.

Objections to notice of arrears.

3. And be it enacted that it shall and may be lawful for the person so appearing as aforesaid to be the owner of such place or property or for any mortgagee, lessee, or other person having any interest therein at any time within thirty-one days from the day of the service of such notice as aforesaid to lodge at the office of the Civil Commissioner in writing any objections to the payment of any part of the amount claimed in the said notice as due and in arrear, which may be disputed or denied, and if such objections shall be duly lodged within the time aforesaid but shall not be allowed by such Civil Commissioner, and if the party lodging the same shall, within seven days after the lodging thereof, give security by way of recognizance to Her Majesty the Queen, and either with or without sureties as the said Civil Commissioner shall require, to pay the amount which such party disputes or denies together with the costs of the suit next hereinafter mentioned in case such suit shall be determined against the party so objecting as aforesaid and giving such security, the said Civil Commissioner shall forthwith cause proceedings to be commenced

Action to follow objections for the trial thereof.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1844.

in some competent Court, for the recovery of the amount of rent in controversy, and shall not resort to the remedy by distress and sale as in the next succeeding section mentioned.

Recovery of rent by distress and sale in specified cases.

4. And be it enacted that in case no such objections as aforesaid shall have been lodged, or if lodged and disallowed, in case no such security as aforesaid shall have been given, and in case the amount of the land-rent mentioned in such notice as aforesaid shall not within the space of thirty-one days from the day on which notice shall have been served, be duly paid and discharged, or in case such objections as aforesaid shall have been lodged and allowed but the residue or balance remaining after the allowance of the same shall not be paid and discharged within the said space of thirty-one days from the day of the serving of the notice, then it shall and may be lawful for the Civil Commissioner aforesaid in every case in which the person appearing as aforesaid, by the books aforesaid, to be the owner of the place or property in question, shall be in the actual occupation of such place or property, to place in the hands of the messenger of any Resident Magistrate's Court, within that Civil Commissioner's division an authority in writing, empowering such messenger to seize and arrest all goods and chattels, being in and upon the place or property aforesaid, which goods and chattels would be distrainable by law for rent in arrear, and such authority shall in substance be in the form set forth in the second schedule hereunto annexed; and all goods and chattels so seized under or by virtue of any such authority as aforesaid shall be dealt with, treated and considered, to all intents and purposes as if the same had been attached under process of execution issued upon a judgment of the Court of the Resident Magistrate of the district in which such seizure shall have been made, but no greater sum shall in any case be levied and raised than the sum mentioned in the said authority, together with such usual costs and charges, as would have been attendant upon the seizure and sale of the said goods and chattels, had the same been attached under such process as aforesaid.

Restrictions as to seizure and sale.

Distress may be levied on occupier under contract for ownership.

5. And be it enacted that in every case in which the person in actual occupation of any such place or property as aforesaid not being the owner thereof shall yet have entered into such occupation under or in pursuance of some contract or agreement for becoming the owner of the same, the power of distress and sale in the last preceding section mentioned may be exercised by the Civil Commissioner aforesaid, in manner and form as in the said section stated, precisely as if the person so in occupation under such contract or agreement were in law the owner.

Cases in which recovery of rent may be sought by action.

6. And be it enacted that in all cases in which neither the person appearing as aforesaid by the books aforesaid to be the owner of the place or property in question, nor any such occupant as in the last preceding section mentioned, shall be in the actual occupation of such place or property or in which although in such

Digitised by the University of Pretoria, Library Services, 2016

occupation no sufficient goods and chattels shall appear to exist, whereof could be made in manner aforesaid the rent due and in arrear; or in which, by reason of any difficulties to him appearing, such Civil Commissioner as aforesaid shall decline to resort to the mode of proceeding in the last preceding section mentioned, it shall and may be lawful for such Civil Commissioner, at any time after the expiration of thirty-one days from the day on which such notice as aforesaid shall have been duly served, but not sooner, in case the rent in arrear shall still remain due and unpaid, to proceed according to law in some competent Court for the recovery of the land-rent due and in arrear, or for such other and alternative relief as by reason of the non-payment of the said rent the Colonial Government shall be legally entitled to demand.

Persons who may pay rent and have remedies of the government for its recovery.

7. And be it enacted that any mortgagee, sub-lessee, or other person having any interest in any such place or property as aforesaid, shall be entitled at any time before the execution of the decree of any such Court as aforesaid, to pay and satisfy the amount of land-rent in arrear, with costs, and thereupon to be deemed and taken in case he shall not by reason of some stipulation or agreement be himself responsible for the said rent, to have, in regard to the amount so paid and satisfied, the like rights and remedies against the real debtor, as those which do or shall by law belong to the Colonial Government in regard to the recovery of its land-rents and its costs of suit.

Cases in which civil commissioner shall sell and not enter into possession for recovery.

8. And be it enacted that if in any such suit or proceeding as aforesaid, a decree should be pronounced declaring the quitrent grant, or lease of any such place or property, and the right or title derived from, by, or under it to be cancelled, annulled, forfeited, and avoided for or by reason of non-payment of the rent reserved and conditioned to be paid, then, in case the place or property in question shall, at the time of the pronouncing of such decree be under any mortgage either conventional or tacit (the hypothecation of Government for the rent due and in arrear alone excepted), the Civil Commissioner shall instead of entering upon or taking possession of such place or property under such decree be bound and obliged to cause the said place or property, and all right and title to, and interest in, the same, existing by virtue of the quitrent grant or lease thereof to be sold by public sale (in case no mortgagee or other interested person shall previously to such sale pay off the land-rent due and in arrear with all costs and charges), and such Civil Commissioner shall after deducting from the purchase money the amount of rent due and in arrear together with costs and the charges of the said sale pay over the surplus (if any) to the party or parties legally entitled to the same.

Sales to be by the sheriff.

9. And be it enacted that every such sale as is in the last preceding section mentioned shall be held by the Sheriff and shall be conducted in like manner as sales of immovable property seized or attached by such Sheriff in execution of legal process.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1844.

Moneys payable to absent mortgagees.

10. And be it enacted that whenever any such mortgagee as aforesaid shall be absent from the Colony or shall not be discoverable the Civil Commissioner shall cause all such moneys as would be payable to such mortgagee if present to be paid into the guardian's fund to the credit of such mortgagee, there to be subject to the same provisions in all respects which are provided by Ordinance No. 105, bearing date the 5th day of July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony.

Where land is derelict.

11. And be it enacted that in every case in which any place or property in regard to which any arrear of land-rent shall be due to the Colonial Government shall be abandoned, deserted, or left derelict, and the person having or claiming title to the same shall after being duly summoned [1] make default, it shall and may be lawful for the Supreme or some Circuit Court as the case may be, upon proof to the satisfaction of the said Court by affidavit or otherwise as to such Court shall seem fit that a certain amount of land-rent is due and in arrear, in respect to the said place or property, and that such place or property has been and is abandoned, deserted, or left derelict, to decree in a summary manner that the right, title, and interest of the grantee or lessee of the said place or property, and that of all other persons claiming by, through, or under him shall thenceforth be to all intents and purposes cancelled, annulled, forfeited, and avoided, and to adjudge and decree the said place or property to have reverted to the Colonial Government wholly free and unencumbered, and in the same plight and condition, as if the particular title, under and by virtue of which such place or property was previously held had never been created; and as often as any such decree as last aforesaid, shall be pronounced, the Civil Commissioner shall take possession on behalf of the Colonial Government of the place or property in question, and the said Government shall be at liberty to dispose of the same in whatever manner it shall seem fit. Provided always, that nothing in this section contained shall be taken or construed so as to prevent the Colonial Government from claiming from any competent Court a like decree of forfeiture of title for non-payment of rent in any case in which by law the said Government shall be entitled to claim the same. And provided also, that if in any case the place or property so abandoned or deserted shall be under mortgage at the time of any such decree as aforesaid, then the provisions in the eighth, ninth, and tenth sections of this Ordinance contained shall be deemed and taken to apply to the same as fully as if the said sections were each of them herein again repeated.

In actions for recovery of rent what proof of title necessary.

12. And be it enacted that for the hearing and determining in any of the Courts of this Colony (except the Supreme Court and the Court of the Resident Magistrate of Cape Town) of any suit,

[1] See § 2, Ord. 7, 1846; § 3, Act 3, 1879, and Act 24, 1887.

Digitised by the University of Pretoria, Library Services, 2016

action, or proceeding for the recovery of land-rent or for any other purpose relating to this Ordinance, it shall not be necessary for the Civil Commissioner to produce the original title deed of any such place or property as aforesaid or any duplicate thereof or any deed of transfer relating to such place or property; but on the contrary the entry or entries in the books of the Civil Commissioner purporting to contain the leading heads of the grant or lease or other instrument of title of such place or property shall *primâ facie* be deemed and taken to be admissible and sufficient evidence to prove the amount of the rent reserved, and all other matters contained in such entry or entries of which the original grant or lease or other instrument of title might but for the present section be in law the best evidence: Provided always, that it shall be competent for any person defending any such action as aforesaid to produce and prove any such grant or lease or other instrument as aforesaid, and thereupon such deed so produced and proved shall in case of any discrepancy between the said entries and said deed be deemed and taken to be the best evidence of every matter and thing in the said deed contained.

Interpretation clause.

"Civil commissioner."

"Colonial government."

"Land-rents due and in arrear."

"Owner."

13. And be it enacted that in the interpretation of this Ordinance the term "Civil Commissioner" shall mean the officer for the time being acting as such; and that the terms "Colonial Government" and "Government" shall mean respectively Her Majesty's Local Executive Government within this Colony; and that the term "land-rents due and in arrear" shall extend to and comprise quit-rents, loan-rents, and all other sorts of periodical payments to the Colonial Government, arising out of lands and due and in arrear, as also the amount which would have been paid for stamped receipts had the said rents instead of being allowed to fall into arrear been regularly paid, and stamped receipts as by law required been regularly given for the same; and that the term "owner" shall mean the person in whom whether in his individual or in some fiduciary capacity the complete *dominium* or legal right in any place or property held by any quitrent grant or lease or other title from and under the Colonial Government, shall for the time being be vested; and that the singular number shall include the plural number; and that the masculine gender shall include females as well as males.

SCHEDULE No. 1.

To A. B., and all others whom it may concern.

Notice is hereby given that the sum of £————, being the amount of —— year's quitrent (or other rent as the case may be), up to the ——— day of ————, in the year of our Lord ———, is now due and owing to Government upon the place ———— (here describe the farm or other property according to its title or other description), and that unless the said sum of £—— shall be paid to the undersigned within thirty-one days from the day of the service of

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1844. this notice, then such proceedings will be had and taken, in regard to the said arrear, as are by law, and especially by the Ordinance No. 9, 1844, entituled, "An Ordinance for facilitating the recovery of Land-rents in this Colony," authorised and enjoined.

Dated this ———— day of ————, in the year of our Lord ————.

————,
Civil Commissioner for the Division of ——.

SCHEDULE No. 2.

To ————, messenger of the Court of the Resident Magistrate of ————.

You are hereby authorised and required, in pursuance of the provisions of the Ordinance No. 9, 1844, entituled "An Ordinance for facilitating the recovery of Land-rents in this Colony," to repair to the place ———— (here describe the farm or other property, according to its title or other description), whereof ———— is the owner and occupier (or whereof ———— is in possession, under a contract, for the purchase thereof), and there to seize and arrest such goods and chattels, being in and upon the said place, as by virtue of the fourth section of the Ordinance aforesaid may lawfully be seized and arrested, and whereof can be levied and made the sum of £ ———, being the amount of quitrent (or other rent, as the case may be) due upon the said place ————, up to the ———— day of ————, 18—; and for seizing and arresting the said goods and chattels, and levying thereout the said sum of £———, in manner and form as by the said Ordinance is provided, this shall be your warrant and authority.

Dated this ———— day of ————, in the year of our Lord——.

————,
Civil Commissioner for the Division of——.

No. 10.] [July 4, 1844.

Ordinance for empowering the Governor to appoint in all cases the places at which Convicts sentenced to be imprisoned shall be confined.

[Repealed by Act 23, 1888.]

No. 11.] [July 4, 1844.

Ordinance to enable the Cape of Good Hope Trust and Assurance Company to be appointed by that name as Trustees and Tutors and to sue and be sued in the name of their Secretary.

[Expired 31st December, 1860.]

No. 12.] [July 31, 1844.

Ordinance to amend the Ordinance No. 8, 1843, entituled "An Ordinance for Improving the Public Roads of this Colony."

[Repealed by Act No. 9, 1858, which was in turn repealed by Act 40, 1889.]

Digitised by the University of Pretoria, Library Services, 2016

No. 13.—Sd. P. Maitland.] [August 28, 1844.

Ordinance for transferring to certain other Officers the Duties of the Office of the Collector of Taxes.

Preamble.

WHEREAS by reason of the intended abolition of the office of the Collector of Taxes in Cape Town it has become necessary to provide for the performance after the abolition of the said office of such of the duties heretofore performed by the Collector of Taxes in Cape Town as shall still remain to be discharged: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the first day of January, 1845, so much of the Ordinance No. 43, entituled "An Ordinance of His Honour the Lieutenant-Governor in Council for empowering the Collector of Taxes in Cape Town and the Civil Commissioners of the country districts to collect the several Taxes and Duties now or hereafter to be imposed and payable within the Colony," and so much of the Ordinance No. 57, entituled "An Ordinance for repealing certain Taxes and Duties and imposing certain others in lieu thereof," and so much of the Ordinance No. 6, 1844, entituled "An Ordinance enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for regulating Sales by Auction," and so much of any former law or Ordinance, if any, as is repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, and the same are hereby repealed accordingly.

Ordinance No. 43 and Ordinance No. 6, 1844, repealed, in so far as inconsistent.

Substitution of treasurer-general for collector of taxes in Cape Town.

2. [1] And be it enacted that from and after the said first day of January, 1845, all and singular the several duties and functions (except in the case hereinafter excepted) now imposed upon or exercised by the Collector of Taxes in Cape Town shall thenceforth be imposed upon and exercised by the Treasurer-General of this Colony for the time being or the officer for the time being acting as such Treasurer-General and by no other person, as fully and completely to all intents and purposes as if the said Treasurer-General or officer acting as such had been duly appointed by such style and title to be the Collector of Taxes in Cape Town; and all bonds, vouchers, or rights of action which shall upon the said first day of January, 1845, be vested in or recoverable by the said Collector of Taxes in his capacity as such collector shall thenceforth vest in and be recoverable by the said Treasurer-General or officer acting as such and by no other person whomsoever: Provided that nothing herein contained shall be construed so as to require the said Treasurer-General or officer for the time being acting as such to take or use in regard to any matter or thing herein referred to any other or additional style, title, or official designation.

3. [Sections 3 and 4 repealed by Act 3, 1876.]

[1] Amended by § 2, Act 3, 1876.

Digitised by the University of Pretoria, Library Services, 2016

No. 14.—Sd. P. Maitland.] [August 28, 1844.

Ordinance for the better Regulation of the Office of the Registrar of Deeds. (1)

Preamble.

WHEREAS it is expedient to make provision for authorising all persons who may be desirous so to do to prepare or cause to be prepared by such persons qualified in the manner hereinafter provided as they shall select certain of the deeds now drawn or prepared exclusively in the Deeds Registry Office of this Colony and to regulate the fees to be hereafter charged and taken in the said office: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the promulgation of this Ordinance it shall and may be lawful for the Registrar of Deeds for the time being or the officer for the time being acting as such and he is hereby required duly to register all fit and proper transfer deeds and deeds of hypothecation now exclusively prepared in the said office which shall be prepared or drawn by any advocate of the Supreme Court of the Colony or any person authorised (2) as in the next succeeding section of this Ordinance mentioned but not by any other person or persons whomsoever, and the said Registrar may require proof by signature or otherwise as he shall think fit that every such deed as aforesaid tendered for registration has been prepared by some person qualified as aforesaid.

Preparation of transfer deeds and deeds of hypothecation.

2. [Superseded by Act 12, 1858, § 8.]

3. [Superseded by § 2 Act 20, 1884.]

SCHEDULE OF FEES.

[Repealed by Act 20, 1884.]

No. 15.—Sd. P. Maitland.] [August 28, 1844.

Ordinance to provide for the Enregisterment in the Land Registers of the Colony of certain Subdivisions of the Locations and Extensions of the Settlers of 1820.(3)

Preamble.

WHEREAS in consequence of the encouragement to emigration to the Cape of Good Hope offered by the Government of his late Majesty King George the Third in certain letters dated Downing-street, London, 1819, certain parties of settlers arrived in this Colony in and about the year 1820 and were located in the lower part of the division of Albany and at Glen Lynden in the division of Somerset, on certain lands which were surveyed for the said parties respectively: And whereas certain of the said parties consisted wholly or in part of individuals who paid, in England

[1] See Placaat June 19, 1714, and laws there referred to in note.
[2] See Act 12, 1858, § 8.
[3] Expired 31st December, 1846, but revived by Ordinances No. 15, 1847, and No. 7, 1853, and Acts No. 24, 1856, No. 7, 1859, and 12, 1862.

Digitised by the University of Pretoria, Library Services, 2016

certain deposits required by the said Government, and thereby acquired certain rights to portions of the original locations so surveyed for the said parties: And whereas other lands were set aside by Government, and certain exchanges of granted land were made for the better maintenance of some of the said parties, and surveys of the shares held by the said individual settlers their heirs or assigns, at the date of survey, effected for the purpose of enabling the proprietors thereof to obtain registry of the same in the Land Registers of the Colony: And whereas the said proprietors have been and still are prevented from obtaining such registry by reason of the death, absence from the Colony, mental incapacity, or insolvency of the former heads or nominal heads of their parties, to whom in most instances grants of the original locations were issued, or of other persons through or from whom the said proprietors have mediately or immediately derived just, lawful, and undisputed rights to the said subdivisions, or by reason that in many instances it has now become impossible to produce such legal evidence of the cessions of the said rights as would enable the Supreme Court or the Circuit Courts of this Colony to declare and enforce the same, while at the same time the provisions of the Ordinance No. 97, entitled "Ordinance for enabling certain persons having respectively the just, lawful, and undisputed right to certain Lands and Houses, to procure the same to be enregistered as their property in the Land Register," could not properly be accommodated so as to meet the exigency of the cases aforesaid, or if they could be so accommodated not without much and unnecessary expense. And whereas in many instances the head of the party cannot give transfer of the subdivisions which have been effected by reason that the said subdivisions include without distinction portions of land registered as his property together with portions of lands granted to others, or of ungranted Crown lands allotted to the party: And whereas by reason of the issue and existence of certain title deeds to portions of the land referred to the Governor of this Colony is prevented from directing the issue of new title deeds of the said subdivisions in the names of the persons justly entitled to the same, and thus giving them registry in the Land Registers of this Colony.

Names of proposed grantees to be published.

2. Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the consent of the Legislative Council thereof, that from and after the promulgation of this Ordinance, it shall and may be lawful for the Governor of this Colony to publish by proclamation in the *Government Gazette* and in some one or more of such newspapers as shall be published in Graham's Town the names of such persons as shall after due investigation be recommended by the board of commissioners for lands as the persons entitled to receive grants of the aforesaid subdivisions of locations, together with a description of the said subdivisions and also the particulars of all such grants of original locations and other

Digitised by the University of Pretoria, Library Services, 2016

Ord. 15—1844.

lands as it may be necessary to cancel by reason of portions thereof being included in such aforesaid subdivisions, and thereupon to proclaim that unless objections showing cause to the contrary be lodged in writing at the office of the Secretary to Government, in Cape Town, within six weeks from the day on which such proclamation shall be last published the title deeds therein mentioned will be cancelled and the subdivisions aforesaid granted accordingly. (1)

Objections to grants.

Grants to be issued in absence of objections.

3. And be it enacted that in case no objections are lodged in the office of the Secretary to Government as aforesaid at or before the expiration of the term of six weeks as aforesaid it shall and may be lawful for the said Governor to direct the said title deeds to be cancelled and the grants of the said subdivisions to be issued accordingly.

Consideration and disposal of objections.

4. And be it enacted that in case any such objections as aforesaid shall be lodged as aforesaid the said objections shall be referred to the board of commissioners for lands for investigation, and should the said board deem it necessary in any case to amend their previous recommendation a further publication of six weeks by proclamation in manner aforesaid of such amended recommendation, shall be necessary before it shall be lawful for the said Governor to direct that any title deeds or title deed shall in conformity with such amended recommendation be cancelled or be issued as the case may be: Provided that if no objection be lodged within the said period of six weeks to any such amended recommendation it shall be lawful for the said Governor to direct the certain title deeds or title deed referred to in such amended recommendation to be cancelled or issued as the case may be in conformity therewith.

Proceedings when objections disallowed.

5. And be it enacted that if after any such objections as are mentioned in the second section of this Ordinance shall have been referred to the board of commissioners for lands the said board shall report to the said Governor that they do not see cause to amend their recommendation, or if any objections to the amended recommendation mentioned in the fourth section of this Ordinance shall be lodged as aforesaid, the said Governor shall cause a Government notice to be published in the *Government Gazette* and in one or more of the newspapers to be published in Graham's Town setting forth the particulars of any title deeds or title deed the cancellation of which shall have been objected to and a description of the several subdivisions which contain portions of the land described therein, and also the names of the person or persons to whom it is recommended to issue title deeds of the said subdivisions respectively, and in the case of such of the said subdivisions as may be unclaimed or if claimed when the claims to the said subdivisions are not proved or have not been reported on, then the name or names of the persons for whom the said

[1] See Act 12, 1862.

Digitised by the University of Pretoria, Library Services, 2016

subdivisions respectively have been surveyed, or a description of the title deed or title deeds if any the issue of which shall have been objected to accompanied by an announcement that the deeds aforesaid will be cancelled or issued as the case may be unless such cancellation or issue shall be restrained by the interdict of some competent Court or Judge to be duly sued out within three months from the date of such notice; and when and as often as any such notice shall be published then all persons who shall object to any of the matters or things embraced, in such notice, and by the same announced as intended to be done shall be bound to apply to some competent Court or some Judge having lawful authority for an interdict or order restraining all parties whom it may concern from proceeding to do the matter or thing which the person applying alleges ought not to be done; and unless the person so applying for such interdict shall obtain the same and shall within a period of three months from the date of the last publication of the said notice (if published on more days than one) lodge the said interdict or a copy thereof in the office of the Secretary to Government in Cape Town, then it shall be lawful for the Governor of the Colony to direct that the title deed shall be issued or the existing title deed shall be cancelled as recommended by the said board of commissioners for lands: Provided, always, that it shall and may be lawful for the said Governor upon cause shown to enlarge the time within which in any particular case such interdict may be applied for.

Objector may apply for interdict.

Interdict to be lodged with Secretary to Government.

6. And be it enacted that it shall be lawful for the Supreme Court or any Circuit Court of this Colony to grant an interdict to any person or persons applying as aforesaid for the same in case it shall appear that the party so applying has some right to or over or in respect of the land of which a title deed is recommended to be cancelled, and to the cancellation of which such party objects or to which any new grant is announced as intended to be made, and moreover that such party is likely to be prejudiced by the cancellation or issue as the case may be of any title deeds or title deed intended to be cancelled or issued respectively.

In what cases interdict may be granted.

7. And be it enacted that when and as often as any such interdict as aforesaid or any copy thereof shall be lodged at the office of the Secretary to Government in Cape Town as aforesaid a public notice of the lodgment of the same shall be forthwith given in the *Government Gazette*, and in some one of such newspapers as aforesaid, and the said interdict or a copy thereof together with the claim or claims and all the proofs and documents relating thereto on which the recommendation of the board of commissioners for lands was founded, shall be delivered or transmitted to or placed at the disposal of the person or persons or some one of them to whom the grant was recommended or whose claims shall be stayed by the said interdict, or their heirs or other representatives, for the purpose of enabling him or them to procure the

Notice of interdict to be published.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 15—1844.

removal of the said interdict, and the final determination according to law of all questions in dispute connected with the same.

Interdict to be conclusive of rights unless removed.

8. And be it enacted that when and as often as any such final determination as aforesaid shall have been made by any competent Court in any suit or proceeding arising from or connected with any such interdict as aforesaid the cancellation of any old title deed or issue of any new title deed respectively shall be regulated in conformity with the judgment of such Court, and so as to secure as much as may be the rights of all parties as the same shall have been ascertained and declared by the judgment of such Court. But in case it shall so happen that the person or persons whose claims are stayed or supposed rights affected by any such interdict shall not within a period of six months from the date of the publication of the notice in the last preceding section mentioned obtain a final determination of the matters in dispute in regard to the same and give notice of such final determination being had and come to to the Secretary to Government in Cape Town, then the matters so in dispute shall be considered as if decided in favour of the party who shall have obtained the interdict, and thereupon the consequences hereinbefore mentioned shall take place in the same manner as if a competent Court had finally determined in favour of such party. Provided, always, that it shall be lawful for the Governor aforesaid to enlarge the time during which notice of any such final determination being had and come to may be given as aforesaid to the Secretary to Government.

Locations to be sold, if there be no application for grant.

9. And be it enacted that when there shall remain any subdivision or subdivisions of locations aforesaid to which no claim has been made or the claims to which shall not have been proved so as to enable the said land board to recommend the issue of the title deed or title deeds thereof to the claimant or claimants respectively, or to any other person, it shall be lawful for the Governor of the Colony to cause to be published in the *Government Gazette* and in one or more of the newspapers which shall be published at Graham's Town a notice describing the said subdivision or subdivisions, and declaring that unless a notice stating cause to the contrary be lodged in the office of the Secretary to Government in Cape Town within three months after such notice shall be last published the said subdivision or subdivisions will be sold by public auction for account of whom it may concern.

Application of proceeds of sale.

10. And be it enacted that if no such notice as aforesaid be lodged as aforesaid at or before the expiration of the said three months then it shall be lawful for the said Governor at any time thereafter to cause the said subdivision or subdivisions to be sold in freehold by public auction; and in case of any such sale the proceeds after deduction of the expenses of sale shall be disposed of in manner following, that is to say: first, a sum equal to fifteen years' purchase of the annual quitrent fixed for settlers' grants and

Digitised by the University of Pretoria, Library Services, 2016

of such stamps as would have been required in respect of such annual quitrent for the said period, shall be paid into the Colonial Treasury to account for the general revenue; secondly, the amount of loan from the Storm Fund if any with the interest thereon if any shall be paid into the said treasury to account of the said fund; and lastly, the remainder of the said proceeds if any shall be paid into the Guardian Fund in the name of the proprietor at the date of the said sale of the location surveyed for or other person justly entitled thereto or to any portion thereof, there to be subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th of July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony.

Proceedings in case of notice under section 9.

11. And be it enacted that in case such a notice be lodged as the second notice in the ninth section mentioned the said notice shall be referred to the land board, and if the said board shall be enabled thereby to recommend the issue of title deed to the party who shall have lodged such notice or to any other person the name of the person or persons so recommended by the said board and the description of the subdivision or subdivisions referred to shall be published by proclamation as in the second section of this Ordinance provided. But if it shall appear to the said board that the said notice does not state any sufficient cause against the said sale and the party lodging it does not furnish sufficient proof to enable the said board to recommend the issue of title deed to such party or any other person then it shall be lawful for the said Governor to cause a notice to be inserted in the *Government Gazette* and in some one or more of such newspapers as shall be published at Graham's Town declaring that unless restrained by an interdict of some competent Court or some Judge having lawful authority to be lodged at the office of the Secretary to Government in Cape Town within three months from the publication of such notice the subdivision or subdivisions mentioned in such notice will be sold by public auction; and provided no such interdict be lodged as aforesaid then it shall be lawful for the said Governor to direct the said subdivision or subdivisions to be sold as aforesaid by public auction and the proceeds thereof disposed of as provided for in the tenth section of this Ordinance; but in case an interdict shall have been so lodged as aforesaid then every matter and thing in relation to the said subdivision or subdivisions or to the title deed thereof or to the rights of any parties to or over the same shall be governed and directed by any order, judgment, or decree in the premises of any competent Court.

Sale on rejection of claim.

Cancellations and grants under this ordinance liable to be affected on the same grounds as would affect decrees of court of the same nature.

12. And be it enacted that the cancellation of every title deed effected under the provisions of this Ordinance and every title deed issued under the said provisions shall respectively be liable to be annulled, set aside, limited, qualified, and affected on every ground and by reason of every cause, matter or thing (and shall not be annulled, set aside, limited, qualified, or affected on any ground or

Digitised by the University of Pretoria, Library Services, 2016

Ord. 15—1844.

by reason of any cause, matter or thing) on or by reason of which such cancellation would by law have been liable to be annulled, set aside, limited, qualified, or affected in case such cancellation of any old deed had been respectively decreed by some competent Court in some suit or proceeding in which all persons not under some legal disability at the time of such suit or proceeding and having any right or title to or interest in any of the land affected by such cancellation or title deed were duly before the said Court.

Proceedings at law, or applications under Ordinance 97 competent in fit cases, notwithstanding this ordinance.

13. And be it enacted that nothing in this Ordinance contained shall be held or construed so as to prevent any person or persons whomsoever from proceeding in any manner in which he or they may be advised in any competent Court in regard to any lands belonging or appertaining to any of the locations or extensions of the said settlers of 1820; or from applying to the committee nominated and appointed under Ordinance No. 97 in order to obtain enregisterment in any case to which the said Ordinance No. 97 shall be considered by such person or persons to apply. Provided, always, that no such proceeding as aforesaid in any such Court (except as certain proceedings are by this Ordinance contemplated and provided as aforesaid) and no application to the said committee shall in any case be commenced by any person or persons in regard to any locations or subdivisions mentioned in any such proclamation as in the second section of this Ordinance provided; and all persons having commenced or being interested in any suit or proceeding at law or any application to the said committee in regard to any title-deed or to any subdivision or subdivisions mentioned in any such proclamation shall be bound within six weeks from the date of the publication of such proclamation to lodge at the office of the Secretary to Government in Cape Town notice of the pending of such suit or application, which notice shall be deemed and taken to be an objection duly lodged as in the fourth section of this Ordinance provided.

Limitation.

14. And whereas it is expedient to limit the time during which the provisions of this Ordinance shall be operative be it enacted that this Ordinance shall take effect from and after the promulgation hereof, and that no such proclamation as is in the second section of this Ordinance mentioned shall be issued after the 31st day of December, 1846. (1)

No. 16.] [Sept. 17, 1844.

Ordinance for Fixing the Precedence of the Lieutenant-Governor of the Eastern Districts of the Colony.

[Lapsed.]

---

[1] See footnote to titled heading of this Ordinance.

Digitised by the University of Pretoria, Library Services, 2016

No. 17.] [Dec. 18, 1844.

Ordinance for removing certain doubts in regard to certain Ordinances heretofore promulgated in this Colony.

[Disallowed by the Queen.]

No. 18.] [Dec. 26, 1844.

Ordinance for regulating the Payment of Transfer Duty in this Colony.

[Repealed by Act 5, 1884.]

No. 1.] [Jan. 6, 1845.

Ordinance for creating certain Visiting Magistrates' Courts at Convict Stations in this Colony.

[Repealed by Act 23, 1888.]

No. 2.] [Jan. 6, 1845.

Ordinance for fixing the mode of making out Jury Lists for Cape Town and the District thereof.

[Superseded by Acts 7, 1861, and 2, 1876.] (1)

No. 3.] [Jan. 15, 1845.

Ordinance for repealing certain Ordinances regarding certain Tolls, in order to make other provision respecting the said Tolls.

[Superseded by Act 9, 1858.] (2)

No. 4.—Sd. P. Maitland.] [Jan. 30, 1845.

Ordinance for declaring certain Guano to be the Property of Her Majesty the Queen.

Preamble.

WHEREAS considerable quantities of the substance commonly called "guano" have been found in and upon certain islands or rocks in the sea within the limits of this Colony and its dependencies: And whereas it is possible that further quantities of the said substance may exist and be hereafter discovered at other places within the said limits: And whereas doubts exist whether the said substance being merely or mainly the droppings of unreclaimed birds of a base nature can in law, though a merchantable article, be deemed to be property or possessed of legal value: And

[1] See Act 22, 1891, for existing law.
[2] See Act 40, 1889, for existing law.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 4—1845.

whereas it is expedient that such doubts should be removed and that all of the said substance lying and being in and upon any place or territory within the limits aforesaid, and not granted or belonging to any private individual, should be declared to be the property of Her Majesty the Queen, and that provision should be made for preventing or punishing the unauthorised removal of the same: Be it therefore enacted and declared by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all of the said substance commonly called guano which may now or at any time hereafter be found lying and being in or upon any island, rock, or other place not being the property of any private person or persons and within the limits of this Colony and its dependencies, shall be deemed and taken to be property and to belong to and be in the lawful possession of Her Majesty the Queen, her heirs and successors.

Guano within limits of the colony declared the property of the Queen.

Penalties on removal of such guano.

2. And be it enacted that if any person or persons shall remove or cause to be removed from any such island, rock, or place as aforesaid any of the property aforesaid without the leave of the Governor of this Colony, for the time being first had and obtained; or if any person or persons shall receive and have any of the said property, knowing the same to have been so removed without such leave as aforesaid, every such person shall for every such offence, besides paying and making good the full value of the property illegally removed, incur and be liable to a penalty not exceeding one hundred pounds sterling, whereof one-half shall be paid to any person who shall have given information touching the commission of the offence and the other half shall be paid to the Colonial Treasury. And in default of immediate payment of such penalty, the person condemned to pay the same may be imprisoned with or without hard labour until he shall pay the same, but so, however, that he shall not be detained for any period exceeding three months. But it shall be competent for the Governor in any case in which it shall appear to him to be just and proper so to do to remit the whole or any part of any such penalty as aforesaid.

Removals constituting separate offences.

3. And be it enacted that every trip or voyage in which any vessel, boat, or raft shall receive and remove from any such island, rock, or place as aforesaid any of the said property in order that the same may be put on board any other vessel or delivered or discharged in any other manner whatsoever shall be deemed to be a separate offence on the part of every person manning, navigating, or conducting such vessel, boat, or raft; and in case any such property as aforesaid shall happen to be removable, and shall be removed otherwise than by water carriage, then every separate instance or occasion upon which any of the said property shall have been in any manner carried away shall constitute a separate offence on the part of every person carrying the same away; and in regard to persons receiving the said property knowing the same to have been removed without leave every act of receiving any

Digitised by the University of Pretoria, Library Services, 2016

quantity of the same at any one time shall also constitute a separate offence. Ord. 5—1845.

4. And be it enacted that all offences committed in contravention of this Ordinance may lawfully be prosecuted in the Court of any Resident Magistrate in this Colony. Prosecution of offences.

5. And be it enacted that nothing in this Ordinance contained shall be held or construed so as to impair or affect the right if any which any person or persons may now by law possess or claim in regard to the substance aforesaid and the removal of the same under and by virtue of any lease or contract with the local Government of this Colony relative to any island or other place on which such substance shall be found; but every such lease or contract shall be construed and the rights of the respective parties thereto shall be ascertained and determined precisely as if this Ordinance never had been passed. Effect of leases.

6. And be it enacted that this Ordinance shall commence and take effect from and after the date of the promulgation thereof. Time of taking effect.

No. 5.—Sd. P. Maitland.] [February 27, 1845.

Ordinance for authorising the appointment of a Vestry and Churchwardens for St. Paul's Church, Rondebosch.[1]

WHEREAS it is expedient that the inhabitants of Rondebosch in the Cape district and the parochial limits thereof, and holding communion with the United Church of England and Ireland as there by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with St. Paul's Church at Rondebosch, and that the said vestry and churchwardens after having been duly appointed should possess certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said United Church of England and Ireland: And whereas on the appointment of the said vestry and churchwardens it is expedient that the office of trustees as at present instituted should cease and determine: Preamble.

1. 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 thereof, that on and after the promulgation of this Ordinance, and annually afterwards on the same day a general meeting of the inhabitant householders of Rondebosch aforesaid and of the parochial limits thereof holding communion with the United Church of England and Ireland as there by law established shall be holden at Rondebosch, fourteen days' notice whereof Annual election of vestry.

[1] See Ord. 3 of 1847.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 5—184

shall be given by the officiating minister of the said church for the time being by promulgation during divine service and by notice posted on the doors of the church or by advertisement in the *Government Gazette*, for the purpose of electing a vestry, and it shall and may be lawful for the inhabitant householders as aforesaid or the greater part assembled at such meeting to elect from among themselves any number of persons not exceeding eight in manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereinafter mentioned.

Auditors of accounts.

2. And be it further enacted that two other persons not being members of the said vestry shall likewise be elected at such meeting as aforesaid to be auditors of the accounts of the said vestry.

Qualification of members of vestry.

3. And be it further enacted that every inhabitant householder being a member of and holding communion with the church aforesaid and within the parochial limits thereof shall be eligible to be a member of the said vestry: Provided, always, that no person shall be entitled to vote at such election or be eligible to be chosen a member of the vestry or an auditor of the accounts thereof so long as (legal demand having previously been made) any just claim had upon him by the said vestry as such shall remain unsatisfied.

Preparation and inspection of lists of persons eligible.

4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing section shall be prepared by the officiating minister so long as there are no churchwardens appointed, and when churchwardens shall have been appointed as is hereinafter provided then by the officiating minister and churchwardens conjointly, and shall be open for the inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place.

Mode of election

5. And be it further enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitant householders aforesaid respectively and containing the names of the persons for whom they vote to be elected as vestrymen and auditors.

Appointment of chairman.

6. And be it further enacted that the officiating minister for the time being shall preside as chairman at the meetings of the said vestry, provided that in his absence from any such meeting one of the other members shall be chosen to act as chairman, and in case the votes of the said vestry be equally divided the chairman or acting chairman shall have a casting vote in addition to his own.

Quorum of vestry.

7. And be it further enacted that four members of the said vestry or three members beside the chairman shall form a quorum and shall be competent to perform all matters and things which may be done by the vestry under and by virtue of any of the provisions of this Ordinance.

Digitised by the University of Pretoria, Library Services, 2016

Power to make rules, orders, and by-laws.

8. And be it further enacted that it shall and may be lawful for the said vestry so from time to time constituted and appointed to frame, adopt, alter, or rescind such rules, orders, and by-laws as may to them appear expedient for their guidance in the discharge of their duties and for more effectually executing the provisions of this Ordinance and also to take such order for the management of the said church as shall to them seem expedient, provided that the said rules, orders, or by-laws contain nothing repugnant to law or to the tenor of this Ordinance or to the customs and usages of the United Church of England and Ireland as there by law established.

Delivery of deeds, papers, &c., by trustees to vestry.

9. And be it enacted that the trustees of the church aforesaid shall upon the appointment of the said vestry deliver over to the said vestry all deeds, books, and papers relating to the church in their custody or power and all sums of money in their possession or control, and the office and duties of the said trustees shall thereupon cease and determine.

Transfer of powers of trustees to vestry.

10. And be it enacted that the said vestry so from time to time constituted and elected by such members of the said church as aforesaid shall and may have and exercise all the same powers and rights and duties respecting the said church and the care and government thereof, and the administration of the grounds, funds, rents, and revenues thereof and all other matters and things relating to the same as are now possessed and exercised by the trustees together with such other laws and rights and duties as are hereinafter specified.

Power to compel payments, enter into contracts, &c.

11. And be it enacted that it shall and may be lawful for the said vestry for the time being to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to their order by virtue of any of the provisions of this Ordinance, and in their own names to make and enter into, perform and execute or compel performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for the good of the church aforesaid.

Power to sue and defend suits.

12. And be it further enacted that it shall and may be lawful for the said vestry as such from time to time to commence and maintain all such suits and actions in any competent Court of this Colony as they shall deem necessary in performance of the trust reposed in them against any person whatsoever; and all such suits and actions shall and may be brought by them in the name of the vestry of St. Paul's Church at Rondebosch, without specifying the christian or surnames of the members of the vestry, and no action shall abate by reason of the death or removal or the going out of office of any individual member thereof.

Actions against vestry not competent against individual members.

13. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or other matter or thing made or entered into or

Digitised by the University of Pretoria, Library Services, 2016

Ord. 5—1845.

performed by the said vestry in the execution of the said trust or shall arise or accrue to any person whatsoever against the said vestry shall be brought by such person in manner and in name aforesaid and not against any individual member of the said vestry.

Accounts, with report of auditors at annual meeting.

14. And be it enacted that the said vestry shall keep an account wherein they shall enter all moneys received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times. And the said account together with any report of the auditors or either of them thereon shall be laid before the members holding communion with the said church at the general annual meeting aforesaid and published if requisite for general information.

Appointment and duties of churchwardens.

15. And be it enacted that the said vestry shall forthwith on their appointment or so soon as conveniently may be choose out of their own number two persons to be churchwardens who shall perform and execute all lawful acts and matters and things for the good order and decency of behaviour to be kept in the said church by the congregation thereof and for preserving to all persons their rights in the pews and sittings thereof, and providing the said church (by order and at the charges of the said vestry) with necessary and customary furniture for the performance of divine service and for keeping the same clean and in proper repair, and for keeping the burial-ground attached to the said church in decent order and properly fenced, and for discharging all other duties which usually devolve on churchwardens in the United Church of England and Ireland, so far as the same may be applicable to this Colony.

Account and appropriation of collections.

16. And be it further enacted that the said churchwardens shall keep an exact account of all collections of money made from time to time in the said church for any charitable or religious purposes connected with the said church or congregation; and the said churchwardens together with the officiating minister for the time being shall faithfully administer the same or see that they be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same. And the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations as the general church fund and accounts of the vestry.

Continuance in office of churchwardens.

17. And be it enacted that the churchwardens appointed as above shall continue in office until after the next general annual election of the vestry is completed, when they shall deliver up to the said vestry all accounts of such charities as aforesaid duly audited, together with all vouchers, sums of money, or securities held by them in virtue of their office; and the vestry shall then

Digitised by the University of Pretoria, Library Services, 2016

proceed to nominate other churchwardens for the ensuing year: Provided always that the churchwardens thus vacating office shall be eligible to be re-elected in case they are continued as members of the vestry.

Proceedings in case of vacancies.

18. And be it further enacted that in case any member of the vestry shall die or desire to resign or shall be removed or for any other lawful cause shall vacate his office it shall and may be lawful for the surviving or other members of the said vestry to decide whether a special general meeting shall be called for the purpose of electing another member in the place of the one so dying or desiring to resign or being removed, or whether his place shall remain vacant until the next general annual meeting to be holden as aforesaid: Provided always, that in case the members of the said vestry decide that a special general meeting shall be holden for the purpose aforesaid the same notice shall be given thereof and the same proceedings shall be observed thereat as in case of the general annual meeting is provided.

Letting of pews and sittings.

19. And be it enacted that all the pews and sittings in the said church with the exception of a reasonable proportion of free sittings reserved for the poor shall and may be let by the vestry by the year or for any shorter period to any person desiring to take the same, at a rent to be affixed to them respectively by the vestry and payable at such times and in such manner as shall be appointed by the vestry; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hindrance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable: Provided, always, that nothing in this section shall be construed to interfere with the claims of any person at present holding sittings in the church.

Proceedings in case of arrear in payment of pew-rents.

20. And be it enacted that it shall and may be lawful for the vestry whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same is due and payable to give notice to the possessor of such pew, forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said vestry to re-enter into the possession of the said pew for the purposes of this Ordinance without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive the said vestry from recovering the amount of such rent in arrear by action in any competent Court.

Burials.

21. And be it further enacted that no burial shall take place within or under the said church; but the burials of all persons according to the rights and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted or which may hereafter be consecrated and allotted to the said church

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1845.

for that purpose; and the vestry shall have the right to demand and receive reasonable fees for the permission to bury in the burial-ground of the said church.

Monuments and vaults in burial ground.

22. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monument to be erected or placed in such convenient parts of the said church or of the burial-ground belonging thereto or vaults to be dug and made in the said burial-ground upon pay ment to the fund of the said church for such permission of such reasonable fee as shall be affixed by the said vestry for such permission according to the terms thereof.

Ownership in vaults and monuments.

23. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or digging or making any vault in the said burial-ground by and with such permission as aforesaid to have, maintain and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons or his or their heirs for ever: Provided, always, that in case any such monument as aforesaid is suffered to fall into decay and the person or persons to whom the said monument appertains neglect to repair the same it shall and may be lawful after a general notice of such intention to remove the same.

Public ordinance.

24. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance and shall be judicially taken notice of by all Judges, Magistrates, and others without being specially pleaded, and shall commence and come into operation as law from and after the promulgation thereof.

No. 6.] [March 10, 1845.

Ordinance for substituting Declarations in the place of certain Oaths and for the suppression of Voluntary and Extra-judicial Oaths and Affidavits.

[Repealed by Act 18, 1891.]

No. 7.—Sd. P. Maitland.] [March 25, 1845.

Ordinance for authorising a Sum of Money to be raised in Shares for Building a Church at Fort Beaufort.

Preamble.

WHEREAS several persons being desirous of erecting a church at Fort Beaufort for the celebration of divine service according to the rites of the United Church of England and Ireland as by law established, and being ready and willing to raise and provide by way of loan for that purpose a certain sum of money as hereinafter mentioned, at a public meeting of the said persons holden at Fort Beaufort on the 15th day of November, 1843, a committee

Digitised by the University of Pretoria, Library Services, 2016

of management was appointed for carrying their intention into effect: And whereas His Excellency the Governor has agreed to grant from the treasury of this Colony as a donation towards the building and completing the said church to the persons who shall undertake and become bound for completing the same the sum of one hundred pounds: And whereas the Society for Promoting Christian Knowledge hath agreed to grant the sum of one hundred pounds and the Society for the Propagation of the Gospel in Foreign Parts hath agreed to grant the sum of one hundred pounds as donations toward the building of the said Church: And whereas several other persons have agreed to subscribe certain sums of money by way of donation for furthering the building and completing the said church: And whereas at a public meeting of the persons interested in the said church holden pursuant to notice thereof on the 17th December, 1844, it was agreed and resolved by the said persons that in order to raise a sum of money amounting together with the said sum of money agreed to be granted by His Excellency the Governor from the Colonial Treasury as aforesaid and the said sums of money agreed to be granted by the Society for Promoting Christian Knowledge and by the Society for the Propagation of the Gospel in Foreign Parts and the said other donations to the sum of eight hundred pounds, being near or about the estimated cost of building and completing the said church, a certain number of shares should be disposed of, that is to say one hundred shares at five pounds each: And whereas the following persons have agreed to take shares in the said loan as aforesaid, that is to say: Charles Holliday and John Vaughan, four shares each; Robert Bovey, John Blakeway, William Ayton, Wm. Gilbert, and George Gilbert, three shares each; John Holliday and Bradshaw Daniel Bell, two shares each; William Parrot, Meent John Henry Borcherds, George McKay, the Rev. Herbert Beaver, Philip Norton, William Andrews, William Nelson, Charles Blakeway, David Mills, Stephen Humphreys, the Rev. James Barrow, the Rev. John Heavyside, Charles Burton, Richard Ralph, Thomas Foden, John North Annan, George Broster, and Ezekiel Hams, one share each:

Authority to raise money on loan by shares.

1. And whereas the said persons have made application that an Ordinance may be passed to sanction and confirm the plan adopted at the last-mentioned meeting and to provide for carrying the same into effect: Now, therefore, be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the said persons who have already agreed and all such as shall by virtue of any of the provisions of this Ordinance hereafter agree to take shares in the said loan to raise and provide in manner and for the purpose aforesaid such a sum of money as together with the said sum so to be granted from the Colonial Treasury and the said sums so to be granted by the Societies for

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1845

Promoting Christian Knowledge and for the Propagation of the Gospel in Foreign Parts and the said donations shall amount to the requisite sum for building and completing the said church, and it shall and may be lawful for such persons to become shareholders in the said loan, and to take such shares therein (not exceeding by any one person the number of ten shares) as such persons have already agreed or shall hereafter agree to take in the said loan until the whole number of one hundred shares shall have been disposed of.

Sale and transfer of shares.

2. And be it enacted that no share shall be transferable by any holder thereof or any right or interest therein until all the calls thereon shall have been paid as hereinafter mentioned, but after the said calls shall have been paid it shall and may be lawful for any shareholder to sell or transfer his share or shares and all his right and interest in respect thereof to any other person by endorsement on the said share or otherwise as he shall see fit: Provided, however, that no sale of any such share shall take place by any public auction, but shall be by private contract only, and that the person to whom any share or shares shall be sold or transferred as aforesaid shall forthwith give notice thereof to the trustees to be elected in manner hereinafter mentioned.

Interest on shares.

3. And be it enacted that the sums advanced by shareholders in respect of their several shares shall bear interest from and after the first day to be fixed by the trustees after the said church shall be erected and completed and open for divine service therein, and not sooner.

Right of shareholders to vote.

4. And be it enacted that all shareholders in the said loan shall at all public meetings of the shareholders have the right of voting in the election of trustee and in all matters relating to the erection of the said church, and the management of the funds thereof until the said loan shall have been wholly repaid and discharged according to the number of their respective shares, that is to say, the holder of one share shall be entitled to one vote; the holder of two or three shares to two votes, the holder of four or five shares to three votes, the holder of six or seven shares to four votes, and the holder of eight, nine, or ten shares to five votes.

Free sittings.

5. And be it enacted that on the completion of the said church a part of the whole number of sittings shall be appropriated to the use of the public as free sittings, and that the number of free sittings shall bear the same proportion to the whole number of sittings as the sum raised by donations shall bear to the whole sum raised by shares and donations together.

Preference of shareholders in renting pews.

6. And be it enacted that on the completion of the said church and after the proper number of pews and sittings shall have been set apart and allotted for the use of the minister and the churchwardens and public aforesaid, all shareholders shall have a right to become each the renter of one pew in preference to any other persons who possess no shares, and the shareholders shall amongst

Digitised by the University of Pretoria, Library Services, 2016

themselves have priority in the choice of pews of whatever size or seats not exceeding six according to the number of their shares, the holder of the greater number of shares to have the prior choice, and the choice of holders of an equal number of shares to be determined if need be by ballot amongst them: Provided, however, that it shall and may be lawful for the trustees at their discretion upon the application of any shareholder whose family may require a greater number of seats in the said church than six to permit and allow such shareholder to choose two adjoining pews.

Subscription by shareholders to selection of pews.

7. And be it enacted that the trustees shall keep a book or plan wherein shall be entered the names of all shareholders in the order of the number of shares taken by them, the numbers of their said shares respectively, and the number and description of the pew chosen by each shareholder in respect thereof; and every shareholder shall on making his choice as aforesaid sign his name in a column opposite to the said entry in acknowledgment of the truth thereof, and no second choice shall be afterwards made by any holder of the same share or any of them except upon the pew or pews so chosen as aforesaid being first relinquished and given up.

Rights of shareholders in pews.

8. And be it enacted that upon any shareholder having duly made choice of a pew the said shareholder, his heirs and assigns shall and may for ever afterwards possess and occupy the same without the hindrance or disturbance of any person whatever, so long as he or they shall continue to pay the rent affixed thereon when and as the same shall become due and payable and shall continue to hold the share or shares in respect of which the said pew was chosen or the same shall have been paid off by the trustees by virtue of any of the provisions of this Ordinance.

General annual meeting.

9. And be it enacted that a general meeting of the shareholders shall be holden on the first Wednesday of May in every year at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this Colony twenty-one days at least before the same is to be holden, and it shall and may be lawful for the trustees or the auditors or either of the auditors to be elected as hereinafter mentioned at any time to call a general meeting of the shareholders upon giving the like notice thereof.

Election of first trustees and auditors.

10. And be it enacted that as soon as conveniently may be after the passing of this Ordinance a general meeting of the shareholders shall be holden at Fort Beaufort, notice whereof shall be given by the said committee of management by advertisement in one of the public papers of this Colony twenty-one days at least before the said meeting is appointed to be holden, for the purpose of electing trustees and auditors, and it shall and may be lawful for the said shareholders or the greater part assembled at such meeting to elect out of the said shareholders any number of persons not exceeding

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1845.

nine to be trustees and two other persons to be auditors of the accounts of the said trustees.

Continuance in office of trustees.

11. And be it enacted that the trustees so elected by the shareholders and such as shall be afterwards elected upon the death, resignation, or removal of any trustee as hereinafter mentioned shall continue in office until the first Wednesday of May next after the said church shall be erected and completed, and that upon the said first Wednesday of May and yearly afterwards on the same day three of the said trustees shall go out of office and three other trustees shall be elected instead of them by and out of the shareholders in manner aforesaid until the whole of the first appointed and preceding trustees shall have been relieved; and the order of their so going out of office shall if necessary be determined by ballot amongst them.

Auditors of accounts.

12. And be it enacted that two persons not being trustees shall be elected by and out of the shareholders yearly on the first Wednesday of May to be auditors of the accounts of the said trustees.

Delivery of books, papers, &c., by committee of management to trustees.

13. And be it enacted that the said committee of management shall upon the election of trustees as aforesaid and upon their acceptance of the said office deliver over to the said trustees all deeds, books, plans, papers, and vouchers relating to the said church in their custody or power and all and any sums of money, donations, or subscriptions given or subscribed for the purpose aforesaid or securities for the same in their possession or control, and the said committee of management and the office and duties thereof shall thereupon cease and determine.

Powers and duties of trustees as to trust funds.

14. And be it enacted that the said trustees and all others who shall from time to time be hereafter elected as trustees under any of the provisions of this Ordinance shall during the time of their continuance in office stand and be possessed of all the said sums of money, donations, and subscriptions and of all such sums of money as shall at any time hereafter be granted to them from the Colonial Treasury as aforesaid or from the Societies for Promoting Christian Knowledge and for the Propagation of the Gospel in Foreign Parts or shall arise from payments made by the shareholders in respect of their said shares or otherwise, and of all such donations and subscriptions as shall at any time hereafter be given or subscribed for the purpose aforesaid or in aid of the funds of the said church, and of all rents and revenues arising from the letting of pews, fees for placing monuments in the said church or in the burial-ground belonging thereto or for digging vaults in the said burial-ground or otherwise, upon trust in the first place and until the said church shall be erected and completed; to cause the said church to be erected and completed according to such plan and specification thereof as shall be approved of and adopted by them, and from and after the erection and completion of the said church upon trust to pay and apply the said sums of money,

Digitised by the University of Pretoria, Library Services, 2016

donations, subscriptions, rents, and revenues in manner following, that is to say: in the first place, to pay thereout the cost of all necessary repairs and expenses in and about the said church, for repairing, keeping up, and maintaining the same; secondly, in payment of the interest together with any arrears thereof due to the several shareholders on the sums advanced by them on their respective shares in an equal rate, when and as the funds at their disposal shall enable them so to do; and lastly, upon trust to pay and apply the residue thereof in discharge of the loan advanced by the shareholders whenever and as often as the said residue shall be sufficient to pay off a part of the said loan at a rate of not less than five shillings sterling upon each share until the whole of the said loan shall be paid off and discharged.

Power of trustees to compel payments, make contracts, &c.

15. And be it enacted that it shall and may be lawful for the trustees to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to them under and by virtue of any of the provisions of this Ordinance, and in their own names to make and enter into, perform and execute, and compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for erecting and completing the said church as aforesaid.

Power of trustees to sue and defend suits, &c.

16. And be it enacted that it shall and may be lawful for the trustees as such at all times and from time to time as they shall see fit to commence and maintain all such suits and actions in any competent Court in this Colony as they shall deem necessary in performance of the trust reposed in them against any shareholder or other person whatsoever, and all such suits and actions shall and may be brought by them in the name of "The Trustees of Saint John's Church at Beaufort" (being the name given to it by His Excellency the Governor), as the case may require, without specifying the christian or surnames of the trustees; and no action shall abate by reason of the death or removal or going out of office of any trustee.

Actions against trustees in execution of their trust not competent against individual trustees.

17. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or agreement or any other matter or thing made or entered into, done or performed by the said trustees in the execution of the said trust, or which shall arise or accrue to any person whatsoever against the said shareholders jointly, shall be brought by such person against the said trustees in manner and in the name aforesaid and not against any individual trustee or trustees, shareholder or shareholders.

Calls on shareholders.

18. And be it enacted that it shall and may be lawful for the trustees from time to time to call upon the shareholders for such payments in respect of their said shares as together with the donations and sums of money to be granted from the Colonial Treasury, and by the Societies for Promoting Christian Knowledge

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1845.

and for the Propagation of the Gospel in Foreign Parts as aforesaid they may deem necessary for carrying on the building and completing the said church as aforesaid: Provided, however, that no such call shall at any one time exceed one-third part of the amount of the said shares and that the whole of such calls shall not exceed the amount of five pounds in respect of each share.

Advertisement of calls.

19. And be it enacted that the trustees shall cause all calls to be made by them to be advertised in one of the public newspapers of this Colony together with the time and place appointed by them for payment thereof twenty-one days at least before the said time.

Forfeiture of share on non-payment.

20. And be it enacted that if any shareholder shall neglect or refuse to pay at the time and place appointed for that purpose his proportion of any lawful call made by the trustees upon the shareholders as aforesaid, and the same shall be in arrear for the space of fourteen days next after the said day appointed for payment, it shall and may be lawful for the said trustees if they shall think fit to declare and pronounce the share or shares of such shareholder to be forfeited and the same shall thereupon be forfeited accordingly; and it shall and may be lawful for the said trustees to dispose of such forfeited share or shares to any other person who may be desirous of possessing the same: Provided, however, that nothing herein contained shall extend or be construed to prevent the said trustees from bringing and maintaining their action against any shareholder refusing or neglecting to pay as aforesaid if they shall think fit so to do instead of pronouncing and declaring his share or shares to be forfeited as aforesaid.

Account and audit.

21. And be it enacted that the trustees shall keep an account wherein they shall enter all money received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times; and the said account together with any report of the auditors or either of them thereon shall be laid before the shareholders for their inspection at their general annual meetings.

Lodgment of moneys in bank.

22. And be it enacted that the trustees shall as soon as they shall receive any sum of money exceeding ten pounds open and keep an account with any person or persons not being trustees who shall be appointed by the shareholders for that purpose at any general meeting or in any bank; and every other sum of money exceeding ten pounds so received by the said trustees shall be forthwith paid into the hands of the person or persons or bank so to be appointed by the shareholders for that purpose, to be placed to the credit of such account; and all cheques or orders for payment of any such money thus deposited shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the trustees or by two of them for themselves and co-trustees.

Penalty on improper retention of money.

23. And be it enacted that any trustee who shall retain in his hands or knowingly permit any co-trustee so to retain any sum of

Digitised by the University of Pretoria, Library Services, 2016

money exceeding ten pounds part of the church fund longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum or cause it to be paid to the person or persons or bank appointed as aforesaid or shall employ for his own benefit or knowingly permit any co-trustee so to employ any sum of money part of the church fund shall and may be removable by the said shareholders from his said office, and shall moreover forfeit and pay for the benefit of the church fund double the amount of the fund so retained and employed, and which shall and may be recovered by the other trustees by action in any competent Court.

Final account.

24. And be it enacted that as soon as the said church shall be erected and completed as aforesaid the accounts of the said trustees shall thereupon be finally wound up and audited, and laid before the shareholders for their inspection, and no further call shall be afterwards made upon the shareholders in respect of their shares.

Death, resignation, or removal of trustee.

25. And be it enacted that in case any trustee shall die or desire to resign his said office or shall be removed as aforesaid the surviving or other trustees shall forthwith call a meeting of the shareholders for the purpose of electing a new trustee in the place of the one dying or desiring to resign or being removed as aforesaid, and the same notice shall be given of the time and place of the said meeting and the same proceedings shall be observed thereat as upon the original election of trustees: Provided, however, that no trustee shall be permitted to resign his office until he shall have duly accounted to the satisfaction of the shareholders for all sums of money at any time received by him.

Constitution of vestry.

26. And be it enacted that as soon as the said church shall be erected and completed the care and government of the said church shall be thenceforward and until the said loan shall have been wholly paid off in manner hereinbefore provided, together with the interest thereon as aforesaid, be committed to a vestry consisting of the officiating minister for the time being and the trustees elected by the shareholders without any new election in manner aforesaid; and the said minister shall when he is present preside at the said vestry, and when he is absent then one of the trustees elected by them; and all the members of the said vestry shall have an equal right of voting in matters belonging to it, except that in case of an equality of votes the president shall likewise have a casting vote.

Duty of vestry.

27. And be it enacted that the duty of the said vestry shall be to provide the said church with necessary and customary furniture for the performance of divine worship and the use of the officiating minister therein, and to keep the same clean and in proper repair.

Election of churchwardens.

28. And be it enacted that there shall be two churchwardens chosen yearly on the first Wednesday of May by the vestry from their own number, who shall perform and execute all lawful acts, matters, and things necessary for the good order and decency of

Digitised by the University of Pretoria, Library Services, 2016

Ord. 7—1845.

behaviour to be kept and observed in the said church by the congregation thereof and for preserving to all persons their rights in the said pews and sittings.

Minister and churchwardens' pews

29. And be it enacted that before any choice of pews by the shareholders shall take place there shall be set apart and allotted by the vestry a pew sufficient to hold six persons for the minister and another sufficient to hold four persons for the churchwardens; and there shall also be set apart in some convenient part of the said church the due proportion of free seats for the use of poor persons.

Free seats.

Choice and rent of pews.

30. And be it enacted that as soon as may be after the erection and completion of the said church the trustees shall call together the shareholders of each class according to their number of shares for the purpose of exercising their right in the choice of pews, and the rents of all such pews as shall be chosen by shareholders shall be fixed by the vestry according to the number of sittings therein.

Vacant pews

31. And be it enacted that after the shareholders shall have chosen their pews in manner provided for that purpose the trustees shall give notice of all the pews and seats which are then vacant by affixing the same in writing upon the door of the said church and otherwise as they shall see fit; and the said trustees shall give the like notice for six successive weeks at the end of each year of all the pews which are then vacant or will become vacant at the commencement of the next year.

Letting of pews.

32. And be it enacted that all the pews and seats in the said church except the pews set apart for the minister and churchwardens and the said free seats and the pews chosen by shareholders shall and may be let by the trustees by the year or for any shorter period to any person desiring to take the same, at a rent to be affixed to the same respectively by the vestry and payable at such time and in such manner as shall be appointed by the trustees; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hindrance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable.

Proceedings on non-payment of pew-rent.

33. And be it enacted that it shall and may be lawful for the trustees whenever and as often as it shall happen that the rent of any pew is in arrear and unpaid for the space of twenty-eight days after the same is due and payable to give notice to the possessor of such pew forthwith to quit and give up possession thereof, and thereupon it shall and may be lawful for the said trustees to re-enter into the possession of the said pew for the purposes of this Ordinance without any other form or proceeding whatever; and no person having been so dispossessed of his pew for non-payment of rent shall be entitled afterwards to any priority in the choice of a pew: Provided, however, that nothing

Digitised by the University of Pretoria, Library Services, 2016

herein contained shall extend or be construed to deprive the trustees from recovering the amount of such rent in arrear by action as aforesaid in any competent Court. Ord. 7—1 45.

34. And be it enacted that no burial shall take place within or under the said church; but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted or which hereafter may be consecrated and allotted to the said church for that purpose. Burials.

35. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monuments to be erected or placed in such convenient parts of the said church or of the enclosed ground about the same or in the burial-ground belonging thereto, or vaults to be dug and made in the said burial-ground upon the payment to the fund of the said church for such permission by the person or persons desiring to erect or place any monument in the said church or enclosed ground about the same or in the said burial-ground or to dig and make any vault in the said burial-ground of such a reasonable fee as shall be affixed by the said vestry for such permission according to the terms and extent thereof. Monuments and vaults.

36. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or enclosed ground about the same or digging and making any vault in the said burial-ground by and with such permission aforesaid to have, maintain, and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever Property in do.

37. And be it enacted that on the first Wednesday in the month of May next after the whole of the said loan and the interest thereon shall have been paid off and discharged as aforesaid the office of the trustees and auditors shall thereupon cease and determine, and in the place of the said trustees there shall be elected on the said first Wednesday in May and yearly afterwards on the same day by and out of the resident inhabitants of Fort Beaufort and of the parochial limits thereof being members of and holding communion with the United Church of England and Ireland as by law established a like number of persons, who shall together with the officiating minister for the time being form a vestry for the future care and Government of the said church, and two other persons to be auditors of the accounts of the said vestry; and the trustees last in office aforesaid shall upon the lastmentioned vestry entering upon their said office surrender and give up to the said lastmentioned vestry all documents, books, plans, papers, and vouchers relating to the said church and to the administration of the funds thereof and all sums of money in their custody, possession, or control arising from and belonging to the church fund. Election of new vestry.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 10—1845.

Powers of new vestry.

38. And be it enacted that the said vestry so from time to time constituted and elected by such inhabitant householders as aforesaid shall and may have and exercise all the same powers, rights, and duties respecting the said church and the care and government thereof, and the administration of the funds, rents, and revenues thereof and all other matters and things relating to the same as shall and may be exercised by the trustees and vestry or either of them, constituted and elected by such shareholders as aforesaid under and by virtue of any of the provisions of this Ordinance, in so far as the said powers, rights, and duties shall be applicable to the then existing circumstances of the said church.

Public ordinance.

39. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance and shall be judicially taken notice of as such by all Judges, Magistrates, and others without being specially pleaded.

Time of taking effect.

40. And be it enacted that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

No. 8.] [April 7, 1845

Ordinance for removing an objection to the validity of a certain Jury List.

[Temporary. Lapsed.]

No. 9.] [April 15, 1845.

Ordinance for providing a proper Jury to serve in the Circuit Court for the District of Swellendam.

[Temporary. Lapsed.]

No. 10.—Sd. P. Maitland.] [May 14, 1845.

Ordinance for punishing the Concealment of the Birth of Children.

Preamble.

WHEREAS the concealment by mothers of the birth of their children is a highly suspicious and reprehensible proceeding; And whereas such concealment is not by the law of this Colony deemed to be a crime; And whereas it is expedient that such concealment should be constituted and declared to be a crime: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof that if any woman shall be delivered of a child and shall by secret burying or otherwise disposing of the dead body of the said child endeavour to conceal the birth thereof, every such woman so offending shall be deemed to be guilty of the crime of concealing the birth of her child, and being convicted thereof shall be liable to be

Definition of offence of concealing child-birth.

Penalty.

Digitised by the University of Pretoria, Library Services, 2016

imprisoned with or without hard labour for any term not exceeding five years.

Proof of time of child's death not necessary.

2. And be it enacted that upon the occasion of the trial of any person charged with the commission of the said crime, it shall not be necessary to prove whether the child died before, at, or after its birth.

Conviction of concealment on indictment for murder.

3. And be it enacted that if any woman tried for the murder of her child shall be acquitted thereof, it shall be lawful for the jury by whose verdict she shall be acquitted to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof; (but it shall not be necessary to prove whether the said child died before, at, or after its birth); and thereupon it shall and may be lawful for the Court to pass upon her any such sentence as might have been lawfully passed upon her if she had been convicted upon an indictment for the crime of concealing the birth of her child.

Time of taking effect.

4. And be it enacted that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

No. 11.] [May 14, 1845.

Ordinance for Repealing the 1st Section of Ordinance No. 4 of 1843.

[Repealed by Ordinance No. 15, 1845.]

No. 12.] [Aug. 27, 1845.

Ordinance for establishing the Roman-Dutch Law in and for the District of Natal. (1)

No. 13.] [Oct. 7, 1845.

Ordinance for applying a Sum not exceeding £161,527 13s. 5d. for the service of the year 1846. [Spent.]

No. 14.] [Oct. 16, 1845.

Ordinance for erecting a District Court in and for the District of Natal.

---

[1] Natal was constituted a distinct Government by Letters Patent of 30th April, 1845, but the Legislature of this Colony continued to pass laws for "the district of Natal," until, by proclamation of 25th July, 1848, a separate Legislative Council was constituted.

Digitised by the University of Pretoria, Library Services, 2016

No. 15.—Sd. P. Maitland.] [December 1, 1845.

Ordinance for repealing Ordinances No. 4, 1843, and No. 11, 1845, and for making other provisions in their stead.[1]

Preamble.

WHEREAS a certain Ordinance was made and passed in this Colony bearing date the 4th day of May, 1843, and numbered 4, 1843, entituled "Ordinance for establishing the validity of certain Writings Testamentary and Powers of Attorney executed without being witnessed as by law required and for other purposes." And whereas a certain other Ordinance was made and passed in this Colony bearing date the 14th day of May, 1845, and numbered 11, 1845, entituled "Ordinance for repealing the first section of Ordinance No. 4, 1843": And whereas it is expedient to repeal both of the said Ordinances and to make other provisions in their room and stead: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the two certain Ordinances aforesaid shall be repealed and the same are hereby repealed accordingly.

Repeal of former ordinances.

Repeal of law requiring seven witnesses to execution of will.

2. And be it enacted that every law in usage in force within this Colony before and down to the first day of January, 1844, by reason whereof any wills or other testamentary writings, or any powers of attorney were or might have been deemed or taken to be inoperative or defective unless the execution of the same were duly witnessed by seven or some other number of competent witnesses shall be and the same are hereby declared to be repealed in regard to all wills or other testamentary writings or powers of attorney made or executed upon or after the said first day of January, 1844.

Manner of attestation and number of witnesses.

3. And be it enacted that no will or other testamentary writing and no power of attorney made or executed upon or after the said first day of January, 1844, which will or other testamentary writing or power of attorney if made before the said first day of January, 1844, would in order to be valid have required to be witnessed by seven or some other number of competent (2) witnesses shall be valid unless it shall be or shall have been executed in the manner hereinafter mentioned: that is to say, it shall be or shall have been signed at the foot or end thereof if a will or other testamentary writing by the testator or by some other person in his presence and by his direction, and if a power of attorney, by the person executing the same, or by some other in his presence and by his direction, and such signature shall be or shall have been made or acknowledged by the testator or person executing the power of attorney, as the case may be, in the presence of two or more competent witnesses present at the same time, and such witnesses shall attest and subscribe or shall have attested and subscribed the will

[1] This Ord. is repealed so far as it relates to Powers of Attorney by Act 10 of 1879. See Procl. 12th July, 1822.

[2] See Act 22, 1876.

Digitised by the University of Pretoria, Library Services, 2016

or power of attorney as the case may be in the presence of the person executing the same; and where the instrument shall be or shall have been written upon more leaves than one the party executing the same and also the witnesses shall sign or shall have signed their names upon at least one side of every leaf upon which the instrument shall be or shall have been written.

Signatures on each leaf.

4. And be it enacted that nothing in this Ordinance contained shall be deemed or taken to extend to or affect any will or other testamentary writing or power of attorney made or passed or to be made or passed before any notary and witnesses, or to any codicil made by virtue or in pursuance of any power reserved in that behalf in any such last mentioned will or testamentary writing, nor to any instrument whatever, testamentary or otherwise, made and executed at any time before the said 1st day of January, 1844.

Exemption as to notarial instruments and instruments executed before 1844.

5. And be it enacted that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

Time of taking effect.

No. 16.—Sd. P. Maitland.] [December 1, 1845.

Ordinance to amend the Ordinance No. 7, 1843, entituled "Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their room and stead." (1)

Preamble.

WHEREAS by the fifth section of the Ordinance No. 7, 1843, entituled "Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their room and stead," it is provided that the Governor of this Colony for the time being should have the right of filling up vacancies in the office of minister in congregations belonging to the Dutch Reformed Church in South Africa of which congregations the minister for the time being receives a salary from the Colonial Government: And whereas it is expedient that the said right should be vested in Her Most Gracious Majesty the Queen, her heirs and successors: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the fifth section of the said Ordinance shall be repealed and the same is hereby repealed accordingly.

Repeal of Section 5 of Ordinance No. 7, 1843.

2. And be it enacted that in every case in which a vacancy shall occur in the office of minister of any congregation belonging to the said Dutch Reformed Church of which congregation the minister for the time being receives a salary from the Colonial Government, Her Majesty the Queen, her heirs and successors shall have and possess and shall exercise in whatever manner she or they shall

Appointment by the Queen of minister receiving salary from Government.

---

[1] But see Act 5, 1875.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 16-1845.

deem the best for the vacant congregation the sole and unrestricted right of filling up such vacancy by the appointment of whatever individual she or they may select from amongst the number of such ministers as shall by the rules and regulations of the said church for the time being be competent to be appointed to supply vacancies in the ministry thereof.

Time of taking effect.

3. And be it enacted that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

No. 17.] [Dec. 4, 1845.

Ordinance for determining the Qualification of Jurors in the District of Natal.

No. 1.] [Jan 7, 1846.

Ordinance for the Regulation of the Post Office and Postage. [Repealed by Act 4, 1882]

No. 2.] [Jan. 7, 1846.

Ordinance for creating a Deeds Registry Office for the District of Natal.

No. 3.] [Jan. 7, 1846.

Ordinance for regulating the Payment of Transfer Duties in the District of Natal.

No. 4.] [Jan. 7, 1846.

Ordinance for fixing the Age of Majority within the District of Natal.

No. 5.] [Jan. 7, 1846.

Ordinance for creating Field-cornets and Constables in and for the District of Natal.

No. 6.] [Jan. 7, 1846.

Ordinance for creating Justices of the Peace within the District of Natal.

Digitised by the University of Pretoria, Library Services, 2016

No. 7.—Sd. P. Maitland.] [Feb. 16, 1846.

Ordinance for regulating the manner of Summoning for Land-rent in cases of Desertion of the Land. (1)

Preamble.

WHEREAS it is expedient to amend the law relative to the manner of summoning persons having or claiming title to any place or property abandoned, deserted, or left derelict, in regard to which any arrear of land-rent shall be due to the Colonial Government, as well as all persons by whom any purchase money of lands or erven bought by them from the said Government, shall be due and owing to the said Government: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all laws and customs heretofore in force in this Colony, in so far as the same are repugnant to or inconsistent with, any of the provisions of this Ordinance shall be and the same are hereby repealed accordingly.

Repeal of former laws.

Citation of debtors for land-rent by edictal summons.

2. And be it enacted that every person having or claiming title to any such place or property as aforesaid, shall be, and be deemed to have been, duly summoned, within the intent and meaning of the eleventh section of Ordinance No. 9, 1844, entituled "Ordinance for facilitating the Recovery of Land-rents in this Colony," when and as often as one edictal citation, granted by the Supreme Court, and directed to the owner, or supposed owner of the place or property in question, and all others having or claiming title thereto, shall have been published in the *Government Gazette* of this Colony for some space of time, to be fixed by the said Court, not less than three weeks and not exceeding three months; and if no person having or claiming title as aforesaid shall appear at the time and place in such citation limited and fixed for such appearance, then all persons having or claiming title as aforesaid shall be deemed to have made default, and thereupon the same consequences, in all respects shall attach as if default had been made after three or any other number of edictal citations, had successively been granted and published in the usual and customary manner.

Edictal summons for debtor of purchase money.

3. And be it enacted, that in every case in which it shall be necessary to summon by edict any person by whom any amount of such purchase money as aforesaid shall be due and owing for the recovery of such amount, such person shall be, and be deemed to have been, duly summoned, to and for all intents and purposes of law, when and as often as one edictal citation, as in the second section of this Ordinance mentioned, shall have been published as in the said second section stated, precisely as if such purchase money were so much land-rent.

Non-application to Natal.

4. And be it enacted that nothing in this Ordinance contained shall extend to the district of Natal.

Time of taking effect.

5. And be it enacted that this Ordinance shall commence and take effect from and after the date of promulgation thereof.

[1] See Ord. 9, 1844, and note.

Digitised by the University of Pretoria, Library Services, 2016

No. 8—Sd. P. Maitland.] [Feb. 16, 1846.

Ordinance for authorising the Appointment of a Vestry and Churchwardens for the Episcopal Church about to be erected at Graaff-Reinet.

Preamble.

WHEREAS it is expedient that the inhabitants of Graaff-Reinet and the parochial limits thereof being members of and holding communion with the United Church of England and Ireland as there by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with the Episcopal Church about to be erected at Graaff-Reinet, and that the said vestry and churchwardens after having been duly appointed should possess certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said United Church of England and Ireland: And whereas on the appointment of the said vestry and churchwardens it is expedient that the committee and secretary at present constituted should cease and determine: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that on the first Wednesday in the month next but one ensuing after the promulgation of this Ordinance, and annually afterwards on the same day, a general meeting of the male inhabitants of Graaff-Reinet aforesaid and of the parochial limits thereof being of the age of twenty-one years or upwards and members of and holding communion with the United Church of England and Ireland as there by law established shall be holden at Graaff-Reinet, fourteen days' notice whereof, shall be given by the minister of the said church for the time being by promulgation during divine service and by notice posted on the doors of the church or by advertisement in one of the public papers of this Colony for the purpose of electing a vestry, and it shall and may be lawful for the inhabitants as aforesaid or a greater part assembled at such meeting to elect from among themselves any number of persons not exceeding eight, in manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereinafter mentioned.

Annual election of vestry.

Auditors.

2. And be it enacted that two other persons not being members of the said vestry shall likewise be elected at such meeting as aforesaid to be auditors of the accounts of said vestry.

Qualification of members of vestry.

3. And be it enacted that every male inhabitant householder being of the age of twenty-one years or upwards and a member of and holding communion with the church aforesaid and residing at Graaff-Reinet or within the parochial limits thereof shall be eligible to be a member of the said vestry: Provided, always that no person shall be entitled to vote at such election or be eligible

Digitised by the University of Pretoria, Library Services, 2016

to be chosen a member of the vestry or an auditor of accounts thereof so long as (legal demand having previously been made) any just claim had upon him by the said vestry as such shall remain unsatisfied.

List of eligible persons.

4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing section shall be prepared by the officiating minister so long as there are no churchwardens appointed, and when churchwardens shall have been appointed as is hereinafter provided, then by the minister and churchwardens conjointly, and shall be open for inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place.

Manner of election.

5. And be it enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitants as aforesaid respectively and containing the names of the persons for whom they vote to be elected as vestrymen and as auditors.

Chairman.

6. And be it enacted that the officiating minister for the time being shall preside as chairman at the meetings of the said vestry, provided that in his absence from any such meeting one of the other members shall be chosen to act as chairman; and in case the votes of the said vestry be equally divided the chairman or acting chairman shall have a casting vote in addition to his own.

Quorum.

7. And be it enacted that five members of the said vestry or four members besides the chairman shall form a quorum and shall be competent to perform all matters and things which may be done by the vestry under and by virtue of any of the provisions of this Ordinance.

Power to make, alter, &c., rules.

8. And be it enacted that it shall and may be lawful for the said vestry so from time to time constituted and appointed to frame, adopt, alter, or rescind such rules, orders, and by-laws as may to them appear expedient for their guidance in the discharge of their duties and for more effectually executing the provisions of this Ordinance, and also to take such order for the management of the said church as shall to them seem expedient; provided that the same rules, orders, or by-laws contain nothing repugnant to law or to the tenor of this Ordinance or to the customs and usages of the United Church of England and Ireland as there by law established.

Cessation of committee.

9. And be it enacted that the said committee shall upon the appointment of the said vestry deliver over to the said vestry all deeds, books, and papers relating to the church in their custody or power and all sums of money in their possession or control; and the office and duties of the said committee shall thereupon cease and determine.

Powers of vestry as to administration, &c.

10. And be it enacted that the said vestry as from time to time constituted and elected by such members of the said church as aforesaid shall and may have and exercise the whole power and

Digitised by the University of Pretoria, Library Services, 2016

Ord. 8—1846.

rights and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof, and all other matters and things relating to the same.

As to payment of money, contracts, &c.

11. And be it enacted that it shall and may be lawful for the said vestry for the time being to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to their order by virtue of any of the provisions of this Ordinance, and in their own names to make and enter into, perform and execute, or compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for the good of the church aforesaid.

Manner of bringing actions by vestry.

12. And be it enacted that it shall and may be lawful for the said vestry as such from time to time to commence and maintain all such suits and actions in any competent Court in this Colony as they shall deem necessary in performance of the trust reposed in them against any person whatsoever; and all such suits and actions shall and may be brought by them in the name of "The Vestry of St. James' Church," without specifying the christian or surnames of the members of the vestry and no action shall abate by reason of the death or removal or going out of office of any individual members thereof.

Actions against vestry.

13. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or other matter or thing made or entered into or performed by the said vestry in the execution of the said trust or shall arise or accrue to any person whatsoever against the said vestry shall be brought by such person in manner and in name aforesaid and not against any individual member of the said vestry.

Accounts of vestry.

14. And be it enacted that the said vestry shall keep an account wherein they shall enter money received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times. And the said account together with any report of the auditors or either of them thereon shall be laid before the members holding communion with the said church at the general annual meeting aforesaid, and published if requisite for general information.

Churchwardens.

15. And be it enacted that the said vestry shall forthwith on their appointment or as soon as conveniently may be choose out of their own number two persons to be churchwardens, who shall perform and execute all lawful acts, and matters, and things for the good order and decency of behaviour to be kept in the said church by the congregation thereof, and for preserving to all persons their rights in the pews and sittings thereof, and providing the said church (by order and at the charges of the said vestry) with necessary and customary furniture for the performance of divine service, and for

Digitised by the University of Pretoria, Library Services, 2016

Ord. 8–1846.

keeping the same clean and in proper repair, and for keeping the burial-ground attached to the said church in decent order and properly fenced, and for discharging all other duties which usually devolve on churchwardens in the United Church of England and Ireland so far as the same may be applicable to this Colony.

Charitable collections, &c.

16. And be it enacted that the said churchwardens shall keep an exact account of all collections of money made from time to time in the said church for any charitable or religious purposes connected with the said church or congregation, and the said churchwardens together with the officiating minister for the time being shall faithfully administer the same or see that they be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same. And the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations as the general church fund and accounts of the vestry.

Continuance in office of churchwardens.

17. And be it enacted that the churchwardens appointed as above shall continue in office until after the next general annual election of the vestry is completed when they shall deliver up to the said vestry all accounts of such charities as aforesaid duly audited, together with all vouchers, sums of money, or securities held by them in virtue of their office, and the vestry shall then proceed to nominate other churchwardens for the ensuing year: Provided, always, that the churchwardens thus vacating office shall be eligible to be re-elected in case they are continued as members of the vestry.

Vacancy in vestry

18. And be it enacted that in case any member of the vestry shall die or desire to resign or shall be removed or for any other lawful cause shall vacate his office it shall and may be lawful for the surviving or other members of the said vestry to decide whether a special general meeting shall be called for the purpose of electing another member in the place of the one so dying or desiring to resign or being removed, or whether his place shall remain vacant until the next general annual meeting to be holden as aforesaid: Provided, always, that in case the members of the said vestry decide that a special general meeting shall be holden for the purpose aforesaid, the same notice shall be given thereof and the same proceedings shall be observed thereat as in case of the general annual meeting is provided.

Free sittings.

19. And be it enacted that there shall be set apart in the said church two free pews, one to be allotted to the use of the minister and the other to that of the churchwardens, and such other pews as the vestry for the time being may deem necessary as free sittings for strangers and poor persons.

Letting of pews by vestry.

20. And be it enacted that all the pews and sittings in the said church with the exception of these allotted and reserved as afore-

Digitised by the University of Pretoria, Library Services, 2016

Ord. 8—1846.

said shall and may be let by the vestry by the year or for any other shorter period to any person desiring to take the same, at a rent to be affixed to them respectively by the vestry and payable at such times and in such manner as shall be appointed by the vestry; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hindrance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable.

Proceedings in case of arrear pew-rents.

21. And be it enacted that it shall and may be lawful for the vestry whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same is due and payable to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and there upon it shall and may be lawful for the said vestry to re-enter into possession of the said pew for the purposes of this Ordinance without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive the said vestry from recovering the amount of such rent in arrear by action in any competent Court.

Pew-book.

22. And be it enacted that the said churchwardens acting as aforesaid shall keep a book to be called the "Pew-book," wherein they shall enter or cause to be entered the name of every person applying for either a pew, sitting, or sittings in the said church together with the date of such application; and that on any pew, sitting, or sittings becoming vacant, either by death, resignation, removal, or in any other way, or in case of the erection of any new pew or pews or seats in any part of the said church, the churchwardens for the time being shall forthwith apprise the applicant whose name shall stand first on the pew-book of the vacancy so caused or of the new pew, pews, or seat so erected, and shall offer the said pew, seat or seats to such applicant on condition that he or she shall covenant and engage to pay the rent of the same affixed and made payable as hereinbefore mentioned; and that the said pew, sitting, or sittings so becoming vacant, or the said pew or pews, seat or seats so newly erected shall not be offered to any person whatsoever whose application for the same or any portion of the same shall bear a later date until it shall have been declined by every applicant preceding such person on the pew-book.

Burials.

23. And be it enacted that no burial shall take place within or under the said church, but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted or which may hereafter be consecrated and allotted to the said church for that purpose.

Monuments and vaults.

24. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to

Digitised by the University of Pretoria, Library Services, 2016

permit any monument to be erected or placed in such convenient parts of the said church or of the enclosed ground about the same or in the burial-ground belonging thereto, or vaults to be dug and made in the said burial-ground, upon payment to the fund of the said church for such permission of such reasonable fee as shall be affixed by the said vestry for such permission according to the term thereof. Ord. 9—1846.

25. And be it enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or digging or making any vaults in the said burial-ground by and with such permission as aforesaid to have, maintain, and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever: Provided, always, that in case any such monument as aforesaid is suffered to fall into decay and the person or persons to whom the said monument appertains neglect to repair the same it shall and may be lawful after a general notice of such intention to remove the same. Ownership in vaults and monuments.

26. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance and shall be judicially taken notice of by all the Judges, Magistrates, and others without being specially pleaded, and shall be of full force and effect after the promulgation thereof. Public ordinance.

No. 9.—Sd. P. Maitland.] [February 28, 1846.

Ordinance for the better Preservation of the Public Roads and the Prevention of Accidents and Injuries thereon.(1)

WHEREAS the proclamation of His Excellency the Right Honourable Du Pré, Earl of Caledon, Viscount Alexander and Baron Caledon of Caledon, &c., &c., &c., the then Governor of this Colony, bearing date the 23rd of June, 1809, for providing for the safety of travellers and other the like purposes, has become in some respects insufficient to secure the ends intended; and it is therefore expedient to repeal the same and to make other provisions in its room and stead: And whereas the substance of the Ordinance No. 79 of 1830, entituled "Ordinance for preventing the practice of riding or driving carelessly or furiously on the frequented parts of the Public Roads of this Colony," may with advantage, be incorporated in the provisions of this Ordinance, and it is therefore expedient to repeal the same: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the proclamation aforesaid and the Ordinance aforesaid shall respectively be repealed, and the same are hereby repealed accordingly. Preamble. Repeal of former laws.

[1] See Acts, 23, 1858; 24, 1858; 3, 1859; 13, 1863; 10, 1864; 32, 1868; 5, 1871; 6, 1873; 26, 1884; 30, 1885; 41, 1887; 7, 1889; 40, 1889; 24, 1890; 38, 1892, 27, 1894.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1846.

Owner's name on wagon-plate.

2. And be it enacted that the owner of every wagon or cart shall paint or cause to be painted in one or more straight line or lines upon some conspicuous part on the right or off-side of his wagon or cart or upon some board or plate firmly affixed to such side the Christian name and surname by which he is usually called and distinguished, together with the name of the district in which he resides, in legible letters not less than one inch in height, and shall continue the same thereupon so long as such wagon or cart shall be used upon any public road in this Colony; and every owner of any wagon or cart who shall use or allow the same to be used on any public road without having his name and district of residence painted thereon as aforesaid or who shall suffer the same to become illegible or who shall paint or cause to be painted any false name or district of residence shall upon conviction forfeit any sum not exceeding forty shillings. Provided that nothing in this section contained shall be construed to extend to any wagon or cart on springs and used solely for the conveyance of passengers or other persons.

Penalty

Misconduct of driver.

3. (1) And be it enacted that the driver of any wagon or cart or other carriage which shall by the negligence or misbehaviour of such driver cause any hurt or damage to any person or cattle or to any other vehicle or to any goods conveyed in any other vehicle passing or being upon any public road; or of any wagon, cart, or other carriage which when meeting or being followed upon any public road by any other wagon, cart, or other carriage shall not together with the cattle drawing the same keep upon the left or near side of the road; or of any wagon, cart, or other carriage, which shall wantonly or unnecessarily prevent, hinder, or interrupt the free and rightful passage of any other wagon, cart, or carriage; or of any wagon, cart, or other carriage which upon any public road within four miles of Cape Town or in any town or village for which town or village no municipal regulations for the prevention of negligent, careless, or furious driving shall be provided; or on any public road within the distance of two miles of any town or village other than Cape Town shall drive or be driven so negligently, carelessly, or furiously as to injure or endanger the person or property of any other person; or of any wagon, cart, or other carriage which shall having the oxen or other cattle used for drawing the same unyoked or detached therefrom be left (unless by reason of accident or other unavoidable cause) standing upon any part of the road aforesaid between Cape Town and Simon's Town or any part of the new road aforesaid between Cape Town and its terminus at the Eerste River, or of any wagon, cart, or other carriage the oxen or other cattle belonging to which or any of them shall be suffered while attached thereto to lie down to rest upon any part of either of the two last mentioned roads

Side of road.

Obstruction.

Furious driving.

Unyoking on certain parts of road.

[1] See § 204 of Act 40, 1889, and § 5 sub-sections 15 and 17, also sub-sections 1, 2, and 3, of § 7, Act 27 of 1882, and § 2, Act 13 of 1886.

Digitised by the University of Pretoria, Library Services, 2016

respectively, shall upon conviction forfeit any sum not exceeding forty shillings, Provided, always, that if the owner of any such wagon, cart, or other carriage shall be in or with the same when any contravention of this section shall be committed such owner and not the driver shall incur and be liable to the said forfeiture. Penalty.

Duty of leader of oxen.

4. (') And be it enacted that in case any wagon or cart being drawn by any number of oxen more than two shall be in motion upon any part of the public road from Cape Town and Simon's Town lying between Cape Town and the eighth milestone upon the said road or upon any part of the new road over the Cape Downs leading to or towards the interior lying between Cape Town and the fourth milestone from Cape Town upon the said road or upon any part of the road from Cape Town to and through the municipality of Green Point as far as where the said road intersects the limit of the said municipality farthest from Cape Town without having some person actually leading in the usual manner the foremost pair of oxen, or in case any such wagon or cart being upon any part of the road first in this section mentioned beyond the eighth milestone aforesaid or upon part of the road secondly in this section mentioned beyond the fourth milestone aforesaid which shall not, while approaching closely to and passing any other wagon, cart, or carriage followed or while being passed by any other wagon, cart, or carriage that is proceeding in the same direction, have some person actually leading the foremost pair of oxen, any person at the age of sixteen years or upwards employed and engaged to lead the said oxen and who shall be found wilfully or negligently not leading the same shall upon conviction forfeit any sum not exceeding forty shillings. Penalty.

Penalty on owner who has not employed leader.

5. (1) And be enacted that the owner of every such wagon or cart as in the last preceding section mentioned which shall be in motion aforesaid without such leading as aforesaid who shall not have employed and engaged some person of the age of sixteen years and upwards to act as leader in the usual manner shall upon conviction forfeit any sum not exceeding forty shillings. Provided, also, that when and as often as no person of the age last mentioned shall be discovered with or near such wagon or cart who shall confess himself, or shall be otherwise shown to be employed and engaged to act as such leader it shall be deemed and taken *primâ facie* that no such person has been so employed or engaged, and the owner aforesaid shall be liable unless he shall prove that some such leader as aforesaid was actually engaged and employed, in which case he shall be acquitted.

Recovery of penalties.

6. And be it enacted that all fines, penalties, and forfeitures imposed by this Ordinance shall be recoverable in the Court of any Resident Magistrate without regard to the district in which the same shall have been incurred; and in case any offender shall

[1] See footnote to sec. 3.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1846.

not upon conviction pay the sum awarded such Magistrate is hereby authorised to commit him to prison, there to be kept to hard labour should the said Magistrate so order for any term not exceeding six weeks, unless the sum awarded shall be sooner paid or recovered. Provided, always, that it shall be competent for such Magistrate notwithstanding such committal to prison as aforesaid to authorise by warrant under his hand the amount adjudged to be forfeited (together with such costs if any as may be awarded under and by virtue of the forty-first section of this Ordinance) to be levied by distress and sale of the goods of the offender. And provided, also, that when and as often as any of the goods of the offender shall be within any district other than that of the convicting Magistrate, the Resident Magistrate of the district in which such goods shall be shall endorse any such warrant as aforesaid, after which it shall and may be executed in like manner as if the same had been issued by the Magistrate so endorsing it; and provided, also, that nothing in this section contained shall be construed so as to affect or impair the force and validity of the eighteenth or thirty-fifth or of the concluding clause of the thirtieth section of this Ordinance. And provided, also, that the keeper of every public prison shall receive into his charge and custody the body of any person committed by any Resident Magistrate whether of the district in which such prison is situate or not to be imprisoned under the provisions of this Ordinance for any contravention of the same.

Appointment by Governor of road magistrates.

7. And whereas it is expedient in order to prevent delay inconvenience, and expense that Magistrates should be created having in regard to such fines, penalties and forfeitures as aforesaid a certain concurrent jurisdiction with such Resident Magistrates as aforesaid: Be it therefore enacted that it shall and may be lawful for the Governor of this Colony from time to time to nominate and appoint in such places as he shall deem expedient so many fit and proper persons as he shall select, to be called and termed Road Magistrates, who shall severally and respectively have jurisdiction to try and determine all cases of offences alleged to have been committed in contravention of any of the provisions of the second, third, and fourth sections of this Ordinance and all other offences created by this Ordinance, in regard to which such Road Magistrates shall be expressly invested with jurisdiction, and to impose all fines, penalties, and forfeitures consequent thereon, and if it need be award imprisonment in as full and ample a manner as is hereinbefore provided in regard to the Court of Resident Magistrates.

Their jurisdiction.

Oaths of road magistrate.

8. And be it enacted that every such Road Magistrate shall before acting as such take the oath of allegiance and the oath of office in the first schedule hereunto annexed set forth, which oaths respectively any Resident Magistrate or Justice of the Peace is hereby empowered to administer.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1846.

Summary exercise of jurisdiction.

9. And be it enacted that every such Road Magistrate as aforesaid shall act in and exercise the jurisdiction aforesaid in a purely summary manner, that is to say, when and as often as any person or persons shall under and by virtue of the provisions in that behalf hereafter contained bring or cause to be brought before such Road Magistrate at any place where he shall happen to be any wagon, cart, or other carriage, or owner or driver thereof, and shall complain that any offence against the provisions of the second or third sections of this Ordinance has been by it or by means of it committed such Road Magistrate shall record such complaint and shall forthwith hear and determine the same.

Record book of complaints, &c.

10. And be it enacted that every complaint shall if possible before but at all events as soon as may be after the determination of the case be recorded by the Road Magistrate by entering in separate columns in a record book to be kept for that purpose the name and residence of the person complaining, the name and residence if known of the owner of the wagon, cart, or other carriage, by or by means of which the alleged offence has been committed, the description of such alleged offence, and the day of the hearing of the same.

Judgment.

11. And be it enacted that every such Road Magistrate as aforesaid shall also record in a separate column in the said record book the judgment given by him in regard to any such complaint as soon as the same shall have been pronounced.

Execution of judgment.

12. And be it enacted that in every case in which any such Road Magistrate shall see cause in regard to any such complaint to convict the party offending, being the owner of the wagon, cart, or other carriage, it shall and may be lawful for him in case the fine, penalty, or forfeiture imposed shall not be paid forthwith or in case sufficient security for the payment of the same shall not be given to issue a warrant under his hand directed to any person whom he shall name therein, authorising such person to seize and attach any property, matter, or thing being in or upon such wagon, cart, or other carriage, sufficient to satisfy the exigency of the warrant, or failing such to seize and attach so many of the oxen or other cattle belonging to or drawing the wagon, cart, or other carriage in regard to which such conviction shall have been had as may be deemed sufficient to satisfy the exigency of the warrant, and which number shall be specified in such warrant.

Form of warrant.

13 And be it enacted that every such warrant shall in substance and effect be agreeable to the form in the second schedule hereunto annexed mentioned and set forth.

Manner of proceeding on attachment of cattle.

14. (1) And be it enacted that when and as often as any oxen or other cattle shall be seized and attached under any such warrant as aforesaid they shall by the person named in the said warrant, be forwarded to the nearest public pound, the keeper of which is

[1] See Act 15, 1892, § 24.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1846.

hereby required to receive the same, and at or as soon as may be after the expiration of ten days from the day of such seizure and attachment shall be publicly sold for ready money by the keeper of such pound (who shall not require any licence as an auctioneer in order to sell the same) to the highest bidder; provided that a notice of such sale shall be affixed by such pound-keeper at such pound and such other place if any as such Road Magistrate may order three days at least before the sale. And provided also that if the amount mentioned in any such warrant together with the reasonable expenses of seizing and sending such oxen or other cattle to the pound and the legal pound charges be sooner paid and satisfied to the Road Magistrate convicting, to be by him applied according to law, the said Magistrate shall grant his order for the restoration of the said oxen or other cattle, which shall be restored accordingly.

Application of proceeds.

15. (1) And be it enacted that the keeper of every pound by whom any such oxen or cattle shall be sold as aforesaid shall forthwith pay and hand over to the Road Magistrate convicting or any person by him authorised to receive the same the amount which shall have been realized by such sale; deducting only his legal and usual charges in regard to similar cattle impounded for the same time for other causes; and if after the payment of such charges and the reasonable expenses of the persons mentioned in such warrant as aforesaid and the amount of the fine, penalty, forfeiture imposed any surplus shall remain the same shall be paid upon demand to the owner of the oxen or other cattle seized and sold.

Manner of proceeding on attachment of property other than cattle.

16. And be it enacted that when and as often as any property, matter, or thing other than cattle shall be seized and attached under and by virtue of the provision in that behalf in the twelfth section of this Ordinance contained, the same shall be sold publicly and for ready money by the person to whom the warrant aforesaid shall be directed or by some other person to be approved of by the Road Magistrate issuing the same to the highest bidder at such place as such Magistrate shall direct for the sale thereof. Provided that a notice of every such sale shall be affixed at such place or places as the said Magistrate shall deem requisite seven days at least before the day appointed for such sale, which shall not be earlier than the fourteenth day from the day of the seizure. And provided, also, that the person conducting such sale shall pay and hand over to the Road Magistrate, to be applied as in and by the forty-second section of this Ordinance is directed the whole amount of the proceeds realized thereby less such fee or charge not exceeding seven shillings and six pence as the said Magistrate shall deem reasonable and allow, and any surplus shall upon demand be paid to the person convicted. And provided, also, that if such last mentioned person shall pay or cause to be paid at any time

[1] See Act 15, 1892, § 24.

Digitised by the University of Pretoria, Library Services, 2016

before such sale as aforesaid the amount of the fine imposed, together with a fee of three shillings and six pence for the person who shall have made seizure the property seized shall be restored.

Imprisonment of driver on non-payment of fine.

17. And be it enacted that in every case in which the driver of any wagon, cart, or carriage shall be convicted by any Road Magistrate of contravening any of the provisions of the third section of this Ordinance, such Magistrate, in case the fine imposed shall not be forthwith paid and it shall appear that the offender may be committed to prison without thereby depriving the wagon, cart or other carriage of which he shall be in charge of a person necessary for the safe conduct of the same, shall forthwith commit such offender to prison, and his warrant for that purpose shall in substance and effect be agreeable to the form in the third schedule of this Ordinance mentioned and set forth.

Manner of proceeding when the immediate imprisonment of driver would endanger the safety of the master's property.

18. And be it enacted that in every case in which it shall appear that to commit to prison forthwith any driver convicted as in the last preceding section mentioned would have the effect of depriving the wagon, cart, or carriage of which he was in charge of a person necessary for the safe conduct of the same the Magistrate convicting (whether a Resident Magistrate or a Road Magistrate) shall instead of forthwith committing the offender cause to be seized and detained in some safe place some sufficient property, matter, or thing in, upon, or belonging to such wagon, cart, or carriage, by way of caution or security for the payment of the fine imposed or otherwise for the reappearance of such offender at some reasonable time to be fixed by the said Magistrate for such payment or reappearance. And when and as often as any property, matter, or thing shall be seized and detained under the provisions of this section the Magistrate causing such seizure or detention shall deliver to the person convicted a certificate which shall in substance and effect be agreeable to the form in the fourth schedule hereunto annexed, and shall allow him to depart. And in case the fine imposed shall not be paid, or failing that in case the offender shall not again appear on the day limited for such purpose in the said certificate, the property or thing seized and detained shall be treated and considered as if seized and attached under a warrant of the Magistrate granting such certificate against the goods and chattels of the offender, and shall be sold in case such Magistrate be a Resident Magistrate, by the messenger in manner and form as by the rules of his Court in that behalf provided, and in case such Magistrate be a Road Magistrate by some person by him appointed for that purpose in manner and form as is hereinbefore in the sixteenth section in this Ordinance provided. Provided, always, that in case the fine imposed be paid or the offender again appear on or before the day in and by the said certificate limited for that purpose the property, article, matter or thing detained shall be restored.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9 - 1846.

Payment by master of fine in last section,

or delivery up of offender.

19. And be it enacted that the owner of any property, matter, or thing seized or detained under the circumstances in the last preceding section mentioned, shall be authorised either to pay the fine imposed for and on account of the offender, and to retain or recover the amount thereof from such offender, or otherwise to convey such offender to the Magistrate granting the certificate aforesaid, so as to produce such offender at any time before the expiration of the day limited in such certificate for that purpose. And whenever any such offender shall be so produced before any Resident Magistrate or Road Magistrate and shall not pay the fine imposed such Resident Magistrate or Road Magistrate shall forthwith commit him to prison, and the warrant to be issued by any Resident Magistrate for that purpose shall be in substance and effect agreeable to the form in the third schedule of this Ordinance mentioned and set forth.

Authority of persons seeing contraventions of this ordinance to compel offenders to appear before magistrate;

if within three miles.

20. And be it enacted that it shall and may be lawful for any person who shall witness or discover any contravention of the provisions of the second, third, or fourth sections of this Ordinance and for any other person whom he shall desire to assist him and shall be willing so to do to require and if necessary and practicable use all force necessary to compel the owner, driver, or other person or persons in charge of the wagon, cart, or other carriage by or by means of which such contravention shall have been committed forthwith to proceed with the wagon, cart, or other carriage in question and the oxen or other cattle belonging thereto to the residence or place of abode of whatever Resident Magistrate or Road Magistrate shall be or reside or be found nearest to the place where such wagon, cart, or other carriage shall be when so required to proceed as aforesaid, and such Resident Magistrate or Road Magistrate shall as soon as may be proceed to hear and determine the subject-matter of the complaint, and shall detain the wagon, cart, or other carriage in question to abide the issue of the investigation of the case. Provided that it shall not be lawful to require any such owner, driver, or other person as aforesaid to proceed to any Magistrate whose residence shall be distant three miles or upwards.

Manner of proceeding when offender cannot at once be taken before magistrate.

21. And be it enacted that when and as often as any person witnessing or discovering any such contravention as aforesaid shall by reason of distance or other impediment find it impossible or deem it inexpedient to require any such wagon, cart, or other carriage to proceed to any Resident Magistrate or Road Magistrate, and in every case in which the residence of the nearest Resident Magistrate or Road Magistrate shall be distant three miles or upwards from the place at which any such contravention as aforesaid shall be witnessed or discovered and there shall be nearer than the nearest Resident Magistrate or Road Magistrate any Justice of the Peace, field-cornet, or gaoler, the person so witnessing or discovering any such contravention as aforesaid may require and

Digitised by the University of Pretoria, Library Services, 2016

compel such wagon, cart, or other carriage to proceed to whoever of the last mentioned persons can be most conveniently reached, and such Justice of the Peace, field-cornet, or gaoler is hereby authorised and empowered at his discretion either to detain the said wagon, cart, or other carriage with the oxen or other cattle thereto belonging, for any period not exceeding twelve hours, in order that during that period the case concerning it or them may be disposed of by some Resident Magistrate or Road Magistrate, should it be practicable so to do, or such Justice of the Peace, field-cornet, or gaoler may in case the owner of such wagon, cart, or other carriage shall be in charge of or with the same take, but without fee or reward and as near as may be in the form in the fifth schedule to this Ordinance set forth, the bond, obligation, or recognizance of such owner with or without sureties as may be thought fit, conditioned for the appearance of such owner before any Resident Magistrate whom the said owner and the person complaining shall agree to have inserted, and in case they shall not so agree then before the Resident Magistrate whom the Justice of the Peace, field-cornet, gaoler, or constable shall under the circumstances deem the most convenient, upon some convenient day to be after consulting such owner and person complaining fixed by the Justice of the Peace, field-cornet, or gaoler, and which day shall be mentioned in such bond, obligation or recognizance, then to answer the charge to be preferred against him; and upon such owner entering into such bond, obligation, or recognizance the wagon, cart, or other carriage in question, and the oxen used for drawing the same shall be allowed to depart. But if in any case the owner of the wagon, cart, or other carriage brought as aforesaid to any Justice of the Peace, field-cornet, or gaoler should not in person be in charge of or present with the same then in place and stead of taking such bond, obligation, or recognizance as aforesaid such Justice of the Peace, field-cornet, or gaoler shall and may detain the alleged offender to answer the charge against him, provided his so doing would not have the effect of depriving any wagon, cart, or other carriage of a person necessary for the safe conduct of the same, but if such detention would have such effect such Justice of the Peace, field-cornet, or gaoler shall and may seize and detain and if he shall think fit forward to and place in the nearest public pound such a number of the oxen or other cattle belonging to such wagon, cart, or other carriage as he shall deem sufficient to meet and satisfy any fine, penalty, or forfeiture which may be imposed for or in respect of the charge preferred; or should it be practicable shall seize and detain instead some property, matter, or thing in, upon, or belonging to such wagon, cart, or other carriage, and shall then permit and suffer such wagon, cart, or other carriage to depart, having first delivered a written statement to the owner or person in charge thereof of the day on which the case will come on to be investigated in and by the Court of the Resident Magistrate.

Ord. 9—1846.

Bond for appearance of owner before magistrate.

Detention of offender in default of bond;

or seizure of sufficient property.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1846.

Provision for appearance of complainants on day of trial.

22. And be it enacted that in every case in which any wagon, cart, or other carriage shall be brought as aforesaid to any Justice of the Peace, field-cornet, or gaoler such Justice of the Peace, field-cornet, gaoler, or constable shall take down in writing the name and residence of every person bringing the same or causing the same to be brought, and may require every such person to enter into a bond, obligation, or recognizance with or without sureties and as near as may be in the form in the sixth schedule to this Ordinance set forth to appear and give evidence in the Court of the Resident Magistrate, or in case such Justice of the Peace, field-cornet, or gaoler shall propose to detain the wagon, cart, or other carriage with the oxen or other cattle as aforesaid in order that the case may be brought before any Road Magistrate then before such Road Magistrate, touching and concerning such alleged offence; and in case no sufficient security either personally or by sureties shall when required be given by some person or persons so to appear and give evidence the wagon, cart, or other carriage shall, unless the matter complained of in regard thereto shall be apparent upon the view thereof and the Justice of the Peace, field-cornet, or gaoler shall himself think fit to prosecute be permitted to pursue its journey.

Proceeding on frivolous and vexatious complaints.

23. And be it enacted that if in any case in which any wagon, cart, or other carriage shall be brought as aforesaid to any Justice of the Peace, field-cornet, or gaoler it shall appear to such Justice of the Peace, field-cornet, or gaoler that the complaint made is groundless and vexatious; the person preferring the same and neglecting to give sufficient security personally or by sureties to appear and give evidence as aforesaid may upon the request of the owner or person in charge of the wagon, cart, or other carriage in question be detained in custody until he shall be brought up before the Court of the Resident Magistrate, such owner or person in charge in his turn giving security to appear and give evidence in the said Court or in person abiding in order so to do when the said person or persons shall be brought before the same, which shall be as soon as reasonably may be.

Penalty on such complaints.

24. And be it enacted that any person who shall to any Resident Magistrate, Road Magistrate, Justice of the Peace, field-cornet, or gaoler prefer by virtue or under pretext of this Ordinance any groundless and vexatious complaint against any other person or any wagon, cart, or other carriage shall in addition to any civil action to which he may render himself liable forfeit upon conviction any sum not exceeding forty shillings.

Transmission of bonds for appearance to magistrate.

25. And be it enacted that in every case in which any Justice of the Peace, field-cornet, or gaoler shall take from any such owner as aforesaid (whether resident in the district in which any alleged offence shall have been witnessed or discovered or not) any such bond, obligation, or recognizance as aforesaid he shall forthwith forward the same to the Resident Magistrate mentioned

Digitised by the University of Pretoria, Library Services, 2016

therein, together with the name and residence of every person complaining as aforesaid, as also any bond, obligation, or recognizance which may have been entered into by any such last mentioned person to appear and give his evidence in the Court of the Resident Magistrate at the time fixed in the bond, obligation, or recognizance of such owner as aforesaid for the hearing of the case.

Report of detention of cattle, &c., to magistrate.

26. And be it enacted that in every case in which any oxen or other cattle or any property, matter, or thing shall have been detained or impounded under and by virtue of the provision in that behalf hereinbefore set forth, by any Justice of the Peace, field-cornet, or gaoler, such Justice of the Peace, field-cornet or gaoler shall transmit forthwith to the Resident Magistrate a report of what has been done in that behalf, mentioning the day named by him to the parties for the hearing of the case together with the name and residence of and the other matters and things concerning every person complaining, in manner and form as in the last clause of the last preceding section mentioned and set forth.

Duty of magistrate to sit for hearing of case on day fixed.

27. And be it enacted that it shall be the duty of every Resident Magistrate to whom any such bond, obligation, or recognizance as aforesaid or any such report as in the last preceding section mentioned shall be transmitted by any Justice of the Peace, field-cornet, or gaoler to sit for the hearing of the case to which it relates upon the day which has been specified for the hearing of the same, and thereupon in the presence of the parties interested should both attend or in the absence of such of them if any as may make default to pronounce such judgment as shall to justice appertain.

Excussion of property detained on conviction of owner.

28. And be it enacted that if the Court of the Resident Magistrate shall see cause to convict any owner in any case in which it shall have been reported as aforesaid that any oxen or other cattle or any property, matter, or thing seized and detained have been detained and impounded as aforesaid by any Justice of the Peace, field-cornet, or gaoler, the said oxen or other cattle shall and may be excussed in satisfaction of the judgment. Provided, always, that the pound fees or charges due and payable thereon shall be first deducted from the amount for which any such oxen or other cattle shall be sold; and that there shall be next deducted the expense of sending the same to pound by such Justice of the Peace; and that in case there shall then remain any surplus after deducting the fine, penalty, or forfeiture imposed such surplus shall be paid over to such owner.

Conviction of driver in his absence.

29. And be it enacted that if the Court of the Resident Magistrate shall see cause to convict in his absence any driver in any case in which any oxen, cattle, property, article, matter, or thing, shall have been seized, detained, or impounded the same shall and may be executed in satisfaction of the judgment. Provided, always, that if such driver duly appear the thing seized, detained, or

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1846.

Restoration of owner's property detained on driver's appearance.

impounded shall be forthwith restored to the owner; and provided that it shall be competent for such owner at any time before the actual sale of the thing so seized, detained, or impounded to redeem the same by payment for and on account of the offenders of the fine imposed with reasonable charges to be assessed by the said Magistrate, and provided that if such owner shall produce to such Magistrate at any time before such sale aforesaid the convicted party (as he is hereby authorised to do) and shall pay such reasonable charges as aforesaid the thing seized, detained, or impounded shall be forthwith restored.

Prosecuted by summons,

30. And be it enacted that nothing in this Ordinance contained shall be construed so as to make it imperative or necessary for any person witnessing or discovering any contravention of this Ordinance to require the wagon, cart or other carriage by or by means of which such contravention shall have taken place to proceed at once to any Resident Magistrate, Road Magistrate, Justice of the Peace, Field-cornet, gaoler, or constable as aforesaid, but that such person may should he so think fit prosecute or cause to be prosecuted the party offending before any Court of Resident Magistrate which such person shall select. Provided, however, that no summons shall be issued by any such Court in any such case until such person shall have deposed on oath to the fact or facts charged to be or to have been such a contravention as aforesaid; and provided, also, that no person shall be summoned to appear before any such Court other than that of the district in which he resides, except such Court shall be appointed to be holden within the distance of twenty miles of such residence.

at the district court or court within twenty miles of offender's residence.

Proceeding and judgment on default of appearance.

31. And be it enacted that in every case in which any person shall have been summoned to appear before any Court of Resident Magistrate being that of the district in which he resides or some other such Court to be held within twenty miles of his residence to answer to the charge of contravening any of the provisions of this Ordinance; and such person shall not appear upon the day appointed for that purpose, then the said Court, upon being satisfied by the return of the messenger of such Court endorsed upon the summons or other credible evidence on oath that the said summons was duly served, may either proceed to hear the case in the absence of the person summoned and give final judgment and if necessary issue execution thereupon, or in case it should seem more expedient the Resident Magistrate may issue his warrant for the apprehension of the person so making default in manner and form as is by law provided in regard to a person neglecting to appear to answer any criminal charge. Provided, however, that when and as often as any case shall be heard in the absence of the defendant as aforesaid, and such person shall be convicted, process shall in the first instance issue only against his goods, and not either directly or alternatively against his person; and provided, also, that if it shall afterwards be made to appear that no goods

Execution.

Digitised by the University of Pretoria, Library Services, 2016

have been found sufficient to satisfy the exigency of the writ or warrant of execution it shall and may be lawful for the Court having cognizance of the case then to issue a warrant against the defendant for committing him to the prison nearest to his residence in manner and form as such Court might have done forthwith in case such defendant had duly appeared or been apprehended and brought before the same. Ord. 9—1846.

Sentence without appeal or review.

32. ([1]) And be it enacted that every sentence or judgment of any Resident Magistrate or Road Magistrate given or pronounced in any case of alleged contravention of any of the provisions of this Ordinance shall be final and conclusive and shall not be subject to be brought by way of appeal or review before any other Court, anything in the Charter of Justice or any other Law or Ordinance to the contrary notwithstanding.

Penalty on refusal to proceed to magistrate as required under 20th and 21st sections.

33. And be it enacted that if any person being in charge of any wagon, cart, or other carriage, whether the owner thereof or not, shall in any case in which he shall be required to proceed to any Resident Magistrate, Road Magistrate, Justice of the Peace, Field-cornet, or gaoler under and by virtue of either the twentieth or the twenty-first sections of this Ordinance resist or refuse so doing or make any undue or unnecessary delay in so doing such person shall forfeit upon conviction any sum not exceeding five pounds. Provided, always, that the said forfeiture shall in no case attach or be inflicted except where it shall be proved that some one or more of the provisions of the second, third, or fourth sections of this Ordinance were actually contravened in the view of the person requiring the wagon, cart, or other carriage contravening the same to proceed as aforesaid.

Penalty for the kindling of fires near certain roads.

34. And be it enacted that if any person shall whether by day or night kindle, place, or have any fire upon the ground upon any part or within twenty yards on either side of the public road aforesaid from Cape Town to Simon's Town or of the new hard road aforesaid from Cape Town to its terminus at the Eerste River or of the public road from Cape Town to and through the municipality of Green Point; such person shall upon conviction forfeit any sum not exceeding two pounds, and it shall and may be lawful for any person finding any such fire forthwith to extinguish the same or cause the same to be extinguished: Provided, also, that it shall and may be lawful for His Excellency the Governor by any proclamation or proclamations to be by him from time to time issued in that behalf to extend the provisions of this section to any other public road or part thereof.

Apprehension without warrant of offenders under last section.

35. And be it enacted that it shall and may be lawful for any person in whose presence any such offence as is in the last preceding section mentioned shall be committed to apprehend without warrant the person offending and to deliver him to any Resident

[1] But see § 4, Act 21 of 1876, as amended by Act 35, 1893.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9-1846.

Magistrate, Road Magistrate, Field-cornet, constable or peace officer, who shall keep him in safe custody and with all reasonable dispatch convey him with the witness or witnesses before the nearest Resident Magistrate or Road Magistrate (which Road Magistrate shall have in regard to the said offence the same jurisdiction as a Resident Magistrate), to be dealt with according to law. Provided, always, that if in any case the person about to be apprehended as aforesaid shall be in actual charge of or belong to any wagon, cart, or other carriage the person apprehending shall unless there shall be on the spot some other person ready and willing with the consent of the person about to be apprehended to take charge of such wagon, cart, or other carriage cause the offender or some other person to conduct the said wagon, cart, or other carriage to such Resident Magistrate, Road Magistrate, or Field-cornet, or to some public pound or police station, there to be kept for the owner, by whom it may at any time be taken possession of, such owner, however, being bound before receiving possession thereof to pay and satisfy all reasonable charges and expenses attendant upon the keeping of the same and of the oxen or other cattle belonging thereto, and provided, also, that the warrant of committal by any Road Magistrate for the offence in the last preceding section mentioned shall in substance and effect be agreeable to the form in the third schedule hereunto annexed set forth; or such Resident Magistrate or Road Magistrate may in case it shall appear more conducive to the interest of the owner of such wagon, cart, or carriage, proceed in manner and form as in the eighteenth section is provided to seize and detain some property or such matter or thing and allow the said offender to depart; and thereupon all and singular the provisions of the said eighteenth and nineteenth sections of this Ordinance shall be applicable and be applied as fully as if the same were here again repeated.

Form of committal.

Payment of charges by owner or offender.

36. And be it enacted that the reasonable charges and expenses in the last preceding section mentioned shall be and constitute a debt due by and recoverable from the owner of the wagon, cart, or other carriage in regard to which or the oxen or other cattle belonging to which the same shall have been incurred, and in case such owner shall not himself be a party offending such charges and expenses shall be by him recoverable over from the offender. Provided, always, that in case of any dispute about the amount of any charges or expenses claimed under and by virtue of the last preceding or of the fourteenth, fifteenth, twenty-eighth, or fortieth sections of this Ordinance, and of which the amount shall not be ascertained by law such dispute shall be settled by the decision of any Resident Magistrate or Road Magistrate.

Presumption of ownership of oxen, &c., in owner of wagon.

37. And be it enacted that in all cases the oxen or other cattle drawing or belonging to any wagon, cart, or other carriage which shall under the provisions of the twentieth or twenty-first sections

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1846.

of this Ordinance be brought to or before any Resident Magistrate, Road Magistrate, Justice of the Peace, Field-cornet, or gaoler shall be deemed to belong to the owner of such wagon, cart, or other carriage, and shall be liable to be seized and sold in satisfaction of any fine, penalty, or forfeiture incurred by such owner.

Definition of "owner" in regard to summons.

38. And be it enacted that when and as often as it shall be necessary to proceed by summons from the Resident Magistrate's Court in regard to any alleged contravention, by or by means of any wagon, cart, or other carriage, for which contravention the owner is hereinbefore declared to be liable, the several and respective persons following shall in the several and respective cases following be deemed to be for the purpose of incurring any fine, penalty, or forfeiture under the provisions of this Ordinance but not otherwise such owners, that is to say,—1st, the person whose name shall at the time of the alleged contravention be painted upon any wagon, cart, or other carriage, as the owner thereof, shall be deemed to be such owner and as such responsible, unless it shall be made to appear to the Court that his name was so upon the said wagon, cart, or other carriage, without his knowledge or consent; 2nd, the person having the right of property in any wagon, cart, or other such carriage, which ought by the second section of this Ordinance to have the name of the owner legibly painted thereon, and which either has not any name so painted or has so painted the name of some person not being the person having such right of property without the knowledge or consent of such person, shall be deemed to be the owner and as such responsible; 3rd, the person having the right of property in any carriage of a species or description in regard to which the painting thereupon of the owner's name is not hereinbefore enjoined, shall be deemed to be the owner, should such person be present in or with such carriage at the time of any contravention complained of, or should such carriage be then under the care and management of any person as his servant or agent; but in every other case the owner of any such last mentioned carriage shall be deemed to be the person by whom or by whose servant or agent the same shall be driven or conducted at the time of any such contravention as aforesaid. Provided, always, that nothing herein contained shall be construed to extend so as to enable the messenger to attach in order to satisfy any fine, penalty, or forfeiture imposed upon any person as such owner as aforesaid anything except what would independently of this Ordinance be the property of such person.

Penalty on furious driving.

39. (1) And be it enacted that any person who upon any road or in any place in which negligent, careless, or furious driving is hereinbefore by the third section of this Ordinance made punishable as therein mentioned shall ride so negligently, carelessly, or

[1] But see § 2, Act 13, of 1886, and sub-section 1, § 7, Act 27, 1882.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1846.

furiously as to injure or endanger the person or property of any other person shall upon conviction forfeit any sum not exceeding forty shillings.

Apprehension of persons furiously driving without warrant.

40. And be it enacted that every person offending against the provisions of the last preceding section may be apprehended without warrant in order to be brought before the nearest Resident Magistrate or Road Magistrate (which Road Magistrate shall have in regard to the said offence the same jurisdiction as a Resident Magistrate) in like manner and form as is by the thirty-fifth section of this Ordinance provided in regard to the offending person therein mentioned: Provided, also, that the horse or other animal upon which such person so offending as aforesaid shall then be riding may be detained and conducted to the Magistrate aforesaid by the person apprehending such person, and such horse may for the purpose of satisfying or making good the fine, penalty, or forfeiture incurred by any such person be deemed to be the property of the offender and be dealt with as such. And provided, further, that when and as often as any such horse shall be seized and attached under the warrant of any Road Magistrate to satisfy the sentence of any such Magistrate the person seizing and attaching the same may place such horse at livery instead of sending him to the public pound, in which case he shall give immediate notice to the messenger of the Court of the Resident Magistrate of the district in which such horse shall be detained, who shall proceed in regard to the sale thereof precisely as if such horse had been seized and attached by himself under and by virtue of a warrant of the said Resident Magistrate. Provided, always, that every such horse shall be restored upon the payment of the fine, penalty, or forfeiture imposed together with the reasonable charges and expenses of the horse's keep as also of the person who seized and attached the same under and by virtue of the warrant of the Road Magistrate aforesaid. And provided, further, that the warrant of committal by any Road Magistrate for the offence in the last preceding section mentioned shall in substance and effect be agreeable to the form in the third schedule hereunto annexed set forth.

Property in and attachment of horse, &c.

Restoration of horse.

Form of committal.

Power of magistrate to award costs.

41. And be it enacted that it shall and may be lawful for any Resident Magistrate should he so think fit to award in regard to any prosecution by virtue or under pretext of any of the provisions of this Ordinance either to the party complaining or the party complained against such reasonable costs as might lawfully be awarded by such Magistrate in regard to any civil action pending in his Court, and such Resident Magistrate may commit to prison any defendant adjudged to pay the same until the same shall be paid in like manner as is by the sixth section of this Ordinance provided, in regard to the fine, penalty, or forfeiture which such defendant shall have incurred. Provided, however, that all such costs as may be awarded against any complainant shall be

Digitised by the University of Pretoria, Library Services, 2016

recoverable in manner and form as costs awarded against a plaintiff in a civil suit or proceeding in such Court, except when the complainant shall appear to have committed the offence in the twenty-fourth section of this Ordinance mentioned and be thereof convicted, in which case the amount of such costs shall in the warrant of committal be added to the amount of the fine imposed. Ord. 9—1846.

42. And be it enacted that the whole amount of every fine, penalty, and forfeiture levied upon conviction of any offence in contravention of any of the provisions of this Ordinance shall upon recovery thereof be paid to the person prosecuting the offender, unless such person shall decline to receive the same and direct some charitable or other appropriation thereof, in which case it shall be applied accordingly. Appropriation of fines.

43. And be it enacted that every Road Magistrate shall on or before the 31st day of December now next ensuing and on or before the 31st day of December in each succeeding year prepare from his record book and transmit to His Excellency the Governor a statement in writing, showing the number of cases connected with this Ordinance by him determined, the names of the parties, the date of the hearing, the judgment pronounced, and the aggregate amount received or levied, and the mode in which that amount has been applied, and every such statement shall be vouched by having added thereto by such Road Magistrate the declaration following, that is to say, "I, ———, do solemnly and sincerely declare that the above is a true and correct statement regarding the several matters mentioned and set forth in the forty-third section of the Ordinance No. 9 of 1846," which declaration such Road Magistrate shall sign. Annual return of cases, &c., by road magistrate.

44. And be it enacted that the fifth and remaining sections of the Ordinance No. 32, of 1827, entituled, "Ordinance for creating Justices of the Peace in this Colony," shall apply and extend to all Road Magistrates appointed under and by virtue of the provisions of this Ordinance, and every person acting in obedience to any warrant of any such Road Magistrates or acting in aid of such person, precisely as if the said sections were herein again set forth and word for word repeated, substituting only Road Magistrate for Justice of the Peace whenever the former word occurs and such person as last aforesaid for the constable or other officer or person or persons acting by his order and in his aid in the tenth and twenty-first sections of the said Ordinance mentioned. Application to road magistrate of certain sections of Ordinance No. 32.

45. And be it enacted that in the interpretation of this Ordinance the term "Governor" shall mean the officer for the time being administering the Government of this Colony; and that the term "Resident Magistrate" shall comprehend any officer for the time being acting as such; and that the term "carriage" shall comprehend every description of vehicle whether upon two wheels or more, or whether drawn by one horse or more, except when there is something in the context to restrict the mean- Interpretation clause.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9–1846.

ing of the said term; and that the term "cattle" shall comprehend all animals used for draught; and that the singular number shall include several persons, animals, or things, as well as one person, animal, or thing, and that the masculine gender shall include females as well as males unless there be something in the context repugnant to such construction.

Exclusion of Natal.

46. And be it enacted that nothing in this Ordinance contained shall extend to the district of Natal.

Time of taking effect.

47. And be it enacted that this Ordinance shall commence and take effect from and after the first day of May next.

SCHEDULE No. 1.

Oath of Allegiance to be taken by the Road Magistrate.

Oath of allegiance.

I, ————, do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria. So help me God!

Oath of Office to be taken by the Road Magistrate.

Oath of office.

I, ————, do swear that faithfully and honestly and to the best of my ability and power I will discharge my duty as a Road Magistrate appointed under and by virtue of the Ordinance No. 9, of 1846. So help me God!

SCHEDULE No. 2.

Warrant referred to in the 13th Section of the above Ordinance.

To —— (name of the person to whom warrant is directed).

Warrant under section 13.

Whereas ———— (name the known or alleged or supposed owner) or other the owner or owners of a certain (state the description of the carriage) now at this place (or if at the place of any Justice of the Peace, field-cornet, gaoler, or constable state where), has (or have) this day been convicted before me of the offence of contravening the Ordinance No. 9, 1846, and I have thereupon adjudged that for the said offence he (or they) do forfeit the sum of ———— (state the amount of the fine imposed), this is therefore to authorise and require you to seize and take possession of ——— (state the description of the property or as the case may be the number and species of the cattle to be seized) now belonging to the said (repeat the name of the carriage), and to treat and dispose of the same as by the said Ordinance is provided, in order that of the same may be levied and made the said sum of ———, together with your reasonable charges about the same; and for so doing this shall be your warrant. And return to me this warrant, endorsing thereupon what you shall have done under it.

Given under my hand at ——, this —— day of ——, 18 —.

(Signed) ———, Road Magistrate.

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE No. 3.

Ord. 9—1846.

Warrant of Road Magistrates for committing to prison for offences under the 3rd, 34th, and 39th Sections of the above Ordinance.

To the Gaoler or Keeper of Her Majesty's Gaol at ————.

Warrant under sections 3, 34, and 39.

Whereas ——— (name the offender) has been this day adjudged by me to forfeit and pay the sum of £—— for the offence of which he was convicted of contravening the ——— section (or ———) of the Ordinance of No. 9, of 1846, but has not paid the said sum, this is therefore to require you to receive the said ——— into your custody and him safely to keep to hard labour, for the space of (state the period of imprisonment) now next ensuing, unless the said sum of £——— shall be sooner paid.

Given under my hand at ——, this —— day of ——— 18 —.

(Signed) ———, Road Magistrate.

*** Should the imprisonment be meant to be without hard labour, the words "to hard labour" in the above form are to be omitted.

SCHEDULE No. 4.

Certificate mentioned in the 18th Section of the above Ordinance.

Certificate under section 18.

This is to certify that ——— (name the offender) was this day adjudged by me to forfeit and pay me the sum of £—— for contravening the Ordinance No. 9, 1846, which fine he has not paid; wherefore and inasmuch as the said (name the offender) is needed to conduct the (state the description of the carriage) of which he is in charge, I have by virtue of the eighteenth section of the said Ordinance caused to be seized and detained (state the description of the property) as security for the payment of the said fine or otherwise for the reappearance before me of the said (name of the offender) on the —— day of ——— next ensuing, at —— o'clock of the forenoon, failing which the said (repeat the description of the property) will be dealt with as by the said eighteenth section is directed; of which all whom it may concern are required to take notice.

Given under my hand at —— this day of ——, 18 —.

(Signed) ———, Resident Magistrate or

" ———, Road Magistrate

(as the case may be).

SCHEDULE No. 5.

Recognizance mentioned in the 21st Section of the above Ordinance.

Recognizance under section 21.

Before me ——— (state name and office of the person taking the recognizance) on this —— day of ———, 18 —, came and appeared ——— (name and residence of the owner of the carriage), who acknowledged himself to owe to our Lady the Queen the sum of £———, to be levied and made of his goods and chattels if he shall make default in the condition following:

Whereas the said ——— (owner's name) is the owner of a certain (state the description of the carriage) detained under the provisions of the 21st section of the Ordinance No. 9, 1846, upon a charge of this

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1846.

day (or otherwise according to the truth) having at or near ——— (state the place) contravened the said Ordinance; now the condition of this recognizance is such that if the said owner shall personally appear before the Court of the Resident Magistrate of the district of ——— between the hours of eleven and twelve o'clock on the forenoon of the —— day of ———— next ensuing, then to answer any charge which shall be preferred against him of having so as aforesaid contravened the said Ordinance, and not to depart without the leave of the said Court, then this recognizance to be void.

Acknowledged before me as aforesaid.

(Signed) ———, Justice of the Peace
(or otherwise as the case may be).

*** Should there be any surety to the recognizance, add his name and residence next after that of the owner, changing "himself" into "themselves," "his" into "their," and in place of "he" in the last clause of the obligation inserting again the name of the owner.

SCHEDULE No. 6.

Recognizance mentioned in the 22nd Section of the above Ordinance.

Recognizance under section 22.

Before me ——— (as in Schedule No. 4) on this —— day of —— 18—, came and appeared ——— (name and residence of the witness) who acknowledged himself to owe to our Lady the Queen the sum of £——, to be levied and made of his goods and chattels if he shall make default in the condition following:

Whereas the said ——— hath this day brought or caused to be brought before me, ——— (repeat the name), a certain (state the description of the carriage) whereof ——— is named as the owner, complaining that by or by means of the same, and at or near ——— (place) the Ordinance No. 9, of 1846, was this day (or otherwise according to the fact) contravened; now the condition of this recognizance is such that if the said (witness) shall personally appear before the Court of the Resident Magistrate for the district of ———— (or before A. B., Esq., of ———, Road Magistrate, as the case may be) between the hours of eleven and twelve o'clock in the forenoon of the —— day of ——— next ensuing (in case the witness is to appear before a Road Magistrate the hours will depend on the circumstances, and should be so stated), then and there to give evidence touching and concerning the said alleged contravention; and shall not depart without the leave of the Court, then this recognizance will be void.

Acknowledged before me as aforesaid.

(Signed) ———, Justice of the Peace
(or otherwise as the case may be).

*** Should there be more witnesses than one, or one or more witnesses with sureties, the necessary changes will be understood from the note to form in Schedule No. 5.

Digitised by the University of Pretoria, Library Services, 2016

No. 10.—Sd. P. Maitland.] [March 10, 1846.

Ordinance for amending the Law relating to the Baking Trade. (1)

Preamble. WHEREAS doubts exist whether or not all bakers within the Colony are by law required to take out licences to trade as such: And whereas it is expedient to remove such doubts and to regulate in certain other respects the baking trade: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the proclamation of Lord Charles Henry Somerset, the then Governor of this Colony, bearing date the 6th of December, 1822, and of any other law or usage heretofore in force in this Colony as shall be repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed and the same is hereby repealed accordingly. Repeal of former laws.

Penalty on carrying on trade of a baker without licence. 2. And be it enacted that from and after the first of May next no person shall within this Colony exercise the trade or calling of a baker without having previously taken out a baker's licence. And any person exercising the trade or calling of a baker as aforesaid without having previously taken out such licence as aforesaid shall for every offence forfeit five pounds. (2) Provided, however, that every person within this Colony lawfully keeping a retail shop may without taking out a baker's licence sell bread purchased or obtained from any person who shall have taken out a baker's licence aforesaid. Provided, also, that nothing herein contained shall extend to prevent any person from selling bread to travellers without any licence whatever. Sale of bread at retail shops.

3. [Repealed in part by Act 20, 1884, and lapsed as to remainder.]

Licence applicable to one baking place only. 4. And be it enacted that no person who shall have taken out a baker's licence shall be entitled by virtue thereof to bake or make bread at more than one place or premises or to sell the same elsewhere than at the place or premises where it is baked or made. Provided, however, that any one person may take out as many baker's licences as he may require, and that the holder of a baker's licence who shall also keep a lawful retail shop may sell in such retail shop bread baked and made at the place or premises licensed as a bakery without taking out any additional baker's licence. And provided, also, that the servant of any licensed baker in charge of any delivering cart of such baker may sell bread for and on account of such baker from and out of such cart while on its daily or usual delivering rounds. Sale by delivery from carts.

Municipal regulation as to registration of bakers. 5. And be it enacted that nothing in this Ordinance contained shall extend to alter or affect any municipal regulation of the municipality of Cape Town touching and concerning the registration at the office of the municipality of any licence to exercise the

[1] See Ord. 1, 1838; Ord. 2, 1838, and Act 6, 1861, § 5.
[2] But see Acts 13, 1870, § 6 and 20, 1884, Tariff 15.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 11—1846.

trade of a baker or to vend bread; but every such regulation shall be deemed, taken, and judged of in regard to bakers and vendors of bread precisely as if this Ordinance had never been passed.

Presumption on sale of bread without licence.

6. And be it enacted that every person selling bread without having previously taken out a baker's licence shall be deemed and taken to have himself baked and made the same unless he shall prove that the same was baked and made by some licensed baker.

Repeal of clause of proclamation of 1822.

7. And be it enacted that the tenth clause or section of the proclamation aforesaid of the 6th of December, 1822, shall be repealed, and the same is hereby repealed accordingly.

Meaning of term "bread."

8. And be it enacted that in the interpretation of this Ordinance the term bread shall not extend to sweetened or spiced bread or cakes or any species of confectionery, and that the singular number shall include several persons as well as one person and that the masculine gender shall include females as well as males. (1)

Exclusion of Natal.

9. And be it enacted that nothing in this Ordinance contained shall extend to the district of Natal.

Time of taking effect.

10. And be it enacted that this Ordinance shall commence and take effect from and after the first day of May next ensuing.

No. 11.—Sd. P. Maitland.] [March 10, 1846

Ordinance for amending the Law relative to the Licensing of Retail Shops.

[Repealed except as to Section 8. See Act 3, 1864, § 21 and Act 20, 1884.]

Sale of articles without licence.

8. And be it enacted that from and after the 1st day of January, 1847, it shall be lawful to sell in Cape Town, and that from and after the taking effect(2) of this Ordinance it shall be lawful to sell in all other places within this Colony, fruit, vegetables, milk, eggs, firewood, cakes, or confectionery without taking out any licence for the privilege of so doing.(3)

No. 12.] [March 10, 1846.

Ordinance for fixing the Value of Immovable Property within certain Municipalities for the purposes of Road Rates.

[Repealed in the repeal of Ordinance No. 8, 1843, and Ordinance No. 12, 1844, by Act No. 9, 1858.]

---

[1] See also § 14 Act 5 of 1883.
[2] 1st May, 1846.
[3] See also Act 10, 1869, and Act 11, 1871, as amended by Act 15, 1890.

Digitised by the University of Pretoria, Library Services, 2016

No. 13.—Sd. P. Maitland.] [March 25, 1846.

Ordinance for facilitating Loans on Security of Shares in Joint-stock Companies.

Preamble.

WHEREAS a number of banking, and other Joint-stock companies exist in this Colony, constituted respectively by and under respective deeds of co-partnership or association, commonly called trust deeds: And whereas in all or most of such deeds as aforesaid a certain clause or provision is contained by which it is stipulated and agreed between the parties thereto, that proprietors should assign and transfer their shares by endorsement upon the certificates thereof, but that no such endorsement should be valid to transfer any interest in, or right or title to, any share until such endorsement should have been registered and certified in manner and form as by the said deeds, provided: And whereas in all or most of the said deeds, a certain other clause or provision is contained, limiting, and determining the number of shares which it shall be competent for any person to hold or possess: And whereas the two certain clauses or provisions aforesaid, were devised and intended to apply to and govern cases of sale and purchase, and are inapplicable to cases in which shares are sought to be only pledged, seeing that in such cases, it would be inconvenient to require that a complete and entire change of ownership should be *ab initio* effected, while, moreover, the second of the clauses or provisions aforesaid, limiting and determining the number of shares to be held or possessed by any one person, would, in many instances, tend to prevent such complete and entire change from being effected: And whereas it may be apprehended, that the title of any person to or with whom any certificates of shares of any such joint-stock company as aforesaid, may be pledged, might, whether such certificates have endorsed thereon, fitting words of cession from the person pledging to the person receiving the pledge, or are only indorsed in blank by such first-mentioned person; or are by him pledged and deposited without either cession or endorsement, but with a collateral power to sell conferred upon the person receiving the pledge to be executed in case of default made by the person pledging; be drawn into question and disputed by execution creditors or creditors, in an insolvent estate; so long as no assignment or transfer as aforesaid, has been as aforesaid, registered and certified. And whereas any such apprehension may tend to impede the freedom of raising money upon security of certificates of shares; and it is therefore expedient to remove the same, and to facilitate transactions tending to promote the interest and convenience of traders and others requiring from other persons temporary advances, or forbearance of their demands; Be it therefore enacted, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the legal holder of any share of the capital

Pledge of shares by pledge of certificates of shares.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 13—1846.

stock of any joint-stock company now existing, or to be hereafter established, within this Colony, to pledge, or to have pledged, such share for any purpose, object, or consideration for which movable property may lawfully be pledged, by pledging, or having pledged, in manner and form as in the next succeeding section mentioned, the certificate of such share, and the person receiving such pledge, (called hereafter in this Ordinance the pledgee) shall be deemed and taken as against the pledger and his creditors, whether in execution or insolvency, and all persons claiming from, through or under him, or them, to have a good and valid hypothec, or lien upon the said certificate, and upon the said share, and to be in the same plight and condition, in regard to such share as if the same like the certificate thereof, were a thing capable of being actually handed over and deposited with such person, and had actually so been; Provided always, that nothing herein contained shall extend to alter or affect the mutual rights or claims of the company, in which such share exists and the owner of any such share, which rights or claims, notwithstanding any such pledge, shall be deemed and judged of precisely as if such pledge had never been effected. And provided also, that nothing in this Ordinance contained, shall extend to supersede, invalidate, or otherwise affect any special provision in any trust deed contained, touching and concerning the manner and form in which alone pledges of shares, shall be constituted and effected.

Manner of pledging certificates.

2. And be it enacted, that every such share as aforesaid, shall be deemed and taken, as against the pledger, his heirs, and creditors, to be or to have been lawfully and effectually pledged, when and as often as the certificate of such share shall be, or shall have been, delivered into and detained in the actual custody and possession of the pledgee; having endorsed thereon, in fitting words, a cession of the said share made in favour of the pledgee, by the person entitled to cede the same, or having thereon the blank endorsement of such person so entitled, or otherwise, when in reference to the certificate so delivered and detained as aforesaid, some instrument, note, or memorandum in writing, shall be, or shall have been, made containing a description of the share pledged, and a statement of the purpose, object or consideration, for which the same shall have been pledged. Provided always, that nothing herein contained shall be construed so as to deprive any pledge sought to be effected in any manner or form other than is in this section mentioned, of any force or validity which it might otherwise have had. And provided also, that nothing in this Ordinance contained, shall be deemed, or taken to abridge, alter or affect the right, if any, of any pledgee of any share to retain the same for or account of any future or other debt or demand, not contemplated at the time of the original pledge, or mentioned in any such instrument, note or memorandum as aforesaid, which right shall be judged of and determined according to the ordinary rules of law relative to the

Digitised by the University of Pretoria, Library Services, 2016

detention of movables pledged, for the security of future or other debts or demands.

Issue of fresh certificates on proof of loss of originals.

3. And whereas certificates of shares which have been pledged, or otherwise delivered, upon good consideration, may, through fraud, be alleged, or through mistake be supposed, to be lost or destroyed, and thereupon application for fresh certificates may be made to the directors of the company in which the shares exist: And whereas a sudden or secret compliance with any such application might tend to the prejudice of pledgees or other persons, and it is therefore expedient, to provide for the protection of such pledgees or other persons, and, at the same time, to provide, for the issue of fresh certificates in cases where the original certificates shall appear to have been really lost or destroyed; Be it enacted, that in every case in which any such application as aforesaid shall be made to the directors of any joint-stock company, such directors, in case they shall not have knowledge or notice that the share in regard to which the fresh certificate is applied for is in pledge, or otherwise disposed of, shall, (but at the cost and charge of the applicant) insert an advertisement in the *Government Gazette*, and in such one of the newspapers in the Colony as they shall select, stating that an application has been made for a fresh certificate for the share numbered —— and issued to —— as the proprietor thereof, upon the ground that the original or former certificates of the said share has been lost or destroyed (as the case may be), and that, should no objection be lodged at the office of the company on or before some certain day to be fixed in such advertisement, (not being less than fourteen days from the date of the last publication of the said advertisement), the said fresh certificate will be issued as requested.

Non-liability of company on issue of fresh certificates.

Personal responsibility of directors in certain cases.

4. And be it enacted, that in case no such objection as aforesaid shall be lodged, it shall and may be lawful for the said directors to issue, or cause to be issued, the fresh certificate applied for, and such directors shall not, nor shall the company, incur thereby any liability whatsoever: Provided always, that if any pledgee of any certificate or share shall have at any time before the application for a fresh certificate, given notice in writing at the office of the company, that the same has been pledged to him, or if the pledgee of any certificate and share shall lodge an objection in pursuance of any such advertisement, and the directors shall, nevertheless, without the consent of such pledgee, or the decree of some competent Court, issue such fresh certificate, such directors shall be personally responsible to such pledgee for any loss or damage which he may thereby sustain.

Order of preference between pledgee of original certificate and *bona fide* pledgee or purchaser on faith of fresh certificate.

5. And be it enacted, that in case the pledgee of any original or former certificate of any share of which a fresh certificate is applied for as aforesaid, shall not have given notice in writing of such pledge at the office of the company, or after such advertisement as aforesaid shall have been duly published, shall not within the time

Digitised by the University of Pretoria, Library Services, 2016

Ord. 14—184

in that behalf specified, lodge an objection to the issue of any fresh certificate, and the directors shall, in consequence, have issued or caused to be issued such certificate to the person applying for the same, every subsequent purchaser or pledgee dealing *bonâ fide*, and without notice of the older pledge, upon the faith of the fresh certificate as evidence of the ownership of the share which it represents, shall be entitled to be preferred to the full extent of his claims and demands above or before the original pledgee: Provided, however, that such original pledgee shall still be entitled to be preferred above or before the person by whom, or in whose right or supposed right any such fresh certificate shall have been obtained, and above or before his heirs, and above or before his creditors, whether in execution or insolvency, but so, however, as not to require any execution creditor to refund any moneys actually paid out to him, or to require the creditors of any insolvent estate to refund any dividends by them actually received.

Interpretation clause.

6. And be it enacted, that in the interpretation of this Ordinance the term person, shall embrace any co-partnership or company, and that the singular number shall include several persons as well as one person, and that the masculine gender shall include females as well as males.

Exclusion of Natal.

7. And be it enacted, that nothing in this Ordinance contained shall extend to the district of Natal.

Time of taking effect.

8. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

No. 14.—Sd. P. Maitland.] [March 25, 1846.

Ordinance for improving the Law of Evidence. (1)

Preamble.

WHEREAS the inquiry after truth in Courts of Justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue both in criminal and civil cases should be laid before the persons who are appointed to decide upon them and that such persons should exercise their judgment on the credit to be given to the witnesses adduced and on the truth of their testimony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the Ordinance No. 72, 1830, entituled "Ordinance for altering, amending, and declaring in certain respects the Law of Evidence within this Colony," and of the Ordinance No. 19, 1845, entituled "Ordinance for altering, amending, and declaring in certain respects the Law of Evidence within the District of Natal," and

Repeal of portions of former laws.

[1] See Ord. 72, 1830; Acts 4, 1861; 3, 1864; 17, 1874 §§ 4, 5, 8; 21, 1877; 13, 1886 §§ 6-8; 18, 1891 § 2: also Acts 5, 1890 § 27; 12, 1890 § 19; 13, 1891 § 14; 34, 1891 § 56; 35, 1891 § 61; 9, 1892 § 63; 25, 1892 §§ 82, 88, 121, 127, 165, 197.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 14—1846.

of any other law or custom heretofore in force in any part of this Colony as is repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, and the same is hereby repealed accordingly.

Abolition of incompetency of witness from prior conviction.

2. And be it enacted that no person offered as a witness shall hereafter be incompetent to give evidence in any action, suit, or proceeding by reason that such person has been previously convicted of any crime or offence.

Abolition of incompetency from interest.

3. And be it enacted that no person offered as a witness shall hereafter be incompetent to give evidence in any action, suit, or proceeding by reason of any interest which such person may have in the matter in question or in the event of such action, suit, or proceeding. Provided, however, that nothing herein contained shall be construed so as to alter or in anywise affect the law relative to the giving or requiring of the oath or evidence of either party to any suit, action, or proceeding, which oath or evidence shall hereafter be received or required in such cases, and none other as those in which the same might lawfully have been received or required, previously to the passing of this Ordinance. And provided also, that this Ordinance shall not be construed so as to render competent to give evidence, any person though not a party on the record, in whose immediate and individual behalf any action, suit, or proceeding may either wholly or in part be instituted or defended, or the husband or wife of any such person respectively. [1]

Retention of old law as to evidence of parties.

No change as to actual plaintiffs or defendants.

4. [Superseded by § 2 Act 4 of 1861.]

Competency of private prosecutor.

5. And be it enacted that no person shall hereafter be incompetent to give evidence in any case by reason that in such case he prosecutes at his own instance for any crime or offence. Provided, however, that when any such person shall in any such case seek the recovery or restitution of any money, matter, or thing he shall not by virtue of anything in this Ordinance contained be deemed (if otherwise competent to give evidence) to be rendered competent so to do. [2]

Exception.

6. [Repealed by § 11, Act 4 of 1861.]

7. [Repealed by Act No. 18, 1891.]

[Sections 8 and 9 provide for the taking effect of this Ordinance in Natal.]

Non-application to suits pending.

10. And be it enacted that nothing in this Ordinance contained shall apply to or affect any suit, action, or proceeding which shall be pending at the time of the commencement of this Ordinance.

---

[1] See §§ 2 and 6, Act 4 of 1861.
[2] See § 2 *ibid.*

Digitised by the University of Pretoria, Library Services, 2016

No. 15.] [April 24, 1846,

Ordinance for rectifying certain Title Deeds heretofore issued to certain of the Settlers of 1820.

[Expired. *Vide* Act No. 24, 1856, and Act No. 7, 1859.]

No. 16.] [April 24, 1846,

Ordinance for creating Resident Magistrates within the District of Natal.

No. 17.] [April 24, 1846,

Ordinance to amend the Law regarding Marriages within the District of Natal.

No. 18.] [April 24, 1846,

Ordinance for regulating Sales by Auction within the District of Natal.

No. 19.] [April 30, 1846,

Ordinance for securing the due Performance of Burgher Duty.

[Expired 1st August, 1846.]

No. 20.] [May 4, 1846,

Ordinance for regulating the Levy of the Burgher Force of Cape Town and Green Point.

[Expired 1st August, 1846.]

No. 21.] [Sept. 24, 1846,

Ordinance for amending the Law relating to the Rights of Execution Creditors within the District of Natal.

No. 22.] [Sept. 24, 1846,

Ordinance for Punishing the Concealment of the Birth of Children within the District of Natal.

No. 23.] [Sept. 24, 1846.

Ordinance for Licensing Retail Shops within the District of Natal.

Digitised by the University of Pretoria, Library Services, 2016

No. 24.] [Sept. 24, 1846.

Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within the District of Natal.

No. 25.] [Sept. 24, 1846.

Ordinance for regulating the Payment of the Expenses of Witnesses attending to give evidence on Criminal Trials and Preparatory Examinations within the District of Natal.

No. 26.] [Sept. 24, 1846.

Ordinance fer preventing the mischiefs arising from the printing and publishing within the District of Natal of Newspapers and Papers of a like nature by persons not known, and for regulating the printing and publication of such papers in other respects; and also for restraining the abuses arising from the publication in the said District of blasphemous and seditious Libels.

No. 27.—Sd. P. Maitland.] [October 3, 1846.

Ordinance for amending Law relative to Conventional Hypothecations.(1)

Preamble.

WHEREAS it is found that parties to whom, or in whose favour, mortgages or hypothecations, as well general as special, have been passed, sometimes abstain from registering the same against their debtors, until the increasing embarrassments of such debtors, or other reasons, render it necessary to secure a preference over other creditors, who may have dealt with such debtors in total ignorance, that any such mortgages or hypothecations were in existence: And whereas such a practice may be used so as to cover fraud, and is one which tends to defeat the objects or limit the advantages of the Debt Registry of this Colony, and which should therefore be suppressed: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that every deed or instrument of mortgage or hypothecation, commonly called a general bond, executed after the commencement and taking effect of this Ordinance, shall, if executed by the debtor or mortgagor within the limits of the municipality of Cape Town, be tendered for registration in the Deeds Registry office within the space of seven days next after the day of the execution thereof; and if so executed elsewhere within the limits of the Western Division of this Colony, shall be tendered as aforesaid within the space of fourteen days next after such execution as aforesaid; and if so executed within the limits of any

Registration of general bonds within seven days after execution in Cape Town, within fourteen days in western divisions, within twenty-eight days in eastern divisions.

[1] See § 8 Act 19, 1891.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 27—1846.

of the Eastern Districts, shall be tendered as aforesaid within the space of twenty-eight days next after such execution as aforesaid; and no such deed or instrument which shall be tendered for registration after the expiration of the term hereinbefore limited for the tendering of the same shall be (except as in the next succeeding section is excepted) registered, and if registered such registration shall be null and void. Provided always, that nothing in this Ordinance contained shall be deemed or taken to extend to any deed or instrument executed elsewhere than in any of the places aforesaid, nor to deprive any deed or instrument executed within any of the said places of any force or effect which though unregistered, it may by law possess. Provided also, that nothing in this Ordinance contained shall be construed so as to entitle any instrument to be registered, which instrument would not by law be now entitled to registration.

Order by judge on proof of absence of fraud or neglect of registration after lapse of due time.

2. And be it enacted, that if, in any case, the occurrence of peculiar circumstances shall prevent any such deed or instrument as aforesaid, which should have been tendered for registration within some one of the certain times or spaces aforesaid, from being so tendered, it shall and may be lawful for any person whom it shall concern to apply to any Judge of the Supreme Court for an order directing the Registrar of Deeds to register the said deed or instrument, notwithstanding the time or space aforesaid shall have elapsed, and such judge, upon being satisfied by the person applying, that the delay has not arisen from fraud or neglect, may, should he think fit, make such order; and thereupon the Registrar of Deeds shall register such deed or instrument, and such registration and the effect thereof shall be taken and judged of precisely as if this Ordinance never had been passed.

Insertion of date of execution.

3. And be it enacted, that every such deed or instrument as aforesaid, executed as aforesaid within any of the places aforesaid shall, in some part or portion thereof, set forth the date and place

Penalty on notary inserting false date.

of the execution thereof; and if any notary public, or any other person whomsoever shall, knowingly and wilfully, insert or set forth, in any such deed or instrument, any false or erroneous date or place, such notary public, or other person, shall, for such offence forfeit any sum not exceeding one hundred pounds, and not less than ten pounds, to be recovered for his own use, with costs of suit, by any person suing in any competent Court for, the recovery of the same.

Necessity of express words and maximum amount in deeds to cover future advances.

4. And whereas it is expedient that notice, as particular as possible, should be given upon the face of every deed or instrument of hypothecation of the amount which such hypothecation is intended to secure; and whereas as often as such deeds or instruments are framed so as to cover or secure future debts or advances to an indefinite amount, no such notice is conveyed, and inconviences may thence result: and whereas it is expedient to amend the law in this respect: Be it enacted, that no deed or instrument

Digitised by the University of Pretoria, Library Services, 2016

of hypothecation, whether general or special, executed at any time after the comencement and taking effect of this Ordinance, shall be of any force or effect to give any preference or priority to the payment of any advances, debts, or demands, made or accruing after the date of the registration of such deed or instrument, unless it shall be expressed in such deed or instrument, that the same is meant or intended to cover and secure future advances, debts, or demands generally, or some particular description thereof to be in the said deed or instrument described, and unless also some certain sum shall be expressed in such deed or instrument as a sum beyond which such future advances, debts, or demands, shall not be deemed to be covered or secured by the hypothecation made or created by such deed or instrument: Provided always, that nothing herein contained shall be construed so as to give validity or effect to any deed or instrument or any part of any deed or instrument which before this Ordinance would have been invalid or ineffectual. Ord. 28—1846.

5. And be it enacted, that every such deed or instrument as aforesaid, which shall have been executed before, but shall remain unregistered upon the day of the commencement and taking effect of this Ordinance, shall be tendered for registration within the space of one month next after such day, and if not so tendered shall not be registered, or if registered, such registration shall be null and void: Provided always, that the provisions in the second section of this Ordinance contained shall apply to every such last-mentioned deed or instrument, when and as often as the occurrence of peculiar circumstances shall prevent the same from being tendered for registration within the said space of one month. Registry within one month of deeds already executed.

6. And be it enacted that nothing in this Ordinance contained shall extend to the district of Natal. Non-extension to Natal.

7. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof. Time of taking effect.

No. 28.—Sd. P. Maitland.] [October 3, 1846.

Ordinance for preventing the Mischiefs arising from the cutting, rooting up, and destroying of Trees, Shrubs, and Bushes growing on the Cape Flats and Downs.

WHEREAS it has become an object of the utmost importance to this Colony, to preserve from the effects of drifting sands the new hard road constructed over or across the Cape flats or downs; And whereas a mischievous and illegal practice prevails of cutting down, rooting up, and carrying away from the said flats or downs, for the purpose of firewood, the trees, shrubs, or bushes growing there, by means of which practice the sands are loosened and exposed, and are carried by the wind to, and deposited upon, the said road, to the serious detriment, if not total destruction of Preamble.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 28—1846.

certain parts thereof: And whereas no efforts made or to be made by the Central Board of Commissioners of Public Roads to bind and fix those portions of the said flats or downs from which the sands are carried by causing them to be planted with trees, shrubs, bushes, or other vegetable productions, have been or can be of any avail, so long as the mischievous and illegal practice aforesaid shall be permitted to continue; And whereas in order as much as may be to suppress the said practice and protect the road aforesaid, it is expedient to amend the law relative to the removal of trees, shrubs, and bushes from the said flats or downs. Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the third and fourth sections of Ordinance No. 5, 1836, entituled "Ordinance for defining the limits of and securing from injury the Cape Flats and Downs," shall be repealed, and the same are hereby repealed accordingly.

Repeal of part of former law.

Penalties on destroying trees, shrubs, &c.

2. And be it enacted that if any person (except persons travelling as hereafter is excepted) shall cut, root up, burn, break, destroy, or carry away any tree, shrub, or bush growing upon any part of the Crown lands situate within the Cape downs or flats, or shall engage or employ any other person so to do (whether such last-mentioned person shall actually do so or not); or shall take upon himself to sell or dispose of or authorise to be carried away any such tree, shrub, or bush, such person shall upon a first conviction for the said offence forfeit any sum not exceeding five pounds; and upon non-payment thereof shall be imprisoned for any term not exceeding one month; and upon a second conviction for the said offence shall forfeit any sum not exceeding ten pounds and not less than five pounds; and upon non-payment thereof shall be imprisoned for any term not exceeding three months and not less than one month; and upon a third or any subsequent conviction for the said offence shall forfeit any sum not exceeding twenty pounds and not less than ten pounds, and upon non-payment thereof shall be imprisoned for any term not exceeding six months and not less than three months. Provided always, that every such imprisonment as aforesaid shall be with hard labour unless the Magistrate committing shall otherwise award. And provided also, that every person travelling through or over the flats or downs aforesaid shall be at liberty without incurring any of the penalties or forfeitures aforesaid to cut down and collect such trees, shrubs, or bushes as shall be needed for the purpose of any fire which such person shall require or desire to kindle or keep at any outspan-place within the said flats or downs, such person doing no unnecessary damage in the cutting or collection of the same.

Second and subsequent convictions.

Exemption of travellers.

Certificates by owners of private property in flats to persons carrying away trees, shrubs, &c.

3. And be it enacted that every person being the owner, lessee, or other occupant of any land being private property situate wholly or in part within the said flats or downs who shall deliver

Digitised by the University of Pretoria, Library Services, 2016

Crl 28—1846.

to or permit to be carried away upon any wagon, cart, or other carriage any trees, shrubs, or bushes which shall have grown upon such private property, shall grant and deliver to the person in charge of such wagon, cart, or other carriage, a certificate or note in writing signed by such owner, lessee, or other occupant certifying in substance that the trees, shrubs, or bushes carried in or upon such wagon, cart, or other carriage have been obtained from the person signing the same; and every owner, lessee, or occupant who shall neglect to give such certificate or note in writing to the person in charge of every wagon, cart, or other carriage carrying away with his knowledge and consent any such trees, shrubs, or bushes as aforesaid, shall for every such neglect forfeit any sum not exceeding twenty shillings.

Penalty on neglect of such certificates.

Licences by civil commissioner to owners of certain portions of flats to carry away trees, &c., on their property.

4. And be it enacted that no person being the owner, lessee or other occupant of any land being private property situate wholly or in part within the said flats or downs and lying to the westward of an invisible line supposed to be drawn from the beach of Table Bay at the point where a line drawn due west from Duiker Vallei would touch the said beach to the said Duiker Vallei, thence to the seventh milestone on the hard road across the flats, thence to Jackal's Vallei, thence to the house commonly called Mannenberg's, thence to the Vaderlandsche Riet Vallei, thence to the northern end of Zeekoe Vallei, thence to the southern end of Zeekoe Vallei, and thence in a straight line due south to the beach of False Bay, shall deliver or permit to be carried away in or upon any wagon, cart, or other carriage, any trees, shrubs, or bushes having grown upon such private property without having previously obtained a licence in writing from the Civil Commissioner of the Cape division or officer acting as such, authorising him to remove the trees, shrubs, or bushes growing upon such private property. And any such owner, lessee or occupant as is in this section mentioned, who shall without having obtained such licence permit any trees, shrubs, or bushes to be carried away in or upon any wagon, cart or other carriage, shall for every such offence forfeit any sum not exceeding forty shillings and not less than one pound; and upon non-payment thereof shall be imprisoned for any term not exceeding one month.

Penalty on so carrying away without licence.

Conditions of licence.

5. And be it enacted that the Civil Commissioner aforesaid shall upon the application of any such owner, lessee, or other occupant as is in the last preceding section mentioned, grant such licence as aforesaid as often as such Civil Commissioner shall be satisfied by inspection or otherwise that there are growing upon the private property in question trees, shrubs, or bushes which might be removed without thereby loosening or exposing sands in such a manner as to occasion the drifting of the same. And every such licence shall be revocable by such Civil Commissioner, and shall be by him revoked whenever it shall appear that the said private property and the trees, shrubs, or other bushes thereupon are in

Digitised by the University of Pretoria, Library Services, 2016

Ord. 28—1846.

such a condition that the further removal of the latter would produce injurious consequences. Provided always, that every such licence may be framed in such a manner as to authorise the removal of such trees, shrubs, or bushes as aforesaid from a part or parts only of any private property instead of the entire. And

Compensation on refusal of licence.

provided also, that when and as often as any owner, lessee, or other occupant applying for such a licence as aforesaid shall be wholly refused the same or shall be allowed a licence covering a part or parts only of his property, it shall and may be lawful for such owner, lessee, or other occupant to require compensation from the Central Board of Commissioners of Public Roads for any losses which he may allege himself to have sustained, and thereupon such proceedings shall be had as if such claim were a claim for compensation preferred under and by virtue of the tenth section of Ordinance No. 8, 1843, [1] entituled an "Ordinance for improving the Public Roads of this Colony."

Evidence of contravention of second section.

6. And be it enacted that when and as often as any wagon, cart or other carriage shall be found within or upon any part of the said flats or downs (not being private property) or upon the said hard road or any other road or place to which the said wagon, cart, or other carriage shall have come from any place eastward of the Salt River having in or upon such wagon, cart or other carriage, trees, shrubs or bushes of a species or description commonly found growing on the said flats or downs, it shall and may be lawful for any person finding the same to require the person in charge thereof to produce and show such a certificate or note in writing as aforesaid; and his refusal or neglect so to do shall be deemed and taken for the purpose of the penalties by this Ordinance provided to be conclusive evidence that the said trees, shrubs, or bushes were carried away by the person so neglecting or refusing, from Crown land as in the second section of this Ordinance mentioned, and thereupon such person may lawfully be required, and if he shall refuse may, if necessary, be forcibly compelled to proceed forthwith to the nearest Resident Magistrate or Road Magistrate, there to be dealt with according to law in the exercise of the jurisdiction hereinafter conferred. Provided always, that if it shall be proved to the satisfaction of such Resident Magistrate or Road Magistrate that the certificate or note in writing by law required was really given and received, and afterwards lost or mislaid, the person accused shall be acquitted, or if he shall have paid any fine imposed upon him previous to such proof being given, shall have the same returned to him, or if in prison by reason of default made in the payment of any such fine shall be forthwith discharged by an order under the hand of the committing magistrate.

Jurisdiction in all cases under the ordinance.

7. And be it enacted that the Court of the Resident Magistrate of Cape Town and the district thereof, and the Cape District, and

[1] Repealed by Act 9, 1858.

Digitised by the University of Pretoria, Library Services, 2016

the Court of the Resident Magistrate of the district of Wynberg, and the Court of the Judge and Superintendent of Police of Cape Town, shall respectively have jurisdiction to inquire into and determine all cases and questions of fines, forfeitures, or penalties by this Ordinance provided.

Jurisdiction as to offences under second section.

8. And be it enacted that every Road Magistrate resident within the division of the Cape shall have jurisdiction in regard to every offence in the second section of this Ordinance mentioned, whenever any wagon, cart, or other carriage shall be brought before him under and by virtue of the sixth section of this Ordinance, and shall in regard to the prosecution of any such offence proceed in manner and form as by law would have been fit and proper had such wagon, cart, or other carriage been brought before him under and by virtue of the twentieth section of Ordinance No. 9, 1846, entituled "Ordinance for the better preservation of the Public Roads and the prevention of Accidents thereon," charged with having contravened any of the provisions of the third section of the said last-mentioned Ordinance.

Penalty on forging certificate.

9. And be it enacted that if any person shall forge or alter any such certificate or note in writing as aforesaid, or if any person in charge of any wagon, cart, or other carriage shall knowingly produce and show as genuine, any forged or altered certificate or note in writing as aforesaid, or any paper purporting to be such a certificate or note in writing as aforesaid, which shall not bear and shall by the person producing and showing the same be known not to bear the signature of any person by the provisions of this Ordinance authorised and entitled to grant such a certificate or note in writing, or if any person so authorised and entitled as last aforesaid, shall knowingly put or affix any wrong date to any such certificate or note in writing as aforesaid, or if any such last mentioned person shall deliver to any other person any such certificate or note in writing, save only for the use and protection of some wagon, cart, or other carriage then actually loaded with or loading, or about to load the trees, shrubs, or bushes referred to in and intended to be protected by such certificate, such person so offending shall upon conviction of any such offence be liable to forfeit any sum not exceeding twenty pounds, and upon non-payment thereof shall be imprisoned for any term not exceeding six months.

Time of taking effect.

10. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 29.] [Oct. 5, 1846.

Ordinance for the better Regulation of the Sale of Wines and Spirituous and Fermented Liquors.

[Repealed by Ordinance No. 9, 1851.]

Digitised by the University of Pretoria, Library Services, 2016

No. 30.] [Oct. 30, 1846.

Ordinance for applying a Sum not exceeding £161,854 15s. 10d. for the service of the year 1850.

No. 31.] [Oct 30, 1846.

Ordinance for applying a Sum not exceeding £7,421 16s. 10d. for the service of the year 1846, in addition to the sum already in that respect provided.

No. 32.] [Oct. 30, 1846.

Ordinance for amending the Law regarding certain Rules of Court.

[Repealed by Act No. 26, 1856.]

No. 33.] [Nov. 25. 1846.

Ordinance for amending the Ordinance, No. 2, 1845, entituled "Ordinance for creating a Deeds Registry Office for the District of Natal."

No. 34.] [Dec. 14, 1846.

Ordinance for levying Wharfage and other dues in Cape Town and for devoting them to the construction of a Harbour of Refuge in Table Bay, and for other purposes.

[Not sanctioned by the Home Government.]

No. 1.] [Jan. 11, 1847.

Ordinance for removing vessels stranded in the Ports and Harbours of this Colony.

[Repealed by Act 46, 1885.]

No. 2.] [Feb. 23, 1847.

Ordinance for facilitating the Apprehension and regulating the mode of Conveyance of Deserters from Her Majesty's Land Forces within the District of Natal to their respective Corps; and for the more prompt payment of Rewards and the Expenses consequent thereupon.

Digitised by the University of Pretoria, Library Services, 2016

No. 3.] [March 5, 1847.

Ordinance for authorising the Vestry of St. Paul's Church, Rondebosch, to raise a Sum of Money not exceeding £2,000, to enlarge the Building of the said Church. [Spent.]

No. 4.] [March 11, 1847.

Ordinance to indemnify all Persons in regard to certain Acts done during the recent existence of Martial Law. [Spent.]

No. 5.] [March 30, 1847.

Ordinance for the creation of Municipal Boards in the Towns and Villages of the District of Natal.

No. 6.] [March 30, 1847.

Ordinance for enabling the Lieutenant-Governor of Natal to make provision for regulating the dealing in and possession of Fire-arms and Ammunition within the said District.

No. 7.] [March 30, 1847.

Ordinance for enabling the Lieutenant-Governor of Natal to establish Public Pounds within the said District.

No. 8.] [March 30, 1847.

Ordinance for enabling the Lieutenant-Governor of Natal to establish Markets within the said District.

No. 9.] [March 30, 1847.

Ordinance for regulating the Sale of Wines and Spirituous and Fermented Liquors within the District of Natal.

No. 10.] [March 30, 1847.

Ordinance for laying certain Duties upon Licences and in lieu of Stamps within the District of Natal.

No. 11.] [March 30, 1847.

Ordinance for amending the Ordinance No. 14, of 1845, entituled Ordinance for erecting a District Court in and for the District of Natal.

Digitised by the University of Pretoria, Library Services, 2016

No. 12.] [March 30, 1847.

Ordinance for the Establishment and Regulation of a Post Office and Postage within the District of Natal.

No. 13.] [April 16, 1847.

Ordinance for empowering the Commissioner for Claims to take Evidence relating thereto.

[Expired.]

No. 14.] [June 25, 1847.

Ordinance for enabling the Governor of the Colony to create Courts of Resident Magistrates.

[Repealed by Act No. 20, 1856.]

No. 15.] [July 20, 1847.

Ordinance for reviving the Provisions of the Ordinance No. 15, of 1844, entituled "Ordinance to provide for the Enregisterment in the Land Registers of the Colony of certain Subdivisions of the Locations and Extensions of the Settlers of 1820."

[Expired.]

No. 16.] [July 24, 1847.

Ordinance for the better Regulation of Pounds and Prevention of Trespasses.

[Repealed by Act 15, 1892.]

No. 17.] [Sept. 11, 1847.

Ordinance for declaring the true meaning and construction of the 21st section of the Ordinance No. 8, 1843, entituled "Ordinance for improving the Public Roads of this Colony."

[Repealed, with Ordinance No. 8, 1843, by Act No. 9, 1858.]

No. 18.] [Sept. 11, 1847.

Ordinance for applying a Sum not exceeding £179,981 9s. 7d. for the service of the year 1848. [Spent.]

No. 19.] [Sept. 11, 1847.

Ordinance for applying a Sum not exceeding £11,365 9s. 8d. for the service of the year 1847, in addition to the Sum already in that respect provided. [Spent.]

Digitised by the University of Pretoria, Library Services, 2016

No. 20.—Sd. Henry Pottinger.] [October 29, 1847.

Ordinance for relieving Agricultural and other Produce and other Articles from the necessity of passing through Public Markets.

Preamble.

WHEREAS under and by virtue of certain powers and authorities contained in the following Ordinances respectively, that is to say, the Ordinance No. 9, 1836, entituled "Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony on which the local Regulations of each shall be founded;" the Ordinance No. 6, of 1837, entituled "Ordinance to authorise the Governor of the Colony, by and with the advice of the Executive Council, to establish Markets and provide Regulations for the same in Villages and other places not being Municipalities," and the Ordinance No. 1, 1840, entituled "Ordinance for the better Regulation of the Municipal Board of Cape Town and the Vicinity thereof," markets have been established in various towns and villages throughout the Colony and various regulations regarding the said markets having the force of law been from time to time framed and published: And whereas by the respective regulations of and concerning the said markets respectively or the greater number of the said markets it is provided and required that certain produce and other articles brought into the said towns or villages shall be obliged to pass through the market established within the same and be there sold by public sale, in case the same shall not have been previously entered in manner and form as by such regulations in that behalf provided: And whereas the compulsory provisions aforesaid whereby the owners of produce or other articles brought into such towns or villages for sale are prevented from selling the same where and when and in what manner they themselves deem best, and are forced to pass the same through the public market and pay market dues and charges thereupon, are subversive of that freedom in regard to their dealings which the inhabitants are entitled to enjoy and are justly deemed oppressive by many farmers and others frequenting the several towns and villages in which such compulsory provisions exist: And whereas it is expedient to annul and make void all such compulsory provisions, leaving all such markets as aforesaid to be resorted to by persons voluntarily desirous of so doing but none other: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all municipal or market regulations heretofore framed and published under and by virtue of any of the aforesaid Ordinances respectively, in so far as such regulations or any of them shall be repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, avoided, and annulled, and the same are hereby repealed, avoided, and annulled accordingly.

Repeal of repugnant municipal market regulations.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 20–1847.

Relief of produce, &c., from passing market.

2. And be it enacted that no person conveying or carrying any agricultural or other produce or any article, matter, or thing whatever to and into any town or village in this Colony shall henceforth be required or obliged under any pain or penalty whatsoever to carry or convey the same into or upon any market established in such town or village under or by virtue of the said Ordinances respectively, nor to pass the same through or sell the same at any such market, nor to pay or satisfy any manner of municipal or market dues or charges in respect of any produce, article, matter, or thing not voluntarily carried or conveyed into or within the precincts of the markets, nor to enter or cause to be entered upon any market registry any produce, article, matter, or thing not as aforesaid voluntarily brought to such market; but on the contrary all persons whomsoever shall be fully and lawfully entitled to bring into, through, or out of every town or village for sale or barter or any other purpose any description of property whatsoever, and to dispose of the same elsewhere than at or on the public market, or to take the same away again as he shall deem expedient, without being thereby liable to pay any fine, forfeiture, due, or charge whatsoever: Provided, always, that nothing herein contained shall be taken or construed so as to impair or affect any such market regulation as aforesaid so far as it may relate to any produce, article, matter, or thing which shall be voluntarily carried or conveyed into or within the precincts of any such market aforesaid in order to be sold or offered for sale thereat; and such produce, article, matter, or thing shall be subject to all such regulations and be liable to the like dues and charges as if this Ordinance never had been passed.

Prohibition of future municipal and market regulations making it compulsory for produce to pass market.

3. And be it enacted that it shall not be competent or lawful for any municipal or market regulation to be hereafter framed and published whether under and by virtue of the Ordinances aforesaid or of the Ordinance No. 4, 1839, entituled "Ordinance for the creation of a Municipal Board for the Districts of Green Point and Sea Point," to make or render it compulsory upon any person to convey or carry any produce, matter or thing to any particular market or place of sale or to impose any fine or penalty upon any person for not conveying or carrying the same to such market or place or to impose any due or charge upon or in regard to the sale, barter, or other disposition of any property not voluntarily and actually conveyed or carried into or upon the public market.

Limits of markets.

4. And be it enacted that the limits of every market established in any town or village under or by virtue of any of the Ordinances aforesaid respectively shall remain and continue as fixed or reputed at the time of the promulgation of this Ordinance, unless altered or enlarged by some regulation, municipal or otherwise, having the force of law, duly framed and published.

Digitised by the University of Pretoria, Library Services, 2016

5. And be it enacted that nothing in this Ordinance contained shall extend to the district of Natal. Ord. 21—1847. Exclusion of Natal.

6. And be it enacted that this Ordinance shall commence and take effect from and after the 1st day of January, 1848. Time of taking effect.

No. 21.—Sd. Henry Pottinger.] [Oct. 29, 1847.

Ordinance for improving the Ports, Harbours, and Roadsteads of this Colony. (1)

WHEREAS it is expedient in order to facilitate and encourage the export and coasting trade of this Colony that provisions be made by law for increasing the safety and convenience of the several ports, harbours, and roadsteads thereof and generally for improving the same: And whereas such improvement may most fitly and effectively be made by means of local boards of commissioners to be invested with all necessary powers and authorities: Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Governor of this Colony to nominate and appoint for or in regard to any port, harbour, or roadstead in this Colony which shall be deemed by him to need improvement a board of commissioners, to be called and known by such style and title as the said Governor when nominating and appointing the same shall bestow or prescribe. Preamble. Appointment of board of commissioners.

2. And be it enacted that every such board of commissioners shall consist of so many fit and proper persons, not less than three nor more than five, (2) as the said Governor shall deem sufficient, who shall from time to time be appointed by proclamation to be from time to time issued in the *Government Gazette*, and such persons so appointed shall continue to be members of the board for or in regard to which they shall have been nominated until their respective appointments shall be revoked by some proclamation to be issued as aforesaid; and every person who shall be appointed to be a member of any such board shall before proceeding to act as such take and subscribe before some Resident Magistrate or Justice of the Peace the following declaration, which declaration such Magistrate or Justice is hereby authorised to administer, that is to say: "I, A. B., do declare that I will faithfully execute the duties of a commissioner of (here state the style and title of the Constitution of board. Declaration of commissioner.

---

[1] See General.—Acts 15, 1861: 2, 1877; 5, 1887; 16, 1857, § 37; 7, 1894; 46, 1885. Special.—East London—Acts 18, 1869; 7, 1871; 11, 1874; 26, 1875; 22, 1878; 18, 1893, § 28; 8, 1894, § 4. Kowie—Acts 26, 1864; 11, 1874; 10, 1866-67; 16, 1869. Mossel Bay—Acts 7, 1860; 26, 1864; 20, 1886. Port Elizabeth—Acts 10, 1858; 24, 1884; 26, 1864; 25, 1875; 16, 1859; 5, 1873; 21, 1882; 23, 1883; 20, 1872; 16, 1894. Simon's Town—Ord. 6, 1851; Acts 14, 1855; 17, 1861, § 6; 26, 1885. Table Bay—Ord. 100, 1833; Acts 14, 1855; 4, 1857; 20, 1858; 22, 1872; 37, 1887; 9, 1893; 4, 1873; 26, 1881; 11, 1890; 39, 1889.

[2] Seven, see Act 15 of 1861.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 21—1847.

particular board) appointed by His Excellency the Governor under and by virtue of the provisions of Ordinance No. 21, 1847." And every such declaration so taken and subscribed shall be forwarded to the Secretary to Government to be preserved in the Colonial Office.

Nomination of chairman.

3. And be it enacted that the said Governor shall by proclamation as aforesaid from time to time nominate and appoint one of the members of every such board as aforesaid to be the chairman thereof; and the said board shall hold its meetings (1) at such times and at such place or places as the members thereof shall find it convenient for the dispatch of business to appoint; and such a number of members as shall by any such proclamation as aforesaid be directed shall form a quorum and shall be competent to exercise the several powers and authorities hereinafter mentioned and granted to every such board; and at any meeting of any such board at which the chairman for the time being shall not be present, some member thereof present shall be chosen by a majority of votes of the members present to take the chair, and whenever at any meeting of any such board the votes of the members in regard to any question shall be equally divided the chairman besides his vote as a member shall have a casting vote. And every such board shall be competent to frame all necessary rules and regulations for the due and proper dispatch of business.

Quorum.

Powers and duties of board.

4. And be it enacted that it shall and may be lawful for every such board and it shall be the duty thereof, so far as a necessity shall appear to exist and the means at its disposal shall permit, to take measures for improving by means of piers, wharfs, landing-places, moorings, engines, and other works of a like nature the port, harbour, roadstead, bay or inlet for or in regard to which such board shall have been appointed. (2)

Report to Governor of intended works.

5. And be it enacted that it shall and may be lawful for every such board as aforesaid and it is hereby required to frame and transmit to the Governor aforesaid a report setting forth what particular works appear to the said board to be most required for the improvement of the port or place in regard to which such board shall have been appointed, and stating as accurately as may be the probable nature and cost of such preliminary examinations, surveys, plans, and estimates as shall be necessary, in order to determine in regard to the practicability and expense of such proposed works; and thereupon it shall and may be lawful for the said Governor, should he approve of such report, to cause to be issued as a temporary advance from time to time as he shall find necessary from the Colonial Treasury to such board as aforesaid, to be by it applied in procuring and prosecuting in respect of such work or works as the said Governor shall approve of and direct

Advance for preliminary expenses.

[1] Every meeting is open to the public, Act 15 of 1861.

[2] And to make regulations for the due and proper management of the said Wharves, &c., Act 2 of 1877. See also Act 5, 1887.

Digitised by the University of Pretoria, Library Services, 2016

any such examinations, surveys, plans, and estimates as aforesaid; and every such temporary advance as aforesaid shall be repaid to the Colonial Treasury by the board receiving the same from and out of any funds or moneys to be by it received, borrowed, or raised under the provisions and for the purposes of this Ordinance; but in case there shall be no such funds or moneys then such advance shall become a charge upon and be borne by the public revenue. Ord. 21 1847.

Authorisation of loans on credit of the public revenue.

6. And be it enacted that when and as soon as the necessary examinations and surveys, plans and estimates shall have been made or caused to be made by any such board in respect of any intended work or works as aforesaid the same shall be sent in by such board for the inspection and approval of the said Governor, and thereupon it shall and may be lawful for the said Governor, with the advice and consent of the Legislative Council (1) of the Colony, to be declared by any vote or resolution of the Council, to authorise any such board to borrow and take up from time to time upon interest such sum or sums of money as may be necessary for the execution of any such work or works, and to engage and pledge the credit and responsibility of the public revenue of this Colony for the repayment of the principal and interest of every such sum as shall be so borrowed.

Mode of effecting loans.

7. And be it enacted that all sums of money which shall be borrowed or taken up by way of loan by any such board as aforesaid shall be borrowed and taken up in such amounts and for such times and at such rate of interest as the Governor aforesaid with such advice and consent as aforesaid to be declared as aforesaid shall approve of, and all such sums shall be a charge upon and payable out of such tolls, charges, fees and revenues as shall under and by virtue of any of the provisions in that behalf hereafter mentioned be claimable and recoverable by such board for or in respect of the use by any person or persons of all or any of the works to be provided and completed by such board; and every bond, hypothecation, or other deed necessary for the securing of the due and punctual repayment of every such loan with interest thereon in the mean time shall be executed by and on behalf of the board borrowing the same by the chairman of such board in his capacity as such chairman, and shall be executed by and on behalf of the Colonial Government by such person as shall by the Secretary to Government in the name of the Governor aforesaid by any writing under his hand be authorised to execute the same, and the execution by any such last-mentioned person of any such bond, hypothecation, or other deed as aforesaid as surety *in solidum* and co-principal debtor for or in respect of the punctual repayment of any principal sum with interest shall have the force and effect of pledging and engaging the public revenue of this Colony for

Execution of bonds.

[1] The Legislative Council referred to in this Section is extinct. See Preamble to Act 10, 1858.

Digitised by the University of Pretoria, Library Services, 2016

Ord 21—184

the due fulfilment of the stipulations and provisions in the said deed contained and by the board aforesaid to be performed.

Power of employing engineers, &c.

8. And be it enacted that it shall be lawful for every such board and it is hereby empowered from time to time, to appoint such and so many surveyors, engineers, clerks, officers and other persons as it shall deem necessary to employ in the execution of any of the powers conferred upon such board by this Ordinance, and may from time to time remove such surveyors, engineers, clerks, officers, and other persons or any of them and appoint others in their stead, and fix the respective duties and salaries of such surveyors, engineers, clerks, officers, or other persons, and if it shall think proper so to do take such security from any surveyor, engineer, clerk, officer, or other person appointed by virtue of this Ordinance for the due and faithful execution of his office or employment as the said board shall think fit: but no amount of salary shall be assigned to any person engaged for an indefinite period, or for any definite period longer than six months, until the same shall have been first approved of by the Governor aforesaid.

Power with consent of Governor to use public lands and excavate materials.

9. And be it enacted that it shall and may be lawful for every such board by and with the consent of the Governor aforesaid to enter upon and take possession of so much of any land belonging to the Queen's most excellent Majesty as shall be required for the purpose of any of the works, matters or things aforesaid by such board to be constructed or made or for any other purpose relating to the execution of this Ordinance. And also to enter upon all lands of her said Majesty lying convenient to any such works and there to dig for, excavate, and carry away all such stones, clay or other materials as may be required or serviceable for the making and repairing of any of the said works.

Vesting in boards of rights of government in regard to private property.

10. And be it enacted that for the purpose of executing any of the objects of this Ordinance it shall be lawful for every such board and it is hereby authorised to take and use any land and to dig out and carry away any materials belonging to or being found in or upon the land of any person or persons whatsoever and which land shall adjoin or lie convenient to any work to be performed or carried on, and that such board shall be and is hereby invested for the purpose of so doing with all and singular the legal rights if any belonging to the Government of this Colony in respect to the taking of any such land adjacent to the sea and the raising and carrying away such materials for making and repairing roads or harbours and whether such rights shall have been preserved to the said Government by the proclamation of His Excellency Sir John Francis Cradock, bearing date the 6th day of August, 1813, permitting the conversion of lands on loan into places on perpetual quitrent, or shall have been created by express stipulation or condition in any grant of freehold property, or shall exist in any other way or manner whatsoever.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 21—1847.

Proceedings where materials are required from lands on which no such rights exist.

11. And be it enacted that in any case any such board shall require to take or use any land or to dig out or carry away any materials belonging to any person who shall not be bound by law to allow the said board so to do without requiring any recompense or payment by reason of the powers and authorities in the last preceding section delegated to or bestowed upon the said board, and which person shall think proper to require compensation from the said board, it shall be lawful for the said board and it is hereby authorised to treat and agree with every such person for the purchase or hire as the case may be of any such lands or materials as last aforesaid, and generally to enter into such contract or contracts relative to the obtaining of any such land or materials upon such terms and conditions as it shall judge expedient. And if any such person and the said board shall not agree upon the purchase money or hire or other recompense to be respectively given by the one party and accepted by the other, then the said board shall cause to be served upon such person a written notice offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state in writing to the said board or to some person by it appointed, within a certain limited time to be specified in the said notice, whether he is willing to accept the sum therein mentioned or not. And in case such person shall refuse to accept the sum offered or shall neglect to reply to said notice then the said board shall by another notice in writing call upon such person to refer to arbitration the amount of recompense or compenastion to be paid to him by the said board, and for that purpose to transmit to the said board within a certain reasonable time to be specified in the said last-mentioned notice the name of some person whom he shall select to be an arbitrator upon such arbitration; and the said board upon receiving the name of the person so selected shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said board by the secretary of the said board for the time being and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and shall contain amongst other things a direction to the said arbitrators to set off against and deduct from the amount of such recompense or compensation as would otherwise be claimable, the amount at which they shall estimate the benefit and advantage derived or to be derived by the person claiming recompense or compensation by reason of the formation or improvement of the work in regard to which the question shall have arisen, together with a power to the said arbitrators in case of a difference in opinion to call in an umpire, whose decision shall be final; and the award of such arbitrators or umpire as the case may be shall be made a rule of the Supreme Court and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding

Offer of recompense for such materials.

Arbitration.

Umpirage.

Making award a rule of court.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 21—1847.

Proceeding in case of refusal of arbitration.

at law brought for or on account of the same subject-matter. And in case such person as aforesaid claiming such recompense or compensation shall neglect or refuse to name some person to be such arbitrator as aforesaid or to sign the said deed of submission, then it shall be lawful for the said board and it is hereby authorised to lodge in some joint stock bank in the Colony the sum of money offered by it as aforesaid in its first notice in this section mentioned for or on account and at the risk of such persons aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said board upon so lodging the said sum shall be authorised and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by arbitrators or an umpire under the provisions of this section, as if all acts by law required for vesting in the said board a sufficient title to the use of or property in the land or materials aforesaid had been duly done and performed.

Proceeding of board when owner of land cannot be found.

12. And be it enacted that in case any such board as aforesaid shall require to take or use any of the land or to dig out or carry away any of the materials in the last preceding section mentioned of which the owner or owners shall be absent from the Colony and not represented by any agent duly accredited or shall not be discoverable, then it shall be lawful for the said board and it is hereby authorised to cause a notice to be inserted in the *Government Gazette* for four successive weeks, describing as accurately as may be the land which is required to be taken or used or from and out of which materials are required to be dug out and carried away, and calling by name upon the owner or owners of the said land or materials if known, or if not known then upon the owner or owners whoever he or they may be, to take notice that the said board is ready and willing to treat with the owner or owners or any person duly authorised by him or them for the recompense or compensation to be made or paid by the said board for the said land or materials, and requiring such owner or owners to apply within forty-two days from the date of such notice, which shall be the day of its first publication, to the said board, stating the recompense or compensation claimed; and if the owner or owners shall so apply within the said period, then the like proceedings, in regard to the agreeing for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken which are prescribed in the last preceding section, precisely as if the said owner or owners had from the first been in actual occupation; and

Appraisement of land or materials.

in case such owner or owners shall not apply to the said board within the said period then it shall and may be lawful for the said board to appoint some competent person to appraise the value of the land or materials required (setting off against and deducting from the value of such land or materials the amount at which the appraiser shall estimate any benefit or advantage derived or to be

Digitised by the University of Pretoria, Library Services, 2016

derived by the owner or owners of the said land or materials, by reason of the formation or improvement of the work in regard to which the question shall have arisen), and such person shall make oath before some Justice of the Peace (which oath every Justice of the Peace is hereby empowered to administer) that he hath to the best of his judgment fairly appraised such value, and thereupon it shall and may be lawful for the said board to pay whatever sum such person shall have valued the land or materials in question at, into the Guardian's Fund to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th of July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony; and the said board upon so paying the said sum shall be authorised and entitled to take or to use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said board a sufficient title to the use of or property in the land or materials aforesaid had been duly done and performed.

Ord. 21—1847.

Payment of sum awarded into guardian's fund.

13. And be it enacted that all works constructed, altered, repaired, or improved by any such board as aforesaid shall vest in such board together with all lands reclaimed by any such board from the sea.

Vesting of property in boards.

14. And be it enacted that all lands which shall under and by virtue of any of the provisions of this Ordinance become vested in any such board as aforesaid and which shall be or become unnecessary for the purposes of any of the works under the management or administration of such board, may be sold or alienated by such board, and the moneys arising from the sale or alienation thereof shall be applied by the said board to the purposes thereof: Provided always that no such board shall sell or alienate any such land without the consent of the Governor aforesaid first had and obtained; and provided also that in the application of the proceeds thereof the said board shall conform to such directions in that behalf as the said Governor shall issue.

Disposal of unnecessary lands.

15. And be it enacted that when and so often as any pier, harbour, quay, landing-place, engine, moorings, or other work shall become vested in any such board as aforesaid under the provisions of this Ordinance it shall and may be lawful for the said board and they are hereby authorised to levy or cause to be levied and paid for the use of such pier, harbour, quay, landing-place, engine, moorings, or other work, such tolls and rates as the Governor aforesaid, with the advice and consent of the Legislative Council [1] aforesaid, to be declared as aforesaid, issued from time to time, approve of, and by any proclamation to be by him shall in that behalf from time to time publish and announce: Provided always, that when and so soon as the moneys if any due and owing by any such board in

Imposition of tolls and rates for use of piers, &c.

Reduction of tolls, &c.

[1] See Acts 2 of 1877; 5, 1887; and § 3, Act 5 of 1883.

Digitised by the University of Pretoria, Library Services, 2016

Ord 21 – 1847.

respect of sums by such board borrowed and taken up as aforesaid for the purposes of all or any of the works under the management or administration of such board shall have been by such board paid off and satisfied, then and in that case all tolls and rates payable to such board shall as much as may be be lowered to and fixed at such a scale or tariff as shall yield an amount not exceeding the probable average annual expense of maintaining and repairing the works aforesaid and further improving the port or harbour in or about which such works shall have been made. And such reduction shall be made by the Governor aforesaid by any such proclamation as aforesaid.

Letting to hire of tolls, &c., by tender or public auction.

16. And be it enacted that every such board may from time to time if it shall deem it to be expedient let or farm the tolls and rates to be payable in regard to the use of any pier, harbour, quay, landing-place, engine, moorings, or other work vested in such board by tender or by public auction to the highest and best bidder, for any time not exceeding one year in any case: Provided always, that previously to every letting of such tolls or rates the said board shall give in some convenient manner public notice of the time and place at which tenders will be received or any such auction as aforesaid will take place; and that the person who shall at any such auction be declared to be the highest bidder or whose tender shall be accepted will be required to produce two sufficient sureties for the payment of the stipulated hire; and provided also that in every letting of such tolls or rates whether by tender or by auction the said board shall require the farmer or renter thereof to enter into a bond with not less than two responsible sureties, 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 in case any instalment or payment of such rent or hire shall be in arrear and unpaid for the space of three days after the same shall have become due then it shall be lawful for the said board to enter into and take possession of the said tolls or rates and of all toll houses or other buildings of which the renter or farmer in default would otherwise be entitled to the use, and to re-let the said tolls, or otherwise to place a collector or collectors in receipt thereof and possession of the said houses and buildings, as to them may seem fit; and the sum for which the said renter or farmer shall 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 or rates, credit being given to him by the said board for whatever sums they shall receive for or on account of the said tolls in respect of the term for which the said rates or tolls were let to the renter or farmer making default.

Conditions of tender and auction.

Affixing of tables of tolls.

17. And be it enacted that the said board or in case of any letting to hire every renter or farmer of any tolls or rates shall affix

Digitised by the University of Pretoria, Library Services, 2016

or cause to be affixed and continued in a conspicuous place at or near which any rate or toll shall be payable a table of the rates or tolls to be taken thereat plainly and legibly painted or printed in the English language, under a penalty not exceeding five pounds, to be sued for by any person whatever in any competent Court for his own use.

Decision by Governor and council whether all articles or only articles voluntarily conveyed to the pier, &c., shall be subject to tolls.

18. And be it enacted that it shall and may be lawful for the Governor aforesaid, with the advice and consent as aforesaid, to be declared as aforesaid when and as often as he shall with such advice and consent approve of any tolls or rates to be levied and paid for and in respect of any pier, harbour, quay, landing-place, engine, moorings, or other work as aforesaid, to fix and determine and by any such proclamation as aforesaid publish and announce whether such tolls or rates shall be levied and paid upon or in respect of every rated article, matter or thing landed or shipped at or in any part of the port, harbour, or roadstead in question, or only upon or in respect of such rated articles, matters or things as shall voluntarily be brought or taken to the pier, harbour, quay, landing-place, engine, moorings, or other work aforesaid in regard to the use of which such tolls or rates shall be imposed. And when and as often as any tolls or rates shall be imposed upon or in respect of all rated articles, matters and things landed or shipped at or in any part of any port, harbour, or roadstead, the Governor aforesaid with the advice aforesaid shall by any such proclamation as aforesaid publish and announce the limits of such port, harbour, or roadstead, for the objects and purposes of such tolls or rates, and the levy and payment thereof, but not otherwise. Provided always, that no toll or rate in respect of the use of any moorings which shall be put down or fixed by any such board as aforesaid shall be claimed from or be payable by any vessel other than one which shall by the voluntary act of the master or person in charge have made use of the said moorings.

Appointment by board of collectors of tolls with approbation of Governor.

19. And be it enacted that it shall and may be lawful for any such board as aforesaid, in cases in which any tolls or rates as aforesaid shall not be leased or let, or for the lessees or lessee of such tolls or rates if leased or let from time to time to appoint by and with the approbation of the Governor aforesaid sufficient collectors and officers or agents for the purpose of receiving the tolls or rates payable under this Ordinance, and in case any person liable to pay such tolls or rates shall refuse or neglect to pay the same it shall be lawful for such board or for the lessees or lessee of the said tolls or rates or their officer or agent or other person to whom such toll or rate ought to have been paid to seize the vessels, goods, articles, matters, and things in respect of which such tolls or rates ought to have been paid wherever the same may be found, and to detain the same until such tolls or rates together with the reasonable cost and expense of such seizure and detention shall be paid; and if such vessels, goods, articles, matters and things shall

Digitised by the University of Pretoria, Library Services, 2016

Ord. 21—1847.

not be redeemed within twenty-one days after the seizure thereof the same shall be sold by public sale, and after deducting the costs of such seizure, detention, and sale all such sums as shall be due in respect of such tolls or rates shall be satisfied thereout and the overplus paid to the owner or whomsoever else it may concern.

Wilful injury to piers, &c.

20. And be it enacted that if any person or persons shall wilfully cut, break down, destroy, or injure any pier, harbour, quay, landing-place, engine, moorings, or work of any kind whatever erected or made under the authority of this Ordinance it shall be lawful for any person or persons who shall see the offence committed to apprehend and also for any other person or persons to assist in apprehending the offender or offenders, and by the authority of this Ordinance and without any warrant to deliver him or them to any field-cornet, constable, or peace officer, who is to keep him or them in safe custody, and with all reasonable dispatch to convey him or them before the Resident Magistrate within whose district the offence shall have been committed; and if the party accused shall 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 shall have been done thereby; and one moiety of such forfeit shall be paid to such person or persons apprehending such offender or offenders, and the other moiety shall be paid to the board of commissioners in which the work so injured as aforesaid shall be vested, to be by the said board applied for the purposes of this Ordinance; and in case any such offender shall not upon such conviction pay the said forfeiture and satisfaction such Magistrate is hereby required to commit him to prison, there to be kept to hard labour if such Magistrate shall so order for any time not exceeding three calendar months unless the said forfeiture and satisfaction shall be sooner paid: Provided always, that nothing herein contained shall prevent the said board from bringing any action for damages before the Supreme or any Circuit Court having jurisdiction should they consider the amount of such damages to exceed the jurisdiction of any Resident Magistrate.

Apprehension of offenders.

Penalty.

Imprisonment on non-payment of penalty.

Action for damages before superior court

Damage to works.

21. And be it enacted that if any person shall without lawful cause do damage or injury to any of the matters or things in the last preceding section mentioned it shall be lawful for any Resident Magistrate having jurisdiction, and he is hereby required, upon the application or complaint of the Board of Commissioners in which shall be vested the work to which such damage or injury shall have been done, 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 to award such sum of money by way of satisfaction to the party complaining of such damage, as to such Resident Magistrate shall appear reasonable; and in case of neglect or refusal forth-

Award by magistrate of damage.

Imprisonment on non-payment.

Digitised by the University of Pretoria, Library Services, 2016

with to pay such money together with all expenses attending the recovery thereof it shall be lawful for such Resident Magistrate to sentence the party so neglecting or refusing to any period of imprisonment not exceeding fourteen days: Provided however, that nothing herein contained shall prevent any such board from bringing any civil action for damages against any person doing such damage or injury as aforesaid before the Supreme Court or any Circuit Court having jurisdiction should they consider the amount of such damages to exceed the jurisdiction of any Resident Magistrate. Ord. 21—1847. Action before superior court.

22. And be it enacted that every such board shall and it is hereby required to cause a true, exact, and particular account to be kept and yearly made up and balanced, that is to say, on the 31st day of December in each year, of all the moneys raised, collected, or in any manner received by the said board, or by any person on their behalf, by virtue of or for the purposes of this Ordinance and of the charges and expenses incurred by the said board, and a copy of such account together with all necessary vouchers shall be transmitted by the said board to the Governor of the Colony for the time being, in order to the same being audited by such person or persons as the said Governor may from time to time appoint, and afterwards laid by the said Governor before the Legislative Council; and the said board shall also cause an abstract of the said account to be published without delay in the *Government Gazette* for general information. Mode of keeping, publishing, and auditing accounts.

23. And be it enacted that every such board shall and it is hereby required when transmitting such yearly account as aforesaid to transmit also a report made up to the 31st day of December in each year detailing all and singular the particulars of every work which such board shall have commenced, carried on, or completed during the year then ended; which report shall by the Governor aforesaid be laid before the Legislative Council. Transmission of annual report.

24. And be it enacted that no person appointed under and by virtue of this Ordinance to be a member of any such board as aforesaid shall have or receive any salary or allowance or shall exact, accept, or take any fee or reward whatsoever on any account whatsoever relative to carrying this Ordinance into execution; nor shall any such person be eligible to become a contractor with the board of which he shall be a member for the doing of any work or the supplying of any materials, articles, or things contemplated by this Ordinance; nor shall such person directly or indirectly be interested or concerned in any such contract as last aforesaid under a penalty not exceeding one hundred pounds. Prohibition to members to receive fees.

25. And be it enacted that 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 Ordinance or for or in respect of any other matter or thing relating to this Ordinance by or against any such board of commissioners as aforesaid it shall and may be Title under which board may sue or be sued.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 21—1847.

lawful for the said board to sue or be sued by the style or title by or under which such board shall have been appointed by the Governor aforesaid, and in all criminal proceedings the same style may be used. Provided always, that no member of any board shall be deemed or taken to be an incompetent witness in any such suit, action, or proceeding by reason of his holding the said office; and provided also, that the said members shall always be reimbursed out of the moneys to arise by virtue of this Ordinance all such costs, charges, and expenses as they shall be put to or become chargeable with by reason of bringing or defending any action or suit, unless such action or suit shall arise from their own gross negligence or wilful default.

Members of board competent witnesses in such actions.

Payment of costs.

Ordinance not to extend to Natal.

26. And be it enacted that nothing in this Ordinance contained shall extend to the district of Natal.

Time of taking effect.

27. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 22.] [October 29, 1847.

Ordinance for establishing certain Rules of Court.

[Not Printed.]

No. 23.] [December 28, 1847.

Ordinance for reducing the Postage upon Religious Publications of or under a certain weight.

[Repealed by Act No. 4, 1882.]

No. 24.] [December 28, 1847.

Ordinance for improving the Gaols of this Colony.

[Repealed by Act 23, 1888.]

No. 25.—Sd. H. G. Smith.] [December 28, 1847.

Ordinance for improving the Police of the Colony. (1)

Preamble.

WHEREAS it is intended to augment and render more efficient the police of the several country districts of this Colony: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Governor of this Colony for the time being to nominate and appoint from time to time as occasion may require, in every district of this Colony other than Cape Town and the district thereof, some fit and proper person to

[1] See Ord. 2, 1840, and notes.

Digitised by the University of Pretoria, Library Services, 2016

be the head of the police force of such district, who shall be called and styled "Chief Constable of the district of ————."

Chief Constable.

Oath of allegiance and declaration of office.

2. And be it enacted that every such chief constable shall before entering upon the duties of his office take the oath of allegiance and also subscribe the declaration of office following, that is to say, "I, A. B., do declare that I will truly and faithfully to the best of my ability, without fear, favour or affection, perform the duties of chief constable of the district of ————;" which oath and declaration the Resident Magistrate of the district is hereby authorised to receive.

Powers and duties of chief constable.

3. And be it enacted that such chief constable shall have and possess all the powers and authorities of a constable as in the next succeeding section more particularly described, and he shall be under the authority and control of the Resident Magistrate of the district and shall as such chief constable yield obedience to all the lawful commands of such Resident Magistrate, and shall constantly report to such Resident Magistrate all cases of crimes or offences which shall come to his knowledge.

Appointment of police made by magistrate with consent of Governor.

4. And be it enacted that it shall and may be lawful for the Resident Magistrate of every district other than Cape Town and the district thereof, with the consent of the Governor aforesaid, to nominate and appoint so many fit and proper men as may be necessary to be and constitute the police force of such district, who shall be sworn in by such Magistrate to act as constables for preserving the peace, preventing the commission of crimes, and apprehending offenders when crimes have been committed; and the men so sworn shall within the said district have all such powers, authorities, privileges, and advantages and perform all such duties and incur all such responsibilities as any constable duly appointed now has or hereafter may have within his constablewick or assigned district by virtue of any Law or Ordinance existing or to exist in this Colony, and shall obey all such lawful commands touching the manner in which they shall conduct themselves in the execution of their office as they may from time to time receive from their lawful superiors, as the latter shall be constituted, named, and specified in the rules and regulations to be hereafter framed.

Powers and duties of constables.

Rules, &c., framed by magistrate subject to Governor's approval.

5. And be it enacted that the Resident Magistrate of each district, subject to the approval of the Governor aforesaid, shall and may from time to time frame such rules and regulations as the said Magistrate shall deem expedient relative to the general government and management of the men so as aforesaid to be appointed members of the police force of such district, the classification, rank, and particular duty of the several members, their distribution and inspection, the description of arms, accoutrements, and other necessaries to be furnished to them, and which of them shall be provided with horses for the performance of their duty, and all such other rules and regulations relative to the said police force as the said Magistrate shall from time to time deem expedient

Digitised by the University of Pretoria, Library Services, 2016

Ord. 25—1847.

for preventing neglect of duty or abuse of authority and for rendering such force as efficient as possible for the performance of its duties.

Chief constable may suspend members of the force, but not dismiss.

6. And be it enacted that the chief constable of the district with the consent of the Resident Magistrate thereof may suspend from his employment any man belonging to the police force of that district whom he shall deem guilty of misconduct or negligent or remiss in the discharge of his duty or otherwise unfit for the same. But no man belonging to such force shall be dismissed save by the said Governor, and when and as often as any man shall be dismissed or shall cease to belong to such force all powers vested in him as a constable by this Ordinance shall immediately cease and determine.

Penalty for infringing the rules.

7. And be it enacted that any constable belonging to the police force of any district who shall be guilty of any neglect or violation of duty in his office of constable as the same shall be defined by the rules and regulations to be hereafter framed shall be liable to a penalty not exceeding ten pounds, which penalty may be deducted from any salary then due to such offender, or such offender may in the discretion of the Resident Magistrate (1) of the district who is hereby authorised and empowered to enforce in a summary manner, all penalties to be incurred under this section, as well as under the section next succeeding be imprisoned for any term not exceeding one month; but no such penalty or punishment shall be held or taken to exempt such constable from any other penalty or punishment which may by any other law be affixed to any illegal act or acts of which he may be guilty.

Resignation of constable.

8. And be it enacted that no constable belonging to any such police force shall be at liberty to resign his situation or withdraw himself from the duties thereof unless expressly permitted so to do by the chief constable in writing or unless he shall give to such chief constable two full months' notice of his intention; and every constable who shall so resign or withdraw himself without such leave or notice shall be liable to forfeit all arrears of pay then due to him or to a penalty not exceeding ten pounds or to imprisonment for any term not exceeding one month as to the Resident Magistrate of the district shall seem best and most expedient.

Penalty.

Clothing, &c., to be delivered up on leaving the force.

9. And be it enacted that every constable belonging to any such police force who shall be dismissed from or shall cease to hold and exercise his office and who shall not forthwith deliver over to the chief constable all the clothing, accoutrements, appointments, and other necessaries which may have been supplied to him for the execution of his duty or who shall wilfully or maliciously injure any of the said articles so as to render the same valueless or of less

[1] Or Special J.P., Act 10 of 1876, § 2.

Digitised by the University of Pretoria, Library Services, 2016

value before delivering the same over shall be liable to imprisonment for any time not exceeding two months; and it shall be lawful for the Resident Magistrate of that district to issue his warrant to search for and seize for the use of the said police force all the clothing, accoutrements, appointments, and other necessaries which shall not be so delivered over wherever the same may be found. Ord. 25—1847.

10. And be it enacted that every person not being a member of any such police force who shall have in his possession any article being part of the clothing, accoutrements, or appointments supplied to such member and who shall not be able satisfactorily to account for his possession thereof shall be liable to a penalty not exceeding ten pounds or in the discretion of the Magistrate before whom he shall be convicted to imprisonment for any term not exceeding one month. Penalty on persons possessing clothing, &c., belonging to the force.

11. And be it enacted that if any owner or keeper of any house, shop, store, or other place for the sale of any liquors whether spirituous or otherwise shall harbour or entertain any constable belonging to any such police force or permit such constable to remain in his house, shop, store, or other place as aforesaid for any part of the time during which to his knowledge such constable should be on duty every such owner or keeper as aforesaid shall for every such offence be liable to forfeit and pay any sum not exceeding ten pounds, and in default of payment thereof shall be liable to imprisonment for any term not exceeding one month. Publichouse keepers not to harbour constables on duty.

12. And be it enacted that no constable during any part of that time during which he shall be on duty shall be employed by any Resident Magistrate or chief constable or other public officer in any sort or description of private business, work, or labour under any circumstances or pretext whatsoever. Constables on duty not to be employed on private business.

13. [Repealed by Act 27 of 1882.]

14. And be it enacted that the said chief constable and the police under his command shall as much as in them lies suppress all tumults, riots, affrays, or breaches of the peace within the limits of their district, and enforce every Law or Ordinance made or to be made for the due observance of the Lord's Day, for the regular and decent conduct of houses licensed to retail wines or other liquors, for preventing the opening of such houses on improper days and at improper hours, for the suppression of unlicensed tippling houses, for the punishment of drunkenness, and generally for every purpose connected with the good order and tranquillity of the said district. Duties of police force.

15. [Repealed by Act 27 of 1882.]

16. [Repealed by Act 27 of 1882.]

17. And be it enacted that it shall and may be lawful for the members of any such police force to prevent, abate, and suppress all such nuisances and offences within any municipality situated in their district as shall be punishable by any municipal regulations Powers of police in regard of nuisances.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 25 1847.

of such municipality, and they are hereby empowered to arrest without warrant any person whom they shall see in the actual commission of any such nuisance or who shall be charged by any street-keeper or other officer of the said municipality or any other credible person with having recently committed any such nuisance; provided there shall exist reasonable ground for apprehending that except by arresting the party so offending within view of the said constable or so charged as aforesaid with having offended when not within such view such party could not be found or made answerable to justice without delay, trouble, or expense.

18. [§§ 18-20 repealed by Act 27 of 1882.]

Unlawful payments to constables.

21. And be it enacted that no chief constable or constable of or belonging to any such police force as aforesaid shall demand or receive from any person whatsoever any fee, gratuity, or payment for anything done or abstained from by such chief or other constable by virtue or under colour of his office.

Constables not to be concerned in canteens nor in supplying gaols.

22. And be it enacted that no chief constable or other constable shall directly or indirectly be concerned in or derive any profit or advantage from any tap, canteen, public house, or inn within the district nor from the supply of any rations, transport, matter, or thing to the public gaol or to the police force of such district, and any chief or other constable contravening any of the provisions of this section shall forfeit any sum not exceeding one hundred and not less than five pounds.

Criminal process of supreme court.

23. (1) And be it enacted that the chief constable of every district shall diligently and faithfully execute or cause to be executed as he shall be by law required all criminal process of the Supreme or any Circuit Court.

Returns to be made by chief constable.

24. And be it enacted that every chief constable shall every morning (unless prevented by some lawful cause) make a return in writing to the Resident Magistrate of the district showing how each constable of the force has been employed during the hours of duty of the previous day.

Residences of members of police force.

25. And be it enacted that when and as often as the members of any such police force as aforesaid shall not be provided with a place of residence by the Government of this Colony but shall be required to provide a residence for themselves such residence shall be fixed as near as may be to the public gaol of the district and shall be approved of by the Resident Magistrate.

Field-cornet's duties to be performed by chief constable.

26. And be it enacted that it shall and may be lawful for chief constables to perform within the limits of the town or village in which the office of the Resident Magistrate of his district shall be situated all and singular the several duties which by law might be performed within such town or village by the Field-cornet of a field-cornetcy embracing such town or village. Provided that the limits of every town or village shall for the purpose of this section

[1] See § 6, Act 15 of 1864 a 1 § 12, Act 12 of 1882.

Digitised by the University of Pretoria, Library Services, 2016

be as follows, that is to say,—should the same be or become a municipality the municipal limits for the time being, and should the same not be a municipality then the limits of such town or village shall be an imaginary circle drawn at the distance of two miles from the office aforesaid of the Resident Magistrate.

27. [§§ 27-36 repealed by Act 12 of 1874.]

Cape Town police not affected.

37. And be it enacted that nothing in this Ordinance contained shall extend to or affect the executive police of Cape Town and the district thereof.

Interpretation clause.

38. And be it enacted that in the construction of this Ordinance the term "Governor" shall mean the Officer Administering the Government of this Colony for the time being, and that the term "month," whenever the same occurs, shall be taken to mean a calendar month, and that the term "imprisonment" shall embrace imprisonment either with or without hard labour as the functionary awarding such imprisonment shall adjudge and declare; and that all words, importing the singular number only, shall include several persons, matters and things, as well as one person, matter, or thing; and the words importing the masculine gender only, shall include females as well as males, unless there be something in the subject or context, repugnant to such construction.

39. And be it enacted, that nothing in this Ordinance contained shall extend to the district of Natal.

Time of taking effect.

40. And be it enacted, that this Ordinance shall commence and take effect as law from and after the date of the promulgation thereof.

No. 26.—Sd. H. G. Smith.] [December 28, 1847.

Ordinance to provide for the performance in certain Places of certain Duties now performed by Clerks of the Peace. (1)

Witness' expenses under Ordinance 59 of 1829.

3. And be (2) it enacted that in regard to all criminal trials in any Court of Resident Magistrate in any district for which there shall not be a Clerk of the Peace the duties touching bills for the expenses of witnesses by the fourth section of the Ordinance No. 59, bearing date the 2nd of April, 1829, entituled "Ordinance for Regulating the Payment of Expenses of Witnesses attending to give Evidence on Criminal Trials and Preparatory Examinations," imposed upon the said Clerk of the Peace shall be and the same are hereby imposed upon and shall and may be discharged by the Clerk of the said Court. Provided that in any summary cases before the said Court such witnesses, whether against or in favour of the party accused, as shall have been summoned with the previous approbation or consent of the said Clerk as being in his

[1] Obsolete except as to §§ 3 and 4.
[2] See also § 7, Ord. 8 of 1852.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 26—1847.

judgment necessary and proper to be summoned, shall be deemed to be summoned at the instance of the Public Prosecutor within the meaning of the said Ordinance, and all other witnesses summoned shall be deemed for the purposes of the said Ordinance, to be so summoned by a private prosecutor or by the party accused as the case may be, and shall be treated accordingly.

Preparatory examinations.

4. And be it enacted that in the cases of all preparatory examinations before the Resident Magistrate or any Justice of the Peace of any district for which there shall not be a Clerk of the Peace the Clerk of the Peace of such district shall for the purposes of the fifth and sixth sections of the said Ordinance No. 59 be deemed and taken to be absent.

No. 1.] [January 8, 1848.

Ordinance for Improving the Port of Table Bay.

[Repealed by Act No. 11, 1857. *Vide* Act No. 20, 1858.]

No. 2.—Sd. H. G. Smith.] [June 27, 1848.

Ordinance for exempting Newspapers and certain other Publications from Stamp Duty.

Preamble.

WHEREAS by the Ordinance No. 26, bearing date the 23rd of October, 1826, certain duties were imposed upon newspapers and other periodical works printed and published in this Colony: And whereas it is expedient that all such duties should be abolished:

Repeal of Ordinance 26 of 1826.

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said Ordinance No. 26 and every matter therein or in the schedules thereto contained shall be repealed, and the same are hereby repealed accordingly.

Time of taking effect.

And be it enacted that this Ordinance shall commence and take effect as law from and after the date of the promulgation thereof.

No. 3.] [June 27, 1848.

Ordinance to amend the Ordinance No. 49.

[Lapsed.]

No. 4.—Sd. H. G. Smith.] [June 27, 1848.

Ordinance for rendering legal certain Marriages supposed to be invalid.

Preamble.

WHEREAS His Excellency Sir Henry George Wakelyn Smith, Baronet, G.C.B., &c., &c., &c., Her Majesty's High Commissioner for the settling and adjustment of the affairs of the

Digitised by the University of Pretoria, Library Services, 2016

territories of Southern Africa adjacent and contiguous to the Eastern and North-eastern frontier of the Colony of the Cape of Good Hope, did by his proclamation bearing date the 17 of May, 1848, of which a copy is set forth in the schedule hereunto annexed, make provision for rendering valid and effectual certain marriages or reputed marriages in the said proclamation described: And whereas it is expedient that the marriages so legalized by the said High Commissioner in and for the certain territories in the said proclamation mentioned (being part and parcel of Her Majesty's dominions, but not part or parcel of this Colony) should likewise be rendered valid and effectual within this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all and singular the provisions of the proclamation aforesaid and hereunto annexed shall within this Colony have the force and effect of law, and that the registration of marriages in and by the said proclamation provided shall for purposes civil or criminal have the same effect and none other within this Colony which under and by virtue of the said proclamation it is declared or intended to have within the territories aforesaid.

Ord. 4—1848.

Proclamation of 17th May, 1848, given the force of law.

2. And be it enacted that the certificate in the fifteenth section of the said proclamation mentioned shall be good evidence of every such marriage as aforesaid before all Courts and Magistrates in this Colony.

Certificate of marriage, evidence.

3. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

Time of taking effect.

SCHEDULE.

Proclamation.

WHEREAS I did by a proclamation bearing date the 3rd of February, 1848, issued by me in my capacity as Her Majesty's High Commissioner for settling and adjusting the affairs of certain territories adjacent to the Colony of the Cape of Good Hope proclaim, declare, and make known the sovereignty of Her said Majesty over certain territories north of the Great Orange River in the said proclamation mentioned and described: And whereas at various times during the period for which Her Majesty's emigrant subjects have occupied parts or portions of the said territories many marriages have taken place amongst them which owing to the impossibility of obtaining the presence or aid of any minister of the gospel and of conforming to divers requirements of law have not as it is supposed been solemnized in such a manner as to render the same valid and effectual: And whereas the said marriages were so irregularly contracted by reason solely of the necessity under which the parties lay while deprived alike of religious teachers and of regular and established laws, and arose from no want of due reverence for the holy ordinance in question or for the spiritual sanctions with which

Digitised by the University of Pretoria, Library Services, 2016

Ord. 4—1848.

amongst Christians it is customarily and fitly solemnized: And whereas taking these things into my consideration and being desirous to confer upon Her Majesty's said subjects the important advantage of having their children's legitimacy established and their said marriages legalized for all purposes of law, I have determined to exercise for that end the powers and authorities in me vested: Now therefore I do, as Her Majesty's High Commissioner as aforesaid, hereby proclaim, declare, and make known the several following provisions and regulations touching and concerning the marriages aforesaid, that is to say:

1st. The British Resident in the territories aforesaid is hereby authorised and required to frame and preserve a general register of all such marriages as shall under any of the provisions hereinafter contained be transacted or reported to him for registration.

2nd. Such general register shall set forth or show the names and residence of the husband and of the wife, their respective ages and condition in life, the date of the marriage and any other particulars which the said British Resident may be instructed by the High Commissioner to record.

3rd. Every couple (except as hereinafter excepted) united together within the said territories as man and wife in the presence of witnesses by any form of words expressive of their mutual and solemn consent to become and be then and there and from thenceforth married people, married together, may have the said marriage registered. But no marriage or pretended marriage shall be registered in which the parties are connected with each other by consanguinity or affinity in such a degree that the Governor of the Colony of the Cape could not by law have granted to them if resident in the said Colony a valid dispensation or authority to marry, and that no valid marriage could by the laws of the said Colony be therein solemnized between them if domiciled in the said Colony; and if any marriage or pretended marriage hereby declared incapable of registration shall yet be registered such registration shall have or possess no force or effect. But no ground of objection arising from consanguinity or affinity which could in the said Colony have been dispensed with by the authority of the said Governor shall prevent registration or its consequences as hereinafter declared.

4th. Whenever any two spouses married as aforesaid shall together come before the British Resident or any Magistrate resident in the said territories and shall declare the fact of such marriage, the Resident or Magistrate (as the case may be) shall ascertain and record in writing the names of the said spouses, their residence, the date and place of their said marriage, and their respective conditions in life at the time of such marriage, whether they were previously married or not; and such record shall be signed or acknowledged by the said spouses in presence of the Resident or Magistrate. When any doubt shall appear to rest upon the fact or date of the alleged marriage, the Resident or Magistrate may call for the certificate in writing or the solemn declaration before himself or such credible witness or witnesses as were present at or cognizant of the said marriage. But when and as often as any such marriage shall have been contracted before and attested by any person or persons recognized at the time amongst Her Majesty's emigrant subjects as holding a public office or authority entitling him or them to attest marriage, any such attestation or a copy thereof shall upon

Digitised by the University of Pretoria, Library Services, 2016

the identity of the married people being ascertained be conclusive proof of the fact and date of the said marriage.

5th. In case it shall be inconvenient for both spouses to repair to the said Resident or to any Magistrate, the latter may ascertain from the husband alone the circumstances aforesaid, and from them prepare the record. But when the husband shall appear alone he will provide himself with a written certificate or statement signed by the wife, or acknowledged by her in the presence of two neighbours who shall witness the same, in which certificate or statement the wife shall set forth the date of the marriage between herself and her husband. And this certificate or statement shall be preserved together with the record signed by the husband. In case of any doubt as to the fact or date of the marriage the Resident or Magistrate shall proceed as before in order to remove the same.

6th. Should either of the spouses have departed this life since contracting any such marriage as aforesaid, leaving the other of them still surviving, such survivor may appear before the British Resident or any Magistrate as aforesaid, and thereupon the record shall be prepared as if both spouses were living and present; except that the signature of the survivor alone shall be sufficient and that the record shall set forth the death of the deceased. In every such case, moreover, the Resident or Magistrate shall require clear evidence, whether oral or by certificate or affidavit as he shall judge necessary, of the fact and date of the marriage, and shall when it is practicable ascertain that the relatives or friends of the deceased concur in recognizing the said marriage.

7th. Should it happen in any instance in which any such marriage shall have been contracted before and attested by any such persons in office or authority as are hereinbefore referred to that either of the spouses shall refuse to join the other of them in obtaining the registration of the said marriage then the spouse desiring such registration shall be at liberty to appear before the Resident or Magistrate who shall upon proof of such refusal and production of such attestation as aforesaid or an authentic copy thereof, and upon such further inquiry or proof if any as the said Resident or Magistrate shall judge necessary, prepare the necessary record, to which the signature of the spouse applying shall be sufficient, and which shall set forth the refusal of the other spouse.

8th. It shall not be any ground for refusing to prepare a record of or to register any marriage that both or either of the parties to the same at the time of contracting the same were under age.

9th. When and as often as any such Magistrate as aforesaid shall have prepared any such record as aforesaid, he shall with all convenient speed transmit the same with all other writings or papers connected therewith to the British Resident, who shall register every such marriage; and in all cases in which the necessary records shall be prepared by such Resident himself, he shall from or by means of them register the marriage therein mentioned.

10th. Every such marriage as aforesaid when registered by the British Resident shall from and after such registration be a marriage as lawful for all objects and purposes as a lawful marriage within the Colony of the Cape of Good Hope, and shall for all purposes and objects of a civil nature be deemed and taken to have been a lawful marriage from and after the date of the contracting of the same;

Digitised by the University of Pretoria, Library Services, 2016

Ord. 4—1848.

but whether the same shall from the date last mentioned be deemed and taken to have been a lawful marriage for the purpose of a prosecution for bigamy or polygamy, in case either party shall afterwards during the lifetime of the other party have contracted another marriage, shall be judged of and determined by the general principles of law and independently of any of the provisions of this proclamation.

11th. And whereas some ministers of the Dutch Reformed Church of the Cape Colony have heretofore proceeded to the said territories for the purpose of performing therein as generally as circumstances would permit the rites and services of religion: And whereas certain of the emigrant subjects aforesaid have from time to time been married by such ministers, as also by the officiating minister in the Dutch Reformed Church at Pietermaritzburg in the district of Natal: And whereas there is reason to suppose that in all cases in which any such minister as aforesaid shall have solemnized any marriage between parties who had previously lived together as man and wife, by virtue of any such irregular marriage as is hereinbefore mentioned, the said minister has recorded as well the fact and date of such previous marriage as the marriage solemnized by himself: And whereas it is fit that full credit be given to all matters so vouched: It is hereby declared and directed that the British Resident shall receive all original marriage records made by any such minister or authentic copies thereof as evidence of the facts therein contained, and shall from or by means of them register the marriages therein mentioned, without requiring the presence of either spouse or any further proof: and that from and after such registration every such marriage shall be deemed and taken to have been a lawful marriage to all intents and purposes from the date of the solemnization thereof by such minister, and to have been for all purposes of a civil nature a lawful marriage from the date mentioned in the marriage record made by such minister as that on which the first or previous marriage if any was contracted. But if in any case the fact or date of such previous marriage shall not appear in or by such marriage record then the spouses or spouse desiring the registration of such first or previous marriage shall proceed in the same manner as is in that or the like behalf hereinbefore provided; but in every case, the marriage solemnized by such minister shall after the registration thereof be deemed to be a lawful marriage to all intents and purposes from the date of such solemnization.

12th. And whereas it is necessary to make temporary provision for the contracting of marriages within the territory aforesaid pending the opening of churches and the settlement of fixed ministers within the same, it is hereby declared and directed that all persons who shall hereafter be married by any minister belonging to the Dutch Reformed Church of the Cape Colony or person commissioned by the same to solemnize marriages within the said territories shall be deemed and taken to be lawfully married; and such marriage shall be registered by the British Resident aforesaid from or by means of the marriage records of such minister or person and no publication of banns shall be necessary.

13th. If it shall so happen that any person desirous to marry shall be unable to obtain the services of a minister from whom their marriage might receive the solemn and becoming sanctions of

Digitised by the University of Pretoria, Library Services, 2016

religion such persons may apply to and come before the said British Resident or to the nearest Magistrate, and each of them shall in his presence solemnly declare that they know of no impediment to their marriage and that they desire him to witness that they take each other respectively to be husband and wife; and thereupon a record of the said marriage shall be prepared and the same shall be duly registered; and every such marriage shall be deemed to be as valid and effectual and of the same force and obligation as a lawful marriage solemnized within the Cape Colony. Ord. 5—1848.

14th. If both or either of the intended spouses be under age the Resident or Magistrate (as the case may be) shall before permitting the marriage (unless in the case of a widow or widower) require proof of the consent of the parents or guardians, unless it shall be made to appear to him that there are none such living, or that they without sufficient reason refuse consent, or that owing to distance or other causes such consent could not possibly or without much inconvenience be obtained. But no marriage once permitted and recorded shall be impeached upon the ground that both or either of the spouses being under age were or was married without consent of parents or guardians.

15th. A certificate signed by the British Resident or officer acting as such stating the registered particulars of any marriage registered by him or in his office in pursuance of this proclamation shall be good evidence of such marriage before all Courts and Magistrates.

And, lastly, I do hereby proclaim, declare, and make known, that while, in my earnest desire to consult as much as in me lies the interests and feelings of all Her Majesty's subjects in the territories aforesaid and those of their wives and children, I have determined to take all measures necessary for establishing their marriages as aforesaid beyond dispute or controversy, nothing in this proclamation contained is to be construed so as to render invalid any marriage contracted in the said territories and not registered under this proclamation which marriage would otherwise by law be regarded as valid; it being my wish and intention not now to decide that any sort or description of marriage is illegal but to furnish an easy and convenient mode by which certain marriages now supposed to be illegal may have their legality placed beyond doubt.

No. 5—Sd. H. G. Smith.] [June 27, 1848.

Ordinance for enabling Resident Magistrates to exercise in regard to disputed Rights of Water certain Powers formerly exercised by Landdrost and Heemraden. ([1])

Preamble.

WHEREAS in times of drought, disputes not unfrequently arise between farmers and others respecting the enjoyment of the water running through and over their respective properties; And whereas, before the abolition of the Boards of Landdrost and Heemraden such disputes were cognizable by such boards, which were accustomed to settle and arrange the same speedily and at

[1] For jurisdiction of Magistrates generally, see Act 20, 1856, and Notes.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 5—1848.

small expense. And whereas since the abolition of the said boards on the 31st of December, 1827, no local Court or functionary has had any jurisdiction or authority touching or concerning such disputes, which alone could be entertained by the Supreme Court of the Colony or by some Circuit Court: And whereas recourse in the first instance to either of such Courts is necessarily attended with delay in a class of cases in which a speedy remedy is particularly important, while the expense of resorting to the same is often disproportioned to the injury complained of, whereby wrong-doers, calculating upon probable impunity, are emboldened to deprive their neighbours of their just rights: And whereas by the Ordinance No. 77, bearing date the 30th October, 1830, and entituled "Ordinance for the better defining and fixing the Duties and Functions of the Civil Commissioners of this Colony," all such duties as were formerly performed by the Landdrosts of the same districts and which had not by any other Ordinances been appointed to be performed by the Resident Magistrates or any other officers were directed to be performed by such Civil Commissioners: And whereas no Law or Ordinance has yet bestowed upon such Civil Commissioners or any other officers the powers or any of them which were formerly exercised by the Board of Landdrost and Heemraden: And whereas it will be expedient in regard to disputes and questions about water to bestow the jurisdiction and authority hereinafter mentioned upon the Resident Magistrates rather than upon the Civil Commissioners, the same being of a judicial nature: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that anything in the Royal Letters Patent granted by His late Majesty King William the Fourth, bearing date at Westminster, the 4th of May, in the second year of his reign, and commonly called the Charter of Justice, or in the Ordinance No. 33, bearing date the 19th of December, 1827, entituled "Ordinance for creating Resident Magistrates and Clerks of the Peace in certain districts and places in this Colony," or in any other Law or Ordinance heretofore in force in this Colony which shall be repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, and the same is hereby repealed accordingly.

Repeal of repugnant laws.

Power of boards of landdrost and heemraden in regard to water disputes vested in courts of resident magistrates.

2. And be it enacted that the respective Courts of Resident Magistrates shall possess and exercise in regard to all complaints and disputes arising within their respective districts relative to the wrongful diversion or appropriation of water or injury to or obstructions in watercourses the same powers, jurisdiction, and authority which the former Board of Landdrost and Heemraden of the same district or of any district which embraced the territory now constituting the district of the Resident Magistrate, together with other territory, possessed and exercised in like cases. Provided, always, that nothing herein contained shall be construed so as to

Digitised by the University of Pretoria, Library Services, 2016

Ord. 5—1848.

confer upon any Resident Magistrate the right or power to frame or enforce any new distribution of any stream or supply of water or to alter rights to water as subsisting at the time of the commencement and taking effect of this Ordinance. But in regard to the vindication of all subsisting rights, whether arising from regulations duly made by any former Board of Landdrost and Heemraden or from contract, condition, prescription, or other legal source, or origin, the Resident Magistrate shall adjudge and determine in like manner as Landdrost and Heemraden might, if now in existence have lawfully adjudged and determined. Provided, however, that except in a case in which by some written record, act, or instrument preserved of record and having the force of law some greater sum is fixed by way of damages or penalty for the act complained of and proved before such Magistrate, such Magistrate, acting under the provisions of this Ordinance, shall not be authorised in any civil case to award any damages or in any criminal case to impose any fine exceeding the sums to which his general jurisdiction in civil and criminal cases respectively is limited.

Limit of damages.

Rules of procedure in magistrate's court.

3. And be it enacted that in adjudicating upon all such cases and questions as aforesaid the Resident Magistrate shall proceed according to the rules and regulations in force for the time being in regard to the Courts of Resident Magistrate, and every judgment or sentence of any such Magistrate shall be liable to be brought in appeal or review before the Supreme or any competent Circuit Court in manner and form as shall by such rules and regulations be in that behalf provided. And the said Supreme or Circuit Court may reverse or alter the judgment of the said Magistrate in such manner as justice shall require; and in case the record of the Resident Magistrate shall not appear to such Court to furnish sufficient evidence or information for the due determination of the case may remit the same to the Resident Magistrate with instructions in regard to the taking and setting out of further evidence or information; or such Supreme or Circuit Court may order the parties or either of them to produce at some convenient time in such Court such further proof as shall seem necessary or desirable; or such Court may take such other course as shall seem to tend to the most speedy and the least expensive settlement of the case.

Review in supreme or circuit court.

Reservation of rights of the crown.

4. And be it enacted that nothing in this Ordinance contained shall be deemed or taken to impair the rights of Her Majesty the Queen in regard to rivers, streams, or water courses, or to prevent her from regulating the same in any manner in which she might before the passing of this Ordinance lawfully have regulated the same by virtue of her Royal prerogative or any powers or authorities in that behalf expressly or by implication reserved to or vested in Her said Majesty.

Time of taking effect.

5. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

Digitised by the University of Pretoria, Library Services, 2016

No. 6.—Sd. H. G. Smith.] [June 27, 1848

Ordinance for enabling certain Public Sales to be held by Persons not licensed as Auctioneers, and without the Payment of Auction Duty.

Preamble.

WHEREAS certain associations or societies have from time to time been formed in this Colony for the promotion of agriculture and the improvement of live-stock: And whereas the beneficial objects of such associations or societies, whether present or future, will be advanced by enabling them at their respective periodical meetings to hold or authorise public sales of farming produce and live-stock at which such stock and produce may be sold by persons not licensed as auctioneers, and in regard to which no auction duty shall be payable: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the Ordinance No. 6, 1844, entituled "Ordinance for regulating Sales by Auction," as is repugnant to or inconsistent with any of the provisions of this Ordinance, shall be repealed, and the same is hereby repealed accordingly.

Repeal of repugnant parts of Ordinance No. 6, 1844.

Establishment by Governor of agricultural fairs.

2. And be it enacted that it shall and may be lawful for the Governor of this Colony for the time being, upon the application of any such association or society as aforesaid, to grant permission to the same to establish during the pleasure of the said Governor fairs or markets to be held upon the occasion of the various meetings thereof, at which fairs or markets it shall be lawful to sell by public sale or auction, horses, mules, asses, horned cattle, sheep, goats, pigs, implements of agriculture or husbandry, and all agricultural and farming produce, and no person holding such sale as aforesaid under or by virtue of any such appointment as is hereinafter mentioned, shall be required to take out or possess any licence in order to act thereat as auctioneer; nor shall any auction duty be paid or payable in regard to any such sale. Provided always, that not more than four such fairs or markets shall be held in any one year by or in connection with any one association or society: Provided also, that no such fair or market shall continue longer than two days.

Sale without auctioneer's licence.

Frequency and duration of fairs.

Appointment and remuneration of auctioneer.

3. And be it enacted, that it shall and may be lawful for any association or society which shall have received any such permission as aforesaid, to appoint, subject to the approbation of the Resident Magistrate of the district within which any such fair or market shall be held, some fit and proper person, or so many fit and proper persons, as shall be deemed to be expedient, to conduct, as auctioneer or auctioneers, the sales at such fair or market; and such Resident Magistrate, with the advice of such association or society, shall approve of and authorise such rate of remuneration for such person or persons as shall appear just and reasonable. Provided always, that no such Resident Magistrate shall by reason of his

Digitised by the University of Pretoria, Library Services, 2016

having approved of such person or persons or of the rate of remuneration which he or they shall receive, be deemed or taken to be in any degree responsible for the acts or conduct of such person or persons in regard to the sales held by him or them.

Time of taking effect.

4. And be it enacted, that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 7.] [July 4, 1848.

Ordinance for amending and continuing certain Provisions of the Ordinance No 8, 1843, entituled "Ordinance for improving the Public Roads of the Colony."

[Repealed, with Ordinance No. 8, 1843, by Act No. 9, 1858.]

No. 8—Sd. H. G. Smith.] [July 4, 1848.

Ordinance for enlarging in certain respects the Powers of Municipal Commissioners in regard to the Common Pasture Lands of the Municipality. (1)

Preamb

WHEREAS by the thirty-ninth section of the Ordinance No. 9, 1836, entituled "Ordinance for the creation of Municipal Boards in the Towns and Villages of this Colony on which the Local Regulations of each shall be founded," it is provided in regard to the common pasture lands the property of any municipality erected under or by virtue of the said Ordinance that the commissioners of such municipality shall not be authorised or permitted to dispose of, alienate, build upon, enclose, or cultivate any such common pasture lands nor suffer any other person to build upon, enclose, or cultivate the same; and that any such alienation by sale, gift, or otherwise shall be null and void: And whereas in certain of the municipalities established under and by virtue of the Ordinance aforesaid it has become necessary to provide for locating in an orderly and proper manner such Fingoes and others as are now to be found irregularly squatting or living upon such common pasture lands to the serious detriment of the pasturage thereof: And whereas the nature and extent of such common pasture lands are in some places such that portions thereof may be appropriated for the purpose aforesaid and for other purposes useful to the public and profitable to the municipality without prejudicing or interfering with any of the objects for which such common pasture lands were originally reserved: And whereas it is expedient to authorise and empower the commissioners of the several municipalities aforesaid under certain limitations and

[1] See note to Ord. 9, 1836, also § 14, Act 13, 1864. See Act 45, 1882, for consolidated law relating to Municipalities.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 8—1848.

conditions to carry into effect any such plan or purpose as aforesaid which shall appear to them as necessary or desirable: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the Ordinance aforesaid No. 9, 1836, as is repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, and the same is hereby repealed accordingly.

Repeal of repugnant parts of Ordinance No. 9, 1836.

Application by commissioners to Governor for consent to alienation of common pasture lands.

2. And be it enacted that when and as often as any board of commissioners appointed under or by virtue of the Ordinance aforesaid shall at any meeting thereof duly convened in pursuance of the said Ordinance or of the municipal regulations for the time being determine that it is expedient for or on account of any such object or purpose as is in the preamble of this Ordinance mentioned to dispose of or alienate or permit to be built upon, enclosed, or cultivated any part or portion of the common pasture lands of the municipality to which such board of commissioners belongs or any other lands of which the property shall be vested in such board, it shall and may be lawful for such board to apply in writing for the consent of the Governor of this Colony for the time being, with the advice of the Executive Council, to the proposed sale, lease, or other arrangement for the occupation or enclosure of any part or portion of such lands, and upon obtaining such consent but not otherwise to execute or carry into effect such sale, lease, or other arrangement. ([1]) Provided, always, that no such application shall be made to the Governor aforesaid until a notice in writing of such intended application shall have been posted for general information at some conspicuous place of public resort within the municipality for a period of not less than fourteen days, which notice shall in some part thereof describe the part or portion of land proposed to be sold, leased, or otherwise permitted to be occupied or intended to be enclosed, and the object, terms, and conditions of the proposed sale, lease, or other right of occupation or enclosure, and shall require any person objecting to the proposed proceeding to lodge with the commissioners within fourteen days from and after the date of the posting of such notice his objections thereto in writing.

Posting of notice of intended application.

Transmission of notice and objections to Governor.

3. And be it enacted that in every case in which any such board as aforesaid shall apply to the Governor for such consent as aforesaid they shall transmit together with such application a copy of the notice posted as aforesaid and of all objections which shall have been lodged in pursuance thereof, with such observations if any upon such objections as they shall deem necessary or fitting.

Execution of instrument of alienation, &c., on consent of Governor.

4. And be it enacted that when and as soon as the Governor aforesaid shall have signified his consent to the object of any such application as aforesaid all contracts, leases, or other instruments necessary to effect the said object may be signed or executed by

[1] See § 14, Act 13, 1864.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 8—1848.

any two or more of the said commissioners on behalf of the rest of them in case they do not all join; and every such contract, lease, or other instrument shall thereupon be deemed and taken to be binding upon the municipality and the said commissioners and their successors in office; and it shall and may be lawful for any person lawfully claiming under any such contract, lease, or other instrument to build upon, enclose, or cultivate such part or portion of common pasture land or other land in manner and form as he shall by such contract, lease, or other instrument be authorised to build, enclose, or cultivate: Provided, always, that nothing herein contained shall be deemed or taken to deprive any such commissioner as aforesaid of the right or power to carry into effect any plan for locating Fingoes or others upon the common pasture or any other lands, or any other plan envolving the building upon, enclosure, or cultivation of any part or portion of the said lands by means of municipal regulations duly made and published.

Moneys payable to commissioners as part of municipal funds.

5. And be it enacted that all moneys arising from the sale or occupation of any part or portion of any such lands as aforesaid shall be payable to the commissioners of the municipality for the time being as part and portion of the municipal funds of such municipality.

Prohibition of purchase, &c., by municipal officers under penalties.

6. And be it enacted that no person holding any office in or under any board of commissioners for any municipality shall purchase or hire from or acquire any right of occupation under the board of commissioners in or under which such person holds office And if any such person shall directly or indirectly so purchase or hire or acquire any such right of occupation he shall thereby forfeit a sum not exceeding five hundred and not less than one hundred pounds: Provided, always, that nothing herein contained shall extend or be construed to extend so as to prevent any such person from being chosen to fill any such office as aforesaid at any time after the expiration of twelve months from the completion of any such sale or lease or the acquisition of any such right of occupation as aforesaid; but no such person shall be eligible to be so chosen before the expiration of such twelve months.

Time of taking effect.

7. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 9—Sd. H. G. Smith.] [July 4, 1848.

Ordinance for regulating the Duties and Remuneration of Field-cornets. ([1])

Preamble.

WHEREAS owing to the various alterations made from time to time in the administration of the country districts of this Colony the functions of Field-cornets have been considerably narrowed; and it is now expedient to define or describe their duties and to

[1] As to witnesses' expenses of Field-cornets, see Act 7, 1857; see Ord. 5, 1837.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 9—1848.

substitute for the principle of a fixed annual allowance, a remuneration proportioned to the services performed: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the "Instructions for the Field-cornets in the several Country Districts," published by the then Governor and Council of this Colony on the 24th October 1805, shall be repealed, except in so far as the same repeal any former placaats, ordinances, or customs, and the same are hereby repealed accordingly: Provided, always, that the Field-cornets and assistant Field-cornets shall continue to be appointed as at present.

Repeal of former laws.

Duties of field-cornets.

2. And be it enacted that from and after the commencement and taking effect of this Ordinance, the several duties belonging to the office of Field-cornet shall be the following, that is to say:

Apprehension of offenders.

(*a*) He is by virtue of his office bound to apprehend without warrant every person whom he shall have reasonable grounds to suspect of having committed any murder, culpable homicide, rape, robbery, or assault with intent to commit any of those crimes, or assault in which a dangerous wound is given, arson, housebreaking, with intent to commit a crime therein; or theft of any cattle, sheep, or goat; or any other crimes of equal guilt with any of those crimes. And he may also take into custody every person whom he shall see engaged in any affray or whom he shall find attempting to commit a crime or clearly manifesting an intention so to do.

(*b*) [1] [Repealed by § 12, Act 22 of 1875.]

(*c*) [Repealed by § 12, Act 22 of 1875.]

Examination of injury in cases of assault.

(*d*) In cases of assault in which any wound supposed to be dangerous have been given, the Field-cornet will repair to and examine the injured party, and apprise the Resident Magistrate of the case and its circumstances.

Appointment of field-corporals and special constables.

(*e*) When he shall arrest any prisoner he is authorised if need be to appoint any proper person or persons to be a Field-corporal or Field-corporals, special Constable or special Constables for the custody and conveyance of such prisoner to the nearest Field-cornet on the road to the nearest gaol, or in case he himself be the Field-cornet nearest to the gaol then he will send the prisoner to the gaol direct. And every such Field-corporal or special Constable will be paid at the rate of sixpence for each mile which he shall convey any prisoner or prisoners and sixpence for each mile which he shall be obliged to return to his own residence, besides being repaid any sum which he may have expended in providing necessary food or lodging for such prisoner or prisoners.

[1] As to duties of Field-cornets in regard to Inquests see Act 22, 1875.

Digitised by the University of Pretoria, Library Services, 2016

(*f*) Every Field-cornet is bound to receive all prisoners brought to him from any Field-cornet or Justice of the Peace at a greater distance from the gaol and to pass such prisoners on towards the gaol in the same manner as if he had arrested them himself. And any Field-corporal or special Constable appointed by him to convey any such prisoner, whether the same special Constable who brought such prisoner or one appointed anew, shall be entitled to the mileage aforesaid. Ord. 9—1848. Obligation to receive and pass on prisoners.

(*g*) Every Field-cornet whose ward adjoins the sea shall in all cases of ships or vessels wrecked or stranded upon the coast repair to the spot and use every exertion in his power to save life and property; and he may appoint such number of special Constables as may be necessary to protect property and prevent plunder. Proceedings in cases of wrecks.

(*h*) Every Field-cornet receiving special instructions from the Resident Magistrate or Civil Commissioner respecting any special duty to be performed will duly conform to the same. Special duties.

3. And be it enacted that the remuneration to be received by Field-cornets shall hereafter be as follows, that is to say: Remuneration.

(*a*) When he shall be from home engaged in any such service as aforesaid, he shall receive an allowance for horse-hire at the rate of one shilling and six pence per hour.

(*b*) When he shall be from home engaged in any such service as aforesaid, he shall receive an allowance for his time at the rate of seven shillings and six pence per day.

(*c*) ([1]) Besides any claim which he may have for time and horse-hire he shall receive for every inquest which he may hold the sum of one pound.

(*d*) For receiving, supplying with necessary food, and forwarding from his residence any person brought to him on his way to gaol he shall be entitled to the sum of one shilling per day.

(*e*) For any special service required of him by the Resident Magistrate or Civil Commissioner and not adequately repaid by an allowance for time and horse-hire the Field-cornet shall receive such a sum as the Governor of the Colony shall approve of and direct.

4. And be it enacted that from henceforth the Field-cornets shall be deemed and taken to be under the authority of the Resident Magistrate of the district as well as of the Civil Commissioner of the division. Subordination to civil commissioner and resident magistrate.

5. And be it enacted that nothing in this Ordinance contained shall extend to alter or affect any former Law or Ordinance by which any duty or service has been imposed upon Field-cornets; and every Field-cornet while acting in the performance of any Duties not under this ordinance.

[1] See Act 22, 1875, § 19.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 10—1848.

such duty or service not otherwise remunerated shall be entitled to be paid for time and horse-hire at the rate aforesaid.

Time of taking effect.

6. And be it enacted that this Ordinance shall commence and take effect as law from and after the 1st January, 1849.

No. 10.—Sd. H. G. Smith.] [July 27, 1848.

Ordinance for amending the Ordinance No. 86, entituled "Ordinance for establishing and regulating a new Savings Bank in the Colony of the Cape of Good Hope." (1)

Preamble.

WHEREAS the Ordinance No. 86, entituled "Ordinance for establishing and regulating a new Savings Bank in the Colony of the Cape of Good Hope," requires in some respects to be amended:

Repeal of inconsistent parts of Ordinance No. 86.

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the said Ordinance as shall be repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, and the same is hereby repealed accordingly.

Qualification of managers.

2. And be it enacted that all inhabitants resident in Cape Town or within ten miles thereof, shall be eligible to be elected and become managers of "the Cape of Good Hope Savings Bank Society."

Deposits, &c., by members.

3. And be it enacted that no person by reason merely that such person is a member of the said society, shall be deemed or taken to be debarred from making deposits in the said savings bank or deriving interest or profit from the funds so deposited in like manner as if such depositor were not a member of the said society.

Remuneration of managers.

4. And whereas the attendance of two (2) or more managers as in the twentieth section of the Ordinance aforesaid mentioned, is at times irregular, and it is desirable to provide for greater punctuality in the dispatch of the business devolving upon such managers: Be it enacted that it shall and may be lawful for the committee of management of the said society by any resolution thereof, from time to time to authorise and direct the payment, out of the surplus funds of the said society, of a fee or allowance not exceeding the sum of five shillings to each manager not exceeding two who shall attend at the office or place of business of such society at such time as shall be appointed by any rule or regulation of the said society. And it shall and may be lawful for the said committee of management by any resolution thereof, to provide as they shall see fit for the mode in which other managers or another manager shall be called in in case of non-attendance at the proper time of both or either of the managers in their order of rotation, and to

---

[1] Amended by Act 24, 1894.
[2] See § 11 Act 24, 1894.

Digitised by the University of Pretoria, Library Services, 2016

determine that the fee or allowance which would have belonged to the person or persons absenting himself or themselves had he or they attended, shall be received by the person or persons attending in manner and form as the said committee shall by resolution fix in his or their room and stead.

General meetings of committee of management.

5. And be it enacted that the general meeting of the committee of management in the tenth section of the said Ordinance mentioned, and therein directed to be held on the first Thursday in every month, may be lawfully held upon such day in the first week of every month as shall by any rule or regulation of the said committee of management be fixed and appointed.

General meetings of the society.

6. And be it enacted that the general meeting of the said savings bank society in the seventeenth section of the Ordinance aforesaid mentioned and therein directed to be holden in the month of January in each year, shall be held not in the said last-mentioned month, but in lieu and stead thereof in the month of March in each year. Provided always that the said seventeenth section shall, in all other respects remain and continue in full force and effect, and that the committee of management now existing, shall continue to act until their successors shall be elected at the next general meeting aforesaid, which will be held in the month of March, 1849.

Attestation of certain declarations.

7. And be it enacted that for the purpose of attesting any such declaration as is in the twenty-first section of the said Ordinance mentioned, any office-bearer in the said society shall be taken and construed to be a manager, and, as such, to be competent to attest any such declaration.

Time of taking effect.

8. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 11.] [July 10, 1848.

Ordinance for applying a Sum not exceeding £209,304 3s. 11½d. for the service of the Year 1849.

[Spent.]

No. 12.] [July 10, 1848.

Ordinance for enabling Catherine Mary Pigot, Executrix of the Will and Testament of the late George Pigot, to sell and dispose of a certain piece of perpetual Quitrent Land called "Pigot Park," and to invest the proceeds thereof in the names of Trustees for the purposes provided by the said Will and Testament.

No. 13.] [July 11, 1848.

Ordinance for regulating Weights and Measures.

[Repealed by Act No. 11, 1858.]

Digitised by the University of Pretoria, Library Services, 2016

No. 14.] [November 8, 1848.

Ordinance to amend the Ordinance No. 1, 1840, entituled "Ordinance for the better regulation of the Municipal Board of Cape Town and the Vicinity thereof."

[Expired.]

No. 15.—Sd. H. G. Smith.] [December 12, 1848

Ordinance for amending the Law relative to Public Meetings.

Preamble.

WHEREAS by a proclamation of His Excellency the then Governor, Lord Charles Henry Somerset, bearing date the 24th of May, 1822, the said Governor saw fit to declare and enact that public meetings convened without the sanction and authority of the Governor for the time being, or when such sanction or authority cannot be conveniently obtained without the sanction and authority of the chief local Magistrate, for the discussion of public measures and political subjects were and should be deemed to be contrary to law: And whereas there is nothing in the state and condition of this Colony which requires or justifies the continuance of a restraint so inconvenient and invidious upon that liberty of speech and freedom of discussion which Her Majesty vouchsafes to regard as the birthright of her subjects: Aud whereas it is expedient to remove the said restraint: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the proclamation aforesaid of the 24th May, 1822, and every other law heretofore in force in this Colony, whereby public meetings for the discussion of public measures and political subjects are declared or constituted illegal, unless held with or under the previous sanction and authority of the Governor of the Colony for the time being or of some other functionary or Magistrate, shall be repealed, and the same are hereby repealed accordingly.

Repeal of proclamation as to public meetings.

Time of taking effect.

2. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 16.] [December 12, 1848.

Ordinance for applying a Sum not exceeding £24,267 6s. 3d. for the service of the year 1848, in addition to the sum already in that respect provided.

[Spent.]

No. 1.] [June 15, 1849.

Ordinance to postpone the time of the taking effect of the Ordinance No. 13, of 1848, entituled "Ordinance for regulating Weights and Measures."

[*Vide* Act No. 11, 1858.]

Digitised by the University of Pretoria, Library Services, 2016

No. 1.] [Nov. 11, 1851.

Ordinance for appropriating the Public Revenue for Public Service in the years 1850 and 1851. [Spent.]

No. 2.—Sd. H. G. Smith.] [Nov. 11, 1851.

Ordinance for Reviving the Ordinance No. 7, 1843, entituled "Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their stead."

Preamble.

WHEREAS a certain Ordinance was made and passed in this Colony the 8th day of November, 1843, numbered 7, 1843, entituled "Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their stead": And whereas a certain other Ordinance was made and passed in this Colony on the 1st day of December, 1845, numbered 16, 1845, entituled "Ordinance to amend the Ordinance No. 7, 1843, entituled 'Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their stead'": And whereas owing to accidental circumstances it has happened that the confirmation by Her Majesty the Queen of the Ordinance aforesaid No. 7, 1843, has not hitherto been communicated, whereby owing to lapse of time the said Ordinance has or may be supposed to have now ceased to be law: And whereas it is expedient to revive the said Ordinance: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said Ordinance No. 7, 1843, as amended by the said Ordinance No. 16, 1845, shall be and the same is hereby revived, re-enacted, and declared to be law to all intents and purposes as fully and effectually as if the several clauses and provisions thereof as amended in manner aforesaid were herein set forth and word for word repeated.

Revival of Ordinance No. 7, 1843, and Ordinance No. 16, 1845.

2. And be it enacted that every matter and thing done and transacted or intended to be done and transacted before the promulgation of this Ordinance in conformity with or according to the provisions of the said Ordinance or supposed Ordinance No. 7, 1843, shall be taken and judged of in all respects precisely as if Her Majesty's gracious confirmation of the said Ordinance had been duly communicated within the time fixed by her royal instructions for the communication of the same.

Confirmation of acts under Ordinance No. 7, 1843.

3. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

Time of taking effect.

No. 3.] [Nov. 11, 1851.

Ordinance for providing proper Jury Lists in certain Districts within the Colony.

[Temporary.]

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1851.

No. 4.] [Nov. 11, 1851.

Ordinance to provide for the imprisonment of certain Criminals sentenced by Courts-Martial.

[Expired.]

No. 5.] [Nov. 17, 1851.

Ordinance to regulate for one Year the Dealing in Gunpowder and Fire-arms.

[Expired. *Vide* Ordinance No. 2, 1853, amended by Act No. 14, 1857, and Act No. 17, 1892.]

No. 6.—Sd. H. G. Smith.] [Dec. 5, 1851.

Ordinance for regulating the Rates of Wharfage Dues in Cape Town and Simon's Town. (1)

Preamble

WHEREAS by the Ordinance No. 8, 1834, made and passed in this Colony on the 10th day of December, 1834, entituled "Ordinance to abolish the present Rates of Dues payable at the public Wharfs at Cape Town and Simon's Town and to substitute others in lieu thereof," certain Rates or Dues of wharfage and cranage were imposed upon goods, packages, and articles landed or shipped in Table Bay or Simon's Bay: And whereas by a certain other Ordinance made and passed in this Colony on the 14th day of December, 1846, and numbered 34, 1846, entitled "Ordinance for levying wharfage and other Dues in Cape Town, and for devoting them to the construction of a Harbour of Refuge in Table Bay, and for other purposes," certain rates or dues of wharfage and cranage upon all goods, articles, matters, and things landed or shipped in Table Bay were substituted in room and stead of the rates or dues imposed by the Ordinance aforesaid, No. 8, 1834: And whereas the Ordinance aforesaid, No. 34, 1846, having never received the confirmation of Her Majesty the Queen ceased at and after the expiration of three years next after the date thereof to be of any force or effect in law: And whereas upon the expiration of the said Ordinance No. 34, 1846, which repealed in regard to all goods, articles, matters, and things landed or shipped in Table Bay the Ordinance aforesaid No. 8, 1834, the said lastmentioned Ordinance revived: And whereas after the enactment but before the expiration of the said Ordinance No. 34, 1846, it became known to the then Governor of the Colony, the Right Honourable Sir Henry Pottinger, Baronet, G.C.B., &c., &c., &c., that the construction of a harbour of refuge in Table Bay as previously contemplated, and for the construction of which harbour of refuge other and for the most part higher dues of

[1] Repealed as regards Cape Town by Act 22 of 1872.

Digitised by the University of Pretoria, Library Services, 2016

wharfage and cranage had been imposed by the said lastmentioned Ordinance than but for such harbour of refuge would have been imposed, must be postponed; whereupon the said Governor, by and with the advice of the Executive Council, did by letter bearing date the 24th day of April, 1847, authorise the Collector of Customs at Cape Town to levy and receive in lieu and stead of the dues and rates claimable and payable under the said lastmentioned Ordinance certain other rates and dues less by one third than such former rates and dues respectively, which lowered scale or tariff of rates and dues the said Collector of Customs has since continued to levy and receive: And whereas it is necessary to sanction and render valid all wharfage and cranage dues received by said Collector of Customs during the existence of the said Ordinance No. 34, 1846, but not in accordance with its provisions, and all such dues received by him since the expiration of the said lastmentioned Ordinance but not in accordance with the provisions of the said Ordinance No. 8, 1834; as also to make provision for levying wharfage and cranage dues at the port of Cape Town in time to come; and moreover to establish in regard to the port of Simon's Town the same rate of wharfage and cranage dues established in regard to the port of Cape Town: Be it therefore enacted by the Governor of Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that upon and after the sixth day of January, 1852, the Ordinance aforesaid, No. 8, 1834, except so far as the same repeals any former Law or Ordinance, shall be repealed, and the same is hereby repealed accordingly.

Repeal of Ordinance No. 8, 1834.

2. And be it enacted that all sums of money not exceeding in amount the dues of wharfage and cranage specified in the schedule to the Ordinance aforesaid, No. 34, 1846, which have at any time since the passing of the said Ordinance been paid to the Collector of Customs at Cape Town as and for dues of wharfage and cranage payable upon goods, articles, matters, and things landed or shipped in Table Bay shall from and after the taking effect of this Ordinance be held and taken to have been legally levied and received, and every such payment shall be deemed to be as legal, rightful, and effectual as if the same had been made under and by virtue of some valid and subsisting law especially authorising and requiring such payment to be made.

Legislaton of dues taken not exceeding dues under Ordinance No. 34, 1846.

3. And be it enacted that the said Collector of Customs shall be and he is hereby declared to be acquitted and indemnified from and against all actions, suits, penalties, and proceedings whatsoever in respect of the levying or receiving by him of any of the payments or sums of money in the last preceding section mentioned and therein ratified and rendered valid.

Indemnification of collector of customs.

4. And be it enacted that upon and after the sixth day of January, 1852, there shall be levied and paid to the officers respectively in that behalf in the schedule to this Ordinance mentioned upon all goods, articles, matters, and things landed or shipped in

Levy of dues after 6th January, 1852.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1851.

Table Bay or in Simon's Bay the several dues of wharfage and cranage respectively set forth in the said schedule.

5. [Repealed by § 8 Act 20 of 1858.]

6. [Repealed by § 1 Act 22 of 1872.]

Obstruction on public wharves.

7. And be it enacted that no goods, ballast, matters, or things shall be suffered to remain upon any public wharf at [1] Cape Town or Simon's Town so as to create obstructions or inconvenience; and if any person who shall have laid down or caused or procured to be laid down on any such public wharf any goods, ballast, matters, or things shall not remove the same within twelve hours after he shall by any wharf clerk or officer of Customs be required in writing so to do, such person shall upon conviction forfeit any sum not exceeding ten pounds and shall moreover be adjudged by the Court by which he shall be tried for such offence to pay all costs and charges which may have been incurred in removing the goods, ballast, matters, or things which such person shall have neglected to remove. And provided that if such person shall not upon conviction forthwith pay any such fine with all such costs and charges as he shall have been condemned to pay he shall be liable to be imprisoned with or without hard labour for any period not exceeding fourteen days. [2]

Time of taking effect.

8. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

SCHEDULE.

Schedule of dues.

Table of Dues of Wharfage and Cranage payable to the Collector of Customs at Cape Town [3] and the Sub-Collector [4] of Customs at Simon's Town respectively on goods, articles, matters, or things landed or shipped in Table Bay or in Simon's Bay respectively, under Ordinance No. 6 of 1851.

LANDED.	s.	d
Liquids.—On every pipe, puncheon, butt, or other cask of the capacity of 80 gallons imperial or upwards, and containing wine, spirits, or other liquids, the cask	1	4
On every hogshead, half puncheon, tierce, or other cask of the capacity of 40 imperial gallons and under 80 gallons, containing wine, spirits, or other liquids, the cask	1	0
On every quarter or other such cask of the capacity of 20 imperial gallons and under 40 gallons, containing wine, spirits, or other liquids, the cask	0	8
On every barrel, anker, keg, or other cask of less capacity than 20 imperial gallons, containing wine, spirits, or other liquids, the cask	0	6

[1] See note to Preamble.
[2] This section is, in as far as repugnant, repealed by Act No. 4, 1857.
[3] Repealed as regards Cape Town by Act 22 of 1872.
[4] Dues payable to such person as Governor may appoint, see Act 17 of 1861.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6–1851.
Schedule of dues.

	s.	d.
Liquids.—In jars, bottles, and other packages (not in bulk) each of the content of one imperial gallon or upwards, the imperial gallon	0	1
In jars, bottles, and other packages (not in bulk) each of less content than one imperial gallon, the imperial gallon	0	1
Tea, in all packages, per 100 lbs.	0	10
Coffee, sugar, pepper, sago, saltpetre, turmeric, tamarinds, spices, dates, rice, gram, paddy, and drugs, in bags, the bag	0	2
Wheat, barley, oats, rye, and other grain and bran in bags or bulk, the imperial quarter	0	4
Flour, the 196 lbs.	0	4
Tobacco, manufactured (except cigars), the cwt.	0	4
Tobacco, leaf, the cwt.	0	3
Cigars, the 1,000	0	2
Manufactures and all dry goods in cases, bales, or other packages, not otherwise described, measuring 60 cubic feet or upwards, the package	4	0
40 cubic feet and under 60 do.	3	0
30 do. and under 40 do	2	4
20 do. and under 30 do.	2	0
10 do. and under 20 do.	1	4
5 do. and under 10 do.	1	0
2 do. and under 5 do.	0	6
under 2 do.	0	3
Hams or cheeses, when not in packages containing more than one of either, the ham or cheese	0	1
Paint, the ton	4	0
Earthenware, in crates, the crate	1	4
Glass bottles, empty, the gross	0	4
Bricks, tiles, or slates, the 1,000	2	0
Paving stones, the ton	1	0
Cocoanuts, the 1,000	2	0
Rattans, the 100 bundles	1	8
Tar, pitch, and rosin, the cask	0	4
Salt and coals, the ton	1	0
Mill-stones, the stone	1	8
Fir and teak timber, the load of 50 cubic feet	1	4
Mahogany and timber, not being fir or teak, the load of 50 cubic feet	2	0
Deals, planks, boards, battens, and all wood cut from the log (except staves), the load of 50 cubic feet	2	0
Staves, viz., crown pipe, the 1,000	5	0
Do. crown hogshead, do.	3	4
Do. other pipe, do.	3	4
Do. other hogshead, do.	2	4
Do. barrel and heading do.	1	8
Masts or spars, under 5 inches diameter, each	0	1
Do. 5 to 8 inches diameter, each	0	6
Do. above 8 inches do.	2	4
Heavy goods, not otherwise described, the ton	1	8

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1851.
Schedule of dues.

	s.	d
Horses mules, or asses, each	3	4
Calves, sheep, or pigs, each	0	2
Horned cattle, cows, bulls, and oxen, each	1	8
Ivory, per 100 lbs.	1	0
Oars, per 100	5	0

SHIPPED.

Wine, spirits, limejuice, oil, or other liquids, the 100 imperial gallons	0	8
Beef, pork, butter, candles, tallow, flour, meal, fruits, (dried and green), buchu leaves, biscuit, fish (dried and pickled), and preserves, the cwt.	0	2
Wheat, barley, rye, oats, bran, pease, beans, and lentils, the imperial quarter	0	4
Hay, the 100 lbs.	0	2
Hides, of horses or horned cattle, the 100	3	0
Skins, calf, goat, seal, or wild animal, the 100	0	4
Sheep skins, the 100	0	2
Bones, hoofs, or glue pieces, the ton	0	8
Horns, the 1,000	1	4
Ivory, the 100 lbs.	0	4
Ostrich feathers, the package	1	8
Wool, the 100 lbs.	0	4
Argol, aloes, gum, or wax, the ton	1	0
All other articles not enumerated or otherwise described, the ton	0	8
If measurement goods not otherwise enumerated or described, the 40 cubic feet	1	0
Horses, mules, or asses, each	3	0
Horned cattle, each	1	0
Sheep, goats, or pigs, each	0	2

EXEMPTIONS.

1st.—All public stores, naval or military baggage, and personal baggage of passengers,

2nd.—All goods coastwise, whether shipped or landed, except imported goods upon which wharfage has not been once paid.

3rd.—Ships' stores outwards.

4th.—All goods exported, upon which wharfage had been paid upon importation.

No. 7.] [December 16, 1851.

Ordinance for empowering the Commissioners for inquiring into the Rebellion in the Kat River Settlement and in other places upon the Eastern Frontier to take Evidence, and for punishing Perjury committed before the said Commissioners.

[Temporary. Expired.]

Digitised by the University of Pretoria, Library Services, 2016

No. 8.] [December 16, 1851.

Ordinance for applying a Sum not exceeding £201,484 18s. 11s. for the service of the year 1852.

[Spent.]

No. 9.] [December 20, 1851.

Ordinance for the better Regulation of the Sale of Wines and Spirituous and Fermented Liquors.

[Repealed by Act No. 28, 1883.]

No. 1.] [February 6, 1852.

Ordinance for remitting and releasing certain Loans of Money heretofore made from the Public Treasury of this Colony to or for the use of the Orange River Sovereignty.

[Spent.]

No. 2.] [April 3, 1852.

Order for constituting a Parliament for the said Colony.

[Amended by Order in Council dated 11th March, 1853.]

No. 3.] [April 3, 1852.

Ordinance for regulating in certain respects the Appropriation of the Revenue of the Colony of the Cape of Good Hope by the Parliament thereof.

[*Vide* Order in Council dated 11th March, 1853.]

No. 4.—Sd. George Cathcart.] [April 3, 1852.

Ordinance for Improving the Kowie Harbour. (1)

[This Ordinance provides for the formation and management of the Kowie Harbour Improvement Company, which was dissolved by Proclamation dated 30th June, 1870. The following sections only, viz., §§ 35, 43, 44-46, 50, 51 and 53, require to be reprinted.]

* * * * * * *

Proclamation of levy of wharfage dues.

35. And be it enacted that when and as soon as it shall be made to appear to the Governor aforesaid by the directors for the time being that the works aforesaid have been sufficiently advanced to permit the entrance of ships and vessels into the said harbour

[1] See Acts 26, 1864; 10, 1866-67; 16, 1869; 11, 1874.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 4—1852.

it shall and may be lawful for the said Governor, by his proclamation to be issued for that purpose and published in the *Government Gazette*, to announce that from and after some certain day to be specified in such proclamation there shall be levied by and paid to the said directors or such other person or persons as shall be appointed to receive the same for their use upon all goods, articles, matters, and things landed or shipped in or at the said harbour such dues of wharfage not exceeding the several rates of dues respectively set forth in the schedule to this Ordinance as the said Governor shall approve of and appoint, and such dues from time to time by proclamation to alter, but so however as never to exceed the rates mentioned in the said schedule; and the said directors shall be entitled to recover by legal process all such dues from the owners of all goods, articles, matters, and things, landed or shipped respectively, and shall moreover have the right of retaining all goods, articles, matters, and things landed in or at such harbour in respect of which wharfage dues shall be payable until the same shall be paid, as well as the right of preventing any goods, articles, matters, or things from being shipped in or at the said habour until the wharfage dues payable in respect thereof shall have been paid; Provided that the said directors shall erect or provide such cranes and other conveniences as may be necessary for landing and shipping at the said harbour.

* * * * * * *

Property in works vested in directors.

43. And be it enacted that the right to and property in all and singular the embankments, walls, piers, jetties, wharves, or other works constructed under the provisions of this Ordinance, as also to and in the said harbour itself, shall vest in the directors of the said company for the time being: Provided that the said harbour when completed shall be taken to extend from the end next the sea of the piers to be constructed at the entrance thereof, up to the spot or place in the Kowie River at which a line drawn parallel to the line of low water along the sea shore and at a distance from such low water line of one mile would cross the said river; and provided, also, that the said directors shall appoint fit and proper landing places in the said harbour, and that no articles shall be landed or shipped except at some such landing-place unless by permission of the said directors, under the penalty of forfeiting any sum not exceeding fifty pounds and not less than forty shillings, which sum shall be paid to the said directors for the purposes of this Ordinance.

Extent of harbour, landing-place, &c.

Power in directors to farm out wharfage dues.

44. And be it enacted that the directors for the time being may from time to time should they deem it expedient let or farm the wharfage dues payable in or at the said harbour, and all wharves, cranes, machines, or other conveniences provided by the said directors under this Ordinance at such rents and upon such terms and conditions as shall be agreed upon between the said directors

Digitised by the University of Pretoria, Library Services, 2016

Ord. 4—1852.

and the person contracting with them: Provided that the said directors shall be bound to take good collateral security for the payment of the stipulated rent and that no such hiring shall be for any term exceeding one year; provided, also, that no such contract of hire shall be entered into before the Governor aforesaid shall have been informed of and shall have approved of the terms and conditions thereof and of the amount of rent proposed to be reserved.

Limitation of term of hiring to one year.

45. And be it enacted that it shall and may be lawful for the said directors to make arrangements with any person or persons who shall be willing to provide and keep in or at the harbour aforesaid a steam-vessel of the sort commonly called a steam-tug for assisting vessels frequenting the said harbour, and such directors shall approve of a reasonable scale of fees or charges to be paid by vessels employing such steam-tug, and no higher fees or charges shall in any case be demandable or payable: Provided that the said directors before approving of any such scale shall submit the same to the Governor aforesaid and obtain his sanction; and provided, also, that no vessel shall be bound to employ or accept the assistance of such steam-tug.

Arrangements with persons providing steam-tug.

46. And be it enacted that the owner of every vessel shall be answerable to the said directors for any damage done by such vessel through the wilful act or negligence of any person employed about the same to any of the works aforesaid or to the said harbour; and the master or other person in charge of such vessel by whose wilful act or negligence any such damage is done shall also be liable to make good the same, and the said directors may detain such vessel until sufficient security has been given for the amount of damage done by such vessel: Provided that every such owner who shall be obliged to pay or make good the amount of any damage arising from any wilful or negligent act or omission of any other person shall be entitled to recover from such other person the amount so paid.

Liability of owners of ships for damage to works.

* * * * * * *

50. And be it enacted that as soon as the shareholders of the said company shall be fully repaid their paid-up capital with all interest or dividends due thereon as well as the certain bonus hereinbefore provided then all and singular the works aforesaid and all land granted to or otherwise vested in the said directors and not sold or otherwise disposed of shall cease to be the property of the said directors and become thenceforth the property of Her Majesty the Queen in Her Colonial Govenment for public purposes, and this Ordinance shall thereupon cease and determine: Provided that the directors for the time being shall be bound to execute all necessary surrenders or other deeds requisite for vesting the said property in Her said Majesty.

Period at which works, &c., shall become property of the Queen.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 5—1852.

Cessation of board under Ordinance No. 21, 1847.

51. And be it enacted that upon the commencement and taking effect of this Ordinance the Board of Commissioners appointed under the Ordinance No. 21, 1847, for the improvement of the port and harbour of the Kowie River shall be dissolved, and no such board shall again be appointed during the existence of this Ordinance.

* * * * * * *

Interpretation clause.

53. And be it enacted that in the interpretation of this Ordinance the term "Governor" shall mean the officer for the time being administering the Government of this Colony, and that whenever any public officer is named by his name of office the person meant shall be deemed to be the person acting as such officer, and that the term "month" shall mean a calendar month, and the term "owner" when used in relation to goods shall be taken to include any consignor, consignee, shipper, or agent for the sale or custody of such goods as well as the proprietor thereof, and that words importing the singular number only shall include the plural number also and that words importing the plural number only shall include the singular number also and that words importing the masculine gender only shall include females, unless there be something in the subject or context repugnant to such construction.

Time of taking effect.

54. And be it enacted that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

No. 5.—Sd. George Cathcart.] [April 3, 1852.

Ordinance to enable Municipal Commissioners appointed under Ordinance No. 9, 1836, to purchase or hire Immovable Property for Municipal Purposes. (1)

Preamble.

WHEREAS the forty-fourth section of the Ordinance No. 9, 1836, entituled "Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony on which the local Regulations of each shall be founded," has recently been adjudged to be so worded as to render its meaning and operation doubtful, for which reason it is necessary to repeal the said section and to make other provisions in its room and stead: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said forty-fourth section of the said Ordinance shall be repealed and the same is hereby repealed accordingly.

Repeal of 44th section of Ordinance No. 9, 1836.

Power to commissioners to purchase or hire houses, &c.

2. And be it enacted that the commissioners appointed under and by virtue of the Ordinance No. 9, 1836, for any municipality

(1) See note to Ord 9, 1836.

Digitised by the University of Pretoria, Library Services, 2016

may and they are hereby authorised and empowered to treat with the owner or owners or occupier or occupiers of any houses, buildings, lands, grounds, or other fixed property required for the purposes of the municipality, and to purchase the same for such sum of money or hire the same for such rent as to the said commissioners shall appear reasonable, which purchase-money or rent (as the case may be) shall be respectively paid out of the municipal revenue arising from the said Ordinance: Provided, always, that the said commissioners shall not purchase or hire any such fixed property as aforesaid without the consent first had and obtained of a majority of the wardmasters (if any) of the municipality present at a meeting of the wardmasters (if any) of the municipality to be called by the said commissioners for the purpose of considering the expediency of such purchase or hire (as the case may be); and provided, also, that in case the purchase money proposed to be paid shall exceed one hundred and fifty pounds or the rent proposed to be paid shall exceed twenty pounds per annum, or in case there shall be no wardmasters belonging to the municipality, then neither the contract of purchase nor the contract of hire shall be concluded by the said commissioners without the consent first had and obtained of a majority of the resident householders of the municipality present at a meeting of the resident householders of the municipality to be called by the said commissioners for the purpose of considering the expediency of such purchase or hire (as the case may be), at which meeting every commissioner may speak but no commissioner shall vote; provided, further, that when and as often as it shall be necessary to call a meeting of the resident householders for any such purpose as aforesaid it shall not be necessary to call any meeting of wardmasters for the same purpose; and provided, also, that every such meeting as aforesaid whether of wardmasters or resident householders shall be called by the said commissioners by a notice in writing, which shall be posted upon or affixed to some public place within the municipality for not less than seven clear days previous to the day appointed for the holding of such meeting; and such notice shall also be published for the same space of time in some one or more of the newspapers (if any) published within the municipality; and provided, lastly, that it shall not be lawful for any such commissioners as are in this Ordinance mentioned who shall without the consent of any such meeting as aforesaid have purchased any such property as aforesaid to purchase within the term or space of twelve months next after such former purchase, any other such property as aforesaid, without the consent of some such meeting of householders as aforesaid first had and obtained in case the purchase money of such former purchase and of such other proposed purchase shall together exceed one hundred and fifty pounds; and in like manner no such commissioners, who shall without the consent of any such meeting have hired any such property as aforesaid shall, within the space of

Consent of wardmasters.

Consent of resident householders in certain cases.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1852.

twelve months next after such former hiring hire any other such property without the consent of some such meeting in case the rent of the former hiring and of such other proposed hiring shall together exceed twenty pounds per annum.

Time of taking effect.

3. And be it enacted that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

No. 6.—Sd. George Cathcart.] [April 3, 1852.

Ordinance to prevent the Commission of Nuisances in the River Liesbeek. (1)

Preamble.

WHEREAS a large and increasing number of families resident in Rondebosch and neighbouring places are solely dependent for their supply of water for drinking and domestic purposes upon the water of the River Liesbeek: And whereas owing to the commission of nuisances in the said river and the absence of proper regulations for securing the purity thereof, the water of the said river is likely to be rendered, more especially in the summer season, so unwholesome as to be unfit for use: And whereas it is expedient to remedy this growing evil: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all and singular the rules and regulations in the schedule to this Ordinance contained, and all and singular the penalties and punishments by the said rules and regulations provided for contraventions thereof shall have and they are hereby declared to have the force of law, and to be of the like effect in every respect as if they had been severally and respectively inserted in the body of this Ordinance.

Legalization of rules in schedule.

Prosecution of offences in court of resident magistrate.

2. And be it enacted that the offence of contravening any of the rules and regulations aforesaid may lawfully be prosecuted in the Court of the Resident Magistrate of the district in which such contravention shall have taken place: and be it enacted that the amount of every fine imposed and recovered under this Ordinance and not exceeding twenty shillings shall be paid to the informer, and that when any such fine exceeding twenty shillings shall be imposed and recovered one half thereof shall be paid to the informer and the other half to the Colonial Treasury: Provided that if one half of such last-mentioned fine shall amount to less than twenty shillings the informer shall nevertheless receive twenty shillings thereof and the balance only shall be payable to the Colonial Treasury.

Time of taking effect.

3. And be it enacted that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

---

[1] Amended by Act 32, 1893.

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE.

Ord. 6—1852.

Prohibition of dams.

1. No dam (by which is meant any hindrance placed in the river to prevent the ordinary flow thereof) shall be placed or continued in the bed of the river unless provided with a fit sluice or fit sluices. Any person placing or continuing to keep up any dam not provided with a fit sluice or sluices to forfeit any sum not exceeding ten pounds nor less than two pounds, and in default of payment to be liable to imprisonment with or without hard labour for any period not exceeding one month: Provided that nothing herein contained shall be deemed or taken to confer any right or title upon any person whomsoever to place hereafter any dam in the said river or to continue therein any dam already placed therein, which right or title if any shall be judged of precisely as if this Ordinance had never been passed.

Raising and putting down of sluices.

2. All sluices in the Liesbeek River shall be raised by the respective persons by whom they shall have been respectively placed or by whom they shall be respectively kept up or used at least once in every month during the period between the 1st of September and the 1st of May in every year; that is to say, they shall be raised so as to allow the free escape of the water on the last Saturday of every month during such period, not later than five o'clock p.m., and shall not be again put down so as to stop the flow of the water before seven o'clock on the same evening. Any person having a dam and neglecting to cause this regulation to be complied with to forfeit for every such offence any sum not exceeding ten pounds nor less than two pounds, and in default of payment to be liable to imprisonment with or without hard labour for any period not exceeding one month: Provided that if any person shall succeed in showing the existence of a legal right antecedent to the passing of this Ordinance to object to the opening of his sluice or sluices in the manner above directed if such opening had been enforced by the authority of the Colonial Government, shall be enabled to claim compensation from the Colonial Government for any damage which he shall prove himself to sustain by being compelled to obey this regulation.

Penalty on contravention.

Prior legal rights.

Report of dams to resident magistrate.

3. Every person having or keeping up any dam and sluice in the said river must within seven days from the commencement of this Ordinance report the same to the Resident Magistrate of the district in which the same shall be placed; and any sluice found in the said river in regard to which no such report shall have been made shall by order of the Resident Magistrate of the district be demolished. The person who shall make such report and in case of change of possession the occupier for the time being of the property occupied by such person to be the person bound to fulfil the preceding regulations.

Penalty on erecting privies and otherwise polluting the stream.

4. Any person erecting or having any privy or watercloset so situated that the filth thereof or therefrom will fall into the said river or by means of any drain, pipe, or other channel find its way into the said river, and any person throwing or conducting nightsoil or throwing or conducting the offal of blood of slaughtered animals into the said river, or washing wool, or dressing or steeping skins in the said river or throwing into the said river any dead carcase of any animal, or drowning any animal in the said river shall forfeit any sum not exceeding twenty pounds and not less than ten pounds, and in default

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1852.

of payment shall be liable to imprisonment with or without hard labour for any period not exceeding three months.

Penalty on throwing rubbish, &c., into the river.

5. Any person casting or throwing garden or other rubbish into the said river or throwing or suffering to run over the surface of the ground into the said river any water fouled by washing dirty clothes therein, or doing wilfully and knowingly any other act not specified in these regulations and plainly calculated to make the water of the said river impure shall forfeit any sum not exceeding ten pounds nor less than one pound and in default of payment shall be liable to imprisonment with or without hard labour for any period not exceeding one month.

Erection of washing-places.

6. It being in contemplation to raise by public subscription or other means sufficient funds for providing suitable washing-places on the banks of the river furnished with necessaries and conveniences for washing clothes, at which washing-places all persons shall be at liberty to wash clothes free of charge, it shall not be lawful for any person at any time after a sufficient number of such washing-places shall have been provided and suitably supplied with necessaries and conveniences for washing clothes to wash or place dirty clothes in the bed of the said river, under any penalty not exceeding two pounds nor less than five shillings, and in default of payment the person convicted shall be liable to be imprisoned with or without hard labour and with or without spare diet for any period not exceeding fourteen days: Provided that nothing in this regulation shall have any force or effect until one month after His Excellency the Governor shall by a Government notice to be published in the *Government Gazette* announce for general information that a sufficient number of such washing-places furnished with necessaries and conveniences for washing clothes have been provided. And printed notices containing such Government notice, both in the English and Dutch languages, and such other matters as may be useful, shall be posted at convenient places at and near the river for the guidance of all whom it may concern.

Government notice of such erection, &c.

Regulations for washing-places.

7. It shall be lawful for the respective Resident Magistrates of the Cape and Wynberg districts in their respective districts to frame rules for such washing-places when established, regulating the mode in which persons frequenting them shall make use of them and of the several conveniences to be there provided, which rules shall be approved of by the Governor for the time being. Any person who shall disobey any of such rules so approved of may by the Magistrate be excluded from the privilege of using any of the washing-places in his district, and may moreover be fined any sum not exceeding ten shillings, and in default of payment may be imprisoned with or without hard labour for any period not exceeding seven days.

Washing-tubs on adjacent properties.

8. As soon as the sixth of these regulations shall come into force but not before all occupiers of any land by or through which the river runs and generally all persons whomsoever using the water of the said river for washing purposes elsewhere than at some public washing-place shall be bound to be provided with washing-tubs, which tubs must not be placed in the river but only upon or adjacent to one or other of its banks under the like penalty as in the sixth of these regulations provided.

Penalty on allowing foul water to flow back into the stream.

9. Every such occupier or other person as in the eighth regulation mentioned shall be bound by digging a pit or by some other means

Digitised by the University of Pretoria, Library Services, 2016

Ord. 6—1852.

to prevent the dirty water from the washing-tubs from falling or running back over the surface of the soil into the river, unless from the lie of his ground such dirty water may be emptied upon it without falling or running back into the river. And any occupier who shall permit the washing of clothes upon his land without providing pits or other means of preventing the dirty water aforesaid from running back over the surface into the river when such means shall be necessary for preventing the same shall for each offence forfeit any sum not exceeding five pounds and not less than one pound, and in default of payment shall be liable to imprisonment with or without hard labour for any period not exceeding one month.

Hours within which washing may be done.

10. In order that the public may be able to obtain occasional supplies of drinkwater comparatively free from impurity pending the time when such washing-places as aforesaid may be established no washing of dirty clothes in the said river shall during the period between the 1st of September and the 1st of May in every year take place sooner than eight o'clock in the morning of any day. Any person found washing dirty clothes in the said river contrary to the terms of this regulation shall incur the like penalty as that by the sixth regulation provided.

Penalty on washing on private property without leave.

11. Any person washing clothes upon private property by or through which the said river runs without being employed or authorised so to do by the occupier of the property in or on which such person shall be so washing shall forfeit any sum not exceeding two pounds and not less than ten shillings, and in default of payment shall be liable to imprisonment with or without hard labour and with or without spare diet for any period not exceeding one month.

Definition of river.

12. All open cuts, ditches, watercourses, or channels whether artificial or natural into which the water of or from the said river passes, and out of which the water returns again into the river, either through the same mouth by which it entered such cuts or channels or by any other, shall for the purposes of the fourth, fifth, sixth, eighth, ninth and tenth of these regulations be deemed to be a part of the said river.

Duties of constables as to regulations.

13. It shall be competent for any police constable or other person authorised in writing by either of the Resident Magistrates aforesaid to enter upon any private property lying along the sides of the said river in order to ascertain that the foregoing regulations are complied with and to note any contraventions of the same; and any person obstructing any police constable or other person so authorised whilst in the performance of such duty shall for every offence forfeit any sum not exceeding ten pounds and not less than two pounds, and in default of payment shall be liable to imprisonment with or without hard labour for any period not exceeding one month. But every such constable shall announce to the occupier or some person at his residence his office and the object of his visit.

No. 7.] [April 16, 1852.

Ordinance to amend the Ordinance No. 5, 1851, entituled "Ordinance to regulate for one year the dealing in Gunpowder and Firearms."

[*Vide* Ordinance 2, 1853, Acts 14, 1857, and 17, 1892.]

Digitised by the University of Pretoria, Library Services, 2016

No. 8.—Sd. George Cathcart.] [December 9, 1852.

Ordinance for regulating in certain respects the Prosecution of Crimes in Districts in which there shall not be Resident Clerks of the Peace and for other purposes. (1)

Preamble.

WHEREAS it is expedient pending further provision in that behalf to regulate provisionally the prosecution of crimes in districts the Clerks of the Peace of which shall not have their homes or usual places of residence within the same: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the Ordinance No. 40, entituled "Ordinance for regulating the manner of proceeding in Criminal Cases in this Colony," and the Ordinance No. 73 entituled "Ordinance for explaining, altering, and amending the Ordinance No. 40," and any rules of the Supreme Court or of the Circuit Court or of the Courts of the Resident Magistrates (2) in so far as the said Ordinances and rules shall be repugnant to, or inconsistent with the provisions and operations of this Ordinance, shall be repealed, and the same are hereby repealed accordingly.

Repeal of repugnant laws

Issue of criminal process by clerk of Magistrates where there is no clerk of the peace.

2. (3) And be it enacted that in every district of this Colony, the Clerk of the Peace of which shall not have his home or usual place of residence within the same, it shall and may be lawful for the clerk of the Court of the Resident Magistrate for such district, upon being satisfied that any crime or offence within the jurisdiction of such Court, and proper to be summarily prosecuted therein at the public expense, has been committed; to issue and deliver to the messenger of the said Court. or other proper officer of the law, the process of the said Court in the fifty-sixth (4) rule of the Courts of the Resident Magistrates mentioned, precisely as if the public prosecutor for such district had duly requested the said clerk to issue and deliver such process, save and except only that from the form of the summons in or under the said fifty-sixth ( ) rule set forth shall be omitted the following words, that is to say, "Upon the complaint and information of ———, Esquire, who prosecutes in the name and on behalf of Her Majesty": Provided always, that nothing herein contained shall be deemed or taken to alter or affect the sixth section of the aforesaid Ordinance No. 73, which shall as much as may be acted upon in every such district as aforesaid.

Retention of section 6 of Ord. No. 73.

Issue of process for summoning of witnesses.

3. (5) And be it enacted that when and as often as the clerk of the Court shall under and by virtue of the last preceding section issue and deliver such a summons as aforesaid, for compelling the

---

[1] See Ordinance 40, 1828.
[2] See § 59, Act 20, 1856.
[3] See §§ 64-68, Sched. B, Act 20 of 1856.
[4] Now 68th.
[5] See Sched. B, Act 20 of 1856, and § 2, Ord. 59.

Digitised by the University of Pretoria, Library Services, 2016

appearance of any party to answer any charge, the said clerk shall also issue and deliver to the messenger, or other proper officer, the process of the said Court for compelling the attendance of all necessary witnesses in the case, and such process shall be in the form in that behalf provided in the first of the two forms in or under the fifty-seventh [1] rule of the Courts of the Resident Magistrates set forth, save and except only that the following words of the said form, that is to say, "Preferred by the public prosecutor," shall be omitted.

Issue of warrant to enforce appearance.

4. [2] And be it enacted, that upon the day appointed by any such summons as is in the second section of this Ordinance mentioned for the appearance of any party to answer any criminal charge, it shall be lawful for the Resident Magistrate to issue the warrant in the fifty-eighth rule of the Courts of the Resident Magistrates mentioned, without being requested by any prosecutor so to do.

Proceedings notwithstanding non-appearance of prosecutor.

5. [3] And be it enacted, that no charge or complaint in any such last-mentioned summons contained shall be dismissed by reason merely that no prosecutor appears on the court day appointed for the appearance of the party in the last preceding section mentioned anything in the fifty-ninth rule of the Courts of the Resident Magistrates to the contrary notwithstanding. Provided that nothing herein contained shall be deemed or taken to prevent the clerk of the Court from assisting in the conduct of the trial in such manner as shall be in his power. Provided also, that no judgment or sentence of the Court of Resident Magistrate for any such district as aforesaid, shall be liable to be reversed or in anywise impeached, by reason that no public prosecutor appeared upon the trial of any charge contained in any such summons as aforesaid.

Assistance by clerk in the conduct of trial.

Reading of charge.

6. [3] And be it enacted that upon the day of the hearing of any charge contained in any such summons as aforesaid, the Magistrate shall cause the clerk of the Court to read in lieu and stead of the statement of the prosecutor in the sixty-second rule of the Courts of the Resident Magistrates mentioned, a copy of the summons aforesaid, and no reading of any such statement as aforesaid shall be necessary.

Expenses of witnesses.

7. [4] And be it enacted, that all witnesses summoned in any such district as aforesaid, by any such process as is in the third section of this Ordinance mentioned, shall, for the purpose of receiving their expenses as such witnesses, be taken and considered to be witnesses summoned at the instance of the public prosecutor, and that the clerk of the Court shall in lieu and stead of the Clerk of the Peace, make out the bills of the expenses of such witnesses,

[1] Now 69th.
[2] See § 73, Sched. B, Act 20 of 1856.
[3] See § 74 Sched. B, Act 20 of 1856.
[4] See also § 3 Ord. 26 of 1847.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 8 - 1852.

which bills are by the fourth section of Ordinance No. 59 described and directed.

Deposit of expenses by private prosecutor.

8. (1) And be it enacted that when in any Court of Resident Magistrate within this Colony, the prosecution is at the instance of a private person prosecuting under or by virtue of the sixth section of the aforesaid Ordinance No. 73, such private prosecutor or some one on his behalf shall (except as is in the next succeeding section excepted) before or at the time of the delivery to the messenger or other proper officer of the process for procuring the attendance of any person before the said Court to give evidence in support of such prosecution, deposit in the hands of the clerk of the Court such a sum of money as shall be sufficient to pay the expenses which such witness would be by law entitled to receive after giving his attendance in case he had been summoned at the instance of the public prosecutor, and such witness shall, after giving his attendance receive such expenses from the said clerk. Provided that if the Court shall, for sufficient cause, disallow the expenses of any witness in regard to whom any such sum shall have been deposited, or if any such witness shall fail to attend, the sum so deposited shall be returned to the party who deposited the same.

Return of deposit on disallowance of expenses of witness.

Cases in which the deposit need not be made.

9. And be it enacted, that in every district the Clerk of the Peace of which shall not have his home or usual place of residence within the same, no private person prosecuting summarily, at his own instance, in the Court of the Resident Magistrate of such district, shall be required to make any such deposit as is in the last preceding section mentioned, or to pay any of the expenses of any witnesses summoned at his instance; nor shall any such private prosecutor be required to pay the expense of the process in the fifty-sixth (2) rule of the Courts of the Resident Magistrates mentioned, in case such private prosecutor shall satisfy the clerk of the Court that the charge which such private prosecutor prosecutes is one which, from its nature and circumstances, would be proper to be prosecuted at the public instance, by a resident public prosecutor, and that the witnesses proposed to be summoned are material and necessary: and bills of expenses for the witnesses summoned at the instance of any such last-mentioned private prosecutor shall be made out and paid, in like manner, as if such witnesses had been summoned in manner and form hereinbefore, in the third section of this Ordinance mentioned. Provided that in every case in which the clerk of the Court shall be satisfied, as aforesaid, by any private prosecutor, the said clerk shall, before issuing the process in such case, enter, under the head "Remarks," in the "Criminal Record Book," or in some other and more convenient place in the said book, the following words, or words to the same effect, "Process in this case to be executed free." And

Payment by private prosecutor of witnesses' expenses by order of the Court.

[1] See § 69 Sched. B, Act 20 of 1856.
[2] Now 68th.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 8—1852.

provided, further, that it shall be competent for the Court, upon the hearing of any case in which the process shall have been issued, as aforesaid, free of charge to the private prosecutor, to order such private prosecutor to pay all costs and expenses of process issued and witnesses summoned, at his instance, in case such Court shall pronounce the charge to be unfounded and vexatious (1), and shall be satisfied by oath that it was through, or by means of, some misrepresentation or concealment of the true facts of the case, upon the part of such private prosecutor or some one acting on his behalf that the clerk of the Court was induced to cause the process to be in the first instance executed free, and in such a case the Court may order to the witnesses aforesaid their just and reasonable expenses and shall not be obliged to allow them only the rate by law allowed to witnesses summoned at the instance of the public prosecutor. And provided, also, that if from the nature of any case prosecuted at the instance of a private prosecutor, for or on whose behalf the process was not executed free, the Court should, upon the hearing thereof, see reason to think that the case, as it then appears, is one proper to have been prosecuted at the public expense, such Court may make an order directing that all sums paid or deposited by such private prosecutor, in regard to such case shall be returned to him, and that the costs and expenses of process and witnesses shall be paid in like manner as if the process had been sued out and the witnesses had been summoned at the instance of the public prosecutor.

Restitution to private prosecutor of expenses.

10. (2) And be it enacted that in every such district as in the last preceding section mentioned, it shall be competent for the Clerk of the Peace thereof or for any other person specially authorised by the Attorney-General by any writing under his hand, to act in any particular case to appear in Court at any stage of any summary prosecution pending in such Court and to take up and conduct all the further proceedings in such case, or to apply, by motion to the Court, to stop all further proceedings in such case, in order that a prosecution for the same crime or offence may be instituted in some other form or Court; and the Court shall, in every such case, be bound to make an order in the terms of such motion.

Authority of clerk of peace or person specially appointed by Attorney-General to take up and assume conduct of pending cases.

11. And be it enacted that in every such lastmentioned district it shall and may be lawful for the Resident Magistrate or any Justice of the Peace, on receiving information of any crime or offence having been committed within the said district (except it shall plainly appear to be proper for the cognizance of a court of summary jurisdiction) to issue his warrant for the apprehension of any person who, from information on oath, may be reasonably suspected of having committed such crime or offence, and also to issue his warrant for summoning those persons whom it shall appear necessary to examine as witnesses, and in case of refusal or

Preparatory examination by Resident Magistrate and Justice of the Peace.

[1] See § 19 Ord. 40 and § 74, Sched. B, Act 20 of 1856.
[2] See § 8, Ord 73 and § 64, Sched. B, Act 20 of 1856.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 8—1852.

failure to attend after due proof of the service of such summons, a further warrant under the hand of such Magistrate to enforce the appearance of such witnesses (which warrant may be executed by the person to whom it is directed either within or without the local limits of the jurisdiction of the Magistrate issuing the same), and such Magistrate shall proceed with the preparatory examination in the usual manner and do or cause to be done everything which by the said Ordinance No. 40 or any other Law or Ordinance is enjoined to be done by the officer conducting the preparatory examination, anything in the Ordinances No. 40 and No. 73 respectively to the contrary notwithstanding. Provided always that the Clerk of the Peace of such district or other person specially authorised in writing by the Attorney-General to act in any particular case may commence any preparatory examination or appear and intervene at any stage of any preparatory examination and assume the sole conduct and management thereof.

Intervention of Clerk of the Peace.

Transmission of preparatory examination to Attorney-General.

12. And be it enacted that in every such lastmentioned district where a preparatory examination has been taken by any Magistrate without the presence of the Clerk of the Peace or other person deputed by the Attorney-General such Magistrate shall transmit such preparatory examination to the Attorney-General at his office in Cape Town, or to such Clerk of the Peace as may from time to time be specified by the Attorney-General, to be by such Clerk of the Peace submitted for the consideration of the Attorney-General.

Conduct of prosecutions in Circuit Courts.

13. And be it enacted, that at every Circuit Court held for two or more districts, all crimes and offences committed in either or any of the districts for which such court shall be holden, may lawfully be prosecuted either by the Clerk of the Peace of the said district, or by the Clerk of the Peace of the district in which such Court is held, or by any other person specially authorised by the Attorney-General by any writing under his hand to prosecute in such Court all and singular the said crimes and offences: Provided that nothing herein contained shall be construed so as to deprive the said Attorney-General of any power which he may now possess to grant to any person a special authority to prosecute in any particular case pending in such Court.

Appointment of prosecutor by Resident Magistrate in case of emergency.

14. And be it enacted that when and as often as any Clerk of the Peace shall by reason of sudden illness or other cause be unable to conduct in any Circuit Court the prosecutions which he would or might otherwise have conducted, and in consequence of such inability there shall not be any person entitled by law to conduct such prosecutions, it shall and may be lawful for the Resident Magistrate of the district in which such Circuit Court shall be holden or for the officer acting as such upon being satisfied of such inability, to grant by any writing under his hand an authority to some fit and proper person to prosecute such cases, which written authority shall be in substance as follows, that is to say:

Digitised by the University of Pretoria, Library Services, 2016

Ord. 8—1852.

Form of appointment.

"I, the undersigned, do hereby certify that it has been made to appear to me that A. B., Esquire, the Clerk of the Peace for the district of ————, is unable to appear in the Circuit Court to be holden at ————, on the —— day of ————, 18—, for the division of ————, (or divisions of ———— and ————, according to the fact), and that in consequence of such inability it is necessary that some other person should be appointed to conduct in the said Court the prosecution of all crimes and offences committed in the district of ———— (or districts of ———— and ————, as the case may be), and I do therefore hereby authorise and appoint C.D., of ————, to appear in the said Court and to conduct therein, in room and stead of the said A.B., the prosecution of such lastmentioned crimes and offences.

Given under my hand this —— day of ————, 18 —.

(Signed) E.F.,

Resident Magistrate of ————."

And every person producing in any such Circuit Court any such authority, shall be entitled to conduct all such prosecutions as the person in whose room and stead he has been so appointed to act would, had he personally appeared in such Court, been competent to conduct: Provided always, that no such Resident Magistrate shall grant any such authority, unless from want of time, or other cause no authority to prosecute shall have been obtained from the Attorney-General upon application to him for that purpose. Provided, however, that no such authority, when given, shall be impeached or questioned upon the ground that, under the circumstances of the case, an authority from the said Attorney-General might have been obtained, had timely application in that behalf been made.

Time of taking effect of Ordinance.

15. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 9.] [December 11, 1852.

Ordinance for applying a Sum not exceeding £216,357 5s. 8d., for the service of the year 1853.

[Spent.]

No. 10.] [December 11, 1852.

Ordinance for applying a Sum not exceeding £4,085 1s. 10d., for the service of the years 1851 and 1852, in addition to the sums already in that respect provided.

[Spent.]

No. 1.] [October 7, 1853.

Ordinance to prevent the spread of the Cattle Disease, commonly called "Long Ziekte."

[Repealed by Act 27, 1893]

Digitised by the University of Pretoria, Library Services, 2016

No. 2.—Sd. George Cathcart.] [October 10, 1853.

Ordinance to regulate till the expiration of the year 1854 the Dealing in Gunpowder, Firearms, and Lead. (1)

Preamble.

WHEREAS an Ordinance was duly made and passed in this Colony on the 17th day of November, 1851, and numbered 5, 1851, entituled "Ordinance to regulate for one year the Dealing in Gunpowder and Firearms": And whereas by the twenty-seventh section of the said Ordinance it was enacted that the said Ordinance should commence from and after promulgation thereof, in manner and form as in the said section set forth, and should remain and continue in force for one year from the commencement thereof but with the provision nevertheless that it should be lawful for the Governor by proclamation in the *Government Gazette* to continue the said Ordinance in force for such further space or term not exceeding one year from and after the year aforesaid as the said Governor should deem necessary and determine. And whereas the said Ordinance was promulgated as aforesaid upon the 29th day of November, 1851, and thereupon took effect as law: And, whereas upon the 16th day of April, 1852, a certain other Ordinance, numbered 7, 1852, was duly made and passed in this Colony, entituled: "Ordinance to amend the Ordinance No. 5, 1851, entituled 'Ordinance to regulate for one year the Dealing in Gunpowder and Firearms,'" by which lastmentioned Ordinance all dealings in lead were placed under the like restrictions and alienations as those which by the Ordinance aforesaid, No. 5, 1851, had been and were provided in regard to firearms; And whereas the Governor of this Colony did, upon the 11th day of November, 1852, publish his proclamation bearing date the 8th day of the said month, whereby after reciting as therein is recited he did proclaim, declare, and make known that the said Ordinance No. 5, 1851, would continue and be of force for the space or term of one year, from and after the date upon or at which the said last-mentioned Ordinance would but for the said proclamation have expired and become of no effect: And whereas it is expedient to continue for a further limited term the said Ordinance No. 5, 1851, as amended by the said Ordinance No. 7, 1852, and with some other amendments: and whereas the end in view may be most conveniently and advantageously accomplished by repealing both the Ordinances aforesaid and by re-enacting in this Ordinance the several provisions of the Ordinances aforesaid with all necessary amendments: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the commencement and taking effect of this Ordinance the Ordinance aforesaid, No. 5, 1851, and the Ordinance aforesaid, No. 7, 1852, shall be and the same are

Repeal of former laws.

[1] Made perpetual by Act 28, 1864; see also note to Ord. 7 of 1834; see Act 17, 1892.

Digitised by the University of Pretoria, Library Services, 2016

hereby respectively repealed, save and except in so far as either of the said Ordinances repeals any former Law or Ordinance or any part thereof or relates to the prosecution and punishment of any offences committed before the commencement and taking effect of this Ordinance, in regard to which repeal and which offences the said Ordinances shall respectively remain and be in full force and effect.

2–7. [Repealed by Act No. 17, 1892.]

Issues from private magazine by authority of resident magistrate.

8. (1) And be it enacted that no storekeeper of any private magazine situate within this Colony shall, from and after the commencement of this Ordinance, issue any gunpowder in any quantity whatsoever from any such magazine without the previous permission in writing of the Resident Magistrate of the district in which such magazine shall be situated; which permission shall set forth the quantity of gunpowder to be issued and the name of the person to whom it is to be issued, and which permission, which shall in substance correspond with the form marked No. 3 in the schedule to this Ordinance annexed, shall be delivered to and preserved by such storekeeper; and any storekeeper who shall deliver any gunpowder contrary to the provisions of this section shall for every offence be liable upon conviction to be imprisoned and kept at hard labour for any term not exceeding seven years: Provided that if in any case any private magazine shall be situated at a greater distance than twelve miles from the office of the Resident Magistrate of the district in which such magazine shall be situated, then the permission in writing of any Justice of the Peace of the said district (not being the owner of or interested in the gunpowder mentioned in such permission) may be received by such storekeeper in lieu and stead of the permission of the said Resident Magistrate: provided, also, that in any district in which there shall not be at the time of the commencement of this Ordinance such safe and fitting private magazines as shall be required for the secure storing of such gunpowder as shall be in or come to such district, every such building, store, or place as the Resident Magistrate of such district shall approve of and appoint to be a private magazine for the time being shall be deemed and taken to be a private magazine within the meaning of this Ordinance: provided, also, that such Resident Magistrate may subject to the confirmation or disallowance of the Governor appoint a fit and proper person to be storekeeper to any such temporary magazine as well as to any private magazine in his district which shall not already have a storekeeper duly appointed: and provided also, that every store or place belonging to Her Majesty's Board of Ordnance in which gunpowder belonging to private persons shall be permitted to be placed shall also so far as such last mentioned gunpowder is concerned but no farther, be deemed to be a private magazine: and provided, also, that no storekeeper of any such

Form of authority.

Penalty on delivering without authority.

Cases in which justice of the peace may grant authority.

Approval by magistrate of private magazine and appointment of temporary storekeeper.

[1] See § 3, Act 14, 1857, Act 13, 1877, and § 1, Act 29, 1879.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1853.

Penalty on opening barrel, &c., in private magazine.

magazine shall open or permit to be opened within any such magazine any barrel, keg, or other case containing gunpowder; and any such storekeeper as aforesaid who shall contravene this provision of this section shall upon conviction forfeit not exceeding (1) fifty pounds; and provided, also, that in case there shall be in in any town or place in which there shall be one private magazine or more private magazines than one any licensed dealers therein at whose premises it shall be deemed to be inadvisable that gunpowder should be retailed in the manner hereinafter contemplated and provided for, it shall and may be lawful for the Resident Magistrate of the district in which any such private magazine shall be situated, by writing under his hand, to authorise and require the storekeeper thereof to remove from and out of such magazine, at the desire of the owner of any of the gunpowder stored therein, any quantity of such owner's gunpowder, not exceeding one hundred pounds weight, at any one time, to some safe and convenient place adjacent to such magazine, and to be mentioned in such written authority, there to be strictly kept by such storekeeper, at which safe place any barrel, keg, or other case containing such removed gunpowder may be opened by such storekeeper, and any quantity of gunpowder mentioned in any such permission as is in this section mentioned may be from time to time delivered by such storekeeper. But no second or subsequent removal as aforesaid of any gunpowder belonging to any one owner shall take place as long as any of that owner's gunpowder first or previously removed shall not have been delivered by such storekeeper under and by virtue of some such permissions as aforesaid, and all gunpowder in any such place as aforesaid and not yet delivered by such storekeeper shall be regarded, deemed, and judged of for all purposes of this Ordinance precisely as if such place were actually part and parcel of the private magazine under such storekeeper's control.

Appointment by magistrate of place where gunpowder in quantities not more than 100 lbs. may be opened.

Proof of proper purpose for which gunpowder is needed.

9. And be it enacted, that no such Resident Magistrate or Justice of the Peace, as is in the last preceding section mentioned shall grant any such permission as in the said section mentioned until it shall have been made to appear to his satisfaction by the person applying for the same that the gunpowder sought to be taken from or out of such private magazine is needed for some necessary and proper purpose; and every such Resident Magistrate or Justice of the Peace is hereby authorised, in every case in which he shall see reason or think it necessary so to do, to require before granting such permission that the person desiring the same shall enter into a bond or obligation, which shall in substance correspond with the form marked No. 2 in the schedule to this Ordinance annexed, conditioned for the production of such proof or evidence as such bond shall specify that the gunpowder to be mentioned in such permission has been actually delivered or dealt

[1] Printed as amended by Act 11 of 1875, § 2.

Digitised by the University of Pretoria, Library Services, 2016

with in the manner proposed by such person and agreed to by such Magistrate or Justice of the Peace.

Transmission of copy of permission from justice of the peace to resident magistrate.

10. And be it enacted that every Justice of the Peace who shall under the circumstances in the said eighth section mentioned grant any such permission as therein authorised shall forthwith transmit to the Resident Magistrate of the district a copy of such permission, in order that the same may by such Resident Magistrate be recorded.

Transmission monthly of tabular statements of permissions by resident magistrate to Secretary to Government.

11. [1] And be it enacted that every Resident Magistrate shall within the first seven days of every calendar month prepare and transmit to the Secretary to Government, for the information of His Excellency the Governor, a tabular statement, showing in regard to every such permission as aforesaid granted by or reported to him during the month next preceding that in which such statement shall be prepared, the date when such permission was issued the name and residence of the person to whom it was issued and the quantity of gunpowder which it authorised to be delivered. And every such Resident Magistrate shall moreover within the same period of seven days affix a copy of such tabular statement to some conspicuous place at or near his public office for general information.

Copy of statemen at public offices.

Tabular statement monthly of storekeeper to magistrate.

12. And be it enacted that every storekeeper of every private magazine shall within the first seven days of every calendar month, prepare a tabular statement of the like nature with that which is in the last preceding section mentioned, showing the date of every issue from such private magazine during the previous month, and the name of the person to whom such issue shall have been made and the quantity delivered to such person; and to every such tabular statement the storekeeper shall subjoin a solemn declaration which shall be in substance as follows that is to say:

Storekeeper's declaration.

"I, A. B., storekeeper of the private gunpowder magazine situated in ———, do solemnly and sincerely declare that the above statement contains, to the best of my knowledge and belief, a true and correct account of all the gunpowder delivered from or taken out of the said magazine during the month ending the —— of —— last. Dated at —— this —— day of —— 18 —.

(Signed) "A. B., Storekeeper."

And every such storekeeper shall within the said period of seven days deliver such statement and declaration at the office of the Resident Magistrate of the district in which such private magazine shall be situated, to be by him preserved; and if any such storekeeper shall deliver any wilfully false statement with such a declaration subjoined he shall upon conviction incur the penalties by law provided for the crime of perjury: Provided that in case any storekeeper shall not be able truly to make the said declaration, it shall and may be lawful for him to declare according to

[1] But see § 3, Act 29 of 1879.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1853.

Penalty on neglect to make statement.

the truth; and provided that any storekeeper who shall neglect to deliver such statement as aforesaid within the term aforesaid shall for every such neglect forfeit upon conviction the sum of not exceeding (1) one hundred pounds.

Penalty of £500 or seven years' imprisonment on delivery of firearms, &c., by persons licensed or unlicensed, unless to a magistrate or justice of the peace;

13. And be it enacted that no person whomsoever whether licensed or unlicensed shall from or after the commencement of this Ordinance, under or by virtue of any sale, barter, gift, or other transaction, or for any cause or reason whatsoever, deliver (except as hereinafter is excepted) at any shop, store, private dwelling, or other place within this Colony any gun or pistol, or any lock, stock, barrel, or other part of any gun or pistol, or any percussion caps exceeding in any one week one box containing not more than five hundred in number, or any gunpowder or any (2) lead: and any person contravening any of the provisions of this section shall upon conviction forfeit the sum of not exceeding (1) five hundred pounds; or such person may instead of being sentenced to forfeit such sum be sentenced to be imprisoned and kept at hard labour for any period not exceeding seven years: Provided that nothing in this section contained shall be deemed or taken to prevent any sale, barter, gift, or loan to any Resident Magistrate or Justice of the Peace nor to any person who shall produce and deposit with the person delivering the gun or other matter or thing mentioned in such certificate, a written certificate signed by either of the last-mentioned (3) persons, certifying that the bearer, who must be named in such certificate, is to the knowledge of the person signing such certificate a fit and proper person to obtain such gun or other matter or thing as aforesaid, which certificate shall in substance correspond with the form marked No. 4 in the schedule to this Ordinance annexed (4): Provided, also, that no Justice of the Peace residing or being within twelve miles of the office of the Resident Magistrate of the district shall grant any such certificate as aforesaid: Provided, at the same time, that no certificate granted in contravention of this prohibition shall be deemed to be on that account invalid, so as to subject any person acting upon it to any pains or penalties: And provided, further, that nothing herein contained shall be deemed or taken to prevent one member of any military or burgher force from delivering without the production of any such certificate as aforesaid any of the matters or things aforesaid to any member of the same or any similar force or to prevent any person from delivering any of the matters or things aforesaid to any other person then living with him under the same roof, or being in his service, for the private use of such other person: And provided, lastly, that nothing in this section contained shall

Or unless a certificate from a resident magistrate or justice of the peace shall have been produced;

Or unless both party delivering and party receiving be members of military or burgher force, or person receiving be inmate with or servant of person delivering.

[1] Printed and amended by Act 11 of 1875, § 2.

[2] Provisions of this Ord. as to lead restricted to certain divisions see Acts 14 of 1857, and 14 of 1866-67.

[3] Governor may appoint Clerk to R.M. or other person to grant such certificates, Act 29 of 1879. See also Act 13, 1878.

[4] As to issue of certificates to natives, see § 3, Act 13 of 1877.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1853.

extend to any gunpowder duly delivered by any storekeeper from any private magazine under and by virtue of the permission in writing hereinbefore in the eighth section of this Ordinance mentioned, nor to any gunpowder or firearms delivered by any person in the military, naval, or civil service of Her Majesty, acting by or under Her Majesty's authority.

Exception as to gunpowder.

Certificate of magistrate before grant of licence.

14. And be it enacted that from and after the commencement of this Ordinance no distributor of stamps or other officer shall grant a licence to any person to deal in gunpowder until there shall be delivered to such distributor or other officer a certificate in writing, signed by the Resident Magistrate of the district, certifying that the licence applied for by such person is one fit and proper to be granted.

Penalties.

15. And be it enacted that if any person not being licensed to deal in gunpowder shall store, keep, or have any gunpowder whatsoever other than such gunpowder as such person shall *bonâ fide* have and keep for his own private use, or if any person licensed to deal in gunpowder shall from or after the commencement of this Ordinance store, keep, or have in any warehouse, shop, or place not being a bonding or private magazine, any quantity of gunpowder exceeding at any one time [1] fifty pounds weight thereof, every such person shall for every such offence forfeit upon conviction the sum of not exceeding [2] five hundred pounds, or he may instead of forfeiting such sum be imprisoned and kept at hard labour for any term not exceeding seven years. And when and as often as it shall be made to appear to any Resident Magistrate or Justice of the Peace, from information taken on oath, that any gunpowder is stored or kept in any dwelling-house or other place in contravention of this section, such Resident Magistrate or Justice of the Peace may in person demand entrance into such dwelling-house or other place, and upon refusal or neglect of any person or persons therein to admit such Resident Magistrate or Justice, such Resident Magistrate or Justice may force an entrance thereinto, and remove all gunpowder found therein; and the same shall be forfeited to Her Majesty the Queen. And every person who shall be within, in any such house or place, at the time of demand made for admittance, and refusal or neglect to admit, shall upon conviction of the offence of contravening this section by refusing or neglecting to admit such Magistrate or Justice be imprisoned and kept at hard labour for any period not exceeding seven years.

Forfeiture.

Penalty of seven years' imprisonment on refusal to admit magistrate or justice.

Declaration of licensed dealer to obtain gunpowder from magazine.

16. And be it enacted that no such Resident Magistrate or Justice of the Peace as in the eighth section of this Ordinance mentioned shall grant to any licensed dealer any such permission as in the said eighth section mentioned to obtain from any private magazine any quantity of gunpowder to be disposed of by such

[1] One hundred, see § 4, Act 14, 1857. See also § 20, Ord. 7, 1884.
[2] Printed as amended by § 2, Act 11, 1875

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1853.

dealer until such dealer shall make in the presence of such Resident Magistrate or Justice of the Peace his solemn declaration in writing, which solemn declaration shall be in substance as follows, that is to say:

"I, A. B., of ———, licensed dealer in gunpowder, do solemnly and sincerely declare that there is not now in my possession or at my disposal or under my control, any gunpowder whatsoever," (or if the fact be that such dealer does possess gunpowder stored in some private magazine, then let him make his declaration as above, adding to it, "save and except such as is stored in"—*here describe the private magazine.*

(Signed) A. B.

Declared before me, this —— day of ———, 18—.

C. D.,

Resident Magistrate, or Justice of the Peace,

(as the case may be).

Production of certificates to cover first quantity, before permission for second quantity may be granted.

17. ([1]) And be it enacted that when and as often as any Resident Magistrate or Justice of the Peace shall have given to any licensed dealer as aforesaid any one such permission as aforesaid to obtain from any private magazine fifty pounds weight of gunpowder to be by him disposed of, no second such permission shall be granted to him until he shall produce to and deposit with such Resident Magistrate or Justice of the Peace (as the case may be) certificates, such as are in the thirteenth section of this Ordinance mentioned, covering and accounting for all the gunpowder by such dealer obtained by virtue of the first permission granted to him under this Ordinance; and in like manner, no fresh permission shall at any time be granted to any licensed dealer to obtain a still further supply of fifty pounds weight until he shall have produced and deposited certificates covering and accounting for the whole of the fifty pounds weight last issued to him; and so on as long as this Ordinance shall remain in force; and, moreover, such licensed dealer shall upon the occasion of every second or subsequent application for such permission as aforesaid make in the presence of the Resident Magistrate or Justice of the Peace (as the case may be) his solemn declaration in writing, which solemn declaration shall be in substance as follows, that is to say:

Declaration on application for second and further quantities.

"I, A. B., of ———, licensed dealer in gunpowder, do solemnly and sincerely declare that I have not had in my possession or sold or otherwise disposed of to any person whomsover, since the —— day of ———, 18 , [state the date of the "permission" last issued] any other gunpowder than the quantity mentioned in the permission granted to me on the day last mentioned, and which

[1] Amended by § 5, Act 14 of 1857.

Digitised by the University of Pretoria, Library Services, 2016

quantity I have disposed of under and by virtue of the certificates now by me produced." Ord. 2–1853.

(Signed) A.B.

Declared before me, this —— day of ————, 18

C. D.,

Resident Magistrate or Justice of the Peace,

(as the case may be).

False declaration punishable as perjury.

18. And be it enacted that if any person shall make any wilfully false statement in any declaration required by either of the two immediately preceding sections such person shall upon conviction incur the penalties by law provided for the crime of perjury.

Entry of magistrate into dealer's premises.

19. And be it enacted that in every case in which any such licensed dealer as aforesaid shall have obtained under and by virtue of any such permission as aforesaid, the fifty (1) pounds weight of gunpowder mentioned in such permission, it shall and may be lawful for the Resident Magistrate or Justice of the Peace who shall have granted such permission, to enter at all reasonable times, the licensed premises of such dealer, and require the production of such gunpowder, or otherwise the production of certificates covering and accounting for so much thereof as shall not be produced, and in case such dealer shall fail to produce either the whole quantity of gunpowder obtained by him under and by virtue of such permission or certificates covering and accounting for so much thereof as shall not be produced, such dealer shall for such offence incur the like penalty as that which is in the thirteenth section of this Ordinance provided for or in regard to the offence therein described: Provided, also, that every such dealer shall on or before the seventh of every month deliver or cause to be delivered to the Resident Magistrate of the district a return or account in writing signed by such dealer, setting forth the several receipts and deliveries of gunpowder (if any) made or received by such dealer during the preceding month and the quantity of gunpowder in his possession at the expiration of such preceding month; and such return or account shall specify in regard to each delivery the quantity delivered, the person to whom delivered, and the granter of the certificate by virtue of which such delivery was made: and any licensed dealer who shall without lawful and sufficient cause neglect to deliver or cause to be delivered in manner aforesaid any such return or account, or who shall deliver or cause to be delivered any such return or account containing anything wilfully erroneous, shall for every such offence forfeit the sum of not exceeding (2) five hundred pounds.

Penalties of § 13 on dealers not properly accounting.

Monthly return of receipts and deliveries.

Penalty on neglect of return—£500.

Transmission by justices of certificates deposited by dealer to resident magistrate.

20. And be it enacted that every Justice of the Peace with whom any such certificates as aforesaid shall be deposited by any licensed dealer as aforesaid when applying under the provisions of the eighth

[1] But see § 5, Act 14, 1857.

[2] Printed as amended by Act 11 of 1875.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1853.

section of this Ordinance for a fresh permission to obtain a further quantity of fifty pounds weight of gunpowder to be by him disposed of at his premises shall forthwith transmit to the Resident Magistrate of the district copies of all such certificates, in order that such Resident Magistrate shall, as he is hereby required to do, include such certificates, as well as all certificates which may have been in like manner deposited with himself, in the monthly (1) tabular statements which are hereinbefore in the eleventh section of this Ordinance directed to be transmitted to the Secretary to Government, and affixed at or near such Resident Magistrate's public office.

Licence for removal of guns, &c., or gunpowder from place to place.

21. And be it enacted that it shall not be lawful for any person not being in the military or burgher service of Her Majesty to remove or convey, or cause to be removed or conveyed, from any place within the Colony to any other place within the same (except as hereinafter is excepted) any gun or pistol, or lock, stock, or barrel of any gun or pistol, or any percussion caps or any gunpowder (not being arms or ammunition for the defence of the person or persons carrying the same), or any (2) lead without having a licence for removing or conveying the same signed by some Resident Magistrate of the Colony, which licence shall in substance correspond with the form marked No. 5 in the schedule to this Ordinance annexed: and it shall be lawful for any two or more of Her Majesty's subjects who shall find or come up with any person or persons or any wagon or other vehicle removing or conveying any matter or thing for the removing or conveying of which such a licence as aforesaid is by this section required to demand to see such licence, and unless the same shall be produced and shown, to seize and take possession of all such matters and things as shall have been in progress of removal without the licence by this section required; and all such matters and things shall, unless proof be made that the licence required by this section had been obtained but was lost or mislaid, be forfeited to Her Majesty, together with any wagon, cart, or other vehicle, in which the said matters and things shall have been when seized, and any ox or other beast employed in drawing any such vehicle or in carrying any of the said matters and things; and every person engaged in removing and conveying such matters or things in contravention of the provisions of this section shall upon conviction forfeit the sum of (3) not exceeding five hundred pounds, or such person may, instead of being sentenced to forfeit such sum, be sentenced to be imprisoned and kept at hard labour for any period not exceeding seven years, and may be lawfully apprehended without warrant in order to be tried for such offence: provided, also, that all and singular the provisions

Seizure on non-production of such licence.

Forfeiture of wagon, &c.

Penalty, £500 or imprisonment for seven years.

[1] But see § 3, Act 29, 1879.

[2] Provisions of this Ord. as to lead restricted to certain divisions. Acts 14 of 1857 and 14 of 1866-67.

[3] Printed as amended by Act 11 of 1875.

Digitised by the University of Pretoria, Library Services, 2016

in the ninth section of this Ordinance contained relative to the permission therein referred to shall apply to the licence by this section required: provided, always, that nothing in this section contained shall be construed so as to require any licence as aforesaid for the removal of any gunpowder from the landing-place thereof to some bonding magazine, or from any bonding magazine to any private magazine, nor to any gunpowder the property of Her Majesty the Queen. Ord. 2—185 Exceptions.

22. And be it enacted that if any person shall within this Colony wilfully deliver or cause to be delivered to any person whomsoever any gunpowder, gun, or pistol, or any lock, stock, barrel, or other part of any gun or pistol, or any percussion caps, or any lead, with the purpose, design, or knowledge that the same should or would be conveyed to and made use of by the Queen's enemies, or by any of her subjects in rebellion against her authority, such person shall whether the gunpowder or other matter or thing shall or shall not come into the hands of such enemies or rebels be deemed and taken to have committed by such delivery an overt act of high treason, and shall upon conviction suffer death as a traitor. Delivery of gunpowder, &c., to Queen's enemies, high treason.

23. And be it enacted that every person dealing in firearms within this Colony shall within fourteen days next after the commencement and taking effect of this Ordinance return an account to the Resident Magistrate of the district in which such person shall reside of every gun and pistol and part of any gun or pistol and of all percussion caps and of all lead in his possession, and shall verify such return by a solemn declaration at the foot of or attached to such return; and shall provide a book in which the guns and pistols or parts thereof and percussion caps, and lead [1] mentioned in such return shall be entered, and shall from time to time in the first week of every calendar month, and also upon receiving any number of guns, pistols, or parts thereof or percussion caps or lead to be sold, make a like return verified as aforesaid and a like entry; and every such dealer shall also enter separately in such book an account of every gun or pistol and of all percussion caps and of all lead sold and delivered or otherwise disposed of, with the time when and the person to whom the same shall have been delivered; and it shall and may be lawful for such Resident Magistrate or any person authorised by him by any writing under his hand at all reasonable times to have access to such book and to examine the stock of guns, pistols, and unconnected parts or portions thereof and of percussion caps and of all lead [1] in the possession of such dealer, and compare and balance the same with the amount kept in such book, and if it shall appear that any error has been designedly committed, either in regard to any such return as aforesaid or to the non-entry in the said Return of dealer to resident magistrate within 14 days of promulgation of ordinance. Further monthly return. Access of resident magistrate to dealer's book, and right to examine stock.

[1] But see § 3, Act 29, 1879.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2–1853.

book of any gun, pistol or any unconnected part of any gun or pistol, sold and delivered or otherwise disposed of, or of any percussion caps or of any lead, such dealer shall for every such error forfeit the sum of (1) not exceeding five hundred pounds: Provided, also, that every person being the keeper either individually or as one of some number of co-partners in trade of any store, shop, or other place where wares and merchandise are exposed for sale who shall have in his possession any guns, pistols, or unconnected parts thereof, or percussion caps or lead (1) other than those used by him for the defence of his person or property or for sporting, shall be deemed and taken until the contrary be proved, to be a dealer in firearms within the meaning of this section; but that no other person shall be deemed to be such dealer: and provided also, that the acts or omissions of any co-partner in trade of any such dealer or of any clerk, agent, or servant of any such dealer in regard to any of the matters by this section required shall be deemed to be the act or omission (as the case may be) of such dealer himself: and provided, also, that any dealer who shall without lawful and sufficient cause neglect to make such return as aforesaid within the time aforesaid shall upon conviction forfeit the sum of (1) not exceeding five hundred pounds; provided that nothing in this section contained shall extend to any firearms the property of Her Majesty the Queen.

Penalty on false statement £500.

Definition of dealers.

Liability of dealer for acts of clerk, &c.

Penalty on neglect of dealer's returns £500.

Governor's power to remit fines.

24. And be it enacted that it shall and may be lawful for His Excellency the Governor should he see reason so to do to remit or mitigate any fine or forfeiture incurred under this Ordinance.

Informer's share of penalty.

25. And be it enacted that of every fine levied or paid under the provisions of this Ordinance there shall be paid to the person who shall have given the information that shall have led to the conviction so much thereof, not in any case exceeding fifty pounds, as His Excellency the Governor shall direct, and the residue shall be paid into the Colonial Treasury.

Interpretation clause.

26. And be it enacted that in the construction of this Ordinance the word "lead" shall include all pig or bar lead, rolled or sheet lead, pipe lead, and all lead made or capable of being made into balls, shots, slugs, or other forms fit for firearms and that the word "Governor" shall mean the officer for the time being administering the Government of this Colony, and that whenever mention is made of any public officer the officer mentioned shall be deemed to be the officer for the time being acting as such officer; and that unless there shall in the context be something repugnant to such construction, every word importing the singular number only shall extend to several persons or things, every word importing the plural number shall apply to one person or thing, and every word importing the masculine gender only shall apply to a female.

Time of taking effect.

27. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof, and shall

[1] Printed as amended by Act 11 of 1875.

Digitised by the University of Pretoria, Library Services, 2016

continue and be in force till the expiration of the year 1854, and no longer. [1] Ord. 2—1853.

SCHEDULE No. 1.

[Repealed by Act 17, 1892.]

SCHEDULE No. 2.

Form of Bond or Obligation in case of Inland Transport.

Form of bond for inland transport.

Know all men, &c. [as in form No. 1, down to the condition]. Whereas the above bounden [the person about to remove the gunpowder] hath under the Ordinance —, entituled, "Ordinance to regulate, till the expiration of the year 1854 the Dealing in Gunpowder, Firearms, and Lead," applied for permission to receive from [bonding magazine or private magazine as the case may be] —— pounds weight of gunpowder to be conveyed by him to [private magazine or other approved place where the powder is to be deposited]. Now the condition of this obligation is such that if the said [the person about to remove the gunpowder] shall within —— from the date hereof, produce and deliver to [the Resident Magistrate granting the permission or other functionary as agreed on] as proof that the gunpowder aforesaid has been duly disposed of [a certificate in writing signed by the Resident Magistrate of the district of ——— or the officer for the time acting as such, certifying that the gunpowder aforesaid has been deposited in a private magazine at ———, or such other proof as shall in every particular case be agreed on], or if the above bounden [the person about to remove the gunpowder] shall account for the said gunpowder to the satisfaction of [the Resident Magistrate granting the permission, or other functionary as agreed on], then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed, and declared in presence of	A. B.	L. S.
	C. D.	L. S.
	E. F.	L. S.

NOTE.—This form can, by making the necessary changes, be adapted to every case contemplated by the Ordinance, whether removal from a bonding magazine to a private magazine, or from one private magazine to another private magazine or from a private magazine for private consumption, and whether the permission with which it is connected be granted by an officer of Customs, a Resident Magistrate, or a Justice of the Peace.

SCHEDULE No. 3.

Form of Permission by Resident Magistrate to authorise issue of Gunpowder from Private Magazine. [2]

Authority for issue from private magazine.

I, ———, Resident Magistrate of———, do hereby authorise [the name of the applicant] of [the residence of applicant] to receive from the storekeeper of [describe the magazine] —— pounds of gunpowder

[1] Continued by subsequent Acts, see note to Ord. 7 of 1831.
[2] See Act 14, 1857, § 3.

Digitised by the University of Pretoria, Library Services, 2016

Ord. 2—1853.

it having been made to appear to my satisfaction that such gunpowder is needed for a necessary and proper purpose.

Dated this ——— day of ——— 185—.

A. B., Resident Magistrate.

SCHEDULE No. 4.

Form of a Certificate authorising the purchase of Guns, Powder, &c.

Authority for purchase of guns, &c.

I, ———, do hereby certify that the bearer [the name of the applicant] of [the residence of the applicant] is to my knowledge a fit and proper person to obtain and have —— pounds of gunpowder [or a gun, or —— pounds of lead] which he requires for his own use.

Dated this ——— day of ——— 185—.

A. B., Resident Magistrate

[Or otherwise, as the case may be.]

SCHEDULE No. 5.

Form of Licence for removing Gunpowder, &c.

Licence for removing gunpowder, &c.

Know all men to whom these presents shall come that [name of person to whom such licence shall be granted] is hereby authorised to remove from [place from which the thing in question shall be taken] to [place to which the thing in question shall be taken];—[Here describe the number of any kegs or packages in which the gunpowder shall be contained, and the weight of the entire, and firearms and lead, shall be described as accurately as may be]. And all Her Majesty's subjects are required to respect this licence, and allow the abovementioned gunpowder [or firearms or lead] to pass without hindrance from ——— aforesaid to ——— aforesaid. Dated this ——— day of 185—.

A. B., Resident Magistrate of the District of———

———

No. 3.] [October 10, 1853.

Ordinance for declaring the Ordinance No. 9, 1836, to be in force and operation.

[Spent.]

———

No. 4.] [October 10, 1853.

Ordinance for applying a Sum not exceeding £154,497 2s, for the Service of the Year 1854.

[Spent.]

———

No. 5.] [October 10, 1853.

Ordinance for applying a Sum not exceeding £73,480 8s. 8½d., for the Service of the Years 1852 and 1853.

[Spent.]

Digitised by the University of Pretoria, Library Services, 2016

No. 6.] [October 14, 1853.

Ordinance for the General Management and Regulation of the Customs in the Colony of the Cape of Good Hope.

[Repealed by Act 10, 1872.]

No. 7.] [October 14, 1853.

Ordinance for reviving the Ordinance No. 15, 1844, entituled "Ordinance to provide for the Enregisterment in the Land Registers of the Colony of certain Sub-divisions of the Locations and Extensions of the Settlers of 1820.

[Spent.]

No. 8.] [October 14, 1853.

Ordinance to indemnify certain Persons in regard to Acts done during the existence of Martial Law.

[Spent.]

No. 9.] [October 14, 1853.

Ordinance for continuing the provisions of an Ordinance bearing date the 14th day of February, 1833, entituled "An Ordinance for enabling certain Persons having respectively the just, lawful, and undisputed Right to certain Lands and Houses to procure the same to be enregistered as their Property in the Land Register."

[Spent.]

Letters Patent.] (1)

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to our trusty and well-beloved Sir HENRY GEORGE WAKELYN SMITH, Baronet, Knight Grand Cross of our Most Honourable Order of the Bath, Major-General of our Forces, with local rank of Lieutenant-General of the said Forces in our Settlement of the Cape of Good Hope, in South Africa: Whereas we did, by certain Letters Patent under the great seal of our Kingdom of Great Britain and Ireland, bearing date at Westminster the fifteenth day of December, one thousand eight hundred and forty-seven, in the eleventh year of our reign, constitute and appoint you to be Governor and Commander-in-Chief in and over our said settlement of the Cape of Good Hope, in South Africa, with its territories and depen- Preamble.

[1] See Acts 1, 1854; 11, 1856; 16, 1856; 21, 1859; 3, 1865 (in part); 1, 1872; 7, 1872; 14, 1874; 18, 1874; 39, 1877 (in part); 6, 1879; 32, 1879; 1, 1882; 13, 1882; 36, 1882; § 3, 41, 1882; 5, 1883; 9, 1883; 13, 1883; 35, 1885; 6, 1887; 14, 1887; 28, 1887; 30, 1887; 39, 1887; 16, 1888; 32, 1888, §§ 12, 15; 18, 1891, §§ 4, 8; 9, 1892; 14, 1893; 16, 1893; 25, 1894 Part III.

Digitised by the University of Pretoria, Library Services, 2016

Letters Patent. 23rd May, 1850.

dencies, for and during our royal will and pleasure, and did thereby require and command you to do all things in due manner that should belong to your said command and the trust we have thereby reposed in you, according to the several powers and directions granted or appointed you by the said commission, and the instructions therewith given you, or according to such further powers, instructions, and authorities as should at any time thereafter be granted or appointed you under our sign manual and signet, or by our order in our Privy Council, or by us through one of our principal Secretaries of State: And we did thereby, amongst other things, declare our will and pleasure that there should be within our said settlement a Legislative Council, to be constituted in such manner as is in that behalf directed by the instructions therewith given to you, or according to such further powers, instructions, or authorities as should at any future time be granted to or appointed for you under our signet and sign manual, or by our order in our Privy Council, or by us through one of our principal Secretaries of State: And we did thereby further give and grant unto you, the said Sir HENRY GEORGE WAKELYN SMITH, full power and authority, with the advice and consent of the said Legislative Council, to make, enact, ordain, and establish laws for the order, peace, and good government of our said settlement of the Cape of Good Hope, and its dependencies, as, relation being had unto the said Letters Patent and accompanying instructions, will more fully and at large appear: And whereas we have deemed it expedient to make other provision than is in the said commission contained for making, enacting, ordaining, and establishing laws for the peace, order, and good government of the said settlement: Now, know you that, in pursuance and in exercise of the powers to us in that behalf in anywise belonging, we, of our special grace, certain knowledge, and mere motion, do hereby declare and ordain that there shall be within our said settlement of the Cape of Good Hope a Parliament, to be holden by you our Governor and Commander-in-Chief, and to consist of our Governor and Commander-in-Chief, a Legislative Council, and a House of Assembly: And we do hereby declare, ordain and appoint that the said Legislative Council (subject to the exceptions hereinafter provided) and the said House of Assembly shall consist and be constituted of such persons as shall be elected in such manner and form, and for such terms and under such regulations as shall for that purpose be prescribed in any Ordinance or Ordinances to be for that purpose passed by you, with the advice and consent of the present Legislative Council of our said settlement: Provided, nevertheless, that it shall be prescribed in and by such Ordinance or Ordinances, that the Chief Justice of the Colony of the Cape of Good Hope for the time being shall be, by virtue of his office, a member of the said Legislative Council, and shall preside over the same:

A Parliament to be established at the Cape of Good Hope.

Constitution of Legislative Council and House of Assembly:

Under such regulations prescribed by Ordinance to be passed by present Legislative Council.

Chief Justice to preside over Legislative Council.

Digitised by the University of Pretoria, Library Services, 2016

Letters Patent. 23rd May, 1850.

Provided, also, that every such Ordinance shall contain a clause suspending the operation of the same until it shall have been confirmed by us, with the advice of our Privy Council: And we do hereby declare our will and pleasure that you, our Governor, with the advice and consent of the Legislative Council and House of Assembly so to be constituted and elected in manner and form aforesaid, shall have authority to make laws for the peace, welfare, and good government of our said settlement: And we do hereby further declare our will and pleasure that, in the said Ordinance or Ordinances for constituting the said Legislative Council and House of Assembly, provision shall be made for enabling and empowering you, our Governor, to transmit to the said Legislative Council or House of Assembly, for their consideration, the drafts of any laws which it may appear to you desirable to introduce, and also any amendments for the consideration of the said Legislative Council and House of Assembly (if you shall so think fit) in any bill presented to you for our assent, and for prescribing the manner in which such drafts of laws and amendments shall be dealt with by the said Legislative Council and House of Assembly, and for determining the regulations under which bills appropriating sums of money to the public service may be introduced in such Assembly, amended, and finally enacted; and for empowering you, our said Governor and Commander-in-Chief, from time to time, in the exercise of your discretion, to dissolve such Legislative Council and House of Assembly together, or such House of Assembly separately: And we do hereby reserve to ourself full power and authority, by an order or orders to be made by us in our Privy Council, to alter or amend such Ordinance or Ordinances as shall be passed by you, with the advice and consent of the Legislative Council of our said settlement, for the purpose of constituting and establishing the said Assembly, and for such other purposes as are hereinbefore specified: And we do further declare our will and pleasure to be, that it shall be competent for you, our Governor, to continue, with the advice and consent of the present Legislative Council of our said settlement, to make, enact, ordain, and establish laws for the peace, order, and good government of our said settlement, until the first writs shall issue for the election of members of the said Legislative Council and House of Representatives, under and by virtue of such Ordinance or Ordinances so to be made and passed as aforesaid, but no longer: In witness whereof we have caused these our Letters to be made Patent. Witness ourself at Westminster, the twenty-third day of May, in the thirteenth year of our reign.

Constitution Ordinance not to come into operation till confirmed by the Queen.

Governor to make laws, with advice and consent of Council and Assembly.

Provision to be made for enabling Governor to transmit drafts of laws to Council or Assembly; or amendments, &c. &c.;

And for introducing Bills for appropriating sums of money;

And for dissolving Council and Assembly.

Queen to have power to alter or amend ordinances.

Present Council to make laws, &c., till issue of first writs for election of Council and Assembly.

By writ of Privy Seal,

CHARLES EDWARD PEPYS,

Clerk of the Crown in Chancery.

23rd May, 1850.

Digitised by the University of Pretoria, Library Services, 2016

Order in Council. 11th March, 1853.

Order in Council.]

At the Court at Buckingham Palace, the 11th day of March, 1853.

PRESENT:

The Queen's Most Excellent Majesty,
His Royal Highness Prince Albert,

Lord Privy Seal,	Earl of Aberdeen,
Duke of Newcastle,	Earl of Clarendon,
Duke of Wellington,	Mr. Herbert,
Lord Chamberlain,	Sir James Graham, Bart.

Recital of Letters Patent.

WHEREAS Her Majesty did, by her Letters Patent under the great seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the twenty-third day of May, in the thirteenth year of her reign, declare and ordain that there should be within her settlement of the Cape of Good Hope a Parliament, to be holden by the Governor and Commander-in-Chief of the said settlement, and to consist of the said Governor and Commander-in-Chief, a Legislative Council, and a House of Assembly: And did thereby declare, ordain, and appoint that the said Legislative Council (subject to the exceptions thereinafter provided) and the said House of Assembly should consist and be constituted of such persons as should be elected in such manner and form, and for such terms and under such regulations as should for that purpose be prescribed in any Ordinance or Ordinances to be for that purpose passed by the said Governor, with the advice and consent of the then Legislative Council of the said settlement: Provided, nevertheless, that it should be prescribed in and by such Ordinance or Ordinances that the Chief Justice of the Colony of the Cape of Good Hope for the time being should be, by virtue of his office, a member of the Legislative Council, and should preside over the same: Provided also, that every such Ordinance should contain a clause suspending the operation of the same until it should have been confirmed by her said Majesty, with the advice of her Privy Council: and did thereby declare her will and pleasure that the said Governor, with the advice and consent of the Legislative Council and House of Assembly, so to be constituted and elected in manner and form aforesaid, should have authority to make laws for the peace, welfare, and good government of the said settlement: And did further declare her will and pleasure that, in the said Ordinance or Ordinances for constituting the said Legislative Council and House of Assembly, provision should be made for enabling and empowering the said Governor to transmit to the said Legislative Council or House of Assembly, for their consideration, the drafts of any laws which it might appear to him desirable to introduce, and also any amendments for the considera-

Digitised by the University of Pretoria, Library Services, 2016

tion of the said Legislative Council and House of Assembly (if he should so think fit) in any bill presented to him for her assent, and for prescribing the manner in which such drafts of laws and amendments should be dealt with by the said Legislative Council and House of Assembly, and for determining the regulations under which bills appropriating sums of money to the public service might be introduced in such Assembly, amended, and finally enacted: and for empowering the said Governor, from time to time, in the exercise of his discretion, to dissolve such Legislative Council and House of Assembly together, or such House of Assembly separately: And did thereby reserve to herself full power and authority, by an order or orders to be made by her, in her Privy Council, to alter or amend such Ordinance or Ordinances as should be passed by the said Governor, with the advice and consent of the Legislative Council of the said settlement, for the purpose of constituting and establishing the said Assembly, and for such other purposes as are hereinbefore specified: And did further declare her will and pleasure to be that it should be competent for the said Governor to continue, with the advice and consent of the Legislative Council of the said settlement, to make, enact, ordain, and establish laws for the peace, order, and good government of the said settlement, until the first writs should issue for the election of members of the said Legislative Council and House of Representatives, under and by virtue of such Ordinance or Ordinances so to be made and passed as aforesaid, but no longer:

Order in Council. 11th March, 1853.

And whereas, on the 3rd day of April, in the year 1852, in pursuance of the authority conveyed by the said Letters Patent, an Ordinance was enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, entitled "An Ordinance for constituting a Parliament for the said Colony":

Confirmation of Ordinance of April 3, 1852.

And whereas it is expedient that certain amendments should be made in the said Ordinance, in pursuance of the power and authority reserved to Her Majesty in her said Council in that behalf by the said Letters Patent; of which said Ordinance, with such amendments as aforesaid, a copy is contained in the Schedule to the present Order in Council annexed:

With certain amendments.

And whereas it is expedient that the said Ordinance so amended as aforesaid shall be ratified and confirmed by Her Majesty in Council:

It is therefore hereby ordered by the Queen's Most Excellent Majesty, with the advice of her Privy Council, that the said Ordinance so amended as aforesaid shall be, and the same is hereby ratified, confirmed, and finally enacted.

And it is further ordered and declared by the authority aforesaid, that the said Ordinance shall commence and take effect within the Colony of the Cape of Good Hope from and after the first

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

When votes equal, presiding member to have the casting vote.

arise in the said Assembly shall be decided by a majority of votes of the members present, other than the presiding member, and that when the votes shall be equal, the presiding member shall have the casting vote.

Electoral divisions.

7. (1) And be it enacted, that the divisions of the Cape (exclusive of the city of Cape Town), Malmesbury, Stellenbosch, the Paarl, Clanwilliam, Swellendam, Caledon, George, Uitenhage, Port Elizabeth, Albany (exclusive of the town of Graham's Town), Fort Beaufort, Victoria, Albert, Somerset, Graaff-Reinet, Cradock, Colesberg, Beaufort, and Worcester, and the city of Cape Town, and the town of Graham's Town, shall, respectively, be Electoral Divisions within the meaning and for the purposes of this Ordinance:

Cape Town to include Green Point.

Provided that for the purposes of this Ordinance the division of the city of Cape Town shall include the municipality of Green Point:

Boundaries of the electoral divisions.

And provided also, that the boundaries of the said several Electoral Divisions, other than Cape Town and Graham's Town, shall be the boundaries from time to time assigned to or prescribed for such divisions respectively in respect of fiscal purposes: And provided further, that the boundaries of the city of Cape Town, the municipality of Green Point, and the town of Graham's Town, shall, for the purposes of this Ordinance, be the boundaries assigned to or prescribed for the said city, the said municipality, and the said town respectively, by the municipal regulations in force for the time being in the same respectively.

Who qualified to be registered as voters, and to vote at elections of members of the Council, and of members of the Assembly.

8. (2) And be it enacted, that every male person, not subject to any of the legal incapacities hereinafter mentioned, who shall have occupied within any Electoral Division for the space of twelve months next before the day on which any such registration of voters as is hereinafter mentioned shall commence, any house, warehouse, shop or other building, being either separately or jointly, with any land within such Electoral Division occupied therewith, of the value of seventy-five (3) pounds sterling, or who shall have been, for the space of twelve months aforesaid, really and *bonâ fide* in the receipt of salary or wages at and after the rate of not less than fifty pounds by the year, (4) shall be entitled to be registered as a voter, and to vote at elections of members of the said Council and of members of the said House of Assembly: Provided, that when any number of different premises of the required nature and value shall have been occupied in immediate succession by the same person within the same Electoral Division

---

[1] Further electoral divisions created by Acts 3 of 1865, 7 of 1872, 39 of 1877, and 30, 1887.

[2] As to qualification of voters in Griqualand West see Act 39 of 1877. § 8. See also Schedule E to Act 9, 1892, for abstract of qualifications entitling to registration. Must be able to sign his name and to write his address and occupation, § 6, Act 9, 1892.

[3] Printed as amended by Act 9, 1892, § 4 sub § (*a*).

[4] Do. do. do. sub § (*b*).

Digitised by the University of Pretoria, Library Services, 2016

during the aforesaid space of twelve months, such person shall be deemed and taken to be entitled to be registered as a voter and to vote: Provided further, that no person claiming to be registered from salary or wages shall be prevented from being so registered by reason that, during the space of twelve months aforesaid, he may have been employed by different employers, in case no interval greater than one month shall have occurred between the time of his quitting one employer and the time of his taking employment with or under another employer: And provided also, that whilst no person shall be entitled to be registered as a voter, or to vote from or out of any premises of which he shall not be in actual occupation, yet if, in any case, it shall happen that the same person shall be in actual occupation, in each of two or more Electoral Divisions, of premises of the required nature and value, such person shall be entitled to be registered as a voter for each of the said Electoral Divisions, and to vote for each of such Electoral Divisions in the election of members of the House of Assembly; but no voter shall vote in more than one Electoral Division in the election of members of the Legislative Council.

Constitution Ordinance.

Persons occupying premises of the required value in each of two or more electoral districts, to vote in each for members of Assembly; but no person to vote in more than one district for members of the Legislative Council.

9. And be it enacted, that where any premises are jointly occupied by more persons than one, each of such joint occupiers shall be entitled to be registered as a voter, and to vote in respect of the said premises, in case the total value of such premises, when divided by the number of such joint occupiers as aforesaid, shall yield for every such joint occupier a sum of seventy-five (1) pounds: Provided, however, that in case such joint occupiers shall own, or be interested in, such premises in unequal shares or proportions, no such joint occupier shall be entitled to be registered as a voter or to vote unless his share or proportion shall, regard being had to the total value of the premises, yield a sum of seventy-five (1) pounds.

When joint occupiers shall be entitled to be registered voters, or to vote.

10. And be it enacted, that no person shall be entitled to be registered as a voter or to vote at any election of members of the Legislative Council or Assembly of the Cape of Good Hope, unless he be of the full age of twenty-one years, and either a natural-born subject of Her Majesty the Queen, or a subject of Her Majesty the Queen who, though not natural-born, was, before and on the eighteenth of January, one thousand eight hundred and six, a subject of the Batavian Government, resident in this Colony, and who, from thence hitherto, has resided or maintained a domicile in the said Colony, or unless, if of alien (2) birth, and not such a subject as last aforesaid, he shall have been naturalized by some Act of the Parliament of Great Britain and Ireland, or of the Legislature of the Cape of Good Hope, or shall, before the commencement and taking effect of this Ordinance, have obtained a deed of burghership;—and that no person shall be entitled to be

Who disqualified to be registered as voters or to vote.

[1] Printed as amended by Act 9, 1892, § 4 sub § (c).
[2] See Act 2 of 1883, as amended by Act 35, 1889, as to Naturalization.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

registered as a voter, or to vote, who is of unsound mind, or who shall have been convicted of and sentenced for treason, murder, (1) rape, theft, fraud, perjury, or forgery, unless he shall have received a free pardon.

A register of voters in each electoral division to be formed.

11. (2) And whereas it is expedient to form a register of all persons entitled to vote in each Electoral Division, be it therefore enacted that it shall and may be lawful for the Governor of the Cape of Good Hope, and he is hereby required, as soon as may be after the taking effect of this Ordinance within the said Colony, by proclamation or proclamations to be by him issued for that purpose, to enjoin and direct some fit and proper person or persons to make out, or cause to be made out, in and for each Field-cornetcy in each Electoral Division (except the Electoral Divisions of Cape Town and Graham's Town), an alphabetical list of all persons entitled to vote, resident within such Field-cornetcy; and the person or persons appointed to make out any such list shall insert therein the name and, as well as may be, the address of every person who shall, in person, or by any writing under his hand, witnessed by one witness, or more than one, claim to be inserted therein, as well as the name of every other person who shall be known, or on reasonable grounds believed, to be entitled to be inserted therein.

A list to be made of the voters in each field-cornetcy (except Cape Town and Graham's Town).

List of voters for the several field-cornetcies, how to be framed.

12. And be it enacted, that it shall and may be lawful for the Governor aforesaid, and he is hereby required, by some such proclamation as aforesaid, to fix and name some convenient place within each Field-cornetcy, at which place the person or persons appointed to make out the list aforesaid for such Field-cornetcy will attend upon such day or days as shall in any such proclamation be, in that behalf, appointed, and at which place all persons shall be entitled to appear in order to claim to be themselves placed upon such list, or to hand in the claim of any other persons made in writing as aforesaid: Provided always, that the Governor may, in case the convenience of the inhabitants shall seem to him so to require, appoint, in any Field-cornetcy, more places than one for the purposes aforesaid; in which case, every such place shall be announced by proclamation, and the day or days at which the person or persons aforesaid, appointed to make out the list aforesaid for such Field-cornetcy, will attend at each such place, shall be published for general information.

Every field-cornetcy list, when completed, to be posted.

13. And be it enacted, that as soon as the list aforesaid for any Field-cornetcy shall be completed (and not later than some certain day to be by the Governor aforesaid, in or by some such proclamation as aforesaid, fixed for that purpose), the person or persons appointed to make out such list shall cause a copy thereof, legibly

[1] With exception of those convicted of treason or murder, all others convicted of crimes mentioned shall be entitled to be registered as voters and to vote after the lapse of 5 years from the date of expiration of sentence—§ 35 of Act 9, 1892.

[2] §§ 11 to 19 inclusive apply only to First Registration of Voters. For procedure now see Act 14 of 1887.

Digitised by the University of Pretoria, Library Services, 2016

written, to be posted upon, or affixed to, some public place or public places within such Field-cornetcy, there to remain for general information during not less than seven days; and if any person shall, during such space of seven days, wilfully tear down, cover over, deface, or obliterate, either wholly or in part, any such list, or any such other list or notice as are hereinafter mentioned, or procure any other person so to do, every such person shall, upon conviction, be liable to be imprisoned, with or without hard labour, for any period not less than one month or more than three months. Constitution Ordinance. Penalty for tearing down, &c., any such list.

14. And it be enacted, that subjoined or annexed to every copy of any such list as aforesaid, so posted or affixed as aforesaid, a notice shall be written, signed by the person or persons causing such list to be posted or affixed, which notice shall be written both in the English and the Dutch languages, and shall be, in substance, as follows, that is to say,— Notice to claimants, and persons objecting, how to be given.

"Notice is hereby given, that if any inhabitant whose name is not inserted in the above list shall claim to be entitled to have his name inserted therein, or if any inhabitant shall object to the right of any person whose name is inserted in the said list to have his name therein inserted, every such inhabitant may lodge his claim or objection, in writing, directed to the undersigned, at (here name some convenient place within the Field-cornetcy), on or before the day of , (here insert some day not sooner than seven, nor less than fourteen days next after the day on which the list aforesaid shall have been first posted), in order that such claim or objection (as the case may be) may be recorded, and dealt with as the law directs.

"Given under my hand this day of , 185

(Signed) "A. B."

And every such claim as aforesaid shall be in substance as follows, that is to say :— Form of claim.

"To the officer appointed to make out the list of voters in the Field-cornetcy of , in the division of

"Please to take notice that I claim to have my name inserted in the list of voters in the above Field-cornetcy.

"Dated the day of 185 .

(Signed) "A. B.,

"Of " (here state his place of residence.

And every such objection as aforesaid shall be in substance as follows, that is to say, Form of an objection.

"To the officer appointed to make out the list of voters in the Field-cornetcy of , in the division of

"Please to take notice that I object to the name of being retained in the list of voters in the above Field-

Digitised by the University of Pretoria, Library Services, 2016

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 ground of objection)

"Dated the day of 185

(Signed) "A. B.,

"Of " (here state his place of residence)

Copies of field-cornetcy lists as originally posted, of lists of claimants, and of lists of persons objected to, to be transmitted to civil commissioners.

15. And be it enacted, that as soon as may be after the day fixed in and by such notice as aforesaid as the latest day upon which any such claims or objections as aforesaid are to be receivable, the person or persons aforesaid, appointed to make out the list to which such claims or objections shall relate, shall transmit to the Civil Commissioner of the division in which such Field-cornetcy shall be situate a copy of the list for the said Field-cornetcy, as such list was originally posted or affixed, together with another list, containing the names of all persons not inserted in such list who shall, according to the terms of the notice aforesaid, have claimed to be inserted therein, and also a third list, containing the names of all persons inserted in such list, as posted or affixed, whose right to be so inserted shall have been objected to as aforesaid: Provided also, that such person or persons as aforesaid shall, at the same time, transmit to the Civil Commissioner the original writings containing all such claims or objections.

From the above field-cornetcy lists, civil commissioners to form divisional lists.

16. And be it enacted, that the Civil Commissioners of the several divisions of the Colony of the Cape of Good Hope shall, respectively, and with all convenient speed, prepare, from the several lists received by them from the several Field-cornetcies, a general list, containing the names of all persons inserted, or claiming to be inserted, in such several and respective lists; and such general list shall keep the several Field-cornetcies in such division distinct from each other, in regard to the voters therein, but shall, so far as may consist with such distinction, pursue an alphabetical order; and that opposite the name of any person, who shall, in manner aforesaid, have been objected to, shall be placed the words "Objected to," and at the foot of the list of names beginning with any particular letter, and belonging to any particular Field-cornetcy, shall be written in words, "Persons claiming to be registered as voters," under which words shall be placed the names of all such claimants as aforesaid whose names begin with that particular letter; and should there be no such claimant, then under the said words shall be written the word "None"; and that every Civil Commissioner, as soon as he shall have completed such general list, shall report to the Secretary to Government that the same has been completed.

How divisional lists to be framed.

As soon as a proclamation shall be issued for the first election of members of Council, the civil commissioners shall draw out lists of persons objected to.

17. And be it enacted, that as soon as may be after the time and place, or the times and places, for the taking of the poll for members of the Legislative Council shall, by any such proclamation as is hereinafter in the 32nd section of this Ordinance mentioned, be

Digitised by the University of Pretoria, Library Services, 2016

fixed for or in regard to any Electoral Division, the Civil Commissioner of such division shall, from the lists and accompanying writings aforesaid in his custody, draw out and post upon or affix to some public place at or near his office a list containing the names, and, as far as known, the residences, or supposed residences, of all persons placed upon any of the lists of or belonging to any of the Field-cornetcies in such division whose right to be placed upon such lists shall, in the manner hereinbefore in the 14th section of this Ordinance mentioned, have been objected to, and the Civil Commissioner shall prefix to the list which he is by this section directed to draw out and post, a notice, which shall be written both in the English and the Dutch languages, and shall be in substance as follows, that is to say:— Constitution Ordinance.

"Division of

Form of notice to be prefixed.

"The several persons whose names are set forth in the subjoined list having been objected to as not being entitled to be placed upon the list of voters for this division, notice is hereby given to each of the said several persons respectively, that before being permitted to vote at the ensuing election for members of the Legislative Council, the objection against him will be heard and determined by the proper officer upon the day and at the place set opposite to his name in the said subjoined list, and that should any such person fail to attend, his name will be struck out of the voters' list for this division.

"Given under my hand this day of 185

(Signed) "A. B.

"Civil Commissioner for the Division of ."

Provided always, that every such list as aforesaid shall be drawn out in four columns, of which the first shall set forth the name of the person objected to, the second, his residence, or supposed residence, the third, that one of the appointed polling-places in such division which shall be most easily reached from the place or residence, or supposed residence, of the person objected to, and the fourth, the day upon which such person is to attend at such polling-place, which day shall be that appointed, in manner aforesaid, for the commencement of the poll at such polling-place: Provided also, that nothing in this nor in any of the four next succeeding sections mentioned shall extend to the Electoral Divisions of the city of Cape Town or the town of Graham's Town. Form of such lists. Cape Town and Graham's Town not included in this or any of the four next succeeding sections.

18. And be it enacted, that every such Civil Commissioner aforesaid shall, when drawing out and posting the list in the last preceding section mentioned, or as near such time as may be, draw out and post another list, containing the names and, as far as known, the residences, or supposed residences, of all persons not inserted in the list of voters for such division who shall, in man- Civil commissioner to draw out, or at about the same time, lists of claimants.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

Form of such lists.

ner and form as hereinbefore provided, have claimed to be inserted therein: and that such list of claimants shall, like the list aforesaid of persons objected to, be drawn out in four columns, of the like tenour and effect as aforesaid, and which list shall have prefixed thereto a notice, which shall be written both in the English and Dutch languages, and shall be in substance and effect as follows, that is to say:—

Form of notice to be prefixed to such lists.

"Division of

"The several persons whose names are set forth in the subjoined list having claimed to be inserted in the list of voters for this division, notice is hereby given to each of the said several persons respectively, that his claim to be so inserted will be heard and determined by the proper officer upon the day and at the place set opposite to his name in the said subjoined list; and that should such person fail to attend and support his claim, the same will be rejected.

"Given under my hand, this day of 185

(Signed) "A B.,

"Civil Commissioner for the Division of "

Civil commissioners to give notice to claimants, persons objected to, and persons objecting.

19. And be it enacted, that as soon as may be after the lists and notices in the two last preceding sections respectively mentioned shall have been posted as aforesaid, the Civil Commissioner posting the same shall, by the public post, or in any other mode by which his letter shall seem to him to be more likely to be carried safely and speedily to its destination, transmit to every person in either of the said lists mentioned, a letter, signed by such Civil Commissioner, informing such persons of the polling-place at which, and of the day on which, the claim of such person, or the objection against him (as the case may be), will be heard and determined, and apprising him that unless he shall attend then and there, his claim will be rejected or the objection against him allowed (as the case may be); and that such Civil Commissioner shall at the same time inform every person so objected to of the alleged ground of objection, and shall, in like manner, transmit a letter to every person by whom an objection to any other person shall have been lodged, in manner and form as in the 14th section of this Ordinance mentioned, informing such persons who shall have so objected of the time and place at which such objection will be heard and determined.

An officer to attend at every polling-place

What lists such officer is to be furnished with.

20. And be it enacted, that upon the day appointed for commencing to take the poll for members of the Legislative Council at any polling-place within any Electoral Division, the officer appointed to take the poll thereat shall attend for the purpose of so doing at such polling-place, having in his possession a copy of the general list of voters for such division as the same is hereinbefore in the

Digitised by the University of Pretoria, Library Services, 2016

16th (1) section of this Ordinance described, certified under the hand of the Civil Commissioner to be a correct copy, and (1) also a list of the names of all persons, whether claimants, persons objected to, or persons objecting, who shall, in manner aforesaid, have been noticed or directed to attend at the particular polling-place, in order to have any claim or objection heard and determined. (1) Constitution Ordinance.

21. (1) And be it enacted, that it shall and may be lawful for every person, whether claimant or person objected to, or person objecting, who shall, in manner aforesaid, have been noticed or directed to attend at any such polling-place, to come upon the day in that behalf prescribed before the officer appointed to take the poll at such polling-place, and the said officer shall hear all such parties, and finally determine every such claim and every such objection; and such officer is hereby authorised to administer an oath to any person whom he shall see fit to examine touching any such claim or objection, and may admit or reject any claim or objection, as justice shall require; and that, as often as the claim of any claimant shall be admitted, he shall be entitled to give his vote forthwith, precisely as if his name had stood, from the first, free from objection upon the general list; and the name of every person objected to in regard to whom the objection shall have been allowed, shall be considered as if the same had never been inserted in the voters' list aforesaid: Provided always, that the officer taking the poll at any such polling-place shall, when delivering or transmitting, as hereinafter directed, the list of persons admitted to poll at such polling-place, also deliver or transmit to the Civil Commissioner of the division a list of all claimants whose claims shall have been admitted, and of all persons objected to in regard to whom the objection shall have been allowed; and the voters' list for such division shall be rectified by adding the name of every such claimant, and expunging the name of every person objected to in regard to whom the objection shall be allowed; and such list, when so rectified, shall become and remain, so long as no fresh registration of voters shall have taken place in and for such division, the list of registered voters for such Electoral Division; and a clear and correct copy of such list shall be, at all times, preserved in the office of the Civil Commissioner: Provided also, that in every case in which the Governor aforesaid shall have ascertained that the claims or objections to be heard and determined at any particular polling-place are too numerous to be conveniently determined by one officer, it shall and may be lawful for the said Governor to appoint a second officer for such polling-place,—and when and as often as two such officers shall be so appointed, one of them shall hear and determine all claims and objections, at some place adjacent to, but distinct from, the place at which the poll shall be taken.

Officer at polling-place to hear and determine claims and objections.

Divisional lists to be rectified in conformity with such determination.

Copy of all such rectified lists to be preserved.

[1] But see Act 14 of 1887.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

Lists of voters for Graham's Town how to be made.

22. (1) And be it enacted, that the lists of voters for the Electoral Division of Cape Town and the Electoral Division of Graham's Town respectively, shall be made out by such fit and proper persons as shall be for that purpose nominated by the Governor of the Cape of Good Hope, by Government Notice in the *Government Gazette*.

Persons appointed to make out such list, to make out list of resident householders from the municipal records.

23. And be it enacted, that it shall and may be lawful for the commissioners of the municipalities of Cape Town and Green Point respectively, and they are hereby required to permit the persons so nominated as aforesaid to make out the lists of voters for the Electoral Division of Cape Town to copy, or cause to be copied, the names of all the resident householders in the said municipalities respectively, for the purpose of placing such resident householders upon the said lists as hereinafter mentioned; and that the commissioners of the municipality of Graham's Town shall, in like manner, and for the like purpose, permit the person nominated to make out the list of voters for Graham's Town to copy, or cause to be copied, the names of the resident householders of Graham's Town.

When lists of resident householders obtained, other persons claiming to be voters to receive notice to make their claims.

24. And be it enacted, that so soon as the persons in the last preceding section mentioned shall be respectively in possession of lists of all the resident householders of the municipalities of Cape Town and Green Point, and of all the resident householders of the municipality of Graham's Town, each of the said persons shall respectively give notice, by publication in whatever manner shall, for the time being, be used for the publication of Government notices in Cape Town and in Graham's Town respectively, that he will attend at some convenient time and at some place, within his Electoral Division for which he shall have been appointed to act (which time and place shall be specified in such notice), at which time and place all persons claiming to be registered as voters for Cape Town or for Graham's Town (as the case may be), and not being resident householders of either or any of the respective municipalities, shall be called upon to attend and give in their

Manner of making claims.

names: Provided always, that it shall be lawful, in any such notice as aforesaid, to fix different times or different places in regard to different districts of the said Electoral Divisions respectively: Provided also, that when the person so attending as aforesaid at any particular time and place, in pursuance of the notice aforesaid, shall see cause, he may announce, in some public manner, so as to make the same known to whom it may concern, that he will again attend there for the same purpose at some appointed hour upon some future day, on which day and hour it shall be his duty to attend.

---

[1] §§ 22 to 31 inclusive repealed by Act 14 of 1874 in so far as they relate to the Electoral Division of Cape Town. See also § 27, Act 16 of 1856, as to framing of lists for Graham's Town.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

Claimants attending in person to have their names taken down.

25. (1) And be it enacted, that the persons so nominated as aforesaid, and attending at such a place or places as in the last preceding section mentioned, shall respectively take down the names of all persons who shall, in person, claim before them to be registered; but the names of no persons other than those who shall so claim.

When names of claimants and resident householders shall be all received, copies of the several lists to be posted for not less than seven days.

26. (1) And be it enacted, that the persons so nominated as aforesaid shall, so soon as they shall respectively have collected the names of all such claimants as aforesaid, proceed to frame, from and out of the names of the resident householders aforesaid, an alphabetical list of voters for the city of Cape Town and town of Graham's Town respectively, and shall cause a copy of such list, legibly written or printed, to be posted upon or affixed to some public place within such city and such town respectively, there to remain for general information during not less than seven days.

When several lists posted, notice thereof shall be given, as well as notices similar to those in the 14th section mentioned.

27. And be it enacted, that as soon as may be after any such list as aforesaid shall have been posted or affixed, the person who shall have posted it, or caused it to be posted, shall give notice in Cape Town and in Graham's Town respectively, by publication in whatever manner shall, for the time being, be used for the publication of Government notices in Cape Town and in Graham's Town respectively, and by printed placards posted through the said city and the said town, that such list has been posted or affixed, and such notice shall, moreover, contain a further announcement, which shall, in substance, be the same, *mutatis mutandis*, as the notice hereinbefore in the 14th section of this Ordinance directed to be given in regard to the lists therein mentioned; and the forms of claims and of objections respectively in the said lastmentioned section contained shall, *mutatis mutandis*, be applicable and be used.

Notice of revision of the general lists for Cape Town and Graham's Town, how to be given.

28. And be it enacted, that as soon as may be after the publication in Cape Town and in Graham's Town respectively of any such notice as in the last preceding section mentioned, the Resident Magistrate of Cape Town and the Resident Magistrate of Albany (as the case may be) shall respectively, by a notice of not less than fourteen days, to be published in whatever manner shall, for the time being, be used for the publication of Government notices in Cape Town and Graham's Town respectively, inform all whom it may concern that such Resident Magistrate will attend in his Court-room, on some day and hour to be specified in such notice, for the purpose of revising and amending the voters' list of Cape Town or of Graham's Town, as the case may be.

---

[1] See § 27 Act 16 of 1856.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

After the time for making claims and objections, as fixed by the notice required in the 27th section, shall have expired, but not later than forty-eight hours before the sitting of the resident magistrate, announced in the notice required by the 28th section, lists posted, together with separate lists of persons claiming to be inserted and of persons objected to, to be delivered to resident magistrates.

29. And it be enacted, that as soon as may be after the expiration of the number of days in the 27th section of this Ordinance mentioned, and not later than forty-eight hours before the hour announced for the sitting of the Resident Magistrate, for the purpose of revising and amending such list as aforesaid, the person nominated as aforesaid to prepare the lists of voters for the division to which such notice shall relate, shall deliver to the said Resident Magistrate a correct copy of such list, in the plight and condition in which the same was originally posted, together with two such other or separate lists as are in the 15th section of this Ordinance directed to be framed, containing, respectively, the names of persons not inserted in such original list who shall have claimed to be therein inserted, and the names of persons inserted in such original list whose right to be so inserted shall have been objected to: Provided always, that the person nominated as aforesaid shall also deliver to the Resident Magistrate the original writings, containing all such claims and objections, and shall, moreover, not less than forty-eight hours before the hour appointed for the sitting of the Resident Magistrate to revise and amend the list aforesaid, cause notice, in writing, to be given to every person inserted in such original list, whose right to be so inserted shall have been objected to, that his said right has been so objected to, and that the hearing of such objection will come on before the Resident Magistrate at the sitting appointed to be held by him for the purpose aforesaid.

Resident magistrate to revise the voters' lists, Graham's Town.

30. And be it enacted, that the respective Resident Magistrates of Cape Town and Albany shall, upon the days and hours by them respectively announced as aforesaid, attend in their respective Court-rooms, and it shall be lawful for any person not inserted in the original list, who shall have claimed, in writing, to be inserted therein, and for any person who shall, in writing, have objected to the right of any person inserted in the said list to be so inserted, and for any person who shall have been so objected to, to come before such Resident Magistrate; and such Resident Magistrate shall hear all such parties, and may, should he think fit, summon before him, and examine upon oath, any person whom he shall deem it necessary to examine, and may impose a fine not exceeding ten pounds on any person duly summoned who shall, without sufficient cause, refuse or neglect to attend; and such Magistrate shall finally determine all questions brought before him, and revise and amend the said original list as justice shall require: Provided always, that every such Magistrate may adjourn such sitting from time to time, if it shall seem to him expedient so to do.

Lists for Graham's Town, as revised, to be kept in the office of the resident magistrate.

31. And be it enacted, that so soon as the Resident Magistrates as aforesaid shall respectively have revised and amended the respective lists aforesaid, each of the said Magistrates shall cause to be made out, and safely kept in his office, the list of voters as so by him revised and amended, and such lists shall respectively be

Digitised by the University of Pretoria, Library Services, 2016

the lists of registered voters for the city of Cape Town and the town of Graham's Town, respectively; and, as soon as the said Resident Magistrates shall respectively have made out such revised and amended lists, they shall respectively report that they have done so to the Secretary to Government. Constitution Ordinance.

32. And be it enacted, that so soon as it shall appear, from the reports of the Civil Commissioners and Resident Magistrates aforesaid, that the lists of persons qualified to vote in the several Electoral Divisions of the said Colony have, in such manner and form as aforesaid, been completed, it shall and may be lawful for the Governor, by ([1]) proclamation, to command that the returning officer, to be by him appointed for each of the said Electoral Divisions ([2]) in the Western districts and the Eastern districts respectively, shall cause to be taken and returned to the Secretary to Government, or such other person as by such proclamation may be in his behalf appointed, all the votes of persons entitled to vote in such respective Electoral Divisions which shall be given, in manner herein provided, for the candidates for election as members of the Legislative Council, for the districts of which such respective Electoral Divisions may form part; and the Governor shall, in such proclamation or proclamations as he shall issue as aforesaid, fix and appoint the several polling-places in and for every Electoral Division (of which there shall be one at least in every Field-cornetcy in each of the several Electoral Divisions other than Cape Town and Graham's Town), and fix and appoint the day on which the polling shall commence at every such place, and the day on which the same shall finally close: Provided that every such proclamation shall be published in the *Government Gazette*, not less than thirty days before the earliest day mentioned therein for the commencement of the poll at any polling-place in any division in such proclamation mentioned. Votes for members of the Legislative Council to be called for, and polling-places to be appointed.

33. ([3]) And be it enacted, that no person shall be qualified to be elected a member of the said Council who would, under and by virtue of any of the provisions of this Ordinance, be incapacitated to be registered as a voter as herein provided, or who shall be under the age of thirty years; or who shall not be the owner, for his own use and benefit, of immovable property, situate within the districts of this Colony, of the value of two thousand pounds of sterling money, over and above all special conventional mortgages affecting the same; or who shall not, being the owner of such property to such value, but under mortgage, be at the same time possessed of property, movable and immovable, within the said Colony, to the value of not less than four thousand pounds of sterling money, over and above his just debts: Provided always, that every married man shall, for the purposes of this and every Qualification of members of the Legislative Council.

[1] See § 9, Act 21 of 1859.
[2] Electoral Provinces now, Act 18 of 1874.
[3] Printed as amended by Act 18 of 1874, § 5.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

other section of the present Ordinance which regards the ownership or occupation of property, be deemed and taken to own or occupy (as the case may be) the whole of the property belonging to his wife: Provided, also, that no person holding any office of profit under Her Majesty the Queen within the said Colony, and no uncertificated insolvent, and no alien who shall have been registered as a voter by virtue merely of having obtained a deed of burghership, shall be eligible to be elected a member of the said Council. (1)

Requisition to candidates.

34. And be it enacted, that no person shall be deemed a candidate at any election of members of the said Council for the said (2) Western districts or Eastern districts, unless he shall have been invited to become such candidate by a requisition in writing, signed by not less than twenty-five of the persons qualified to vote in the election of members of the said Council for such respective (2) districts, every such signature being accompanied by a full and correct address of the person so signing, and shall have accepted such requisition, in writing under his hand, and shall have transmitted, within the time limited in this behalf, such requisition, with such acceptance thereof, to the Secretary to the Government, or such other person as may be appointed as herein mentioned.

No person to sign more than one requisition.

35. And be it enacted, that no person shall be entitled to sign a requisition to more than one candidate, or to sign more than one requisition in respect of the same election; and that if the same person shall sign more than one such requisition his signature shall be expunged from all the requisitions which he may have signed, and he shall not be capable of signing another requisition for the election in respect of which he shall have so signed.

Governor to require persons who have received and accepted such a requisition to transmit the same as directed.

36. And be it enacted, that the Governor shall, by proclamation to be published in the *Government Gazette* not less than twenty-eight days before the day appointed for the commencement of the poll, call upon all persons who may have received and accepted such requisitions as aforesaid to become candidates to transmit such requisitions, and their acceptance thereof, within a time to be limited in such proclamation, to the Secretary to the Government, or such other person as by such proclamation may be appointed in this behalf; and the Governor shall, in such proclamation, require the persons who shall be invited in manner herein mentioned to become candidates for election as members of the said Council, and who shall accept such invitations, severally to nominate, by writing under their hands, transmitted to the Secretary to the Government, or such other person as may in this behalf be appointed by such proclamation, and within such time as by such proclamation may be limited, one person as a scrutineer, for the purpose of examining the lists of votes returned as herein provided.

Candidates to nominate each a scrutineer to examine lists of voters.

---

[1] But see Acts 1 of 1872, § 3 and 18 of 1874, § 8.
[2] Electoral Provinces now, Act 18 of 1874, § 4.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

37. (1) And be it enacted, that the Governor shall cause to be published in the *Government Gazette*, fourteen days at least before the day appointed for the commencement of the poll, separate lists, for the Western districts and the Eastern districts respectively, of the candidates who shall have received and accepted, and transmitted as aforesaid, such requisitions; and the Governor shall, by such proclamation, appoint such three of the scrutineers nominated by the candidates of the (2) Western districts, and such three of the scrutineers nominated by the candidates for the (2) Eastern districts, as the said Governor shall find to be nominated by the greatest number of candidates for such districts respectively, to be committees of scrutineers for such (2) districts respectively, for the purposes herein mentioned: Provided always, that in the event of three scrutineers not being nominated as aforesaid, for such districts respectively, or of any scrutineer nominated or appointed, dying, declining, or becoming incapable to act, or of there being a deficiency of scrutineers from any other cause, the Governor may appoint such scrutineer or scrutineers as may be necessary for constituting the full number of three scrutineers for the Western districts and the Eastern districts respectively.

Lists of candidates to be published.

How committees of scrutineers to be appointed.

Persons on registered lists entitled to vote.

38. And be it enacted, that all persons whose names shall be inserted in the list of voters for any Electoral Division, but no other persons, shall be entitled to (3) vote in and for such Electoral Division for members of the Legislative Council: Provided always, that the list of voters for every Electoral Division, other than the city of Cape Town or the town of Graham's Town, shall, for the purposes of this section, be taken to include the name of every claimant whose claim shall be allowed by any such officer as aforesaid, at any such polling-place as aforesaid, and not to include the name of any person originally inserted upon such list in regard to whom an objection shall have been allowed by any such officer.

Commencement and continuation of poll.

39. And be it enacted, that the poll at every polling-place in every Electoral Division shall, upon every day appointed for taking the poll thereat, open at eight o'clock in the forenoon and close at five o'clock in the afternoon.

The votes for members of Legislative Council may be distributed amongst the candidates as the voter pleases.

40. And be it enacted, that each person entitled to vote in and for any Electoral Division comprised in the Western districts shall be entitled to vote for the members of the said Council to be elected for such districts, and shall be entitled to give at such election as many votes as there are members of such Council to be elected at such election for such districts; and each person entitled to vote in and for any Electoral Division comprised in the Eastern districts shall be entitled to vote for the members of the said Council to be elected for such districts, and

[1] See Act 18 of 1874, § 4.
[2] 3 Scrutineers are appointed for each Electoral Province, § 4 *ibid.*
[3] Agents of Candidates may not vote, Act 9 of 1883, § 35.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

shall be entitled to give at each election as many votes as there are members of such Council to be elected at such election for such districts; and every person so entitled to vote for members to be elected for the Western districts and for the Eastern districts, respectively, shall be entitled, at his discretion, to give at any such election one vote to each of any number of the candidates not exceeding the whole number of members to be elected, or to distribute, in such proportion as he may think fit, the whole number of votes which he is entitled to give among any lesser number of candidates, or to give all his votes to one candidate.(1)

Manner of voting for members of the Legislative Council.

41. (1) And be it enacted, that the manner of voting at every polling-place in every Electoral Division for members of the said Council shall be as follows, that is to say: the Governor shall cause the officer appointed as aforesaid to take the poll at each polling place to be furnished with a sufficient number of printed lists of the several candidates for the Western or Eastern districts, as the case may be, whose names shall have been published in the *Government Gazette*, as aforesaid, and such voter shall, in the presence of such officer, write, or cause such officer to write, upon one such list, against the name or names of the candidates whom such voter shall desire to be chosen, the number or respective numbers of votes which he shall give to such candidate or to each of such candidates respectively, and the name of such voter shall by such officer be legibly written at the top of such list, and shall, either by himself or by such officer, at his request, be signed or written at the foot of such list, which list shall also be signed by such officer, in attestation of the correctness thereof: Provided always, that when and as often as the identity of any voter shall be established, no omission, either in the voters' list of the division, or in the list in this section mentioned, of one or more of the christian names of such voter,—and no variance between the said last-mentioned lists in regard to the christian names of such voter,—and no error in the spelling of either the christian names or the surname of such voter, shall destroy or affect the validity of his vote.

42. [Repealed by Act 14 of 1874 § 37.]

At the close of the poll, officer to transmit lists received from voters to the Secretary to Government.

43. And be it enacted, that as soon as the time limited for keeping open the poll at any polling-place at any election of a member or members of the Legislative Council shall have expired, no further votes shall be received thereat, and the officer who shall have taken the poll at such polling-place shall, with all convenient speed, deliver in person, or securely enclose and transmit to the Secretary to the Government, or such other person as may be appointed in this behalf as hereinbefore mentioned, the lists received by such officer from the voters at such polling-place.

---

[1] Electoral Provinces now. This section must be read with § 4 Act 18 of 1874. Voting by Ballot from and after the 1st July, 1894, § 36 Act 9, 1892; see § § 37 *et seq*, for Mode of Voting and Procedure at the Poll.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

Members of the Legislative Council to be ascertained, and announced by proclamation.

44. (1) And be it enacted, that the lists of votes for the Western districts and the Eastern districts respectively, when returned to the Secretary to the Government, or such other person as may be appointed to receive the same, as herein provided, shall be laid before the committees of scrutineers for such districts respectively, and each such committee shall, by writing under the hands of the members of such committee, or two of them, certify to the Secretary to the Government the names of the several candidates for whom votes have been given, and the number of votes they shall find to have been given for each of such several candidates within the districts for which such committee is appointed; and such certificate shall be published in the *Government Gazette;* and the Governor shall, by proclamation in the *Government Gazette*, declare such (2) eight candidates and seven candidates respectively as may appear by the certificates of the committees of scrutineers for the Western districts and Eastern districts respectively to have been elected by the votes, or (as the case may be) the majority of votes, received as aforesaid, to be duly elected members of the said Council for such districts respectively, and the day of the publication of such proclamation shall, for the purpose of computing the time during which such members are under the provision hereinbefore contained, to hold their seats, be deemed and taken to be the date of their election: Provided that, if it appear by such certificate of the scrutineers that, by reason of any two or more candidates having received an equal number of votes the requisite number of members cannot be declared to be elected by the majority of votes, the Governor shall, before he shall issue such proclamation as last aforesaid, cause the member or members required to make up such number to be determined by lot among the candidates having such equal number of votes, such lot to be drawn in presence of one of the Judges of the Supreme Court, and of such candidates, or their agents authorised in writing (in case such candidates or agents think fit to attend); and such judge shall certify to the Secretary to the Government, under his hand, the name of the candidate or candidates upon whom the lot has fallen, and such certificate shall be published in the *Government Gazette*, and the Governor shall, by such proclamation as aforesaid, declare such candidate or candidates to be, with the candidate or candidates having such majority of votes as aforesaid, duly elected members of the said Council.

When the members of the Legislative Council shall have been announced proclamation to be issued for electing the members of the House of Assembly.

45. And be it enacted, that as soon as, but not before, the names of the members of the Legislative Council shall, in manner and form as aforesaid, have been published in the *Government Gazette*, the Governor shall, by proclamation in the said *Gazette*, command the returning officers of the several Electoral Divisions by him appointed to proceed, upon some certain day to be named in such

[1] See § 4, Act 18 of 1874. See also §§ 50 and 56, Act 14 of 1874.
[2] But see Act 18 of 1874, § 3.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

proclamation, to the election of members of the House of Assembly of the Cape of Good Hope: Provided always, that it shall be lawful for the said Governor to issue, for the purpose aforesaid, either one proclamation or more than one, and to appoint the same days or different days for or in regard to the several Electoral Divisions of the Colony respectively, and any day or days appointed by any proclamation from time to time to alter, as circumstances shall require: Provided also, that not less than thirty-one clear days shall elapse between the day of the publication of any proclamation fixing the day of election for any Electoral Division and the day of such election.

Each electoral division other than Cape Town to elect two members of Assembly.

46. And be it enacted, that for the purpose of constituting the House of Assembly of the Cape of Good Hope, it shall and may be lawful for the voters in or for each of the twenty-two [1] Electoral Divisions hereinbefore mentioned, except the city of Cape Town, to elect two [2] qualified men, and no more, to be the representatives of such Electoral Division, and for the voters in or for the Electoral Division of Cape Town to elect four qualified members; and that every voter in every Electoral Division shall be entitled to give at each election as many votes as there are members of Assembly to be elected at such election: Provided always, that in no Electoral Division except Cape Town shall any voter be capable of giving to any one candidate more votes than one: Provided also, that in the Electoral Division of Cape Town every voter shall be entitled, at his discretion, to give at any such election one vote to each of any number of the candidates not exceeding the whole number of members to be elected, or to distribute in such proportions as he shall think fit the whole number of votes which he is entitled to give among any lesser number of candidates, or to give all his votes to one candidate. [3]

Cape Town to elect four members.

Voters in Cape Town may distribute their votes amongst the candidates at pleasure.

Qualification of members of the House of Assembly.

47. [4] And be it enacted, that any person (except as is next hereinafter excepted) who shall be qualified and entitled to be registered as a voter in and for any Electoral Division within the said Colony shall be qualified and entitled to be elected a member of the Legislative Assembly for any Electoral Division within the said Colony: Provided also, that no person holding any office of profit under [5] Her Majesty the Queen, within the said Colony, and no uncertificated insolvent, and no alien who shall have been registered as a voter by virtue merely of having obtained a deed of burghership, shall be eligible to be elected a member of the said Legislative Assembly.

Persons qualified to be voters who are disqualified to be members.

Nomination of candidates for the House of Assembly, and proceedings thereupon.

48. And be it enacted, that upon the day which shall, in and by any such proclamation as is in the 45th section of this

[1] Number increased. See note to § 6 of this Ordinance.
[2] As to Electoral Division of Kimberley, see Act 13 of 1882, § 2.
[3] Cumulative voting abolished by Act 16, 1893.
[4] See § 33 of this Ordinance and Act 18 of 1874, § 8.
[5] But see Act 1 of 1872, § 3.

Digitised by the University of Pretoria, Library Services, 2016

Ordinance mentioned, be appointed for proceeding to the election in any Electoral Division, of members of the House of Assembly for such division, the returning officer of such Electoral Division shall (except as hereinafter excepted in regard to the Electoral Divisions of Cape Town and the Cape Division) hold, in the Court-room of the town or place in which the office of the Civil Commissioner of the same division shall be situated, a public court for the nomination of persons proposed as members of Assembly for such division; and every such person shall be nominated by some registered voter of or for such division, and such nomination shall be seconded by some other such voter: and if it shall happen that the number of persons so proposed is not greater than the number of members to be elected, then the persons so proposed shall forthwith be declared to be duly elected. But in case the number of persons so proposed exceeds the number of members to be elected, and any of the candidates, or any voter acting on behalf of any of the candidates, shall, after the result of a show of hands of the voters present shall have been declared, demand a poll, the returning officer shall, before adjourning such court for the purpose of such poll, take sufficient security from or on behalf of every person so proposed, for the payment of an equal share or proportion of the expenses of such poll (not exceeding, however, the sum of fifty pounds), as the said expenses shall be sanctioned and allowed by the Governor of the said Colony: Provided always, that not less than three clear days shall, in any case, elapse between the nomination of the candidates and the commencement of the poll, and that when there shall be more polling-places than one in any Electoral Division, the returning officer shall, before adjourning the court aforesaid, fix and announce the day or days on which the poll will be taken at the respective polling places; and such returning officer shall also forthwith cause a written notice, under his hand, to be posted upon or affixed to some conspicuous place at or near such Court-room, containing the names of the several polling-places in such Electoral Division, and the days and hours for the taking of the poll thereat respectively: And provided that, in case such security for expenses, as aforesaid, shall fail to be given, by or on behalf of any candidate so nominated as aforesaid, then every candidate by whom or in whose regard such failure shall have taken place shall, in case there be other candidates giving such security, not less in number than the number of members to be elected, be considered as if he or they had not been nominated; but if the candidate or candidates so giving security shall be in number less than the number of members to be elected, then the candidate or candidates, if any, giving such security, shall be declared duly elected, and the question of election between or amongst the other candidates failing to give such security shall be decided by a show of hands; and if none of the candidates nominated, nor any voter on behalf of any of them,

Constitution Ordinance.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

shall give such security, then the question of election between all the several candidates shall be decided by a show of hands: Provided always, that if after such second show of hands shall have been taken, any of the candidates in regard to whom it shall have been taken, shall declare his or their readiness to give the security which he or they previously failed to give, he or they may demand a poll; and then, if a greater number of such last-mentioned candidates than can be all elected shall give the said security, a poll shall be granted and taken in regard to such last-mentioned candidates; but in case the number of such last-mentioned candidates giving such security shall not be greater than the number of members still to be elected, then the candidate or candidates giving such security shall be declared duly elected: Provided, however, that no member who shall, before such second poll, have been declared duly elected shall be subjected to or affected by such second poll, or chargeable with any of the expenses thereof: Provided further, that the court aforesaid for the nomination of candidates for the Electoral Division of Cape Town and the Electoral Division of the Cape shall be held at such convenient place or places within the City of Cape Town as the Governor of the said Colony shall appoint: And provided also, that the court aforesaid for the nomination of candidates for the Electoral Division of Graham's Town shall be held in the same Court-room in Graham's Town in which shall be held the court for the nomination of candidates for the division of Albany.

Poll for members of Assembly, where and how to be taken.

49. (1) And be it enacted, that the returning officer of every Electoral Division shall, unless he shall for some sufficient reason find it expedient to act otherwise, appoint, for the taking of the poll for the election of the members of the House of Assembly, the same polling-places within such division which had before been appointed by proclamation for the taking of the poll for the members of the Legislative Council; and such returning officer, in fixing a day or days for taking the poll at any polling-place within the Electoral Division, shall have regard to the distance from the Court-room aforesaid of such polling-place, and its other local peculiarities, and shall take care to allow time reasonably sufficient for the transmission to such polling-place, and the publication thereat, for a period of not less than three clear days, of the names of the persons proposed, in manner aforesaid, as candidates: Provided also, that such returning officer shall, without delay, deliver or transmit to the person appointed to take the poll at any polling-place in such Electoral Division, a list of the registered voters for such division, certified under the hand of the Civil Commissioner of such division to be correct; and such returning officer shall also deliver or transmit, at the same time, to the same person, the names of the candidates who have been

[1] Voting by Ballot from and after 1st July, 1894—§ 36 Act 9, 1892; For mode of Voting and Procedure at the Poll see §§ 37 *et seq.*

Digitised by the University of Pretoria, Library Services, 2016

proposed; and the person receiving the said names shall forthwith fix them up in some conspicuous place at such polling-place, for general information: Provided always, that in case there shall be more polling places than one within the Electoral Divisions of Cape Town and Graham's Town, or either of them, the list of registered voters to be delivered as aforesaid shall be certified, not by the Civil Commissioner, but by the Resident Magistrate of Cape Town or the Resident Magistrate of Albany, as the case may be.

The register to be conclusive proof of right to vote.

50. And be it enacted, that no person shall be permitted to vote in any Electoral Division for any member of the House of Assembly except a person whose name shall be inserted in the list of registered voters (1) for such Electoral Division, and who shall, in person, appear to vote: Provided that the list of registered voters for the time being in and for the several Electoral Divisions shall, for all purposes and in all places, be deemed and taken to be conclusive proof of the right to vote of every person inserted therein; and no such list shall be opened up, or the right of any voter mentioned therein questioned, in any manner or by any proceeding, either in the Legislative Council or the House of Assembly.

No vote to be received except for a candidate nominated as in the 48th section mentioned.

51. And be it enacted, that no vote shall be received, or, if received, shall be reckoned or regarded, which vote is given, or proposed to be given, to or for any person not proposed and seconded as aforesaid, as a candidate for representing in the Legislative Assembly the Electoral Division in or for which such vote shall be given or proposed.

52. [Repealed by § 37, Act 14 of 1874, which see: and note to § 42 of this Ord.]

Lists of voters received at polling-places to be transmitted to the returning officers.

53. And be it enacted, that as soon as the time limited for keeping open the poll at any polling-place for any election of a member or members of the House of Assembly shall have expired, the person charged with the duty of taking the poll thereat shall, with all convenient speed, deliver, in person, to the returning officer for the Electoral Division for which such poll is taken, or, in case it be inconvenient to deliver the same in person, shall securely enclose and transmit to such returning officer, a list containing the names of all persons admitted to poll at such polling-place, together with the names of the respective persons for whom such voters shall respectively have voted.

Returning officer to cast up such lists.

54. And be it enacted, that when and as soon as the returning officer of any Electoral Division shall be in possession of the whole of the poll-lists of such division, he shall cast up and ascertain the number of votes for each candidate.

Returning officer to hold a court, declare the state of the poll, and make proclamation of the members.

55. (2) And be it enacted, that every such returning officer shall, as soon as may be after he shall be in possession of the whole

[1] Agents of Candidates cannot vote. Act 9 of 1883, § 35.
[2] See §§ 47 and 51 Act 14 of 1874.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

of the said poll-lists, but nevertheless upon a notice to be posted or affixed for not less than two clear days at the Court-room in which the court aforesaid for the nomination of the candidates was held, hold in the said Court-room another court, whereat such returning officer shall openly declare the state of the poll, and make proclamation of the member or members of the House of Assembly returned, and such returning officer shall, without delay, transmit to the Governor the names of the member elected, and the number of votes received by the respective candidates.

The names of the members of the House of Assembly to be published.

56. (1) And be it enacted, that as soon as the said Governor shall have received from the several returning officers throughout the Colony the names of the members elected by the several Electoral Divisions to serve in the House of Assembly, the Governor shall, by proclamation in the *Government Gazette*, publish the names of the members returned, together with the Electoral Divisions which they severally represent; and the day of the publication of such proclamation shall, for the purposes of the sixth section of this Ordinance, be deemed and taken to be the date of the election of all and singular the members of the said House of Assembly.

Provision for the case in which the same member is elected for more than one division.

57. And be it enacted, that if in any case the same person shall have been elected for more than one Electoral Division, such person shall be bound, upon being thereto required by the Governor, if not before, to elect what Electoral Division he will represent, and upon such election being declared, the Governor shall, by a proclamation of the same nature with the proclamation in the 45th section of this Ordinance mentioned, command the returning officer of any other division for which such person shall have been returned to proceed to the election of another person in the room and stead of the person so originally elected, and thereupon the like proceedings shall take place as are hereinbefore directed in regard to the original election; and if such person shall fail to make his election as aforesaid when thereto required, then his election for every division for which he shall have been elected shall be deemed and taken to be void; and, by proclamation as aforesaid, a new election for a member in place and stead of such person shall be commanded in regard to every such division.

Provision for failure to elect.

58. And be it enacted, that if, at any such public court as in the 48th section of this Ordinance mentioned, it shall so happen that no candidates or candidate shall be proposed and seconded, whereby there shall be no election in such Electoral Division for any member of the House of Assembly, the returning officer shall forthwith notify the fact to the Governor, who shall, in publishing, in the manner hereinbefore in the 56th section of this Ordinance mentioned, the names of the members of the House of Assembly, announce, at the same time, the division or divisions in which no

[1] See § 47 and § 51 Act 14 of 1874.

Digitised by the University of Pretoria, Library Services, 2016

election shall have taken place: but no such refusal or failure to elect in any one division, or divisions more than one, shall be deemed or taken to make the House of Assembly incomplete, or to prevent it from meeting and dispatching business, so long as there shall be a quorum of members present. Constitution Ordinance.

59. And be it enacted, that if any returning officer or any person whatsoever shall wilfully contravene or disobey the provisions of this Ordinance, or any of them, with respect to any matter or thing which such returning officer or other person is hereby required to do, he shall, for such his offence, be liable to be sued, in any competent Court, for the penal sum of one hundred pounds, and the plaintiff shall recover the said sum or such lesser sum as such Court shall think he ought to pay for such offence, with full costs: Provided that no such action shall be brought except by a voter, or person claiming to be a voter, or a candidate, or a member actually returned for either House of Parliament, or other party aggrieved. Penalty on returning officer or other person for contravening this ordinance.

60. And be it enacted, that as soon as every Electoral District in the Colony shall have either elected or fail in electing its representative, in the House of Assembly, it shall and may be lawful for the Governor of the Cape of Good Hope to summon, by proclamation, the Legislative Council and the House of Assembly of the Cape of Good Hope, to meet at such place within the said Colony and at such time as the said Governor shall think fit: Provided always, that the said Council and Assembly shall be summoned to meet at some period not later than twelve months next after the promulgation of this Ordinance in the said Colony. Governor to summon the Council and the Assembly to meet at such place and time as he shall appoint.

61. And be it enacted, that no member, either of the Legislative Council or of the House of Assembly of the Colony of the Cape of Good Hope, shall be permitted to sit or vote therein until he shall have taken and subscribed the following oath before the Governor of the Colony, or before some person or persons authorised by such Governor to administer such oath:— The oath of allegiance to be taken by the members of the Council and of the Assembly.

> "I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Colony of the Cape of Good Hope. (1)

62. And be it enacted, that every person authorised by law to make an affirmation instead of taking an oath, may make such affirmation in every case in which an oath is hereinbefore required to be taken. Affirmation in lieu of oath in certain cases.

63. And be it enacted, that the House of Assembly shall, at its first meeting, and before proceeding to the dispatch of any other business, elect one member thereof to be and be called the Speaker of such House; and as often as the place of such Speaker shall House of Assembly to elect its Speaker.

---

[1] Printed as amended by Act 18, 1891, § 4.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

become vacant by death, resignation, or removal by vote of the said House, shall again elect before proceeding to the dispatch of any other business, some other member to fill the said place; and the Speaker elected shall, unless it shall be otherwise provided in the standing rules and orders hereinafter mentioned, preside at all meetings of the said House.

Declaration of property qualification to be made by the members of the Legislative Council.

64. And be it enacted, that every elective member of the Legislative Council, before he shall sit or vote therein, shall deliver to the Clerk of the said Council, while the Council is sitting, with the President in the chair, the following declaration:—

> "I, A. B., do declare and testify that I am the owner, for my own use and benefit, of immovable property situate at in the Colony of the Cape of Good Hope, of the clear value of two thousand pounds sterling money, over and above all special conventional mortgages affecting the same, and that I have not collusively or colourably obtained a title to the said property, or any part thereof, for the purpose of qualifying or enabling me to be returned as member of the Legislative Council of the Cape of Good Hope."

Or if such member cannot or shall not make the lastmentioned declaration, he may make, in lieu and stead thereof, the declaration following:—

> "I, A. B., do declare and testify that I am the owner, for my own use and benefit, of immovable property situate at in the Colony of the Cape of Good Hope, of the clear value, if unencumbered, of two thousand pounds sterling money, and that I am possessed of property, movable and immovable, within the said Colony, to the value of four thousand pounds sterling money, over and above all my just debts; and I further testify and declare that I have not collusively or colourably obtained a title to the said property, or any part thereof, for the purpose of qualifying or enabling me to be returned as member of the Legislative Council of the Cape of Good Hope."

Declaration to be filed.

And that every such declaration as aforesaid shall be contained in a paper signed by the member making the same, and every such paper shall be filed and kept by the Clerk of the Legislative Council with the other records of his office; and every member of the said Council who shall sit and vote in the said Council before making such declaration as aforesaid shall be liable, for every day on which he shall so offend, to a penalty of one hundred pounds, to be sued for and recovered for his own use by any person suing for the same; and if any person shall knowingly or wilfully deliver a false declaration respecting his qualifications aforesaid, such person shall be deemed to be guilty of the crime of falsity,

Penalty for sitting and voting before making the said declaration.

Digitised by the University of Pretoria, Library Services, 2016

and upon conviction thereof shall suffer the like pains and penalties as by law are incurred by persons guilty of wilful and corrupt perjury.

Property qualification must be possessed during the time the member of Council retains his seat.

65. And be it enacted, that every elective member of the Legislative Council shall have and possess the qualification aforesaid during all the time he shall be and remain a member of the said Council. (1)

[§§ 66, 67 and 68, repealed by Act 9, 1883.]

Resignation of seat in Council.

69. And be it enacted, that it shall be lawful for any member of the Legislative Council of the Cape of Good Hope, by writing, (2) under his hand, addressed to the President of the said Council, to resign his seat in the said Council; and upon such resignation, the seat of such member shall become vacant.

Resignation of seat in Assembly.

70. And be it enacted, that it shall be lawful for any member of the House of Assembly of the Cape of Good Hope, by writing, under his hand, addressed to the (3) Speaker of the said Assembly, to resign his seat in the said Assembly; and upon such resignation, the seat of such member shall become vacant.

Vacating of seats in certain cases, and for certain causes.

71. And be it enacted, that if any Legislative Councillor of the Colony of the Cape of Good Hope, or any member of the House of Assembly thereof, shall for one whole Session of the Parliament of the said Colony fail to give his attendance in the House of Parliament to which he belongs, without the permission of such House, or shall take any oath, or make any declaration of acknowledgment of allegiance, obedience, or adherence to any foreign prince or power,—or shall do, concur in, or adopt any act whereby he may become a subject or citizen of any foreign state or power, or if his estate shall be sequestrated as insolvent, (4)—the seat of such councillor or member of the Assembly shall thereby become vacant.

No member of Council eligible to be a member of Assembly: member of Assembly elected a member of Council to vacate his seat in the Assembly.

72. And be it enacted, that no member of the Legislative Council shall be eligible for a seat in the House of Assembly: and that if any member of the House of Assembly shall be elected a member of the Legislative Council, the former seat of such member shall, *ipso facto*, become vacant.

Election how to take place on vacancies.

73. (5) And be it enacted, that when and as often as a vacancy shall, by death or other cause in this Ordinance specified, occur in regard to any elective seat or seats in the Legislative Council, or any seat or seats in the House of Assembly, it shall and may be lawful for the House in which such vacancy or vacancies shall have occurred to address the Governor, stating the existence of such vacancy or vacancies, and the cause or causes thereof; and the

---

[1] The remaining portion of this section relating to the modes of procedure upon a Petition against a member of the Legislative Council for want of qualification repealed by Act 9 of 1883.

[2] Or by telegraphic message. See Act 41 of 1882, § 3.

[3] See also Act 18 of 1874, § 9.

[4] See also § 8 Act 18 of 1874.

[5] See also Act 18 of 1874, § 4 and § 9, and Act 9 of 1883.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

Governor, upon receiving such address, shall, by proclamation, command, in like manner, *mutatis mutandis*, as is hereinbefore enjoined in regard to the first election under this Ordinance, a new election or new elections, for supplying such vacancy or vacancies; and the like proceedings shall, *mutatis mutandis*, take place in regard to such elections for supplying vacancies as are hereinbefore ordered in regard to the first or original elections: Provided always, that it shall be lawful for the Governor to issue the like proclamation during any recess of either House of Parliament, whether by prorogation or adjournment, as soon as he shall receive notice, by a certificate under the hands of two members of such House, supported by such evidence as he shall consider sufficient, that a vacancy has occurred in any such seat as aforesaid in such House, and thereupon the like proceedings shall take place: Provided also, that no member elected to supply any vacancy in the Legislative Council, caused by the death, resignation, disqualification, or incapacity of any other member, shall hold his seat longer than during the term for which the member occasioning such vacancy might, but for the cause creating the vacancy, have held his seat: And provided also, that no vacancies occurring in regard to any number of members of either House of Parliament, whose names shall, in manner and form as hereinbefore provided, have been published as members, shall be deemed or taken to render such House incompetent for the dispatch of business, so long as there shall be members present therein sufficient to form a quorum.

Dissolution of the Council and Assembly, or of the Assembly without the Council.

74. And be it enacted, that it shall and may be lawful for the Governor of the Cape of Good Hope, whenever he shall see fit so to do, to prorogue, either by speech or by proclamation, published in the *Government Gazette*, the Legislative Council and the House of Assembly of the said Colony; and also, either by speech or by any such proclamation, to dissolve the said Council and the said House of Assembly, or dissolve the said House of Assembly, without dissolving the said Council. ([1])

Proceedings upon any general election, caused either by a dissolution or by effluxion of time.

75. ([2]) And be it enacted, that whenever, by reason of any such dissolution as aforesaid, there shall be a general election for the members, either of the Legislative Council or the House of Assembly, and whenever, by effluxion of time, there shall occur one of the alternate elections of eight members and of seven members of the Legislative Council, as hereinbefore directed, or a general election for the whole of the members of the House of Assembly, then and in every such case the like proclamation, or proclamations, *mutatis mutandis*, shall be issued by the Governor, and the like proceedings, *mutatis mutandis*, be had and taken in regard to any such election as are hereinbefore directed in regard to the first or original elections under this Ordinance: Provided always, that when and as often as the Legislative Council and the House of

[1] See Act 18 of 1874, § 7.
[2] But see § 4 Act 18 of 1874.

Digitised by the University of Pretoria, Library Services, 2016

Assembly shall be dissolved together, the members of the Legislative Council shall be elected before any proclamation shall issue for the election of any of the members of the House of Assembly. Constitution Ordinance.

76. (1) And whereas it is expedient that provision should be made that at the expiration of every two years a fresh register of voters should take place throughout the Colony of the Cape of Good Hope, be it therefore enacted, that not sooner than one month before nor later than one month after the expiration of two years from the day of the publication of the proclamation, announcing, as hereinbefore mentioned, the names of the first members of the Legislative Council of the said Colony, the like proclamation and proceedings, in all respects, *mutatis mutandis*, as are hereinbefore directed in regard to the first or original registration of voters under this order, shall respectively be issued and take place, in order that there shall thereby be prepared and preserved fresh lists of voters in and for the several Electoral Divisions, similar to the lists hereinbefore directed to be prepared and preserved; and such a fresh registration shall, in like manner, take place every two years: Provided that in future registrations no objection shall be received to names which shall have been retained on the list of voters at the two preceding biennial registrations, unless these names are objected to on the ground that the persons so previously registered no longer possess the qualification in respect of which they had been registered: Provided also, that if, after the preparation of any fresh list in any Electoral Division (other than Cape Town and Graham's Town), a poll shall, in such division, be taken for members or a member of the House of Assembly before any poll shall be there taken for members or a member of the Legislative Council, and before any further biennial list of the voters in such division shall begin to be prepared, then and in that case the same proceedings relative to the determination of claims and objections which are hereinbefore directed, in regard to the officers charged with the taking of the votes at the first election of members for the Legislative Council, shall take place in regard to the officers taking the poll at such election of members or a member of the House of Assembly, precisely as if the said poll for members or a member of the Legislative Assembly were the first poll for the first members of the Legislative Council: Provided also, that if, in any division, no poll shall be taken for members of the Legislative Council or House of Assembly before a fresh biennial list shall begin to be prepared, then in that case the respective officers appointed to prepare such fresh biennial list in the respective Field-cornetcies, shall determine upon all claims and objections growing out of or connected with the last previous biennial list; and the like forms, *mutatis mutandis*, shall be observed in regard to the posting notices and transmitting letters, for the Provision for a biennial registration of voters.

[1] But see Act 14, 1887.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

information of claimants, persons objecting, and persons objected to, which are hereinbefore directed to be observed upon the occasion of the poll for the first members for the Legislative Council of the said Colony.

A session of Parliament once, at least, in every year.

77. And be it enacted, that there shall be a session of the Parliament of the Cape of Good Hope once at least every year; so that a period of twelve calendar months shall not intervene between the last sitting of the said Parliament in one session and its first sitting at next session.

Standing rules and orders to be made in and for the Council and the Assembly respectively.

78. (1) And be it enacted, that the Legislative Council and the House of Assembly, at the first sitting of each respectively, and from time to time afterwards, as there shall be occasion, shall prepare and adopt such standing rules and orders as shall appear to the said Council and Assembly best adapted for the orderly and efficient conduct of the business of such Council and Assembly respectively, and for the manner in which the said Council and Assembly shall respectively be presided over, in case of the absence of the President or Speaker, and for the mode in which the said Council and the said Assembly shall confer, correspond, and communicate with each other, relative to votes or bills passed by or pending in the said Council and Assembly respectively; and for the manner in which notice of bills, resolutions, and other business, intended to be submitted to the said Council and Assembly respectively, at any session thereof, may be published in the *Government Gazette* or otherwise, for general information, for some convenient space of time before the meeting of such Council and Assembly respectively: and for the proper framing, entitling, and numbering of the Acts to be made and passed by the said Council and Assembly, and for any other purpose necessary for the convenient dispatch of business: all of which rules and orders shall, by such Council and Assembly respectively, be laid before the Governor of the Colony, and being by him approved, shall become binding and of force, but subject nevertheless to the confirmation or disallowance of Her Majesty, in manner as hereinafter provided respecting the acts to be made by the Governor, with the advice and consent of the Legislative Council and Assembly of the Colony.

79. [Repealed by Act 1 of 1872, § 5.]

Manner in which the public revenue shall be appropriated to the public service.

80. And be it enacted, that it shall not be lawful for the House of Assembly or the Legislative Council to pass, or for the Governor to assent to, any bill appropriating to the public service any sum of money from or out Her Majesty's revenue within the said Colony, unless the said Governor, on Her Majesty's behalf, shall first have recommended to the House of Assembly to make provision for the specific public service towards which such money is to be appropriated; and that no part of Her Majesty's revenue within the said Colony shall be issued, except under the authority

[1] Printed as amended by Act 13, 1883.

Digitised by the University of Pretoria, Library Services, 2016

given by the Governor of the said Colony, directed to the public treasurer thereof.

Governor may transmit drafts of laws to either house.

81. And be it enacted, that it shall and may be lawful for the Governor of the Cape of Good Hope to transmit, by message, to either the Legislative Council or the House of Assembly, for their consideration, the drafts of any laws which it may appear to him desirable to introduce, and all such drafts shall be taken into consideration in such convenient manner as shall, in and by the rules and orders aforesaid, be in that behalf provided: Provided always, that the said Governor shall not transmit (1) to the Legislative Council the draft of any law which ought, under and in virtue of the provisions of this Ordinance, to originate in or be introduced into the House of Assembly.

Power of Governor to assent to, or to refuse to assent to, or to reserve for the royal pleasure, bills which have passed the two houses.

82. And be it enacted, that whenever any bill which has been passed by the Legislative Council and Assembly of the Colony of the Cape of Good Hope shall be presented for Her Majesty's assent to the Governor of the said Colony, such Governor shall declare, according to his discretion, but subject nevertheless to the provisions contained in this Ordinance, and to such instructions as may from time to time be given in that behalf by Her Majesty, her heirs or successors, that he assents to such bill in Her Majesty's name, or that he refuses his assent to such bill, or that he reserves such bill for the signification of Her Majesty's pleasure thereon: Provided always, that it shall and may be lawful for the Governor, before declaring his pleasure in regard to any bill which shall have been so presented to him, to make such amendments in such bill as he shall think needful or expedient, and by message to return such bill, with such amendments, to the Legislative Council, or the House of Assembly, as he shall think more fitting; and the consideration of such amendments by the said Council and Assembly respectively shall take place in such convenient manner as shall, in and by the rules and orders aforesaid, be in that behalf provided.

Power of the Crown to disallow acts assented to by the Governor.

83. And be it enacted, that whenever any bill which shall have been presented for Her Majesty's assent to the Governor of the said Colony of the Cape of Good Hope shall, by such Governor, have been assented to in Her Majesty's name, such Governor shall, by the first convenient opportunity, transmit to one of Her Majesty's Principal Secretaries of State an authentic copy of the Act so assented to; and that it shall be lawful, at any time within two years after such bill shall have been received by such Secretary of State, for Her Majesty, by Order in Council, to declare her disallowance of such Act, and that such disallowance, together with a certificate under the hand and seal of such Secretary of State, certifying the day on which such bill was received as aforesaid, being signified by such Governor to the

(1) See § 88.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

Legislative Council and Assembly of the Cape of Good Hope, by speech or message to the Legislative Council and Assembly of the said Colony, or by proclamation, shall make void and annul the same from and after the date of such signification.

Bills reserved, when to take effect.

84. And be it enacted, that no bill which shall be reserved for the signification of Her Majesty's pleasure thereon, shall have any force or authority within the Colony of the Cape of Good Hope until the Governor of the said Colony shall signify, either by speech or message to the Legislative Council and Assembly of the said Colony, or by proclamation, that such bill has been laid before Her Majesty in Council, and that Her Majesty has been pleased to assent to the same; and that an entry shall be made in the journals of the said Legislative Council of every such speech, message, or proclamation, and a duplicate thereof, duly attested, shall be delivered to the proper officer, to be kept amongst the records of the said Colony; and that no bill which shall be so reserved as aforesaid shall have any force or authority in the said Colony, unless Her Majesty's assent thereto shall have been so signified as aforesaid within the space of two years from the day on which such bill shall have been presented for Her Majesty's assent to the Governor as aforesaid.

Acts of the Parliament to be printed in the Government Gazette.

85. And be it enacted, that the Governor of the Cape of Good Hope shall cause every Act of the Parliament of the Cape of Good Hope which he shall have assented to in Her Majesty's name to be printed in the *Government Gazette* for general information, and such publication by such Governor of any Act of the said Parliament shall be deemed to be law in the promulgation of the same. (1)

Copies of Acts of the Parliament to be enrolled.

86. And be it enacted, that as soon as may be after any Act of the Parliament aforesaid shall have been assented to, in Her Majesty's name, by the Governor of the Cape of Good Hope, or having been reserved for the signification of Her Majesty's pleasure, Her Majesty's assent thereto shall, in manner aforesaid, have been signified by the said Governor, the Clerk of the Legislative Council shall cause a fair copy of such Act, signed by the said Governor, as well as by the President of the said Legislative Council and the Speaker of the House of Assembly, to be enrolled of record in the office of the Registrar of the Supreme Court: Provided, however, that the validity of any such Act shall not depend upon the enrolment thereof.

Certificates of disallowance of acts of the Parliament to be enrolled.

87. And be it enacted, that when and as often as any bill, provisionally assented to by the Governor of the Cape of Good Hope in the name of Her Majesty, shall, in manner aforesaid, have been disallowed by Her Majesty, the Governor aforesaid shall cause a certificate of such disallowance, certified under the public

(1) See Act 5, 1883.

Digitised by the University of Pretoria, Library Services, 2016

seal of the said Colony, to be enrolled in the office of the Registrar of the Supreme Court. Constitution Ordinance.

88. And be it enacted, that in regard to all bills relative to the granting of supplies to Her Majesty, or the imposition of any impost, rate, or pecuniary burden upon the inhabitants, and which bills shall be of such a nature that if bills similar to them should be proposed to the Imperial Parliament of Great Britain and Ireland, such bills would, by the law and custom of Parliament, be required to originate in the House of Commons, that all such bills shall originate in, or be by the Governor of the Cape of Good Hope introduced into, the House of Assembly of the said Colony: Provided that the Legislative Council of the said Colony and the Governor thereof shall, respectively, have full power and authority to make, in all such bills, such amendments as the said Council and the said Governor shall, respectively, regard as needful or expedient; and the said Council and the said Governor may, respectively, return such bills, so amended, to the House of Assembly or the Legislative Council. Bills granting supplies or imposing taxes to originate in the Assembly.

89. And be it enacted, that all debates and discussions in the Legislative Council and House of Assembly, respectively, shall be conducted in the English [1] language, and that all journals, entries, minutes, and proceedings of the said Council and Assembly be made and recorded in the same language. Proceedings in both houses to be in the English or Dutch languages.

90. [2] Provided always, that no part of such sums [3] shall become payable to any member in any session until after an Act providing funds for the public service of the current year shall have been passed by the said Council and Assembly, and assented to by the Governor. Provision for the payment of the expenses of certain members of the two houses.

91. And be it enacted, that in the construing this Ordinance, the word "Governor" shall mean any officer for the time being lawfully administering the Government of the Colony of the Cape of Good Hope; and that the words "Chief Justice" shall mean the person for the time being lawfully administering the functions of the Chief Justice; and that the words "Colony of the Cape of Good Hope" shall not include the district of Natal; and that the words "*Government Gazette*" shall mean the *Government Gazette* of the Colony of the Cape of Good Hope; and that whenever mention is made of any public officer, the officer mentioned shall be deemed to be such officer for the time being, or the officer acting as such; and that words importing the singular number shall include the plural number, and words importing the plural number shall include also the singular number, unless there be something in the subject or context repugnant to such construction. Interpretation of terms.

---

[1] Or Dutch. See Act 1 of 1882.

[2] Repealed with exception of last proviso by Act 16, 1888, § 1.

[3] See §§ 3 *et seq.* of Act 16, 1888.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

Ordinance when to take effect.

92. And be it enacted, that this Ordinance shall commence and take effect within the Colony of the Cape of Good Hope from and after such date (1) as Her Majesty shall, by the advice of Her Privy Council fix for that purpose.

W. L. B.

ORDER IN COUNCIL.

At the Court at Buckingham Palace, the 11th day of March, 1853.

PRESENT:

The Queen's Most Excellent Majesty,
His Royal Highness Prince Albert,

Lord Privy Seal,	Earl of Aberdeen,
Duke of Newcastle,	Earl of Clarendon,
Duke of Wellington,	Mr. Herbert,
Lord Chamberlain,	Sir James Graham, Bt.

WHEREAS, on the 3rd day of April, in the year 1852, an Ordinance was enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, entitled "An Ordinance for regulating in certain respects the Appropriation of the Revenue of the Colony of the Cape of Good Hope by the Parliament thereof," of which said Ordinance a copy is contained in the schedule to this present Order in Council annexed:

And whereas it is expedient that the said Ordinance should be ratified and confirmed by Her Majesty in Council:

It is, therefore, hereby ordered by the Queen's Most Excellent Majesty, with the advice of Her Privy Council, that the said Ordinance shall, and the same is, hereby ratified, confirmed, and finally enacted.

And it is further ordered and declared, by the authority aforesaid, that the Ordinance shall commence and take effect within the Colony aforesaid, from and after the first day of July next ensuing:

Provided, always, that nothing herein contained shall extend to prevent the Parliament of the said Colony from making any Act or Acts (subject to Her Majesty's power to disallow the same, with the advice of her Privy Council, or to assent to the same, if reserved for the signification of her pleasure thereon), in amendment of the said Ordinance or in furtherance of the objects thereof.

And the Most Noble the Duke of Newcastle, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

WM. L. BATHURST.

---

(1) 1st July, 1853.

Digitised by the University of Pretoria, Library Services, 2016

[SCHEDULE REFERRED TO IN THE FOREGOING ORDER.] Constitution Ordinance.

Ordinance (enacted by the Honourable the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof,) for regulating, in certain respects, the Appropriation of the Revenue of the Colony of the Cape of Good Hope by the Parliament thereof.

WHEREAS Her Majesty did, by certain Letters Patent, bearing date at Westminster on the twenty-third day of May, in the thirteenth year of her reign, amongst other things declare and ordain that there should be within the settlement of the Cape of Good Hope, a Parliament, to consist of the Governor, a Legislative Council, and House of Assembly: And whereas, by an Ordinance, entituled "Ordinance enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for constituting a Parliament for the said Colony," provision has been made for constituting a Legislative Council and House of Assembly for the said Colony, and for defining the powers of the same: And whereas it is expedient that provision should be made for defraying certain expenses out of the revenue of the said Colony: Preamble.

1. Be it therefore enacted, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said Governor shall be authorised to pay, out of the revenue of the said Colony, all the costs, charges, and expenses incident to the collection, management and receipt thereof: Provided always, that full and particular accounts of all such disbursements shall from time to time be laid before the Parliament of the said Colony. Charges of collecting and managing the revenue to be paid thereout. Accounts of all such disbursements to be laid before the Parliament.

2. And be it enacted, that until the Parliament of the said Colony shall otherwise direct, there shall be payable every year to Her Majesty, her heirs and successors, out of the said revenue fund, the sum of one hundred and six thousand and ninety pounds, for defraying the expenses of the several services and purposes in the schedules (marked A, B, C, and D) annexed to this Ordinance: the said sum to be issued by the Treasurer of the said Colony, in discharge of such warrant or warrants as shall be from time to time directed to him under the hand and seal of the Governor. Grants for civil and other services.

3. And be it enacted, that in construing this Ordinance, the word "Governor" shall mean any officer for the time being administering the Government of the Cape of Good Hope. Interpretation clause.

4. And be it enacted, that this Ordinance shall commence and take effect within the Colony of the Cape of Good Hope from and after such date as Her Majesty shall, by advice of her Privy Council, fix for that purpose. Ordinance when to commence.

Digitised by the University of Pretoria, Library Services, 2016

Constitution Ordinance.

SCHEDULES REFERRED TO IN THE FOREGOING ORDINANCE.

SCHEDULE (A)

The Governor and Private Secretary,	£5,300	0	0		
The Lieut-Governor, Secretary, Messenger, and House-rent ..	2,200	0	0		
The Clerk of the Executive Council	520	0	0		
The Colonial Secretary and his Department	5,500	0	0		
The Treasurer-General do.	1,890	0	0		
The Auditor-General do.	1,650	0	0		
The Registrar of Deeds do.	1,000	0	0		
The Surveyor-General do.	2,080	0	0		
The Civil Engineer do.	2,250	0	0		
The Post Office Department ..	2,330	0	0		
The Keeper of the Public Buildings	235	0	0		
The Agent-General in London ..	210	0	0		
The Secretary and Clerks of the Central Road Board	1,140	0	0		
The Supreme Court	7,935	0	0		
The High Sheriff	1,250	0	0		
The Attorney-General	1,670	0	0		
Divisional Courts	16,335	0	0		
Education Establishments	4,100	0	0		
Medical Departments	1,895	0	0		
Police, Prisons, and Gaols ..	1,540	0	0		
				£61,030	0 0
SCHEDULE (B.)					
Pensions				15,000	0 0
SCHEDULE (C.)					
(1) Public Worship				16,060	0 0
SCHEDULE (D.)					
Border Department (Aborigines)				14,000	0 0
				£106,090	0 0

No. 1—1854.] [Sept. 19, 1854.

ACT

(2) To Secure Freedom of Speech and Debates, or Proceedings in Parliament, and to give Summary Protection to Persons employed in the Publication of Parliamentary Papers.

Preamble.

WHEREAS it is essential to the due and effectual exercise and discharge of the functions and duties of Parliament, and to the promotion of wise legislation, that the freedom of speech and debates, or proceedings in Parliament, should not be impeached or questioned in any Court or place out of Parliament, and that no

[1] Schedule C. repealed by Act 5 of 1875.
[2] See also Act 13 of 1883.

Digitised by the University of Pretoria, Library Services, 2016

obstructions or impediments should exist to the publication of such reports, papers, votes, or proceedings of either House of Parliament as such House of Parliament may deem fit or necessary to be published: And whereas it is fit that such freedom should be secured by law, and that all such obstructions or impediments, should any arise, may be summarily removed: Be it therefore enacted by the Governor, by and with the advice and consent of the Legislative Council and the House of Assembly, that there shall be freedom of speech and debates, or proceedings in Parliament, and that such freedom of speech and debates, or proceedings in Parliament, shall not be liable to be impeached or questioned in any Court or place out of Parliament.

Freedom of speech and debates, or proceedings in Parliament not to be questioned out of Parliament.

2. And be it enacted, that it shall and may be lawful for any person or persons who may be a defendant or defendants in any civil or criminal proceeding, commenced or prosecuted in any manner soever, for or in respect of the publication of any report, paper, votes, or proceedings, by such person or persons, by or under the authority of either House of Parliament, to bring before the Court in which such proceeding shall be so commenced or prosecuted, or before any Judge thereof (should the proceedings be in the Supreme or any Circuit Court), first giving twenty-four hours' notice of his intention so to do to the plaintiff or prosecutor in such proceeding, a certificate under the hand of the President of the Legislative Council for the time being, or of the Clerk of the Legislative Council, or of the Speaker of the House of Assembly, or of the Clerk of the same House, stating that the report, paper, votes, or proceedings, as the case may be, in respect whereof such civil or criminal proceeding shall have been commenced or prosecuted, was or were published by such person or persons, or by his or their servant or servants, by order or under the authority of the Legislative Council, or the House of Assembly, as the case may be, together with an affidavit verifying such certificate; and such Court or Judge shall thereupon immediately stay any such civil or criminal proceeding, and the same and every writ or process issued thereon shall be, and the same shall be deemed and taken to be, finally put an end to, determined, and superseded, by virtue of this Act.

Mode of proceeding in cases in which suits at law are instituted in regard to papers published by authority of either House of Parliament

3. Provided always, and it is hereby expressly declared and enacted, that nothing herein contained shall be deemed, or taken, or held, or construed, directly or indirectly, by implication or otherwise, to affect the rights and privileges of Parliament, in any manner whatsoever.

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

4. That in construing this Act, the word "Governor" shall mean any officer for the time being lawfully administering the Government of this Colony.

Interpretation clause.

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1854.] [Sept. 26, 1854.

An Act for applying a Sum not exceeding £23,770 10s. 4d. for the Service of the year 1854, in addition to the Sum already in that respect provided.

[Spent.]

No. 3—1854.] [Sept. 26, 1854.

An Act for applying a Sum not exceeding £997, in addition to the Sums already in that respect provided, for the Service of the year 1854.

[Spent.]

No. 4—1854.] [Sept. 26, 1854

ACT

For authorising the Importation into the Colony of the Cape of Good Hope of Books, being Foreign Reprints of Books first composed, or written, or printed, or published in the United Kingdom, and in which there shall be Copyright. (1)

Preamble.

WHEREAS, by an Act passed in the Session of Parliament holden in the fifth and sixth years of her present Majesty's reign, entitled "An Act to amend the Law of Copyright," it is amongst other things enacted, that it shall not be lawful for any person, not being the proprietor of the copyright, or some other person authorised by him, to import into any part of the United Kingdom, or into any part of the British dominions, for sale, or hire, any printed book, first composed, or written, or published in any part of the United Kingdom, wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British dominions: And whereas, by an Act passed in the session of Parliament holden in the eighth and ninth years of the reign of her present Majesty, entitled "An Act to regulate the Trade of the British Possessions abroad," books, wherein the copyright is subsisting, first composed, or written, or printed in the United Kingdom, and printed or reprinted in any other country, are absolutely prohibited to be imported into the British possessions abroad: And whereas, by an Act passed in the session of Parliament holden in the tenth and eleventh years of her present Majesty's reign, entitled "An Act to amend the Law relating to the Protection in the Colonies of Works entitled to Copyright in the United Kingdom," it is enacted, that, in case the Legislature or proper Legislative

[1] See Acts 8, 1859; 2, 1873; 8, 1880; 29, 1884; 4, 1888.

Digitised by the University of Pretoria, Library Services, 2016

authorities, in any British possession, shall be disposed to make due provision for securing or protecting the rights of British authors in such possession, and shall pass an Act, or make an Ordinance for that purpose, and shall transmit the same, in the proper manner, to the Secretary of State, in order that it may be submitted to Her Majesty; and in case Her Majesty shall be of opinion that such Act or Ordinance is sufficient for the purpose of securing to British authors reasonable protection within such possession,—it shall be lawful for Her Majesty, if she think fit so to do, to express Her Royal approval of such Act or Ordinance, and thereupon to issue an Order-in-Council, declaring that so long as the provisions of such Act or Ordinance continue in force within such Colony, the prohibitions contained in the aforesaid Acts, and hereinbefore recited, and any prohibitions contained in the said Acts, or in any other Acts, against the importing, selling, letting out for hire, exposing for sale or hire, or possessing foreign reprints of books first composed, written, printed, or published in the United Kingdom, and entitled to copyright therein, shall be suspended as far as regards such Colony: And whereas, by an Act passed in the session of Parliament holden in the sixteenth and seventeenth years of her present Majesty's reign, entitled "An Act to amend and consolidate the Laws relating to the Customs of the United Kingdom and the Isle of Man, and certain Laws relating to Trade and Navigation, and the British Possessions," the said prohibition against the importation of foreign reprints of books as aforesaid is re-enacted, subject to the powers vested in Her Majesty of suspending such prohibition in certain cases as aforesaid: And whereas it is expedient to permit the importation into the Colony of the Cape of Good Hope of books so prohibited as aforesaid, subject to the restrictions contained in the said recited Act, entitled "An Act to amend the Law relating to the protection in the Colonies of Works entitled to Copyright in the United Kingdom," and to the provisions hereinafter contained: Be it therefore enacted by His Honour the Lieutenant-Governor, by and with the advice and consent of the Legislative Council and House of Assembly, that from and after the time when this Act shall come into operation, it shall be lawful to import into the Colony of the Cape of Good Hope all books and reviews of whatsoever nature or kind, bound or in covers, from whatsoever country the same shall be imported, being reprints of books or reviews first composed, or written, or printed, or published in the United Kingdom.

An *ad valorem* duty of 20 per cent. to be paid on reprints.

2. And be it enacted, that on the importation into this Colony of every reprint of any such book or review as aforesaid, of whatsoever nature or kind the same may be, first composed, written, printed, or published in the United Kingdom, and protected at the time of such importation by the Act of the Imperial Parliament to enforce the law of copyright, whether imported from the

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1854.

United States, or from any other foreign country, there shall be paid an *ad valorem* duty, on the *bonâ fide* price of such reprint, of twenty per cent.: Provided always, that before the reprint of any book or review as aforesaid, such book or review shall have been duly registered according to the provisions of the above recited Act of the Imperial Parliament, passed in the session holden in the fifth and sixth years of Her Majesty's reign, entitled "An Act to amend the Law of Copyright": Provided also, that the said duty shall be paid on newspapers or other periodicals containing only extracts from such books or reviews as aforesaid.

Duty to be remitted to the Commissioners of Customs at London.

3. And be it enacted, that the said duty shall be paid to the Collector of Customs of the Colony, who is hereby directed, whenever he is required so to do, to report the same to the Governor for the time being, and the Governor for the time being will remit the same to the Commissioners of Customs at London, with a detailed account thereof, at least once a year, in order that the said duty may be duly paid over to the registered proprietor of the copyright of such books or reviews respectively.

Penalties for importing, using, selling, &c., reprints contrary to this Act.

4. And be it enacted, that after this Act shall come into operation, it shall not be lawful for any person to import or bring, or cause to be imported or brought, into this Colony, for use, sale, or hire, any reprint referred to in this Act, and hereby made liable to the duty aforesaid, contrary to the true intent and meaning hereof; or knowingly to sell, publish, or expose to sale, or let to hire, or have in his or her possession, for use, sale, or hire, any such reprint as aforesaid; and every such reprint so imported or brought into this Colony, sold, published, exposed for sale, or let for hire, shall be forfeited and sold, and one half of the proceeds of the sale thereof shall be paid to the seizing officer, and the other half to the registered proprietor of the copyright of the book or review from which such reprint is made; and every person so offending, being duly convicted thereof, shall, for every such offence, forfeit and pay the sum of five pounds sterling money, and double the value of every copy of such reprint which he or she shall so import or cause to be imported into this Colony; or shall knowingly sell, publish, expose to sale, or let to hire, or shall have in his or her possession, for sale or hire, contrary to the true intent and meaning of this Act, to be recovered in the Court of the Resident Magistrate of the district in which the offence shall have been committed; one half of such penalty to be paid to the officer seizing, and the remainder thereof to be paid to the Treasurer-General of the Colony, and remitted to the use of the proprietor of the copyright in the manner hereinbefore provided for.

Book or review to be stamped at the time of entry.

5. And be it enacted, that at the time of the entry of any reprint of any book or review as aforesaid, it shall be the duty of the officer passing such reprint to stamp the same, and the Collector of Customs of this Colony shall furnish to the several officers who may require the same the necessary stamps for such purpose.

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1854.

Interpretation of terms.

6. And be it enacted, that in the construction of this Act, every public officer therein described by the name of his office shall mean not only the person filling such office, but also his lawful substitute or person provisionally appointed to discharge the duties of such office; and the word books shall be construed to mean and include every volume, pamphlet, review, magazine, or periodical work, (other than newspapers and gazettes, and maps, charts, and plans, published separately as well as collectively); and every word importing the singular number or masculine gender only, shall be applied to several persons and things, as well as one person or thing, and shall include females as well as males, and *vice versâ*, unless in any of the above cases there be something in the subject or the context plainly to exclude such construction.

Act when to take effect.

7. (1) And be it enacted, that this Act shall not be in force until after having been allowed and confirmed by Her Majesty, and the due proclamation thereof.

No. 5—1854.] [September 26, 1854.

An Act to regulate, till the expiration of the year 1855, the dealing in Gunpowder, Firearms and Lead.

[Expired.]

No. 6—1854.] [September 26, 1854.

An Act for applying a Sum not exceeding £193,305 8s. 3d. for the service of the year 1855.

[Spent.]

No. 7—1854.] [July 5, 1855.

An Act for Extending Trial by Jury to Civil Cases.

[Repealed by Act No. 23, 1891.]

No. 1—1855.] [May 4, 1855.

An Act for Granting Duties of Customs in the Colony of the Cape of Good Hope.

[Superseded by Act 13, 1884.]

No. 2—1855.] [June 8, 1855.

An Act for Abating Public Nuisances and other Mischiefs of a Public Nature in certain Towns and Villages, not being Municipalities.

[Repealed by Act 27, 1882.]

---

[1] See Gazette of 25th June, 1855, publishing Order in Council.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1855.] [June 8, 1855.

An Act for the Better Organization and Regulation of an Armed and Mounted Police Force upon the Frontier of this Colony.

[Repealed by Act 9, 1878.]

No. 4—1855.] [June 8, 1855.

An Act for Encouraging the Importation of European Labourers into this Colony.

[Repealed by Act 15, 1856.]

No. 5—1855.] [June 8, 1855.

An Act for Creating Divisional Councils in this Colony. (1)

[Repealed by Act 4, 1865.]

No. 6—1855.] [June 8, 1855.

An Act for Granting Compensation to certain Persons in the Kat River, for the loss of Erven to which they were respectively entitled.

[Expired.]

No. 7—1855.] [June 8, 1855.

An Act to Regulate till the expiration of the year 1856, the dealing in Gunpowder, Firearms and Lead.

[Expired.]

No. 8—1855.] [June 8, 1855.

ACT

To Amend Ordinance No. 6, (2) of 1853, entitled "An Ordinance for the General Management and Regulation of the Customs in the Colony of the Cape of Good Hope."

Preamble.

WHEREAS it is expedient to permit the shipment of stores from the bonded warehouses, for the use of vessels visiting the ports of this Colony:

Bonded goods may be shipped as stores for any ship not being on her voyage from one colonial port to another, free of duty.

1. Be it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council and House of Assembly, that it shall be lawful for the proper officers of Customs to deliver, from any of the bonded warehouses in this Colony, any articles, whatever, duly warehoused therein, being original

[1] For existing law see Act 40, 1889.
[2] Ord. 6, 1853, is repealed by Act 10, 1872.

Digitised by the University of Pretoria, Library Services, 2016

packages as imported, to be shipped free from Customs duty as stores for the use of any vessel not being then on any voyage from any one port to any other port of this Colony: Provided, always, that such delivery and shipment shall be under such rules and regulations as the Collector of Customs shall direct; and any such articles shipped as stores contrary to such rules and regulations shall be forfeited, and shall be dealt with in the same manner as is provided in the Ordinance No. 6 of 1853, in respect of goods forfeited, or liable to forfeiture, for breaches of the Customs laws. No. 13—1855.

2. This Act shall commence and take effect from and after the promulgation thereof. Act when to commence.

No. 9—1855.] [June 8, 1855.

An Act for Incorporating the South African Association. (1)
[Repealed by Act No. 17, 1875.]

No. 10—1855.] [June 8, 1855.

An Act for the Better Administration of Justice.
[Superseded by Act 40, 1882.]

No. 11—1855.] [June 8, 1855.

An Act for Applying a Sum not exceeding £34,940 4s. 4d., in addition to the Sums already provided, for the Service of the Year 1855.
[Spent.]

No. 12—1855.] [June 8, 1855.

An Act for Applying a Sum not exceeding £66,192, for the Service of the Year 1856.
[Spent.]

No. 13—1855.] [June 8, 1855.

ACT

For the Appointment of Shipping Masters, and for other purposes relating to the "Merchant Shipping Act, 1854." (2)

WHEREAS, by an Act of the Imperial Parliament, to wit, the "Merchant Shipping Act, 1854," it is among other things enacted, that "If the Governor-General of India in Council, or the respective Legislative authorities in any British possession abroad, Preamble.

[1] See Act 27, 1888.
[2] See Acts 3, 1863; 13, 1874; 3, 1858; 18, 1861.

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1855.

by any Acts, Ordinances, or other appropriate legal means, apply or adapt any of the provisions in the third part of this Act contained to any British ships registered at, trading with, or being at any place within their respective jurisdictions, and to the owners, masters, mates, and crews thereof, such provisions, when so applied and adapted as aforesaid, and as long as they remain in force, shall, in respect of the ships and persons to which the same are applied, be enforced, and penalties and punishments for the breach thereof shall be recovered and inflicted, throughout Her Majesty's dominions, in the same manner as if such provisions had been hereby so adopted and applied, and such penalties and punishments had been hereby expressly imposed": And whereas it is expedient to apply and adapt to this Colony certain provisions of the third part of the said Act to British ships registered at or being within the limits of this Colony, and to the owners, masters, mates, and crews of such ships: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor may establish shipping offices, and appoint shipping masters.

1. The Governor may establish a shipping office, or shipping offices, at any port or ports in this Colony, and may, for that purpose, appoint, and from time to time remove and re-appoint, superintendents of such offices, to be called shipping masters, with any necessary deputies, clerks, and servants; and every act done by or before any deputy, duly appointed, shall have the same effect as if done by or before a shipping master; and such shipping masters shall perform in this Colony the duties and exercise the powers conferred upon such shipping masters by the aforesaid Act, in so far as may be applicable in this respect to this Colony, in regard to British ships registered at or being within the limits of this Colony.

Governor may grant to shipping masters, and other officers, reasonable salaries.

2. It shall be lawful for the Governor to grant to such shipping masters, deputies, clerks, and servants, appointed as aforesaid such salaries or other allowances out of the fees to be received under this Act, for the labour and responsibility in executing the duties of their respective offices or employments, as the Governor shall deem to be reasonable and necessary.

Duties of shipping masters.

3. It shall be the general business of shipping masters, appointed as aforesaid, to afford facilities for engaging seamen by keeping registries of their names and characters; to superintend and facilitate their engagement and discharge in manner provided in the aforesaid Act; to provide means for securing the presence on board, at the proper times, of men who are so engaged; to facilitate the making of apprenticeships to the sea service; and to perform such other duties relating to merchant seamen and merchants ships as are now or may hereafter be legally committed to them.

What fees to be payable at shipping offices.

4. Such fees, not exceeding the sums specified in the table marked A in the schedule hereto annexed, as shall from time to

Digitised by the University of Pretoria, Library Services, 2016

time be fixed by the Governor, shall be payable upon all engagements and discharges effected before shipping masters; and the Governor shall cause scales of the fees payable for the time being to be prepared, and to be conspicuously placed in the shipping offices; and all shipping masters, their deputies, clerks, and servants, may refuse to proceed with any engagement or discharge, unless the fees payable thereon are first paid.

By whom certain fees are to be paid in the first instance, and how those parties are to be reimbursed.

5. Every owner or master of a ship engaging or discharging any seamen or seaman in a shipping office, or before a shipping master, shall pay to the shipping master the whole of the fees hereby made payable in respect of such engagement or discharge, and may, for the purpose of in part reimbursing himself, deduct, in respect of each such engagement or discharge, from the wages of all persons (except apprentices) so engaged or discharged, and retain any sums not exceeding the sums specified in that behalf in the table marked B in the schedule hereto annexed: Provided that if in any case the sums which the owners so entitled to deduct exceed the amount of the fees payable by him, such excess shall be paid by him to the shipping master, in addition to such fee.

The receiving of anything, except lawful fees, an offence.

6. Any shipping master, deputy shipping master, or any clerk or servant in any shipping office, who demands or receives any remuneration whatever, either directly or indirectly, for hiring or supplying any seaman for any merchant ship excepting the lawful fees payable under this Act, shall for every such offence, incur a penalty not exceeding twenty pounds, and shall also be liable to be dismissed from his office.

Fees to be paid into the colonial treasury.

7. The whole of the fees received by the shipping masters under this Act shall be paid by them into the Colonial Treasury, at such times and in such manner as the Governor shall direct.

Shipping masters to keep correct accounts of fees.

8. The shipping masters shall keep true and correct accounts of all such fees, and shall render accounts of the receipts and payments of the same, duly vouched, in such manner and form, and at such periods as the Governor shall direct.

Shipping masters may be required to give security.

9. All shipping masters, deputies, clerks, and servants so appointed as aforesaid, shall, before entering upon their duties, give such security (if any) for the due performance thereof as the Governor may require.

No person, under a penalty of £20, to interfere with or perform any of the duties of shipping masters.

10. Any person interfering with or taking upon him to perform any of the duties and powers of any shipping master, in this Colony, by engaging seamen, or otherwise dealing with any matter within the province of such shipping master, shall incur a penalty not exceeding twenty pounds: Provided, however, that nothing herein contained shall be construed so as to prevent any owner, master, or mate, from entering into any agreement with any seaman, such agreement to be perfected according to the provisions of this Act, before a shipping master at the shipping office.

Digitised by the University of Pretoria, Library Services, 2016

No. 13—

Governor may dispense with the minister of shipping masters in regard to matters by this Act required to be transacted beforeshipping masters.

11. The Governor may from time to time, dispense with the transaction before a shipping master, or in a shipping office, of any matters required by this Act to be so transacted, and thereupon such matters shall, if otherwise duly transacted as required by law, be as valid as if transacted before a shipping master, or in a shipping office.

The agreements mentioned in the 149th and 150th sections of the "Merchant Shipping Act, 1854," to be conformed to.

12. In the case of all British registered ships, the agreements entered into in this Colony between the masters of such ships and their crews shall be dated and signed, and shall contain all the particulars, as far as applicable, as are set forth in the 149th and 150th sections of the aforesaid Act, and in the second schedule to this Act annexed.

Penalty for carrying seamen to sea without an agreement executed.

13. If, in any case, a master carries any seaman to sea without entering into an agreement with him in the form and manner and at the place and time hereby in such case required, the master or owner of the ship shall, for each such offence, incur a penalty not exceeding five pounds.

Shipping masters to arbitrate in disputes between masters and seamen.

14. Every shipping master shall hear and decide any question whatever between a master or owner and any of his crew, which both parties agree, in writing, to submit to him; and every award so made by him shall be in writing, and shall be binding on both parties, and shall, in any legal proceeding which may be taken in the matter before any Court of Justice, be deemed to be conclusive as to the rights of the parties; and no such submission or award shall require a stamp; and any document purporting to be such submission or award shall be *primâ facie* evidence thereof. And every shipping master shall receive from the parties such fee, not exceeding one pound sterling, upon each arbitration, as the said shipping master shall fix and determine

Fees for so arbitrating.

How seamen to be engaged to serve on board British ships registered and being within this colony.

15. And whereas it is further enacted in the Act aforesaid, that "Every master of a ship who, if such ship is registered in the United Kingdom, engages any seaman in any British possession, or if such ship belongs to any British possession, engages any seaman in any British possession other than that to which the ship belongs shall, if there is at the place where such seaman is engaged any official shipping master or other officer duly appointed for the purpose of shipping seamen, engage such seaman before such shipping master, and if there is no such shipping master or officer, then before some officer of Customs; and the same rules, qualifications, and penalties as are hereinbefore specified, with respect to the engagement of seamen before shipping masters in the United Kingdom shall apply to such engagements in a British possession; and upon every such engagement such shipping master or officer as aforesaid shall endorse upon the agreement an attestation, to the effect that the same has been signed in his presence, and otherwise made as hereby required; and if, in any case, such attestation is not made, the burthen of proving that the seaman was duly engaged as hereby required, shall lie upon the master";

Digitised by the University of Pretoria, Library Services, 2016

And whereas it is expedient to extend and apply in this Colony the provisions of the Act above recited to all British registered vessels registered in this Colony: Be it further enacted, that such provisions shall extend and apply to all British vessels registered in this Colony, which shall be within the limits of this Colony.

The 244th, 247th, and 248th sections of the "Merchant Shipping Act, 1854," to apply to all British ships registered and being within this colony.

16. The provisions contained in the 243rd, the 244th, the 247th, and 248th sections of the aforesaid Act, and in the second schedule to this Act annexed, relating to punishments for offences committed by seamen or apprentices to the sea service, are hereby extended and applied to all crews of all British ships, registered in this Colony, which shall be within the limits of this Colony.

What tribunals or persons to perform in this colony certain duties mentioned in the 242nd section of the "Merchant Shipping Act, 1854."

17. [1] Whereas it is enacted by the 242nd section of the aforesaid Act, and in the second schedule to this Act annexed, that the Board of Trade may suspend or cancel the certificate (whether of competency or service) of any master or mate, in certain cases, one of which cases, set forth in paragraph 5 of the said section, is as follows:—"If upon any investigation made by any Court or Tribunal, authorised or hereafter to be authorised, by the Legislative authority, in any British possession, to make inquiry into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such Court or Tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of or serious damage to any ship, or loss of life, has been caused by his wrongful act or default, and such report is confirmed by the Governor or person administering the Government of such possession": And whereas it is expedient to authorise Courts or Tribunals in this Colony, for the purposes stated in the said recited section: Be it hereby further enacted, that any of the Courts of Resident Magistrate in this Colony shall be authorised to make the inquiries into all the matters, and for the purposes set forth in the said section; and, further, that it shall be lawful for the Governor, upon any occasion which he may see fit, to nominate and appoint any other person or persons whatever to be a Court or Tribunal duly authorised to make inquiry into the several matters and things set forth in the aforesaid recited section.

The 518th, 520th, and 521st sections of the "Merchant Shipping Act, 1854," extended to this colony.

18. The provisions contained in the 518th, the 520th, and 521st sections of the aforesaid Act, and in the second schedule to this Act annexed, relating to legal procedure, to the punishment of offences, to the recovery of penalties, and to jurisdiction, shall be held to extend, as far as applicable, to this Colony.

How penalties under this Act to be applied.

19. All penalties recovered under this Act shall be applied in the same manner, and upon the same principles, as are set forth in the 524th section of the aforesaid Act, and in the second schedule to this Act annexed.

[1] As to circumstances under which Colonial Tribunal may hold enquiry: see 45 and 46 Vict. Chap. 76.

Digitised by the University of Pretoria, Library Services, 2016

No. 13 - 1855.

This Act, how to be cited.

20. This may be cited, for all purposes, as the "Local Merchant Seaman's Act, 1855."

Construction of terms.

21. In the construction of this Act, the word "Governor" shall signify the person who, for the time being, shall be lawfully administering the Government of this Colony, and the words "master," "seaman," and "ship," shall respectively have the meaning given to them in and by the Imperial Act aforesaid: and words importing the singular number shall include the plural number, and words importing the plural number shall import the singular number, unless, in any such case, there shall be something in the subject or context repugnant to such construction.

Act, when to commence.

22. This Act shall commence and take effect from and after the promulgation thereof.

SCHEDULE TO WHICH THIS ACT REFERS.

Table A. (1) (See Section 4.)

Fees to be charged for matters transacted at Shipping Offices.

1. *Engagement of Crews.*

	£	s.	d.
In ships under 60 tons	0	4	0
,, 60 to 100 ,,	0	7	0
,, 100 to 200 ,,	0	15	0
,, 200 to 300 ,,	1	0	0
,, 300 to 400 ,,	1	5	0
,, 400 to 500 ,,	1	10	0
,, 500 to 600 ,,	1	15	0
,, 600 to 700 ,,	2	0	0
,, 700 to 800 ,,	2	5	0
,, 800 to 900 ,,	2	10	0
,, 900 to 1000 ,,	2	15	0
Above 1000 ,,	3	0	0

And so on for ships of larger tonnage, adding for every 100 tons above 1000, five shillings.

2. *Engagement of Seamen separately.*

Two shillings for each.

3. *Discharge of Crews.*

	£	s.	d.
In ships under 60 tons	0	4	0
,, 60 to 100 ,,	0	7	0
,, 100 to 200 ,,	0	15	0
,, 200 to 300 ,,	1	0	0
,, 300 to 400 ,,	1	5	0
,, 400 to 500 ,,	1	10	0
,, 500 to 600 ,,	1	15	0
,, 600 to 700 ,,	2	0	0
,, 700 to 800 ,,	2	5	0
,, 800 to 900 ,,	2	10	0
,, 900 to 1000 ,,	2	15	0
Above 1000 ,,	3	0	0

And so on for ships of larger tonnage, adding for every 100 tons above 1000, five shillings.

4. *Discharge of Seamen separately.*

Two shillings for each.

Table B. (2) (See Section 5.)

Sums to be deducted from wages by way of partial repayment of fees in Table A.

1. In respect of engagements and discharges of crews, upon each engagement and each discharge.

From wages of any mate, purser, engineer, surgeon, carpenter, or steward .. 1s. 6d.

All others except apprentices .. .. .. 1s.

2. In respect of engagements and discharges of seamen separately, upon each engagement and each discharge .. .. .. 1s.

[1] Repealed in regard to the Port of Cape Town by § 2, Act 13, 1860.
[2] Do. do. § 3, do.

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE OF QUOTATIONS FROM THE IMPERIAL MERCHANT SHIPPING ACT, 1854, REFERRED TO IN THE LOCAL MERCHANT SEAMAN'S ACT, 1855.

149. The master of every ship, except ships of less than eighty tons, registered tonnage, exclusively employed in trading between different ports on the coasts of the United Kingdom, shall enter into an agreement with every seaman whom he carries to sea from any port in the United Kingdom, as one of his crew, in the manner hereinafter mentioned; and every such agreement shall be in a form sanctioned by the Board of Trade, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars, as terms thereof, that is to say:

(1) The nature and, as far as practicable, the duration of the intended voyage or engagement. (1)
(2) The number and description of the crew, specifying how many are engaged as sailors.
(3) The time at which each seaman is to be on board, or to begin work.
(4) The capacity in which each seaman is to serve.
(5) The amount of wages which each seaman is to receive.
(6) A scale of the provisions which are to be furnished to each seaman.
(7) And regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt.

And every such agreement shall be so framed as to admit of stipulations, to be adopted at the will of the master and seaman in each case, as to advance and allotment of wages, and may contain any other stipulations which are not contrary to law: Provided that if the master of any ship belonging to any British possession has an agreement with his crew made in due form according to the law of the possession to which such ship belongs or in which her crew were engaged, and engages single seamen in the United Kingdom, such seamen may sign the agreement so made, and it shall not be necessary for them to sign an agreement in the form sanctioned by the Board of Trade.

150. In the case of all foreign-going ships, in whatever part of Her Majesty's dominions the same are registered, the following rules shall be observed with respect to agreements, that is to say:

(1) Every agreement made in the United Kingdom (except in such cases of agreements with substitutes as are hereinafter specially provided for) shall be signed by each seaman in the presence of a shipping master.
(2) Such shipping master shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it and shall attest each signature.
(3) When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the

[1] See § 3, Act 13, 1874.

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1855.

shipping master, and the other part shall contain a special place or form for the descriptions and signatures of substitutes, or persons engaged subsequently to the first departure of the ship, and shall be delivered to the master.

(4) In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea by death, desertion, or other unforeseen cause, the engagement shall, when practicable, be made before some shipping master duly appointed in the manner hereinbefore specified; and whenever such last-mentioned engagement cannot be so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to the seamen; and the seamen shall thereupon sign the same in the presence of a witness, who shall attest their signatures.

242. ([1]) The Board of Trade may suspend or cancel the certificate (whether of competency or service) of any master or mate ([2]) in the following cases, that is to say:

(1) If upon any investigation made, in pursuance of the last preceding section, he is reported to be incompetent, or to have been guilty of any gross act of misconduct, drunkenness, or tyranny.

(2) If upon any investigation, conducted under the provisions contained in the eighth part of this Act, or upon any investigation made by a Naval Court, constituted as hereinafter mentioned, it is reported, that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default.

(3) If he is superseded by the order of an Admiralty Court, or of any Naval Court, constituted as hereinafter mentioned.

(4) If he is shown to have been convicted of any offence.

(5) If, upon any investigation made by any Court or Tribunal authorised, or hereinafter to be authorised, by the Legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters and mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such Court or Tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of, or serious damage to any ship, or loss of life, has been caused by his wrongful act or default, [and such report is confirmed by the Governor or person administering the Government of such posession]. ([3])

And every master or mate whose certificate is cancelled or suspended shall deliver it to the Board of Trade, or as it directs, and in default, shall for each offence incur a penalty not exceeding fifty pounds;

[1] Powers of cancelling or suspending certificates vested in Colonial Tribunals by § 1, Act 3, 1863.

[2] Or Engineer. § 4, Act 13, 1874.

[3] Words in brackets repea ed by § 7, 45 and 46, Vict. c. 76, and therefore not applicable to vessels registered in United Kingdom.

Digitised by the University of Pretoria, Library Services, 2016

and the Board of Trade may at any subsequent time grant to any person whose certificate has been cancelled a new certificate of the same, or of any lower grade.

243. Whenever any seaman who has been lawfully engaged, or any apprentice to the sea service commits any of the following offences, he shall be liable to be punished summarily as follows, that is to say:

(1) For desertion, he shall be liable [to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also] (1) to forfeit all or any part of the clothes and effects he leaves on board, and all or any part of the wages or emoluments which he has then earned, and also, if such desertion takes place abroad, at the discretion of the Court, to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed until his next return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him.

(2) For neglecting or refusing, without reasonable cause, to join his ship, or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of the ship's sailing from any port either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his ship or from his duty, not amounting to desertion or not treated as such by the master, he shall be liable [to imprisonment for any period not exceeding ten weeks, with or without hard labour, and also] (1) at the discretion of the Court, to forfeit, out of his wages a sum not exceeding the amount of two days' pay, and in addition for every twenty-four hours of absence either a sum not exceeding six days' pay, or any expenses, which have been properly incurred in hiring a substitute.

(3) For quitting the ship without leave after her arrival at her port of delivery, and before she is placed in security, he shall be liable to forfeit out of his wages, a sum not exceeding one month's pay.

(4) For wilful disobedience of any lawful command he shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding two days' pay.

(5) For continued wilful disobedience to lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit, for every twenty-four hours' continuance of such disobedience or neglect, either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute.

[1] Words in brackets repealed as regards the United Kingdom by § 12, 43 & 44, Vict. c. 16.

Digitised by the University of Pretoria, Library Services, 2016

(6) For assaulting any master or mate, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

(7) For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

(8) For wilfully damaging the ship, or embezzling, or wilfully damaging any of her stores or cargo, he shall be liable to forfeit, out of his wages, a sum equal in amount to the loss thereby sustained, and also, at the discretion of the Court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

(9) For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay to such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage; and the whole, or a proportionate part, of his wages may be retained, in satisfaction or on account of such liability, without prejudice to any further remedy.

244. Upon the commission of any of the offences enumerated in the last preceding section, an entry thereof shall be made in the official log-book, and shall be signed by the master, and also by the mate or one of the crew: and the offender, if still in the ship, shall before the next subsequent arrival of the ship at any port, or if she is at the time in port, before her departure therefrom, either be furnished with a copy of such entry, or have the same read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit; and a statement that a copy of the said entry has been so furnished, or that the same has been so read over as aforesaid, and the reply (if any) made by the offender shall likewise be entered and signed in manner aforesaid; and in any subsequent legal proceedings, the entries hereinbefore required shall, if practicable, be produced or proved, and in default of such production or proof, the Court hearing the case may, at its discretion, refuse to receive evidence of the offence.

247. Whenever any seaman or apprentice is brought before any Court, on the ground of having neglected or refused to join, or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, such Court may, if the master or the owner, or his agent, so requires, [instead of committing the offender to prison] [1] cause him to be conveyed on board, for the purpose of proceeding on the voyage, or deliver him to the master or any mate of the ship, or the owner or his agent, to be by them so conveyed, and may, in such case, order any costs and expenses properly incurred by or on behalf of the master or owner, by reason of the offence, to be paid by the offender, and, if necessary, to be deducted from any wages which he has then earned, or which, by virtue of his then existing engagement, he may afterwards earn.

[1] The words in brackets and the next section (248) repealed as regards United Kingdom by § 12, 43 and 44 Vict. c. 16.

Digitised by the University of Pretoria, Library Services, 2016

248. If any seaman or apprentice is imprisoned on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, or of his having committed any other breach of discipline, and if, during such imprisonment, and before his engagement is at an end, his services are required on board his ship, any Justice may, at the request of the master or of the owner or his agent, cause such seaman or apprentice to be conveyed on board his said ship, for the purpose of proceeding on the voyage, or to be delivered to the master or any mate of the ship, or to the owner or his agent, to be by them so conveyed, notwithstanding that the termination of the period for which he was sentenced to imprisonment has not arrived.

518. In all places within Her Majesty's dominions, except Scotland, the offences hereinafter mentioned shall be punished, and penalties recovered in manner following, that is to say:

(1) Every offence by this Act declared to be a misdemeanour, shall be punishable by fine or imprisonment, with or without hard labour; and the Court before which such offence is tried may, in England, make the same allowances, and order payment of the same costs and expenses as if such misdemeanour had been enumerated in the Act passed in the seventh year of his late Majesty King George the Fourth, chapter sixty-four, or any other Act that may be passed for the like purpose; and may in any other part of Her Majesty's dominions make such allowances, and order payment of such costs and expenses (if any) as are payable or allowable upon the trial of any misdemeanour, under any existing Act or Ordinance, or as may be payable or allowable under any Act or Law, for the time being, in force therein.

(2) Every offence, declared by this Act to be a misdemeanour, shall also be deemed to be an offence hereby made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by a penalty not exceeding one hundred pounds, and may be prosecuted accordingly in a summary manner, instead of being prosecuted as a misdemeanour.

(3) Every offence hereby made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by any penalty not exceeding one hundred pounds, shall, in England and Ireland, be prosecuted summarily before any two or more Justices, as to England, in the manner directed by the Act of the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, and as to Ireland, in the manner directed by the Act of the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any Act or Acts that may be passed for like purposes: And all provisions contained in the said Acts shall be applicable to such prosecutions in the same manner as if the offences, in respect of which the same are instituted were hereby stated to be offences in respect of which two or more Justices have power to convict summarily, or to make a summary order.

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1855.

(4) In all cases of summary convictions in England, where the sum adjudged to be paid exceeds five pounds, or the period of imprisonment adjudged exceeds one month, any person who thinks himself aggrieved by such conviction, may appeal to the next Court of General or Quarter Sessions, which is holden not less than twelve days after the day of such conviction for the county, city, borough, liberty, riding, division or place wherein the case has been tried; provided that such persons shall give to the complainant a notice, in writing, of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such Sessions, and shall also either remain in custody until the Sessions, or enter into a recognizance, with two sufficient sureties, before a Justice of the Peace, conditioned personally to appear at the said Sessions, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and upon such notice being given, and such recognizance being entered into, the Justice, before whom the same shall be entered into, shall liberate such person, if in custody; and the Court at such Sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the Court shall seem meet; and in case of dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as may be awarded, and shall, if necessary, issue process for enforcing such judgment.

(5) All offences under this Act shall, in any British possession be punishable in any Court, or by any Justice of the Peace, or Magistrate, in which or by whom offences of a like character are ordinarily punishable or in such other manner or by such other Courts, Justices, or Magistrates as may, from time to time, be determined by any Act or Ordinance duly made in such possession, in such manner as Acts and Ordinances in such possession are required to be made, in order to have the force of law.

520. For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

521. In all cases where any district within which any Court or Justice of the Peace, or other Magistrate has jurisdiction, either under this Act, or under any other Act, or at common law for any purpose whatever, is situate in the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such Court, Justice of the Peace, or Magistrate shall have jurisdiction over any ship or boat being on, or lying, or passing off such coast, or being in or near such bay, channel, lake, river, or navigable water as aforesaid, and over all persons on board such ship or boat, or for the time being belonging thereto, in the same manner as if such ship,

Digitised by the University of Pretoria, Library Services, 2016

boat, or person were within the limits of the original jurisdiction of such Court, Justice, or Magistrate.

524. Any Court, Justice, or Magistrate imposing any penalty under this Act for which no specific application is herein provided, may, if it or he think fit, direct the whole or every part thereof to be applied in compensating any person for any wrong or damage which he may have sustained by the act or default in respect of which such penalty is imposed, or to be applied in or towards payment of the expenses of the proceedings; and subject to such directions or specific application as aforesaid, all penalties recovered in the United Kingdom shall be paid into the receipt of Her Majesty's exchequer, in such manner as the Treasury may direct, and shall be carried to and form part of the consolidated fund of the United Kingdom; and all penalties recovered in any British possession shall be paid over into the public treasury of such possession, and form part of the public revenue thereof.

No. 14—1855.] [June 8, 1855.

ACT

For Exempting from Wharfage and Cranage Dues certain Articles landed from or shipped on board Whaling Vessels.

Preamble.

WHEREAS, by Ordinance No. 6 of 1851, (1) entitled an Ordinance "For regulating the rates of Wharfage Dues in Cape Town and Simon's Town," certain wharfage and cranage dues are payable upon the landing or shipping of the several articles set forth in the schedule to the said Ordinance: And whereas it is expedient to exempt certain articles from the payment of such dues:

Certain articles connected with whaling ships to be free from wharfage dues.

1. Be it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council and House of Assembly, that the following articles shall be exempt from the payment of wharfage and cranage dues, upon being landed or shipped in Table Bay or Simon's Bay respectively, that is to say:

All surplus stores or provisions for the use of whaling vessels.

All whalebone, whale head-matter, and whale or fish oil, landed or shipped from or on board of whaling vessels, or from or on board of any other vessel conveying such whalebone, whale head-matter, or oil from or to any whaling vessel; provided that such whalebone, whale head-matter, or oil be not entered for colonial consumption.

Act when to commence.

2. This Act shall commence and take effect from and after the promulgation thereof.

---

[1] See Act 17, 1861, § 6.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1855.] [June 8, 1855.

An Act to amend the Ordinance No. 18, 1844, for Regulating the Payment of Transfer Duty in this Colony.

[Repealed by Act 5, 1884.]

No. 16—1855.] [June 8, 1855.

An Act to provide for the Organization of the Inhabitants of the several Divisions of this Colony for the Internal Defence of their respective Divisions.

[Repealed by Act 7, 1878.]

No. 1—1856.] [June 4, 1856.

An Act for Preventing the Spread of Contagious or Infectious Diseases.

[Repealed by Act 4, 1883.]

No. 2—1856.] [June 4, 1856.

An Act for the Naturalization of HERMANN SEBASTIAN VON RONN.

[Private.]

No. 3—1856.] [June 4, 1856.

ACT

To Declare the Law in relation to Bills of Exchange and Promissory Notes becoming payable upon Holidays. (1)

Preamble.

WHEREAS, by the law of this Colony, Bills of Exchange and Promissory Notes becoming payable upon a Sunday are deemed, for the purposes of presentation for payment, to become due upon the Monday following: And whereas it is expedient to declare what days, not being Sundays, shall be considered as holidays in reference to such presentation as aforesaid, and to apply to such holidays, respectively, the rule or principle of law aforesaid at present applicable to Sundays: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Bills due on holidays or fast-days.

1. As often as any Bill of Exchange or Promissory Note shall become due and payable upon any of the holidays following, that is to say,—upon New Year's Day, the Queen's Birthday, Good Friday, Easter Monday, Whit Monday, Ascension Day, Christmas

[1] See Act 34, 1889; and as to law of Bills of Exchange, &c., see Act 19, 1893.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1856.

Day, or any day appointed by proclamation of the officer administering the Government as a solemn fast or day of thanksgiving, such Bill or Note shall be deemed and taken to become due and payable upon the day next succeeding such holiday, and not sooner, unless such succeeding day shall be a Sunday, in which case such Bill or Note shall be deemed and taken to become due upon the following Monday.

If succeeding day be Sunday.

2. As often as any Bill of Exchange or Promissory Note shall become due and payable upon the day next preceding any of the holidays aforesaid, it shall not be necessary or competent for the holder of such Bill or Note to give notice of the dishonour thereof until the day next succeeding such holiday.

Notice of dishonour.

3. As often as any such holiday as aforesaid shall fall on a Monday, all Bills and Notes which become due and payable upon the next preceding Sunday shall be deemed and taken to become due and payable upon the next succeeding Tuesday, and not sooner. And in regard to all Bills and Notes which become due upon the Saturday next preceding any such holiday which shall fall on a Monday, it shall not be necessary or competent for the holder of any such Bill or Note to give notice of the dishonour thereof until the next succeeding Tuesday.

Bill due on Sunday when next Monday is a holiday.

Notice of dishonour.

4. This Act shall commence and take effect from and after the promulgation thereof.

Act when to commence.

No. 4—1856.] [June 4, 1856.

An Act to amend Act 5 of 1855, entitled "An Act for creating Divisional Councils in this Colony."

[Repealed by Act 4, 1865.]

No. 5—1856.] [June 4, 1856.

ACT

For Regulating the Provincial Hospital at Port Elizabeth.

Preamble.

WHEREAS it is intended to establish an hospital, to be called the "Provincial Hospital at Port Elizabeth": And whereas it is expedient that the Board of Managers of the said Provincial Hospital should be incorporated, and that certain other matters 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, that is to say:—

Hospital how to be designated.

1. The hospital aforesaid shall be called the "Provincial Hospital at Port Elizabeth," and shall be managed by a Board of Managers.

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1856.

Board of management: civil commissioner, municipal commissioners and elective members.

2. (1) The Civil Commissioner of the division of Port Elizabeth for the time being, the commissioners of the municipality of Port Elizabeth for the time being, together with a number of elective members equal to the number of municipal commissioners for the time being, which members shall be elected as hereinafter provided, shall form a board for the management of the said hospital, of which board the Civil Commissioner for the time being shall be the chairman: Provided always, however, that when the Civil Commissioner 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, he shall, besides a deliberative vote, possess a casting vote.

Board how to be styled.

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 Provincial Hospital," 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.

Life-governor.

5. Any person making a donation to the funds of the said hospital of not less than £20 (twenty pounds) shall become a life-governor, and be entitled to elect and be elected.

Donor to the funds entitled to elect and be elected.

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, who shall be entitled to elect and be elected.

Subscribers of one guinea.

7. Any subscriber subscribing annually not less than one guinea shall be entitled to elect and be elected.

Subscribers of half a guinea.

8. Any subscriber subscribing not less than half-a-guinea annually, shall be entitled to elect, but not to be elected.

Board of managers, when to be elected.

9. As soon as there shall be twenty persons entitled to vote at the election of the elective members of the Board of Managers aforesaid, but not sooner, the Civil Commissioner aforesaid shall, by a notice to be published in the *Government Gazette*, 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 at some place in Port Elizabeth, to be specified in such notice, for the purpose of electing so many members of the said board as shall be then to be elected.

Election, how to be made.

10. At the meeting lastmentioned, the Civil Commissioner shall preside, and the election shall be by signed lists, and the Civil Commissioner shall transmit the names of the members elected to the Colonial Secretary, who shall cause the same to be published in the *Government Gazette*: Provided that at such meeting all persons entitled to vote who shall be females, or who shall reside beyond

Who entitled to vote.

[1] See Act 14, 1868, § 80.

Digitised by the University of Pretoria, Library Services, 2016

the limits of the municipality of Port Elizabeth, but no other persons, shall be entitled to appoint, by any writing under their hands respectively, some other person, being himself a person entitled to vote, to be the proxy of or for the person by whom he shall have been so appointed, and to vote in such person's behalf.

Elective members, when to retire.

11. The elective members elected at the first meeting held for the election of elective members shall hold office for three years; and thereafter until the expiration of one year and one half year from the day on which the municipal commissioners of Port Elizabeth, in office at the expiration of the said three years were elected, at which time such first elected members shall go out of office, and be succeeded by others to be then elected; and all elective members other than those first elected shall go out of office at the end of the third year from the date of their election, and be succeeded by others; and so on for ever: Provided that all outgoing elective members shall be eligible to be re-elected.

How their places to be supplied.

Election of new members.

12. On the Monday next before the day on which any body of 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 three years next succeeding, of which meeting a notice of not less than twenty-one days shall be given by the Civil Commissioner aforesaid, in the *Government Gazette*.

What constitutes vacation of office.

13. If any elected member of the said board shall die or resign, or, being a subscriber, shall cease to subscribe, in manner aforesaid, an amount not less than one guinea per annum, or shall cease to reside in the division of Port Elizabeth, or shall become incapacitated for fulfilling the duties of his office by mental or bodily infirmity or disease, he shall, *ipso facto*, vacate his office, and the said board shall give notice of such vacancy to the Civil Commissioner 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 till the next general election of elected members, but no longer: Provided that every such person shall be eligible to be re-elected.

How vacancy to be filled.

In case of 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 elected members which were then to be elected shall not have been duly elected, then the Civil Commissioner aforesaid, upon being informed by the Board of Managers of such non-election, shall forthwith, upon the like notice as 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 elected members in office at the time of such non-election of new members shall remain in office till such new

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1856.

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.

Ex-officio members to constitute the board until elective members are chosen.

15. Until elective members of the Board of Managers shall be elected, the members *ex officio*, of the said board 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; and no vacancy or vacancies at any time occurring amongst or in regard to the elective members shall be deemed or taken to render the said board incomplete, or to suspend or impair any of its powers.

Increase or diminution of municipal commissioners, before any general election, not to affect the board.

16. Should the number of commissioners of the municipality of Port Elizabeth be increased or diminished in the interval between one general election of elective members and the next succeeding general election, such increase or diminution shall not alter or affect the tenure of office of any of the elective members who shall be in office at the time of such increase or diminution: Provided that at the then next ensuing general election, the number of members to be elected shall be the same as the number of municipal commissioners for the time being: Provided also, that if, during any such interval as aforesaid, the number of municipal commissioners shall be diminished, so as to fall below the number of elected members for the time being, no casual vacancies occurring in the office of elective members shall be filled up, so long as the elected members for the time being shall exceed the number of municipal commissioners for the time being.

Board of managers to hold property for the benefit of the institution.

17. The Board of Managers aforesaid shall stand and be possessed of all lands which may be granted to the said board by Her Majesty the Queen, or by any private person, for the use and benefit of the Provincial 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, subscribed, bequeathed, paid, or in any manner coming to the said board, for the use and benefit of the said hospital; and generally of all property, movable or immovable, belonging to the said hospital, —more especially of a certain grant of land already made in trust to the municipal commissioners of Port Elizabeth, for the use and benefit of the said hospital.

Board may, with sanction of the Governor, sell or lease lands held in trust.

18. It shall be lawful for the said board, with the sanction of the Governor of this Colony for the time being, first had and obtained, but not otherwise, to sell by public sale, but not otherwise, any portion or portions of any land which may have been granted to the said board by Her Majesty the Queen, which land it may be found expedient to alienate; and the said board may, in case

Digitised by the University of Pretoria, Library Services, 2016

the sanction aforesaid shall have been obtained, lease any of the said lastmentioned lands, at the best rent that can be obtained, without any fine or fore-gift, for any term not exceeding thirty-three years from the time when such lease shall be made.

Transfers, leases, &c., to be executed by three members of the board.

19. All transfers, leases, contracts, 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.

Gratuitous treatment to indigent persons.

20. The Provincial Hospital at Port Elizabeth shall be all times open, so far as its funds 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.

Paying patients to be charged according to tariff.

21. It shall be the duty of the Board of Managers to make provision for the reception and treatment 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.

Physicians and surgeons appointed by board.

22. It shall be lawful for the Board of Managers to appoint all such doctors of medicine and surgeons as may be required for the said hospital, at such salaries as the said board shall deem expedient, and to discharge any such doctor of medicine or surgeon for immoral or improper conduct, or for non-fulfilment of his engagements with the said board: Provided that no such doctor of medicine or surgeon 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 and shall have had an opportunity of making his defence, and until a majority of the members present at some meeting of the said board at which not less than three-fourths of the members for the time being shall be present shall have resolved that such doctor of medicine or surgeon be so discharged.

Board to appoint other officers.

23. All persons other than doctors of medicine and surgeons employed in or about the said hospital shall be engaged by the said board and shall hold their situations at the pleasure of the said board.

Board to frame and amend rules.

24. It shall be the duty of the Board of Managers to frame and from time to time if need be to amend all such rules and regulations as to the said board shall seem necessary touching and concerning the times of meeting and mode of summoning of the members of the said board; how many members shall form a quorum; the recording of the proceedings of every such meeting; the officers of such board and their salaries, if any; the mode in which the moneys belonging to the said board shall be collected, kept, and paid out; the mode in which the accounts of the said hospital shall be kept; the number and the duties of the officers, hospital attendants, and other persons employed in or about the said hospital: the length of notice to be given or

Board to regulate duties and salaries of officers.

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1856.

received by each doctor or surgeon 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-second section specified; the regulations under which ministers of religion or others desirous to visit patients for the purpose of religious counsel or consolation shall be permitted so to do; the fees or charges to be paid by the paying patients herebefore in the twenty-first section mentioned; and generally any subject connected with the cleanliness, order, conduct, and management of the said hospital.

Copy of rules to be sent to the Governor.

25. The Board of Managers shall furnish to the Governor for the time being a copy of the rules and regulations aforesaid for the time being, and shall regularly report to the said Governor all amendments thereof and additions thereto.

Board may purchase, rent, or dispose of lands, buildings, &c., for the benefit of the institution.

26. It shall be lawful for the said board to purchase or rent all such lands or buildings as shall be necessary for the purpose 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 building of any buildings or the supply of any furniture or apparatus which shall be required for such hospital: Provided that no contract for any purpose which shall require an xpenditure above twenty pounds shall be entered into, unless tenders for the same shall have been called for by a notice, written or printed, and posted at the office of the Resident Magistrate of Port Elizabeth for not less than eight days, as also by an advertisement to be published in some one or more of the newspapers of Port Elizabeth for not less than eight days.

Report of proceedings and accounts of expenditure to be submitted to Parliament.

27. The Board of Managers aforesaid 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 of December in every year; 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 Governor of the Colony not later than the first of March in the next succeeding year; and the said Governor shall lay a copy of such accounts and of such report before each House of Parliament should Parliament be sitting at the time of the receipt of such accounts by such Governor; and in case Parliament should not be then sitting the Governor shall lay the copies aforesaid before the said Houses respectively at the then next ensuing session of Parliament. And the said Governor shall also cause the said accounts and report or an abstract of them to be published in the *Government Gazette*.

To be published in Gazette.

Act when to commence.

28. This Act shall commence and take effect from and after the promulgation thereof.

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1856.] [June 4, 1856.

ACT

For Regulating the Public Schools in Port Elizabeth upon the Grey Foundation.

Preamble.

WHEREAS it is intended to establish Public Schools in Port Elizabeth, for the education of youth, without distinction of creed, class, or colour, which schools, in honour of His Excellency Sir George Grey, K.C.B., the Governor of this Colony, and in acknowledgment of the interest which he has evinced in their success, are to be called the "Public Schools of Port Elizabeth upon the Grey Foundation": And whereas it is expedient that the board of managers for managing the said schools should be incorporated, and that certain other matters likely to promote the welfare of the said schools 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, that is to say:—

Designation of schools.

1. The schools aforesaid shall be called the "Public Schools of Port Elizabeth upon the Grey Foundation," and shall be managed by a board of managers.

2. [Repealed by Act 14, 1888.]

Board how to be styled.

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 Public Schools of Port Elizabeth upon the Grey Foundation," 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.

Who elective members.

4. The elective members of the board aforesaid shall be elected by donors to the said schools, of sums not less, respectively, than fifty pounds, and subscribers subscribing, each of them, a sum of not less than five pounds: Provided that any sum not less than five pounds paid by any person by way of a fee or fees for any pupil belonging to the said schools shall be deemed, for the purposes of this Act, to be a subscription.

What entitles to vote.

5. Every donor of a sum of fifty pounds shall be entitled to one vote; every donor of one hundred pounds to two votes; and in like manner, every donor shall have one vote for every fifty pounds of his donation: Provided that all successive donations given by the same person shall, for the purposes of this Act, be regarded as one donation of the whole amount of the donations of such person for the time being.

Number of votes to each.

6. Every such subscriber as already defined, of five pounds, shall be entitled to one vote; every subscriber of ten pounds, to two votes; and in like manner, every subscriber shall have one vote for every five pounds of his subscription: Provided that no subscriber shall be entitled to vote at any election, except a subscriber who shall have paid a subscription of not less than five

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1856.

pounds for the year in which such election shall be held:

Donor may vote.

Provided, also, that a donation of not less than five pounds shall be considered as a subscription, entitling the donor to vote as if a subscriber of the same amount at any election which shall be held within twelve months next after the bestowal of such donation.

7. [Repealed by Act 14, 1888.]

Election how to take place.

8. At the meeting lastmentioned, the Civil Commissioner shall preside, and the election shall be by signed lists, and the Civil Commissioner shall transmit the names of the members elected to the Colonial Secretary, who shall cause the same to be published in the *Government Gazette:* Provided that at such meeting all

Who to vote.

persons entitled to vote who shall be females, or who shall reside beyond the limits of the municipality of Port Elizabeth, but no other persons, 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.

9. [Repealed by Act 14, 1888.]

10. [Repealed by Act 14, 1888.]

What constitutes vacancy.

11. If any elected member of the said board shall die or resign, or, being a subscriber, shall cease to subscribe, in manner aforesaid, an amount not less than five pounds per annum, or shall cease to reside in the division of Port Elizabeth, or shall become incapacitated for fulfilling the duties of his office by mental or bodily infirmity or disease he shall, *ipso facto*, vacate his office, and the said board shall give notice of such vacancy to the Civil Commissioner aforesaid, who shall, upon the like notice as that in the last

Vacancy to be filled.

preceding section mentioned, call a meeting of donors 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 till the next general election of elected members, but no longer: Provided that every such person shall be eligible to be re-elected.

In case of failure to elect.

12. Should it happen by reason of any failure or neglect, or other cause, that any such meeting as in the fourth section of Act 14 of 1888 mentioned [1] shall not have been duly holden, or that at such meeting the number of elected members which were then to be elected shall not have been duly elected, then the Civil Commissioner aforesaid, upon being informed by the board of managers of such non-election, shall forthwith, upon the like notice as in the said tenth section mentioned, call a meeting of donors and subscribers, in order thereat to elect the members necessary to be elected: Provided that the elected members in office at the time of such non-election of new members shall remain in office till such new members shall be elected: And provided that the new members, elected at any such meeting as in this section mentioned,

[1] Printed as amended by Act 14, 1888, § 7.

Digitised by the University of Pretoria, Library Services, 2016

shall remain in office as long as members elected at such regular meeting as in the tenth section mentioned would have remained in office, and no longer.

Ex-officio members to constitute board until elective members are chosen.

13. Until elective members of the board of managers shall be elected, the members *ex officio* of the said board 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; and no vacancy or vacancies at any time occurring amongst or in regard to the elective members shall be deemed or taken to render the said board incomplete, or to suspend or impair any of its powers.

14. [Repealed by Act 14, 1888.]

Board to hold property for the benefit of the institution.

15. The board of managers aforesaid shall stand and be possessed of all lands which may be granted to the said board by Her Majesty the Queen, or by any private person, for the use and benefit of the public schools 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 schools; and of all funds and moneys granted to the said board from and out of the public revenue of this Colony, or given, subscribed, bequeathed, paid, or in any manner coming to the said board for the use and benefit of the said schools; and generally of all property, movable or immovable, belonging to the said schools.

Board may, with sanction of the Governor, sell or lease lands held in trust.

16. It shall be lawful for the said board, with the sanction of the Governor of this Colony for the time being, first had and obtained, but not otherwise, to sell by public sale, but not otherwise, any portion or portions of any land which may have been granted to the said board by Her Majesty the Queen, 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 lastmentioned lands, at the best rent that can be obtained, without any fine or fore-gift, for any term not exceeding thirty-three years from the time when such lease shall be made.

Transfers, leases, &c., to be executed by three members.

17. All transfers, leases, contracts, or other instruments to be executed by the said board, for any of the purposes of this Act, or of the said schools, 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.

Schools to be three in number.

18. The schools aforesaid to be managed as aforesaid by the said board shall be, in the first instance, three in number, that is to say, one High or Collegiate School, to be called the "Grey Institution," and two Elementary or Training Schools, for the preparation of pupils for the High or Collegiate School aforesaid.

Board of managers to appoint and discharge teachers.

19. It shall be lawful for the board of managers to appoint all such teachers and masters as may be required for the said schools, at such salaries as the said board shall deem expedient, and to discharge any such teacher or master for improper conduct, or other

Digitised by the University of Pretoria, Library Services, 2016

No. 6—1856.

incapacity, or for non-fulfilment of his engagements with the said board: Provided that no such teacher or master 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 statemen of the charges against him, and shall have had an opportunity of making his defence, and until a majority of the members present at some meeting of the said board, at which not less than three fourths of the members for the time being shall be present, shall have resolved that such teacher or master be so discharged.

Board to appoint other officers.

20. All persons other than teachers and masters employed in or about the said schools shall be engaged by the said board, and shall hold their situations at the pleasure of the said board.

Board to frame rules for the institution.

21. It shall be the duty of the board of managers to frame, and from time to time, if need be, to amend all rules and regulations as to the said board shall seem necessary, touching and concerning the times of meeting, and mode of summoning of the members of the board; how many 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 board shall be kept; the ages and proficiency in learning which shall be a condition of admission into the Grey Institution aforesaid, and into both or either of the two other schools aforesaid; the fees or other charges which shall be payable by or in regard to the pupils in the said three schools respectively; the number and the duties of the teachers, masters, or other persons employed in each of the said schools; the length of notice to be given or received by each teacher or master, 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 19th section specified; the branches of learning which shall be taught in the said schools respectively; the terms and conditions upon which benevolent persons may entitle themselves, or others nominated by them. to send free pupils to the said schools respectively; and generally any subject connected with the due and proper conduct, discipline, management, and advancement of the said schools.

To regulate duties and salaries of officers.

Right of presentation to scholarships.

22. It shall at all times be provided by such rules and regulations that every donor to the said schools of not less than £100 [1] shall have the right to send to and keep at the said schools, or any of them, for the term of twenty-one years next after the date of the donation, one free pupil; and that every donor of not less than £200 shall have the right to send and keep at the said schools, or any of them, for ever, one free pupil for every £200 which he shall give to the said schools; and such rules and regulations shall also provide for the manner in which, and the persons by

[1] Printed as amended by § 8 Act 14, 1888.

Digitised by the University of Pretoria, Library Services, 2016

whom, such donors as aforesaid may exercise such right of presentation: Provided that it shall be lawful for the board of managers to agree, if they should so think fit, to the mode of exercising a right of presentation which shall be proposed by any donor, or intended donor, anything in the said rules and regulations to the contrary notwithstanding.

Copy of rules and amendments to be sent to Governor.

23. The board of managers shall furnish to the Governor for the time being a copy of the rules and regulations aforesaid for the time being, and shall regularly report to the said Governor all amendments thereof and additions thereto.

Board may purchase, rent, or dispose of lands, buildings, &c., for benefit of institution.

24. 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 schools, 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 building of any buildings, or the supply of any furniture or apparatus which shall be required for such schools: Provided that no contract for any purpose which shall require an expenditure above £20 shall be entered into, unless tenders for the same shall have been called for by a notice, written or printed, and posted at the office of the Resident Magistrate of Port Elizabeth, for not less than eight days, as also by an advertisement to be published in some one or more of the newspapers of Port Elizabeth, for not less than eight days.

Report of state and proceedings, with accounts of expenditure, to be sent to Governor, for presentation to Parliament.

25. The board of managers aforesaid 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 31st of December in every year; and the said board shall also frame a full report of the state and proceedings of the schools, 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 Governor of the Colony, not later than the 1st of March in the next succeeding year; and the said Governor shall lay a copy of such accounts and of such report before each House of Parliament, should Parliament be sitting at the time of the receipt of such accounts by such Governor; and in case Parliament should not then be sitting, the Governor shall lay the copies aforesaid before the said Houses respectively at the then next ensuing session of Parliament. And the said Governor shall also cause the said accounts and report, or an abstract of them, to be published in the *Government Gazette*.

To be published in *Gazette*.

Act when to commence.

26. This Act shall commence and take effect from and after the promulgation thereof.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1856.] [June 4, 1856.

ACT

For apportioning Quitrents upon the Subdivision of Fixed Property.

Preamble.

WHEREAS it is expedient that provision should be made, by law, for apportioning the quitrent payable by or out of fixed property which may become, or may have become subdivided amongst several owners: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Repugnant laws repealed.

1. So much of the proclamation of Sir John Francis Cradock, the then Governor of the Colony, bearing date the 6th August, 1813, as may be repugnant to or inconsistent with any of the provisions of this Act, is hereby repealed.

Seller and purchaser to agree upon the respective shares of quitrent.

2. As often as the owner of any fixed property, in its original extent subject to the payment of quitrent to Her Majesty the Queen, shall, after the taking effect of this Act, sell or otherwise alienate any part, but not the whole, of such property, whether an undivided share thereof, or a portion thereof to be divided off by diagram, it shall be lawful for the seller and purchaser, by agreement [1] between themselves, or by their attorneys or agents, duly authorised, made in the presence of the Civil Commissioner of the division in which such property shall be situated, to fix and determine the shares or proportions of the quitrent previously payable by or out of the entire of the said property, which shall, for the future be payable by the seller and the purchaser, respectively, and from or out of their respective shares or portions of the said property, and the terms of such agreement shall be put in writing,

Agreement to be certified by Civil Commissioner.

and certified by the Civil Commissioner, and in every transfer deed which shall be passed in virtue of, and for carrying into effect such sale or alienation, the amount of quitrent to be thenceforth payable

Amount of quitrent to be stated in transfer deed.

from or out of the share or portion of such property as aforesaid, transferred by such transfer deed, shall be stated and embodied: Provided that in every such case as in this section mentioned the

Quitrent on original property to be endorsed on title deed.

amount of quitrent which shall continue to be paid by the said party so selling or alienating as aforesaid shall be, by the Civil Commissioner, endorsed upon the title deed or transfer deed, as the case may be, under or by virtue of which such party holds such

Minimum quitrent to be five shillings. Farms subdivided for purposes of village redeemable.

property; and provided, further, that on no division shall less than 5s. quitrent be payable; and provided, also, that in any farm sub-divided for the purpose of a village, the quitrent thereon shall be redeemable at a twenty years' purchase.

Civil Commissioner to keep record-book of apportionment of quitrents

3. The Civil Commissioner shall cause every such apportionment of quitrent so made as aforesaid to be recorded in a book to be kept by him for that purpose.

[1] For proceedings where parties conc rned do not agree, see Act 10, 1875.

Digitised by the University of Pretoria, Library Services, 2016

Several purchasers of one property to agree as to their proportionate shares of quitrent.

4. As often as any owner of fixed property shall sell or alienate the whole thereof to more persons than one, either in undivided shares, or in portions to be divided off by diagram, then the several purchasers may, in manner aforesaid, agree upon the proportionate amounts of quitrent to be thenceforth payable by each; and the 2nd and 3rd sections aforesaid shall, *mutatis mutandis*, apply to this case as well as to the case therein mentioned.

Act applicable to previous purchases.

5. When any persons shall, under any deed of grant or transfer deed, or transfer deeds, made prior to the taking effect of this Act, own, amongst them, in either undivided or divided shares or portions, any extent of fixed property, subject to quitrent, as such extent was originally granted, or some such persons shall own a part of such extent in undivided shares, and the rest of such persons shall own the rest of such extent in portions divided off by diagram, such persons may, by any agreement made in manner and form as in the 2nd section of this Act mentioned, fix and determine the shares and proportions of the quitrent previously payable from or out of the entire property in its original extent, which shall thenceforth be payable from or out of each undivided share and each divided portion, and such shares and proportions of quitrent shall be endorsed by the Civil Commissioner upon the title deed, or transfer deed or deeds, under or by virtue of which the several shares or portions of such property shall be enjoyed by such owners respectively, and shall also be recorded by such Civil Commissioner, as in the 3rd section of this Act directed, and be stated and embodied in any transfer deed by which any such share or portion may be afterwards transferred.

Each share of the entire property to pay its own proportion of quitrent, and no more.

6. As often as the quitrent originally payable by or out of any fixed property in its original extent shall have been apportioned in manner and form as by this Act provided, then each share or portion of such property shall be chargeable with its share or proportion of such quitrent, according to such apportionment, and no more, precisely as if such share or proportion had been originally granted, subject to such share and proportion, and no more.

If any share be again subdivided, the quitrent apportioned to it shall be subdivided in proportion.

7. In all cases in which any share or portion of fixed property in regard to which the quitrent shall have been apportioned as aforesaid, shall be again subdivided in any manner already referred to in this Act, then the rent first apportioned as aforesaid shall, in its turn, be again apportioned in manner and form as aforesaid; and so on, in regard to succeeding subdivisions, so long as such subdivision shall continue to be made.

Act not to affect subdivisions of fixed property in regard to which there is no such agreement as is in the second section mentioned.

8. Nothing in this Act contained shall extend to or affect any case of subdivision of fixed property in regard to which the parties shall not, by agreement, made in manner aforesaid, fix and determine, amongst each other, the quitrent to be afterwards payable, by or out of their several shares or portions respectively.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1856.

Certificate of Civil Commissioner to be *prima facie* evidence that quitrent is due.

9. In all actions, suits, and proceedings for the recovery of apportioned quitrent in arrear, a certificate under the hand of the Civil Commissioner of the division in which the property shall be situated, shall be *primâ facie* evidence that the amount mentioned in such certificate is due and owing by the person named therein, which certificate shall be in substance and effect as in the schedule to this Act set forth.

Act when to commence.

10. This Act shall commence and take effect from and after the promulgation thereof.

SCHEDULE.

Form of cerrtificate referred to in ninth section.

I, A. B., Civil Commissioner of the division of , do hereby certify that, from the records in my office, it appears that the sum of pounds shillings and pence is the amount of apportioned quitrent, annually payable from and out of a certain undivided *(fourth)* part or share of the quitrent farm called *(or otherwise describe the property)*, situated in the Field-cornetcy of , in this division, of which part or share is the owner; and I further certify that the sum of £ is due and payable upon or in regard to such part or share, being for such quitrent, from the day of 18 , to the day of , 18 .

(Signed) A. B.,
Civil Commissioner of the division of ———.

NOTE.—In case the apportioned quitrent shall be payable out of a portion of land divided off by diagram from any other part of any original extent, the certificate will describe such land as a certain piece or portion of land, formerly part of the quitrent farm called , and will substitute the words "piece or portion of land" for the words "part or share," in the remainder of the certificate.

No. 8—1856.] [June 4, 1856.

An Act for enabling persons alien born to hold fixed property in this Colony.

[Repealed by Act 2, 1883.]

No. 9—1856.] [June 4, 1856.

ACT

To Cancel a Grant of certain Piece of Land situate in the Government Gardens, Cape Town (commonly called "the Paddock"), made in favour of the See of Cape Town, under date the 11th day of April, 1848.

Preamble.

WHEREAS His Excellency Sir Henry George Wakelyn Smith, K.C.B., the then Governor of this Colony, granted, on the 11th day of April, 1848, unto the Right Reverend Robert Gray, D.D.,

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1856.

Bishop of Cape Town, and his successors in the said see, a certain piece of land (commonly called "the Paddock,") containing 501 square roods and 136 square feet, situate in Cape Town, bounded north-east by the Government Gardens, south-east by private property, south-west by municipal property, and north-west by the walk of the said Government gardens; together with a right of carriage-road to, into, and from the said piece of land, over and along so much of the said Government walk or avenue leading from Orange-street, in Cape Town aforesaid, to the said piece of land, as is necessary for ingress and egress to the same by the present gateway, and also together with the right of foot-road to, into, and from the said land, over all and any part of the roads or walks adjoining the north-western and north-eastern boundaries thereof, through proper doors or wickets: And whereas such grant was improperly made, and without any prior public notice thereof to those interested in the non-alienation of the said land, and has, further, been found to be injudicious, unnecessary, and in violation of the prescriptive right of the public to safe and unimpeded access to and through the said Government gardens: And whereas the said grant is in other respects detrimental to the interests and adverse to the wishes of the public, and ought, by reason thereof, to be cancelled:

Grant to the see of Cape Town annulled.

1. 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, that the said grant of the said piece of land, together with the grant of right of carriage and foot-road aforesaid, shall be, and the same hereby accordingly are cancelled, rescinded, set aside, and made null, void, and of no force or effect, to all intents and purposes whatsoever.

Compensation not barred.

2. Be it further enacted, that nothing herein contained shall debar the said Right Reverend Robert Gray, D.D., or the Bishop of Cape Town for the time being, from being reimbursed, from out of the Colonial Treasury, all sums of money expended by him in and upon the said piece of land.

No. 10—1856.] [June 4, 1856.

An Act for the Preventing of Cruelty to Animals. [1]
[Repealed by Act 3, 1875.]

No. 11—1856.] [June 4, 1856.

ACT

To Secure Electoral Privileges to the Inhabitants of the Division of Queen's Town. [2]

Preamble.

WHEREAS His Excellency the late Governor Sir George Cathcart, K.C.B., did, by proclamations bearing date 10th September and

[1] For existing law see Act 18, 1888.
[2] See Constitution Ordinance.

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1856.

10th November, 1853, create, upon the eastern frontier of the Colony, a certain division for fiscal purposes of the Colony, called the division of Queen's Town: And whereas it is expedient that all duly qualified persons in the said division should be entitled to be registered as voters, and to vote at elections of members of the Legislative Council, and of members of the House of Assembly; and that for such purpose, the said division of Queen's Town should be united to, and form part of, the electoral division of Victoria: 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:—

Repugnant part of Constitution Ordinance repealed.

1. So much of the Ordinance for constituting a Parliament for this Colony, amended, ratified, and confirmed by the Order of Her Majesty in Council, bearing date the 11th day of March, 1853, as shall be repugnant to or inconsistent with the provisions of this Act, shall be repealed, and is hereby repealed accordingly.

Electoral division of Victoria to include Queen's Town. Voters residing in Queen's Town to be registered as of Victoria, and to vote accordingly.

2. The electoral division of Victoria, in the said Ordinance mentioned, shall, for all the purposes of the said Ordinance, include the division of Queen's Town: and all persons in the said division of Queen's Town, duly qualified as in the 8th section of the said Ordinance required, shall be entitled, at and from the first ensuing registration of voters throughout the Colony, to be registered as voters in the electoral division of Victoria, and to vote at elections of members of the Legislative Council and of members of the House of Assembly.

Act, when to commence.

3. This Act shall take effect from and after the promulgation thereof.

No. 12—1856.] [June 4, 1856.

ACT

For Better Securing in certain cases the Inheritances of Minors. (1)

Preamble.

WHEREAS, from ignorance, neglect, and other causes, it not unfrequently happens that the survivor of two spouses, who at the time of the death of the first dying of them, had children of their marriage, under age, not merely fails to settle for, or secure in proper time, and in the usual way, the inheritances accruing to such minor children out of the estate of their deceased parent, but proceeds to marry again, without settling for or securing such inheritances, whereby confusion and litigation are likely to be created, and such minors are exposed to the risk of injury and loss: And whereas, whilst it is the duty of the several Matrimonial Courts of the Colony, before which all persons about to be married by special licence are bound to appear, to ascertain, in the case of widowers and widows, having minor children of a former marriage,

[1] See Order in Council, September 7, 1838, and Notes.

Digitised by the University of Pretoria, Library Services, 2016

No. 12—1856.

that the inheritances which have devolved upon such minors have been settled for or secured, no provision exists of the same nature or with the same object in regard to surviving spouses who are minded to marry not by special licence, but by banns: And whereas, it is expedient to make such provision: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

A widower or widow shall, prior to re-marriage pay to the Master of the Supreme Court the inheritance due to their minor children, or secure such inheritance by a deed of "kinderbewys."

1. As often as any widower or widow, [1] being the parent of any minor child, entitled to claim from such widower or widow any inheritance out of the estate of his or her deceased spouse, shall be minded to contract another marriage, and to that end shall be desirous to have the banns of such intended marriage published by any minister of religion or marriage officer in this Colony, such widower or widow, or his or her agent, shall obtain and deliver to the Resident Magistrate of the district in which such banns are intended to be published, a certificate, signed by the Master of the Supreme Court, certifying that the amount of inheritance due to such minor child as aforesaid, from and out of the estate of his or her deceased parent, has been paid into the Guardians Fund, or otherwise, a certificate from the Registrar of Deeds, certifying that the customary bond or obligation, commonly called a "kinderbewys," is registered in the debt registry, for securing the amount of such inheritance: Provided that should it be necessary to publish the banns of any such marriage in more districts than one, then one such certificate as aforesaid shall be delivered to the Resident Magistrate of each district; or otherwise one such certificate shall be delivered to one of the said Magistrates, and a copy thereof, certified by such Magistrate to be correct, shall be delivered to the other Magistrate: And provided, also, that the said Master and the said Registrar shall, upon request, grant such certificates as aforesaid, without fee or charge. [2]

Magistrate's certificate.

2. The Resident Magistrate, upon receiving such a certificate or attested copy of certificate as aforesaid, shall deliver to the party delivering the same to him a certificate signed by him, certifying that it has been made to appear to him, that no reason exists, arising out of unsecured inheritances of minor children, why the banns of marriage of the widower or widow who shall be named in such certificate shall not be published.

In case of doubt or question as to minor's title to inheritance.

3. In any case in which any widower or widow, having any minor child who is alleged not to be by law entitled to any inheritance from or out of the estate of his or her deceased parent, shall be minded to contract another marriage, such widower or widow shall apply to the Resident Magistrate of the district in which banns are desired or required to be published, for a certificate, of the like tenor as that in the last preceding section mentioned:

[1] See also § 14, Proc. 23, May, 1805, and § 22, Ord. 105.
[2] But see Sched. 2, Act 20, 1884.

Digitised by the University of Pretoria, Library Services, 2016

No. 12—1856.

Provided that in any such case, involving matter of law, which the said Magistrate shall decline to take upon him to determine without legal advice, he shall require the party applying for such certificate to state, under the inspection and subject to the correction of such Magistrate, a case for the written opinion of the Attorney-General of the Colony, and to obtain such opinion for the information of such Magistrate, who shall grant his certificate as aforesaid, in case the said Attorney-General shall be of opinion that the minor child or children in question are not, by law, entitled to any inheritance from or out of the estate of its or their deceased parent; but who shall withhold such certificate in case the said Attorney-General shall not give such an opinion as aforesaid, as also in case no opinion of the said Attorney-General shall be produced: Provided, further, that when any such banns as in this section mentioned are desired or required to be published in each of two districts, a certificate from each Resident Magistrate shall be necessary; and provided, also, that it shall be lawful for any such Magistrate to grant his certificate, although he shall not have received the certain other certificate in the first section mentioned,—in case it shall be made to appear to him by the party applying for his certificate that the value of the joint estate in question in such case was under one hundred pounds sterling.

If magistrate refuse certificate, application to judge in chambers.

4. In any case under this Act in which the Resident Magistrate shall see cause to withhold his certificate aforesaid, it shall be lawful for the person who shall have applied for such certificate to apply to a Judge of the Supreme Court, in Chambers, for an order upon such Magistrate, to grant such certificate, and thereupon it shall be lawful for such Judge, in the most summary and least expensive manner, to inquire into the case, and after inspecting such documents, and calling for such proofs, as to him shall seem needful, to grant or refuse such order, as to him shall seem expedient: Provided that in no case shall the costs of making any such order be awarded against the Magistrate, unless the necessity for such order shall have arisen from his wilful neglect or default.

Certificate has no legal force except as authorising publication of banns.

5. No such certificate as aforesaid, whether made upon a Judge's order or not, shall be of any force or effect in law, except simply to authorise the publication of banns of marriage; and all matters and things regarding the rights, inheritances, estates, or interests of minors, and of all others, shall be judged of, after the granting of such certificate, precisely as if the same never had been granted.

Banns not to be published until such certificate is produced.

6. (1) No minister of religion or marriage officer shall publish the banns of any person whom he shall know to be a widower or widow, having a minor child or children of a former marriage, until there shall be delivered to him such a certificate as aforesaid, signed by the Resident Magistrate of the district in which such

[1] As to Marriages by Special Licence see § 6, Act 9, 1882.

Digitised by the University of Pretoria, Library Services, 2016

banns are desired or required to be published; and if any such minister or marriage officer shall discover, after one or more publications of banns, that either of the parties intending to marry is such a widower or widow as aforesaid, then such minister or marriage officer shall suspend the further publication of such banns until he shall be furnished with such certificate as aforesaid: Provided, also that if such discovery as aforesaid shall be made after the publication of banns shall have been completed, such minister or marriage officer shall not solemnize the marriage until such certificate shall have been delivered to him. No. 13—1856.

7. This Act shall commence and take effect from and after the promulgation thereof. Act when to commence.

No. 13—1856.] [June 4, 1856.

ACT

For Constituting the District of Tulbagh a Division.

WHEREAS the district of Tulbagh now forms part of the Electoral Division of Worcester, and whereas it is expedient that the District of Tulbagh should be constituted a separate division for fiscal purposes, but continue, nevertheless, to belong to the Electoral Division of Worcester for electoral purposes: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:— Preamble.

1. So much of the 7th section of the Ordinance for constituting a Parliament for this Colony [1] as is repugnant to or inconsistent with this Act is hereby repealed. Repugnant section of Constitution Ordinance repealed.

2. From and after the first day of January, one thousand eight hundred and fifty-seven, the district of Tulbagh, according to its existing limits, shall become and be a division for fiscal purposes, as well as a district, and shall cease, for fiscal purposes, or any purpose other than that in the next succeeding section mentioned, to belong to the division of Worcester; and from and after the date aforesaid, the Divisional Council for the time being of the now existing division of Worcester shall stand dissolved, and the provisions of the Act No. 5, 1855 [2] entituled "An Act for creating Divisional Councils in this Colony," shall apply to the divisions of Worcester and Tulbagh respectively, as then limited and bounded, precisely as if no Divisional Council in the existing division of Worcester had ever been elected: Provided also that the registered voters for the Electoral Division of Worcester resident within the Fiscal Division of Tulbagh, and none other, shall be entitled to vote at any election of members of the Divisional Council for the division of Tulbagh. Tulbagh a fiscal division. Divisional council of Worcester dissolved. Separate councils for Worcester and Tulbagh.

[1] Constitution Ordinance.
[2] Repealed by Act 4, 1865, which in its turn is repealed by Act 40, 1889.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1856.

Tulbagh to remain part of electoral division of Worcester.

3. Notwithstanding the erection of the said district into a division as aforesaid, the said district and division of Tulbagh shall continue for electoral purposes, to form part of the Electoral Division of Worcester, precisely as if this Act had not been passed, and as if the said district had not been erected into a division.

Act when to commence.

4. This Act shall commence and take effect from and after the promulgation thereof.

No. 14—1856.] [June 4, 1856.

An Act for amending the Act No. 5, 1855, entituled "An Act for Creating Divisional Councils in this Colony."

[Repealed by Act 4, 1865.]

No. 15—1856.] [June 4, 1856.

ACT

To Amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices. (1)

Preamble.

WHEREAS it is expedient to amend and consolidate the laws regulating the relative rights and duties of masters, servants, and apprentices: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Repuguant laws repealed

1. From and after the commencement and taking effect of this Act, the Ordinance entituled "An Ordinance for amending and consolidating the Laws regulating the relative rights and duties of Masters, Servants, and Apprentices," enacted by the Governor of the Cape of Good Hope, with the advice of the Legislative Council thereof, and bearing date the 1st of March, 1841, and all Orders in Council confirming or continuing the said Ordinance (except in so far as the said Ordinance, or any of the said orders, repeals any former law or usage), the Act No. 4, 1855, entituled "An Act for encouraging the importation of European Labourers into this Colony," and all other laws and regulations repugnant to any of the provisions of this Act, shall be repealed, and the same are hereby repealed accordingly.

Interpretation clause.

2. For the purposes and within the meaning of this Act, unless it be otherwise specially provided, or there be something in the subject or in the context repugnant to such construction,—1st, The word "Governor" shall mean the officer lawfully administering the Government of this Colony; 2nd, The word "servant" shall be construed and understood to comprise any person employed for hire, wages, or other remuneration, to perform any handicraft

[1] See Acts 18, 1873; 28, 1874; 7, 1875; 35, 1886; 8, 1889; 30, 1889. Extended by Proclamation No. 206 of 1893 to all the Native Territories.

Digitised by the University of Pretoria, Library Services, 2016

or other bodily labour in agriculture or manufactures, or in domestic service, or as a boatman, porter, or other occupation of a like nature; 3rd, The word "apprentice" shall be construed and understood to comprise any person indentured or bound by any contract of apprenticeship made according to law, as apprentice to any other person; 4th, The word "master" shall be construed and understood to comprise any person, whether male or female, employing for hire, wages, or other remuneration, any person falling within the beforementioned definition of the word "servant," or to whom any person falling within the beforementioned definition of the word "apprentice" shall have been indentured or bound by any contract of apprenticeship, made according to law; 5th, The words "contract of service" and "contract of apprenticeship" shall respectively be construed and understood to comprise any agreement, whether oral or written, whether expressed or implied, which any person falling within the beforementioned definitions of the word "servant" and "apprentice" shall respectively have entered into or made, according to law, with any person falling within the beforementioned definition of the word "master," for the performance of any work or labour of any kind hereinbefore mentioned; 6th, The words "Magistrate" and "Magistrates" shall be construed and understood to comprise the Resident Magistrates duly appointed for the different districts of this Colony; 7th, The words "this Colony" shall be construed and understood to comprise all islands, and other territories whatsoever, which are dependent on the Colony of the Cape of Good Hope, and subject to the Government thereof; 8th, The word "month" shall be construed and understood to comprise the period of one calendar month; 9th, The words "father," "parent," "relative," "husband," and "wife," shall be respectively construed and understood to comprise reputed fathers, parents, relatives, husbands, or wives, as well as actual parents and relatives, and lawful husbands and wives; 10th, The words "officer" and "proper officer," when used with reference to the attestation or making of contracts of service of apprenticeship, or to the transfer and assignment of apprentices, shall be construed and understood to comprise every person who shall have been appointed by the Governor to attest or make such contracts; 11th, All words in this Act, and in the various rules and regulations hereinafter enacted, importing the singular number or the masculine gender only, shall be construed and understood to include several persons as well as one person, and females as well as males.

CHAPTER I.

In cases not provided for, the law of bi-lateral contracts in general to prevail.

1. Notwithstanding the repeal, by the Ordinance aforesaid, of the laws thereby repealed, the Courts of this Colony, in all cases which are now or shall be hereafter depending before the same,

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1856.

arising out of or respecting the formation or dissolution of contracts of service or apprenticeship, or touching or concerning any rights, duties, obligations, powers, liabilities, or other matters or things arising out of or proceeding from any contracts of service or apprenticeship, or any of the mutual relations subsisting between masters and servants or apprentices, shall respectively try, judge, and determine the said causes according to the law of this Colony, respecting and applicable to bi-lateral contracts in general, except when other provisions touching and concerning any such matter and thing as aforesaid shall have been made in this Act, or by any other law not repealed by the Ordinance aforesaid.

Repeal aforesaid not to annul contracts entered into previously to the taking effect of this Act.

2. The beforementioned repeal shall not annul or affect any contracts of service or apprenticeship entered into previously to the time when this Act shall take effect, and which, under and by virtue of, and according to any laws in force within this Colony on the day previously to the taking effect of this Act, were then subsisting legal and valid contracts.

Contracts liable to be set aside on account of fraud, &c.

3. Nevertheless any such lastmentioned contract of service or apprenticeship, to be performed within this Colony, shall be liable to be set aside by any Magistrate having jurisdiction over the parties, or any competent Court, upon reasonable proof being made to the satisfaction of such Magistrate or Court, that either of the parties to such contract was induced to enter into the same by any fraud, misrepresentation, or concealment.

CHAPTER II.

On the formation of Contracts of Service.

Contracts entered into out of the colony, how to be certified.

1. No contract of service made elsewhere than within the limits of this Colony shall be of force or effect within this Colony, except the same shall have been made in writing, and be duly certified by the British Consul, or other similar officer, at the place where the same was made, or if there be no such officer, then by such Magistrate of such place, or other proper authority; but contracts not so certified shall, notwithstanding, have force and effect in this Colony, upon other proof of such contract, to the satisfaction of the Magistrate before whom the same shall come in question.

Every contract shall be deemed to be entered into for one month, unless otherwise specified: except the servant be non-resident, or shall work by the piece.

2. Every contract of service, whether oral or written, the term of endurance of which shall not have been expressly specified and limited by such contract, shall, in the absence of sufficient proof to the contrary, be deemed and taken to be for the term of one month from the commencement thereof; save and except contracts for service in any trade or handicraft, whereby it shall not have been stipulated that the servant shall, during the term thereof, reside in the house of or on the premises of the master, which shall be deemed and taken to endure only until the night of Saturday of the week on any day of which it shall have been stipulated that

Digitised by the University of Pretoria, Library Services, 2016

the service shall commence; and contracts for executing any particular piece of work specified in the contract which shall expire so soon as the work is finished, and when the work is not finished within a reasonable time, may be put an end to by the master, after the lapse of a period of time reasonably sufficient for finishing such work.

No oral contract to be binding for more than one year, and not valid unless the time to be entered upon shall be stipulated.

3. No oral contract of service shall be valid or binding for any longer term than one year from the period fixed for the commencement of the service stipulated for by such contract; and no such oral contract shall be valid or binding in any case, unless it be stipulated in such contract that the service, thereby stipulated for, shall be entered upon by the servant within one month from the date of the contract.

4. [Repealed by § 1 Act 18 of 1873.]

No contract to be valid or binding for a longer period than five years.

5. No such contract so entered into before a Magistrate or other proper officer, shall be valid or binding for a longer period than five years from the date thereof, if entered into within this Colony; and no such contract shall endure longer than five years from the day of the commencement of the service, when such contract shall be entered into elsewhere than in this Colony.

Form of contract of service.

6. All contracts of service entered into before a Magistrate or other proper officer, within the limits of this Colony, shall be drawn up as nearly as possible in the following terms:

Be it remembered,—that on this day of in the year of our Lord , A. B., of , and C. D., of , appeared before me, E. F. (Resident Magistrate, or officer specially appointed by the Governor to attest contracts of service for the district, as the case may be, with his usual description), and in my presence, signed their names (or made their marks, as the case may be) to the following contract of service: The said A. B., agrees to hire the service of the said C. D., and the said C. D. agrees to render to the said A. B. his service at all fair and reasonable times, and in the capacity of for commencing on the day of instant, and terminating on the day of , in the year . And it is further agreed that the said A. B. shall pay to the said C. D., as such servant as aforesaid, wages after the rate of by the day (week, month, or year, as the case may be), and that such wages shall be paid on the day of each week (or month, as the case may be).

(Here add any special agreement compatible with the law, and not adverted to in this form).

(Signed) A. B.
C. D.

The preceding agreement was signed by the abovenamed parties, in my presence, on the day and year above

Digitised by the University of Pretoria, Library Services, 2016

No 15—1856.

written, voluntarily, the same being, as far as I am able to judge, understood by them respectively.

(Signed) E. F.

Resident Magistrate (or officer specially appointed by the Governor to attest contracts of service for the district).

In the absence of special agreement, one month's notice is required, before a contract shall be deemed to have expired.

7. No contract of service for a month or any longer period shall be deemed and taken to have expired until at least one month's notice, calculated from, and inclusive of, the day of giving such notice, shall have been given by either of the parties to the other party, unless it shall have been expressly stipulated that no such notice shall be necessary; and when the service shall be a weekly one, a week's notice shall be necessary: Provided that nothing herein contained shall be construed so as to enable any party to any contract of service to determine the same without the consent of the other party, before the expiration of the term of service originally agreed upon.

How such notice may be waived.

8. When any such notice as is hereinbefore mentioned shall have been given by either of the parties to the other, and the master shall suffer the servant to remain, or the servant shall remain in his service after the day on which according to the notice given the contract of service should expire, such notice shall be deemed and taken to have been withdrawn and passed from, and the contract of service shall continue to endure as long, and in like manner, as if no such notice had been given unless it shall have been otherwise expressly and specially agreed between the parties.

Servants hired to reside on the premises to be supplied with food and lodging, unless otherwise agreed upon.

9. In all contracts, whether oral or written, by which it is stipulated that the servant shall reside on the premises of his master, and wherein it shall not be expressly provided that the master is not to supply food and lodging, the master shall be deemed and taken to have engaged to provide such servant, and such of his family (if any) as shall have been included in the contract, in manner hereinafter mentioned, in section twelve of this chapter, with lodging and sufficient food of good and wholesome quality, during the continuance of the contract.

When rate of wages not specified, the magistrate to fix such rate by custom.

10. In case of any action for non-payment of wages, due and payable by virtue of any contract of service, being brought before any Magistrate, or other competent Court by any servant, and when the rate of wages at which such contract was made shall not be proved to the satisfaction of such Magistrate or Court, such Magistrate or Court is hereby required to fix the rate of wages at that usually paid in the district or place in which the service for which the wages are claimed was performed, reference being had to the skill and ability of the servant, and to give decree accordingly.

Provision in case of sickness.

11. When any servant shall, in consequence of any sickness or accident, which shall not have been occasioned by his own fault, be rendered incapable of performing his master's service, he shall,

Digitised by the University of Pretoria, Library Services, 2016

in the absence of any special provision in the contract to the contrary, be entitled to receive his full wages during the first month of such incapacity, and every other benefit, privilege or advantage, whether for himself or his family, stipulated for in the contract of service during the whole period of such incapacity, unless the stipulated term of service shall sooner expire, or unless the period of such incapacity shall extend to a longer period than two months; in which latter case the master shall be entitled, if he shall so think fit, at the expiration of such two months, or at any time afterwards during which such incapacity shall uninterruptedly continue, to treat and consider the contract of service as rescinded and determined, to all intents and purposes whatsoever, he, the said master, being however bound, before being so entitled to consider the said contract as determined, to make good all stipulations therein mentioned and agreed upon, up to and for the day on which he shall declare his intention to treat and consider the said contract as rescinded, with, however, the limitation as to wages, hereinbefore provided: Provided, however, that if the master shall not think fit, at or after the expiration of such two months as aforesaid, to treat the contract of service as determined and rescinded, but shall permit the servant to remain in his service, such servant shall not be entitled to claim any portion of the wages beyond wages for the first month as aforesaid, or any other benefit or advantage stipulated for in the contract of service (save and except such food and lodging for himself and family as by the contract of service the master had engaged, or shall be deemed and taken to have engaged, to provide him with), for any period subsequent to such two months during which such incapacity as aforesaid shall continue: And provided, always, that no servant hired by any contract expressly to perform service in any trade or handicraft, shall be entitled to receive the wages, or any other benefit or advantage stipulated in the contract of service, for any part of the time during which he shall have been rendered incapable of performing his master's work by any such sickness or accident as aforesaid, save and except such food and lodging for himself or family as by the contract of service his master has engaged to provide him with, such food and lodging to be provided during such incapacity as aforesaid, unless the contract of service shall sooner expire, or unless such incapacity shall extend to a period longer than one month, in which latter case the master shall be entitled, if he shall so think fit, under the same powers and conditions in every respect as in this section before set forth, to treat and consider such last-mentioned contract of service as absolutely, and, to all intents and purposes, determined and rescinded.

Contracts for the services of husband, wife, and children, how to be entered into.

12. All contracts of service stipulating for the services of the wife of any servant, together with those of her husband, shall be made or executed by her in like manner as the same shall be made and executed by her said husband: And it shall be lawful for

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1856.

the father, or, in the event of his death or absence, then for the mother, of any child under the age of 16 years, to contract for the service of such child together with his own, in like manner as such person may contract for his own services; and when such contract shall be in writing, the name and age of every such child shall be clearly set forth and specified in the contract: Provided always, that nothing herein contained shall give to the master of any such parent any claim on the services of any such child beyond the period for which the parent shall be engaged, nor beyond the period when such child shall attain the age of 16; nor to the services of any other child of the contracting parent, whether under colour of such lastmentioned child having been fed or clothed by the master, or having been born while the parent of such child was in the said master's service, or under any other pretence whatsoever.

One month after the death of the husband, contract to be null and void with regard to the services of the wife and children.

13 On the death of any person being at the time, together with his wife and any child, under contract as aforesaid, the contract shall become null and void, in respect to such wife and children, at the expiration of one month after the death of such person.

Wife and children of the servant not to reside on the premises of the master, unless stipulated in the contract, nor the master to claim their services by reason merely of their residence on the premises.

14. It shall not be lawful for any person entering into any contract of service by which it is stipulated that the servant shall himself reside on the premises of the master, to keep his wife and children on the premises of his master, unless when the master shall have also stipulated in such contract that this shall and may be done; Provided that, when the master shall have so stipulated, it shall not be lawful for him to claim the services of any such wife or child by reason merely of their residence on his premises.

An agricultural labourer or herdsman to remain in his master's service during public commotion or invasion of the colony, or if called out for burgher service, the master to provide for his family.

15. When, in times of public commotion or invasion of the Colony, the Governor shall deem it expedient to call out for service any portion of the burgher force of any division of the Colony, under the Act No. 16, of 1855, (1) every person under contract of service under this Act, as an agricultural labourer or herdsman, for any period not less than one month, to any master residing in such division, shall, if the period of service contracted for should expire during the persistence of such commotion or invasion, notwithstanding such expiration, be bound to continue in the service of his employer, on the terms of the contract under which he had been serving, until the cessation of such commotion or invasion, and until the services of the burghers of such division shall be dispensed with for the occasion: Provided that, if any such servant shall at any time be called out for burgher service under the said Act No. 16, 1855, (1) the master of such servant shall, during the absence of such servant on such duty, be bound to permit the family and property of such servant to remain upon his premises, and to provide for the same, in the same manner as he would have been bound to do by the contract of service, if such servant had not proceeded to the performance of such duty.

[1] Act 16 of 1855 is repealed by Act 7 of 1878.

Digitised by the University of Pretoria, Library Services, 2016

CHAPTER III.

No. 15—1856.

On the Apprenticeship of Children. (1)

Contracts to be in writing.

1. No contract of apprenticeship shall be valid unless, at the time of its being entered into, it shall have been reduced into writing, and signed with the name, or, in case of illiterate persons, with the mark, of the master and parent, or guardian, as the case may be, of the apprentice, and also of the apprentice if of the full age of 16 years.

Children under 16 to be apprenticed to agricultural labour only till that age.

2. No contract of apprenticeship by which any child under 16 years, if a female, and 18 years if a male, may be apprenticed as an agricultural or domestic servant, shall be valid for any longer period than until such child shall have attained the full age of 16 years, if a female, and 18 years, if a male.

Children, not destitute, above 10 and under 16 years, may be apprenticed till 21

3. Children not being in a state of destitution, above the age of 10, and under the age of 16 years, may be apprenticed by their fathers, or, in the case of fatherless children, by their mothers, or, in case of orphans, having guardians, by their guardians, until they shall have attained their 21st year, or for any shorter period, and due provision for the maintenance, clothing, and instruction of every such apprentice shall be made in the contract of apprenticeship: Provided always, that every contract of apprenticeship, whereby any child under the age of 10 years, not being in a state of destitution, shall be apprenticed, or attempted so to be, shall be null and void to all intents and purposes whatsoever; save and except a contract of apprenticeship executed by the parent or guardian, and the master, in the presence of a Resident Magistrate and attested by such Magistrate to be a contract which appears to him to be for the benefit of the child.

Persons of 16 years and upwards may, by their own consent, be apprenticed for five years.

4. Any minor of the full age of 16 years or upwards may, by his own consent, be apprenticed for any term not exceeding five years to any trade, in the practice of which any peculiar art or skill is required, but not otherwise; Provided always, that in the case of such minor or minors being females, they may, with such consent, be apprenticed to domestic service for any such period as last aforesaid.

Resident magistrate to be the guardian, *ex officio*, of minors who have no parents or guardians

5. The Resident Magistrates of the Colony shall be, *ex officio* the guardians, within their respective districts, of all such minors as in the last preceding section mentioned, which minors have no parents or guardians within the Colony, or none discoverable, and such Resident Magistrates may lawfully indenture such minors.

Destitute children, how to be treated in the first instance.

6. When any parent or parents shall abandon or desert, or by death shall leave, in a state of destitution any child under the age of 16 years, the person with whom such child shall have been so left, or by whom such child shall be found in such state of destitution, shall, with all convenient speed, give notice thereof

(1) See also § 4, Act 7 of 1879.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1856.

to the nearest Field-cornet, or directly to the Magistrate, in order that means may be taken for providing for the maintenance and education of such child, by apprenticeship, in manner hereinafter mentioned; and if any person shall be duly convicted by any Magistrate or other competent Court of detaining in his possession or employment any such destitute child as aforesaid for a longer period than one month without giving such notice, every such person shall forfeit and pay, at a rate not exceeding twenty, nor less than five shillings for each month that such child shall have been detained; and every such sum so forfeited shall be paid into the Public Treasury; and all reasonable expense incurred in giving such notice, and for the maintenance of such child until removed by the proper authority, shall be paid from the said treasury.

Destitute children, how to be apprenticed.

7. The Field-cornet or Resident Magistrate shall, upon receiving such notice as aforesaid, cause the child to be removed to the residence of such Magistrate, and the said Magistrate shall, unless when it shall be made to appear to him that the child is actually not in a state of destitution, or is able to earn his own livelihood (in either of which events he shall decline to act in the case), cause such child to be lodged and provided for at the public cost, until he shall have sufficiently ascertained by inquiry, which he is hereby required to cause to be made, whether such child have any relative, fit, proper, and willing to maintain and take care of him, and if he shall discover any such relative or relatives, he shall apprentice such child, either to the sole relative, or to that one among the several relatives of whom it shall appear most for the interest of such child to become the apprentice; and if no such fit and proper relative be found, he shall apprentice him, as soon as a suitable opportunity can be found, to some fit and proper person, until he shall have attained his eighteenth year, or in the case of females, until their sixteenth year, or for any shorter period that may be deemed advisable. And every such Magistrate shall give public notice in the *Government Gazette* of the name of every such apprentice and of the person to whom he shall have been apprenticed.

Maintenance and wages to be stipulated on behalf of such destitute children when apprenticed.

8. Due provision for the maintenance, clothing, and instruction of every destitute child so apprenticed shall be made in every such contract of apprenticeship, and suitable wages shall also be therein stipulated for, whenever such Magistrate or other proper officer shall deem that the child's service in any part thereof will be worth wages; and in apprenticing every such child, either to a relative or stranger, it shall be the duty of such Magistrate or officer to make the best terms he can for such child.

Form of contract in apprenticing destitute children.

9. All such contracts for the apprenticeship of destitute children as aforesaid shall be drawn up as near as possible in the following terms:

District of

This contract of apprenticeship of A. B. (here insert the designation of A. B. as accurately as possible), a destitute

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1856.

child, witnesseth that C. D. (here describe C. D. as the Resident Magistrate, or as the officer specially appointed by the Governor to attest such contracts of apprenticeship for the district, as the case may be), pursuant to the Act No. , in that case made and provided, does by these presents apprentice the said A.B., aged years, or thereabouts, to E. F. (here insert the designation of E. F. as accurately as possible), with him to dwell and serve as an apprentice until (or for, as the case may be—here insert the age at which the apprentice is to determine, or the term for which it is to endure), during all which time the said apprentice shall faithfully and honestly serve and obey his master; and the said E. F. for himself, his heirs, and executors, does hereby covenant and agree with the said C. D., for and on behalf of the said A. B., that he, the said E. F., shall teach and instruct, or cause to be taught and instructed, the said A. B., in the (here insert the particular trade or occupation), in the best manner that he can, during the said term, and shall also duly provide, or cause due provision to be made, for the education and religious instruction of the said A. B., to the best of his ability, and shall, during the said term, provide the said apprentice with suitable and sufficient food, washing, lodging, and all other things necessary and fit for such apprentice, and shall also pay, as wages, to the said apprentice, the sum of (here insert the terms at which the wages stipulated are to be payable); and also, the said E. F. shall not assign or transfer the said apprentice to any other person during the said term, without the consent, in writing, first had and obtained, of the Magistrate or other proper officer having power and authority to give such consent.

In witness whereof, we, the said C. D. and E. F., have set our hands at on this the day of 18

(Here insert the signatures or marks of the parties.)

In presence of (here shall be inserted the signatures of at least two witnesses, who have witnessed the execution of the contract).

Covenants in such contracts to endure to successor in office of the magistrate in whose favour they are made.

10. In case the Magistrate or other proper officer by whom the contract for the apprenticeship of any such destitute child as aforesaid shall have been entered into as aforesaid shall, by death or otherwise, cease to act as such Magistrate or officer, then, and in that case, all the provisions and covenants in such contract of apprenticeship contained shall endure in favour of the successor of such Magistrate or officer, duly appointed, and such successor shall and may sue upon and take all other benefit and advantage whatsoever of such provisions and covenants, in like manner as if such

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1856.

successor had been himself the person by whom such contract as aforesaid was originally made.

Such contracts of apprenticeship shall be in three parts,—one to be given to the master, one to the apprentice, and the third to be filed in the office of the magistrate.

11. Every such last-mentioned contract of apprenticeship shall be made and signed as aforesaid in three parts, one of which parts shall be given to the master, and one to the apprentice, and the third shall be filed and registered in the office of the Magistrate by whom it is attested; or where it shall have been attested by any other officer specially appointed as aforesaid, an entry of it shall be made in a book to be kept by him for that purpose, and the said third part shall be transmitted by him to the Magistrate of the district in which the master by whom such contract has been made usually resides, to be filed and registered in his office.

Apprentice not to be assigned without consent of magistrate, or when apprentice shall be 16 years, without his own consent.

12. No master shall or may assign or transfer any apprentice, having been apprenticed as aforesaid by any Magistrate or other proper officer as aforesaid, to any other person, without the consent, in writing, first had and obtained, of the Magistrate or other proper officer of the district in which such master resides; and in case such apprentice shall be of the age of sixteen years or upwards, without the consent of such apprentice himself.

CHAPTER IV.

Respecting the effects of the Death, Insolvency, and change of Residence of the Master; and other circumstances dissolving Contracts of Service without notice.

Effect of death or insolvency of master upon the contract of service.

1. In the event of the death or insolvency of the master, the contract of service shall, except as hereafter excepted, cease and determine after one month from the date of such death or insolvency, in case the stipulated term of service shall not sooner expire; and up to the period of such determination of such contract, such servant shall be entitled to claim his full wages and every other remuneration specified in such contract, and shall be bound, if required, to perform his service for the person legally representing the deceased or insolvent master.

Effect of death or insolvency of master upon the contract of apprenticeship.

2. In the event of the death or insolvency of the master of any apprentice, or in the event of the apprentice being prevented, in the manner hereinafter in the 6th section of this chapter particularly mentioned, from performing his service or fulfilling his engagement at the place where the same ought to be performed or fulfilled, such death, insolvency or prevention shall be a complete discharge of the contract of apprenticeship, and if any sum shall have been really and *bonâ fide* paid by or on behalf of such apprentice as aforesaid, it shall be lawful for any Magistrate having jurisdiction, or other competent Court, upon proof of such payment, to order, in a summary manner, any sum which to the said Magistrate or Court shall seem reasonable to be paid to or for the use of such apprentice as aforesaid, by any such master as

Digitised by the University of Pretoria, Library Services, 2016

aforesaid, or his legal representative; regard being had, however, in estimating such sum, to the amount of the sum originally paid by or on behalf of such apprentice, and to the time during which, such apprentice continued in the service of such master as aforesaid; Provided always, that every such apprentice shall be entitled to his full wages, or other remuneration, which may have become due previous to such dissolution of the contract of apprenticeship.

Effect of death or insolvency of master where apprentice is under or of the age of 16.

3. In the event of the death or insolvency of the master of any child, who having been in a state of destitution, shall have been apprenticed by a Magistrate or other proper officer in the manner hereinbefore set forth, it shall be the duty of such Magistrate or other proper officer, in case such apprentice shall, at the time of the death or insolvency of his former master, be under the age of 16 years, and unable to support himself, to retake the charge and care of such child; and it shall be deemed expedient, to apprentice again the said child for any term within the limits prescribed by this Bill for the duration of apprenticeship to such fit and proper person as such Magistrate or other proper officer and such child, if of the age of 16 years or upwards, shall mutually approve of and agree upon; Provided that when such child has not attained the said age of 16 years, his consent shall not be necessary in any case.

Widow of deceased master may adopt the contract of service.

4. The wife of the deceased master of every servant or apprentice, hired or contracted to perform service as a domestic or agricultural servant, is entitled, if she shall so think fit, to claim the service of such servant or apprentice during the full period of the stipulated term of service, provided she shall consent to perform, and shall perform, all the stipulations of the contract in favour of the servant or apprentice which the master was bound to perform

On death of servant or apprentice, wages to be paid up to period of death.

5. In the event of a servant or apprentice dying during the currency of the stipulated term of service, his heirs, executors, or other legal representatives, are entitled to claim from the master the full wages and other remuneration due to such servant or apprentice for the period which he had served previously to his death, and no more.

Effect of change of residence of master upon the contract of service or apprenticeship.

6. No servant or apprentice (save as hereafter provided as to persons apprenticed as destitute children), hired or contracted to perform service at the residence of, or at any particular place of trade or business, occupied by his master, is, in the event of his master's removing his residence, or place of trade or business, out of the town, or (where such place is not in any town) from the place in which by the contract such servant or apprentice was bound to perform his service, to any greater distance than two miles from such town or place where, by the stipulations of the contract, such servant or apprentice is not bound to reside in the house or on the premises of his master, or out of the district of such town or place where such servant or apprentice is bound

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1856.

to reside in the house or on the premises of his master,—bound to perform his service at the place to which his master shall have removed his residence or place of trade or business, without the consent of such servant, or of the parents or guardians of such apprentice;—but such consent shall in all cases be deemed and taken to have been given whenever it shall be proved that such servant or apprentice, being one not bound to reside in the house or on the premises of his master, has performed, or in the case of an apprentice, been knowingly permitted and allowed by his parent or guardian to perform, at the new residence or place of trade or business of his master, any service to his master of any kind which he was bound by the contract to perform,—or being one bound to reside in his master's house or premises, has gone to and remained, and in the case of an apprentice, been permitted and allowed by his parent or guardian to go to and remain in such house or on such premises, for one week after his master's removal thereto.

The master of an apprentice, who shall have been a destitute child, may remove such apprentice, with permission of magistrate.

7. The master of any apprentice who has been apprenticed to him in manner hereinbefore provided as a destitute child is entitled, without limitation or restraint, to remove such apprentice to and to exact the performance of the service stipulated in the contract wherever such master may have removed his residence or place of trade or business within this Colony, upon giving notice of his intention so to do before his departure to the Magistrate of the district which he is going to leave, and the Magistrate, upon receiving such notice, shall endorse the same on the third part of the contract of apprenticeship registered and filed by him; and on such removal taking place, forthwith transmit such third part to the Magistrate of the district to which such an apprentice shall be removed, to be by him duly registered and filed in manner hereinbefore provided.

Certain servants and apprentices bound to make certain journeys, if required.

8. No servant or apprentice, hired or contracted to perform domestic service, may lawfully refuse to accompany his master, or any of his family, by desire of his master, on any journey within this Colony, or in the course of such journey to perform every such service as, by reason of his contract of service or apprenticeship, he would be bound to perform in his master's house or on his premises; and no servant or apprentice may lawfully refuse to go on any journey within this Colony on which his master shall order him to go, or in charge of, or to drive, herd, tend, or take care of any carriage, horse, or any kind of cattle, the property or in the lawful possession of or under the lawful control of his master, which such servant or apprentice would, by reason of his contract of service or apprenticeship, be bound to ride, drive, herd, tend or take care of, or charge of, at his master's residence or on his premises: Provided always, that there shall be reasonable ground for believing that such journey may and will be performed before the expiration of the stipulated term of the

Digitised by the University of Pretoria, Library Services, 2016

service of such servant or apprentice; and that such master shall be bound to provide such servant or apprentice with food and every other thing which may be necessary and proper to enable such servant or apprentice to perform such journey, and to return to the residence or premises of his master before the expiration of the term of service.

No servant or apprentice shall be bound to accompany his master or go out of the Colony.

9. No servant or apprentice shall be bound to accompany his master or to go out of this Colony, without the special agreement or consent of such servant, or of the parent or guardian of such apprentice, or when such apprentice is of the full age of sixteen years, without, also, the consent of such apprentice.

Where servant not bound to accompany his master to new residence, contract dissolved by master's removal.

10. When any servant not being bound or obliged to accompany his master, or go to any place to which the master shall remove his residence or place of trade or business, or to which the master shall order such servant to go, shall decline or refuse so to do, the contract of service shall, from the date on which the servant shall be prevented from performing his stipulated service at the place where the same was to have been performed, stand dissolved, and such servant shall be entitled to claim from the master such wages or other remuneration, at the rate specified in the contract of service, as shall have been earned up to the time of the refusal beforementioned, together with wages and remuneration after the rate aforesaid for the period of one month additional, or until the expiration of the contract of service, in case it shall expire within one month from the time of such refusal: Provided always, that when notice of his intention to remove as aforesaid, or to send such servant as aforesaid, shall have been given by such master, such additional wages and remuneration shall not in any case be due or payable for any period longer than one month from the date of such notice.

Any special agreement touching change of residence to be good.

11. Nothing herein contained shall annul or affect any special agreement or stipulation, made in any contract of service or apprenticeship, whereby the servant or apprentice shall be bound to accompany his master, or to go to any place, to which the master shall remove his residence or place of trade or business, or order such servant or apprentice to go, and there perform the service stipulated in such contract.

Effect of marriage of female servant or apprentice, as to right of husband.

12. When any female servant or apprentice shall be lawfully married during the currency of her stipulated term of service, her husband may at any time subsequent to such marriage dissolve the contract of service or apprenticeship, and remove his wife from her master's service, if he shall think fit so to do, and shall be entitled to claim the wages and other remuneration which may have become due to her, for services previously to such removal, but shall be liable to her master for all damage which her master may sustain by such removal. But such damages shall in no case exceed the amount of the wages which she would have earned between the time of her marriage, and the time of the expiration

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1856.

of her service, had she continued in such service until such expiration.

Effect of marriage or pregnancy of female servant or apprentice, as to the rights of master.

13. The master of any female servant or apprentice, who during the currency of her stipulated term of service, shall marry or enter into any state which in this Colony is or shall be reputed to be the marriage state, shall, where such servant or apprentice is, by her contract of service or apprenticeship, bound to reside or to perform domestic service in the house or on the premises of her master, be entitled, at any time subsequent to such marriage or reputed marriage, to dissolve such contract and dismiss such servant or apprentice, and when such servant or apprentice is not by such contract bound to reside or to perform domestic service, in the house of the premises of her master, he shall be entitled to dissolve such contract, and dismiss such servant or apprentice from his service, whenever she shall, by reason of her pregnancy or delivery of a child, become disabled from performing the service which, by such contract she is bound to perform; but any such servant or apprentice so dismissed on account of her marriage, or entering into a state so reputed as aforesaid to be the marriage state, or of pregnancy or delivery of child, shall be entitled to claim from her master the wages and every other remuneration which shall have become due to her for her services previously to the date of such dismissal; and the master, before being entitled to dismiss such servant or apprentice, shall be bound to pay and satisfy the same.

CHAPTER V.

Of the Jurisdiction of the Resident Magistrates in cases between Masters and Servants and Apprentices.

Jurisdiction of resident magistrates in cases between masters and their servants and apprentices.

1. The Resident Magistrates within the Colony have jurisdiction in all cases arising in their respective districts between masters and their servants and apprentices, and with reference to their relative rights and duties, or to any matter or thing, or offence, as to which provision is made by this bill.

Resident magistrates have jurisdiction over all persons within their respective districts.

2. Every Resident Magistrate has jurisdiction in any such case as aforesaid, brought before him against any person being at the time within his district, whether the grounds of such case arose within the district or not, or whether the person against whom the case is brought has his usual residence or place of abode in that district or not; but the Magistrate shall, whenever it shall appear to him that any such case can be more conveniently tried or determined by the Resident Magistrate of any other district, dismiss such case, and, in the event of his doing so, when the servant or apprentice is accused of desertion, and when he shall have probable cause shown to him, by oath or affidavit, of any credible person, for believing this to be the fact, such Magistrate

Digitised by the University of Pretoria, Library Services, 2016

may, if he think fit, issue a warrant for the conveyance, under sure custody, of such servant or apprentice to the town or place where the Court of such other Magistrate is held; Provided the master shall undertake to pay the expense of such conveyance, and the Magistrate by whom the cause shall be ultimately tried and decided shall adjudge by which of the parties the said expenses shall be paid.

3. [§§ 3-9 repealed by § 21, Act 18 of 1873.]

Definition of punishment for servant refusing to resume his service after undergoing imprisonment.

10. If any servant or apprentice, whose contract of service or apprenticeship still subsists, shall, upon being discharged from prison after undergoing imprisonment under this Act, refuse or neglect, upon his master's request, to resume his service under his contract, he shall be liable to be imprisoned with or without hard labour for any period not exceeding one month, and so on for successive periods, not any of them exceeding one month, until he shall consent to resume, and shall resume, his service under his contract; and every such period of imprisonment, or so much thereof as the convicting Magistrate shall adjudge, may be with solitary confinement with or without spare diet, or with spare diet with or without solitary confinement: Provided, however, that no servant or apprentice shall, under this Act be imprisoned continuously, and without any intermediate resumption of service, under his contract, for longer than six months in all.

Period of imprisonment of servant to be added to the term of service stipulated in the contract.

11. When any period of imprisonment shall be undergone by any servant or apprentice for any offence under this Act, a like period shall be added to the term of service stipulated for in the contract of service or apprenticeship, as it subsisted when such imprisonment was commenced, so that such servant or apprentice shall be obliged to serve a further period equal to the period of his imprisonment, in addition to the term of service originally stipulated.

Period during which any servant shall have absented himself from the service of his master to be added to the term of service originally stipulated.

12. When the offence of which any servant or apprentice shall be convicted under this Act, shall be the offence of absenting himself from, or of departing from, the service of his master, then the period of his absence shall be added to the term of service originally stipulated, in like manner as in the last preceding section directed in regard to the period of imprisonment therein mentioned; and it shall be the duty of the Magistrate convicting such servant or apprentice, to ascertain, at the trial, the period of absence, and to certify the same by some writing under his hand, to be delivered to the master, and the period mentioned in such writing shall, by all Courts and in all places, be deemed to be added to the original term of service.

Compensation by servant for loss of or damage to property of master

13. As often as any property of the master shall be lost or damaged by means of any act or omission of his servant or apprentice, which act or omission is by this Act declared to be an offence, it shall be lawful for the Magistrate, should he so think fit, and the master shall thereto agree, to ascertain whether such

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1856.

servant or apprentice is able to make compensation for such loss or damage, and if so, to fix the amount of such compensation, and make such order as to the payment thereof, either at once or by instalments out of wages to be yet earned, or otherwise, as shall seem reasonable and just, and in the meantime, and until default made in such payment, or in the payment of such some instalment, to defer passing sentence upon the party offending; but such Magistrate shall preserve on record the evidence in the case, and, upon application of the master, and proof given, upon oath, of some such default as aforesaid, shall issue his warrant for the apprehension of such servant or apprentice, and shall pronounce upon him such sentence as, regard being had to the circumstances of the original offence, and to the degree in which such servant or apprentice has made, or failed to make, the compensation ordered, shall appear equitable and just.

Cancellation of contract for misconduct of servant.

14. As often as the master of any servant or apprentice, who shall be convicted of any offence under this Act, shall desire the cancellation of the contract of service or apprenticeship, the Magistrate, should he so think fit, may order the cancellation of the same, and the same shall be cancelled accordingly; Provided that such cancellation shall not prevent the execution of any sentence which the Magistrate may pronounce or may have pronounced upon the offender for his offence.

Cancellation of contract on groundless accusation by the master.

15. As often as the master shall have caused any servant or apprentice to be brought before the Magistrate to answer any charge preferred against him by such master, and such master shall fail in obtaining the conviction of such servant or apprentice, then the Magistrate, should he so think fit, may, at the desire of such servant or apprentice, order the cancellation of the contract of service or apprenticeship, and the same shall be cancelled accordingly.

16. [§§ 16-20 repealed by Act 18 of 1873.]

Actions by servants to compel delivery of property detained.

21. (1) *The Magistrates of this Colony have jurisdiction in any civil case instituted by any servant or apprentice, to compel the delivery of any of his cattle, sheep, goats, or other animals, lawfully running or being upon his master's land, and which his master shall, either before or after the expiration of the contract of service or apprenticeship, upon demand made, and without lawful cause, have refused to deliver or permit to be taken away; and in case it shall be made to appear that the master had no reasonable and probable cause for believing that the animals in question were lawfully detained, the Magistrate shall, besides giving judgment for the delivery of such animals, and for costs, impose, at the same time, upon the master, a fine not exceeding one pound for every animal so unlawfully detained: Provided, however, that the total amount of the fine so payable shall not exceed the sum of*

[1] This section is repealed by Act 18 of 1873, but is reprinted in view of the provisions of § 3 Act 14 of 1870. See, however, § 15 Act 18 of 1873.

Digitised by the University of Pretoria, Library Services, 2016

five pounds altogether; such fine to be recoverable in like manner as the said costs, but, when recovered, to be applied as by this Act directed, in regard to fines in criminal cases: Provided that neither the fact that the contract of service or apprenticeship of such servant or apprentice has not yet expired, nor the fact that money is due or alleged to be due by such servant or apprentice to the master, shall be deemed or taken to be, of itself, reasonable and probable cause for such detention: Provided, however, that nothing herein contained shall impair the effect of any express contract of lawful kind, by force of which the master shall claim a right to retain any such animals as aforesaid.

22. [§§ 22 and 23 repealed by Act 18 of 1873.]

Contract may be cancelled if the master has wrongfully assaulted his servant or apprentice.

24. As often as any master shall be convicted of wrongfully and unlawfully assaulting his servant or apprentice, the convicting Magistrate may, should he so think fit, and should the servant or apprentice so desire, order the cancellation of the contract of service or apprenticeship, and the same shall be cancelled accordingly.

25. [§§ 25 and 26 repealed by Act 18 of 1873.]

Detaining a child under 16 years of age.

27. If any child under the age of sixteen years shall be wrongfully detained by any person as a servant or inmate, the Resident Magistrate of the district in which it shall be so detained, shall have jurisdiction to order the restoration of such child to such of its parents as would, under this Act, be entitled to apprentice such child, if then about to be apprenticed: Provided, however, that should it be made to appear, upon the hearing of any such case, that the person complained against originally obtained the said child in a lawful manner, and when an infant under the age of five years, and that the parent claiming the same has so acted in reference to the said child, and to the person bringing it up, as to make it a breach of good faith on the part of such parent to seek to take it away, as he or she now seeks to do,—and that from the character of the said parent, the purpose for which he or she appears to desire to obtain possession of the said child, or other circumstances, it will be for the manifest benefit of the said child to remain with the person with whom it is residing, rather than to be delivered to the parent applying, then the Magistrate shall refuse to order the delivery of the said child, leaving it to the parent applying for the same to take such other proceedings, if any, as he or she may be advised; and such Magistrate may, in the meantime, authorise the person rearing up such child to retain possession thereof.

Attorney-General and the clerks of the peace to act for servants, respondent, in cases of appeal to Supreme or circuit court.

28. In any case between a master and his servant, or apprentice, in which the Resident Magistrate shall have given judgment in favour of such servant or apprentice, and such master shall appeal from such judgment, or apply to have the same reviewed, it shall be the duty of the Attorney-General, in case such appeal or application shall be brought before the Supreme Court, and of the Clerk of the Peace for the district in which such judgment was made, in case such appeal or application shall be brought before

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1856.

the Circuit Court, (provided the said Attorney-General or such Clerk of the Peace shall be called on so to do), to appear for and conduct the case of such servant or apprentice, free of all charge or expense whatever,—and the Judge of the Circuit Court is hereby empowered, upon the motion of any such Clerk of the Peace, to assign counsel to act gratuitously for such servant or apprentice whenever such Judge shall be of opinion that it is fit and proper so to do.

CHAPTER VI.

Respecting Characters given by Masters to Servants or Apprentices.

No master is bound to give a character of a servant.

1. No master is bound to give a character to any servant or apprentice, who is or has been in his service, or to assign any reason for refusing to give it.

Consequences of knowingly giving a false character.

2. Every master who shall knowingly have given any false character to any servant or apprentice is liable to make compensation for any loss or damages which any third party, who, by reason of such character so given, has been induced to take such servant or apprentice into his service, has sustained by the misconduct of such servant or apprentice in any respect, or with reference to any matter to which such character so given was false.

Penalties for counterfeit certificates of character and false representations.

3. Every person who, for the purpose of giving a character to any servant or apprentice, or other person intending to offer himself to be hired as a servant, shall forge or counterfeit and utter any certificate of such servant's or apprentice's character, or shall falsely personate any other person, and as such, either personally or by writing, give any false, forged, or counterfeit character or certificate of character, of any such servant, apprentice, or other person offering or intending to offer to hire himself as a servant; and every person who shall offer to hire as a servant, asserting or pretending that he has served in any service in which he has not actually served, or with a false, forged, or counterfeit certificate of character, or shall in any wise add to or alter, by effacing, or erasing, or inserting any word or date, in any certificate given to him by his present or any former master, or by any other person duly authorised by any such master to give the same, and shall use, or attempt to use, the same, as an inducement to hire him, shall, on conviction thereof, incur and be liable to a fine not exceeding £50, nor less than £10, or to be imprisoned for any period not exceeding one year, nor less than one month, or to both such fine and imprisonment.

Digitised by the University of Pretoria, Library Services, 2016

CHAPTER VII.

No. 15—1856.

Respecting the Constraints of Masters, Servants, and Apprentices.

Definition and punishment of unlawful interference with servants or apprentices, in order to prevent them from entering into or completing contract of service or apprenticeship.

1. Any person who shall by violence to the person or property, or by threats or intimidation, or by molesting, or in any way obstructing another, force or endeavour to force any servant or apprentice to depart from his service or work, or to return his work to his master before the same shall be finished, or to prevent or endeavour to prevent any servant or other person, not being hired or employed, from hiring himself to, or accepting service or work from any person, or force or induce, or endeavour to force or induce, any such servant or apprentice, or other such person to belong to any club or association, or to contribute to any common fund, or shall use or employ violence to the property of another, or threats of intimidation, or shall molest or in any way obstruct another on account of his not belonging to any particular club or association, or not having contributed, or having refused to contribute, to any common fund, or to pay any fine or penalty, or on account of his not having complied, or of his refusing to comply, with any rules, orders, resolutions, and regulations, made to obtain an advance or to reduce the rate of wages, or to lessen or alter the hours of working, or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, trade, business, work, or labour, or the management thereof; or who, by any such violence, threats, intimidation, molestation, or obstruction, shall force, or endeavour to force, any manufacturer, or person carrying on any trade, business, work, or labour or engaged in agriculture, to make any alteration in his mode of regulating, managing, conducting, or carrying on the same, or to increase or limit the number of his apprentices or servants, shall on conviction thereof before any Resident Magistrate, or other competent Court, be imprisoned with or without hard labour, for any period not exceeding three months.

Definition and protection of lawful acts and associations.

2. Provided always that nothing herein contained shall extend to subject to punishment any persons who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at that meeting, or any of them respectively, shall require or demand for his or their service or work, or shall pay his or their servants or apprentices for their service or work, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices, which rate of wages or prices the persons entering into such agreement, or any of them, shall require or demand for his or their service or work, or pay to his or their servants or apprentices for their service or work, or of fixing the number of hours of work which he or they will work, or will require his or their servants or apprentices to work in any manufacture, trade, business, labour, or agriculture, and that no such persons so meeting

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1856. together, or entering into any such agreement as aforesaid, shall be liable to any penalty or prosecution for so doing.

No. 16—1856.] [June 4, 1856.

ACT

For Amending the Law relative to the Registration of Voters and to the taking of Polls. (1)

Preamble. WHEREAS it appears to be practicable to lessen the expense, without impairing the efficiency, of the system now in force for the registration of voters and the taking of polls: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed. 1. So much of the 76th section, and of any other section, of the Ordinance constituting a Parliament in this Colony as shall be repugnant to or inconsistent with this Act, is hereby repealed.

Postponement of first biennial registration confirmed. And the act of the Governor aforesaid, in having hitherto deferred the first biennial registration of voters, as in the said 76th section mentioned, is hereby ratified and confirmed.

Governor, by proclamation, to call upon persons in each field-cornetcy to forward their claims for registration to civil commissioner. 2. It shall be lawful for the said Governor, by any proclamation or proclamations to be by him issued and published in the *Government Gazette*, to call upon all persons resident in any Field-cornetcy within any Electoral Division, other than Cape Town and Graham's Town, and qualified to be registered as voters for such division, but who are not registered in such Field-cornetcy and upon the list of registered voters for the time being for such Electoral Division, to send in to the Civil Commissioner of such division their claims, in writing; which claims may be either in the English or in the Dutch language, and shall be in substance as follows:

"To the Civil Commissioner of"

Form of claim. "Please take notice that I, A.B., residing in the Field-cornetcy of , in the above Electoral Division, hereby claim to be entitled to be registered in the said Field-cornetcy, as a voter at the election of members of Parliament. Dated this 185

(Signed) A.B."

(describe his residence)

Claim to whom addressed, and where to be left. 3. Every such claim as aforesaid shall be addressed as aforesaid to the Civil Commissioner, and shall be marked on the outside "Claim to be registered as a voter," and shall be delivered either at the office of the Civil Commissioner of the division, or otherwise to the Field-cornet of the Field-cornetcy in which the claimant resides.

---

[1] See Constitution Ordinance.

Digitised by the University of Pretoria, Library Services, 2016

4. Every such proclamation as aforesaid shall name a day, on or before which all such claims as aforesaid must be delivered in, in manner and form as in the last preceding section mentioned, which day shall not be earlier than the 15th of June nor later than the 31st of July next after the commencement and taking effect of this Act: Provided that every such proclamation shall be published for not less than 31 days before the day named therein as the last day for the delivery of claims.

Proclamation to name a day for receiving claims.

5. At some time between the 1st day of June and the 15th day of July next after the commencement and taking effect of this Act, the Civil Commissioner of each Electoral Division shall transmit to the Field-cornet of each Field-cornetcy within such division a list, containing the names of all persons registered as of or as belonging to such Field-cornetcy, according to the registered list of voters for the time being of such Electoral Division, with a letter, desiring the said Field-cornet, acting to the best of his knowledge, information, and belief, to notify or report, either upon the list so transmitted, or upon some separate paper, such of the persons inserted in such list as shall be dead, and such as shall have ceased to reside in such Field-cornetcy, and such as shall have ceased to possess the qualification in regard to which they were formerly registered.

Civil commissioner to forward list of registered voters to each field-cornet for correction.

6. Every Field-cornet receiving any such list for the purpose in the last preceding section stated, shall, with all convenient speed, and to the best of his knowledge, information, and belief, notify or report as aforesaid the names of all persons who shall have died, or ceased to reside in such Field-cornetcy, or ceased to possess the qualification in regard to which they were formerly registered, and shall then return such list, with such notification or report, to the Civil Commissioner from whom he shall have received such list.

Field-cornet to correct the list.

7. As soon as may be after the day named in the proclamation in the 2nd section mentioned as the last day for the delivery in of claims by persons not included in the registered list of voters for the time being, the Field-cornet of each Field-cornetcy in every Electoral Division shall carefully enclose and transmit to the Civil Commissioner all claims which shall have been delivered to such Field-cornet; and if there be none such, then the Field-cornet shall report to such Civil Commissioner that there are none.

Field-cornet to send claims to civil commissioner.

8. When the Civil Commissioner shall be in possession of a notification or report from each Field-cornet, touching the matters in the 5th section mentioned, and in possession also of the claims which shall as aforesaid have been delivered to each Field-cornet, then such Civil Commissioner shall forthwith frame a list of names for or in regard to each Field-cornetcy, in order that the same may be posted for general information as hereinafter directed.

Civil commissioner to frame list for each field-cornetcy.

9. In framing such list as aforesaid the Civil Commissioner shall insert the name of every person included in the registered list of voters for the time being as of or as belonging to such

List how to be framed.

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1856.

Field-cornetcy, except the name of a person notified or reported as aforesaid as dead, or as having ceased to reside in that Field-cornetcy, or as having ceased to possess the qualification in regard to which he was formerly registered, and such Civil Commissioner shall also insert the name of every person who shall, as aforesaid, have delivered a claim, either at the office of such Civil Commissioner or to the Field-cornet of his Field-cornetcy, claiming to be registered: Provided that if, through mistake or otherwise, any person already registered shall have delivered in such a claim, his name shall be but once inserted in such list: and provided that such list shall place the names upon it in alphabetical order.

List to be sent to field-cornet.

10. When the Civil Commissioner shall, in manner aforesaid, have framed the list aforesaid, he shall deliver or transmit the same to the Field-cornet to whose Field-cornetcy it relates, having subjoined or appended thereto a notice, written both in the English and in the Dutch languages, to be signed by such Field-cornet before the posting of the said list, as hereinafter directed; which notice shall be in substance as follows:—

Form of notice to be annexed.

"Notice is hereby given that if any inhabitant of the Field-cornetcy of , whose name is not inserted in the above list, shall claim to be entitled to have his name inserted therein, or if any such inhabitant shall object to the right of any person whose name appears in the above list, whether a person formerly registered or not, to be registered as a voter, such inhabitant may lodge his claim or objection, in writing, with Mr. , the Field-cornet of the said Field-cornetcy, on or before the day of (here insert some day not sooner than ten nor later than twenty-eight days next after the day on which the list aforesaid shall have been first posted), in order that such claim or objection may be recorded and dealt with as the law directs.

"Given under my hand, this day of , 185

(Signed) C.D., Field-cornet."

Separate list to be framed of persons represented as dead or disqualified.

11. The Civil Commissioner aforesaid shall, when transmitting or delivering to such Field-cornet the list in the 10th section mentioned, transmit or deliver at the same time another list, containing the names of all persons who shall have been by such Field-cornet notified or reported in manner aforesaid as dead, or as having ceased to reside in such Field-cornetcy, or as having ceased to possess the qualification in regard to which they were formerly registered. And such Civil Commissioner shall head or entitle such list thus:—

"List of persons formerly registered as voters, who are believed to be no longer entitled to be registered."

And such Civil Commissioner shall subjoin or append to such list a notice, written both in the English and Dutch languages, and

Digitised by the University of Pretoria, Library Services, 2016

signed by such Civil Commissioner, which notice shall be in substance as follows :— No. 16—1856.

"Notice is hereby given that all the above-named persons are believed to have ceased to be entitled to be registered as voters in this Field-cornetcy, and that none of the said persons will continue registered, unless he shall, in pursuance of the notice subjoined to the certain other list now posted at this place, lodge his claim afresh, just as if he had never been registered before. Form of notice to be attached.

(Signed) O.P.,

"Civil Commissioner of the Division of ."

12. Every Field-cornet receiving any such lists and notices as aforesaid shall forthwith fill up the blank left in such notice as in the 10th section mentioned for the day on or before which claims and objections shall be lodged, and shall forthwith post such lists and notices at some public place within such Field-cornetcy, there to remain for general information for not less than seven days: provided that as often as any Field-cornet shall receive such list as in the 10th section, and also such a list as in the 11th section mentioned, he shall post both at the same time and in the same place. Lists to be posted.

13. Every claim to be made in pursuance of such notice as aforesaid shall be marked on the outside "Claim to be registered as a voter," and shall be in substance as follows :— Form of claim in pursuance of above notice.

"This is to give notice that I hereby claim to have my name inserted in the list of voters in the Field-cornetcy of Dated the day of , 185

"(Signed) E.F."

(Here state place of residence.)

14. Every objection to be made in pursuance of such notice as aforesaid shall be marked on the outside, "Objection to the registration of a voter," and shall be in substance as follows :— Form of objection.

"This is to give notice that I hereby object to the name of being retained in the list of voters in the Field-cornetcy of , the ground of my objection being that" (here state the ground of objection).

"Dated this day of 185 .

"(Signed) G.H."

(Here state place of residence).

15. As soon as may be after the day fixed in and by the notice so posted as aforesaid as the latest day for lodging claims or objections, the Field-cornet of every Field-cornetcy within any district composing or comprised within any Electoral Division shall carefully enclose and transmit to the Resident Magistrate of Claims and objections to be transmitted to the resident magistrate.

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1856.

the district all such claims and objections as aforesaid as shall have been lodged with such Field-cornet. Should no such claim or objection have been lodged, the Field-cornet shall inform such Resident Magistrate that such is the case.

Copies of lists mentioned in 10th section to be sent to the magistrates of the several districts constituting an electoral division.

16. As often as any Electoral Division shall comprise more than one district subject to the jurisdiction of a Resident Magistrate, the Civil Commissioner shall, as soon as may be after transmitting to the Field-cornet of each Field-cornetcy the lists in the 10th section mentioned, transmit to the Resident Magistrate of each district copies of the lists transmitted to the Field-cornets of such Field-cornetcies as shall be comprised within any such district of Resident Magistrate: provided that no copy so transmitted to any Resident Magistrate need contain a copy of the notice in the 10th section mentioned.

Notices need not be sent.

Duty of magistrate on receiving such list.

17. As soon as any Resident Magistrate shall be in possession of the list so to be transmitted to him by the Civil Commissioner as in the last preceding section mentioned, and also of all claims and objections forwarded to him by any Field-cornet, under and by virtue of the 15th section of this Act, he shall forthwith frame, in regard to each Field-cornetcy within his district, a list containing the names of all persons not inserted in the list relating to such Field-cornetcy, received by him as aforesaid from the Civil Commissioner, and who shall have claimed in manner aforesaid to be inserted therein, and also another list containing the names of all persons inserted in the said list in regard to whom an objection shall, in manner aforesaid, have been lodged.

Title of list of claimants.

18. The list of claimants in the last preceding section mentioned shall be headed thus—

"Field-cornetcy of

"List of persons not posted, who have since claimed to be registered as voters."

And such list shall have subjoined or appended thereto a notice in the English and Dutch languages, and signed by the Resident Magistrate, which notice shall be in substance as follows:—

Form of notice to be appended.

"The persons above named, and all others whom it may concern, are required to take notice that the Resident Magistrate undersigned will hold a court at on the day , 185 , at o'clock in the forenoon, at which court the claimants may appear, with proof of their qualification to be registered, failing which they will not be registered; and any inhabitant of the Field-cornetcy aforesaid may appear to oppose such registration.

"Given under my hand, this day of , 185

"(Signed) L.M.,

"Resident Magistrate for the District of "

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1856.

19. The list of persons objected to, as in the 14th section mentioned, shall be headed thus—

Title of list mentioned in 14th section and notice to be affixed.

"Field-cornetcy of

"List of persons posted, who have been since objected to."

And such list shall have subjoined or appended thereto a notice in the English and Dutch languages, and signed by such Resident Magistrate as aforesaid, which notice shall be in substance as follows:—

"The persons above named, and also the persons by whom they have been objected to, are respectfully required to take notice that the Resident Magistrate undersigned will hold a court at on the day of , 185 , at o'clock in the forenoon, at which court the persons objected to and the persons objecting may appear, with their respective proofs, in order to have the said objections decided. The name of the objector and the ground of objection in each case can, in the meantime, be learned by application to the undersigned. Should the objecting party not appear at the court aforesaid, the objection will be dismissed.

"Given under my hand, this day of , 185

"(Signed) L.M.,

"Resident Magistrate for the District of "

Magistrate to post list.

20. Every Resident Magistrate who shall have framed any such lists and notices as aforesaid shall forthwith post the same at or near his Court-room or office, for general information, and shall also cause copies thereof, signed by himself as aforesaid, to be posted, as soon as may be, by the Field-cornet of each Field-cornetcy to which any such lists shall relate, at the same place at which the list in the 10th section mentioned had been posted.

Court to be held for hearing claims and objections.

21. The day to be appointed by any such notice as is in the 18th and 19th sections mentioned for the holding of the court in such notice referred to, shall be some day not less than one month after the day on which such notice shall have been posted by such Resident Magistrate at his Court-room or office: provided that the same day need not be appointed for or in regard to each Field-cornetcy within the district of such Magistrate.

Place where court to be held.

22. The place to be appointed by any such notice for the holding of the said court may be the ordinary Court-room of the district, but, in case distance and the number of claims or objections should be so great as, in the opinion of the Magistrate, to render it expedient to hold such court at some place other than the ordinary Court-room, it shall be lawful to hold it at such other place: provided also that the same place need not be named in regard to all the Field-cornetcies within the district of such Magistrate: and provided that the claims and objections connected with one Field-

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1856.

cornetcy may be heard and determined at a court held at any place within another Field-cornetcy.

Manner of hearing and determining questions.

23. The Resident Magistrate aforesaid shall attend on the day and the place and hour mentioned in the notice aforesaid for the holding of the court, and shall hear all parties, claimants, and persons objecting, and persons objected to, and may, should he so think fit, examine all such parties upon oath, and should he so think fit, may summon before him, and examine upon oath, any person whom he shall deem it necessary to examine; and such Magistrate shall finally determine all questions brought before him: provided that every claimant who shall have claimed in manner and form as in the 12th section mentioned, shall be bound to prove to the satisfaction of such Magistrate, either in person or by some one else, authorised in writing to appear for him, his right to be registered as a voter in such Field-cornetcy: and provided that if the person who shall have objected to the right of any other person to be registered shall not, either in person or by some one else, authorised in writing to appear for him, appear to make good his objection, such objection shall, without requiring any appearance or proof on the part of the person objected to, be dismissed: provided, also, that if the person objected to shall fail to appear in person, and the ground of objection shall be one peculiarly within the knowledge of such person, then, in case the objecting party shall make oath to his belief that such ground of objection does really exist, the Magistrate may allow the objection: provided, lastly, that the Magistrate may adjourn the court till some future day, and, should it be convenient, to some other place, for the further hearing of any case, or for his decision upon any case already heard regarding which he may desire time to consider his judgment.

List of claims admitted and objections allowed to be sent to civil commissioner.

24. As soon as the Resident Magistrate shall have finally determined upon all claims and objections connected with any Field-cornetcy within his district, he shall transmit to the Civil Commissioner of the Electoral Division the list originally received by such Magistrate from the Civil Commissioner, as also a list, showing the names of all claimants whose claims have been admitted and the names of all persons objected to in regard to whom the objection shall have been allowed.

How if electoral division contains more than one fiscal division.

25. Should it at any time happen that any Electoral Division of this Colony shall comprise within it more Fiscal Divisions than one, then the Civil Commissioner mentioned in and contemplated by this Act shall be deemed to be the Civil Commissioner of that Fiscal Division which shall give its name to the Electoral Division; and all Resident Magistrates, whose districts shall be comprised within the other Fiscal Division included in such Electoral Division shall be deemed, for the purpose of this Act, to be in the same plight and condition as if Resident Magistrates of the Fiscal Division which shall give its name to the Electoral Division.

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1856.

Civil commissioner to frame general list from field-cornetcy lists.

26. When the Civil Commissioner of the Electoral Division shall be in possession of the list of voters in each Field-cornetcy within such Division, as rectified and amended in manner aforesaid, he shall, with all convenient speed, frame from such lists a general list of the voters of or for such Electoral Division, containing the names of all persons mentioned in the several and respective lists of voters in the several and respective Field-cornetcies, as rectified and amended as aforesaid, which general list shall keep the several Field-cornetcies distinct from each other, but shall, so far as may consist with such distinction, pursue an alphabetical order; and such general list shall become and remain, so long as no fresh registration of voters shall have taken place in and for such division, the list of registered voters for such Electoral Division, for all the purposes of the 21st and of every other section of the Ordinance constituting a Parliament for this Colony; and the Civil Commissioner shall report to the Colonial Secretary, in Cape Town, that such list has been completed.

Completion of general list to be reported to Colonial Secretary.

List of voters for Graham's Town how to be framed.

27. The list of voters for the Electoral Divisions of Cape Town (1) and Graham's Town respectively shall be framed in manner and form as is in that behalf directed in the Ordinance in the last preceding section mentioned, save and except that the persons in the 26th section of the said Ordinance mentioned may, in the list in the said section mentioned, and therein directed to be posted upon or affixed to some public place, include the name of any person inserted in the registered list of voters for the time being who is believed by such persons to be still qualified to be inserted in such list, although such person may not be a resident householder of the municipality in question, and may not, under the 25th section of the said Ordinance have claimed in person to be registered: Provided always that the Government notice in the 22nd section of the said Ordinance mentioned, shall be published not more than 14 days next after the publication of the proclamation in the 2nd section of this Act mentioned.

Provision for a registration in every alternate year.

28. In order that there may be henceforth a general registration of voters throughout the Colony every two years, the Governor of the Colony shall, in the year next but one after the year of the first general registration by this Act directed, issue and publish a proclamation or proclamations, of the same tenor and effect, in all respects, as the proclamation in the 2nd and 4th sections of this Act mentioned, and a Government notice as in the last preceding section of this Act mentioned, and thereupon all and singular the several provisions of this Act shall take effect, in order that there shall thereby be prepared and preserved fresh lists of voters in and for the several Electoral Divisions of the Colony; and in like manner such proclamation or proclamations, and such Government notice, shall be published, and such proceedings as aforesaid take place every second or alternate year for ever.

(1) Repealed by Act 14 of 1874, as far as regards Cape Town.

Digitised by the University of Pretoria, Library Services, 2016

No. 17—1856.

Polling officers at elections.

29. From and after the commencement and taking effect of this Act, the poll at every election of a member or of members of the Legislative Council, or of the House of Assembly, shall be taken in the divisional town of every Electoral Division of the Colony by the Civil Commissioner of such division; in every Field-cornetcy other than such town by such other person, being a resident within such division, as the Governor shall appoint: and the said persons shall respectively be deemed and taken to possess all and singular the powers and authorities of the polling officers mentioned in the Ordinance constituting a Parliament, but none other. Provided, that nothing in this Act contained shall extend to either of the Electoral Divisions of Cape Town or Graham's Town.

Construction of terms.

30. In construing this Act, the word "Governor" shall mean the officer for the time being lawfully administering the Government of this Colony; and whenever mention is made of any public officer, the officer mentioned shall be deemed to be the officer for the time being, or the officer acting as such officer; and words importing the singular number shall include the plural number, and words importing the plural number shall include also the singular number, unless there be something in the subject or context repugnant to such construction.

Act when to commence.

31. This Act shall commence and take effect from and after the promulgation thereof.

No. 17—1856.] [June 4, 1856.

AN ACT

For Rendering more effective the services of such Military Pensioners receiving Pensions from the Colonial Revenue as shall be called out to assist in preserving the Public Peace.

Preamble.

WHEREAS, by an Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the session of Parliament, holden in the sixth and seventh years of Her Majesty the now Queen, and entituled "An Act for rendering more effective the services of such out-pensioners of Chelsea Hospital as shall be called out to assist in preserving the Public Peace," provision is made for organizing and equipping certain of the out-pensioners of the Royal Hospital at Chelsea, for the purpose of rendering them more efficient when called out to assist in preserving the public peace: And whereas it is expedient to declare and enact that military pensioners resident in this Colony, whose pensions are payable and paid from the public revenue of this Colony, should be placed, for the purpose of more effective service in this Colony, under the provisions of the Act aforesaid; Be it enacted by the Governor of the Cape of Good Hope, with the advice and

Queen may order pensioners to be enrolled.

Digitised by the University of Pretoria, Library Services, 2016

consent of the Legislative Council and the House of Assembly thereof, that it shall be lawful for Her Majesty, and Her Majesty is hereby authorised, from time to time to order, that so many of the military pensioners resident in this Colony, whose pensions are payable and paid from the public revenue of this Colony, as to Her Majesty shall seem fit, shall be enrolled as a local force for the preservation of the public peace in this Colony: and that for the purpose aforesaid all and singular the provisions of the hereinbefore in part recited Act shall, so far as applicable, apply and extend to all such military pensioners as aforesaid enrolled for service within this Colony, precisely as if such military pensioners were out-pensioners of Chelsea Hospital, and this Colony were a portion of the United Kingdom. No. 19—1856. Imperial act to apply to such pensioners.

2. This Act shall commence and take effect from and after the promulgation thereof. Act, when to commence.

No. 18—1856.] [June 4, 1856.

An Act for Applying a Sum not exceeding £200,965 9s. 9d. for the Service of the Year 1856.

[Spent.]

No. 19—1856.] [June 4, 1856.

AN ACT

To Regulate, till the expiration of the Year 1857, the Dealing in Gunpowder, Firearms, and Lead. (1)

WHEREAS the Ordinance No. 2, 1853, entituled "Ordinance to regulate, till the expiration of the year 1854, the dealing in Gunpowder, Firearms, and Lead," was, by the 27th section thereof, limited to continue and be in force till the expiration of the year 1854, and no longer: and whereas, by the Act No. 5, 1854, the said Ordinance was continued in force until the expiration of the year 1855; and whereas, by the Act No. 7, 1855, the said Ordinance was again continued in force until the expiration of the year 1856; and whereas it is expedient further to continue the said 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:— Preamble.

1. The said Ordinance, No. 2, 1853, and every provision thereof, shall continue and be in force until the expiration of the year Ordinance 2 of 1853 extended to 1857.

[1] See Acts 14, 1857; 4. 1887; 17, 1892.

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1856.

1857, anything in the said Ordinance contained to the contrary notwithstanding. (1)

Powder magazines to be guarded at night, or otherwise protected.

2. And whereas, in some places, private magazines for storing gunpowder, established under the provisions of Ordinance No. 7 of 1834, are built in exposed situations, so as to be in danger of being broken into by enemies or others who might desire to possess themselves of the gunpowder stored therein; and whereas it is necessary for the public safety that such exposed magazines should be guarded at night, or else be, by other means, made secure against attack; and that in case a sufficient protection shall not be provided, no gunpowder should be permitted to remain in such exposed magazines: Be it enacted that it shall and may be lawful for the Governor, or officer for the time being administering the Government, to require the owner or owners of any private magazine, containing gunpowder, placed in such a situation as to be, in the judgment of the said Governor, exposed to be attacked and plundered, to provide a sufficient guard of men for the protection of such magazine during the night, or else to require that such magazine shall, by a wall, fence, or other means, be sufficiently protected from attack without the aid of a guard of men.

In case of refusal or neglect.

3. Should the owner or owners of any such magazine as aforesaid refuse or neglect to provide such guard or other protection, after being required so to do, it shall be lawful for the Governor, or other officer as aforesaid, to cause the gunpowder contained in any such magazine to be removed, at the expense of the owner or owners of the magazine, to such neighbouring receptacle, if any there be, as the said Governor or other officer shall deem safe and sufficient; or such Governor or other officer may cause such gunpowder to be destroyed.

No appeal from Governor's decision.

4. The decision of the Governor or other officer aforesaid, regarding the nature of the situation of any such magazine, and regarding the necessity of providing any such magazine with some such protection as aforesaid, and regarding the sufficiency or otherwise of any protection proposed to be afforded by the owner or owners of any magazine, and regarding the propriety of destroying instead of removing the gunpowder contained in any exposed and unprotected magazine, shall be final and conclusive, and shall not be disputed or questioned in any Court or by any proceeding whatsoever.

Act when to commence.

5. This Act shall commence and take effect from and after the promulgation thereof.

---

[1] Made perpetual by Act 28 of 1864.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.] [June 4, 1856.

AN ACT

For Amending and Consolidating the Laws relative to the Courts of Resident Magistrates. (1)

Preamble.

WHEREAS it is expedient to amend and consolidate the laws relative to the courts, jurisdiction, powers, and duties of the Resident Magistrates within this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Districts in which courts are established.

1. Courts of Resident Magistrates shall be, and the same are hereby declared to be, erected, constituted, and established for and within each of the following districts, that is to say,—Cape Town and the district thereof, Wynberg, Simon's Town, Malmesbury, Piquetberg, Stellenbosch, the Paarl, Worcester, Tulbagh, Clanwilliam, Swellendam, Riversdale, Caledon, Beaufort, George, Aliwal, Uitenhage, Port Elizabeth, Albany, Fort Beaufort, Bathurst, Stockenstrom, Somerset, Victoria, Fort Peddie, Albert, Queen's Town, Graaff-Reinet, Richmond, Cradock, Colesberg, East London, Alexandria, Prince Albert, Victoria West, Bredasdorp, Calvinia, Middelburg, Aliwal North, Oudtshoorn, and Namaqualand; and the said Courts shall be respectively holden by and before the Resident Magistrates for the districts aforesaid.

Establishment of courts by proclamation.

2. It shall and may be lawful for the Governor of this Colony, by any proclamation to be by him, from time to time, issued for that purpose, and published in the *Government Gazette*, to erect, constitute, and establish Courts of Resident Magistrates, to be held for and within such districts, respectively, as the said Governor shall think fit, which Courts shall respectively be holden before such persons as shall respectively be appointed to be Resident Magistrates of such districts.

Fixing limits of magistracy.

3. It shall and may be lawful for the Governor of this Colony, by any proclamation to be by him issued for that purpose, and published in the *Government Gazette*, on the passing of this Act, and thereafter from time to time as occasion may seem to him to require, to define, fix, and appoint the local limits of the territory which shall be comprehended and included in any of the aforesaid districts, whether in the first section mentioned or such as shall hereafter be created, and within which the Resident Magistrate for

---

[1] Amended by Acts 9, 1857; 12, 1860; 19, 1865; 12, 1869; 21, 1869; 21, 1876; 19, 1877; 16, 1882; 43, 1885; 17, 1886, §§ 12, 13; 31, 1886. See Ord. 6, 1839; 5, 1848; Acts 10, 1876; 16, 1876.

Act 12, 1869, provides that any act which is required to be done by the Clerk to any Resident Magistrate, may be done by such Magistrate himself. § 13, Act 16, 1882, provides that the process of Courts of Resident Magistrates for summoning any person, whether as a party or a witness in any case, civil or criminal, may be signed by the Clerks of such Courts.

This Act may be cited as "The Resident Magistrates' Court Act, 1856." See § 8, Act 21, 1876.

Digitised by the University of Pretoria, Library Services, 2016

No. 20.—1856.

Alteration of districts.

such district shall have and exercise jurisdiction and authority; and whenever the said Governor shall deem it to be inexpedient or unnecessary that any of the said Courts shall continue to be holden for and within any of the districts aforesaid, then and in every such case it shall and may be lawful for the said Governor, by any proclamation to be by him issued for that purpose, and published as aforesaid, to abolish such Court and the office of Resident Magistrate for such district, as also to annex any such district, or any part thereof, to any other district or districts; and every district, or part thereof, which shall be so annexed as aforesaid to any other district, shall thereby become and be within and subject to the jurisdiction and authority of the Resident Magistrate for the district to which it shall be so annexed; and whenever any Court shall be erected under or by virtue of the power and authority in that behalf in the second section of this Act mentioned, and the district assigned for the exercise of the jurisdiction of such Court shall comprise territory which was, before then, either wholly or in part, within the jurisdiction of some other Court or Courts of Resident Magistrate, then and thereupon such territory shall wholly cease to be within or subject to the jurisdiction of such other Court or Courts. (1)

Revival of abolished magistracies.

4. Whenever the said Governor shall, by any proclamation to be by him issued for that purpose, repeal any such proclamation by which the Court of, and the office of the Resident Magistrate for any district was abolished, thereupon, and by virtue of such repeal, such Court and such office shall of new become and be created, constituted, and established, in like manner, and to all intents and purposes, as if the same had never been abolished in manner aforesaid.

Appointment of magistrates.

5. Every person who shall hereafter be appointed the Resident Magistrate for any district, shall be so appointed by the Governor of this Colony, under the great seal thereof; and it shall and may be lawful for the said Governor when and so often as, by reason of the death, sickness, absence, or other incapacity of any Resident Magistrate, it shall appear to him to be necessary or expedient so to do, to appoint some fit and proper person to act as and in the said stead of such Resident Magistrate, within his district; and all deeds, acts, matters, and things which shall be done and performed by or before any person so appointed to act as aforesaid, under and by virtue of such his appointment, shall be as legal, valid, and effectual, to all intents and purposes, as if the same had been done and performed by or before the Resident Magistrate instead of whom such person shall have been so appointed to act; Provided, always, that no Resident Magistrate of any district existing at the time of the commencing and taking effect of this Act, and of which the local limits shall not be changed by any

[1] See also § 55.

Digitised by the University of Pretoria, Library Services, 2016

such proclamation as is in the third section mentioned, need be appointed anew, but shall, without any fresh appointment, be deemed and taken to be the Resident Magistrate of such district.

Oath to be taken by magistrates.

6. Every person who shall in manner aforesaid be appointed to be a Resident Magistrate, or to act as or in the stead of any Resident Magistrate, shall, before exercising any of the functions of his office, take the oath of office set forth in the schedule hereunto annexed, marked A. before the Chief Justice or any of the Judges of the Supreme Court, or before the Clerk of the Peace, or any Justice of the Peace, for the district for or in which such person is appointed to act, who are hereby empowered and required to administer the same; and every such person shall, so soon as he shall have duly taken the oaths aforesaid, cause such oaths to be recorded, and shall subscribe the same, in the record book of the proceedings of his Court, or of the Court in which he shall so have been appointed to act, as the case may be.

Nature of courts

7. The Courts of the Resident Magistrates aforesaid shall be respectively Courts of Record, and the pleadings and proceedings of the said Courts shall be carried on, and the sentences, decrees, judgments, and orders thereof, pronounced and declared in open Court, and not otherwise; and the several pleadings and proceedings of the said Courts shall be in the English language [1]; and in all criminal cases the witnesses against and for any accused person or persons shall deliver their evidence *viva voce*, and in open Court.

Civil jurisdiction of magistrates. Vide also sections 10, 53, 55, and 56.

8. Every Resident Magistrate of the Colony shall have, in all civil cases brought or instituted against any person residing within the district for which such Resident Magistrate shall have been appointed, the jurisdiction following, that is to say:

1. [Superseded by § 5, Act 43, 1885.]
2. In all cases (except as hereinafter is excepted) in which the debt or damages demanded shall not exceed twenty pounds sterling.[2]
3. No such Magistrate shall have jurisdiction in, or cognizance of, any action or suit wherein the title to any lands or tenements, or the title to any fee, duty, or office is in question, or any action or suit to try the validity of any will or other testamentary instrument, or any action or suit whereby rights in future can be bound: Provided that any such Magistrate may, in the course of any action or suit to recover damages for criminal conversation with the wife of the plaintiff or for the amount or value of necessaries lawfully supplied to the wife of any person, determine upon or in regard to the fact of marriage, and may, in the course of any action or suit for the amount or value of maintenance lawfully supplied to

[1] But see Act 21 of 1884, as to use of Dutch Language; § 14, Act 17, 1886, and § 1, Act 15, 1888.

[2] Amended by § 5, Act 43, 1885. See also Act 21, 1876, § 3.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

the child, legitimate or illegitimate, of any person, determine upon the question of affiliation, so far as may be necessary for the decision of any such action or suit, without thereby binding, or being deemed or taken to bind, rights in future: Provided, however, that the evidence in every such case as aforesaid shall be recorded by the Magistrate, and that the same may be put in as proof, by either plaintiff or defendant, in any subsequent suit or action in the same Court, between the same parties, in which the matters in question in the former suit or action shall again come into dispute.

4. [Superseded by § 5, Act 43, 1885.]

Protest of bill of exchange or promissory note under £20 not necessary.

9. In any action or suit brought in the Court of any Resident Magistrate upon any bill of exchange or promissory note, for any sum under twenty pounds, against the drawer or any endorser thereof, it shall not be necessary to prove the dishonour of such bill or note, or notice of such dishonour, by a protest made by a public notary,—but such dishonour and notice thereof may be proved by the evidence of any competent witness: and no charge shall be allowed in the taxation of costs between party and party, for any such protest, should one have been made: Provided that, as often as notice of dishonour shall be necessary to be proved in regard to any bill or note, the reasonable horse-hire and other expenses of the person employed to give such notice shall be allowed to the successful party in the cause: Provided, however, that no horse-hire or other expenses shall be allowed in regard to any notice of dishonour given at any place within the two miles of the residence of the person causing the same to be given.

Jurisdiction in ejectment.

10. The Resident Magistrates aforesaid shall, in their respective Courts, have jurisdiction in all actions of ejectment against the occupier of any lands, tenements, or premises, situated within the local limits of their respective districts, at the suit of any person (or of his lawful attorney, administrator or executor) under whom such occupier has holden or occupied the same in virtue of any lease, contract, or agreement; or at the suit of any person (or of his lawful attorney, administrator, or executor) whose name if enregistered in the land register of the Colony as the proprietor of any such lands, tenements, or premises, against the tenant or occupier thereof; or at the suit of any tenant (or his lawful attorney, administrator, or executor) holding a subsisting written lease of any such lands, tenements, or premises, under the person whose name is enregistered in the land register of the Colony as the proprietor thereof, against any occupier of such lands, tenements, or premises, whose right, or alleged right, of occupation is not derived from the person whose name is enregistered as aforesaid as the proprietor thereof: Provided always, that the title to the ownership of any of the lands, tenements, or premises aforesaid shall not in any such action be in question, but only the right of occupation: And pro-

Digitised by the University of Pretoria, Library Services, 2016

vided, also, that it shall not be shown by the defendant that the right to the occupation of any such lands, tenements, or premises, during the term or period as to which the right of occupation shall be in dispute, is to him of the clear value of forty pounds sterling, or upwards.

Payment of debt by instalments.

11. Every such Court as aforesaid may make orders concerning the time or times, and by what instalments, (1) any debt or costs for which judgment shall be obtained in the said Court shall be paid, and all such moneys shall be paid into Court, unless the said Court shall otherwise direct; and every such order shall be in the form in that behalf in the rules and regulations of the Courts of Resident Magistrates provided.

Recovery of sums adjudged.

12. Whenever any Court shall give judgment for the payment of money, the amount shall be recoverable—in case of default, or failure of payment thereof forthwith, or at the time or times, and in the manner, ordered by the said Court—by execution (2) against the movable property of the party against whom such judgment shall be given; which execution shall be sued out and executed in manner and form as in that behalf directed by the rules and regulations aforesaid. (3)

Recovery of debts beyond district of magistrate adjudging.

13. Whenever there shall not be found within the district of the Resident Magistrate, from or out of whose Court such execution shall issue, sufficient movables of such person from which the debt or costs can be levied, by virtue of any writ or warrant issued by such Magistrate, such writ or warrant, when endorsed by the Resident Magistrate of any other district (and every Resident Magistrate is hereby authorised and required, on production to him of any such writ or warrant, to endorse the same), shall have the like force and effect, and may be executed by the officer or person to whom such writ or warrant shall be directed, within the district of the Magistrate by whom it has been endorsed, as if it had been issued by such last mentioned Magistrate for execution of any sentence or judgment of his Court.

Effect of failure to pay instalment as adjudged.

14. Whenever any such Court as aforesaid shall have made any order for the payment of any sum of money, by instalment, execution upon the judgment recovered against the debtor shall not issue until after default made in the payment of some instalment according to such order, and execution, or successive executions, may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the Court shall order, either at the time of making the original order, or at any subsequent sitting of the Court.

What goods not attachable.

15. In respect of any process of execution issued against any person out of any such Court as aforesaid, the wearing apparel and bedding of such person and his family, as well as the tools and

[1] See § 14.
[2] See Rule 12 Schedule B.
[3] Rules 40, *et seq.*

Digitised by the University of Pretoria, Library Services, 2016

No. 20–1856.

implements of his trade, to the value of five pounds, on the whole, shall be protected from seizure, and shall not be attached or sold.

Decree of civil imprisonment.

16. Whenever it shall appear from or by the return of the messenger of any of the Courts aforesaid to any process of execution, whereby such messenger was required to cause to be levied and raised of the movable property of any defendant the amount of any debt and costs recovered by the judgment of the said Court by any plaintiff, that such messenger had not found any such movable property, or had found sufficient of the same wherewith to satisfy only some part or portion of such debt or costs as aforesaid, then, and in that case, it shall and may be lawful for the clerk of the said Court, and he is hereby required, upon the application of the said plaintiff, or his lawful agent, to issue and deliver to the messenger of the said Court a summons for the said defendant, calling upon him to appear and show why a decree of civil imprisonment should not be pronounced against him, which summons shall, in substance and effect, be in the form in that behalf in the schedule to this Act contained. (1)

Warrant of imprisonment.

17. When and as often as any such Court as aforesaid shall make a decree of civil imprisonment against any defendant, the process for the execution of the same shall be by warrant under the hands of the Resident Magistrate, which warrant shall, in substance and effect, be in the form in that behalf in the schedule to this Act contained. (2)

Imprisonment, and maintenance during.

18. The keeper of whatever prison shall in any such warrant be mentioned and referred to, shall receive into his custody, and retain therein, according to the tenor of such warrant, the person against whom the same shall have been sued out: Provided, always, that the plaintiff sueing out the same shall pay and satisfy the charges for the maintenance of the defendant, precisely as if such defendant had been committed under or by virtue of a decree of civil imprisonment, made or granted by the Supreme or any Circuit Court: And provided, also, that it shall and may be lawful for such keeper as aforesaid, in case any such charges shall remain unsatisfied, to discharge the debtor from custody forthwith: And provided, further, that such charges as aforesaid for maintenance shall be one shilling per day, payable weekly in advance, and shall be paid by the keeper of the prison into the hands of the imprisoned debtor.

Circumstances under which decree of imprisonment may be withheld.

19. When and as often as any defendant, summoned as aforesaid to show why a decree of civil imprisonment shall not be made or granted against him, shall propose terms of settlement to the plaintiff, which terms the said plaintiff shall agree to accept, or shall propose terms of settlement which although the said plaintiff shall refuse to accept the same, shall yet be deemed by the said

[1] Rule 48.
[2] Rule 49.

Digitised by the University of Pretoria, Library Services, 2016

Court to be fair and reasonable, or shall make it appear that he is incapable of paying or settling (1) the amount of the debt or damages, or any part thereof; it shall and may be lawful for the said Court, either to withhold the said decree, or to grant the same, with such certain stay of execution, or other equitable condition, as shall best tend to carry into effect or secure the performance of the terms of settlement agreed upon between the parties, when such terms there are, or, when there are none such, then as shall best tend to carry into effect and secure the performance of any terms proposed by the defendant, which, by the said Court, shall be deemed fair and reasonable, and as such be approved and adopted, or otherwise, as shall best tend to meet the merits of the case.

Period of imprisonment and effect of liberation.

20. No defendant shall be detained in prison, under any such warrant as aforesaid, in any case in which the debt and costs mentioned in such warrant shall together amount to less than five pounds for any period longer than one month; nor in any case whatever for any period longer than three months; and no defendant once discharged shall ever be again arrested for the same debt or cause of action: Provided, always, that when any defendant shall be discharged from prison, by reason merely that any such period as aforesaid has expired, such imprisonment shall not be deemed to be a satisfaction of the debt, damages, or costs for which he was taken in execution, so as to prevent the plaintiff from having further execution, against the property of such defendant: And provided, also, that every defendant imprisoned under any such warrant shall be discharged forthwith upon payment of the amount of debt and costs mentioned in the said warrant.

Costs of proceedings for imprisonment.

21. The costs and charges of every summons for civil imprisonment and for the service of the same, and of every decree made in pursuance thereof, shall be the same as those, for the time being, respectively fixed in regard to other summonses or judgments by the schedule or table of fees appointed and authorised to be taken by the officers of the Courts of Resident Magistrates respectively, and the costs and charges of every warrant issued upon or by virtue of any such decree, and of the execution of the same, shall be payable and paid according to the scale in the schedule to this Act set forth.

Costs of proceedings for imprisonment, by whom payable.

22. All and singular the costs and charges in the last preceding section mentioned shall be payable and paid by the plaintiff, who shall not (except as hereinafter excepted) recover or have the same, or any of them, from the defendant: Provided, always, that if, in any case in which any such decree of civil imprisonment shall be made or granted, it shall be made to appear to the Court, at the time of granting the same, that the non-payment by the said defendant of the debt and costs due by him, and then in question,

(1) See § 6, Act 8, 1879.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

is vexatious, it shall and may be lawful for such Court to allow against such defendant the costs and charges aforesaid, or any part thereof, which to the Court shall seem fit: And provided, also, that nothing in this section contained shall be construed so as to affect any settlements, by means of terms offered by the defendant and accepted by the plaintiff, or to prevent the Court from taking such costs and charges into its consideration, in any case in which terms are proposed by the defendant as fair and reasonable, for the purpose of being sanctioned by the said Court, and carried into effect by its authority.

Proceedings for recovery of possession of house, &c., upon return of *nulla bona* to action for rent.

23. When and as often as a judgment of any such Court as aforesaid shall have been obtained for the amount of any rent of any house, land, or premises held by the defendant from or under the plaintiff, due and in arrear, and it shall appear by the messenger's return to any process of execution issued upon the said judgment, that no movable property has been found wherewith to satisfy the debt and costs mentioned in such process, or any part thereof, it shall and may be lawful for the clerk of the said Court, and he is hereby required, upon the application of the said plaintiff, to issue and deliver to the messenger of the said Court a summons for the said defendant, calling upon him to appear and show why he should not be condemned to deliver up to the said plaintiff possession of the house, land, or premises by the said defendant held from the said plaintiff, and in respect of which the rent recovered as aforesaid shall be due and owing; which summons shall, in substance and effect, be in the form in that behalf in the rules and regulations of the Courts of Resident Magistrates contained (1): Provided, always, that no claim or demand for the delivery up of such possession shall be made under or by virtue of the provisions of this section in any case in which the lease or contract of hire, or the time or term thereof yet to come and unexpired, shall be respectively of a nature or value which would exclude the jurisdiction of any Court of Resident Magistrate, under or by virtue of the tenth section of this Act.

Decree for delivery of possession, and its effects.

24. Upon the hearing of every case in which such delivery up of possession as aforesaid shall be claimed, it shall and may be lawful for the Court of Resident Magistrate in which the same shall be pending, upon proof of such return as aforesaid to the process of execution, to condemn the said defendant to deliver up such possession forthwith, but without costs; and thereupon such Court shall, upon the application of the plaintiff, grant a warrant authorising and requiring the messenger of the said Court to put the plaintiff into possession of the house, land, or premises in question; which warrant shall, in substance and effect, be in the form in that behalf in the rules and regulations of the Courts of the Resident Magistrates contained, (2) and which warrant it shall and may be

[1] Rule 50.
[2] Rule 51.

Digitised by the University of Pretoria, Library Services, 2016

lawful for such messenger to execute as against the defendant, and all persons claiming from, through, or under him; and thereupon every previous contract or agreement for the hire or use of such house, land, or premises by the said defendant, from the said plaintiff, shall become and be wholly evicted, avoided, and from thenceforth absolutely determined: Provided always, that the execution of such warrant shall not operate as a satisfaction or extinguishment of the rent recovered by such judgment.

Court in a certain case may, in an action for rent, decree delivery up of possession.

25. If it shall be made to appear to any such Court as aforesaid, at the time of the hearing of any action brought for the recovery of any such rent as aforesaid, either by the admission of the defendant, or otherwise, and whether such defendant shall personally appear at any such hearing or not, that there is no movable property to be found against which to execute any process of execution, the said Court may then, and without the issue of any such process or any fresh summons, condemn the defendant to deliver up possession as aforesaid, in like manner as if he had been duly summoned in manner and form as in the twenty-fourth section of this Act mentioned.

Arrest of goods in security for rent.

26. When and as often as the landlord of any house, land, or premises, situate within the jurisdiction of any Resident Magistrate, shall make an oath before such Magistrate that an amount of rent, not exceeding the amount to which the jurisdiction of the Court of such Resident Magistrate is limited, is due and in arrear in regard to the said house, land, or premises, and that the said rent has been demanded for the space of seven days and upwards, or, if not so demanded, that the deponent believes that the tenant is about to remove the movable property in and upon the said premises, in order to defeat and avoid the payment of the rent so due and in arrear, and shall enter into security, together with some one as his surety, to be approved of by the said Magistrate, to prosecute in such Court as aforesaid, if need be, a suit for the recovery of such rent so in arrear, and also to pay and satisfy all damages, costs, and charges which the tenant of such house, land, or premises, or any other person, may sustain or incur, by reason of or in connection with the distress or seizure hereinafter mentioned, if the said landlord shall fail to prove that the rent aforesaid is really due and in arrear; then, and in that case, it shall and may be lawful for such Magistrate to issue an order in writing, directed to the messenger of the said Court, authorising and requiring him to seize and arrest, if need be, so much of the movable property in or upon the place or premises in question, and by law distrainable for rent in arrear, as may be sufficient to satisfy the amount of rent due and in arrear, together with the costs and charges of the action aforesaid, to be afterwards, if need be, instituted for the recovery thereof; and such affidavit, security, and order, respectively, shall, in substance and effect, be in the forms in the rules and regulations of the Courts of Resident Magistrates in that

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

behalf contained: (1) Provided, always, that whenever any such order shall be applied for at the time of sueing out, or after having sued out, a summons of the Court aforesaid, for the recovery of the rent in respect of which such order shall be needed, the form of such security as aforesaid shall be modified accordingly: And provided also, that in case of failure made in fulfilling any of the stipulations or conditions contained in such security, then any order made in reference to the same, and everything done under the same, shall be, *ab initio*, null or void, and the landlord and his surety shall be answerable for any damage, loss, or injury, which the tenant aforesaid, or any other person, may have sustained by reason or in consequence of such order.

Execution of arrest in security of rent.

27. The messenger aforesaid, in the execution of any such order as aforesaid, shall repair to the house, land, or premises in question within such space of time as he would be bound to repair to the same were such house, land, or premises, the house of a defendant against whom such order was process of execution on a judgment or sentence of the Court, and shall demand payment of the amount of the rent mentioned in such order, and, failing to obtain such payment, he shall require that so much movable property so distrainable as aforesaid be pointed out as such messenger may deem sufficient to satisfy the exigency of such order; and if such requisition be complied with, the said messenger shall make an inventory of such property, and lay an attachment thereon; but if no such property be pointed out, the said messenger shall attach, under inventory, as much of such property as he himself may deem sufficient for the purpose aforesaid.

Copy of inventory to be handed to the tenant.

28. The said messenger shall deliver a copy of the said inventory, signed by himself, to the tenant, or, if he be not present, or will not accept it, shall leave the same upon the premises; and such inventory shall have subjoined thereto a notice, which shall, in substance and effect, be conformable to the form in that behalf in the rules and regulations of Courts of Resident Magistrates contained. (2)

When security found for rent, goods arrested shall be left with the tenant.

29. When any tenant, in regard to whose rent in arrear movable property has been arrested under any such warrant as aforesaid, will undertake in writing, together with some other person, to be approved by such messenger, as his surety, that the said movable property shall be forthcoming, to answer process of execution in any action for recovery of the rent alleged to be in arrear, if the landlord shall not be sooner satisfied in respect to the said rent, then the said messenger shall leave the said movable property upon the premises where the same was found; and such undertaking as aforesaid shall in substance and effect, be in the form in that behalf in the rules and regulations of the Courts of Resident Magistrates contained. (3)

[1] Rules 52, 53 and 54.
[2] Rule 55.
[3] Rule 56.

Digitised by the University of Pretoria, Library Services, 2016

When no such security found, goods arrested how to be kept.

30. If the tenant will not undertake, in manner and form as in the last preceding section mentioned, then the messenger aforesaid shall either remove the movable property arrested to some convenient place of security; or, should it be inconvenient to remove the same, shall leave it upon the premises, in the charge and custody of some person for him, to await the issue of the proceedings taken, or to be taken, in regard to the rent due and in arrear.

Embezzlement, &c. of goods arrested, how punishable.

31. If any person shall dispose of, conceal, embezzle, or receive any movable property attached under and by virtue of any such order as aforesaid, knowing the same to have been attached, and with intent to defeat the said attachment, such person shall, on conviction thereof, be liable to be imprisoned, with or without hard labour, for any period not exceeding six months.

Goods arrested may, with consent of tenant, be sold at once.

32. Where any person whose movable property has been attached under any such order as aforesaid, shall admit the amount of rent due and in arrear, and shall be minded, in order to save expense, to consent to an immediate sale thereof, it shall and may be lawful for the Resident Magistrate by whom the said order was issued, upon such consent being certified to him by such person, both in person and in writing, to grant another order, directed to the messenger aforesaid, authorising and requiring him to sell, on some convenient day, and at some convenient place, to be specified in such order, the said movable property, or so much thereof as shall be necessary to satisfy the amount of rent due and in arrear, together with the charges of the said sale, which shall be the same as would by law be payable if such sale were a sale under process of execution of the Resident Magistrate's Court; and such order shall, in substance and effect, be in the form in that behalf in the rules and regulations of the Courts of Resident Magistrates contained (1); and every such sale may be made by the said messenger without taking out any licence as an auctioneer, and shall be made publicly, and for ready money, to the highest bidder: and a notice of every such sale shall be affixed at the door of the Court-house of the said Resident Magistrate, and at, or as near as may be to, the place where the sale is actually to take place, for seven days at least before the day appointed for such sale: Provided always, that it shall be competent for the tenant at any time before such sale, to pay the amount of rent due and in arrear, together with such further sum, not exceeding fifteen shillings, as the Magistrate shall tax and allow for the costs and charges of such messenger about such seizure and arrest as aforesaid; and thereupon the movable property arrested shall be restored.

Appeal against judgment of magistrates.

33. It shall and may be lawful for any person, being a party to any civil suit or action, depending in the Court of any Resident Magistrate within this Colony, to appeal against any final

[1] Rule 57.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

judgment, decree, or sentence of such Court, or against any rule or order made by such Court in any such civil suit or action, having the effect of a final or definitive sentence, to the Supreme Court, or to the Circuit Court which shall next be holden for the district of such Resident Magistrate: and in every case in which any such appeal shall be made, the Resident Magistrates shall, and are hereby respectively empowered, either to direct that the judgment, decree, rule, order, or sentence appealed from, shall be carried into execution, or that the execution thereof shall be suspended pending such appeal, as to the said Resident Magistrates respectively, may, in each case, appear to be most consistent with real and substantial justice; and in case any Resident Magistrate shall direct any such judgment, decree, rule, order, or sentence, to be carried into execution, the person in whose favour the same shall have been given shall, before the execution thereof, enter into good and sufficient security, to be approved by such Resident Magistrate, for the due performance of such judgment or order, as the Court to which such appeal shall be made shall think fit to make thereupon; and in case any Resident Magistrate shall direct the execution of any such judgment, decree, rule, order, or sentence to be suspended pending such appeal, such Resident Magistrate shall and may, whenever it shall appear to him necessary, and consistent with real and substantial justice so to do, require the person against whom such judgment, decree, rule, order, or sentence shall have been given, before any order for the suspension of any such execution is made, to enter into good and sufficient security, to be approved by such Resident Magistrate, for the due performance of such judgment or order, as the Court to which such appeal shall be made shall think fit to make thereupon: Provided always, that every such appeal shall be taken, entered, and made within such time and in such manner as is directed and required by the rules and regulations, (1) for the time being, of the Courts of Resident Magistrates: And the said Supreme Court or the said Circuit Court may reverse or alter the judgment of the said Court of Resident Magistrate, as justice shall require,—and in case the record of the Resident Magistrate shall not appear to the Supreme or Circuit Court (as the case may be) to furnish sufficient evidence or information for the due determination of the case, may remit the said record to the Court of the Resident Magistrate, with instructions in regard to the taking or setting out of further evidence or information; or such Supreme or Circuit Court may order the parties, or either of them, to produce, at some convenient time, in such Court, such further proof as shall seem necessary or desirable; or such Court may take such other course as may lead to the just, speedy, and, as much as may be, inexpensive settlement of the case, making such order in regard to costs as justice shall require.

When appeal made, judgment may be either executed or suspended.

At what time appeal to be taken.

Procedure on appeal.

[1] Rules 33, 34, 35, 59 and 60.

Digitised by the University of Pretoria, Library Services, 2016

Costs where action, competent before magistrate, is brought in superior court.

34. If any action shall, after the commencement of this Act, be commenced in the Supreme Court, or any Circuit Court, for or upon any cause of action, other than some one of those in the next succeeding section mentioned, for which cause an action might have been commenced in some Court of Resident Magistrate, and judgment shall be given for the plaintiff for a sum less than forty pounds, if such action be founded upon a liquid document, as in the eighth section of this Act mentioned, or less than twenty pounds, if such action be not founded upon a liquid document, such plaintiff shall not recover any costs exceeding the estimated amount of the costs which he would, in the same case, have recovered in the Court of Resident Magistrate, had he brought his action therein; and if judgment shall be given in favour of the defendant, he shall be entitled to his costs, as between attorney and client, unless, in either case, the Court trying the action shall find, and record, that the said action, from its nature and circumstances was fit to be brought into such Court.

Costs.

Cases in which action may be brought in supreme or circuit court.

35. In all cases in which the plaintiff resides in a district other than that in which the defendant resides, and no part of the cause of action arose in such last mentioned district, and in all cases where a claim or demand is founded upon any notarial or other mortgage bond, or bill of exchange, or promissory note, of which the lawful holder, for valuable consideration, does not reside in the same district with the defendant, and in all cases in which any action shall be brought against any officer of any such Court, for or on account of anything relating to his conduct in his office, the plaintiff may, at his election, bring his action in the Supreme Court, or any competent Circuit Court, although some Court of Resident Magistrate might have had jurisdiction, and the question of the costs in such action shall be judged of by the Court in which it is brought, in like manner as if it could not have been brought in any other.

Costs.

Enrolment of practitioners.

36. (1) It shall and may be lawful for every Court of Resident Magistrate to admit and enrol, as agents in the said Court, so many persons of full age, and of good fame and character, as shall be desirous to be so enrolled, and shall pay for such enrolment, if in the Court of the Resident Magistrate for Cape Town, and the district thereof, and the Cape district, or in the Courts of the Resident Magistrates for Albany and Port Elizabeth respectively, the sum of twenty pounds, and if in any other Court of Resident Magistrate, the sum of ten pounds, to be paid by such Magistrate into the Colonial Treasury: Provided that every agent enrolled in any one Court shall be entitled to be enrolled in any other, without the payment of any further sum, save and except that an agent enrolled in any Court other than one of the three in this section mentioned, who shall desire to be enrolled in any of the said three Courts, shall be liable to pay an additional sum of ten pounds.

[1] See § 8, Act 43, 1885, and Act 31, 1886.

Digitised by the University of Pretoria, Library Services, 2016

No. 20–1856.

Jurisdiction of court over enrolled practitioners.

37. Every such Court shall possess and exercise over, or in respect of, all agents so enrolled the like powers and authorities as the Supreme Court possesses and exercises over, or in respect of the attorneys thereof, and may summarily inquire into any charge of misconduct preferred against any agent, and should the same prove to be well founded, may remove such agent from the roll of agents, either absolutely or conditionally, or may suspend such agent from practice in the said Court, for a limited period, in all cases in which, under similar circumstances, arising in or out of proceedings in the said Supreme Court, any attorney thereof might lawfully have been, by the said Court, proceeded against and punished in the same manner: Provided always, that every Resident Magistrate shall record the evidence upon which he shall have ordered any such removal or suspension, and that any agent who shall conceive himself to be aggrieved by any such removal or suspension, may bring the same in review before the Supreme Court, or any Circuit Court for the district in which such removal or suspension was ordered, which Supreme Court or other Court may set aside the same; and when and as often as any such removal or suspension shall be set aside, no costs shall be awarded against the Magistrate ordering the same, in case he shall appear to have acted *bonâ fide*, and upon reasonable and probable cause: Provided always, that although such removal or suspension shall not be brought in review, the Magistrate so removing or suspending any agent shall nevertheless transmit to the Registrar of the Supreme Court, a certified record of the evidence upon which the said removal or suspension was grounded; and it shall be lawful for the said Court, in case it should deem such removal or suspension one fit to be rescinded or reconsidered, to make such order in the matter as shall to justice appertain.

Fees recoverable by enrolled practitioners from client.

38. [1] No agent shall (except as hereinafter excepted) recover from his client or employer, for, or on account of the work and labour by such agent expended in and about the prosecuting or defending of any civil action or proceeding in any Court of Resident Magistrate, any greater sum than seven shillings and sixpence in liquid cases, or ten shillings and sixpence in all other cases and proceedings: Provided always, that nothing herein contained shall be taken or construed so as to render invalid any agreement in writing signed by the party sought to be charged, or his lawful agent, whereby any greater or lesser sum than either of the sums aforesaid shall be stipulated or undertaken to be paid.

Fees recoverable from opposite party, in regard to employment of an enrolled agent.

39. [1] The party, whether plaintiff or defendant, in whose favour any judgment of any Court of Resident Magistrate in any civil action or proceeding shall be pronounced, shall, subject to the conditions hereinafter mentioned, be allowed, in the taxation of

[1] See § 7, Act 21, 1876. The fees mentioned herein have been altered by Rules of Supreme Court promulgated 4th January, 1878.

Digitised by the University of Pretoria, Library Services, 2016

costs against the opposite party, the expense of the agent, if any, employed by the party successful, according to the scale aforesaid of seven shillings and sixpence in liquid, and ten shillings and sixpence in other cases: Provided always, that nothing herein contained shall be construed so as to deprive any such Court of any discretionary power which it may now by law possess, to refuse costs to any suitor to whom it would, in the judgment of such Court, be inequitable to allow the same.

Advocates may appear.

Costs.

40. Any advocate of the Supreme Court may appear and plead in any civil action or proceeding depending in any Court of Resident Magistrate: Provided always, that nothing shall be allowed to any plaintiff, for the expense of such advocate, when the sum recovered shall be under ten pounds, nor to any defendant, when the sum demanded was under ten pounds, nor shall the expense of such advocate be allowed in any case, without the leave of the said Court of Resident Magistrate; which leave such Magistrate shall only grant in case he be of opinion that the action or proceeding was of such a nature as to render the employment of an advocate reasonable and proper: And provided, also, that the expense of such advocate shall not be allowed unless he shall have been instructed by some such agent as aforesaid, or some such attorney as in the next succeeding section mentioned, whose expense shall also be allowed: And provided, further, that the sum to be allowed for the expense of an advocate, in any taxation of costs between party and party, shall never be more or less than one pound and one shilling.

Attorneys to be deemed enrolled agents.

41. Every attorney duly admitted to practise in the Supreme or any Circuit Court, shall be entitled to practise in any Court of Resident Magistrate, without payment or enrolment, but shall be considered, in the taxation of costs, and in other respects, as an enrolled agent.

Jurisdiction in criminal cases.
Vide also sections 44, 55, and 56.
Punishments.

42. (1) The Resident Magistrates of the Colony shall respectively, have jurisdiction in all cases of crimes and offences wherein any person may be accused of any crime or offence not punishable by death, transportation, or banishment from this Colony: Provided always, that it shall not be lawful for any such Resident Magistrate to punish any offender in any higher or more severe manner than by fine, not exceeding the amount of ten pounds sterling, 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 a period not exceeding three months, or by a whipping, privately, in prison, not exceeding thirty-six lashes: Provided that the punishment of whipping shall not be inflicted except in the case of a second or subsequent conviction of some crime or offence within the space of two years: (2) Provided, also, that any offender may be

---

[1] Printed as amended by § 4, Act 21, 1876.
[2] See Act 21, 1869, as amended by Act 19, 1877, § 1.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

punished by both such fine and such imprisonment, or by both such imprisonment and such whipping, but the offender shall not for the same offence be punished both by fine and by whipping: And provided, also, that in regard to the infliction of spare diet or solitary confinement, the Resident Magistrates shall observe and conform to such regulations and restrictions as shall from time to time be deemed necessary to prevent injurious consequences, and be by the Governor issued for their guidance: And provided, further, that nothing herein contained shall be construed so as to prevent any Resident Magistrate from inflicting any other or greater punishment than the punishment aforesaid, when and as often as he is or shall be authorised so to do by any special Law or Ordinance now in force or hereafter to be enacted.

Females not to be liable to corporal punishment, or to labour in a public place.

43. It shall not be lawful for any Court of Resident Magistrate, in any case, to sentence or adjudge any female to receive personal correction, or to hard labour on any road, street, or public place. [1]

Jurisdiction as to offences committed beyond local limits of magistracy.

44. No Resident Magistrate shall have jurisdiction, except as is hereinafter excepted and provided, in any case of any crime or offence committed without the local limits of the district within which such Magistrate shall have been appointed to exercise jurisdiction: Provided that when any crime or offence shall be committed on the boundary or boundaries of two or more districts, or within the distance of two miles of any such boundary or boundaries, or shall be begun in one district and completed in another, every such crime or offence may be dealt with, inquired of, tried, determined, and punished in any of the said districts, in the same manner as if it had been actually and wholly committed therein: And provided also, that where any crime or offence shall be committed in respect of any property in or upon any cart, wagon, coach, or other carriage whatever, employed on any journey through any part of this Colony, such crime or offence may be dealt with, inquired of, tried, determined, and punished in any district through any part whereof or on, or within the distance of two miles of the boundary whereof such coach, wagon, cart, or carriage, shall have passed in the course of the journey during which such crime or offence shall have been committed, in the same manner as if it had been actually and wholly committed in such district. [2]

Accused persons may make their defence by counsel, attorney, or agent.

45. Every person, upon trial on any criminal charge in any Court of Resident Magistrate, shall be entitled to make his defence by counsel, or by attorney, or by any such agent as is hereinbefore in the thirty-sixth section of this Act mentioned: Provided, however, that nothing herein contained shall extend to alter or affect the law heretofore in force, regarding the admission of legal advisers upon any preparatory examination. [3]

[1] See Act 43, 1885.
[2] As to offences on Lines of Railway, see Act 16, 1882.
[3] See § 39, Ord. 40.

Digitised by the University of Pretoria, Library Services, 2016

Report of summary criminal trials to be forwarded to Attorney-General.

46. Every Resident Magistrate shall prepare and transmit to the Attorney-General of the Colony a report of every criminal case adjudicated upon by such Magistrate under and by virtue of his summary jurisdiction, showing the name and occupation of the party accused, the name and occupation of the complainant, the crime or offence charged, the judgment of the Court, and, in cases of conviction, the sentence pronounced. (1)

Certain judgments in criminal cases to be subject to the revision of a judge of the Supreme Court.

47. When as often as any Court of Resident Magistrate shall sentence any person, upon conviction, to be imprisoned, with or without hard labour, for any period exceeding one month, (2) or to pay any fine exceeding five pounds or to receive any number of lashes [*exceeding twelve*] (3) the Magistrate pronouncing such sentence shall forward to the Registrar of the Supreme Court, (4) not later than one week next after the determination of the case, the record of the proceedings in the case, together with such remarks, if any, as he may desire to append; and such Registrar shall, with all convenient speed, lay the same before one of the Judges of the Court, in chambers, for his consideration,—and in case the said proceedings shall appear to such Judge to be in accordance with real and substantial justice, he shall endorse his certificate to that effect upon the said proceedings, and the said proceedings shall then, by the Registrar aforesaid, be returned to the Resident Magistrate by whom the same shall have been transmitted: Provided, always, that the execution of any sentence of imprisonment, with or without hard labour, or to pay a fine, shall not be suspended by the transmission of, or the obligation to transmit, the record aforesaid, unless the person sentenced shall give sufficient bail to surrender himself in order to undergo such imprisonment, or to pay a fine imposed upon him (as the case may be), in case the proceedings in the case shall be approved as aforesaid,—and in case a written notice to surrender or to pay (as the case may be), signed by the clerk of the Court of the convicting Magistrate, shall be served upon or for the person, at some place to be mentioned in the bail bond or recognizance; and every such notice requiring the surrender of the person, or payment of the fine (as the case may be), shall be served in manner and form as are prescribed and directed by the rules and regulations of the Courts of Resident Magistrates, in regard to the service of the summons on a defendant in a civil case. And if, in any case, a person sentenced to receive any number of lashes [*exceeding twelve*] (5) shall not be

Manner of proceedings in bringing such cases before the Judge.

[1] As to Eastern Districts and Griqualand West, see § 36, Act 21, 1864, and § 19, Act 39, 1877, respectively.
[2] Printed as amended by § 2, Act 9, 1857.
[3] Words in brackets superseded by § 5, Act 21, 1876. See also § 6, Act 17, 1874, and Act 12, 1860.
[4] As to Eastern Districts and Griqualand West, see Acts 10, 1865, and 39, 1877, § 20, respectively.
[5] Words in brackets superseded by § 5, Act 21, 1876.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

also condemned to be imprisoned for such a period as shall allow time for the Judge's certificate to be received before inflicting the said lashes, such person, in case he shall not give sufficient bail for his appearance after being served, at some place to be mentioned in the bail bond or recognizance, with a written notice, signed by such clerk as aforesaid, requiring him so to do, [*and in case he shall not desire to receive his punishment at once,* ([1]) *and be thereupon discharged—which desire shall be recorded, and be signed by the prisoner, and also witnessed*], shall be detained in custody until the proceedings in the case shall be returned as aforesaid: Provided, always, that in every case in which any person sentenced as aforesaid shall give bail as aforesaid, it shall be lawful for the Magistrate (should he so think fit) to take bail also for the cost and charge of serving such notice as aforesaid (if necessary), which cost and charge shall be the same as that of serving a summons in a civil case against the same person at the same place.

When questions arise in such cases, how the same are to be disposed of.

48. If, ([2]) upon considering the proceedings aforesaid, it shall appear to the Judge in chambers that the same are not in accordance with real and substantial justice, or that doubts exist whether or not they are in such accordance,—then it shall and may be lawful for such Judge to lay the same before the Supreme Court for its consideration; and the said Court, at any sitting thereof, shall have full power, jurisdiction, and authority to affirm, alter, or reverse the sentence of the Resident Magistrate's Court, and to set aside or correct the proceedings thereof, and when it shall appear necessary or proper so to do, to remit such case to the said Resident Magistrate's Court, with such instructions relative to the further proceedings to be had in such case as the said Supreme Court shall think fit, and to make such order touching the suspension of the execution of any sentence against the person convicted, or the admitting such person to bail, or, generally, any matter or thing connected with such person or the proceedings in regard to him, as to the said Court shall seem calculated to promote the ends of real and substantial justice: Provided, also, that if, in any case, the said Court should desire to have any question of law or fact, arising in any such case, argued at the bar, such Court may direct the same to be argued by the Attorney-General of the Colony, and by such other advocate as the said Court may appoint.

The person convicted may cause the case, as transmitted, to be set down for argument.

49. ([3]) Every Resident Magistrate forwarding any such record, as is in the forty-seventh section of this Act mentioned, shall inform the person convicted of the day upon which such record will be forwarded, and it shall be lawful for any attorney of the Supreme Court, duly acting for such convicted person, to peruse, and, if need be, take a copy of such record, whilst in the possession of the Registrar of the said Court, or of any of the Judges thereof; and it

[1] Words in brackets superseded by § 6, Act 17, 1874.
[2] See Acts 12, 1860 § 1, and 43, 1885, § 2.
[3] See Acts 12, 1860 and 43, 1885.

Digitised by the University of Pretoria, Library Services, 2016

shall be lawful for such attorney, should he so think fit, acting as aforesaid, to set down the case contained in such record for argument before the said Court, in like manner as if such record had been returned or transmitted to such Court in obedience to any summons of such Court, issued in or for an appeal from, or review of, a judgment of the Court of Resident Magistrate: Provided always, that a written notice shall, in every such case, whether prosecuted at the public instance, or at the instance of a private party, be served upon the Attorney-General of the Colony, at his office, in Cape Town, not less than forty-eight hours before the hour appointed for the argument, setting forth that such case has been so set down for argument, as well as the grounds or reasons upon which the judgment is sought to be reversed or altered. And provided, that whether the said judgment shall be confirmed, or shall be reversed or altered, no costs shall be payable by the prosecutor to the person convicted, or by the person convicted to the prosecutor. Provided, also, that no sentence contained in any record of proceedings, forwarded as in the forty-seventh section of this Act directed, which sentence shall have been pronounced in regard to what was by law an offence, sufficiently charged and proved, and lawfully punishable as by the said sentence directed, shall be reversed or altered, by reason merely that the degree of punishment awarded by such sentence may appear to the Court or Judge considering such record to have been unusually or unnecessarily severe. And provided, lastly, that nothing herein contained shall extend to prevent such Court or Judge, or any other person, from making such representation to the Governor of this Colony, respecting the mitigation of any such sentence, as the circumstances of the case may appear to justify.

Amendment of plaint or summons.

50. In actions and proceedings before the respective Courts of Resident Magistrates, whether civil or criminal, it shall and may be lawful for such Court, before or at the hearing, to amend any plaint or summons, or other record, in regard to the misdescription therein of any written instrument or paper writing relating to such action or proceeding, or of any contract, or any other particular or particulars: Provided that no such amendment be made, except in some particular which, in the judgment of such Court, is not material to the merits of the case, and by which the opposite party cannot be prejudiced in the conduct of his action, prosecution, or defence: Provided also, that such amendment shall be made upon the payment of such costs to the other party, if any, as such Court shall judge reasonable: And provided further, that no misnomer in regard to the name of any person or any place shall vitiate any summons or other writ, or plaint, or proceeding, in case the place or person be therein described so as to be commonly known.

Costs.

Suits by minors and married women competent in certain cases.

51. Persons under age, and married women, shall be entitled to sue in any Court of Resident Magistrate for any cause of action accruing to them, without being assisted by their guardians or

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

husbands (as the case may be) unless the defendant shall show to the Court that any such minor or married woman (as the case may be) has a guardian or a husband (as the case may be), resident within the district of such Magistrate: Provided also, that if, after such proof by the defendant, the plaintiff shall make it appear that the assistance of such guardian or husband (as the case may be) has been solicited, and has, without just and reasonable grounds been refused, the Resident Magistrate may disallow the objection of the defendant, and permit the suit or action to proceed precisely as if such minor were of full age, or such married woman were unmarried.

Summoning of witnesses resident in another district.

52. Whenever any person whom it shall be necessary to examine as a witness (1) in the course of any preparatory examination, or at the trial of any cause, whether civil or criminal, before any of the Resident Magistrates aforesaid, shall reside, or be for the time within any other district than that of such Magistrate, then, and in every such case, it shall and may be lawful for the said Magistrate to issue a summons for the attendance of such person before him, in the like form as is by law provided in respect of summonses to be issued in the like cases, for procuring or compelling the attendance of witnesses residing or being within the district of the Resident Magistrate issuing the same; and every such summons when endorsed by the Resident Magistrate or any Justice of the Peace for such other district, or by the Field-cornet of the Field-cornetcy within which the person so to be summoned resides for the time, or shall be found (who are hereby respectively authorised and required, on production to them of any such summons, to endorse the same), and being duly served and returned, by any person authorised to serve such a summons in either of the said districts, shall have in law the like effect in requiring the attendance of such person as aforesaid, before the Magistrate by whom the same was issued, and in rendering such person, if he shall fail so to attend, liable to every penalty provided for the non-attendance of persons summoned as witnesses, as if such person, at the time when such summons was served, had resided or been within the district of such last-mentioned Magistrate: Provided that, as often as any witness in any civil case brought in any Court of Resident Magistrate shall reside or be in a district other than that under the jurisdiction of such Court, it shall be lawful for the Court in which such civil action shall be brought, should it appear to be for the convenience of the witness, and to be consistent with the ends of justice, upon the request of either party, and after hearing the other party, to frame or approve of such interrogatories as either party shall desire to have put to such witness, and to forward the same (together with the reasonable expenses of such witness, which shall be advanced by the party desiring his examination) to the

Examination of witnesses resident in other districts, by interrogatories.

(1) See Rule 16.

Digitised by the University of Pretoria, Library Services, 2016

Resident Magistrate of the district within which such witness shall reside or be, who shall summon such witness to appear in his Court and, upon his appearance, shall take his evidence in manner and form as if a witness in a case pending in such last-mentioned Court, and shall put to such witness the interrogatories aforesaid, and all other questions calculated to obtain full and true answers to such interrogatories; and shall take down, or cause to be taken down, in writing, the evidence of such witness, and shall transmit the same, certified as correct, to the Resident Magistrate in whose Court such civil case shall be pending; and such evidence (subject to all lawful exceptions) shall be received as evidence in such case: Provided, also, that every witness so summoned by any Resident Magistrate to appear to answer any such interrogatories as aforesaid, shall be summoned in like manner, and be liable to the like penalties, in case of non-attendance, as if such summons was a summons to give evidence in the Court of such last-mentioned Resident Magistrate: And provided, lastly, that as often as any such witness, as in this section mentioned, in any case, civil or criminal, shall, after having been summoned to appear in the Court of some Resident Magistrate, other than that of the district in which such witness shall reside or be, fail to appear, it shall be lawful for the Resident Magistrate in whose Court he shall have been summoned to appear, to certify, under his hand, to the Resident Magistrate of the district in which such witness shall reside or be, that such witness, after being summoned to appear to give evidence in the case in question, made default in so doing; and thereupon it shall be lawful for such last-mentioned Resident Magistrate, and he is hereby required, to proceed against such witness, in regard to such default, in like manner, precisely, as if such witness had been summoned to appear as a witness in the Court of such last mentioned Resident Magistrate, and had made default; and such last mentioned Resident Magistrate shall certify to the Resident Magistrate in whose Court the actual default was made what shall have been done in regard to the witness so having made default.

Procedure in cases of examination upon interrogatories.

53. If any claim shall be made to, or in respect of, any movable property, taken in execution under the process, whether civil or criminal, of any Court of Resident Magistrate, or to or in respect of the proceeds or value thereof, by any person not being the party against whom such process was issued, it shall and may be lawful for the Court issuing such process, upon the application of the messenger, as well before as after any action brought against him, to issue a summons calling before the Court as well the party sueing out such process as the party making such claim, which summons shall be in the form in that behalf in the rules and regulations of the Courts of Resident Magistrates contained (1); and thereupon

Proceedings where third parties claim goods taken in execution.

[1] Rule 58.

Digitised by the University of Pretoria, Library Services, 2016

No. 20 –1856.

any action which may have been brought in any other Court in respect of such claim, shall be stayed, and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons, and that the movable property in question was so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action, after the issue of the summons aforesaid, and the Court of Resident Magistrate issuing such summons shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to such Court shall seem just and lawful, and such order shall be deemed to be a judgment of such Court, and shall be enforced and may be appealed from, in like manner and as any other judgment.

Contempts of court, what, and how punishable.

54. If any person shall wilfully insult the Resident Magistrate during his sitting in any such Court, or any clerk, or messenger, or other officer of any such Court, during his attendance therein, or shall wilfully interrupt the proceedings of such Court, or otherwise misbehave in such Court, it shall be lawful for any constable or private person, by order of the said Court, to take such offender into custody, and to detain him until the rising of the Court; and the Resident Magistrate shall be empowered, if he shall think fit, by warrant under his hand, to commit any person so offending to prison, for any period not exceeding seven days, or to impose upon any such person a fine not exceeding five pounds, for every such offence, and in default of payment thereof to commit the offender to prison, for any time not exceeding seven days, unless the said fine be sooner paid. But in any case in which any such Court shall commit or fine any person, under the provisions of this section for contempt of Court, the Resident Magistrate shall without delay (and if in a country district, by the next succeeding post) transmit to the Registrar of the Supreme Court, for the consideration of a Judge in chambers, a statement, certified by such Magistrate to be true and correct, of the grounds and reasons of his proceedings, and shall also furnish to the party committed a copy of such statement, so certified as aforesaid.

Records of inferior courts, how kept.

55. All the records and proceedings whatsoever of and belonging to any inferior Court, which has at any time heretofore existed within this Colony, shall be kept and preserved, where it has been provided by any law in force at the time of the passing of this Act that the same should now be deposited, and shall there remain until further or other provision respecting the custody of the same shall be made by the Governor of this Colony, by any proclamation to be by him issued for that purpose; and all parties concerned shall and may have access and recourse to the said records and proceedings, and to the records and proceedings of any of the Courts created and established by or under this Act; and every judgment and sentence of any inferior Court which heretofore existed within any district of this Colony, shall and may be

Judgment of former inferior courts may be executed.

Digitised by the University of Pretoria, Library Services, 2016

proceeded upon in the Court of the Resident Magistrate hereby created and established, having jurisdiction over a district comprising the town or village in which such former Court was holden, precisely as if the complaint or action whereon the same was given or pronounced had been originally commenced, and the said judgment or sentence given or pronounced in such last-mentioned Court. And if, at any time hereafter, Courts of Resident Magistrates should be created by any such proclamation as in the second section of this Act mentioned, and the district assigned for the jurisdiction of such Court by any such proclamation as is in the third section of this Act mentioned, should be composed of any territory before then under the jurisdiction of some other Court of Resident Magistrate, any judgment or sentence of such last mentioned Court, pronounced previously to the publication of such last mentioned proclamation, and affecting any person or any property in such territory, shall be as valid and effectual, and may be proceeded upon precisely in the same manner, as if such territory still remained under the jurisdiction of the Court by which such judgment or sentence was pronounced.

Proceedings now pending may be continued.

56. All proceedings prior to judgment or sentence which shall be pending in any Court of Resident Magistrate at the time of the commencement and taking effect of this Act may be proceeded with in any Court of Resident Magistrate established by this Act, in case such last mentioned Court be held in the same town or village in which such other Court was holden, and shall be a Court which would have jurisdiction in regard to such proceeding were the same commenced *de novo*.

Police court of Simon's Town abolished.

57. And whereas a Court of Resident Magistrate exists, and is intended to be continued at Simon's Town, and it is therefore unnecessary and inexpedient to maintain the Police Court in the said town, be it enacted, that the "Police Court of Simon's Town," as erected, constituted, and established by the Ordinance No. 4 of 1834, entituled "Ordinance for erecting, constituting, and establishing Police Courts to be holden in Cape Town and Simon's Town respectively, and for defining the duties and jurisdiction of the Judge of Police of Cape Town, and of the Justice of the Peace of Simon's Town, respectivsly," shall be abolished: and every clause, provision, matter, or thing in the said Ordinance contained, relative to the said Police Court, shall be repealed, and the same is hereby repealed accordingly.

Laws and ordinances repealed.

58. From and after the commencement and taking effect of this Act, so much of the royal letters patent, commonly called the "Charter of Justice," as may be repugnant to or inconsistent with any of the provisions of this Act, also as the Ordinances respectively entituled "Ordinance of His Honour the Lieutenant-Governor in Council, for creating Resident Magistrates and Clerks of the Peace in certain districts and places in this Colony," dated 19th day of December, 1827, No. 33; "Ordinance

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

of His Honour the Lieutenant-Governor in Council for authorising the Civil Commissioner of the Cape district to act within the district and residency of Simon's Town, and for establishing a board for the registration of marriages therein; and for repealing the proclamation of the 8th April, 1825, granting jurisdiction to the Government residents at Algoa Bay (now Port Elizabeth) and Port Frances, in certain criminal and civil cases," dated the 19th day of January, 1828, No. 38; "Ordinance of His Honour the Lieutenant-Governor in Council, for establishing and regulating the Court of the Judge of Police and Resident Magistrate for Cape Town and the district thereof, and the Cape district, and for other purposes," dated the 19th day of March, 1828, No. 44, save and except in so far as, by the seventeenth section thereof, the messengers of the Courts of the Resident Magistrates are authorised to sell by auction goods taken in execution of the process of such Courts; "Ordinance of His Excellency the Governor for establishing boards for the registration of marriages at the Paarl and Port Elizabeth," dated the 29th day of July, 1829, No. 63; "Ordinance of His Excellency the Governor in Council, for extending the jurisdiction of Resident Magistrates, in certain cases of ejectment," dated the 1st day of September, 1829, No. 66; "Ordinance of His Excellency the Governor in Council, for annexing the district of Port Elizabeth to the district of Uitenhage, and for defining and appointing the local limits within which the Courts of the Resident Magistrates and Matrimonial Courts within this Colony, shall respectively have and exercise jurisdiction," dated the 6th day of February, 1832, No. 89, save and except in so far as, by the fourth and fifth sections thereof, provision is made touching and concerning the Matrimonial Courts of this Colony; Ordinance No. 11 of 1836, entituled "Ordinance for rendering valid acts done and duties performed by persons appointed to act as and for certain Magistrates, and to empower the Governor to appoint Assistant Magistrates"; Ordinance No. 1 of 1837, entituled "Ordinance for erecting certain Resident Magistrates' Courts within the Eastern Division of this Colony, and for defining the jurisdiction thereof"; Ordinance No. 1 of 1839, entituled "Ordinance for erecting certain Resident Magistrates' Courts in the Western Division of this Colony, and for defining the jurisdiction thereof"; Ordinance No. 14 of 1847, entituled "Ordinance for empowering the Governor of this Colony to establish Courts of Resident Magistrates," — save and except in so far as any of the said Ordinances enact that certain acts, done previously to the passing thereof, shall be legal, valid, and effectual, and save and except in so far as the said Ordinances, or any of them, may repeal the whole or any part of any former Law or Ordinance,—shall be repealed, and the same are hereby repealed accordingly.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

59. And whereas it is expedient to add to and, in some particulars, amend the rules, orders, and regulations respecting the manner and form of proceeding in civil and criminal cases before the Courts of the Resident Magistrates, respectively, of the Colony of the Cape of Good Hope, bearing date the 22nd March, 1828,—Be it enacted, that the same shall be, and they are hereby repealed; and that the rules, orders, and regulations respecting the manner and form of proceeding in civil and criminal cases before the Courts hereby erected, or authorised so to be, shall be the rules, orders, and regulations in that behalf in the schedule to this Act contained, marked B; and that every rule, order or regulation in the said schedule contained shall be deemed and taken to be of the same force and effect as if the same, or the substance thereof, had been embodied in so many enacting clauses of this Act: Provided that nothing herein, or in the said rules, orders, and regulations contained, shall prevent the application to the said rules, orders, and regulations of the Ordinance No. 8, 1852.

Rules of court set forth in schedule.

60. In the interpretation of this Act, the rules, orders, and regulations hereunto annexed, the term Governor shall be deemed and taken to mean the officer for the time being administering the Government of this Colony, and the term Resident Magistrate, the officer for the time being acting as such; and any word or words importing the singular number or the masculine gender only, shall respectively be understood to include several persons, matters, and things, as well as one person, matter, or thing, and females, as well as males, unless there be something in the subject or context repugnant to such construction.

Interpretation clause.

61. This Act shall commence and take effect from and after the promulgation thereof.

When Act to take effect.

SCHEDULE A.

Form of the Oath of Allegiance.

I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria. So help me God!

Form of Oath of Office.

I, A. B., do promise and swear that I will faithfully and diligently execute, to the best of my abilities, the several duties of the office of Resident Magistrate. So help me God!

SCHEDULE B. [1]

Rules, Orders, and Regulations respecting the manner and form of proceeding in Civil and Criminal Cases before the Courts of the Resident Magistrates respectively of the Colony of the Cape of Good Hope.

1. The jurisdiction in regard to civil cases belonging to any Court of Resident Magistrate is exercisable over or in respect of any person

[1] See Act 12, 1869, and § 13, Act 17, 1886.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

residing or inhabiting within the district assigned to, or appointed for, such Resident Magistrate.

2. [Repealed by § 4, Act 9, 1857.]

3. The clerk of the said Court shall, upon entering into his said office, take an oath for the faithful performance of his duty, in the form following:

I, A. B., do swear that I will truly and faithfully execute the office of clerk of this Court, without fear, favour, or affection for any one; and that I will not, by myself or any other, receive or take, for my own use, any fee or reward for anything done by me in my said office; and that I will not take, or permit or suffer any person under me to take, any other than such lawful fees as I shall be instructed to take or permit to be taken in my said office; and for all such I will duly and faithfully account to the Civil Commissioner of this district, whensoever I am thereunto required. So help me God!

4. The oath of the messenger of the said Court shall be as follows:

I, A. B., do swear that, faithfully and diligently, I will serve the office of messenger of this Court, and execute all summonses and process thereof, without favour or affection for any one; and that I will not, by myself or any other, take, receive, or demand any other than such lawful fees as I may be permitted by this Court to receive for anything done by me in my said office. So help me God!

5. The said messenger shall give security to the satisfaction of the Resident Magistrate for the due fulfilment of the duties of his office, and for the due and punctual payment by him, to the parties entitled thereto, of all moneys which shall come into his hands by virtue of his office.

6. The clerk of the said Court shall keep a book, ruled and divided into columns, headed and entitled according to the form set forth in the schedule hereunto annexed, marked E, which shall be called "The Civil Record Book of the Court of the Resident Magistrate, district of ," and the said clerk shall enter therein, in manner hereinafter set forth, (1) all proceedings in the said Court; and the Resident Magistrate, once in every week, shall, before the rising of the Court, on any Court day, sign the same.

7. The clerk of the Court shall, upon the application and statement, personally or in writing, or by the lawful agent of any one having matter of complaint or demand against another, subject to the jurisdiction of the said Court, enter a plaint into the proper column of the said book, setting forth, shortly and distinctly, the names and places of abode of the said parties; the nature and grounds of the said complaint or demand; and the relief prayed; and the said plaint shall stand for, and be taken as, and in the place of, a declaration of the cause of action between the parties; and the said plaint shall be entered as near as is material in the forms and according to the precedents set forth in the schedule hereunto annexed, marked C.

8. After entering the plaint of the party complaining, the clerk of the said Court shall appoint and specify a day for the appearance of

[1] Rules 7, 14, 37.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

the said parties, with their witnesses, in order to the hearing of the said complaint at a reasonable time, according to the distance at which the party summoned lives from the said Court; and he shall inform the party complaining thereof; and the said clerk shall issue and deliver to the messenger of the said Court a summons for the party complained against, to appear before the said Court with his witnesses, if he have any, on the said day; and the said summons shall be, as near as may be, in the form following, that is to say,—

Court of the Resident Magistrate
for the district of Albany.

Messenger of the Court,

Summon C. D., of (describing him so particularly that the officer of the Court may know where to find him), that he appear before the Court of the Resident Magistrate of this district, to be holden at Graham's Town on the day of next, at of the clock in the forenoon, with his witnesses, if he have any, to show why he hath not paid to A. B., of (describing him as in the plaint) the sum of which the said A. B. complains that he owes him for, &c. (following the statement in the plaint); or why he hath not satisfied A. B., of &c., the damage which the said A. B. complains that he has sustained, by reason that the said C. D., on or about, &c., broke down the fence, &c., of the said A. B., as the case may be—(following the statement in the plaint); and serve on the said C. D. a copy of this summons (and, where the action is founded on any document a copy of the said promissory note or other document, &c.;—or, and a copy of the account or bill of the said A. B., where the demand is upon account or bill), and return you on that day to the said Court what you have done on this summons.

Graham's Town, the 1st May, 185

J. M., Clerk to the Court of the Resident
Magistrate of the district of Albany.

9. Where the party, against whom any summons or other process of the said Court is issued, resides at such a distance from the place where the said Court is holden, or where, from the number of such summonses or other process, the said messenger cannot possibly serve or execute the same, the said summonses or other process may be served or executed by his sufficient deputy, to be first approved of as such by the Resident Magistrate, who shall be paid by the said messenger, and for whom he shall be responsible.

10. A copy of the said summons, together with copies of any documents, account, or bill, upon which the said complaint or demand is founded, shall be delivered to the messenger with the said summons, and shall be served, either personally on the said defendant, or left for him at his dwelling-house, with some one of his household, (1) at least forty-eight hours before the time therein specified for his appearance, where the party summoned lives within five miles of the place of holding the said Court; three days, where the said party lives

[1] See also § 12, Act 17, 1886.

Digitised by the University of Pretoria, Library Services, 2016

No 20—1856.

at a greater distance than five miles, and not exceeding ten miles; and so on, one day in addition to forty-eight hours for every ten miles of distance at which the party summoned lives from the place of holding the said Court. But no case shall be dismissed for or on account of the omission to deliver the copy of any such document, account, or bill as aforesaid in case it shall appear to the Court that such omission has not, in fact and in truth, prejudiced the defendant in respect of his defence.

11. If two or more persons, jointly sued, are partners in trade, the like service upon either of them shall be sufficient.

12. The messenger of the said Court shall endorse or annex to the summons the manner of his executing the same, and shall return the said summons to the clerk of the said Court.

13. It shall be permitted to any plaintiff or defendant in the said Court to appear and conduct his case by means of any person authorised by writing under his hand, to be filed with the clerk of the said Court; and when it shall be made to appear to the satisfaction of such Court that, by reason of the absence from home of any defendant, such written authority could not be obtained, then it shall be permitted to any one of his family, or any one having a general authority to manage his affairs in his absence, and willing to conduct the said case to appear for the defendant and conduct the same. But nothing shall, in the taxation of costs against either party, be allowed for the attendance or services of any person, not being enrolled in such Court to practise as an agent therein, nor an Attorney of the Supreme or Circuit Court, and not being an advocate of the Supreme Court of the Colony, instructed by such agent or attorney. And every such Court of Resident Magistrate, upon being satisfied that any person who appears to have a right of action is, from poverty, unable to sue out the process of such Court, may order all such process to issue without fee or charge. Provided, always, that such person, should he recover and receive sufficient from the other party, shall be liable to pay and make good all fees and charges so remitted.

14. On the Court day appointed for appearance of the parties, unless the said summons shall have been withdrawn, the clerk of the said Court shall cause the said parties, plaintiff and defendant, to be called; and if they, or any one duly authorised on their behalf, appear, he shall record the same, and the Court shall proceed to inquire of and determine the said complaint or demand; and the said clerk shall read over the plaint, and ask the defendant, or his agent, whether he will confess or deny the same; or where the complaint of the plaintiff is in respect of any sum of money alleged to be due to him, if he will make any like counter claim against the plaintiff; and the said clerk shall record his answer in the proper column of the record book.

15. If the defendant deny the said complaint or demand, or make claim of any sum of money as due to him by the said plaintiff, the said plaintiff, or some one on his part, shall forthwith produce and exhibit to the Court any writings or documents whereon his complaint or demand may be founded, and shall also produce any witnesses he may require to have examined in support of the same.

16. The process of the said Court, for compelling the attendance of any person to give evidence therein, shall be by summons issued by

Digitised by the University of Pretoria, Library Services, 2016

the clerk of the said Court, and directed to the messenger thereof; and shall be served and returned by him, in the same manner as any other summons of the said Court; and the said summons may be sued out by either party requiring the attendance of any witness, and shall be, as near as is material, in the form following: that is to say,—

Court of Resident Magistrate of the District of Albany.

Messenger of the Court,

Summon A. B., of &c., C. D., of &c., and E. F., of &c., that, laying aside all and singular business and excuses, they and each of them appear in person before this Court, at Graham's Town, on the day of next, at of the clock in the forenoon, to testify and declare all and singular those things which they, or any of them, know in a certain case, now depending in the said Court, between I. K., plaintiff, and N. O., defendant; and that they, or either of them, by no means omit so to do at their peril. Serve on each of them, the said A. B., &c., a copy of this summons, and pay to the said A. B. the sum of , to the said C. D. the sum of , and to the said E. F. the sum of , for their travelling expenses, respectively,—and return to the said Court what you have done thereupon.

J. M., Clerk of the said Court.

Graham's Town, 1st May, 185

17. If any witness have in his possession or control any deed, instrument, or writing which the party requiring his attendance is desirous to show in evidence, then the said summons shall be in the form following, namely—(as in the former case, to the day of hearing, and then proceed as follows),—"And also that they bring with them, and produce at the time and place aforesaid, a certain deed or instrument in writing, bearing date, &c., (describing very accurately the thing to be produced), and then and there to testify and declare, &c." (as before).

18. There shall be delivered to the said messenger, together with the said summons, so many copies thereof as there are witnesses to be summoned, and also such sum or sums of money, as the party for whom they are to be summoned intends that the said messenger shall pay or offer to the said witnesses respectively for their travelling expenses; and if any person, being duly summoned to give evidence, and his reasonable expenses being paid or offered to be paid to him, and having no sufficient excuse, shall neglect or refuse to attend or give evidence according to said summons, then the said Court shall impose upon the said person a fine for his default, not exceeding five pounds sterling; and for non-payment shall commit such person to the gaol of the said district for any time not exceeding fourteen days. Provided that as often as any person duly summoned shall fail to appear, it shall be lawful for the Resident Magistrate, in case no lawful cause for such non-appearance shall seem to him to exist, to issue his warrant for the apprehension of the party making default, in order that he may be brought up to give his evidence, and to be otherwise dealt with according to law.

19. If it shall appear to the said Court, upon oath, that any person, who is a material witness for either party to any cause, having been

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

duly summoned, doth not attend at the hearing thereof, then the Resident Magistrate shall, at his discretion, either postpone the hearing of the said case to another day, then to be appointed by him, or else shall take the examination of such witnesses as appear, and suspend the further hearing of the said case to another day; which postponement or suspension, and the cause thereof, and the day appointed for the further hearing, the said clerk shall note in the column of the said record book entitled "day of hearing the case."

20. All persons examined or giving evidence in the said Court shall be examined orally and apart, and in open Court; and shall be sworn by the Resident Magistrate, according to the form of the religion they respectively profess, "to tell the truth, the whole truth, and nothing but the truth"; but all persons entitled by law to affirm, instead of taking an oath, may so affirm. Nothing herein contained shall extend to or affect the provisions of the sixth section of Ordinance No. 14, 1846. (1)

21. Whenever it shall appear necessary to the Resident Magistrate, before administering an oath, to examine the person touching his knowledge of the obligation thereof, he shall not merely ask such person generally, whether he understands the nature of the oath, but shall, after explaining to the said person that he is about to administer to him such oath, and the terms thereof,—further ask him:

1st. Whether he believes it to be wicked not to speak the truth?

2ndly. Whether he understands that the taking of such oath is calling upon God to witness that he does speak the truth?

3rdly. Whether he believes that God will hereafter punish any one who, upon oath, does not speak the truth?

4thly. Whether he considers the oath about to be administered to him binding upon him to speak the truth, and the whole truth?

22. The said Court may, at its discretion, and for the information of the said Court, examine the parties upon oath, or either or any of them. (2)

23. Where in the course of any case, it may be necessary for either party to produce and show to the Court any record, entry, or document of the said Court, it shall not be required of the said party to produce any office copy of such record, entry, or document; but the clerk of the said Court shall, at his request, produce and show, or refer to, the original.

24. In every civil case, the clerk of the Court shall take down the evidence and proceedings in writing, and shall also note any objections made by either party to any evidence received or to any evidence or any document tendered by either party to the Court.

25. The case on the part of the plaintiff having been heard, the defendant, or some one on his part, shall in like manner produce any writing or documents he may desire to have read to the Court, and any witness to be examined in support of his answer or denial: and the plaintiff shall be heard in reply thereto.

26. All judgments and sentences of the said Court shall be given in open Court, and shall be recorded by the clerk in the proper column of the said book.

---

1 § 6, Ord. 14, 1846, repealed by § 11, Act 4, 1861. See § 12 of Act 4, 1861.
2 But see § 2, Act 4, 1861.

Digitised by the University of Pretoria, Library Services, 2016

27. Where any judgment shall be upon any debt, payable with interest thereon, the said interest shall be given up to the day of sueing out the process of the Court for the execution thereof. No. 20—1856.

28. If neither the defendant, nor any one admitted for him, appear on the Court day appointed for that purpose, then the said Court, upon the request of the said plaintiff, and being satisfied by the return of the messenger of the said Court, endorsed upon the said summons, that the same hath been duly served, shall proceed to hear the said plaintiff and his witnesses, and cause the evidence to be taken down in writing, and shall give judgment thereon against the said defendant, in the full sum due by him or awarded against him by the Court; but the said judgment shall be only provisional in its nature, and no execution shall issue upon it until the plaintiff, together with some one as his surety, to be approved of by the said Court, shall give security for full restitution of the amount to be levied and raised under such judgment, should the same be reversed; and the form of such security shall be the same as that set forth in the thirty-fourth of these rules and regulations, save and except that the words "notwithstanding the said C. D. has noted an appeal against the same," shall be omitted in the body of the said form, and the word "cause" shall be substituted for the word "appeal" in the end thereof.

29. The defendant may, at any time within one month [1] after the levy made under any writ of execution issued by virtue of any such provisional judgment, take out a summons of the said Court, calling upon the plaintiff in the original action to show cause why the judgment obtained by him should not be reversed. And if it shall be made to appear to the said Court, by oath, that the defendant was absent from his home at the time when the summons of the said Court was served, and that he did not receive the same a sufficient time before the day of the return thereof to be able to obey the same, and that he did not absent himself from home for the purpose of avoiding the service of the said summons, or that, having been duly summoned, he was by just and reasonable cause prevented from attending the Court in pursuance of the said summons,—then the said Court shall order the said judgment to be opened, and shall permit the defendant to answer the said complaint or demand,—upon the terms, nevertheless, of payment of the costs incurred by his default, and that the evidence before given by the said plaintiff shall, on the re-hearing of the case, be read from the evidence and proceedings taken down by the clerk of the said Court, the said plaintiff being at liberty to bring further evidence, if he think fit; and upon the said re-hearing, the case, except as aforesaid, shall proceed as if the defendant had appeared on the original summons.

30. If the defendant, or some one duly authorised on his behalf, do not, within one month [1] next after such levy, as aforesaid, take out such a summons as aforesaid, the provisional judgment shall become final,—and the security aforesaid shall become, *ipso facto*, null and void. But if, upon the hearing of any such summons, the judgment therein mentioned shall be reversed or set aside, then the defendant shall be entitled, without any cession, to sue upon the said security,

[1] Printed as amended by § 5, Act 9, 1857.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

for the recovery of the sums therein mentioned, less the costs incurred by his default.

31. If any person summoned to appear on any day to answer any complaint or demand, shall appear according to the said summons, and the party complaining shall make default, the Court shall adjudge the said plaint to be dismissed; or if he appear, and the judgment of the Court be for the defendant, the said Court shall adjudge to the said defendant his costs, to be taxed by the clerk of the said Court, in like manner as for the party complaining; and the said defendant shall be entitled to the like process of execution for the same. [1]

32. After judgment of the Court against the party complaining, for default of appearance, the same may, upon payment of costs, be admitted to commence a new action for the same cause, and the Court may, in any case, when it shall see fit, absolve the defendant from that instance, instead of giving judgment in his favour, in which case the plaintiff, upon the payment of the costs awarded against him, may commence a new action for the same cause. But the judgment of the said Court, given in favour of the defendant, when pronounced after the hearing of the cause, is a perpetual bar to any other suit or action for the same cause.

33. Any party against whom any final judgment or sentence of the said Court has been given in any civil case (and an absolution from the instance shall be deemed to be such a final judgment or sentence), if he intend to appeal therefrom to any superior Court, shall, on the next Court day, make known his intention to the clerk of the said Court, who shall note his appeal, with the date thereof, in the proper column of the record book,—and the party appealing shall then deposit and lodge with the clerk of the said Court the sum of one pound seventeen shillings and sixpence, as security for the costs of conducting the said appeal, and the said clerk shall make a note of the said deposit, in the last column of the record book, immediately after the note of the said appeal; and thereupon the said appeal shall be allowed, but not otherwise. And any person abandoning his appeal within fourteen days next after he shall have noted the same, shall be entitled to receive back the said sum of one pound seventeen shillings and sixpence provided he have taken no proceedings in the appeal, save the noting thereof.

34. In any case where an appeal may have been duly noted, and the proper security for costs given, the said Court may direct that the judgment or sentence appealed from shall be carried into execution,—or that the execution thereof shall be suspended, pending the said appeal, as to the said Court may appear most consistent with justice:—and in every case where the said Court shall direct such judgment or sentence to be carried into execution, the party in whose favour the same shall have been given shall, before the execution thereof, enter into security, together with some one as his surety, to be approved of by the said Court, for full restitution of the amount to be levied and raised under such judgment, should the same be reversed, as also for the due execution of any such further judgment, order, or decree as shall be afterwards pronounced upon or in respect of the said appeal.

---

[1] See § 39 and Rule 36.

Digitised by the University of Pretoria, Library Services, 2016

And the said security shall be, as near as may be, in the form following: No. 20--1856.

Graham's Town, May 1, 185

A. B., of &c., Plaintiff,

against

C. D., of &c., Defendant.

Whereas the said A.B., on the day of , recovered, by judgment of the Court of the Resident Magistrate of the district of Albany, against the said C.D., the sum of together with the sum of , for costs in a certain case, before the said Court; and whereas the said Court has directed the said judgment, notwithstanding the said C.D. has noted an appeal against the same, to be carried into execution upon security being given for restitution: Now, therefore, the said A. B., and L. M., of , farmer, as surety for him, the said A. B., hereby severally undertake and bind themselves, jointly and severally, to refund and make due restitution of the above several sums of and , should the judgment of the said Court be reversed; and, further, severally to conform to and execute such judgment, order, or decree, as shall be given and pronounced upon or in respect of such appeal.

In witness whereof, the said A. B. and L. M. have hereunto set their hands, on this 1st day of May, 185

(Signed) A. B.

E. F., Clerk of the said Court. L. M.

35. Where the party, who may have deposited with the clerk of the said Court the sum required as security for the costs of conducting the said appeal, shall not afterwards duly proceed thereon to judgment, the sum so deposited, in case the same shall not have been returned as in the thirty-third rule provided, shall be applied to the payment of the costs incurred by the opposite party; and if there be any surplus, the same shall be forfeited and disposed of in the same manner as fines otherwise imposed by the said Court.

36. At the time when judgment or sentence of the Court is given in any case, the clerk of the Court shall, at the request of the party in whose favour the same is given, ascertain and allow the necessary costs and expenses of the said suit against the party to be charged therewith; and in the said taxation he shall charge and allow all such necessary payments and disbursements made in the said case as are provided to be paid by the tariff of charges in the schedule hereunto annexed, marked D, and all such other reasonable sums of money as the party, in whose favour the said judgment or sentence is given, has paid in bringing before the Court any necessary witnesses or evidence, or otherwise: and where he shall think it reasonable to allow any expense not herein provided for, the same not being prohibited by any rule of the said Court, then he shall take the direction of the said Court thereon, and make his allowance accordingly.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

37. Whenever the Court shall make an order for the payment of any debt or damages by instalments, such order shall be recorded by the clerk of the Court in the last column of the civil record book, in manner and form as shown by schedule E, hereinafter contained.

38. The party in whose favour any judgment or sentence of the said Court shall be given, in any civil case, in regard to which an appeal shall not have been noted, or, having been noted, shall have been withdrawn, may sue out of the office of the clerk of the said Court the process of the said Court for the execution thereof.

39. In all cases of appeal the said Court shall conform to and execute such judgments, orders, and decrees as shall be afterwards made and pronounced thereon, in like manner as any original judgment, sentence, or decree by the said court could or might have been executed.

40. ([1]) The process for execution of any sentence or judgment of the said Court shall be by warrant under the hand of the Resident Magistrate, directed to the messenger af the said Court, as near as may be in the form following, that is to say,—

Court of the Resident Magistrate,
District of Albany.

E. F., Messenger of the Court.

Whereas, in a certain case in this Court, before me, wherein A.B., of &c., was the plaintiff, and C.D., of &c., was the defendant (describing the parties as in the plaint), the said A.B., on the day of last by the judgment of the Court, recovered against the said C.D., the sum of , together with the sum of for his costs (which said judgment has been duly affirmed on appeal—if the case so be,—with the further sum of £ for costs thereon), as appears in the proceedings of the said Court; this is, therefore, to require you, that of the movable property of the said C.D., in this district, you cause to be levied and raised the debt (or damages) and costs aforesaid, together with your charges about the same, and pay to the said plaintiff the debt (or damages) and costs aforesaid, and return to the clerk of this Court, on or before the day of next, what you have done by virtue hereof; for which this shall be your warrant.

Given under my hand, at Graham's Town,
this day of , 185

I. K., Clerk of the Court. J. L.

41. Where any person, against whom any judgment of the Court shall have been given, shall, before any warrant shall have been taken out to levy in execution of the process of the said Court, appear before the said Court, and there deliver in to the clerk thereof an inventory of goods, duly proved, upon oath, to belong to the said person, and to exceed in value the amount to be levied under such judgment, with the costs thereof, and shall then and there undertake, in writing, together with some one as his surety, that the goods or chattels contained in the said inventory shall be brought for sale at

[1] See §§ 12 and 13 of this Act.

Digitised by the University of Pretoria, Library Services, 2016

such time and place as the Court shall appoint, unless the person in whose behalf the said process was issued be sooner satisfied in respect of his debt or damages, as the case may be; then no further proceedings shall be had in respect of such judgment of the Court, until after the day so appointed for the sale of such goods or chattels; and the form of such security shall be in substance and as near as is material, according to the form prescribed in respect of the security hereinafter set forth for not making away with goods laid under legal attachment by the process of the said Court.

42. The messenger of the said Court shall, upon receiving the said warrant, repair to the house of the defendant, within twenty-four hours, if he live at the town or place where the said Court is holden,—or within forty-eight hours, if within five miles thereof,—or if at any greater distance therefrom, within so many days' distance in addition thereto as the said party resides therefrom, and there demand payment of the said debt or damages, and costs, or else require that so much movable property be pointed out as the said messenger may deem sufficient to satisfy the exigency of the said warrant; and if he comply therewith, the said messenger shall make inventory thereof, and lay a judicial attachment on the same; but if the debtor will not point out such property, and the judgment of the Court do not declare any to be specially bound, then the said messenger shall immediately lay an attachment under inventory on as much movable property belonging to the debtor as he may deem sufficient to satisfy the execution: and if the judgment of the Court declare any particular property to be specially bound, and liable to execution for the judgment, then the said messenger shall first take the same.

43. The said messenger shall deliver a copy of the said inventory, signed by himself, to the debtor, or, if he will not accept it, shall leave the same on the premises; which inventory shall have subjoined thereto a notice in the following terms:

C. D., May 1st, 185

Take notice, that I have this day seized and laid under judicial attachment the articles comprised in the above inventory, in pursuance of a warrant to me directed under the hand of , Esq., Resident Magistrate for the district of Albany, whereby I am required to cause to be levied and raised of your movable property in this district, the sum of , and costs, recovered against you by the judgment of the said Court, in a certain case wherein A. B. was the plaintiff, and yourself the defendant (as the case may be); and also for my charges in and about the said warrant.

I. K., Messenger of the said Court.

44. Where any person, whose movable property has been attached in execution of the process of the said Court, will undertake, in writing, together with some of his neighbourhood as his security, that the same shall be produced on the day appointed for the sale thereof, if the person, in whose behalf the said process was issued, shall not be sooner satisfied, in respect of his debt, or damages, as the case may be,—then the messenger of the said Court shall leave the said property so attached and inventoried as aforesaid upon the premises

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

where the same was found; and the said security shall be, as near as may be, according to the form following:

Graham's Town, , 185

A B., of &c., Plaintiff,

against

C. D., of &c., Defendant.

Whereas the said A. B., on the day of last, by judgment of the Court of the Resident Magistrate of the district of Albany, recovered against the said C. D., the sum of , together with the sum of for costs, in respect of a certain case in the said Court; and whereas, by virtue of a certain warrant under the hand of , Esq., Resident Magistrate of the said district, bearing date on, &c., directed to E. F., messenger of the said Court, the said E. F. has seized and laid under attachment, in respect of the said judgment, and in respect to the execution thereof, the undermentioned articles, viz.,

One horse,
One cow,
Two chairs,
Two tables.

Now, therefore, the said C. D., and L. M., of , a farmer, as surety for him, the said C. D. hereby severally undertake and promise to the said E. F., that the said goods shall not be made away with or disposed of; but the same shall remain in possession of the said C. D., under effect of the said attachment, and shall be produced to the messenger of the said Court, on the day of next (the day appointed for sale), or any other day when the same may be required, in order to be sold in execution of the said judgment and expenses, if the same shall not be sooner satisfied to the said A. B.; otherwise the said L. M. hereby undertakes and binds himself to pay and satisfy the said judgment, costs, and expenses, for and on behalf of the said C.D.

In witness whereof, the said C. D. and L. M. have hereunto set their hands, on this day of , 185

(Signed) C. D.
L. M.

E. F., Messenger of the said Court.

45. If the defendant will not undertake, together with a surety, for the production of the said goods in manner provided for that purpose, then the messenger shall either remove the same to some convenient place of security, or if the same be cattle, or such property as it may be inconvenient to remove, may leave the same upon the premises, in the charge and custody of some person for him, until the day appointed for the sale thereof.

46. If it shall appear, upon oath, to the Resident Magistrate of the said Court, that any person has made away with or disposed of any goods so left in his possession, under security as aforesaid, the said

Digitised by the University of Pretoria, Library Services, 2016

Magistrate shall forthwith issue his warrant for the apprehension of the said person, to answer for the said fraud according to law. No. 20—1856.

47. Any property sold in execution of the process of the said Court shall be sold publicly, and for ready money, by the said messenger or his deputy, so to be approved of by the said Court, to the highest bidder, at or as near to the place where the same was taken as may be convenient for the sale thereof; and the said messenger shall affix notice of the said sale, and of the day and place thereof, on the door of the Court-house, or on some other like public building, in the place where the said Court is holden; as also where, or as near as may be, the place where the said sale is actually to take place, seven days at least before the day appointed for the said sale; which day shall be not earlier than the fourteenth day from the time of seizure or attachment.

48. The form of summons in cases of civil imprisonment shall be as follows:

Court of the Resident Magistrate, District of Albany.

To A. B., Messenger of the Court.

Summon C. D., of (describe the defendant, as in the former process), that he appear before the Court of the Resident Magistrate of this district, to be holden at Graham's Town on the day of next, at o'clock in the forenoon, to show why a decree of civil imprisonment should not be made against him, at the suit of E.F., of (describe the plaintiff as in the former process), in respect of the non-payment of the sum of £ (insert the joint amount of debt and costs), recovered against the said C. D. by the said E. F., by a judgment of the said Court, bearing date the day of , 185 , and for the recovery of which sum a warrant of execution was, on the day of , last past, duly sued out against the movable property of the said C. D., and in regard to which warrant a return has been duly made that no movable property has been found, whereof could be made the amount stated in the said warrant or any part thereof (or whereof could be made more than the sum of £ parcel of the amount stated in the said warrant), and serve on the said C. D. a copy of this summons, and return you on the said day of next what you have done thereon.

Graham's Town, 1st , 185

G. H., Clerk to the Court of the Resident Magistrate of the District of Albany.

49. As often as the Resident Magistrate shall see cause to grant a decree of civil imprisonment, the defendant shall be committed to the gaol of the district by warrant under the hand of the Resident Magistrate, in the form following, that is to say,—

Court of the Resident Magistrate, District of Albany.

To A. B., Messenger of the Court, and to the Keeper of the Public Prison of the District of Albany.

These are to command you, the said messenger, to take C. D., of (describe as in the summons in the last preceding rule), and

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

deliver him to the keeper of the public prison of the district aforesaid, together with this warrant, there to be safely kept until he shall have paid unto E. F., of (describe the plaintiff as in the summons aforesaid), the sum of £ , which the said E. F., recovered for his debt and costs by judgment of this Court, bearing date the day of , 185 , or until the expiration of months, from the day on which the said C. D. shall be received into the said prison by virtue of this warrant, whichever of the two shall first happen, or until the said E. F. shall be otherwise legally discharged; and for your so doing, this shall be your warrant.

Dated at Graham's Town, this day of , 185

R. G., Resident Magistrate of the District of Albany.

L. N., Clerk of the Court.

*** When a decree of civil imprisonment shall be made after an insufficient levy under process of execution against property, the words "parcel of the sum of £ ," should be inserted before the words "which the said E. F. recovered for his debt and costs," &c. (1)

50. (2) Every summons sued out for the recovery of possession of premises shall be, as near as may be, in the form following, that is to say,—

Court of the Resident Magistrate for the District of Albany.

To , Messenger of the said Court.

Summon C. D., of (describe the defendant as in the former process,) that he appear before the Court of the Resident Magistrate of this district, to be holden at on the day of next, at o'clock in the forenoon, to show why he shall not be condemned to yield and deliver up to A. B., of (describe the plaintiff as in the former process), possession of a certain dwelling-house (or apartment, or other tenement or premises, according to the fact), situate at (describe the local situation), held by the said C. D. from and under the said A. B., for the amount of certain rent or hire due and in arrear from the said C. D. to the said A. B., in regard to the said dwelling-house (or otherwise as before), amounting, together with costs, to the sum of £ , for which a warrant of execution was, on the day of last, duly sued out under a judgment of this Court, against the movable property of the said C. D., on which warrant a return has been duly made that no such movable property as aforesaid has been found whereof could be made the amount stated in the said warrant, or any part thereof; and serve upon the said C. D. a copy of this summons, and return you on the said day of , 185 , what you have done thereon.

Dated at Graham's Town, this day of , 185 .

E. F., Clerk of the Court of the Resident Magistrate of Albany.

[1] §§ 17, 22.
[2] § 23.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

51. (1) When a decree for the delivery up of possession shall be made, the warrant for the execution of the same shall, as near as may be, be in the form following, that is to say,—

Court of the Resident Magistrate for the District of

To , Messenger of the said Court.

It having appeared to this Court that C. D., of (describe the tenant, as in the summons), holds from and under A. B., of (describe the landlord, as in the summons), a certain dwelling-house (or apartment, or other tenement or premises, according to the fact), situate at (describe the local situation), and that the said A. B., who has recovered judgment and sued out execution against the movable property of the said C. D., for the amount of certain rent of the said (name the sort of premises), due and in arrear, hath not had of the said movable property, or otherwise, the amount of the said rent, or any part thereof; and the said A. B. having afterwards, to wit, on day of , 185 , by the judgment of this Court, been duly decreed to be put into possession of the said (name again the sort of premises); this is, therefore, to authorise and require you to put the said A. B. into possession of the same, by removing therefrom the said C. D. and all other persons claiming from, through, or under him, for which this shall be your warrant; and return you on the day of , 185 , what you have done in pursuance thereof.

Given under my hand, at , this day of 185

Resident Magistrate for the District of

E. F., Clerk of the Court.

52. (2) The affidavit of rent in arrear, on which to ground an attachment of the movable property of the tenant, or upon the demised premises, shall be, as near as may be, in the form following, that is to say,—

A. B., of (describe the landlord), maketh oath and saith that C. D., of (describe the tenant), is justly and truly indebted to this deponent in the sum of £ for the arrears of a certain monthly (or yearly, &c., as the may be) rent due and payable by the said C. D., to the said deponent, for the hire and occupation, from and under this deponent, of a certain dwelling-house (or apartment, or other tenement or premises, according to the fact), situate at (describe the local situation), which said sum of £ has been demanded from the said C. D., for the space of seven days and upwards, reckoned from this day, but has not yet been paid (or, when the deponent believes that the property is about to be removed, then say, "on which premises there now are certain movables of the said C. D., which this deponent verily

[1] §§ 24, 25.
[2] § 26.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

believes he is about to remove, in order to avoid the payment of the said rent").

A. B.

Sworn before me, this day of 185 , at

Resident Magistrate of the District of

53. (1) When any person shall apply for an order to seize and arrest movables for rent in arrear, the form of security to be entered into on his part and behalf shall be, as near as may be, as follows, that is to say,—

Whereas A. B., of (describe the landlord), hath this day made oath before me that C. D., of (describe the tenant), holds from and under him, as tenant or occupant, a certain dwelling-house (or apartment, or other tenement or premises, according to the fact), and that there is now justly due and owing by the said C. D., to the said A. B., the sum of £ for months' rent of the said dwelling-house (or otherwise, as the case may be): and whereas the said A. B., hath applied to me for an order for the seizure and arrest of movable property, according to the provisions of the Act in that behalf made and provided; and whereas E. F., of (describe the surety), hath agreed to join the said A. B., in giving the security in the said section mentioned; now, therefore, the said A. B. and the said E. F., do hereby jointly and severally promise and undertake, to and with the said Resident Magistrate, and his assigns, that the said A. B. shall, not later than the day of (date of the next day but one), unless the rent due and in arrear as aforesaid shall be sooner paid and satisfied, or unless the said C. D., shall sooner consent, under the provisions of the Act aforesaid, to a sale, without suit, of the movable property, which may be seized and arrested by virtue of the said order, "sue out from the Court of the said Resident Magistrate, a summons against the said C. D., for the recovery of the rent or hire aforesaid, and shall prosecute the same to judgment, without any unnecessary delay," and that the said A. B., and E. F., or either of them, at the option of the said Resident Magistrate or his assigns, shall pay, satisfy, and make good to, or for the use of, the said C. D., or whom else it may concern, all damage, costs, and charges which he or they may receive or sustain by reason of, or in connection with, the execution of the order aforesaid, in case the said A. B. shall fail to prove, in the suit or action aforesaid, that the said amount of rent to be therein demanded is due and in arrear.

Dated at , this day of , 185 ,
before me, , Resident Magistrate.

(Signed) A. B.
E. F.

[1] See § 26.

Digitised by the University of Pretoria, Library Services, 2016

*** When a summons shall have been sued out for the rent in arrear at or before the time of applying for the order to arrest, the words within the inverted commas should be omitted, and the following words inserted in their stead: "Duly and without any unnecessary delay prosecute to judgment the pending suit or action by the said A. B., against the said C. D., for the recovery of the rent aforesaid, commenced by a summons sued out of the Court of the Resident Magistrate of this district, this day of , 185 (or on the day of , 185 , as the case may be)." No. 20–1856.

54. (1) Every order for arresting movables to meet a demand for rent in arrear shall be, as near as may be, in the form following, that is to say,—

To , Messenger of the Court of the Resident Magistrate for the District of

This is to authorise and require you to repair, as by law provided, to the dwelling-house (or apartment, or other tenement or premises, according to the fact), situate at (describe the local situation), and there demand payment of the sum of £ , being the amount of certain rent or hire of the said (name the sort of premises), due by C. D. to A. B., of (describe the lessor), and in case such payment shall not be made, then require that so much movable property may be pointed out, by law distrainable for the rent so in arrear as you shall deem sufficient to satisfy the said sum of £ , and make an inventory of such property, and lay the attachment thereon under the provisions of the Act in that behalf made and provided; but if no such property shall be pointed out, then seize and arrest, according to the provisions of the said Act, so much of such property as you shall deem sufficient, and further act in that behalf as by the said Act directed; and return on the day of 185 , what you shall have done under this order.

Given under my hand, at , this day of , 185

Resident Magistrate for the District of

55. (2) Whenever the messenger shall have attached any movables, under any such order as aforesaid, the notice to be subjoined to the inventory shall be, as near as may be, in the form following, that is to say,—

C. D.,

Take notice that I have this day seized and arrested the articles comprised in the above inventory, in pursuance of an order to me directed, under the hand of , Esq., Resident Magistrate for the district of , whereby I am authorised and required to seize and arrest movable property distrainable for rent, sufficient to satisfy A. B. the sum of

[1] See §§ 26-28.
[2] See § 28.

Digitised by the University of Pretoria, Library Services, 2016

No. 20–1856.

£ , due to him by you for rent in arrear, as well as my legal charges about the said order.

Dated this day of , 185 , at

Messenger of the Court of the Resident Magistrate for the District of

56. (1) Should the person whose movables have been attached under any such order as aforesaid, be desirous to retain possession thereof, pending the event of the suit for the recovery of the rent alleged to be in arrear, the form of security to be entered into by and on behalf of such person shall be, as near as may be, as follows:

Whereas E. F., messenger of the Court of Resident Magistrate for the district of , by virtue of an order under the hand of , Esquire, Resident Magistrate of the said district, bearing date the day of , 185 , has seized and arrested, in security for the sum of £ , being the amount of certain rent due and in arrear from C. D., of (describe the tenant), to A. B., of (describe the landlord), the undermentioned articles, to wit: (here enumerate the movable property arrested). Now, therefore, the said C. D. and G. H., of (describe the surety), do hereby jointly and severally promise and undertake, to and with the said E. F., that the said movable property shall not be made away with or disposed of, but that the same shall remain in possession of the said C. D., under the effect of the said arrest, to abide the event of a suit to be brought (or "the event of the suit brought") in the Court of the Resident Magistrate aforesaid by the said A. B. against the said C. D., for the recovery of the said rent or sum of £ otherwise the said G. H. hereby undertakes and binds himself to pay and satisfy to the said A. B. the amount of any such judgment which he may recover against the said C. D. for the said rent or sum of £ , together with his costs of suit.

In witness whereof, the said C. D. and the said G. H. have here unto set their hands, this day of , 185

(Signed) A. B.
G. H.

E. F., Messenger of the said Court.
Witness, L. M.

57. (2) In case any person whose movables have been attached, under any such order as aforesaid, shall, both in person and in writing, consent to an immediate sale of such movables, the order for such sale shall be, as near as may be, in the form following, that is to say,—

To E. F., Messenger of the Court of Resident Magistrate for the District of

Whereas you did, on the day of , 185 in pursuance of an order to that effect by me issued, seize and arrest, in security for rent due and in arrear, certain movable property,

[1] See §§ 29 and 31.
[2] See § 32.

Digitised by the University of Pretoria, Library Services, 2016

then being in and upon certain premises, to wit, a dwelling-house (or apartment, or other tenement, according to the fact) situated at (state the local situation, as in the order for arrest), held and occupied by C. D. from and under A. B. (describe the landlord as in the order for arrest); and whereas the said C. D. hath appeared before me, and hath, in order to save the expense of prosecuting (or "further prosecuting," as the case may be) an action for the recovery of the said rent, admitted that he owes the same, amounting to the sum of £ , and hath also consented that the said movable property now under attachment should be sold in satisfaction, or part satisfaction, of the said sum: Now, therefore, these are to authorise and require you to sell, in manner and form as by the thirty-second section of the Act No. , of 1855, prescribed, on the day of , 185 , at , the said movable property, so attached as aforesaid, or so much thereof as may be necessary for the purpose of making of the proceeds the said sum of £ , so due and owing to the said A. B., and your legal charge for holding the said sale; and pay to the said A. B. the said sum, and retain your said charges, and return to me, in the Court of the Resident Magistrate of the district, on the day of , 185 , what you shall have done in pursuance hereof.

Given under my hand, this day of , 185 , at

Resident Magistrate of

58. (1) If any movable property, taken under and by virtue of any process of execution, issued out of any Court of Resident Magistrate, shall be claimed by any third party as his property, and not liable to such execution, the Court of Resident Magistrate out of which such process issued, upon which claim being reported by the messenger thereof, shall issue a summons calling upon the plaintiff and the claimant to appear, in order to inquire into, and determine the question in dispute, and such summons shall be, as near as may be, in the form following, that is to say:

Court of the Resident Magistrate for the District of

To E. F., Messenger of the said Court

Summon A. B., of (describe the plaintiff in the former suit), and G. H., of (describe the claimant), that they severally appear before the Resident Magistrate of this district, to be holden at , on the day of 185 , at o'clock in the forenoon, with their respective witnesses, if they have any, then to have it determined and declared, by the judgment of the said Court, whether certain movable property, attached on the day of , 185 , by you, the said E. F., under and by virtue of a certain writ of execution, issued out of the said Court, commanding you, the said E.F.,

1 See § 53.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

of the movable property of one C.D. to levy and raise certain sums of money in the said writ mentioned, and which movable property is claimed by the said G. H. as being his property, and not liable to such execution, be or be not the property of the said G. H., and be or be not so liable; and serve as well upon the said A. B. as upon the said G. H. a copy of this summons, and return you, on the said day of , 185 , what you have done on this summons.

R. G., Resident Magistrate.

Dated at , this day of , 185

L. M., Clerk of the Court.

59. (1) Where the judgment or sentence of the said Court in any case is appealed from, and the said appeal is duly prosecuted and allowed in manner provided for that purpose, the clerk of the said Court shall forthwith transmit the proceedings in the said case to the Registrar of the Supreme Court, or to the Registrar of the next Circuit Court for the said district, as the case may be, together with a certificate, under his hand, subjoined to the said proceedings in the following terms:

I, L. M., clerk of the Court of Resident Magistrate for the district of Albany, hereby certify and declare that the above are the true proceedings in the case A. B. against C. D.; and that the said proceedings contain true notes of all evidence received by the said Court, objected to, or offered by either party, and rejected by the said Court, on the hearing of the said case.

Graham's Town, May 1, 185 L. M.

60. The clerk of the said Court shall, a sufficient time before the holding of any Circuit Court for the district, apprise the parties in appeal of the day and place of the holding thereof; and shall warn them to appear before the said Circuit Court, and prosecute the said case in appeal, and hear the determination thereof.

61. All fines imposed by the Court in any case, civil or criminal, shall be paid to the clerk of the said Court; and the same, together with all fees of office received by him in every month, shall be paid over on the first day of the following month to the Civil Commissioner of the division; and the said clerk shall deliver therewith an account in such form as the Civil Commissioner shall from to time direct. And the officers of the said Court shall take such fees as are allowed in the tariff hereunto annexed, and the same shall be taken at the time when anything is required to be done by any officer, for which such fees are allowed, and together with the same, shall also be taken and charged the duty imposed by law upon any stamp, where the stamp is supplied by such officer.

IN CRIMINAL CASES.

62. All crimes and offences against the law, within the jurisdiction of the said Court, and which may have been committed by any person

[1] See § 33 and Rule 33.

Digitised by the University of Pretoria, Library Services, 2016

within any district of this Colony, may be prosecuted in the Court of the Resident Magistrate of the said district. (1)

63. Where the public prosecutor shall, by virtue of his office, have determined to prosecute any party in the said Court, for any crime or offence within the jurisdiction of the said Court, he shall forthwith lodge with the clerk of the Court a statement (2), in writing, of the charge or complaint against the said person, describing him by his name, surname, place of abode, and occupation or degree; and setting forth, shortly and distinctly, the nature of the said crime or offence, and the time and place at which the same was committed.

64. Any private person entitled to prosecute (3) for any crime or offence, may prosecute summarily for such crime or offence, by lodging his complaint in any Court of Resident Magistrate, having jurisdiction, nor shall any certificate of any Clerk of the Peace, or any other competent public prosecutor, to the effect that he declines to prosecute for such crime or offence, be necessary. (4) But any competent public prosecutor may, at any time before judgment, intervene in any such case and assume the management and conduct thereof, (5) and the clerk of the Court shall, in the column of the Criminal Record Book, hereinafter mentioned, headed "Remarks, &c.," make an entry of such intervention.

65. The clerk of the Court shall keep a book, ruled and divided into columns, headed and entitled according to the form in the schedule hereunto annexed, marked F, which shall be called "The Criminal Record Book of the Court of the Resident Magistrate, District of ," and the said clerk shall enter therein, in manner hereinafter set forth, all criminal proceedings in the said Court, and shall present the said book to the Resident Magistrate at the first sitting of the Court, upon every Court day; and the Resident Magistrate shall, before the rising of the said Court, sign the same.

66. The clerk of the Court shall, upon such complaint being lodged with him, either by the public prosecutor or any private party, forthwith enter into the proper columns of the Criminal Record Book, the name of the prosecutor, the name of the party charged, the crime or offence charged or complained of, the day of commitment of the party charged, and by whom committed, and any remarks which it may be proper to record.

67. All persons to be prosecuted upon any criminal charge in the said Court shall be brought to trial at the next possible Court day,—but whenever it shall be made to appear, on oath, to the satisfaction of the Resident Magistrate, that any criminal case cannot be proceeded in upon the day appointed for that purpose, without danger of defeating the ends of justice, he shall adjourn the hearing thereof to some future Court day, which day shall be specified by him; and the said adjournment, and the cause thereof, shall be noted by the clerk in the last column of the said Criminal Record Book. (6)

---

[1] See §§ 42, 44.
[2] See Act 3, 1861, § 28.
[3] See §§ 15-18 Ord. 40.
[4] See § 6 Ord. 73.
[5] See § 8, Ord. 73, and § 10, Ord. 8, 1852.
[6] See Rule 81.

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1856.

68. The clerk of the said Court shall, upon or after the lodging of the said complaint at the request of the prosecutor (and at his charge, where the prosecution is by a private party) (1), issue and deliver to the messenger of the said Court, the process of the said Court for compelling the appearance of the said party to answer the charge, and of the witnesses in support thereof,—together with so many copies of the said process as there are persons to be summoned, if there be more than one; and the said messenger shall serve a copy thereof on any defendant, and shall at the same time explain to him the nature and exigency of the said process; and the said process shall be by summons under the hand of the Resident Magistrate, and shall be, as near as may be, in the form following:

Court of the Resident Magistrate, District of

To J. P., Messenger of the Court.

You are hereby required and directed, in Her Majesty's name, on the sight hereof, to summon C. D., of &c. (describing him particularly) that he appear personally before this Court at Graham's Town, on the day of next, at o'clock in the forenoon, then to answer and abide the judgment of this Court, upon the complaint and information of E. F., Esq., who prosecutes in the name and on behalf of Her Majesty (or of G. H., of &c., describing him particularly), that the said C. D., on or about the day of last, violently beat and assaulted the said G. H., of &c., and summon M. N., of &c., O. P., of &c., and such persons (if any) as you shall be required by the said C. D. to summon on his behalf, that they, and each of them, be and appear personally, at the day and place aforesaid to testify all they, and each of them, know concerning the said charge. Serve on each of them, the said C. D., M. N., O. P., &c., a copy of this summons, and return to this Court, on that day, what you have done hereon.

Given under my hand, at , this day of , 185

J. L., Resident Magistrate of the said District.

J. M., Clerk of the said Court.

69. (2) Either party desiring to compel the attendance of any person to give evidence in any criminal case, may take out of the office of the clerk of the said Court the process of the Court for that purpose; and in like manner, when the party charged with any offence, is unable to pay the cost of such process, the clerk of the said Court shall summon, on his behalf such witnesses as he shall desire to have summoned, and shall satisfy the said clerk to be material and necessary for his defence; and the said process shall be, as near as may be, in one or other of the forms following:

---

[1] See §§ 2 and 8, Ord. 8, 1852, also Rules 10 and 84.
[2] See also § 8, Ord. 8, 1852, and § 2, Ord. 59.

Digitised by the University of Pretoria, Library Services, 2016

Court of the Resident Magistrate, District of

No. 20—1856.

To J. P., Messenger of the Court.

You are hereby required, in Her Majesty's name, to summon A. B., of &c., C. D. of &c., and E. F. of &c., (describing them particularly), that they, and each of them, appear personally before this Court at , on the day of next, at o'clock in the forenoon, to testify and declare all they, and each of them, know concerning a certain charge preferred by the public prosecutor against J. A., of (describing particularly the person charged). Serve on each of them, the said A. B., &c., a copy of this summons, and return to this Court, on that day, what you have done hereon.

Given under my hand, at Graham's Town, the day of 185

J. L., Resident Magistrate of the said District.

L. M., Clerk of the said Court.

Court of the Resident Magistrate, District of

To J. P., Messenger of the said Court.

You are hereby required and directed to summon A. B., of &c., C. D., of &c., and E. F., of &c. (describing them particularly), that they, and each of them, appear personally before this Court at , on the day of next, at o'clock in the forenoon, to testify and declare all they, and each of them, know concerning a certain complaint preferred by G. H., of &c., against J. A., of &c.; and serve on each of them, the said A. B., &c., a copy of this summons, and return to this Court, on that day, what have you done hereon.

Given under my hand at Graham's Town,

the day of , 185

J. L., Resident Magistrate of the said District.

L. M., Clerk of the said Court.

70. The process of any such Court for summoning any person, whether as a party or a witness, to appear before that Court, when holden at any place, other than the ordinary and stated place for the holding of the same, may be issued by any Justice of the Peace, resident near the place at which such Court is intended to be holden, and who shall, by any proclamation of the Governor, be nominated and appointed to issue the said process [1]; and such process shall in substance correspond with the forms prescribed for process issued and delivered by the clerk of the Court, and shall state the place where the said Court is intended to be holden, and shall be directed to, and be executed by, such person as such Justice of the Peace shall nominate and appoint, and such person so nominated and appointed shall have and possess, in regard to the execution and return of such process, the like powers and authorities, and be entitled to the like fees, as the messenger of the said Court would have possessed or been entitled to,

[1] Amended by Rule 11, Act 9, 1857.

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1856.

had the same been directed to and executed and returned by him, and such process shall at the foot be signed thus: "J. L., Justice of the Peace, duly authorised," and the same need not be signed by either the Resident Magistrate or the clerk of the Court.

71. All such process as in the last preceding section mentioned, shall have the like force and effect, in all respects, as if the same had been directed to the officer appointed to execute, ordinarily, the criminal process of the said Court, and had been under the hand of the Resident Magistrate of the district, and signed, issued, and delivered by the clerk of the said Court: Provided always that nothing in this rule contained shall be construed so as to prevent the issue and delivery in common form by such clerk, of any process for requiring the appearance of any person before the said Court, at any place where such Court shall be appointed to be held.

72. No person shall be summoned to appear before any such Court, as aforesaid, at any place, other than the ordinary and stated place for the holding of the said Court, to answer any charge, unless such person shall reside nearer to such other place than to the ordinary and stated place aforesaid; and any summons issued in contravention of the provisions of this rule shall be null and void.

73. If upon the day appointed for the appearance of any party to answer to any charge, he shall neglect to appear, and the Court shall be satisfied, upon the return of the messenger, or other person (as the case may be), that he was duly summoned, then the Resident Magistrate shall (on the request of the prosecutor) [1] issue his warrant for the apprehension of the said party, and shall also, if he think fit impose on the said party for his default, a fine not exceeding five pounds sterling. [2]

74. If the prosecutor do not appear on the Court day appointed for appearance, the charge or complaint shall be dismissed [3]: and where the prosecutor, being a private party, does not appear, or appearing, the Court, upon hearing the charge or complaint, shall pronounce the same unfounded and vexatious, the Resident Magistrate shall award to the defendant, on his request, such costs as the said Magistrate may think fit. And in case of any such dismissal as aforesaid, the accused party shall not be again liable to prosecution on the same charge, save and except only that where the prosecutor was a private person no dismissal upon account of his non-appearance shall prevent the public prosecutor from afterwards, should he see fit, taking up the case.

75. In case of the non-attendance of any person, duly summoned to give evidence, and not having any lawful excuse allowed by the Court, the Resident Magistrate shall impose upon him the same fine as is provided for such default in civil cases before the said Court. [4]

76. Where any person shall, upon any Court day, appear before the said Court to prefer any complaint against another, who shall also appear thereto, and the said parties shall both be desirous of then proceeding therein, the Court shall, after the other business of the day has been concluded, cause the said complaint to be recorded; and shall

[1] See § 4, Ord. 8, 1852.
[2] For procedure in case of non-payment of fine, see Ord. 6, 1839.
[3] But see § 19, Ord. 40, and § 5, Ord. 8, 1852.
[4] See Rule 18.

Digitised by the University of Pretoria, Library Services, 2016

forthwith hear and determine the same, or adjourn the hearing thereof to some following day, if the same be necessary,—as the Resident Magistrate shall see fit. No. 20—850.

77. On the day of hearing, the Magistrate shall inquire into the said charge or complaint, by causing the clerk of the Court to read over the statement of the prosecutor, [1] and by hearing such witnesses as he may produce in support of the charge; and, in like manner he shall hear any statement made by the defendant relevant thereto, and his witnesses, if any, in support thereof.

78. The Resident Magistrate shall hear and summarily decide upon each case, and his judgment and sentence shall be pronounced in open Court, and shall be recorded by the clerk in the proper column of the Criminal Record Book.

79. If the sentence of the said Court be for any higher degree of punishment than such as is prescribed by the Act for erecting and establishing the said Court, the said clerk shall also note in the last column of the said Criminal Record Book the particular law authorising the said punishment, and giving jurisdiction to the said Court. [2]

80. All persons examined, or giving evidence in the said Court in criminal cases, shall be examined and give evidence in the same [3] manner and form as is provided in civil cases before the said Court.

81. Any person acquitted upon any charge or complaint, or where the same shall be dismissed for want of prosecution thereof, shall forthwith be discharged out of custody. And any person who shall once have been called upon to plead to any charge, and who shall have pleaded not guilty thereto, shall be entitled to demand that he be either acquitted or found guilty. But nothing herein contained shall apply to any such case as is in the 28th section of Ordinance No. 40, or in the seventh and eighth sections of the Ordinance No. 73, mentioned: Provided, however, that the Court may, after a case has been partially heard, adjourn the further hearing thereof until some future time, in case it should be made to appear, by either the prosecutor or the party accused, that some witness or witnesses, material to the case, and who, without neglect or default of the party applying for the adjournment, are not present, will probably be present in case an adjournment be granted.

82. All persons sentenced by the Court of the Resident Magistrate in any district to undergo the punishment of imprisonment, shall be committed to the gaol of the said district, for the purposes aforesaid, by warrant under the hand of the said Resident Magistrate in the form following, that is to say,—

Court of the Resident Magistrate, District of

To the Gaoler or Keeper of Her Majesty's Gaol
for the District of

Whereas the undermentioned prisoners were this day respectively and duly convicted before me of the several offences undermentioned, and were for the said offences sentenced by me to undergo the several punishments respectively affixed to their names; this is,

[1] See § 6, Ord. 8, 1852.
[2] § 42.
[3] See Rules 20 and 21.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856

therefore, to require you, in Her Majesty's name, to receive the said several prisoners into your custody, and there safely keep them, until they shall have undergone the said punishment or shall be otherwise lawfully discharged therefrom.

Prisoners' Names.	Sentence.	Of what offence convicted.
J. T.	One month's imprisonment, with hard labour.	Theft.
C. D.	Fined twenty shillings, and to be imprisoned until fine is paid.	Assault.
E. F.	To be imprisoned one week, and to receive private whipping of 24 lashes.	Theft.

Given under my hand, at , this day of , 185

Witness, J. L.,
Resident Magistrate of the said District.

L. M., Clerk of the said Court.

83. (1) In all cases of crimes or offences prosecuted in the said Court, where by law there is, or shall be, an appeal from the judgment or sentence thereof to any superior Court, the clerk of the Court shall make note of any such appeal, and shall certify to the said superior Court the said proceedings in such cases, in like manner as is provided for certifying the proceedings in appeal from the judgment or sentence of the said Court in civil cases.

84. (2) The service of all summonses in criminal cases in the said Court shall be made by the messenger of the said Court, or his lawful deputy, in the same manner as is provided to be done in civil cases before the said Court.

SCHEDULE C.

FORMS OF PLAINTS.

March 1, 185

In case of goods sold.—A. B., of (Bathurst, of this district), farmer, complains of C. D., of the same place, baker (or if as executor, &c., then "A. B., as executor of E. F. complains of C. D."), that the said C. D. is indebted to him (as executor, E. F.) in the sum of five pounds sterling, for corn (or hay, or other things, briefly describing it) sold and delivered by the said A. B. to the said C. D. (or by E. F. in his lifetime), in or about the month of February last; which sum the said C. D. refuses to pay, and the said A. B. prays that he may be adjudged to pay the same.

In case of demand for rent.—For three months' rent, due from the said C. D. to the said A. B., on or about the 1st of February last, in respect of the occupation by the said C. D., of a house and garden of the said A. B. (as the case may be), situate at Bathurst; which sum, &c.

For lodging.—For meat, drink, washing, lodging, and other things found and provided by the said A. B. for the said C. D., between the months of December and February last; which sum, &c.

(1) See Rule 59.
(2) See Rules 10, 12 and 18.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

For hire of horses.—For the hire of a horse (or as the case may be) and cart of the said A. B., hired and used by the said C. D., for three weeks, in or about the month of February last; which sum, &c.

For agistment.—For the agistment, depasturing, and keeping fifty oxen and one hundred sheep, by the said A. B., for the said C. D., between the months of December and February last.

For work and labour.—For the work and labour of the said A. B., performed for the said C. D., at his request, on or about, &c.

For same by servants.—For the work and labour of the servants of and belonging to the said A. B., performed for the said C. D., at his request.

For same by servants, horses, and carriages.—For the work and labour of the said A. B., by himself (or his servants, or horses, carts, and carriages, as the case may be), performed by the said A. B. (or his servants, &c.), for the said C. D., at his request: and for timber, nails, &c. (as the case may be), provided by the said A. B. for the said C. D., and used in such work and labour.

For wages.—For wages due and payable from the said C. D. to the said A. B., for his service performed as the servant of the said C. D., between the months of December and February last.

For money lent.—For money lent by the said A. B. to the said C. D., in or about the month of February last.

On note or bill of exchange.—For principal and interest due to the said A. B., on a promissory note drawn by the said C. D., payable to one E. F., or order, and by him endorsed to the said A. B. (or on a bill of exchange, drawn by one E. F., and accepted by the said C. D., payable to the said A. B.)

On a bond.—For principal and interest due on a bond bearing date the day of , made and entered into by the said C. D., for the payment of , and interest, on the day of last.

For money due on an agreement.—For principal and interest upon and by virtue of a certain agreement, bearing date, &c. (date of agreement), and made between, &c., whereby the said C. D. agreed to pay to the said A. B. the sum of £ , together with lawful interest on the same, on the day of now past.

On an award.—For money due to the said A. B., upon and by virtue of a certain award made by E. F., upon a submission by the said A. B., and the said C. D. to the arbitration of the said E. F., concerning certain matters in difference between them; and upon which reference the said E. F. awarded and ordered that the said C. D. should pay the sum of £ to the said A. B. on a certain day, now past.

For detention of property.—A.B., of , farmer, complains that C. D., of the same place, farmer, hath possessed himself of a cow (or wagon or horse, or other thing detained), of the value of £ , or thereabouts, which he unjustly detains from the said A. B.; and the said A. B. prays he may be adjudged to restore to him the said cow, &c., or pay him the value of the same.

For detention of property deposited.—That the said A. B., in or about the month of last, deposited and left several articles of household furniture and wearing apparel, the property of the said A. B., of the value of £ , or thereabouts, with the said C. D., to be safely kept for the said A. B., until he should have occasion for them; and the said A. B. saith that he has demanded the said household furniture,

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1853.

&c. (or caused the same to be demanded for him), but the said C. D. refuses to deliver up, and unjustly detains the same from him; and the said A. B. prays the said C. D. may be adjudged to restore to him the said household furniture, &c., or pay him the value of the same.

For damage sustained by improper driving.—That, on or about the day of last, the said A. B. (or the servant of the said A. B.), was driving his cart, &c., on the public road between and , and the said C. D. (or the servant of the said C. D.) was also on the said road with a certain carriage, &c., under his care and direction; and the said C. D. (or the servant of the said C. D.) so improperly drove and directed his carriage and horses that thereby his carriage was forced and driven with great violence against the cart of the said A. B., and broke to pieces one of the wheels thereof; and the said A. B. was thereby damaged to the amount of £ , and the said C. D. refuses to make amends for the same; and the said A. B. prays he may be adjudged to pay the amount of the said damage.

For wrongfully impounding cattle.—That the said C. D., on or about the day of last, wrongfully impounded, or caused to be impounded, five oxen of the said A. B., and kept the same impounded, for five days, to the damage of the said A. B., of forty shillings; and the said A. B. prays, &c.

For injury done by obstructing a stream of water, the right to the stream not being disputed.—That the said C. D., on or about, &c., wrongfully obstructed a certain stream of water, which of right ought to run through the land of the said A. B., situate at Bathurst, by making dams in the same (or digging trenches, laying timber, &c., in the said stream), above the land of the said plaintiff; and the said A. B., was thereby deprived of the use of the said stream for the space of hours (or days), and hath sustained damage to the amount of £ ; and the said A. B. prays the said C. D. may be adjudged to pay the same.

For wrongfully breaking down a dam in a stream of water.—That the said A. B., having by right made a certain dam in a stream of water running near or through the land of the said A. B., situate at &c., whereby the said A. B. might lawfully pen up and detain the water of the said stream for hours in each day, so that the same might run upon the land or premises of the said A. B.; yet the said C. D., whilst the water was lawfully stopped by the said A. B., wrongfully broke down the said dam, to the damage of the said A. B. of £ ; and the said A. B. prays, &c.

For wrongfully keeping back the water of a stream.—That the said C. D. wrongfully detained and dammed up the water of a certain stream running through or near the land (or premises) respectively of the said A. B. and C. D., situate at, &c., and which, after passing through the land (or premises) of the said C. D., ought to have run into the land (or premises) of the said A. B., and the said A. B. was thereby deprived of the use of the said stream for hours (or days), and hath sustained damage to the amount of £ ; and that the said A. B. prays, &c.

For injury to land by cattle.—That the said A. B. hath a piece of land adjoining to the land of the said C. D., the hedge (fence or ditch) between which belongs to the said C. D., and ought to be repaired by him; yet, through the want of repair of the said hedge, &c., the cattle

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856.

of the said C. D., on or about the day of last, broke into the land of the said A. B., and eat up, trampled down, and destroyed the corn of the said A. B., there growing, whereby the said A. B. was damaged to the amount of five pounds sterling; and the said A. B. prays, &c.

For injury sustained by obstructing a right of watercourse, the right itself not being disputed.—That the said A. B. hath a right of watercourse through the land (or premises) of the said C. D., but the said C. D. on the day of , obstructed him in the exercise of his right, by stopping up the said watercourse, and the house (or premises) of the said A. B. were thereby flooded with water, to the damage to the said A. B. of £ ; and the said A. B. prays, &c.

For obstructing a right of watercourse.—That the said A. B. hath the right of discharging dirty water, &c., through a gutter which runs through the land (or premises) of the said C. D., but the said C. D., on or about, &c., obstructed him from using the said right, by stopping up the said gutter, to the damage, &c.; and the said A. B. prays, &c.

For injury sustained by obstructing a right of road, the right itself not being disputed.—Hath a right of way to pass and repass on foot (or with horses or other beast, or with carts and carriages) from and towards the land (or premises) of the said A. B., over the land of the said C. D., to and from the village of Bathurst; yet the said C. D. obstructs and hinders him in the said right; and especially on the day of prevented him from using the same by digging a ditch across the said way, &c., to damage, &c.; and the said A. B. prays, &c.

For obstructing a right of road to fetch water.—Hath a right to use a certain well or fountain of water, on the land (or premises) of the said C. D. (as before.)

Leading water through the land of another.—Hath the right of a stream of water through the land of C. D. to his own; yet, &c.

Right of way to fetch water.—Hath the right to pass over the land of C. D., to fetch water from a fountain, reservoir, &c., situate upon the land of E. F.

For destroying fences, &c., and of injuries to land or cattle.—That the said C. D., on or about the day of , broke down and destroyed a fence of the said A. B., at Bathurst, in the district of Albany, whereby the said A. B. hath sustained damage to the amount of £ ; &c., (or broke down the door of the house of the said A. B.; and disturbed him in his peaceable possession thereof; or cut down two trees of the said A. B., of the value of £ ; or wrongfully trampled down and destroyed the corn of the said A. B.; or drove about or injured the sheep or cattle; or killed or wounded a dog, horse, &c., of the said A. B., of the value of £); and the said A. B. prays, &c.

For an assault or injury to the person, wife, &c.—That the said C. D., on &c., assaulted and ill-treated the said A. B. (or the wife or child, or servant of the said A. B.), to the damage of the said A. B. of £ ; and the said A. B. prays, &c.

SCHEDULE D.

Fees to be taken by the Officers of the Court of Resident Magistrate.

[Repealed by Rule of Supreme Court framed under Section 7, Act 21, 1876, and published in *Gazette* of 4th January, 1878.]

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1856

SCHEDULE

CIVIL RECORD BOOK.

No.	Parties.	Plaint.	Day of Issuing Summons.	Day of appearance of parties personally, or by whom.
1	Adams against Johnson.	March 1st, 1848. John Adams, of Bathurst, in this district, farmer, complains of Thomas Johnson, of the same place, baker, that the said Thomas Johnson is indebted to him in the sum of £5 10s. 6d. sterling, for corn sold and delivered by the said John Adams to the said Thomas Johnson, in or about the month of December last, which sum the said Thomas Johnson refuses to pay; and the said John Adams prays he may be adjudged to pay the same.	1848. March 3rd.	March 10th, 1848, plaintiff in person, defendant by his son, Richard Johnson.
2	Thompson against George.	March 8th, 1848. Richard Thompson, of Graham's Town, in this district, baker, complains of John George of the same place, grocer, that the said John George is indebted to him in the sum of £4 sterling, for bread and flour sold and delivered by the said Richard Thompson to the said John George, in or about the months of December and February last; which sum, &c.; and the said Richard Thompson, &c.	March 1st	March 3rd.—Defendant in person; plaintiff made default.
3	Berry against Jones.	John Berry, of Graham's Town, in this district, carpenter, complains of Isaac Jones, of the same place, farmer, that the said Isaac Jones is indebted to him in the sum of £9 sterling, for three months' rent, due from the said Isaac Jones to the said John Berry, on or about the first day of February last, in respect of the occupation by the said Isaac Jones of a house and garden of the said John Berry, situate at Bathurst, which sum, &c.; and the said John Berry prays, &c.	March 4th.	March 6th.—Plaintiff in person.
4	Ward against Richards.	Henry Ward, of Graham's Town, in this district, tailor, complains of John Richards, of the same place, farmer, that the said John Richards is indebted to him in the sum of £9 sterling, for three months' rent, due from the said John Richards to the said Henry Ward, on or about the 1st February last, in respect of the occupation by the said John Richards of a house and garden of the said Henry Ward, situate at Bathurst; which sum, &c.; and the said Henry Ward prays, &c.	March 4th.	March 6th.—Plaintiff in person. March 13th.—Both parties in person (second appearance).
5	Thompson against George.	March 8th, 1848. Richard Thompson, of Graham's Town, in this district, baker, complains of John George, of the same place, grocer, that the said John George is indebted to him in the sum of £4 sterling, for bread and flour sold and delivered by the said Richard Thompson to the said John George, in or about the months of December and February last; which sum, &c.; and the said Richard Thompson, &c.	March 6th.	March 28th.—Both parties in person.

Digitised by the University of Pretoria, Library Services, 2016

E. No. 20—1856.

DISTRICT OF ALBANY.

Defence.	Day of hearing the case.	Judgment of the Court.	Subsequent proceedings and remarks.
Debt denied.	1848. March 10th.	For plaintiff, £5 10 6 1 10 6 costs. Ordered, that defendant pay by monthly instalments of £1, the first on the 1st of August, 1848. On default made in any payment, execution to issue for debt and costs still due.	Warrant for execution issued 10th March, 1848.
.....	.....	Defendant absolved from the instance. Costs adjudged to defendant against the plaintiff, 10s.	
Default.	March 6th.	Judgment for plaintiff, £9.	Appeal noted March 14th. —£1 17s. 6d. deposited.
		Final judgment, March 13th. Costs, £2.	March 20th, appeal allowed, May 10th, execution thereon [or—if the case so be—] March 24th, warrant of execution upon security of restitution.
Paid.	March 6th.	Judgment for plaintiff, £9.	Notice of judgment served on defendant March 10th, to appear on March 13th.
.....	Re-hearing, March 13th.	Opened on the appearance of John Richards, on March 13th; final judgment same day for defendant. Costs against plaintiff, £2 10s.	Warrant of execution at the suit of defendant, issued March 16th, 1848.
Admitted, but claims £3 for tea and other articles sold by the said John George to Richard Thompson, during the same period.	March 10th.	For plaintiff, judgment £2. Costs, 10s.	Warrant for execution issued 12th March, 1848.

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE F.

CRIMINAL RECORD BOOK. DISTRICT OF ALBANY.

Prosecutor.	Defendant.	Crime or Offence charged.	Day of commitment for trial, and by whom.	Day of lodging complaint with the clerk.	Day of hearing.	Judgment.	Sentence.	Remarks, &c.
Public Prosecutor.	J. T., of Graham's Town, in this district, labourer.	Stealing at Graham's Town a coat, the property of A. B., of the same place, shopkeeper.	1848. March 1st. J. L., Esq.	1848.	1848. March 20th	Guilty.	One month's imprisonment with hard labour.	
2. Public Prosecutor.	C. D., E. F., and G. H., of Bathurst, in this district, farmers.	Violently assaulting and beating, at Bathurst, A.B., of the same place, farmer.	J.L., Esq., at large, on bail.	March 1st.	Same day.	Guilty.	Fined twenty shillings each	Discharged on the same day, having paid the fine
3. A.B., of Bathurst, in this district, farmer.	C. D., of Graham's Town, in this district, shopkeeper.	Assault at Graham's Town.	.....	March 20th.	Same day.	Not Guilty.		
4. Public Prosecutor.	Jacob, servant of A. B., of Bathurst, in this district, farmer.	Stealing at Bathurst a sheep, the property of his master, on or about the 1st of February, 1848.	March 1st. L. M., Esq.	March 20th.	April 20th.	Guilty.	One month's imprisonment with hard labour.	
5. C.D., labourer.	E.F., canteenkeeper.	Selling wine at ——, at unlawful hours.	.....	August 10th	Sept. 10th.	Guilty.	Fined ten pounds, which not being paid, defendant sentenced to one month's imprisonment, with hard labour.	Sentence founded on Ordinance No. 29, of 1846.

Digitised by the University of Pretoria, Library Services, 2016

No. 21—1856.] [June 4, 1856.

An Act for Better Securing the Efficiency of the Armed and Mounted Police Force upon the Frontier of this Colony.

[Repealed by Act 9, 1878.]

No. 22—1856.] [June 4, 1856.

An Act for Securing by Law a certain Allowance or Annual Pension, granted to Jan Fredrik de Wet, and to Johanna Catharina Andrea de Wet, his Wife.

[Spent.]

No. 23—1856.] [June 4, 1856.

An Act for Empowering the Governor to regulate the Postage of Letters transmitted to and from Countries beyond the Colony.

[Repealed by Act 4, 1882.]

No. 24—1856.] [June 4, 1856.

An Act for Reviving the Ordinance No. 15, 1844, entituled "Ordinance to provide for the Enregisterment in the Land Registers of this Colony of certain Sub-divisions of the Locations and Extensions of the Settlers of 1820."

[Expired.]

No. 25—1856.] [June 4, 1856.

An Act for Promoting the Formation of Volunteer Corps.

[Repealed by Act 10, 1873.]

No. 26—1856.] [June 4, 1856.

An Act for Amending the Law relating to Rules of Court.

[Repealed by Act 15, 1867.]

No. 27—1856.] [June 4, 1856.

AN ACT

For Constituting the District of Namaqualand a Division.

Preamble. WHEREAS a portion of the district of Namaqualand now forms part of the Electoral Division of Clanwilliam, and a portion thereof part of the Electoral Division of Victoria: and whereas it is expedient that the district of Namaqualand should be constituted

Digitised by the University of Pretoria, Library Services, 2016

No. 27—1856.

a separate division for fiscal purposes, but that the same should belong to the Electoral Division of Clanwilliam for electoral 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 :—

7th section of Constitution Ordinance repealed.

1. So much of the 7th section of the Ordinance for constituting a Parliament for this Colony as is repugnant to or inconsistent with this Act is hereby repealed.

Namaqualand to be a separate fiscal division.

2. From and after the commencement and taking effect of this Act, the district of Namaqualand according to its existing limits, shall become and be a division for fiscal purposes, as well as a district, and shall cease, for fiscal purposes, or any purpose other than that in the next succeeding section mentioned, to belong to the divisions of Clanwilliam and Victoria respectively; and from and after the date aforesaid the Divisional Council, for the time being, of the now existing division of Clanwilliam shall stand dissolved, and the provisions of the Act No. 5, 1855, entituled "An Act for creating Divisional Councils in this Colony," shall apply to the Fiscal Divisions of Clanwilliam and Namaqualand respectively, as then limited and bounded, precisely as if no Divisional Council in the existing division of Clanwilliam had ever been elected: Provided also, that the registered voters for the Electoral Division of Clanwilliam for the time being, resident within the Fiscal Division of Namaqualand, and none other, shall be entitled to vote at any election of members of the Divisional Council for the division of Namaqualand.

Divisional council of Clanwilliam dissolved.

Separate council for Namaqualand and Clanwilliam.

Registered voters resident in Namaqualand to vote for its divisional council.

For electoral purposes, Namaqualand to form part of Clanwilliam.

3. Notwithstanding the erection of the said district into a division, as aforesaid, the said district and division of Namaqualand (1) shall for electoral purposes, form part of the Electoral Division of Clanwilliam, precisely as if the said division of Namaqualand had formed part of the division of Clanwilliam at the time when the Ordinance for constituting a Parliament commenced and took effect.

Act, when to commence.

4. This Act shall commence and take effect from and after such date as shall be fixed for that purpose by the Governor of this Colony, by any proclamation to be by him issued and published in the *Government Gazette*.

No. 28—1856.] [June 4, 1856.

An Act for Applying a Sum not exceeding Sixty-three Thousand Six Hundred Pounds for the Service of the Year 1857.

[Spent.]

---

[1] Created a separate Electoral Division by § 24 Act 3, 1865.

Digitised by the University of Pretoria, Library Services, 2016

No. 1—1857.] [June 29, 1857.

An Act for Transferring from the Colonial Government to the Divisional Councils certain Powers and Functions relating to the Public Pounds of the Colony.

[Repealed by Act 40, 1889.]

No. 2—1857.] [June 29, 1857.

An Act for Establishing certain Rules of Court.

[Not printed.]

No. 3—1857.] [June 29, 1857.

An Act for Transferring from the Central Road Board to the Divisional Council of the Cape Division the Revenue arising from the Toll levied at the Entrance of Simon's Town.

[Superseded by Act 33, 1886.]

No. 4—1857.] [June 29, 1857.

AN ACT

For Preventing Obstructions and for preserving Good Order on the Wharfs in Table Bay. ([1])

Preamble.

WHEREAS it expedient that the Governor of this Colony for the time being should be empowered to prevent obstructions and preserve good order on the wharfs in Table Bay: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Management of the wharfs in Table Bay to be under wharfmaster, appointed by Governor, and paid out of the wharfage dues.

1. The management of the wharfs in Table Bay shall be under the direction of an officer, who shall be denominated the wharfmaster, and who shall be appointed by the Governor, and be paid out of the collections of wharfage dues; and the Governor shall have power to remove any such officer for the time being, and to appoint another in his room and stead.

Duties of wharfmaster.

2. The duty of the wharfmaster shall be to cause all persons making use of the wharfs for the landing or shipping of goods, to remove them from the wharfs and the approaches thereto as speedily as possible, so as to prevent the wharfs being encumbered with goods; and to keep the said wharfs and approaches open for the convenience of all persons requiring to use the same.

---

[1] For Port Regulations see Act 16, 1857.

Digitised by the University of Pretoria, Library Services, 2016

No. 4—1857.

Persons failing to remove goods, after due notice from wharfmaster, liable to fine of ten pounds.

3. If any person depositing goods on any of the wharfs in Table Bay, or on any of the approaches to any of the said wharfs, shall not forthwith remove such goods when directed and required so to do by the wharfmaster, or within such reasonable time as shall be notified to the person depositing the goods by the wharfmaster, according to his discretion, then the person so offending shall be liable, on conviction, to a penalty not exceeding ten pounds for every such offence.

Wharfmaster may remove goods at the expense of parties neglecting to do so. Such expense to form an addition to the penalty in the last section mentioned.

4. If any person shall refuse or neglect to remove any goods from any of the wharfs aforesaid, or from any of the approaches to any of the said wharfs, according to the requirements of the wharfmaster, made by him as aforesaid, then the wharfmaster shall be empowered to cause such goods to be removed, and the person so refusing or neglecting shall, besides being liable to the penalty in the last preceding section mentioned, pay and make good the expense of such removal, which expense shall be adjudged by the court in which the penalty aforesaid shall be prosecuted for, by way of additional fine or penalty: Provided, always, that the wharfmaster shall be authorised to remove such goods either to the store or residence of the owner or consignee thereof, or, in case there be none such known, or be open to receive the said goods, then to any other safe store or place; in which last-mentioned case the said wharfmaster shall have a right of retaining such goods until the expense of removing and storing, or keeping the same at the store or place to which they shall have been removed, shall be paid.

Such goods to be removed to store or residence of owner or consignee, or other safe place, and may be retained until expenses of removal be paid.

Wagons and other vehicles to be under direction and control of wharfmaster.

5. All wagons or other vehicles employed in bringing goods to the wharfs, or removing them therefrom, shall, while on the wharfs or any of the approaches thereto, be under the direction and control of the wharfmaster, and all drivers of wagons shall place their wagons after unloading, or when waiting for a load, in such position or place as shall be pointed out by the wharfmaster as proper and convenient. Any person in charge of any wagon or other vehicle, neglecting or refusing to comply with any directions of the wharfmaster in respect of the matter aforesaid, shall be liable to a penalty not exceeding five pounds.

Persons disregarding orders of wharfmaster liable to a fine of five pounds.

Wharfmaster to regulate position of boats.

Boats to vacate the crane-berth when, for certain reasons, directed by wharfmaster to do so.

Penalty for disregarding directions of wharfmaster.

6. The wharfmaster shall have the right to regulate the position of all boats lying at the respective wharfs. No boat waiting for a cargo not actually at the place of shipment shall be allowed to remain in possession of the berth commonly called the crane-berth, but shall, if required so to do by the wharfmaster, give place to any other boat, the cargo of which is ready at the place of shipment, or to any boat arriving with a cargo to be landed. Any person refusing or neglecting to obey any lawful order of the wharfmaster in regard to the subject-matter of this section, shall be liable to a penalty not exceeding £10.

Wharfmaster may, under certain circumstances, prevent landing of goods,—penalty £10.

7. The wharfmaster shall be empowered, as often as the state of any wharf shall appear to him to require, to prevent any boat from landing cargo at the said wharf, unless the owner of that boat shall

Digitised by the University of Pretoria, Library Services, 2016

have removed from the said wharf all goods already deposited thereon by him, and which goods shall then remain upon the said wharf, in contravention of the 3rd section of this Act. Any person landing any such cargo which the wharfmaster shall have directed not to be landed shall be liable to a penalty not exceeding £10. No. 4—1857.

8. No person shall make fast any boat to the steps attached to any wharf, nor shall any boat be hauled up for repair at or upon the space allowed to the fishermen at the Central Wharf, upon which to haul up their boats; nor shall any timber be landed or placed upon the aforesaid space which must at all times be kept clear for fishing boats. Any person contravening any of the provisions of this section shall be liable to a penalty not exceeding £5. No boat to be made fast to steps of wharf nor to encumber the space allotted to fishermen's boats,—penalty £5.

9. All penalties incurred under this Act shall be recoverable in the Court of the Resident Magistrate of Cape Town, or in the Court of the Judge and Superintendent of Police (1) of Cape Town; and in case of non-payment, upon conviction of any penalty imposed by any such Court, under this Act, the person offending may be imprisoned, with or without hard labour, for any period not exceeding one month. Penalties how recoverable.

10. The seventh section of Ordinance No. 6, of 1851, (2) in so far as it is repugnant to or inconsistent with any of the provisions of this Act, is hereby repealed. Repugnant section of Ordinance No. 6, 1851, repealed.

No. 5—1857.] [June 29, 1857.

An Act for establishing more effectually the Settlement in this Colony of certain Military Settlers.

[Lapsed.]

No. 6—1857.] [June 29, 1857.

An Act to reduce the existing Rate of Transfer Dues payable on the Sale of Landed Property.

[Repealed by Act 7, 1858.]

No. 7—1857.] [June 29, 1857.

AN ACT

For Regulating the Payment of the Expenses of Field-cornets and other Public Officers attending to give Evidence in certain Criminal Cases. (3)

WHEREAS Field-cornets and other public officers are occasionally summoned to attend as witnesses in criminal cases, for the purpose of giving evidence regarding matters with which they have been concerned solely in their official capacity: And whereas doubts Preamble.

[1] This Court is abolished.
[2] So much of this Ord. as relates to Cape Town is repealed by Act 22 of 1872.
[3] Extended by Proclamation No. 80 of 1890 to all the Native Territories. See also Ords. 59, 1829; 69, 1830; 26, 1847, and Act 12, 1886, §1.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1857.

exist whether, when so attending, they can lawfully be allowed any expenses other than the ordinary expenses provided by Ordinance No. 59, entitled "Ordinance for regulating the payment of the Expenses of Witnesses attending to give evidence on criminal trials and preparatory examinations": And whereas it is proper to remove such doubts, and to provide that such witnesses shall be considered, when so attending to give evidence, as officially engaged in the public service, and be paid accordingly: 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, that is to say:

Field-cornet, field-commandant, or justice of the peace, summoned to give evidence in regard to matters with which they have been officially concerned, to be remunerated under Ordinance No. 9, 1848.

1. As often as any Field-cornet, Field-commandant, Assistant Field-cornet, or Justice of the Peace, shall attend as a witness before any Court or Justice of the Peace, in this Colony, under such circumstances that he would, if an ordinary witness, be entitled to be allowed expenses under the Ordinance aforesaid, No. 59, at and after the rate therein provided, he shall, in case he shall have been summoned to give evidence regarding matters with which he has been concerned solely in his official capacity, receive and be allowed expenses at and after the rate of remuneration for Field-cornets, when from home on service, set forth in the Ordinance No. 9, 1848, entitled "Ordinance for regulating the duties and remuneration of Field-cornets"; that is to say, he shall receive, as and for his expenses, an allowance for horse-hire at the rate of one shilling and sixpence per hour, together with a further allowance at the rate of seven shillings and sixpence per day.

No. 8—1857.] [June 29, 1857.

An Act for Introducing into this Colony Immigrants from Europe.

[Spent.]

No. 9—1857.] [June 29, 1857.

AN ACT

For Amending the Act No. 20, 1856, entitled "An Act for Amending and Consolidating the Laws relative to the Courts of Resident Magistrates." [1]

Preamble.

WHEREAS it is expedient to amend the Act No. 20, 1856, entitled "An Act for Amending and Consolidating the Laws relative to the Courts of Resident Magistrates," by authorising Courts of Resident Magistrates, held elsewhere than at the stated and ordinary place for holding such Courts, to try civil cases:

[1] See Act 16, 1882.

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1857.

And whereas, also, it is expedient to correct a manifest error in the forty-seventh section of the said Act, arising from the accidental insertion of the word "not," where the said word was not meant to be inserted, whereby the construction of the said section might be rendered doubtful and obscure: And whereas, also, it is expedient to make certain other amendments in the said Act, and in the rules, orders, or regulations contained in the schedule annexed thereto, marked B: Be it enacted by 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 parts of Act No. 20, 1856, repealed.

1. So much of the Act aforesaid, No. 20, 1856, and of any of the rules, orders, or regulations of Court contained in the schedule to the said Act, marked B, as shall be repugnant to, or inconsistent with, any of the provisions of this Act, is hereby repealed.

Forty-seventh section of Act No. 20, 1856, corrected.

2. In the forty-seventh section of the said Act, the word "not," where it occurs in the third line of the said Act, as printed upon vellum, between the words "for any period" and the words "exceeding one month," is hereby struck out and expunged; and all Magistrates and other persons who have hitherto acted upon, or in reference to, the said section as if it had been originally printed and passed as now amended, are hereby indemnified and held harmless for having so done.

Periodical courts to have civil jurisdiction.

3. The Courts of Resident Magistrate, held elsewhere than at the places fixed and appointed by proclamation of the Governor as the stated and ordinary places for holding such Courts, shall henceforth have and exercise the same jurisdiction in civil cases as that possessed by the said Courts, when held at the stated and ordinary places so fixed and appointed as aforesaid.

Rule 2 in schedule B to Act No 20, 1856, repealed.

4. Rule No. 2, as set forth in the schedule aforesaid, marked B, is hereby repealed, and the rule No. 2, in the schedule to this Act, marked A, is hereby substituted in its place and stead.

Rules 29 and 30 altered.

5. In the rules numbered twenty-nine and thirty, in the said schedule set forth, the words "four months," are hereby struck out and expunged, and the words "one month" substituted in their room and stead.

Additional rules in schedule B to this Act established.

6. The additional rules, orders, and regulations contained in the schedule to this Act, marked B, are hereby established and enacted.

7. [Repealed by Act 16, 1882.]

Messenger of the court to be entitled to horse-hire.

8. The messenger of the Magistrate's Court, serving or executing any summons, warrant, or order, mentioned in the schedule, marked D, to the Act aforesaid, No. 20, 1856, shall be entitled in addition to the fees mentioned in the said schedule as fees to be taken by such messenger, to his reasonable horse-hire,(1) to be fixed by the Resident Magistrate: Provided that no messenger shall be entitled to any horse-hire in any case in which the place for the

[1] Charges fixed by Rule of Supreme Court published in *Gazette*, 4th January, 1878. See also § 7, Act 21, 1876.

Digitised by the University of Pretoria, Library Services, 2016

No. 9 1857.

service of the summons, or the execution of the warrant or order, shall be within three miles of the place of holding the Court: And provided that no messenger shall be allowed horse-hire at a rate exceeding the rate, for the time being, which would be lawfully chargeable by a Deputy Sheriff, executing, in the same district, the process of the Supreme or of any Circuit Court.

SCHEDULE A.

Magistrate to hold courts at places and on days appointed by Governor.

Rule 2. The Resident Magistrate shall hold a Court at such place or places as the Governor shall, by proclamation, have appointed, and upon such days as shall, in regard to each Resident Magistrate, have been announced by Government notice, published in the *Government Gazette*. The places for the holding of the Court, as well as the days for the holding of the same, may be from time to time increased, diminished, or otherwise changed, by proclamation or Government notice, according as the change shall relate to the place or places, or to the days, of holding such Court; and every such Court when holden at more places than one within any district, shall have and exercise the same jurisdiction, civil and criminal, at every place at which it shall be held. But in all districts in which the Court of Resident Magistrate is appointed to be held at more places than one, some one place shall, by proclamation, be, in case it shall not have already been, announced as the stated and ordinary place for the holding of such Court.

Such courts to exercise the same jurisdiction in all places.

Stated and ordinary places for holding court to be appointed for each magistracy.

SCHEDULE B.

ADDITIONAL RULES, ORDERS, and REGULATIONS, respecting the manner and form of proceeding in civil and criminal cases before the Courts of Resident Magistrates, respectively, of the Colony of the Cape of Good Hope.

IN CIVIL CASES.

Process of periodical court in civil cases may be issued by any person appointed thereto by Government notice.

1. The process of the Court of Resident Magistrate for summoning any person, whether as a party or a witness, in any Periodical Court, may be issued by any person, resident at or near the place where such Court is intended to be holden, who shall be nominated and appointed, by any Government notice in the *Government Gazette*, to issue the said process: And such process shall, in substance, correspond with the forms prescribed by the rules of Court for process issued and delivered by the clerk of the Court, and shall state the place where the said Periodical Court is intended to be holden, and shall be directed to and be executed and returned by any such person as the Resident Magistrate shall from time to time, by any writing under his hand, nominate and appoint. And any such person so nominated and appointed shall have and possess the like powers and authorities, and be entitled to the like fees, as the messenger of the said Court would have been possessed of, or been entitled to, had the same process been directed to and executed and returned by him: and such process shall at the foot be signed thus, "A. B., appointed by Government notice

Process to be in due form, and may be executed by any person appointed for that purpose.

Digitised by the University of Pretoria, Library Services, 2016

of the ————, 185—, to issue the process of the Periodical Court at ————."

Process so issued, as aforesaid, to be of the same force as that issued by clerk of the court.

2. All such process as in the last preceding section mentioned shall have the like force and effect, in all respects, as if the same had been directed to the officer appointed to execute, ordinarily, the civil process of the said Court, and had been signed, issued, and delivered by the clerk of the said Court: Provided, always, that nothing in this rule contained shall be construed so as to prevent the issue and delivery, in common form, by such clerk, of any process for requiring the appearance of any person before the said Court, at any place where such Court shall be appointed to be held: Provided, also, that the clerk of the Court may, at the stated and ordinary place for holding the Court of Resident Magistrate, sign and issue process for any Periodical Court within the district, and may direct, and may deliver or transmit, such process to the person nominated and appointed as aforesaid, by the Resident Magistrate, to execute the process of such Periodical Court: who shall execute the same, and return the same, after execution, to the person authorised by Government notice as aforesaid to issue the process of such Periodical Court.

Clerk of court may issue process for per odical court.

Such process, how to be executed.

Defendant residing nearer to district than to periodical court not to be sued before the latter without his consent.

Summons in contravention of this rule to be dismissed with costs.

3. No person shall, without his own consent, be summoned, as the defendant in any civil action or proceeding, to appear before any Periodical Court, unless such person shall reside nearer to the place for holding such Periodical Court than to the ordinary and stated place for ho ding the Court of Resident Magistrate; and any summons issued in contravention of the provisions of this rule shall, upon the application of the defendant, be dismissed with costs.

Officer issuing process of periodical court to keep civil record book.

4. The person so appointed as aforesaid to issue the process for any Periodical Court, shall be furnished with a book, corresponding to the Civil Record Book, mentioned in the sixth rule of the Courts of Resident Magistrates, which book shall be called "Civil Record Book of the Periodical Court at ————," and in which book such person as aforesaid shall make entries similar to the entries proper to be made in the Civil Record Book, kept by the clerk of the Court, and the Resident Magistrate, at every sitting of any Periodical Court, after the first sitting thereof, shall sign the said book, in attestation of its correctness.

To act also as clerk of the Court and receive fees.

5. The several duties which are by the rules, orders, and regulations of the Courts of Resident Magistrates appointed to be performed by the clerk of the Court, shall be performed, in regard to any Periodical Court, by the person appointed as aforesaid to issue the process of such Periodical Court, who shall be entitled to demand, and shall receive and account for, the same fees which the clerk of the said Court would be by law entitled to demand and receive: Provided, however, that the Resident Magistrate himself, or the clerk of the Court of Resident Magistrate of the district, if present, shall be entitled to perform, in any Periodical Court, such of the duties aforesaid as such Magistrate or clerk may see fit to undertake.

Magistrate, or clerk of district court, if present, may act.

Judgment in civil cases to be issued by the officer issuing process, and to be executed by the messenger of the district court or other person thereto appointed.

6. The process for the execution of any sentence or judgment, pronounced in any civil case determined in any Periodical Court, shall be issued by the person appointed as aforesaid to issue the process of such Periodical Court, and shall be directed to, and be executed and returned by, the messenger of the Resident Magistrate's Court of the district, or by such other person as the Resident Magistrate shall from time to time, by any writing under his hand, nominate and appoint;

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1857.

and every such last mentioned person shall have and possess the same powers and authorities, and be burthened with the same duties, and be entitled to the like fees, as if such person were himself the messenger aforesaid: Provided that the said messenger shall not be bound to execute the process of any Periodical Court, but that, should any such process be executed by him, his fees and charges for executing the same shall be calculated and regulated, precisely as if the place of holding such Periodical Court had been the stated and ordinary place for holding the Court of Resident Magistrate for the district, and such messenger shall not be entitled to claim fees or charges as if the said process had been issued to him from or out of the stated and ordinary Court. And a warrant for commitment in civil imprisonment, or for the delivery up of possession of premises, shall be deemed to be process of execution within the meaning of this rule.

Messenger of district court not bound to issue process of periodical court, but if so employed not to charge fees as in ordinary court.

Appeal from periodical court to be noted, within ten days, to the officer issuing process.

How such appeal to be prosecuted.

7. Any party intending to appeal against any judgment or sentence of any Periodical Court shall make known his intention so to do to the person aforesaid appointed to issue the process of such Court at any time within ten days next after the day on which such judgment or sentence shall have been pronounced; and thereupon the thirty-third, thirty-fourth, and thirty-fifth rules of the Courts of Resident Magistrates shall apply to such appeal, precisely as if the said sentence or judgment had been pronounced by the Court of Resident Magistrate at the stated and ordinary place for holding the said Court, and as if the person so appointed to issue process were the clerk of the Court.

Costs in periodical court to be taxed by officer issuing process, under control of the magistrate.

8. The taxation of costs and expenses, as in the thirty-sixth rule of the Courts of Resident Magistrates directed, shall be made in all Periodical Courts by the person appointed to issue the process of such Court, but under the immediate supervision and control of the Resident Magistrate who shall sign, or place his initials to, the bill of costs when taxed, in token that he has examined and approved of the charges therein contained.

In an appeal from periodical court, magistrate, and not clerk, to transmit proceedings.

9. As often as the judgment or sentence of any Periodical Court shall be appealed from, the Resident Magistrate, and not the clerk of the Court, shall transmit the proceedings in the fifty-ninth rule of the Courts of Resident Magistrates mentioned, and shall also transmit a certificate under the hand of such Magistrate, which certificate shall be, in substance, the same as the certificate in the said rule set forth.

Meaning of term "periodical court."

10. In construing these rules, the words "Periodical Court" shall mean a Court of Resident Magistrate held elsewhere, within any district, than at the place appointed as the stated and ordinary place for the holding of such Court.

IN CRIMINAL CASES.

Process in criminal cases to be issued by any person appointed thereto by Government notice.

11. The process mentioned in the seventieth rule of the Courts of Resident Magistrates, may be issued by any person, whether a Justice of the Peace or not, who shall be appointed by any Government notice in the *Government Gazette* to issue the said process, and such person, whether a Justice of the Peace or not, may be appointed by such notice, and a proclamation shall not be necessary.

Officer issuing process may conduct criminal prosecution.

12. The person by whom the criminal process for any Periodical Court shall be issued, shall be entitled, subject to the discretion of the Resident Magistrate, to assist in conducting the prosecution in any criminal case which shall be pending therein.

Digitised by the University of Pretoria, Library Services, 2016

No. 10—1857.] [June 29, 1857. No. 12—1857.

An Act for Providing for the Building and Improvement of Public Prisons.

[Spent.]

No. 11—1857.] [June 29, 1857.

An Act for Promoting the Construction of a Harbour of Refuge in Table Bay.

[Repealed by Act 20, 1858.]

No. 12—1857.] [June 29, 1857.

AN ACT

For Constituting certain Districts of this Colony, Divisions. (1)

Preamble.

WHEREAS it is expedient that the several districts of this Colony should (unless where local circumstances render such a change unnecessary) be constituted divisions, in order that the inhabitants may have the advantage of transacting their fiscal business at the same place to which they resort for the administration of justice, instead of being compelled, as at present, to transact such business at another, and, in general, far more distant place: And whereas, whilst it is expedient to constitute the said districts, divisions for all fiscal purposes, as well as for the purpose of enabling every such division to have and possess its own Divisional Council, it is at the same time expedient that the several Electoral Divisions of the Colony, as described in the Constitution Ordinance, should not be altered or affected by this Act: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant parts of the Constitution Ordinance repealed.

1. So much of the Ordinance for constituting a Parliament in this Colony, and commonly called the "Constitution Ordinance," as is repugnant to, or inconsistent with this Act, is hereby repealed.

Certain districts to be fiscal divisions.

2. Each of the several districts named in the schedule to this Act, shall, from and after the first day of January, one thousand eight hundred and fifty-eight, become and be a division, for fiscal purposes, as well as a district, and shall cease, for fiscal purposes, or for any purpose other than the election of members of Parliament, to belong to any division to which the said district, or any part of the said district, belonged, down to, and next before, the day and year aforesaid.

Divisional councils in existing divisions dissolved, and to be reconstituted in each of the new divisions.

3. From and after the day in the last preceding section mentioned, the Divisional Council, for the time being, of every

(1) See Acts 13, 1856; 27, 1856; 25, 1858; 17, 1865; 6, 1871; 3, 1872; 36, 1879; 5, 1886; 33, 1886; 30, 1888; 40, 1889; 24, 1890; 24, 1891; and 12, 1892.

Digitised by the University of Pretoria, Library Services, 2016

No. 12—1857.

division to which any district named in the schedule to this Act, or any part of any such district, previously belonged, shall stand dissolved; and the provisions of the Act No. 5, of 1855, entitled "An Act for creating Divisional Councils in this Colony," shall apply to the divisions constituted by this Act, and to the divisions to which the districts hereby constituted divisions, or any part of any such districts, previously belonged, as such new divisions, and such former divisions shall then be limited and bounded precisely as if no Divisional Council in or for any of such divisions had ever been elected: Provided that the registered voters for any and every Electoral Division, which, down to, and next before, the day aforesaid, comprised any such new division as aforesaid, or any part of any such new division, and which voters shall be resident in such new division, shall be entitled to vote at any election of members of the Divisional Council of such new division.

Subdivisions for the purposes of this Act not to affect electoral boundaries.

4. Notwithstanding the creation of such new divisions as aforesaid, for fiscal and other purposes, every such new division, and every part thereof, shall continue, for electoral purposes, to belong to, and form part of, whatever Electoral Division such new division, or any part thereof, formerly belonged to, precisely as if this Act had not been passed.

SCHEDULE.

DISTRICTS BY THIS ACT CONSTITUTED DIVISIONS.

Alexandria	Middelburg
Aliwal (North)	Mossel Bay
Bathurst	Oudtshoorn
Bedford	Piquetberg
Bredasdorp	Prince Albert
Calvinia	Richmond
Fort Peddie	Riversdale
Hope Town	Stockenstrom
Knysna	Victoria

No. 13—1857.] [June 29, 1857.

AN ACT

For Removing all Doubts regarding the Validity of the Marriages of certain Military Settlers.

Preamble.

WHEREAS certain of the men belonging to the British-German Legion, and about to emigrate to South Africa as military settlers, were married in England upon the eve of embarkation, whilst certain other members of the same force were married as soon as they had put out to sea: And whereas the said marriages were, all of them, entered into in good faith, and solemnized by chaplains of the said force, or by other ministers of religion; and it is just

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1857.

and expedient, for the sake of the said married people and their issue, to prevent any doubts or questions being raised, at any future time, in regard to the validity of such marriages, grounded upon the want, or supposed want, of certain formalities, with which, by reason of haste and other circumstances, it was impracticable to comply: And whereas it has been found impracticable to obtain, for the purpose of being embodied in this Act, a correct list of the marriages aforesaid: And whereas it is expedient that the Governor of this Colony should be empowered, by any proclamation or proclamations, to be by him published in the *Government Gazette*, to proclaim the names of the married people whose marriages shall, by this Act, be declared valid: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Governor to proclaim the names of the married parties. Such marriages declared valid.

1. It shall be lawful for the Governor aforesaid, as soon as he shall have obtained a correct and authentic list of the marriages described in the preamble of this Act, to publish the same by proclamation or proclamations, in the *Government Gazette*, and the marriage of each husband and wife, whose names shall be set forth in any such proclamation, or in any schedule to any such proclamation, (1) as married people, married to each other, is hereby declared to have been, and to be, a legal, valid, and effectual marriage, to all intents and purposes, precisely as if such names had been inserted in this Act, and such marriage had been by this Act declared valid: Provided always, that nothing in this Act contained shall be construed so as to render valid any marriage which would, by reason of the consanguinity or affinity of the parties to such marriage, or a former and still subsisting marriage of either of them, be void, *ab initio*, by the law of England, notwithstanding that such marriage had been solemnized in manner and form, in every respect, as by the law of England prescribed and required.

Unless illegally contracted.

No. 14—1857.] [June 29, 1857.

AN ACT

To Regulate, till the expiration of the Year 1858, the Dealing in Gunpowder, Firearms, and Lead. (2)

Preamble.

WHEREAS the Act No. 19, 1856, entituled "An Act to regulate, till the expiration of the year 1857, the dealing in Gunpowder, Firearms, and Lead," is framed so as to expire at the end of this present year, 1857; and whereas it is expedient that the provisions of the said Act, and of the certain Ordinance therein mentioned, should, with the amendment hereinafter

[1] See Proclamations in *Gazette* 31st July, 1857, and 12th February, 1858.
[2] Made perpetual by Act 28 of 1864. See Ords. 81, 1830; 7, 1834.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1857.

specified, be continued down to the expiration of the year 1858: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Previous laws, excepting the repugnant portions thereof, to continue until end of 1858.

1. The Ordinance No. 2, 1853, and the Act No. 19, 1856, and every provision of the said Ordinance and Act respectively, shall, except as in the next succeeding sections is excepted, continue and be in force till the expiration of the year 1858, anything in the said Ordinance or Act to the contrary notwithstanding.

Restriction on sale of lead confined to certain divisions.

2. From and after the taking effect of this Act, so much of the Ordinance aforesaid, No. 2, 1853, and so much of any former Law or Ordinance as relate to lead, and place the dealing in that article under the same or similar restrictions with those imposed upon the dealing in gunpowder or firearms, are hereby restricted to the following divisions of this Colony, namely,—Albany, Fort Beaufort, Port Elizabeth, Uitenhage, Somerset, Graaff-Reinet, Colesberg, Cradock, Albert, Victoria, and Queen's Town, and shall not, except as hereinafter excepted, extend to any other divisions (1); Provided, always, that in regard to all lead shipped or placed on board any ship, vessel, or boat, being in or near any port or place within this Colony, the said Act No. 2, 1853, shall remain, in all parts of this Colony, in full force and effect.

Except when shipped.

Resident magistrate or justice of the peace may permit issues of 100 lbs. of gunpowder from private magazines.

3. It shall be lawful for any Resident Magistrate or Justice of the Peace, entitled to grant any such permission as is in the eighth section of the Ordinance aforesaid mentioned, should such Magistrate or Justice, in the exercise of his discretion, think it proper so to do, to grant to any person licensed to deal in gunpowder, such a permission as is in the eighth section aforesaid mentioned, to obtain, at one and the same time, any quantity of gunpowder not exceeding one hundred pounds weight thereof, and the form of permission set forth in schedule three of the said Ordinance shall be altered accordingly.

Form of permission.

Licensed dealers receiving such permission, may have 100 lbs. of gunpowder.

4. It shall be lawful for such licensed dealer, receiving and acting upon such permission as aforesaid, to store at his warehouse or shop any quantity of gunpowder not exceeding one hundred pounds weight thereof, anything in the fifteenth section of the said Ordinance, and in the twentieth section of Ordinance No. 7, 1834, to the contrary notwithstanding: Provided that every licensed dealer shall be bound to satisfy the Resident Magistrate of his district, or some Justice of the Peace named by such Magistrate, that the premises in which such dealer proposes to store or keep any such gunpowder are fit and proper for the purpose, and not dangerous to the public safety.

Provided it be safely stored.

Licensed dealer having a permission, may receive a further one, to supply his trade in respect of different qualities of powder.

5. It shall be lawful for any licensed dealer who shall have obtained one permission to obtain, at one and the same time, any

(1) Extended to King William's Town and East London by § 4, Act 14 of 1866-67.

Digitised by the University of Pretoria, Library Services, 2016

quantity of gunpowder not exceeding one hundred pounds weight thereof, to obtain another permission for another quantity of gunpowder, not exceeding one hundred pounds weight thereof, and so on, from time to time, as circumstances shall require; in order that such licensed dealer shall be able,—subject at all times to the discretion of the Resident Magistrate or Justice of the Peace (as the case may be),—to have always on hand, for the purposes of his trade, a moderate supply of both fine gunpowder and coarse gunpowder: Provided that no licensed dealer shall store, keep, or have any quantity of gunpowder, of any description, exceeding, at any one time, one hundred pounds weight thereof; and that all and singular the penalties mentioned in the fifteenth section of the Ordinance aforesaid, No. 2, 1853, shall apply to any licensed dealer who shall store, keep, or have, at any one time, any quantity of gunpowder, exceeding one hundred pounds weight thereof, precisely as if the said fifteenth section, in reference to the largest quantity of gunpowder which any licensed dealer might lawfully store, keep, or have at any one time, had specified one hundred pounds weight thereof, instead of fifty pounds weight thereof: Provided, also, that as often as any licensed dealer shall have obtained one such permission as aforesaid, no second such permission shall be granted to him, until he shall produce to, and deposit with, the Resident Magistrate or Justice of the Peace (as the case may be), certificates granted under the thirteenth section of the said Ordinance, covering and accounting for a quantity of gunpowder equal to the quantity which such dealer shall desire a permission to obtain; and so on, from time to time, in regard to every subsequent permission which may be applied for: And provided that, as often as the licensed dealer applying for any such permission as is in this section mentioned, shall have disposed of all gunpowder obtained by him under any previous permission, the provisions of the seventeenth section of the Ordinance aforesaid shall apply to every such application, precisely as if the said seventeenth section, instead of authorising and relating to no permissions, except permissions for fifty pounds weight of gunpowder, had authorised and related to permissions for any quantity of gunpowder not exceeding one hundred pounds weight thereof: Provided, lastly, that as often as any licensed dealer shall make an application for a further supply of gunpowder, whilst any portion of any gunpowder previously obtained by him shall be still in his possession, such dealer shall make a solemn declaration, which shall be, in substance and effect, as follows, that is to say:—

Not to have at any one time more than 100 lbs. Penalty imposed by section 15, Ordinance 2, 1853.

No second permission to be given, unless upon production of certificates covering the disposal of an equal quantity under previous permission.

If quantity under any one permission be exhausted, sec. 17, Ord. 2, 1853, to apply to every fresh application.

Solemn declaration to be made.

I, A. B., of , licensed dealer in gunpowder, do hereby solemnly and sincerely declare that I have not sold, or otherwise disposed of, to any person whomsoever, since the day , 185 (state the date of the "permission" last issued to such dealer), any gunpowder whatsoever,

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1857.

except pounds weight thereof, which said quantity of pounds, I have disposed of under and by virtue of the certificates now by me produced. And I further declare that I have not now in my possession any gunpowder whatever, except pounds weight thereof.

(Signed) A. B.

Declared before me, this day of , 185

C. D., Resident Magistrate,

(or Justice of the Peace, as the case may be.)

Penalties of perjury to apply to false declaration.

6. If any person shall make any wilfully false statement in any such declaration as is in the last preceding section mentioned, such person shall, upon conviction, incur the penalties by law provided for the crime of perjury.

Section 8, Ord. No. 2, 1853, to extend to permissions issued under this Act, and to gunpowder so obtained.

7. All and singular the several provisions of the Ordinance aforesaid, which relate to the permissions in the eighth section of the said Ordinance mentioned, and to the gunpowder obtained by virtue of such permissions, and which provisions are not repugnant to the provisions of this Act, shall extend and apply to the permissions authorised by this Act.

Certificate under section 13 of Ordinance No. 2, 1853, not transferable.

8. No person who shall have received from any Resident Magistrate, or Justice of the Peace, any such certificate as is in the thirteenth section of the Ordinance aforesaid mentioned, shall deliver such certificate to any other person, with intent that the gunpowder mentioned in such certificate should be obtained for the use of any person other than the person named in such certificate; nor shall any person who shall have received any such certificate deliver the same to, or leave the same, with any licensed dealer, without, at the time of such delivery, or within three days thereafter, removing from the premises of such dealer, the gunpowder mentioned in such certificate. Any person contravening any of the provisions of this section, shall, upon conviction, be liable to a fine not exceeding £50, or to imprisonment, with or without hard labour, for any period not exceeding six months.

All gunpowder mentioned in such certificate, to be removed within three days.

Penalty for contravention.

In indictments, not necessary to quote other laws than Ordinance No. 2, 1853, as amended by this Act.

9. Every offence against the Ordinance aforesaid, No. 2, 1853, as amended by this Act, committed after the commencement and taking effect of this Act, and before the 31st of December, 1858, shall, in any indictment relative thereto, be charged as a contravention of the said Ordinance No. 2, 1853, as amended by this Act; and it shall not be necessary in any such indictment to recite or refer to any of the other Acts by which the said Ordinance has been from time to time continued.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1857.] [June 29, 1857.

AN ACT

For enabling Municipalities to obtain additional Police, by contributing towards the Expense thereof. (1)

Preamble.

WHEREAS, in certain of the municipalities of this Colony, the want of an adequate and efficient body of police, for the prevention of crime and the preservation of peace and order, has for some time been seriously felt by the inhabitants; and whereas, whilst the expense of some policemen at each of the several seats of magistracy to be employed in the execution of criminal warrants, the safe keeping of offenders, and the conduct of the criminal business of the Courts held in and for the several districts of this Colony, may fitly and properly be borne by the public revenue, it will be necessary that the inhabitants of such municipalities as may desire the advantage of a body of police, sufficiently numerous to patrol their streets, prevent drunkenness and disorder, and perform other duties of a like nature, within the municipal limits, should contribute towards the expense of such police: And whereas, from the claims upon the public revenue which the inhabitants of municipalities regarded as contributors thereto, must be considered as possessing, it would not be just to require such municipalities to contribute towards the expense of such additional police more than one-half of the cost and charge thereof, leaving the other half of such cost and charge to be borne by the public revenue: And whereas there is reason to believe that certain municipalities would be desirous to obtain a more efficient police force, upon the terms just referred to: 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:—

Municipal commissioners, acting upon a decision of a meeting of householders, may intimate to the magistrate, their desire to co-operate for the purposes of this Act.

1. It shall be lawful for the municipal commissioners of any municipality, acting in pursuance of the vote or decision of a meeting of the resident householders thereof, to communicate to the Resident Magistrate of the district that such municipality is desirous of availing itself of the provisions of this Act: Provided that no such meeting shall be held unless upon a notice, setting forth the object of such meeting, and published, in whatever manner shall be by law directed in regard to the meetings of resident householders in such municipality, for not less than twenty-one days.

Such meeting to be called in due form.

Magistrate to ascertain the number and probable cost of the additional police required.

2. Every Resident Magistrate, receiving any such communication as aforesaid, shall, by conference or correspondence with the municipal commissioners, ascertain what number of policemen, in addition to the police force for the time being, such commissioners desire; and such Magistrate shall, in conjunction with the said commissioners, frame a detailed estimate of the probable cost, per

[1] See Acts 8, 1873, and 23, 1885.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1857.

year, of such additional policemen: Provided that, thereafter the police force, for the time being, to be maintained exclusively from and out of the public revenue, in the district of which such seat of magistracy is, or shall be, a municipality, shall be the number set forth as regards such seats of magistracy in the schedule annexed to this Act,—leaving all additional policemen to be provided for under this Act.

Number and cost of such police to be reported to the Governor.

3. As soon as the number and the estimated cost of such additional policemen shall have been agreed upon, between the Resident Magistrate and the municipal commissioners, the Resident Magistrate aforesaid shall report the particulars, for the consideration and approval of the Governor of the Colony, who may, in case the number or cost shall appear to him to be unnecessarily large, communicate, through the said Magistrate, with the municipal commissioners, for the purpose of agreeing upon some smaller number or reduced cost.

Approved by Governor.

4. As often as the Governor aforesaid shall approve of the number and cost of additional policemen as originally submitted, or as subsequently reduced, he shall signify such approval to the Resident Magistrate, who shall, in writing, communicate the same to the municipal commissioners.

Municipal commissioners may call a meeting of householders to assess a police rate.

5. It shall be the duty of any municipal commissioners to whom any such approval as in the last preceding section shall have been communicated, should they not already have been placed in possession of funds applicable to, and sufficient for, defraying one-half of the cost of such additional policemen for a period of not less than one year, to call, upon a notice of not less than fourteen days, a meeting of resident householders, for the purpose of assessing a police rate, for defraying one-half of the cost of the said policemen, and such rate shall be regarded as a rate duly assessed by virtue of the Ordinance or Law under which such municipality shall have been established: Provided that at such meeting as aforesaid a police rate may be assessed for one year only, or successive annual police rates may be then assessed for any number of years not exceeding three: And provided that meetings of resident householders shall and may be called, in manner aforesaid, for the purpose of assessing the necessary police rate, so long as such municipality shall continue to avail itself of the provisions of this Act.

Rate assessed to be for one year, or annually for not exceeding three years.

When half the estimated cost for one year has been paid, the magistrate to appoint the additional police.

6. When and as soon as the municipal commissioners aforesaid shall have paid to the Civil Commissioner of the division, acting for and on behalf of the Colonial Treasury, one-half of the estimated cost of such additional policemen for one year, the Resident Magistrate of the district shall, with all convenient speed, nominate and appoint the additional policemen agreed to by the municipal commissioners and approved of by the Governor.

Duties of additional police.

7. Such additional policemen shall be deemed and taken to be appointed under the Ordinance No. 25 of 1847, entitled "An

Digitised by the University of Pretoria, Library Services, 2016

Ordinance for Improving the Police of the Colony," and shall possess all the powers and perform all the duties belonging to the members of the police force in the said Ordinance mentioned: Provided, however, that the stated and ordinary duties of a number of the police force of the district, not less than the number of such additional policemen, shall be confined within the limits of the municipality which shall have desired to have such additional policemen: Provided, however, that every member of the police force aforesaid, whether his stated and ordinary duties be confined within the municipal limits or not, may proceed and act beyond the said limits when engaged in the pursuit of an offender flying from justice, or when the exigency of some particular occasion shall induce the Resident Magistrate, or, in his absence, the chief constable, to order one or more of the members of the said police force to repair to and perform duty at some place other than the said municipality within the said district of such Magistrate.

Proportion of ordinary police to be retained for duty within the municipality.

8. ([1]) A true and correct account shall be kept of the cost, in each respective district, of the additional policemen desired by, and employed in, any municipality within such district; and a copy of such account, or an abstract thereof, shall be furnished to the municipal commissioners of such municipality, at the expiration of one year from the date of the payment, to the Civil Commissioner, in the sixth section mentioned; and so on, from year to year, as long as such municipality shall continue to avail itself of the provisions of this Act, and shall pay to the Civil Commissioner of the division, from year to year, in advance, one-half of the estimated annual cost of the additional policemen.

Civil commissioner to furnish an annual account of the expense of such additional police to commissioners of municipality, who will pay one-half in advance.

9. Should the actual expenditure in any year have fallen short of the estimated expenditure, so that the sum paid in as aforesaid exceeds, in amount, one-half of such actual expenditure, the excess shall be repaid by the Colonial Government to the municipality; and *vice versa*, should the actual expenditure have exceeded the estimated expenditure, the municipality shall make good to the Colonial Government one-half of such actual expenditure.

If the actual expenditure falls short of the estimate, difference to be restored to municipality, and *vice versa*.

10. Should any municipality, which shall have availed itself of the provisions of this Act, become afterwards desirous to cease to do so, it shall be necessary for the municipal commissioners of such municipality to give to the Colonial Government, through the Resident Magistrate of the district, not less than three months before the expiration of the year for which such municipality shall have made its latest payment, under this Act, notice, in writing, that, at and after the expiration of the current year, the said municipality will cease to avail itself of the provisions of this Act: and, thereupon, steps shall be taken to dismiss, at the expiration of the said year all additional policemen, or a number of the police force for the time being, equal to the number of additional policemen.

Municipality to give three months' notice before ceasing to avail itself of this Act.

[1] See Act 23, 1885. All payments to be made quarterly in advance.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1857.

If municipality neglect to give such notice, police to be continued for three months at its expense.

11. Should any municipality neglect to give such notice as aforesaid, then it shall be lawful for the Colonial Government to continue in employment such additional policemen as aforesaid, until the expiration of three months from the last day of that month, on any day of which month notice shall be given by such municipality to the Resident Magistrate aforesaid, that such municipality desires to cease to avail itself of the provisions of this Act, and one-half of the cost of all additional policemen employed by desire of such municipality, down to the expiration of such three months, shall be payable by such municipality to the Colonial Government, and may be recovered by the Colonial Government from the municipal commissioners for the time being by action in any competent Court.

Municipality may add to or reduce the additional police.

12. It shall be lawful for any municipality which shall have desired and received, in manner aforesaid, any particular number of additional policemen, afterwards to add to or reduce that number, as circumstances may require, and thereupon the provisions of this Act shall apply to such altered number: Provided that the number of additional policemen for the time being shall not be altered, except in pursuance of the vote or decision of a meeting of resident householders, called upon a notice similar to that in the first section of this Act mentioned: Provided, further, that as often as the number of additional policemen for the time being shall be increased, one-half of the estimated cost of such increase shall be paid by the municipality to the Civil Commissioner before such increased number shall be employed: And provided, also, that as often as the number of additional policemen shall be reduced, the provisions of the ninth and tenth sections of this Act shall apply to the number of policemen proposed to be reduced, precisely as if the number proposed to be reduced were the whole number of additional policemen for the time being, and as if such municipality were desirous to cease altogether to avail itself of the provisions of this Act.

Moiety of expense to be paid before any addition takes place.

Sections 9 and 10 to apply in respect of policemen proposed to be reduced.

Act to apply to all municipalities except Cape Town.

13. The provisions of this Act shall apply to all the municipalities within this Colony for the time being, except the municipality of Cape Town.

SCHEDULE.

District.	Municipality.	Number and Description of Police Force.
Albany	Graham's Town..	1 chief constable and 9 constables, including turnkeys.
Port Elizabeth ..	Port Elizabeth ..	1 do. and 7 do. do.
Graaff-Reinet ..	Graaff-Reinet ..	Each 1 do. and 5 do. do.
Uitenhage	Uitenhage	

Digitised by the University of Pretoria, Library Services, 2016

SCHEDULE—*continued.*

District.	Municipality.	Number and Description of Police Force.
Albert.....	Burghersdorp....	Each 1 chief constable and 4 constables, including turnkeys.
Beaufort (West)	Beaufort (West)	
Caledon	Caledon	
Cradock	Cradock	
Colesberg	Colesberg.....	
Fort Beaufort ...	Fort Beaufort ...	
George.....	George.....	
Paarl.....	Paarl.....	
Queen's Town ...	Queen's Town ...	
Somerset	Somerset.....	
Stellenbosch	Stellenbosch	
Swellendam	Swellendam.....	
Victoria	Alice	
Worcester.....	Worcester.....	
Mossel Bay.....	Aliwal (South)..	Each 1 do. and 3 do. do.
Middelburg	Middelburg	
Riversdale	Riversdale	
Aliwal (North)..	Aliwal (North)..	Each 1 do. and 2 do. do.
Richmond.....	Richmond	

No. 16—1857.] [June 29, 1857.

AN ACT

To Consolidate the Laws relating to Quarantine and Port Regulations. (1)

Preamble.

WHEREAS it is expedient to consolidate the laws relating to the performance of quarantine, and the observance of port regulations, by vessels arriving in the ports of this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Ordinance 65, and Ordinance 4, 1844, repealed.

1. The Ordinance No. 65, dated 6th August, 1829, entitled "An Ordinance for establishing certain regulations for the protection of the public health, in cases of arrival of vessels from foreign countries in the ports of this Colony, with malignant diseases on board, of an infectious or contagious nature," and the Ordinance No. 4, of 1844, entitled "An Ordinance relating to merchant vessels arriving in the ports of this Colony," are hereby repealed, excepting so far as the said Ordinances repeal or revoke any former Ordinance or proclamation, or any part thereof.

[1] See Acts 5, 1887; 27, 1893, §§ 3-7; 7, 1894, §§ 36, 37; and 16, 1894, § 4 sub-§ (*f*).

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1857.

Interpretation of terms.

2. In the interpretation of this Act, whenever the terms or expressions following shall occur, the same shall be construed respectively in the manner hereinafter directed, that is to say,—the term ship and the term vessel shall be construed to mean ship or vessel generally: the term commander or master of any ship or vessel shall be construed to mean the person having or taking the charge or command of such ship; the term seaman, shall be construed to mean alike seaman, mariner, sailor, or landsman, being one of the crew of any ship; and the term port captain shall extend to and embrace the deputy port captain or harbour master, or any other person authorised to perform the particular duty, or act in the particular matter referred to, or in question, in the section in which the said term port captain is used; and whenever mention is made of any public officer, the officer mentioned shall be deemed to be such officer for the time being, or the officer acting as such.

Quarantine Regulations.

[Sections 3 to 18 inclusive repealed by Act 4 of 1883.]

Port Regulations.

Ship's papers, &c., to be produced.

19. The master of every merchant vessel arriving in a port of this Colony, shall, upon demand, produce and show the ship's register and ship's papers to the Port Captain, or Resident Magistrate, or Justice of the Peace, as the case may be, for his inspection; and shall deliver a list of his passengers, with a description of their rank, sex, and occupation, together with a list of any deaths or removals that may have occurred during the voyage, and shall report in writing if any person or persons should have stowed themselves away, or concealed themselves on board of such vessel without his knowledge or consent; and any master not duly accounting for every individual aforesaid, or falsely accounting for any of them, or refusing to deliver the list when thereunto required as aforesaid, shall forfeit for every such offence the sum of £50.

Penalty.

Public mails, &c., to be delivered.

20. [1] The master of every merchant vessel arriving as aforesaid, shall deliver all public mails entrusted to him for delivery in the Colony to the Port Captain, Resident Magistrate, or Justice of the Peace, at the time of his vessel being boarded by such officer, under a penalty of £20 for every mail, box, bag, or parcel, which he may neglect or refuse so to deliver; and he shall at the same time deliver, in order that they may be transmitted to the post office, all letters, placed in his charge for delivery in this Colony, whether in packages or loose, with the exception only of letters addressed to owners, freighters, or consignees of the vessel, and of

[1] See also §§ 38, 39, Act 4 of 1882.

Digitised by the University of Pretoria, Library Services, 2016

letters addressed to be delivered with goods brought by the vessel to the consignees of such goods; and in case he neglect or refuse so to do, he shall forfeit for every such letter so unlawfully retained a sum not exceeding £2. Penalty.

Vessels arriving at certain ports to be boarded, and have berths assigned to them.

21. (1) The respective Port Captains of the Ports of Cape Town, Port Elizabeth, Simon's Town, Port Alfred, East London, and such other ports in this Colony as may from time to time be appointed for that purpose by Proclamation of His Excellency the Governor, to be published in the *Government Gazette*, shall, upon the arrival of any vessel in the said ports between sunrise and sunset, board her immediately, and, if practicable, previous to her coming to anchor, in order that he may point out to the master of the vessel a proper berth; and in case he should be prevented from so boarding, in consequence of the quarantine regulations, he shall point out a berth for such vessel arriving under such circumstances, and after having pointed out any such berth as aforesaid it shall be lawful for the Port Captain, if it shall appear to him necessary so to do, to order any vessel to shift or change her berth to any other berth to be pointed out, and any master of a vessel disobeying any order of a Port Captain under this section shall be liable to a penalty not exceeding £50.

Penalty on vessels changing berths.

Port captain to offer his services to Her Majesty's ships and national vessels of foreign states.

22. Upon the arrival in any of the ports of this Colony of any of Her Majesty's ships or of any vessel in the employment of Her Majesty, or of any national ship belonging to any foreign state, the Port Captain shall go off on board such ship as speedily as practicable, and offer to the commander thereof every assistance or service in his power; and if he be thereunto requested by the commander, he shall point out a proper berth for such vessel.

Commander of such vessels to be supplied with a copy of this Act and port instructions.

23. Upon the Port Captain boarding any such vessel as aforesaid, or going alongside of her, as the case may be, he shall deliver to the commander or master a copy of this Act, and of such port instructions as may be in force in such port.

Port captain to transmit report of arrival to certain civil and naval authorities.

24. The Port Captains, respectively, shall immediately upon coming on shore, after having boarded or communicated with any vessel arriving in the ports of this Colony, make out and transmit a report of such arrival to the Governor, the Colonial Secretary, and the Collector or Sub-Collector of Customs, in the port of arrival; and further, as regards arrivals in the ports of Cape Town and Simon's Town, to the Senior Officer of Her Majesty's ships and vessels in Simon's Bay; and, as regards arrivals at Port Elizabeth, to the Lieutenant-Governor.

Bond with security to be given by master at Cape Town, Simon's Town, and Port Elizabeth.

25. The master of every merchant vessel arriving at either of the ports of Cape Town, Simon's Town, or Port Elizabeth, shall within twenty-four hours after anchoring, unless prevented by sickness or stress of weather from coming on shore, give bond at the Port Office, with one approved surety, in the sum of £100,

[1] Printed as amended by Act 13 of 1874, § 6.

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1857.

for the due fulfilment of the provisions of this Act; and if he omit or refuse to give such bond as is hereby required, he shall forfeit the sum of £100: Provided, always, that if no suit be commenced in respect of the said bond within one calendar month after the departure of the master of the vessel entering into such security, the said bond shall be null and void, so far as regards the surety mentioned therein, but shall remain in full force and effect as against the master.

The like bond at other ports.

26. The master of any vessel arriving at any port or place in this Colony, other than the ports aforesaid, shall, if required thereunto by the Resident Magistrate, Justice of the Peace, or other local officer as aforesaid, or by any person duly authorised by him, give like bond at the respective office or residence of said officers, in the like sum, and shall, in case of refusal, be subject to the like forfeiture as is provided in respect of the ports of Cape Town, Simon's Town, and Port Elizabeth respectively.

On entering port, vessel's guns to be unloaded.

27. The master of every merchant vessel entering any of the ports of this Colony shall cause all guns on board to be immediately unloaded, and shall not suffer them to be reloaded until the vessel is clear of the anchorage, under a penalty of £5; and any such master firing any gun or rocket, or burning any blue light, on board of his vessel, while within a port of this Colony, without having previously obtained permission from the Port Captain, except when such vessel may be in actual distress or want of assistance, shall be liable to a penalty not exceeding £20 for every such offence; and any person discharging a musket or other firearm loaded with ball or shot from any vessel or boat within the anchorage, or on the beach, shall be liable to a penalty not exceeding £2, or in default of payment, to imprisonment for a period not exceeding eight days. (1)

No firearms or rockets to be discharged, or blue lights burned, except in distress, or with the permission of the port captain.

Regulations to be observed when shipping or unshipping gunpowder.

28. The master of every merchant vessel shall, whilst shipping or unshipping any gunpowder in any port of this Colony, keep a red flag hoisted at the fore, and suspend all other work on board his vessel during the removal of such gunpowder into or out of his vessel, under a penalty of not exceeding £50; and shall, before the magazine of the vessel containing any gunpowder is opened, extinguish all fire and light in the said vessel, under a like penalty of not exceeding £50. And all boats carrying gunpowder to or from any vessel in any port of this Colony shall keep hoisted a red flag, under a like penalty.

No ballast, &c., to be cast into the harbour below high water mark.

29. If any stones, gravel, or ballast, be cast into the water below high water mark, within the bays, rivers, or harbours of this Colony, from any merchant vessel, or from any boat, hired or employed by or on behalf of the owner or master of such vessel, unless with the permission of the Port Captain, Resident Magistrate, or other person duly authorised, as the case may be, then

[1] See, however, Ord. 100, 1833, as to Table Bay.

Digitised by the University of Pretoria, Library Services, 2016

the master of such vessel shall, for every such offence, forfeit a sum of not exceeding £50.

30. [Repealed by § 37 Act No. 7, 1894.]

No vessel to shift her berth without permission.

31. Any master of a merchant vessel shifting or changing the berth of his vessel, after he has come to anchor in the anchorage ground of any port in this Colony, by direction of the Port Captain without obtaining the previous sanction of such Port Captain, excepting in case of emergency, when he shall report his having done so as early as possible to the Port Captain, shall be liable to a penalty not exceeding £10.

32 to 35. [Section 32 to 35 repealed by Act 46 of 1885.]

Port captains shall not sell anchors or cables, or supply ships with anything for profit.

36. (1) It shall not be lawful for any Port Captain, or for any of the crew of his boat, or for any person whatsoever belonging to his department, to supply, by way of sale or for profit, any anchor or cable, or to keep any boat or launch for the purpose of sending off anchors or cables to vessels, or to employ the boats or crews provided by the Government for that purpose, or to own or use any private boat or launch for the purpose of conveying water or ballast to ships, or for any purpose of trade, profit, or emolument whatever, excepting for the recovery of anchors or cables which may have been parted with, or for the removal of any article or thing whatever which may be deemed necessary for the sole purpose of keeping the anchorage ground clear and free from obstructions, as hereinbefore mentioned: Provided, always, that nothing herein contained shall be construed to extend to preclude or prevent any Port Captain from procuring, taking, or sending off in the Government or any other boat, any anchor or cable to any vessel in distress, or from rendering any other assistance in such cases, or from being duly and properly remunerated for the same according to law.

Except in cases of distress.

No person in the port department to recommend agents, &c., to any ship

37. It shall not be lawful for any Port Captain, or for any of the crew under his authority, or for any other person belonging to his department, to take off in the Government boat any merchant, agent, dealer, or other person connected with the shipping interests, or to recommend, directly or indirectly, to the master of any vessel arriving in the ports of this Colony, or to any passenger, or any other person on board thereof, any merchant, agent, dealer, hotel-keeper, lodginghouse-keeper, tradesman, boatman, or other person whatever, for employment in any capacity, or to be dealt with for the shipping of stores, provisions, or supplies of any kind.

Pilotage.

Port captain not to receive anything for pilotage.

38. It shall not be lawful for any Port Captain to make any charge, or to receive from the master of any vessel any sum of money, as pilotage, or for acting as a pilot.

Pilots must be licensed.

39. It shall not be lawful for any person to act as, or exercise the employment of, a pilot to vessels entering into, or departing

[1] This section not to apply to sale or contract effected under Act 46 of 1885.

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1857.

from, any of the ports in this Colony, unless he has been duly licensed by the Governor (1) for that purpose; and any unlicensed person taking charge of any such vessel as a pilot, unless such vessel be in distress, shall be liable to a penalty not exceeding £50.

Mode of licensing pilots.

40. Before any person may be so licensed as a pilot, he shall be required to undergo an examination, touching his fitness and qualification to perform the duties of that employment, before two competent persons, to be nominated by the Governor; and if the persons so nominated shall report to the Governor that the person who is a candidate for the pilot's licence has been duly examined by them, and that they are of opinion that he is qualified to receive such licence, the Governor may, if he see fit, grant him a licence to act as, and exercise the employment of, a pilot in such port or ports of this Colony as are named in such licence; and upon the granting of any such licence, the same shall be notified in the *Government Gazette*: Provided, always, that if at any time afterwards the Governor should see reason to annul or suspend such licence, it shall be lawful for him so to do.

Governor may cancel licence.

Employment of pilot optional with the master.

41. It shall be optional with the master to employ a pilot; and it is hereby declared that the Government shall incur no risk or responsibility whatever, in respect of any licensed pilot whom the master shall, at his option, think fit to employ.

No specific rates of pilotage established.

42. Although it has been deemed expedient, by this Act, to require that persons acting as pilots to vessels entering into the ports of this Colony shall be licensed, in order the better to provide for the competency and good conduct of such persons, it has not been deemed expedient to establish or fix any rates of pilotage or remuneration to pilots when so employed, but to leave such remuneration for such service to be agreed upon or regulated between the master and pilot themselves; and nothing in this Act contained shall be deemed to have established or fixed any specific rates of pilotage.

Pilots may board before pratique received.

43. In consideration of the nature of the services required of a pilot, it shall be lawful for any licensed pilot to proceed to any distance in the offing of any ports of this Colony, and to board any vessel, if the master think fit to receive him or to accept his services, notwithstanding that the vessel may not have been previously boarded by a Port Captain or Health Officer, as hereinbefore provided. But in every such case, neither the pilot nor any of his crew shall communicate with persons on or from the shore, or with any other vessel lying at anchor, until the vessel boarded by such pilot has received pratique; nor shall the pilot take any person with him in his boat, excepting the regular and usual crew of and belonging to his boat, when boarding a vessel before the Port Captain or his crew, under a penalty of £10, in respect of each person taken off contrary to the provisions of this section; nor

But may not communicate with the shore, or other vessel at anchor.

Pilots not to recommend agents, &c. to ships.

(1) Licences may be signed by Colonial or Under Colonial Secretary. Act 25 of 1878, and Govt. Notice, August 23, 1878.

Digitised by the University of Pretoria, Library Services, 2016

shall any pilot, or any of his crew so boarding as aforesaid, recommend, directly or indirectly, to the master of any such vessel, or to any passenger, or any other person on board thereof, any merchant, agent, dealer, hotel-keeper, lodginghouse-keeper, tradesman, boatman, or other person whatever, for employment in any capacity, or to be dealt with for the supply of stores, provisions, or supplies of any kind.

Moorings not to be laid down without permission of port captain.

44. (1) It shall not be lawful to keep a hulk moored in any of the ports of this Colony, or to lay down moorings in the anchorage ground thereof, without a licence having been previously obtained from the Port Captain of the port; and if any hulk be moored, or any moorings laid down, contrary to the provisions of this section, the Port Captain of the port shall, and he is hereby authorised and required to, remove the same; and the person or persons so offending shall be liable to, and chargeable with, all costs and charges attending such removal, and shall also forfeit the sum of £50.

Boats to be licensed annually.

45. (2) Every owner of a boat in this Colony, whether used in the transport of merchandise, or for fishing, or for any other purpose of hire or profit whatsoever, is hereby bound to obtain a licence for the employment of such boat, from the Port Captain, or the Resident Magistrate, and in case there be none such, from some other person duly authorised, at the port to which such boat belongs; and every such licence shall be renewed annually, between the 1st and 15th of January, in each year; and every licence granted at any time during the year, shall expire on the 31st December of that year; and the proprietor of any boat employed without such licence, or without having had a licence duly renewed at the expiration thereof, shall be subject to a penalty not exceeding £5; and in case of the proprietor not being forthcoming, such boat so employed without a licence shall be confiscated.

Penalty on boat without licence.

Bond to be passed before licence is granted.

46. No licence shall be granted for any boat as aforesaid, until the owner thereof has given bond, in the penal sum of £20 sterling, for his good and regular conduct, and for the due observance of these regulations, or such other as may hereafter be established by law on this head, and has produced a certificate of tonnage of the said boat, signed by a master shipwright or other competent person.

Licensed boats to be numbered and registered.

47. All boats so licensed shall be numbered, and their numbers painted legibly on their sterns, in figures of not less than three inches in length, with black paint on a white ground, and shall be duly registered at the office at which the licence shall be granted.

Penalty for carrying wines or spirits to a ship at anchor.

48. If the owner of any boat, licensed as aforesaid, or if any boatman or other person on board thereof, should sell, supply, or convey any wine or spirituous liquors to any of the crew, or to any

[1] For amount of licence see Act 20 of 1884, Tariff 15.

[2] See also Tariff 15, Act 20 of 1884, for annual licences to be taken out for certain classes of boats.

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1857.

other person on board of any vessel lying at anchor in any of the ports of this Colony, without the consent of the master of such vessel, the owner of such boat shall forfeit the sum of £2 for the first offence, the sum of £5 for the second offence, and the sum of £10 for the third, or any further like offence.

Three convictions within twelve months to forfeit licence.

49. Whenever the owner of any licensed boat has been convicted of the offence in the last preceding section mentioned, three or more times within the space of twelve calendar months, then the licence for the boat by means of which the last offence has been committed shall thereupon, *ipso facto*, become null and void.

On transfer of boat, licence becomes void.

50. On the transfer, by sale or otherwise, of any licensed boat, as aforesaid, the licence for such boat shall become null and void, and the party to whom the boat is transferred shall be required to take out a new licence, and enter into the security required by this Act.

How if fine be not paid on conviction.

51. In case any fine imposed by any section of this Act shall not be paid upon conviction, then, in case no other punishment shall be provided in the section imposing the said fine, the offender shall be liable to be imprisoned, with or without hard labour, for any period not exceeding three months.

Governor may remit fine.

52. The Governor, if he shall see reason so to do, may remit or mitigate any fine or forfeiture incurred under this Act.

Offences against the Act where cognizable.

53. All contraventions of the present Act shall be cognizable in Cape Town before the Resident Magistrate or the Judge of Police, and in any other port, before the Resident Magistrate thereof, or of the district to which such port shall belong; and all fines and forfeitures incurred under any of the provisions of this Act, shall be sued for in the said courts respectively; and all penalties and forfeitures recovered under this Act, shall be divided and applied as

How fines to be applied.

follows, that is to say,—one moiety of the proceeds to be paid to the person informing and suing for the same, and the other moiety to be paid into the Colonial Treasury, and to be applied to the general revenue of the Colony: Provided, always, that the Governor may, if he should deem it expedient, pay the whole amount of the penalty or forfeiture, or such part thereof as may have been recovered, to the person informing and suing for the same.

SCHEDULE A.

[Repealed by Act 4 of 1883.]

SCHEDULE B.

[Repealed by Act 46 of 1885.]

No. 17—1857.] [June 29, 1857.

AN ACT

To Incorporate the South African Museum.

Preamble.

WHEREAS the specimens of natural history and other public property deposited in the South African Museum have now become of considerable value: And whereas it is deemed expedient for

Digitised by the University of Pretoria, Library Services, 2016

public convenience, and the promotion of literature and science, that the books, coins, specimens of natural history, and other objects which this Colony now possesses, or may hereafter acquire by gift, bequest, purchase, or exchange, should be deposited in the custody of trustworthy persons: And whereas His Excellency the Governor has already appointed a committee for the management and guardianship of the said museum, and of the collections therein, and it is now deemed necessary that the members of the said committee should be incorporated as a board of trustees: Be it therefore enacted by His Excellency the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Board of trustees appointed.

1. A board of trustees, composed as hereinafter mentioned, shall be, and is hereby, constituted a body politic and corporate, by the name of "The Trustees of the South African Museum," by which name such body corporate shall have perpetual succession, and shall have a common seal, and shall, by the same name, from time to time sue and be sued, implead and be impleaded, answer and be answered unto, in all Courts of the said Colony, and shall be able and capable, in law, to take, purchase, and hold to them and their successors all goods, chattels, and personal property whatever, either now deposited within the precincts of the South African Museum, or hereafter to be acquired by gift, bequest, purchase, or exchange, and shall also be able and capable, in law, to take, purchase, and hold to them and their successors, not only such lands, buildings, hereditaments, and possessions as may from time to time be exclusively used and occupied for the immediate requirements of the said "South African Museum," but also any other lands, buildings, hereditaments, and possessions whatever, situated in the said Colony or elsewhere; and they and their successors shall be able and capable, in law, to grant, demise, alienate, and otherwise dispose of all or any of the property, real or personal, belonging to the said museum; and also shall be able and capable to borrow and take up moneys for the use and purpose of the said museum upon mortgage of the lands, tenements, books, coins, specimens of natural history, and other said objects belonging to the said museum, and upon the security of the moneys granted and payable to the said museum under this present or any future Act; and also to do all other matters and things incidental to, or appertaining to, a body politic and corporate.

To hold fixed and other property.

May raise money on loan.

Not sell, or otherwise alienate, lands without consent of Governor.

2. Provided, always, that it shall not be lawful for the said trustees to alienate, mortgage, lease, charge, or demise any lands, tenements, or hereditaments to which they may become entitled by grant, purchase, or otherwise, unless with the approval of the Governor of the said Colony for the time being.

Museum, when to be open free of charge

3. The said South African Museum shall be kept open free of charge, to visitors, during at least four days in the week.

Digitised by the University of Pretoria, Library Services, 2016

No. 17—1857.

Who to be trustees.

4. The said body corporate shall consist of three trustees, and shall consist of the following gentlemen,—The Honourable Rawson William Rawson, Esq., Colonial Secretary, Thomas Maclear, Esq., Astronomer Royal, Ludovic Pappe, Esq., Doctor of Medicine,—being members of the present committee for the management of the said museum.

Vacancies, how to be filled.

5. All vacancies which may occur by death, resignation, absence from the Colony, removal from office by the Governor, or otherwise, in the trustees aforesaid, or in the trustees for the time being, shall be filled up, as they may occur, by the said Governor, who shall announce every appointment by him of any trustee as aforesaid, by proclamation in the *Government Gazette*.

Quorum

6. At every meeting of the said trustees, two trustees shall form a quorum, and all questions shall be decided by the majority of votes of the trustees present, and in all cases of difference of opinion between the trustees, when only two trustees are present, the question shall be deferred till another meeting, when all the trustees shall be present.

Duties of trustees.

7. The said trustees shall have the entire management and superintendence of the affairs, concerns, and property of the said museum; and in all cases not provided for by this Act, it shall be lawful for the said trustees to act in such manner as shall appear to them best calculated to advance the objects of the said institution.

May frame rules and bye-laws.

8. The said trustees shall have power and authority to make, and also repeal or alter, all such bye-laws, rules, and orders, touching and concerning the management and good government of the said museum, and the income and property thereof, and any other matter or thing relative to the same, as to them may seem fit for the effectual attainment of the objects of the institution, the security of its property, and the administration of its concerns; and all such bye-laws, rules, and orders shall be presented to the Governor; and on confirmation and allowance thereof by His Excellency, shall come into force, and be binding; and all such bye-laws, rules, and orders shall, within one month from the date thereof, be published in the Cape of Good Hope *Government Gazette*.

To be approved by Governor, and published in Gazette.

Trustees to furnish annual reports, to be laid before Parliament.

9. The said trustees shall, once at least in every year, and also whenever the pleasure of the Governor shall be signified in that behalf, report their proceedings and the progress of the said institution to the said Governor; and a copy of every such report shall be laid before the Parliament within one month after the commencement of each session thereof.

Accounts of expenditure.

10. Accounts of the expenditure of the museum shall be furnished annually by the trustees to the Government for examination and audit, and in order that an abstract thereof may be published in the *Government Gazette*.

Digitised by the University of Pretoria, Library Services, 2016

No. 18—1857.] [June 29, 1857.

An Act for applying a Sum not exceeding Two Hundred and Fifty-one Thousand Eight Hundred and Eighty-two Pounds Seven Shillings and Eleven Pence, for the Service of the Year 1857.

[Spent.]

No. 19—1857.] [June 29, 1857.

An Act for applying a Sum not exceeding Seventy-six Thousand Nine Hundred and Forty Pounds, for the Service of the Year 1858.

[Spent.]

No. 20—1857.] [June 29, 1857.

An Act for the Construction of a Railway from Cape Town to Wellington.

[Lapsed. See Act 15, 1872.]

No. 21—1857.] [June 29, 1857.

An Act to Amend the Ordinance No. 1, 1846, entitled "Ordinance for the Regulation of the Post Office and Postage."

[Repealed by Act 4, 1882.]

No. 22—1857.] [June 29, 1857.

AN ACT

For more effectually preventing the improper Introduction into this Colony of Children belonging to Native Tribes, resident in Territories beyond the Land Boundaries thereof.

Preamble

WHEREAS, in some instances, persons visiting the territories lying beyond the land boundaries of this Colony have there procured, and have thence brought into the Colony, to be made servants of, children of tender age, belonging to Native tribes resident in the territories aforesaid: And whereas there is reason to believe that if the practice of procuring such children were suffered to grow up, evil consequences may arise therefrom: And whereas the existing laws of the Colony do not sufficiently provide against the introduction of such children, under such circumstances: Be it therefore enacted by the Governor of the Cape of Good Hope,

Digitised by the University of Pretoria, Library Services, 2016

No 22—1857.

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

Native children under sixteen years of age not to be brought within the colonial land boundary without previous sanction of the Governor.

1. No person, except as hereinafter excepted, shall, without the previous sanction of the Governor of this Colony for the time being, first had and obtained, bring into this Colony, across the land boundary thereof, any child under the age of sixteen years, belonging to any Native tribe or people in Africa, resident beyond the said land boundary. Any person contravening this section of this Act shall, upon conviction, be liable, for and in respect of every child so brought into this Colony, to a fine not exceeding twenty pounds, together with, and in addition to, the sum of one shilling per day for every day during which any such child shall have been harboured or kept by such person within this Colony: Provided that nothing in this section contained shall extend to any parent of any such child as aforesaid, lawfully entering this Colony, and bringing such child into the same, nor to any person whomsoever bringing into the Colony any such child as aforesaid, who shall deliver over such child to any Resident Magistrate of the Colony within the space of fourteen days next after the day upon which such child shall have been brought into the Colony: Provided, however, that every such last-mentioned child shall be placed under the guardianship of the Governor of the Colony, for the time being, as in the fifth section of this Act provided, and that no such child shall be apprenticed to or left with the person by whom such child shall have been brought into the Colony, as in the sixth section of this Act provided: Provided, also, that nothing herein contained shall apply to any inhabitant of any territory beyond the land boundaries of this Colony, visiting this Colony for a temporary purpose, and bringing into this Colony any such child or children as aforesaid, in case such inhabitant shall produce and exhibit to some Resident Magistrate of this Colony, within one calendar month next after the date of his arrival in this Colony, a certificate in writing, signed by some Magistrate of the territory in which such inhabitant usually resides, certifying that the child or children brought into the Colony by such person is or are lawfully in the service of such person, and that the services of such child or children are required by such person during or upon his journey: Provided, also, that the Resident Magistrate to whom such certificate shall be produced or exhibited shall endorse thereon the date at which the same was so produced to him.

Except by the parent of the child; or by persons delivering the same to a resident magistrate within fourteen days

Such child to be under the guardianship of the Governor, and may not be apprenticed to the person by whom it is brought in.

Children may accompany visitors from beyond the land boundary for a temporary purpose, upon a certificate from a competent authority.

Any resident magistrate receiving such certificate, to note the date of its production.

Penalty for keeping or harbouring any child brought into this colony in contravention of the last preceding section.

2. If any child brought by any person into this Colony, in contravention of the last preceding section, shall, without the previous sanction of the Governor of this Colony for the time being, be received, kept, or harboured, whilst under the age of sixteen years, by any other person within this Colony, such last-mentioned person knowing, when so receiving, keeping, or harbouring such child, that such child had been brought into this

Digitised by the University of Pretoria, Library Services, 2016

Colony, without the previous sanction of the said Governor, from beyond the land boundary thereof, then such lastmentioned person shall, upon conviction, be liable to the same penalty as that in the last preceding section mentioned: And any person receiving, keeping or harbouring, within this Colony, any child brought into this Colony by any such inhabitant of another territory, as in the first section mentioned, shall be liable to the said penalty.

How to judge of the age of such children.

3. In every prosecution for a contravention of any of the sections of this Act, the Court in which prosecution shall be pending shall judge from the appearance of the child in question in such prosecution, and also, if needful, from the opinions, given under oath, of persons skilled in ascertaining the age of such children, and from any other evidence which may be adduced on the subject, whether the child referred to in such prosecution was, when brought into this Colony, or received, kept, or harboured therein (as the case may be), under the age of sixteen years or not.

How to judge of the age, if child has died.

4. When by reason of the death of such child, before the hearing of such criminal case as aforesaid, or other cause, the Court in which such case shall be pending shall be unable to inspect the child in question, in such case, then such Court shall Judge of the age of such child when it was brought into the Colony, or received, kept, or harboured therein (as the case may be), by the knowledge or opinion of persons acquainted with such child.

Every child brought into the colony in contravention of the first section, placed under the guardianship of the Governor, and may be apprenticed or placed at an industrial school.

5. Every child brought into the Colony in contravention of the first section of this Act, whether the person who brought such child into the Colony be convicted or not, and every child brought into this Colony, by any inhabitant of another territory, as in the first section mentioned, which child shall be received, kept, or harboured by any other person within this Colony, is hereby placed under the guardianship of the Governor of the Colony for the time being, and may, by any person acting under the authority of the said Governor, be apprenticed in like manner as is, or shall be, by law provided in regard to destitute children, or the said Governor may, without, or before, apprenticing such child, cause such child to be placed at any industrial school within this Colony, and to be there maintained and instructed so long as may be necessary, or as the said Governor shall think fit: Provided that the guardianship of the Governor aforesaid shall not extend to, nor shall he cause to be apprenticed, or placed at an industrial school as aforesaid, any person who shall be of the age of eighteen years or upwards.

Guardianship not to extend beyond the age of eighteen.

No such child to be apprenticed or left with the person by whom introduced or harboured in the colony.

6. No such child as aforesaid shall, in any case, be apprenticed to or left with the person by whom, in contravention of the first section of this Act, such child was brought into this Colony, or any person by whom, in contravention of the second section of this Act, such child was received, kept, or harboured, after being brought into this Colony.

Digitised by the University of Pretoria, Library Services, 2016

o. 26—1857.

7. [The remaining sections of this Act relate to children brought into the Colony prior to its promulgation, and have no further applicability.]

No. 23—1857.] [June 29, 1857

An Act for more effectually preventing Kafirs from entering the Colony without Passes.

[Repealed by Act 22, 1867.]

No. 24—1857.] [June 29, 1857.

An Act for preventing Colonial Fingoes, and certain other Subjects of Her Majesty, from being mistaken for Kafirs, and thereby harassed and aggrieved.

[Repealed by Act 17, 1864.]

No. 25—1857.] [June 29, 1857.

An Act to provide for the Imprisonment, in this Colony, of certain Criminals sentenced in British Kaffraria.

[Spent.]

No. 26—1857.] [June 29, 1857.

AN ACT

For Punishing Emissaries from Kafirland and others, delivering, in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace.

Preamble.

WHEREAS many Kafirs have been, and now are, employed as servants in the frontier districts of this Colony: And whereas, owing to recent events in Kafirland, it is likely that the number of Kafirs who shall find employment in this Colony will be much increased: And whereas, from time to time, heretofore, Kafirs have come from Kafirland into this Colony, charged, or pretending to be charged, with messages from the chiefs of the Kafirs resident in this Colony, ordering such lastmentioned Kafirs to quit this Colony, and repair to Kafirland, there to aid or meet their chiefs: And whereas such messages, and the obedience ordinarily yielded to them, tend to create and keep up alarm and excitement throughout the frontier districts, aforesaid, and seriously to endanger the public peace: 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:

Anypersonconveying or delivering a message to a Kafir within the colony, tending to entice him beyond the boundary, shall be imprisoned.

1. If any Kafir, or other person, whether ordinarily resident in this Colony or not, shall, within this Colony, deliver, by word of mouth, or otherwise convey to any Kafir or other person belonging to, or reputed to belong to, any native tribe or people resident

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1858.

beyond the land boundary of this Colony, any message, order, or request, purporting to have been sent by any native chief, or other person belonging to any such native tribe or people, and calculated and intended to induce the Kafir or other person to whom such message, order, or request shall be delivered or conveyed, to quit this Colony, and repair to any place beyond the land boundary thereof, in order to aid, visit, or meet any native chief, or to attend any meeting of any native tribe or people,—such Kafir or other person delivering or conveying such message, order, or request, shall, upon conviction, be liable to be imprisoned and kept at hard labour for any period not exceeding two years: Provided that nothing in this Act contained shall extend to any message, order, or request which any Kafir or other person shall, by any writing under the hand of any magistrate or other functionary, in British Kaffraria, appointed by Her Majesty's High Commissioner, or other the chief Governor of British Kaffraria, for the time being, to grant passes to Kafirs or other natives to come into this Colony, be authorised to deliver.

Excepting any message or order authorised to be delivered by an officer competent to grant native passes.

2. This Act shall continue in force until the 31st December, 1858, and no longer.(1)

Duration of Act.

No. 27—1857.] [June 29, 1857.

An Act for Regulating the Terms upon which Natives of Kafirland, and other Native Foreigners, may obtain Employment in this Colony.

[Repealed by Act 22, 1867.]

No. 1—1858.] [May 6, 1858.

An Act for Correcting an Error or Misprint in the Act No. 27, 1857, entitled "An Act for Regulating the Terms upon which Natives of Kafirland, and other Native Foreigners, may obtain Employment in this Colony."

[Repealed by Act 22, 1867.]

No. 2—1858.] [June 5, 1858.

AN ACT

For Transferring to one of Her Majesty's Principal Secretaries of State, the Powers and Properties vested in this Colony in the Officers of the Ordnance.

Preamble.

WHEREAS, by divers grants, transfers, leases, contracts, or other means, divers lands, tenements, and properties within this Colony have been, and now are, vested in the officers of Her Majesty's Ordnance: And whereas Her said Majesty hath been pleased to signify Her Royal wish and desire that all such lands, tenements, and properties as aforesaid should be transferred from the officers of

(1) Continued by subsequent Acts and made perpetual by No. 29, 1864.

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1858.

Ordnance and be vested in one of Her Majesty's Principal Secretaries of State: 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:—

All lands, &c., vested in officers of Ordnance transferred to Secretary of State for War.

1. All lands, tenements, and properties, of every sort and description, lying and being within this Colony, and now vested in, or belonging to the officers of Her Majesty's Ordnance, whether by the name of the principal officers of Ordnance, or by the name of the respective officers of Ordnance, or by any other name or description whatsoever, and whether held by freehold, quitrent, leasehold, or any other tenure, are hereby transferred to Her Majesty's Secretary of State, for the time being, to whom Her Majesty shall think fit to entrust the seals of the War Department, and to such last mentioned Secretary of State, for the time being, for ever.

Contracts &c., made with such officers to be enforced by Secretary of State.

2. All contracts, covenants, and agreements heretofore made or entered into by any person or persons whomsoever with the said principal officers of the Ordnance, or with the said respective officers of the Ordnance, or any person or persons on their behalf, as to or concerning any lands, hereditaments, estates, and property, vested in, or agreed to be purchased by, the said principal officers, or by the said respective officers, or in any wise relating to the public service, shall, in this Colony, be deemed and taken to have been made or entered into with such Principal Secretary of State as last aforesaid, and shall be executed and enforced by him, in like manner as if he had originally been party thereto, instead of the said officers of the Ordnance or other person or persons; and all proceedings whatsoever, which have been, or might, or may have been commenced, taken, or done in the names of the said officers, on behalf of Her Majesty, shall and may hereafter be commenced, continued, taken, and done in the name of such Principal Secretary of State as aforesaid, in like manner (in the case of proceedings already commenced, taken, or done) as if he had originally been party thereto, instead of the said officers of the Ordnance.

How such Secretary of State to be styled.

3. In every contract, conveyance, grant, transfer, lease, or other assurance of any lands, tenements, or property, with, unto, or by the last mentioned Principal Secretary of State, for the time being, and in every other deed or instrument relating to any lands, hereditaments, estates, or property, or in any wise to the public service, to which the last mentioned Principal Secretary of State, for the time being, shall be, or shall be intended to be, a party, it shall be sufficient to call or describe him by the style or title of "Her Majesty's Principal Secretary of State for the War Department," without naming him.

Commanding Royal Engineer to represent Secretary of State in the colony.

4. All deeds, instruments, and writings of every sort or kind whatsoever, relating to any lands, tenements, or properties within this Colony, or to any suits or proceedings at law instituted in

Digitised by the University of Pretoria, Library Services, 2016

any of the Courts of this Colony, or to any matter or thing belonging to or connected with the administration of the War Department in this Colony, and to which deeds, instruments, or writings the Secretary of State aforesaid shall be, or shall be intended to be, a party, may be executed for and on behalf of the Secretary of State aforesaid, for the time being, by the commanding Royal Engineer, for the time being, commanding in this Colony: Provided that nothing herein contained shall be construed so as to prejudice or affect the validity of any deed, instrument, or writing signed by the said last mentioned, or by any other, Secretary of State, or by any attorney lawfully appointed by the said Secretary of State to act for him in his official capacity within this Colony. No. 3—1858.

No. 3—1858.] [June 5, 1858.

AN ACT

To Declare the Consent of the Parliament of the Cape of Good Hope to the Erection of certain Light-houses in the said Colony, and to the Collection of Dues in respect of such Light-houses, as well as of certain other Light-houses already erected. ([1])

Preamble. WHEREAS, by the "Merchant Shipping Act Amendment Act, 1855," it is enacted that in any case in which any light-house has been, or is hereafter erected on or near the coasts of any British possessions, by or with the consent of the Legislative authority of such possession, Her Majesty may, by Order in Council, fix such dues in respect thereof, to be paid by the owner or master of every ship which passes the same, or derives benefit therefrom, as Her Majesty may deem reasonable, and may, in like manner, from time to time, increase, diminish, or repeal such dues, and from the time specified in such order for the commencement of the dues thereby fixed, increased, or diminished, the same shall be leviable throughout Her Majesty's dominions in manner in the said Act mentioned; and that no such dues shall be levied in any Colony unless and until the Legislative authority in such Colony has, either by address to the Crown or by an Act or Ordinance duly passed, signified its opinion that the same ought to be levied in such Colony: And whereas heretofore, from time to time, the following light-houses have been erected upon or near the coast of this Colony, namely, the light-house at Cape Agulhas, the light-house at Cape Receife, the light-house on Bird Island, the light-house on Green Point, and the light-house on Mouille Point, which light-houses still subsist: And whereas a light-house is now about to be erected upon South Point and another light-house upon the Roman Rock: And whereas it is expedient that the Parliament of this Colony should

[1] See also Act No 18, 1861.

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1858.

declare, by an Act thereof, its consent to the erection of the two lastmentioned light-houses, and its opinion that such dues as Her Majesty may, by any Order in Council, to be issued in pursuance of the "Merchant Shipping Act Amendment Act, 1855," fix in respect of all and singular the various light-houses aforesaid, or of any of them, ought to be levied in this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Light-houses on South point and Roman Rock consented to.

1. The assent and consent of the Legislature of the Colony of the Cape of Good Hope to the erection of the proposed light-houses upon South Point and upon the Roman Rock are hereby attested and declared.

Light-house dues to be levied on ships touching at ports in this colony.

2. The said Legislature hereby signifies its opinion that any dues which may hereafter be fixed by Her Majesty, by Order in Council, in respect of either of the two light-houses in the last preceding section mentioned, respectively, or in respect of the light-houses at Cape Agulhas, at Cape Receife, on Bird Island, on Green Point, and on Mouille Point respectively, ought to be levied in the Colony in the manner provided by the "Merchant Shipping Act Amendment Act, 1855," on all ships arriving or touching at any port or place in this Colony, which ship shall, by the said Act, be liable to the payment of such dues as shall, by any such Order in Council, be fixed in respect of any such light-houses.

No. 4—1858.] [June 5, 1858.

An Act for creating a Board of Public Examiners in Literature and Science.

[Repealed by Act 16, 1873.]

No. 5—1858.] [June 5, 1858.

AN ACT

For Amending certain Ordinance, No. 6, 1844, entitled, "An Ordinance for Regulating Sales by Auction."

Preamble.

WHEREAS it is desirable that the rate of dues leviable by Ordinance No. 6, 1844, upon property sold by auction in this Colony, be amended: 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:

Two per cent. on movable and one per cent. on immovable property.

1. The fourth section of said Ordinance, No. 6, 1844, is hereby repealed, and it is hereby enacted that from and after the first day of July, 1858, a duty of, and at the rate of, two pounds for every hundred pounds sterling of the purchase money shall be imposed on all movable property, and a duty of, and at the rate of, one

Digitised by the University of Pretoria, Library Services, 2016

pound for every hundred pounds sterling of the purchase money on all immovable property which shall be sold by auction in this Colony. (1) No. 10—1858.

2. This Act shall commence and take effect from and after the first of July, 1858. Act, when to commence.

No. 6—1858.] [June 5, 1858.

An Act for enabling Courts of Resident Magistrate, commonly called Periodical Courts, to be held by and before some Resident Magistrate other than the Resident Magistrate of the District within which such Periodical Courts are held.

[Repealed by Act 16, 1882.]

No. 7—1858.] [June 5, 1858.

An Act for Amending the Law relative to the Payment of Transfer Duty.

[Repealed by Act 5, 1884.]

No. 8—1858.] [June 5, 1858.

An Act to Regulate, till the expiration of the year 1859, the Dealing in Gunpowder, Firearms, and Lead.

[Expired.]

No. 9—1858.] [June 5, 1858.

An Act to Provide for the Management of the Public Roads of the Colony.

[Repealed by Act 40, 1889.]

No. 10—1858.] [June 5, 1858.

AN ACT

For Enabling the Harbour Board of Port Elizabeth to levy certain Wharfage Dues. (2)

WHEREAS the board of commissioners for the harbour of Port Elizabeth, appointed under and by virtue of the Ordinance No. 21, 1847, entitled "Ordinance for improving the ports, harbours, and roadsteads of this Colony," have caused an estimate to be made of Preamble.

(1) The same duties in Native Territories as in Colony—see Proclamations 110 of 1879 para 79; 112 of 1879 para 72; 140 of 1885 para 71.

(2) See Acts 26, 1864; 25, 1875 § 3.

Digitised by the University of Pretoria, Library Services, 2016

No. 10—1858.

the cost of constructing certain works, calculated to promote the safe and convenient anchorage of ships and landing and shipping of goods in the said harbour: And whereas it is estimated by the said board, and by the engineers and others who have, by desire of the said board, considered the subject of the said works, that a sum not exceeding thirty thousand pounds will be sufficient to defray the cost of constructing the said works, of which sum it will not be necessary that the said board should raise, by way of loan, more than twenty-one thousand and five hundred pounds: And whereas it is computed that an annual revenue of three thousand pounds, or thereabouts, will be sufficient for paying the annual interest [1] upon such loan or loans as may be raised for the purpose aforesaid, and for paying off, within a term not exceeding ten years, the capital of such loan or loans: And whereas the said board, having deliberated, in conjunction with the merchants of Port Elizabeth, and with other parties interested in the improvement of its harbour, upon the most expedient mode of raising the annual revenue required, have come to the conclusion that the said revenue may most expediently be raised by dues upon goods landed and shipped in Algoa Bay: And whereas, owing to the extinction of the former Legislative Council of this Colony, the provisions of the Ordinance aforesaid, No. 21, 1847, relative to the borrowing of money by the said harbour board, and to the imposition of tolls or rates, can no longer operate, and it is therefore necessary that provision for the purposes aforesaid should be made 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:—

1. [The loan authorised to be raised under this section is paid off.]

2. [Superseded by § 3, Act 25, 1875.]

Person landing or shipping goods to state to principal customs officer the value thereof.

3. The person by whom any goods, articles, matters, or things, chargeable by the tariff aforesaid, upon the value thereof, shall be, or be about to be landed or shipped in Algoa Bay, or his known agent, shall be bound to state to the principal officer of Customs at Algoa Bay, who shall be entitled to demand and receive the dues or rates payable thereon, the value thereof; and if it shall appear to the said officer that the same are not valued according to the actual value thereof, then the said officer may require the person who shall have landed or shipped, or be about to land or to ship, any goods, articles, matters, or things, to make and subscribe a declaration, which declaration shall be in substance in the form in the second schedule to this Act set forth; and the value stated in such declaration shall be the value upon which dues shall be paid: Provided that it shall be lawful for such officer, as often as it shall be made to appear to him that the value of any goods,

Bond to be taken if wharfage not paid forthwith.

[1] See Act 24, 1889.

Digitised by the University of Pretoria, Library Services, 2016

articles, matters, or things landed in Algoa Bay cannot be declared at or immediately after the time of such landing, to permit the same to be taken away without the payment of wharfage; but in every such case such officer shall take a bond or obligation for the payment of such wharfage at or before such time as shall in that behalf be specified in such bond or obligation.

Penalty for false declaration.

4. Any person who shall wilfully and corruptly make and subscribe any such declaration as aforesaid, knowing the same to be untrue in any material particular, shall be deemed to be guilty of the crime of contravening this section of this Act, and shall, upon conviction thereof, be liable to such punishment as shall be by law provided for the crime of perjury.

Sums collected under this Act to be paid over to harbour board.

5. The principal officer of Customs as aforesaid shall periodically, and at such periods as shall be agreed upon between him and the board aforesaid, pay over to the said board all sums received by him under this Act, and shall allow the said board access at all reasonable times to all such accounts, books, and papers as may be required for checking or auditing the accounts of such sums: Provided, also, that it shall be lawful for the said board to employ and pay out of the sums receivable under this Act, a wharf or other clerk, who shall be under the superintendence and control of the said officer of Customs.

Clerk or other person may be employed, and paid out of dues collected.

Act, when to commence.

6. This Act shall commence and take effect from and after the first of July, 1858.

SCHEDULE No. 1. (1)

SCHEDULE No. 2.

I, A. B., do hereby declare that I am cognizant of the value of the following articles about to be shipped by me (or by C. D., according to the fact), on board the , in Algoa Bay, viz.:—
(here describe the articles, with marks and numbers if any.)

And I do further declare that the said articles are of the value of £

(Signed) A. B.

The above declaration, under the Act No.
was made and subscribed this day of
18 in the presence of C. D.

*** When the articles are landed, or about to be landed, the above form will be altered according to the facts.

---

[1] Repealed by Act 14 of 1867, in its turn repealed by Act 25 of 1875.

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1858.] [June 5, 1858.

AN ACT

For Regulating Weights and Measures in the Colony of the Cape of Good Hope. (1)

Preamble.

WHEREAS it is necessary for the security of commerce and the good of the community that weights and measures should be just and uniform and that true standards should exist, by means of which the accuracy of the weights and measures in public use may be tested and ascertained: And whereas in regard to certain of the weights and measures in general use in this Colony, no standard thereof exists, either in this Colony or in any other part of the world, and the same, or many of them, are inconsistent with each other, and obviously erroneous, which is the cause of great confusion and manifest frauds: And whereas such evils will be best remedied and the recurrence thereof will be best prevented by establishing in this Colony standard weights, in accordance with the standard pound weight now established in and for the United Kingdom of Great Britain and Ireland and the standard of certain of the measures now established in the said United Kingdom, commonly called the imperial weights and measures: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Previous laws repealed.

1. The Ordinance No. 13 of 1848, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, entitled "An Ordinance for regulating Weights and Measures," and bearing date the 11th day of July, 1848, and the Ordinance No. 1, 1849, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, entitled "An Ordinance to postpone the time of the taking effect of the Ordinance No. 13 of 1848," and all former laws, customs, or usages repugnant to or inconsistent with any of the provisions of this Act shall be repealed and the same are hereby declared to be repealed accordingly.

Governor to procure copies of the standard weights and measures used in the United Kingdom.

2. It shall and may be lawful for the Governor of this Colony to procure as soon as may be after the taking effect of this Act a copy or model of the standard pound avoirdupois, of the standard yard, and of the standard gallon, as respectively defined in and for the United Kingdom of Great Britain and Ireland, by an Act of the Parliament thereof made in the fifth year of his late Majesty King George the Fourth, entitled "An Act for ascertaining and establishing Uniformity of Weights and Measures," together with a copy or model of every multiple or sub-multiple of such standard pound specified in the schedule to this Act annexed, and also a

[1] Extended by § 231 of Act 24 of 1886 to all Native Territories.

Digitised by the University of Pretoria, Library Services, 2016

copy or model of every multiple or sub-multiple of such standard yard and standard gallon, made and verified under the direction of the Lord High Treasurer or the Commissioners of the Treasury, or any three of them, and deposited in the office of the Chamberlains of the Exchequer at Westminster, as in the said Act of the Parliament of the United Kingdom provided: and all copies or models procured under this Act shall be made of such metal or materials as shall be best calculated to resist the action of the atmosphere and wear and tear.

Such copies to be made of most durable materials.

3. It shall and may also be lawful for the said Governor to cause to be made of such metal or material as shall be deemed best fitted for the purpose, a measure of capacity for standard or model bushel, to contain or consist of two thousand two hundred and eighteen cubic inches, and one hundred and ninety-one thousandth parts of a cubic inch, equal to eight imperial gallons.

Standard or model bushel.

4. The several copies and models aforesaid, so procured or caused to be made as aforesaid, shall be deposited and carefully preserved, for custody and inspection, in the office of the Treasurer-General of this Colony, or of such other officer as the said Governor may appoint, and be kept by him in a chest, whereto there shall be two locks, with separate and distinct keys, whereof one shall remain with the Governor, and the other with the Treasurer-General, or such other officer as aforesaid; and such copies and models shall be, and the same are hereby declared to be, the original and genuine standards, in and for this Colony, of all weights and measures by this Act established and made necessary. And the said Treasurer General, or other officer as aforesaid, shall, with the permission of the Governor, upon reasonable notice, and at all reasonable times, produce or cause to be produced, for inspection, or for testing the correctness of any measure of weight, extension, or capacity, such one or more of the said copies or models as any Resident Magistrate shall, in writing, desire him to produce.

Copies or models to be deposited with the Treasurer-General or other officer; and to be standards for this Colony.

And may be produced for inspection, &c.

5. If any copy, model, or standard, for the time being, so deposited as aforesaid, shall be lost or destroyed, or if the same shall be injured, or supposed or suspected so to be, it shall and may be lawful for the Governor aforesaid to procure and substitute a fresh copy, model, or standard, in place and stead thereof; and, thereupon, such fresh copy, model, or standard shall be deemed and taken to be the same standard of weight or measure (as the case may be) which the copy, model, or standard that it replaced would have been deemed and taken to have been, had the same been duly preserved and none other substituted for it.

Such copies or models, if lost or injured, to be replaced.

6. (1) It shall and may be lawful for the Governor aforesaid to provide, from time to time, such and so many sets of standard

Several sets of standards may be obtained and deposited with the respective resident magistrates

[1] See Act 15, 1876 § 2.

Digitised by the University of Pretoria, Library Services, 2016

No. 11—1858.

weights and measures, verified as in the second section of this Act mentioned, or otherwise verified by comparison with the copies or models deposited as aforesaid, as the said Governor shall deem to be required for the comparison and adjustment of the weights and measures to be in use in the several districts of this Colony; and the said Governor shall cause one or more of such sets to be deposited with and be preserved by the Resident Magistrates respectively of the several districts of this Colony, or by such other person or persons as he shall direct and appoint; and every weight and measure so provided and preserved, as in this section set forth, shall, until the contrary be proved, be deemed and taken to conform to and correspond with the copy or model of the standard weight or measure of the same description or denomination deposited, as aforesaid, in the office of the Treasurer-General, or other officer as aforesaid, and to be fit and proper for testing and ascertaining the correctness of other weights and measures, as the case may be: Provided, always, that such standard weights and measures, so to be provided as aforesaid, shall not be deemed or taken to be unfit for the purposes aforesaid, by reason that they, or any of them, are not made of the same materials as the copies or models deposited, as aforesaid, in the office of the Treasurer-General, or other officer as aforesaid.

Such standards need not be of the same material as the original copies.

Resident magistrate shall, upon notice, and payment of fee, produce standard for inspection or comparison.

7. Every Resident Magistrate, or other person entrusted with the preservation of the said copies or models in the sixth section of this Act mentioned, shall, upon reasonable notice, and at all reasonable times, cause such of them to be produced for inspection, or for testing the correctness of any measure of weight, extension, or capacity, as any person shall, in writing, request him to produce for that purpose; such person paying, in respect of every such copy or model produced, the sum of sixpence, which shall be paid over by such Resident Magistrate or other person into the Colonial Treasury.

Dutch weights and measures abolished.

8. From and after the date of the taking effect of this Act, the use of all weights, commonly called "Dutch weights," as also of the lineal measure called the "ell," and the measure of capacity known as the "old gallon," and the measures of capacity called "schepel" and the "muid" shall be abolished; and if any person shall, after the said date, sell by or according to any standard of weight other than the standard pound as hereinbefore described, and deposited in the office of the Resident Magistrate, or other person as aforesaid, or some multiple or sub-multiple thereof, or by or according to any measure or extension other than the standard yard aforesaid, deposited as aforesaid, or some multiple or sub-multiple thereof, or by or according to any measure of capacity other than either the standard bushel aforesaid, so deposited as aforesaid, or some multiple or sub-multiple thereof,—or the standard gallon aforesaid, so deposited, as aforesaid, or some part or multiple thereof,—such person shall, upon conviction, be liable to a penalty

Penalty for using weights and measures not in accordance with standards hereby declared.

Digitised by the University of Pretoria, Library Services, 2016

not exceeding forty shillings: Provided that all bargains, sales, and other contracts, *bonâ fide* made before the day of the taking effect of this Act, shall be performed and judged of in like manner as if this Act had never been passed; and provided, also, that nothing herein contained in regard to the measures of extension shall apply to any land or any sale thereof; and provided, further, that nothing in this Act contained shall apply to the use of any weights in the sale of gold, silver, or precious stones, or in the sale of drugs by retail.

Except in transactions previous to the passing of this Act; or relating to lands, precious metals, or minerals, or the sale of drugs.

9. All bargains, sales, or contracts concerning any goods, wares, or merchandize, which shall, after the taking effect of this Act be made with reference to weight, and which shall specify a price or sum for or by "the hundred," or for or by the "hundred pounds," or any multiple or sub-multiple thereof, shall be deemed and taken to be for or by one hundred pounds, or the multiple or sub-multiple named thereof, of the standard weight by this Act established; unless there shall be a special agreement to the contrary, in which the proportion of the weight or measure agreed upon to the standard weight or measure ascertained by this Act shall be mentioned.

Sales by "the hundred," or "hundred pounds," to be judged of with reference to the standard weights hereby established, unless under special agreement to the contrary.

10. [1] From and after the taking effect of this Act, it shall and may be lawful for any Resident Magistrate, Justice of the Peace, or chief constable of police, at all reasonable times, to enter any place, within the limits of his district, wherein goods shall be exposed and kept for sale, or wherein any trade or dealing by weight or measure shall be carried on, and therein to examine all weights, measures, balances, steelyards, or other weighing machines there being, and to compare and try such weights and measures with the copies of the standard weights and measures authorised to be provided, as in the second and third sections of this Act mentioned.

Resident magistrate, or other officers may enter any place to compare the weight and measures in use, with the standards.

11. If, upon such examination as in the preceding section mentioned, it shall appear that any weight or measure is not formed according to the standard weights and measures by this Act established, and is not of some one of the denominations in the schedule to this Act annexed, or is light or otherwise unjust, the same shall be liable to be seized, and the person or persons in whose possession the same shall be found, shall upon conviction, incur the forfeiture thereof, and also a penalty not exceeding five pounds.

Penalty if found to be at variance with the standards.

12. Any person who shall have in his possession any balance, steelyard, or other weighing machine, which shall, on such examination, as in the tenth section mentioned, be found incorrect, or otherwise unjust, or who shall refuse or neglect to produce for such examination, when thereto required, all weights, measures, balances, steelyards, or other weighing machines, which shall be in his possession, or shall otherwise obstruct or hinder such examina-

Penalty for obstructing officers in their examination of weights, measures, &c.

[1] See Act 15, 1876, §§ 5 and 6.

Digitised by the University of Pretoria, Library Services, 2016

No 11 - 1858.

tion, shall incur the forfeiture of such balance, steelyard, or other weighing machine, as shall have been found to be incorrect or unjust, or of such of them as he shall have refused or neglected to produce for such examination, or have hindered or obstructed the examination of, and also a penalty of any sum not exceeding five pounds.

Nothing in this Act to bar action for fraud by false weights, balances, &c

13. Nothing in this Act contained shall be deemed or taken to prevent any person from being prosecuted, in ordinary course of law, for any fraud or other crime, punishable by law, committed by means of false weights, balances, or measures.

How penalties and forfeitures to be recovered and disposed of.

14. All penalties and forfeitures imposed by any of the provisions of this Act shall be recoverable in the Court of the Resident Magistrate within whose jurisdiction the act or omission entailing such penalty or forfeiture shall have been done or committed, and may be proceeded for by any person who shall sue for the same; and one moiety of every penalty or forfeiture recovered shall be paid to the party sueing for the same; together with his costs, as hereinafter mentioned,—and the other moiety to the Colonial Treasury: and it shall be lawful for such Magistrate to commit the offender to prison for any term not exceeding one month, in case the party convicted shall not forthwith pay the amount of the penalty imposed, together with the reasonable costs incurred by the party sueing for the same or secure such payment to the satisfaction of such Resident Magistrate: Provided, always, that such costs shall not exceed the amount of costs which, by the rules of the said Court, for the time being, would have been payable to the party sueing, had the prosecution by him instituted been a civil action or proceeding for the recovery of an amount equal to the penalty so recovered: Provided, always, that whether such offender shall be committed to prison or not, it shall and may be lawful for the party who shall have prosecuted such offender to sue out, but at his own expense, a warrant under the hand of such Magistrate, authorising the levy, by distress and sale of the movable property of such offender, of the amount of such penalty and costs, together with the expense of such distress and sale: Provided, also, that any such offender, if committed to prison, shall be forthwith discharged therefrom, in case he shall pay, or cause to be paid, the amount of such penalty and costs, or in case such amount, together with such expenses as aforesaid, shall have been fully levied and made by force or virtue of the said distress and sale.

If penalty and costs of suit not paid, offender may be imprisoned.

Limitation as to amount of costs.

Goods may be attached to satisfy costs.

Offender to be released if penalty and other expenses are paid.

Weights, &c., when forfeited to be destroyed or sold.

15. Any weight, measure, balance, steelyard, or weighing machine, adjudged under any of the provisions of this Act to be forfeited, shall be broken up, and, if saleable, sold, and the proceeds thereof, after deducting the expenses of breaking up and selling the same, shall be paid, one moiety to the party who shall have proceeded for such forfeiture, and the other half to the Colonial Treasury.

Digitised by the University of Pretoria, Library Services, 2016

16. Every weight used under this Act shall have upon its upper part, and in legible figures, cast or stamped, the number of pounds, multiple, or sub-multiple of a pound, which it is intended to represent.

Denomination and value or weight to be stamped upon it.

17. It shall not be lawful, except as hereinafter is excepted, to make use of weights, in the manufacture of which lead or pewter shall have been used: Provided, always, that nothing herein contained shall prevent the insertion of such plug of lead or pewter into weights as shall be *bonâ fide* necessary for the purpose of adjusting them: Provided, however, that no lead, pewter, or other soft metal, shall be allowed to be used for the purpose of adjustment to a greater extent than as follows, namely: In weights from 10 lbs. to 50 lbs., to the extent of a two-hundredth part of such weight so to be adjusted; and in weights under 10 lbs., to the extent of one-hundredth part of such weight so to be adjusted; and any person contravening this section, shall incur and be liable to a penalty not exceeding five pounds.

Lead or pewter not to be used for purposes of adjustment.

In what proportions.

18. As soon as the standard weights and measures ordered to be obtained for the purposes of this Act shall have been obtained and be in this Colony, the Governor shall, by proclamation to be published in the *Government Gazette*, give notice thereof and of the several descriptions and denominations of the same, and fix the day upon which this Act shall come into operation and have effect, which day shall be not earlier than twelve nor later than eighteen months from the date of such proclamation; and this Act shall come into operation and take effect from and after the day so fixed accordingly.

When this Act shall come into operation.

SCHEDULE of Weights referred to in the second section of this Act.

Schedule of multiples and sub-multiples of the pound weight.

Weight 50 lb.	Weight 1 lb.
25 ,,	$\frac{1}{2}$,,
15 ,,	$\frac{1}{4}$,,
10 ,,	$\frac{5}{8}$,,
5 ,,	$\frac{1}{16}$,,
4 ,,	$\frac{1}{32}$,,
3 ,,	$\frac{1}{64}$,,
2 ,,	

and every decimal fraction of a pound.

Digitised by the University of Pretoria, Library Services, 2016

No. 12—1858.] [June 5, 1858.

AN ACT

For Regulating the Admission of Barristers, Attorneys, Notaries, and Conveyancers. (1)

Preamble.

WHEREAS it is expedient to make provision for the admission, as advocates of the Supreme Court, of such persons, in addition to those at present by law entitled to be so admitted, as shall be duly qualified thereto by general acquirements and by a sufficient knowledge of law and jurisprudence: And whereas it is further expedient to make additional regulations regarding the admission of attorneys of the Supreme Court, and persons desirous of practising as notaries, and of obtaining authority to prepare deeds of transfer and of hypothecation 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:—

Repugnant laws repealed.

1. So much of the Royal Letters Patent of His late Majesty King William the Fourth, bearing date at Westminster, the 4th May, in the second year of his reign, commonly called the Charter of Justice, and so much of the Ordinance No. 14, of 1844, and so much of any other law, usage, or ordinance as shall be repugnant to or inconsistent with any of the provisions of this Act are hereby repealed.

Certain persons may be enrolled as barristers, &c., in the Supreme Court, in addition to those admitted under the charter of justice.

2. In addition to the persons who may, by the seventeenth section of the said Charter of Justice, to be approved, admitted, and enrolled by the Supreme Court as barristers or advocates in the said Supreme Court,—authority is hereby given to the said Supreme Court to approve, enroll, and admit all such persons as shall have obtained either of the two certificates of merit and attainment mentioned in the ninth section of an Act, made and passed in this present session of Parliament, for creating a board of public examiners in literature and science; and in addition to such certificate, the certificate of the higher class in law and jurisprudence in the sixteenth section of the said Act mentioned, to act and practise as barristers or advocates of the said Supreme Court. (2)

Persons holding certificates in law may, after a service of three years as apprentice or clerk, be admitted as an attorney.

3. Every person who shall, previously to the time of his application to be approved, admitted, and enrolled an attorney of the Supreme Court, have obtained either of the certificates in law and jurisprudence in the sixteenth section of the said Act mentioned, shall, upon having actually served as an apprentice or clerk, by

---

[1] As to Licences payable by Advocates, Attorneys, Notaries and Conveyancers, on admission to practise, see Tariff 15, and Stamps on Articles of Apprenticeship, Tariff 2, Act 20 of 884.

As to Enrolled Agents, see Act 20, 1856.

See also Charter of Justice, §§ 17-24; Acts 21, 1864, §§ 13-19; 3, 1865, § 8; 6, 1872; 16, 1873, §§ 19-21; 39, 1877, § 21; 27, 1883; 19, 1891, § 15; 30, 1892.

[2] See § 21, Act 16, 1873; § 1, Act 30, 1892, and § 6.

Digitised by the University of Pretoria, Library Services, 2016

contract in writing, to any advocate, attorney, solicitor, or proctor, throughout the term of three consecutive years, be eligible to be approved, admitted, and enrolled an attorney of the Supreme Court, as fully and effectually, to all intents and purposes, as any person having been bound and having served for five years is eligible to be approved, admitted, and enrolled an attorney, by virtue of the 20th section of the said Charter of Justice and the 149th rule of the Supreme Court. (1)

Authority of the Supreme Court required to practise as notary public.

4. It shall not be lawful for any one to take upon himself to practise as a notary public within the Colony, until he shall have obtained authority to that effect from the Supreme Court, without prejudice, always, to the right of such persons so to practise as may before the taking effect of this Act, have obtained the previously existing legal authority in that behalf.

Who may be admitted as notaries.

5. It shall be lawful for the Supreme Court of the Colony to grant authority to practise as notaries public to the following persons only, that is to say:—To every attorney of the Supreme Court and to every person who shall have been bound by contract in writing to serve within this Colony as a clerk to a notary duly authorised to practise, during the term of four consecutive years subsequent to the date of such contract, and who shall, during the whole of such term of service, have continued to be actually employed within the Colony as clerk in the proper employment and business of such notary as a notary: Provided, however, that if any such last-mentioned person shall have obtained either of the certificates in law and jurisprudence in the sixteenth section of the Act aforesaid mentioned, it shall be lawful for the Supreme Court to grant authority to such person to practise as a notary public after a service of one year only, instead of the service of four years, as hereinbefore required: Provided, also, that no person shall be authorised, as aforesaid, to practise as a notary public unless he shall have attained, at least, the age of twenty-one years, and unless it shall be certified to the Supreme Court, in writing, by the examiners, in the next succeeding section described, that such person has been duly examined by the said examiners, and that he is, in the opinion of such examiners, qualified to be admitted to practise as a notary public. (2)

Limitation as to age, &c.

Who to be examiners in last preceding section mentioned.

6. The examiners in the last preceding section mentioned shall be appointed, from time to time, by the Supreme Court, and shall be three in number, of whom one shall be an advocate of the Supreme Court, of not less than seven years' standing, and two shall be public notaries, duly admitted, and of not less than seven years' standing; and a certificate under the hands of any two or more of such examiners shall be sufficient.

---

[1] See § 21, Act 16, 1873; § 1, Act 30, 1892, and § 6.

[2] The Act (4 of 1858) referred to herein is repealed, but see §§ 19-21, Act 16, 1873; see § 6 Act 30, 1892.

Digitised by the University of Pretoria, Library Services, 2016

No. 12–1858.

How as to applicants; for admission before the passing of this Act.

7. Notwithstanding this Act, it shall be lawful for the Supreme Court to cause to be examined, in regard to his qualification to be admitted to practise as a notary public, any person who shall, at any time before the taking effect of this Act, apply to be so examined, whether such person shall or shall not have served as clerk to a notary; and if, upon such examination, such person shall be found qualified, it shall be lawful to admit him to practise: Provided that every such person shall be examined by such examiners as are in the sixth section of this Act mentioned.

Who may draw deeds of transfer and hypothecation.

8. No person, not being an advocate of the Supreme Court, shall receive authority to draw and prepare transfer deeds, and deeds of hypothecation, which shall be entitled to registration by the Registrar of Deeds, unless he shall have attained the age of twenty-one years, and unless it shall be certified to the Supreme Court, in writing, by three examiners, (1) to be appointed from time to time by the said Supreme Court, of whom one shall be an advocate of the Supreme Court, of not less than seven years' standing, and two shall be persons who shall have received authority to draw and prepare such deeds as aforesaid, that such person, desirous of receiving such authority as aforesaid, has been duly examined by the said examiners, and that he is, in the opinion of such examiners, qualified to receive authority to draw and prepare such deeds as aforesaid; and a certificate to that effect under the hands of any two or more of such examiners shall be sufficient.

Examinations mentioned in preceding sections how to be held.

9. Every examination in the three last preceding sections mentioned shall be held with open doors, at such time and place as the examiners appointed to conduct such examination shall find convenient and appoint.

Fee to be paid by persons authorised to draw deeds of transfer and hypothecation.

10. Every person applying to be admitted to practise as a notary public, or to be authorised to draw and prepare deeds of transfer and hypothecation, shall, before such examination, pay into the hands of the Registrar of the Supreme Court the sum of ten pounds; and such sum shall, by such officer, be divided amongst the examiners who shall have examined such person, share and share alike; and such payment shall be in lieu or stead of every other fee or charge now by law payable to the public revenue, by any person admitted to practise as a notary, or authorised to draw or prepare deeds of transfer or hypothecation.

Supreme Court to make rules and regulations for notaries, &c.

11. It shall be lawful for the Supreme Court to make such rules and regulations as may ensure the due performance of their duties by notaries public and conveyancers, whether appointed under this Act or previously, and to suspend such of them as may fail therein, for such period, and upon such terms, as to such court shall seem to be proper in the circumstances: Provided that the fourth section of the Act No. 26, of 1856, (2) entitled "An Act for amending the law relating to Rules of Court," shall extend and apply to all such rules as aforesaid.

[1] See § 15, Act 19, 1891.
[2] Repealed by Act 15, 1867.

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1858.] [June 5, 1858. No. 13—1858.

An Act for Releasing the Estate Constantia, otherwise called Great Constantia, from the Burthen of an Entail, or Fidei-Commissary Trust.

[Private.]

No. 14—1858.] [June 5, 1858.

An Act for the Creation of Educational Boards in the Field-cornetcies, Villages, and Towns of this Colony, on which the Local Regulations of each shall be founded.

[Repealed by Act 13, 1865.]

No. 15—1858] [June 5, 1858.

An Act for Amending the Act No. 21, 1857, entitled "An Act to Amend the Ordinance No. 1, 1846, entitled 'Ordinance for the Regulation of the Post Office and Postage.'"

[Repealed by Act 4, 1882.]

No. 16—1858.] [June 5, 1858.

An Act for Introducing into this Colony Immigrants from Europe.

[Spent.]

No. 17—1858.] [June 5, 1858.

An Act to Provide for Paying off Loans heretofore contracted by the Central Board of Commissioners of Public Roads.

[Spent.]

No. 18—1858.] [June 5, 1858.

AN ACT

For Enabling the Master of the Supreme Court to lend, upon Government Securities, Moneys belonging to the Guardian's Fund. (1)

Preamble. WHEREAS, by the 32nd section of Ordinance No. 105, bearing date the 5th of July, 1833, and entitled "Ordinance for providing for the due administration and management of the estates and property of minors, lunatics and persons absent from the Colony,—and for the proper care of the persons of minors and lunatics," it is enacted that the Master of the Supreme Court shall, from time to

(1) See also Act 1 of 1874.

Digitised by the University of Pretoria, Library Services, 2016

No. 18—1858.

time, as he may find opportunity, lend on mortgage of immovable property, situated within this Colony, and with or without additional security, as may in each particular case be deemed expedient, all such money as shall at the time be to the credit of the "Guardian's Fund": And whereas it is expedient that the said Master should be authorised to invest money belonging to the said fund in any debentures which may be issued by the Government of this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Moneys of Guardian's Fund may be invested in Government debentures.

1. It shall be lawful for the Master of the Supreme Court, when and as often as he shall find it to be for the advantage of the Guardian's Fund so to do, to invest any unemployed moneys belonging to the said fund in any debentures or other securities which may at any time hereafter be issued by the Government of this Colony and charged upon the public revenue thereof: Provided that every investment under this Act shall be made with the same advice, or upon the same authority, as if such investment were a loan on mortgage.

No. 19—1858.] [June 5, 1858.

An Act to Continue the Ordinance No. 11, 1837, entitled an Ordinance "For establishing, regulating, and providing for the South African College."

[Repealed by Act 15, 1878.]

No. 20—1858.] [June 5, 1858.

AN ACT

For Constructing a Breakwater to form a Harbour of Refuge in Table Bay, and otherwise Improving the said Harbour. (1)

Preamble.

WHEREAS, it is expedient to repeal the Act No. 11 of 1857, entitled "An Act for promoting the construction of a Harbour of Refuge in Table Bay," and to make other provision for improving the said harbour: And whereas the improvement of the said harbour will be best effected by taking, as a basis, the plan of Captain James Vetch, referred to in the preamble to the Act aforesaid, which said plan, signed by the Colonial Secretary, is now deposited in the office of the Registrar of Deeds at Cape Town, and by carrying out the said plan, or some plan of the same nature, gradually, and by degrees, as circumstances will permit: And whereas it will be desirable to commence the construction, in the first place, of such an outer pier or breakwater as is laid down

[1] See Acts 22, 1872; 4, 1873; 26, 1881; 37, 1887; 11, 1890; 9, 1893.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1858.

upon the said plan, and called the North Pier, and to enlarge and improve, at the same time, the existing wharfs: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Act 11, 1857, repealed.

1. The Act aforesaid, No. 11 of 1857, is hereby repealed.

Governor may direct the construction of breakwater.

2. The Governor of this Colony, for the time being, shall, after the passing of this Act, direct a competent engineer or engineers to construct, and cause to be constructed, such an outer pier or breakwater as is described on the said plan, or such part or parts thereof, or other necessary works in connection therewith, as he may think fit; and also to enlarge and improve the existing wharfs; and shall also appoint all proper officers necessary for carrying the aforesaid works into execution, and for controlling the expenditure incurred thereby. And a half-yearly account of such expenditure, made up to the 31st day of December and 30th day of June, in every year, shall be printed and laid before both Houses of Parliament, within fourteen days after such lastmentioned days, if Parliament shall be then sitting, and if not, then within fourteen days after the meeting of Parliament.

And the improvement of existing wharfs, &c.

Accounts of expenditure to be laid before Parliament.

3. [Repealed by Act 22 of 1872.]

Ordinance 1, 1848, repealed.

4. The Ordinance No. 1, of 1848, entitled "An Ordinance for improving the Port of Table Bay," is hereby repealed, and all and singular the lands and grounds which were, by the second and third sections of the said Ordinance, or by any other title whatsoever, vested in the Board of Commissioners [1] in the said Ordinance mentioned, at the time of the taking effect of the Act aforesaid, No. 11, of 1857, are hereby vested in Her Majesty the Queen in her Colonial Government.

Lands vested in harbour board transferred to colonial government.

Certain beach and other lands vested in the colonial government.

5. So much of the shore of Table Bay, and of any waste land as may lie between the northern and the southern piers of the harbour of refuge, proposed by Captain James Vetch, and laid down upon his aforesaid plan, and which shore or land was vested in the Commissioners of the Municipality of Cape Town, at the time of the taking effect of the Act aforesaid, No. 11 of 1857, is hereby vested in Her Majesty the Queen, in her said Colonial Government.

Accumulated wharfage dues, and other revenues, vested in the government

6. All moneys which shall have arisen from the accumulations of dues of wharfage and cranage, which shall be in the Colonial Treasury, or other depositories, at the time of the taking effect of this Act; and all moneys arising from dues of wharfage and cranage to be levied under this Act, and all purchase moneys, rents, or other revenues arising, or to arise, from or out of any of the lands or grounds in the third and fourth sections of this Act mentioned; or from or out of any land or ground which may be created or reclaimed from the sea by means of any of the works or improvements contemplated by this Act, shall vest, and the

[1] See Act 26 of 1881, which is amended by Act 11, 1890.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1858.

same are hereby vested, in her said Majesty in her said local Executive Government, for the purposes of the said harbour: Provided that it shall and may be lawful to expend, during the construction of the said breakwater, and other improvements of the said harbour, so much of the moneys arising from wharfage and cranage dues, for the time being, as shall be needful for enlarging any of the present wharfs in Table Bay, or for keeping them in sufficient repair.

Separate accounts of such revenues to be kept.

7. Correct accounts shall be kept of all moneys arising from or out of the respective sources of revenue aforesaid, distinguishing the proceeds of the dues of wharfage and cranage from the proceeds of the sales or leases of land.

8. The fifth section of the Ordinance No. 6 of 1851 [1] is hereby repealed, and the management of the wharfs in Table Bay, and of the dues of wharfage and cranage levied in Table Bay, and to be applied to the construction of the breakwater aforesaid, and to the making of the other improvements aforesaid, are hereby vested in the Colonial Government.

Superintending engineer may treat for lands and materials.

9. In case the Colonial Government shall require, for the purpose of the works contemplated by this Act, or of any of them, to take or use any land, or to dig out or quarry any stones or other materials, being private property, then the engineer, or other person charged with the conduct of such works, acting under the authority of the Governor, may treat and agree with the owner of any such land or materials, for the purchase or hire, as the case may be, of any such lands or materials, and may enter into any contract relative to the obtaining of such land or materials upon such terms and conditions as he shall judge expedient. And if

Arbitration clause.

any such person and the engineer or other person aforesaid, should not agree upon the purchase money, or hire, or other recompense, to be respectively given and accepted, then the engineer or other person aforesaid shall cause to be served upon such person a written notice, offering as recompense or compensation whatever sum of money he shall deem sufficient, and requiring such person to state, in writing, to the engineer or other person aforesaid, or to some person by him appointed, within a certain limited time, to be specified in the said notice, whether he is willing to accept the sum therein mentioned or not; and if such person should refuse to accept the sum offered, or neglect to reply to the said notice, then the engineer or other person aforesaid shall, by another notice in writing, call upon such person to refer to arbitration the amount of recompense or compensation to be paid to him by the said engineer or other person aforesaid, and for that purpose to transmit to the engineer or other person aforesaid, within a certain reasonable time, to be specified in the said lastmentioned notice, the name of some person whom he shall select, to be an arbitrator

[1] Repealed as regards Cape Town by Act 22 of 1872.

Digitised by the University of Pretoria, Library Services, 2016

upon such arbitration, and the engineer or other person aforesaid, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed by the engineer or other person aforesaid, and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and shall contain, amongst other things, a power to the said arbitrators, in case of difference of opinion, to call in an umpire, whose decision shall be final; and the award of such arbitrators or umpire, as the case may be, shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the same subject-matter. And if such person as aforesaid claiming such recompense or compensation should neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then the engineer or other person aforesaid may lodge in some joint-stock bank in the Colony the sum of money offered by him as aforesaid in his first notice in this section mentioned, for or on account and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property: and the engineer or other person aforesaid, upon so lodging the said sum, shall be authorised and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by arbitrators or an umpire, under the provisions of this section, and as if all acts by law required for vesting in the engineer or other person aforesaid a sufficient title to the use of, or property in, the land or materials aforesaid had been duly done and performed.

Arbitrators may choose an umpire.

How, in case of failure, to appoint arbitrator.

10. In case the engineer or other person aforesaid shall require to take or use any land, or to dig out or carry away any materials belonging to any minor or other person under guardianship or curatorship, then the guardian or curator, as the case may be, shall be authorised, in his capacity as such guardian and curator, to treat and agree with the engineer or other person aforesaid for the purchase or hire of the land or materials required, and to execute any contract which may be needful for carrying out any agreement which may be made, and, in case of non-agreement, to refer the matter in difference to arbitration, as in the last preceding section mentioned: But all moneys which shall, either by agreement or by arbitration, be payable by the engineer or other person aforesaid for or on account of any land or materials in this section mentioned, shall be paid by the engineer or other person aforesaid to the Master of the Supreme Court administering the Guardian's Fund, who is hereby authorised to receive the same, and to place the same to the credit of the minor or other person entitled to such moneys. And if, in any case, any person of full age shall, by way of fidei-commissary limitation, or any limitation of a like nature, be

If property treated for belong to minors.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1858.

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

Certain moneys may be raised on debentures.

11. It shall be lawful for the Governor to raise and take up upon debentures, or such other form of loan as he shall consider preferable, such sum or sums of money, not exceeding in the whole two hundred thousand pounds, as may be required for defraying the costs of the pier or breakwater aforesaid, or any other of the harbour works contemplated by this Act.

Debentures charged upon the revenues described in this Act.

12. All such debentures or other loans are hereby charged upon all and singular the revenues and moneys described in this Act and shall from and out of such revenues and moneys be paid off as speedily as circumstances will permit.

Debentures, for what amounts, and how to be issued.

13. Should any debentures be issued under this Act, they shall be issued for sums not exceeding one hundred pounds nor less than fifty pounds each, and shall be signed by the Treasurer and Auditor of the Colony, and shall bear interest at a rate not exceeding six per cent. per annum.

Loans otherwise than by debentures.

14. In case any loans should be effected under this Act, otherwise than by means of debentures, the deed or instrument attesting such loan, and hypothecating the revenues and moneys aforesaid for the repayment of the same, with the stipulated interest, shall be signed, on the part of the Colonial Government, by the Treasurer and Auditor aforesaid.

No. 21—1858.] [June 5, 1858.

An Act for further Providing for the Building and Improving of Public Prisons.

[Spent.]

Digitised by the University of Pretoria, Library Services, 2016

No. 22—1858.] [June 5, 1858.

An Act to Fix the Amount to be contributed by the Municipality of Cape Town towards the Expense of the Executive Police of Cape Town.

[Repealed by Acts 31, 1883, and 44, 1882, § 47.]

No. 23—1858.] [June 5, 1858.

AN ACT

For Declaring Main Roads and Regulating Tolls. (1)

Preamble.

WHEREAS, by the second section of an Act (2) made and passed during this present session of Parliament, entitled "An Act to Provide for the Management of the Public Roads of the Colony," it is provided that, from and after the first day of January next, the several roads of the Colony, which may, by any Act of the Legislature of this Colony, be declared to be main roads, shall be under the charge of the general government, as by the said Act provided, whose duty it shall be to make, maintain, and improve such main roads, so far as the funds placed at its disposal by the said Act or any future Act will enable it: And whereas, by the thirteenth section of the said Act, it is further provided that all toll-bars (3) established on any main road by authority of any Act of the Legislature of the Colony shall be maintained, and such persons as shall be authorised by the Governor so to do shall be entitled to demand and receive thereat the several tolls authorised in such Act, until the said toll-bars or tolls, or any of them, be abolished, removed, or changed, with the consent of Parliament; and no new toll-bar may be established or any new toll demanded upon any main road except with the consent of Parliament: And whereas it is expedient to describe and declare what roads within this Colony shall for the purposes of the Act aforesaid, be main roads, as also what toll-bars shall be established on such main roads, and what tolls shall be demandable at such toll-bars: Be it enacted by 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 roads declared main roads.

1. All and singular the several roads mentioned and set forth in the schedule to this Act, marked A, are hereby declared, for the purposes of the Act aforesaid, entitled "An Act to Provide for the Management of the Public Roads of the Colony," to be for the time being, and until the Legislature, by some Act thereof, shall otherwise provide, the main roads of the Colony. (4)

---

[1] See Act 3, 1859.
[2] Section 2, Act 9 of 1858, which is repealed by Act 40, 1889.
[3] See §§ 162 *et seq.*, Act 40, 1889, also §§ 188 *et seq.*
[4] See Act 40, 1889, §§ 149-151.

Digitised by the University of Pretoria, Library Services, 2016

No. 23–1858.

Toll-bars described in schedule established.

Tolls to be collected thereat by persons appointed by Governor.

2. All and singular the several toll-bars mentioned and set forth in the schedule to this Act, marked B, are hereby established, and such persons respectively as shall be authorised by the Governor aforesaid so to do shall be entitled to demand and receive at every such toll-bar the several tolls which, in and by the said schedule, marked B, are mentioned and set forth as the tolls to be demanded and received at such toll-bar.

SCHEDULE A.

Repealed and Schedule to Act 22 of 1873 substituted. [1]

SCHEDULE B. [2]

TOLL-BARS AND TOLLS.

Tolls: On certain roads.

1. Rates payable at the upper and lower gates—military lines, Muizenberg, 4th mile Maitland Road, Meiring's Poort, Botha's Hill, and the Buffeljagt's River, Wellington and Paarl or Lady Grey's bridges:—

1. Upon every wheel of a vehicle	£0	0	2
2. Upon each horse, mule, or ass, employed in drawing a vehicle	0	0	1
3. Upon each head of horned cattle employed in drawing a vehicle	0	0	0½
4. Upon each horse, mule, or ass, not employed in drawing a vehicle	0	0	2
5. Upon each head of horned cattle not employed in drawing a vehicle	0	0	0½
6. Upon every sheep, goat, or swine	0	0	0¼

At certain mountain passes.

2. Rates payable at mountain passes,—Bain's Pass, Michell Pass, Sir Lowry's Pass, Houwhoek, Great Brak River Pass, Montagu Pass, Howison's Poort, Zuurberg Pass, Piquineer's Kloof:—

1. Upon each wheel of every four-wheeled vehicle, not provided with a wooden shoe (remschoen), or an iron shoe, not less than eight inches broad	£0	0	3
2. Upon each wheel of any other vehicle	0	0	2
3. Upon every animal employed in drawing a vehicle	0	0	1
4. Upon every animal not employed in drawing a vehicle, excepting sheep, goats, or swine ..	0	0	2
5. Upon every sheep, goat, or swine	0	0	0½

At certain ferries.

3. Rates payable at ferries on the Zwartkop's, Sunday's, and Breede Rivers, namely,—the rate now payable at such ferries respectively, until the expiration of any existing lease or contract for the maintenance of such ferries, when the following rates shall be substituted:—

[3] For a four-wheeled vehicle, with any animals drawing the same	£0	1	6

[1] Act 22, 1873, repealed by Act 40, 1889—see §§ 149 and 150 of latter Act.
[2] Additional tolls established by Act 13 of 1863, but see § 162, Act 40, 1889.
[3] Printed as amended by Act 3 of 1859.

Digitised by the University of Pretoria, Library Services, 2016

	£	s	d
For a two-wheeled vehicle, not drawn by more than four animals	0	1	0
For a two-wheeled vehicle, drawn by more than four animals	0	1	6
For a saddled horse	0	0	4
For loose horses	0	0	3
For loose horses, above 10, each	0	0	2
Sheep or goats, first twenty-five, or any lesser number	0	0	6
Do. for every twenty-five, or any lesser number above the first twenty-five	0	0	2
A person on foot	0	0	3
Person on foot, more than one, each	0	0	2

[From sunset to sunrise, a further charge of one-half of the above rates.]

No. 24—1858.] [June 5, 1858.

AN ACT

To Regulate the respective Rights of certain Divisions, in regard to certain Road Rates.

Preamble.

WHEREAS, by the Act No. 12, 1857, entitled "An Act for constituting certain Districts of this Colony Divisions," and by a certain other Act made and passed in this present session of Parliament, entitled "An Act for constituting the Districts of Frazerburg, Murraysburg, Humansdorp, and Robertson, Divisions," (1) the several districts in the said Acts mentioned have been constituted divisions: And whereas it is expedient to regulate the respective rights in regard to certain road rates of such last mentioned divisions, and of the older or former divisions, from or out of which such recently-constituted divisions shall have been formed: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Divisional council of any new division to receive the arrear road rates assessed by the council of the old division out of which it has been formed.

1. In case any road rates shall have been or shall be assessed by the Divisional Council of any division, from or out of which division the whole or any part of any of the newly-constituted divisions aforesaid shall have been formed, previously to the day upon which such newly-constituted division became a division, then, and in that case, all arrears or amounts of such road rate assessed upon, or in respect of any immovable property lying and being within such newly constituted division, and due or unpaid on the day of the taking effect of this Act, shall be demandable and receivable by the Divisional Council of such newly-constituted division, and not by any former or other Divisional Council; and the Divisional Council of such newly-constituted division in case

Digitised by the University of Pretoria, Library Services, 2016

No. 24—1858.

it shall think fit to collect such arrears shall have and possess all and singular the same rights and remedies for the recovery of such arrear road rates as if the same had been arrears of road rates assessed by such last mentioned council.

New division to pay to the older division its share of any debt contracted by the latter on credit of road rates.

2. In case the Divisional Council of any division from or out of which the whole or any part of any of the divisions constituted by the Act aforesaid, No. 12, 1857, shall have been formed, shall at any time before the 1st January, 1858, when such divisions came into being, have raised money by way of loan, on the credit of any road rates assessed or to be assessed by such council, or shall have incurred any other pecuniary obligation upon the faith of any such road rates, then the Divisional Council of any of the new divisions constituted by the said Act No. 12, 1857, which new division shall comprise any of the immovable property which, next before such new division came into being, belonged to the division by which the Divisional Council which borrowed the said money, or incurred the said obligation, was elected, shall be bound to raise by road rates or otherwise, and pay over to the Divisional Council for the time being of the older or former division, as such last mentioned division shall be limited and bounded after such newly-constituted division shall have become a division, such a proportion of so much of such loan or debt as was due and owing, or of such pecuniary obligation as was in existence when such new division came into being, as the value of the immovable property which, when such loan or debt was contracted, or such other pecuniary obligation was incurred, belonged to the older or former division, but was afterwards included in such newly-constituted division, bears to the value of the whole of the immovable property which, next before the day when such new division came into being, belonged to the older or former division as then limited and bounded.

Last preceding section to apply to the new divisions of Fraserburg, Murraysburg, &c.

3. If it shall happen that the Divisional Council of any division from or out of which the whole or any part of any of the four newly-constituted divisions of Fraserburg, Murraysburg, Humansdorp, and Robertson, shall be formed, shall, at any time before the taking effect of the Act aforesaid constituting such divisions, have raised money, by way of loan, or incurred any other pecuniary obligation on the credit of any road rates assessed, or to be assessed, by such council, then all and singular the provisions of the last preceding section shall apply, *mutatis mutandis*, to such newly-constituted division and such older or former division respectively, precisely as if such newly-constituted division had been a division constituted by the Act aforesaid, No. 12, 1857.

———

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1858.] [June 5, 1858.

AN ACT

For Constituting the Districts of Frazerburg, Murraysburg, Humansdorp, and Robertson, Divisions. (1)

Preamble.

WHEREAS it is intended to create, as soon as may be, districts of Resident Magistrate at and for Frazerburg, Murraysburg, Humansdorp (2) and Robertson: And whereas, whilst it is expedient that the said districts, when defined and established, should become and be divisions for all fiscal purposes, as well as for the purpose of enabling every such division to have and possess its own Divisional Council, it is at the same time expedient that the several Electoral Divisions of the Colony, as described in the Constitution Ordinance, should not be altered or affected by this Act: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant portions of Constitution Ordinance repealed.

1. So much of the Ordinance for constituting a Parliament in this Colony, and commonly called the Constitution Ordinance, as is repugnant to or inconsistent with this Act, is hereby repealed.

As soon as the districts aforesaid are proclaimed as magistracies, they shall be fiscal divisions.

2. When and as soon as districts of Resident Magistrates shall have been by proclamation of the Governor aforesaid created, constituted, and established at any of the four places aforesaid, to wit, Frazerburg, Murraysburg, Humansdorp, and Robertson, then every such district shall, from and after the day of the publication of the proclamation creating such division, become and be a division for fiscal purposes, as well as a district, and shall cease, for fiscal purposes, or for any purpose other than the election of members of Parliament, to belong to any division to which the said district, or any part of the said district, belonged down to and next before the day of publication of such proclamation.

Divisional Councils Act to apply separately to the new divisions, and to those out of which they are constituted.

3. The provisions of the Act No. 5 (3) of 1855, entitled "An Act for creating Divisional Councils in this Colony," shall apply to each of the four divisions aforesaid, and to the divisions to which the said four divisions, or any part of the said four divisions, previously belonged, as such new divisions, and such former divisions shall then be limited, and bounded precisely as if no Divisional Councils in and for any of such divisions had ever been elected: Provided that the registered voters for any and every Electoral Division which, down to and next before the day aforesaid, comprised any such new division as aforesaid, or any part of any such new division, and which voters shall be resident in such new division, shall be entitled to vote at any election of members of the Divisional Council of such new division.

---

[1] See Act 12, 1857, and notes.
[2] For boundaries of Humansdorp division see Act 17 of 1865.
[3] Repealed by Act 4, 1865, which in turn is repealed by Act 40, 1889.

Digitised by the University of Pretoria, Library Services, 2016

No. 25—1858.

Council of older divisions to continue in operation over its original area until council for new division is formed.

4. It shall be lawful for the Divisional Council of every division to which the entire or any part of any one of the four divisions aforesaid belonged down to and next before the day of the publication of the proclamation aforesaid, to continue in existence and operation in and for the whole area or territory which formed the division by which such Council was elected, until the new Divisional Councils contemplated by the last preceding section shall have been elected, but no longer: Provided that in case the new Divisional Councils for the several divisions for or in regard to which the creation of any of the four divisions aforesaid shall render necessary the election of new Divisional Councils shall not all be elected at the same time, then each new Divisional Council shall, upon the election thereof, become the Divisional Council for the division by which it was elected, and no former or other Divisional Council shall have any authority or power in or over the division by which such new Divisional Council was elected: Provided, however, that until new Divisional Councils shall have been elected for all the divisions, for or in regard to which the creation of any of the four divisions aforesaid shall render necessary the election of new Divisional Councils, the Divisional Council aforesaid, continued in existence and operation as aforesaid, shall, notwithstanding the election of a new Divisional Council for one or more of the said divisions, remain in existence and operation in and over the residue or remainder of area or territory which formed the division by which such Council was elected, precisely as if such residue or remainder had been the division by which such Council had been elected.

How, if new councils are not all elected at the same time.

Until all the new councils are elected, the old council shall continue in operation over the remaining portion of the division.

Members of old council may be elected to new council, and continue in both capacities.

5. No member of any Divisional Council continued in existence and operation as aforesaid over any such area or territory as aforesaid shall be, upon that account, ineligible to be elected as a member of any such new Divisional Council as aforesaid: and in case any such member shall be elected a member of any such new Divisional Council as aforesaid, it shall be lawful for him to act as a member of both the Councils of which he shall be a member until the Divisional Council continued in existence and operation as aforesaid shall, upon the election of all the new Divisional Councils necessary to be elected, stand dissolved.

Creation of new division not to interfere with constitution of electoral division.

6. Notwithstanding the creation of the four new divisions as aforesaid for fiscal and other purposes, every such new division, and every part thereof, shall continue, for electoral purposes, to belong to, and form part of, whatever Electoral Division such new division or any part thereof formerly belonged to, precisely as if this Act had not been passed.

———

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1858.] [June 5, 1858. No. 3—1859.

An Act for applying a Sum not exceeding Two Hundred and Ninety-five Thousand and Seventy-eight Pounds Thirteen Shillings and Nine Pence, for the Service of the year 1858.

[Spent.]

No. 27—1858.] [June 5, 1858.

An Act for Applying a Sum not exceeding Ninety-one Thousand Six Hundred and Sixty-five Pounds for the Service of the year 1859.

[Spent.]

No. 1—1859.] [June 1, 1859.

An Act for the Naturalization of JOHAN GEORGE WILHELM VON MEYER, of Worcester.

[Private.]

No. 2—1859.] [July 8, 1859.

An Act for Amending the Act No. 15, of 1858, entitled "An Act for Amending the Act No. 21, 1857, entitled 'An Act to Amend the Ordinance No. 1, 1846, entitled, Ordinance for Regulation of the Post Office and Postage.'"

[Repealed by Act 4, 1882.]

No. 3—1859.] [July 8, 1859.

AN ACT

For Correcting an Error or Misprint in the Act No. 23, 1858, entitled "An Act for Declaring Main Roads and Regulating Tolls."

WHEREAS in Schedule B, Section 3, of the Act No. 23, 1858, entitled "An Act for Declaring Main Roads and Regulating Tolls," a mistake or misprint has occurred in respect of rates payable at ferries on the Zwartkop's, Sunday's, and Breede Rivers, being therein set forth as follows:— Preamble.

	£	s.	d.
For a four-wheeled vehicle, not drawn by more than four animals	0	1	6
For a two-wheeled vehicle, with any animals drawing the same	0	1	0
For do., do., more than four animals ..	0	1	6

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1859.

And whereas the words, as adopted by the House of Assembly, were as follows:—

For a four-wheeled vehicle, with any animals drawing the same	£0	1	6
For a two-wheeled vehicle, not drawn by more than four animals	0	1	0
For a two-wheeled vehicle, drawn by more than four animals	0	1	6

And whereas it is necessary that the said accidental mistake or misprint be amended: 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:—

Misprint in ferry tariff of Zwartkop's River, &c., corrected.

1. That portion of the third section of Schedule B, of the said Act No. 23, 1858, is hereby repealed, and instead thereof, the following shall stand as the rates payable at the before-mentioned ferries, namely:

	£	s.	d.
For a four-wheeled vehicle, with any animals drawing the same	0	1	6
For a two-wheeled vehicle, not drawn by more than four animals	0	1	0
For a two-wheeled vehicle, drawn by more than four animals	0	1	6

No. 4—1859.] [June 8, 1859.

An Act for Amending the Act No. 5, 1855, entitled "An Act for Creating Divisional Councils in this Colony."

[Repealed by Act 4, 1865.]

No. 5—1859.] [July 8, 1859.

An Act to Regulate, till the Expiration of the Year 1860, the Dealing in Gunpowder, Firearms, and Lead.

[Expired.]

No. 6—1859.] [July 8, 1859.

An Act to Facilitate and Render Less Expensive the Filling of Occasional Vacancies in the Legislative Council for the Cape of Good Hope.

[Repealed by Act 18, 1874.]

No. 7—1859. [July 8, 1859.

An Act for Reviving the Ordinance No. 15, 1844, entitled "Ordinance to Provide for the Enregisterment, in the Land Registers of this Colony, of certain Sub-divisions of the Locations and Extensions of the Settlers of 1820."

[Expired.]

Digitised by the University of Pretoria, Library Services, 2016

No. 8—1859.] [July 8, 1859.

ACT

To Repeal the Ordinance No. 60, 1829, entitled Ordinance for "Preventing the Mischiefs arising from Printing and Publishing Newspapers and Papers of a like nature by Persons unknown," and to make further provision in the Premises. (1)

Preamble.

WHEREAS great benefits have been derived from the art of printing, and from the printing and publishing of newspapers and papers of a like nature in this Colony; and whereas all necessary remedies against abuses of the liberty of the press are provided for by the law of libel, on proof of publication of any libellous matter or thing: Be it enacted by 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 60, 1829, repealed.

1. The Ordinance No. 60, 1829, is hereby repealed, except the twenty-third section thereof, which repeals the proclamation of 21st July, 1800.

Printer's name and abode, and place where printed, to be inserted in every book or paper.

2. In some part of every book, pamphlet, newspaper, or other printed work, printed or published in this Colony, there shall be printed the true and real name or names, addition or additions, and place or places of abode, or of business of the printer or printers thereof, and also a true description of the place where the same is printed.

Penalty for contravening this Act.

3. Any person or persons who shall knowingly and wilfully print and publish, or cause to be printed and published, any such book, pamphlet, newspaper, or other work of that nature as aforesaid not containing the particulars aforesaid, shall forfeit a sum of not exceeding one hundred pounds.

Act when to commence.

4. This Act shall take effect from and after the promulgation thereof.

No. 9—1859.] [July 8, 1859.

AN ACT

To Define and Declare the Unit of Land Measure in this Colony.

Preamble.

WHEREAS the unit of land measure within this Colony is the foot; And whereas it has been ascertained, by due investigation, that the foot used for land measurement in this Colony is a length which bears to the length of the foot now by law established in England a certain proportion: And whereas it is expedient to define and declare the said unit of land measure in this Colony by

[1] See Act 29, 1884. Act 8, 1859, extended by Proclamation No. 212 of 1890, to Transkei, Tembuland and Griqualand East.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1859.

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

Unit of land measure defined.

1. The unit of land measure of the Colony is, and shall be, a foot of such length that one thousand of such feet shall be equal to one thousand and thirty-three English feet, as now by law defined and established for lineal measurement in England.

No. 10—1859.] [July 8, 1859.

An Act to Provide for the Adjustment of Disputed Land Boundaries, and for the Erection and Preservation of Land Beacons.

[Repealed by Act 7, 1865.]

No. 11—1859.] [July, 8, 1859.

An Act to Amend the Act No. 9, 1858, entitled "An Act to provide for the Management of the Public Roads of this Colony."

[Repealed by Act 40, 1889.]

No. 12—1859.] [July 8, 1859.

An Act to Define the Meaning and Effect of certain Terms of common use in Acts of Parliament, and to provide Rules for the Interpretation of such Acts in other respects.

[Repealed by Act 5, 1883.]

No. 13—1859.] [July 8, 1859.

An Act to Incorporate the Simon's Bay Dock or Patent Slip Company.

[Superseded by Act 26, 1885.]

No. 14—1859.] [July 8, 1859.

ACT

For the Creation of a Municipal Board for the Districts of Green Point and Sea Point, and for other purposes connected with the said Municipality. (1)

Preamble.

WHEREAS the Ordinance No. 4, 1839, entitled "Ordinance for the Creation of a Municipal Board for the Districts of Green Point and Sea Point," has expired on the 1st day of January, 1859, and it is expedient that a municipal board should be again constituted and established therein: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, that from and after the promulgation of this Bill, a municipality shall be created,

[1] See Act 13, 1892.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1859.

Municipality of Green Point and Sea Point created.

which shall be styled and called the Municipality of Green Point and Sea Point, and which shall include the space of ground situated within the following limits:

Boundaries of municipality.

The southern boundary line of the land now the property of Mr. Wessels and others, formerly belonging to Mr. Smuts (being lot No. 1 of the Green Point lots), prolonged upward and westward to the point where the line of the west side of Strand-street, prolonged northward, shall intersect it, and prolonged downward and eastward across the Somerset or Green Point road to a point twenty yards to the eastward of the said road. A line commencing at the said lastmentioned point, and running parallel within twenty yards to the eastward of the said road, and of the cross road branching off therefrom to Three-anchor Bay to low-water mark; thence along low-water mark to where the western boundry line of the property now belonging to Mr. Henry Hewitt, formerly belonging to Mr. Frederick Liesching (called Botany Bay), prolonged northward, runs into the sea; thence along the lastmentioned boundary line to its southern extremity; thence running in straight direction to the summit of the hill called the Lion's Head; and thence eastward along the ridge and on the line which divides the water flowing therefrom to the north and south to the first point of intersection herein mentioned.

To be under administration of five commissioners.

2. The said municipality shall, for the purposes of this Act, be under the administration of a municipal board consisting of five commissioners, to be elected in a manner hereinafter provided.

Qualification of householders and right of voting.

3. Every person who is the proprietor of, or who, as renter, occupies any dwelling-house situated within the said municipality, and of the yearly value or rent of not less than ten pounds, shall be, and be deemed and taken to be, a householder within the meaning of this Act, and that, at the several meetings of such householders hereinafter appointed or authorised to be holden, every such householder who shall be personally present shall have and be entitled in his own right to one vote, and no more.

Qualification of commissioners.

4. Any person residing within the said municipality, being the proprietor of landed property, situated within the same, of the value of not less than three hundred pounds, and none other, shall be qualified and eligible to be elected a commissioner, for the purposes of this Act.

Meeting of householders for election of commissioners.

5. Within eight days after the promulgation of this Act, the Resident Magistrate for Cape Town, or the officer at the time acting as such, shall call a meeting of the householders of the said municipality, to be holden at the Town-house, in Cape Town, in order to elect five commissioners to form such municipal board as aforesaid, for the purposes of this Act; and at such meeting the said commissioners shall be elected in manner hereinafter provided.

Commissioners to go out of office every two years, but re-eligible.

6. Every person who shall be elected a commissioner at such meeting as aforesaid shall go out of office on the first day of January, 1861; and in place of such commissioners so going out

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1859.

of office, a like number of other commissioners, to be elected in manner hereinafter provided, shall come into office, and remain in office for two years, and at the expiration of such biennial term shall, in like manner, go out of office, and be succeeded by other commissioners, who shall remain in office for a like biennial term, and so on for ever, so long as this Act shall remain in force: Provided, always, that any of such out-going commissioners shall be re-eligible and may be re-elected, and shall in such case again come into office; anything herein contained to the contrary notwithstanding.

Meeting of householders for election of succeeding commissioners.

7. On the first Monday in the month of December, 1860, and thereafter on the first Monday in every month of December, immediately preceding the day on which any such biennial term shall expire, a meeting of the householders of the municipality shall be holden, at such hour and place as shall be duly notified by the said commissioners, for the election of commissioners for the next succeeding biennial term.

Commissioners vacating office from any cause, meeting to be called to elect others.

8. Any commissioner who shall cease to possess the qualification required by the fourth section of this Act, or shall absent himself from the municipality for any period exceeding three months, or shall become incapacitated to fulfil the duties of his office by mental or bodily infirmity or disease, shall, *ipso facto*, vacate his office, and that in case any person so elected a commissioner shall die, or become disqualified in manner aforesaid, or shall resign or refuse to accept the office of commissioner, or in case of any casual vacancy happening in any manner whatever in such office, the commissioner or commissioners then being in office shall forthwith call a meeting of the householders, for the purpose of electing a commissioner to fill up every such vacancy.

If at biennial election three new commissioners be not chosen, those in office to remain until succeeded by others to be elected.

9. If it shall happen that at any such biennial meeting as aforesaid for the election of commissioners, there shall not have been at the least three commissioners duly elected to come into office, and succeed the commissioners who, in manner hereinbefore provided, are to go out of office at the expiration of any such biennial term, then, and in every such case, such lastmentioned commissioners shall remain in office until at the least three commissioners shall be duly elected, when they shall forthwith go out of office and be succeeded by such newly-elected commissioners.

Commissioners elected after first day of biennial term, how long to hold office.

10. Whenever any commissioner or commissioners, by reason of the time at which his or their election shall have taken place, shall come into office on any other day than the first day of any such biennial term as aforesaid, he or they shall remain in office only until the expiration of such biennial term, and no longer, except in the case provided in the ninth section of this Act.

In case of failure or neglect to hold biennial meeting.

11. If it shall happen that, by reason of any failure or neglect, or other cause, the biennial meeting for the general election of commissioners shall not have been duly holden on the first Monday

Digitised by the University of Pretoria, Library Services, 2016

of any month of December, in manner hereinbefore provided, or that at such biennial meeting there shall not have been three commissioners duly elected, or that when the office of any commissioner shall be or have become vacant in any manner aforesaid, the commissioner or commissioners in office shall not, within eight days after such vacancy shall have occurred, have called a meeting of the householders of the municipality to elect a commissioner to fill up such vacancy, then, and in every such case, the Resident Magistrate of Cape Town, or the officer at the time acting as such, shall, so soon as any such event shall have been notified to him in writing by any commissioner or householder, forthwith call a meeting of the householders of the municipality for the purpose of electing a commisioner or commissioners, as the case may be.

Resident magistrate to call meeting for election of commissioners.

12. At every meeting for the election of any commissioner or commissioners, every candidate shall be proposed at the said meeting by some person duly qualified to vote thereat, and shall be seconded by some other qualified person; and every vote which at any such election shall be given for any person who has not been so proposed and seconded shall not be taken into account in such election, but shall be wholly void and ineffectual: And that the votes shall be taken by ballot, and the person or persons having the greatest number of votes shall be elected commissioner or commissioners, as the case may be: Provided, always, that when there shall be only one vacancy to be filled up, and only one candidate shall have been proposed and seconded in manner aforesaid, no vote shall be taken, and such candidate shall thereupon be elected and become commissioner: And provided, also, that when, by reason of any two or more candidates having obtained an equal number of votes, any ballot shall be indecisive as to them, such candidates shall forthwith be ballotted for a second time, and he or they who shall obtain the greatest number of votes shall be elected commissioner or commissioners, as the case may be; but if such second ballot shall also be rendered indecisive, by reason of any equality of votes, the chairman of the meeting shall decide the election by his casting vote; and the commissioners elected at any meeting shall be ranked on the list according to the number of votes by which each shall have been elected, and all other commissioners elected to fill up any vacancy occurring during any such biennial period as aforesaid, shall be ranked on the list after the commissioners holding office at the time of such lastmentioned election: And where two or more commissioners shall have been each elected at the same meeting by the same number of votes, their respective priority on the list of commissioners shall be decided by lot.

Manner of proceeding at election of commissioners.

13. At all meetings of such commissioners, not less than three commissioners shall be a quorum. And be it further enacted, that at the first meeting of the said commissioners, the commissioner to

Quorum of commissioners.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1859.

Chairman to be chosen.

be called and styled the chairman of the board of commissioners shall be chosen by a majority of the votes of the commissioners then present; and the said commissioner so elected chairman shall hold such office until the next succeeding general election of commissioners; and in case of the death, resignation, or other incapacity of such chairman, then a successor shall be forthwith chosen to serve in manner aforesaid, till the then next general election as aforesaid: Provided, however, that if at any meeting of commissioners as aforesaid the chairman shall be absent therefrom, and which absence shall not have arisen from the death, resignation, or incapacity aforesaid, the commissioners then present may choose, by majority of votes, any one of their number to act as chairman for that meeting: Provided, also, that at the first meeting of every successive board of commissioners, to be elected biennially as aforesaid, the commissioners shall, in manner hereinbefore mentioned, with respect to the first board of commissioners choose a chairman to act as such for the term of two years then ensuing; and whenever the votes of such commissioners, including such chairman, are equally divided, the chairman shall have a casting vote.

How, in the absence of chairman.

Chairman elected at first meeting of board to hold office for two years and have casting vote.

Meetings of commissioners, when and how to be held.

14. The said commissioners shall meet at such times as are specified in the municipal regulations for the time being, at some convenient place or office previously publicly notified, with open doors; and, at such meetings, it shall be lawful for any person to appear there and prefer any matter of complaint which he may think proper to make, concerning any matter or thing by force of, or in pursuance of, or under pretence of, the provisions of this Act, or of the municipal regulations.

Special meetings of commissioners.

15. The said commissioners shall meet at all other times, and so often, and at such places, as at any previous meeting shall have been determined; and it shall be at all times competent for any two commissioners, by writing under their hands, upon at least forty-eight hours' notice, to summon the commissioners to meet for any special purpose therein named; and it shall at all times be lawful for any quorum of the said commissioners, who shall have assembled together, although without any such previous notice, to hold a meeting of the municipal board, and then and there to transact any of the business of the municipality, provided that all the commissioners then present shall agree to do so, and that every other commissioner not then present and who shall not be then absent from the municipality at a greater distance than twenty miles, shall have, by writing, under his hand, signified his consent that such meeting of the municipal board shall be holden for the transaction of such business.

Commissioners to receive no fee or reward.

16. No person elected in manner aforesaid a commissioner of the said municipality shall have or receive any salary, or shall exact, take, or accept any fee or reward whatsoever, for or on account of anything done or to be done by him, in virtue of this Act, or relative to putting the provisions of this Act into execution

Digitised by the University of Pretoria, Library Services, 2016

Commissioners may sue and be sued.

17. In any action, or suit, or prosecution 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 property, movable or immovable, vested in the said commissioners, or for or of any other matter or thing relating to this Act, by or against the said commissioners, it shall and may be lawful for the said commissioners to sue or be sued, or to prosecute, by the style or description of "The Commissioners for the Municipality of Green Point." and the secretary of the commissioners may sign all documents necessary for prosecuting any action, suit, or proceeding. Provided, always, that every such commissioner may and shall (if not otherwise interested or objectionable) be a good, examinable, and competent witness in every action, or suit, or prosecution, either for or against the said commissioners; and all the affidavits of debt or service which may be necessary or expedient to be made preparatory to or in the prosecution or defence of any such action, suit, or proceeding, shall and may be lawfully made by any such commissioner; and provided, also, that the said commissioners shall always be reimbursed and paid, out of the moneys to arise by virtue of this Act all such costs, charges, and expenses as they shall be put to or become chargeable with, by reason of bringing or defending such action or suit, and shall not 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 their or any of their own wilful neglect or default.

To be competent as witnesses.

To be reimbursed all costs, unless in case of wilful neglect or default.

Commissioners to frame regulations.

18. The commissioners who shall be elected, in manner aforesaid, to compose the said municipal board, for the term commencing on the passing of this Act and terminating on the first day of January, 1861, shall forthwith proceed to frame and draw up such municipal regulations as they may deem expedient, and shall submit the same, when prepared, to a meeting of the householders of the municipality, to be called by the said commissioners upon seven days' notice: Provided, always, that such commissioners shall submit such regulations to such meeting as aforesaid within two months from the date of their election, otherwise such commissioners shall thereupon, *ipso facto*, vacate their offices, and a new board of commissioners shall thereupon be elected in manner aforesaid, and proceed to frame such regulations in manner aforesaid.

And submit them to meeting of householders within two months after election

Division of municipality into wards, and other matters regarding which regulations should be framed.

19. In such regulations it shall be the duty of the said commissioners to divide the municipality into wards, if it shall be deemed necessary so to do, and to fix the limits of such wards, and to distinguish the same by numbers, and to fix the number, and make rules as to the mode of election of the wardmasters, and as to the duties to be performed by them, and for the classification and valuation of the immovable property therein, and to frame all other regulations which may be necessary to enable the said commissioners to carry into effect the provisions of this Act, or such of

Digitised by the University of Pretoria, Library Services, 2016

No. 14 -1859.

them as the said commissioners shall think expedient and necessary for the municipality.

Regulations, how to be adopted by meeting of householders.

20. At the meeting to which such regulations as aforesaid shall be submitted, the question shall be put by the chairman on each and every clause contained in such regulations, *seriatim*, and afterwards, on the whole of such clauses as have not been disapproved of and rejected by such meeting, jointly; and the majority of votes shall decide whether such clause, or the whole of such regulations, as the case may be, shall or shall not be adopted.

Regulations, how to be made valid.

21. The regulations adopted at such meeting shall first be published in the *Government Gazette* for fourteen days, for general information, and then be transmitted by the said commissioners to the Governor of the Colony for the time being, for the approval, amendment, or disallowance thereof, of the said Governor, by and with the advice of the Executive Council; and in case such regulations shall be approved, notice of such approval shall be given by proclamation to be made in that behalf; and the said regulations shall be published in the *Government Gazette*, and shall thereupon become as legal, valid, and effectual as if the same had been inserted herein: and in the event of the said regulations being amended by the said Governor, by and with the advice of the Executive Council, the regulations, so amended, shall forthwith be transmitted to the said commissioners, who shall forthwith, upon a notice of not less than seven days, call a meeting of the householders of the municipality, who shall, by a majority of votes, decide whether the said regulations so amended shall be adopted or not: and if the regulations be adopted, the said commissioners shall forthwith communicate such adoption to the said Governor, who shall forthwith give notice thereof by Proclamation, and cause the same to be published in the *Government Gazette*, and upon such publication, the same shall become as legal, valid, and effectual as if the same had been inserted herein: Provided, always, that nothing contained in such regulations, or in any of the regulations mentioned in the twenty-second and twenty-third sections of this Act, shall be repugnant to, or inconsistent with, the true intent and meaning of the provisions of this Act.

In case regulations be disallowed, commissioners to frame new regulations.

22. If the said regulations, when submitted to the said Governor, shall be disallowed by him, by and with the advice of the Executive Council, or if such regulations, after being amended by the Governor, by and with the advice of the Executive Council, shall not be adopted by the majority of votes at the meeting of the householders of the municipality aforesaid, then, and in every such case, the commissioners shall again, *de novo*, frame other municipal regulations; and the like proceedings shall be taken for having the same submitted to and adopted by, and when amended by the Governor, decided upon by the householders of the municipality, and submitted to, and approved or amended by the said Governor, by and with the advice of the Executive Council, as by the provi-

Digitised by the University of Pretoria, Library Services, 2016

sions of the twenty-first section of this Act are prescribed to be taken as to the municipal regulations therein mentioned; and so on, until such regulations as have been adopted by the householders in manner aforesaid shall have been approved of by the said Governor in manner aforesaid, or when amended by him in such manner, shall have been adopted by such householders in manner aforesaid.

Regulations, how to be amended, reformed, or repealed.

23. At any time within one month after the expiration of each and every term of ten months from the publication of any such regulations as aforesaid, and at any other time, when such commissioners shall have obtained the consent of the said Governor so to do, it shall be lawful for the said commissioners, and they are hereby required, upon a requisition made to them in writing to that effect, by any number of such householders as aforesaid, not less than ten, to call a meeting of such householders as aforesaid, upon seven days' notice, to be given in manner aforesaid, for the purpose of adding to, amending, or repealing the existing regulations, or any of them, by a majority of persons present and entitled to vote at such meeting; and the said regulations, after being so reformed, shall be first published in the *Government Gazette*, for fourteen days, and then transmitted by the said commissioners to the Governor, for the approval or disallowance thereof, or of any part thereof, by the said Governor, by and with the advice of the Executive Council; and such of the said reformed regulations as shall be approved of shall be published in the *Government Gazette* forthwith, and proclamation of such approval shall be made, and the said reformed regulations, so approved of as aforesaid, shall thereupon become as legal, valid, and effectual as if the same had been inserted herein, and the former regulations shall become null and void, in so far as the same have been altered or repealed by any such reformed regulations, so approved of as aforesaid.

Reformed regulations to be published in *Gazette*, and former regulations repealed.

Commissioners to appoint treasurer and other officers, and may remove them.

24. It shall be lawful for the said commissioners for the time being, and they are hereby authorised and required, to appoint during pleasure, such Treasurer and other officers as shall be specified in any such regulations, and to remove and displace the same.

Treasurer to give security.

25. It shall be lawful for the said commissioners, and they are hereby required, to take security from the Treasurer to be appointed by virtue of this Act, for the due execution of his office of Treasurer, according to the true intent and meaning of this Act, which security shall be to the full amount of the sum likely to be in the hands of the said Treasurer at any one time. And in case any such Treasurer shall neglect or refuse, for the space of three weeks next after his appointment, to give or offer such security to the satisfaction of the said commissioners, then the appointment of every such person so neglecting or refusing, shall be null and void to all intents and purposes, and the said commissioners shall, within three weeks then next, assemble and appoint some other fit

How, if he fail to do so.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1859.

and proper person to the office of Treasurer, instead of the person so refusing or neglecting as aforesaid; and shall so assemble and appoint, from time to time, until security shall be given to their satisfaction as aforesaid.

Treasurer and other officers to render accounts to commissioners.

26. Every such Treasurer and other officer appointed by virtue of this Act shall, under his hand, and at such time or times, and in such manner as the said commissioners shall direct, deliver to the said commissioners, or such person as they shall appoint, true and perfect accounts, in writing, of all matters and things committed to his charge by virtue of this Act, 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 purpose, together with proper vouchers for such payments; and that every such officer shall pay all such moneys as shall remain due from him to the Treasurer for the time being, or to such person or persons as the said commissioners shall appoint to receive the same: and if any

How, in case of refusal or neglect.

such Treasurer, officer, or other person shall refuse or neglect to make and render such account, or refuse to deliver up the vouchers relating to the same, or to make payment as aforesaid, or shall refuse or wilfully neglect to deliver to the said commissioners, or to such person or persons as they shall appoint to receive the same, within three days after being thereunto required by the said commissioners, by notice in writing under their hands given to or left at the last or usual place of abode of such officer, all books, papers, and writings, in his custody or power relating to the execution of this Act, or to give satisfaction to the said commissioners, or such other person or persons as aforesaid, respecting the same, then, and in every such case, upon complaint made by the said commissioners, or by such person or persons as they shall appoint for that purpose, of any such refusal or wilful neglect as aforesaid, to the Supreme Court, or any Judge thereof,—the said Court or Judge shall, if they or he shall see fit, summon the officer so refusing or neglecting to appear before him; 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, relating to the execution of this Act, remained in the hands or in the custody or power of such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as

Digitised by the University of Pretoria, Library Services, 2016

aforesaid, then, and in every such case, such Court or Judge shall, and they or he are or is hereby required to commit such offender to the common gaol or house of correction of Cape Town, 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 said commissioners, or to such other person or persons as aforesaid, or until such other or further time as the said Court or Judge shall direct: Provided that nothing herein contained shall prevent such Treasurer, officer, or other person from 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 said commissioners from bringing their action for the recovery of any sum or sums due by such Treasurer, officer, or other person to the said municipality.

Defaulter may be prosecuted criminally.

Sums deficient may be recovered from him at law.

27. No prosecution or commitment under the provisions of this Act, of any Treasurer or other officer or person, to be appointed under the powers of this Act shall acquit and discharge any surety or security that shall or may have been taken by, or given to, the commissioners for the due and faithful execution of his or their office, of the payment of the moneys received or to be received by him or them respectively.

Prosecution of treasurer or other officers not to acquit their sureties.

28. All acts, orders, and proceedings of the said commissioners, at any of their meetings, shall be entered in a book to be kept by them for that purpose, and shall be signed by the chairman, or person acting as such, and one of the commissioners then present; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings; and such books shall and may be produced and read as *primâ facie* evidence of all such acts, orders, and proceedings, upon any appeal, or trial, or information, or any proceeding, civil or criminal, and in any Court within this Colony.

Commissioners to keep records of proceedings.

29. The said commissioners shall, and they are hereby required, from time to time, to order and direct a book or books to be provided and kept by such person and at such place as they shall from time to time appoint, in which shall be entered true and regular accounts of all sums of money received, paid, 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 book or books shall, at all reasonable times, be open to the inspection of the said commissioners, and of every such householder as aforesaid, without fee or reward; and the said commissioners and other persons aforesaid, or any of them may take copies of or extracts from the said book

To keep accounts of money received and expended, which shall be open to inspection.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1859.

or books without paying for the same; and in case the said commissioners, or any of them shall refuse to permit, or shall not permit, the persons aforesaid to inspect the same, or take copies or extracts as aforesaid, such commissioners or commissioner shall each forfeit and pay any sum of money not exceeding five pounds for each default, to be levied and applied in manner hereinafter provided.

Annual account to be rendered and published.

30. 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 in every year; and a copy or duplicate of such account, verified by the said Treasurer, and certified by the chairman and one of the said commissioners, shall be deposited with the said commissioners, and shall be open to the inspection of any householder of the municipality, or any party interested, and an abstract thereof published in the *Government Gazette* for general information, before the fifteenth day of the said month of January.

Rates, how to be assessed.

31. It shall and may be lawful for the said commissioners, when they shall see fit, and they are hereby required, upon a requisition made to them in writing to that effect, by any number of householders of the said municipality, not less than ten, to call a meeting of such householders, for the purpose of assessing any such rate or rates on the immovable property situated within the municipality, and to endure for such period, not exceeding twelve months, as the majority of persons present and entitled to vote at such meeting shall deem necessary for all and any of the purposes of this Act:

Meeting of householders.

Rates for particular wards.

Provided, always, that when it shall at any time be deemed to be necessary or expedient to assess any rate for the purpose of defraying the expense of lighting or watching any particular ward or wards, or any portion of such ward or wards, or any particular district of the said municipality, or of procuring for the use of the inhabitants thereof any additional supply of water other than that to be furnished from the Cape Town waterworks, in manner hereinafter mentioned, every such rate shall be assessed solely and exclusively on the immovable property situated within the ward or wards, or portions thereof, or the particular district so to be lighted or watched, or for the use of the inhabitants of which such supply of water is to be furnished, unless such meeting shall decide and appoint, by a majority of not less than three-fourths of the votes of the persons present and entitled to vote thereat, that the rate for defraying the expense of any such lighting or watching shall be assessed on the immovable property situated elsewhere within the municipality: Provided, also, that nothing herein contained shall prevent any person who feels himself aggrieved by any such assessment from appealing therefrom to any Court having jurisdiction.

Rates when due, may be collected by a collector.

32. The rates to be levied by virtue of this Act shall become due and be payable within fourteen days after the same shall have

Digitised by the University of Pretoria, Library Services, 2016

been assessed in manner aforesaid, and that it shall and may be lawful for the said commissioners to appoint a collector for the purpose of collecting the amounts due and payable upon the property so assessed; and the said collector is hereby authorised to demand and receive the amounts so to be collected: Provided, always, that the said collector shall be furnished with an order under the hands of the said commissioners, or any two of them, directing the said collector to levy the amount mentioned in the said order; and provided, also, that the said order shall specify the rate in the pound at which the sum mentioned therein shall be computed.

Collector to pay over sums collected to treasurer.

33. The said collector to whom any such order as aforesaid shall be issued shall pay over the amount collected under such order to the Treasurer, to be appointed in the said municipality under this Act, within forty-eight hours after the receipt of any sum so collected by such collector, from the person by whom such sum was paid; and at the time of making any payment to the said Treasurer the said collector shall deliver to him a note in writing, signed by him, specifying the amount so paid, which note shall be kept by the Treasurer as a voucher for his receipt of that particular amount; and the receipt of the said Treasurer specifying the amount paid him by the said collector shall be a sufficient discharge to the collector for such amount, and shall be allowed as such in passing his account with the municipality.

Watchmen may be appointed by commissioners.

34. It shall be lawful for the said commissioners (acting in pursuance of any municipal regulations to that effect), and they are hereby empowered, from time to time to appoint and employ such number of watchmen as shall be sufficient for the proper protection of the inhabitants, houses, and property within the limits of the municipality, by day and night, and provide all such watchmen with such clothing, arms, ammunition, and weapons, and to assign to them such duties, and appoint such hours for them to be on duty, and also to fix their monthly pay, salary, or allowance; and from time to time to make such regulations, relative to them and their duties as shall be deemed fit; and also to cause such a number of watch-houses to be provided as shall be necessary for the purposes aforesaid, within the limits of the municipality.

Watchman to act as constables.

35. All watchmen, while in execution of the powers and authorities of this Act, shall act as constables, and they are hereby invested with, and shall have and enjoy, the like powers and authorities, privileges and immunities, and shall be subject and liable to such and the like penalties and forfeitures as any constable or constables is or are invested with or shall or may have and enjoy, or is or are, or shall be subject or liable to by law.

Commissioners to keep up fire-engines.

36. It shall be lawful for the said commissioners (acting in pursuance of any municipal regulations to that effect), and they are hereby empowered, from time to time, to keep up fire-engines

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1859

for the use of the municipality, and to make such further regulations thereon as they shall think necessary.

To put up lamp-posts and lamps in the roads and streets

37. It shall be lawful for the said commissioners (acting in pursuance of any municipal regulations to that effect), and they are hereby empowered, from time to time, to cause such lamp-irons or lamp-posts, or other posts, to be put or be fixed upon or against the walls or palisades of any houses, tenements, buildings or enclosures (doing as little damage as may be practicable thereto), or to be put up or erected in such other manner, within any of the roads, streets, and places within the limits of the said municipality as shall be deemed proper; and also to cause such number of lamps of such sizes and sorts to be provided and affixed and put upon such lamp-irons and lamp-posts as shall be necessary for lighting any such roads, streets, and places, and cause the same to be lighted during such hours as shall be necessary; and also, from time to time, to make such regulations thereon as they shall find necessary.

To build, repair, and remove bridges.

38. The said commissioners shall, and they are hereby empowered to cause to be made, erected, and built, and covered in, such bridges, watercourses, drains, and ditches as now are or shall be deemed necessary within the municipality, and cause the same to be kept at all times in good and sufficient repair; and to remove such of the same as shall be deemed unnecessary, and from time to time to make such regulations thereon as they shall find necessary.

Proprietors of immovable property to give notice when selling such property.

39. Every proprietor of immovable property within the said municipality shall be bound, and such proprietor is hereby required, in case of sale and disposal by him of immovable property within the said municipality, to give notice in writing of such sale and disposal to the secretary of the said municipality, and such notice in writing shall be given within thirty days after transfer of such immovable property shall have been executed in the office of the Registrar of Deeds in the name of the purchaser or purchasers thereof; and if such proprietor shall neglect to give such notice, he shall continue liable for the amount of any rate which shall have been assessed on such immovable property, and it shall be lawful for said commissioners, and they are hereby empowered, to sue such proprietor before any competent Court, and to obtain the judgment and process of such Court for the recovery of the same.

Commissioners to make and repair roads.

40. It shall be lawful for the said commissioners, and they are hereby empowered, to cause the roads within the limits of the municipality to be at all times kept in good and sufficient repair, and, as occasion shall require, to cause such new roads to be made within the limits aforesaid, as may be legally made and shall be necessary for the public use, and to be kept at all times in like good and sufficient repair, and from time to time to make such regulations thereon as to them shall seem fit. And that for this purpose, it shall be lawful for the said commissioners to cut drains

Digitised by the University of Pretoria, Library Services, 2016

for conveying water from off the said roads into any common land or other land lying between the said roads and the sea, whether within or without the said municipality, wherever the same may be necessary or requisite; and also to take, gratis, from any of the said common land within or without the said municipality, materials for the repair and improvement of the said roads: Provided, always, that no such drain shall be carried across the race-course at Green Point, or shall be carried under any house, now erected or hereafter to be erected, or through any garden now enclosed, or hereafter to be enclosed, without the consent of the proprietor thereof, and that such materials shall always be taken in such manner as that no injury be thereby done to the said race-course, and that the gravel pits or holes be properly fenced in or enclosed whilst the material is being extracted, and that the said pits or holes be filled and levelled within the period of fourteen days from the cessation of such works; on failure of which the party so extracting and neglecting to fill up the holes, or the commissioners of the municipality, under whose orders he may be acting, shall become liable to a penalty not exceeding five pounds, and which may be recovered before any competent Court by any party or parties suing for the same.

Race-course not to be injured.

41. Whenever any road now exists or shall hereafter be made, leading from any public road within the municipality, across any drain appertaining to such public road, it shall be lawful for the said commissioners, and they are hereby empowered, either to cause a bridge to be made over the drain, where it is so crossed by, or to pave it to the extent of the breadth of such road so crossing it, as they shall consider to be most expedient, at the expense of the proprietor or proprietors, for affording access to whose property such last mentioned road shall be used; and to make such regulations for having all such bridges kept in such repair as to occasion no stoppages in or injury to any such drain, and to cause all accumulations of sand or other obstructions of such drain under any such bridge, or at any such crossings, to be removed at the expense of such proprietor or proprietors; and also to remove, or cause to be removed, any pond, reservoir, or accumulation of water, situated on any ground adjacent or near to any such public road, whereby injury is occasioned to any such road, at the expense of the proprietor or proprietors of such ground. And if the amount of any such expense shall not be by him or them paid within fourteen days after demand, the commissioners are hereby empowered to institute proceedings at law for the recovery thereof.

To build bridges over drains appertaining to public roads, when crossed by private roads.

42. It shall be lawful for the said commissioners (acting in pursuance of any municipal regulations to that effect), and they are hereby empowered, from time to time, as occasion may require, to keep up or establish within the limits of the said municipality, a market or markets for the sale of cattle, meat, fish, poultry,

To establish markets, keep them in repair, and regulate their cleanliness.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1859.

vegetables, fruit, and the like; and to cause suitable houses or buildings to be built and erected for the convenience of persons attending, holding, and superintending such market or markets, and to cause the same to be kept in good and sufficient repair; and also, to 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.

To examine weights and measures, and assize bread.

43. It shall and may be lawful to and for the commissioners, and they are hereby empowered, from time to time, to make necessary rules for the due and proper care of weights, measures, and the quality and assize of bread, and the quality of meat; and they are hereby empowered, at all times, to visit and enter into the shops or places, where bread, meat, and other articles are sold, for the purpose of assizing the bread and examining the weights and measures; and also of taking proper care that the bread and meat sold are good and wholesome.

Property in lamps, &c., vested in commissioners, who may sue and prosecute in respect of damage done thereto.

44. The property of and in all the lamps, lamp-irons, lamp-posts, watch-houses, watch-boxes, bridges, sluices, dams, market-houses, pipes, posts, chains, pales, and rails, in, about, or belonging to the said roads, and places within the limits of the said municipality, and of and in all iron, timber, stone, bricks, and other materials, and furniture and things, of, in, and belonging thereto (except when the same shall be otherwise regulated by contract with the said commissioners), shall be, and the same is hereby vested in the said commissioners, 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 said commissioners are hereby authorised and empowered to bring or cause to be brought, any civil or criminal action, in manner as hereinbefore or hereinafter is 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 hereby vested in the said commissioners, subject, however, to the provisions of the Ordinances Nos. 40 and 73, or of any law or Ordinance which may hereafter be created, or then be in force in that behalf. And in all such actions 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 shall be brought, is the property of the commissioners, without particularly stating or specifying the name or names of all or any of the commissioners.

Persons injuring property vested in commissioners to be punished.

45. If any person shall wilfully break, throw down, spoil, or damage, any watch-house or watch-box, or 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 by the provisions of this Act vested in the said commissioners, or shall wilfully break or damage any public watercourse, drain, or ditch within the limits

Digitised by the University of Pretoria, Library Services, 2016

of the said 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 or offenders, and by the authority of this Act, and without any warrant, to deliver him, her, or them to any constable, who is to keep him, her, or them in safe custody, and with all reasonable dispatch to convey him, her, or them before the Resident Magistrate of Cape Town; and if the party accused shall be convicted of any such offence by such Resident Magistrate, he, she, or they shall forfeit, severally, any sum not exceeding two pounds for every such offence, and shall also make full satisfaction for the damage which shall have been done thereby; 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 purposes of this Act; and in case any such offender shall not, on conviction, pay the said forfeiture and satisfaction, such Magistrate is hereby required to commit him, her, or them to the common gaol or house of correction, there to be kept to hard labour, if such Magistrate shall so order, for any term not exceeding three calendar months, unless such forfeiture and satisfaction shall be sooner paid: Provided that nothing herein contained shall prevent the commissioners 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.

Proceedings, where injury is done carelessly or accidentally

46. If any person shall carelessly or accidentally do any such damage or injury as hereinbefore is mentioned, and shall not, upon demand, make satisfaction to the said commissioners 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 commissioners, or any two of them, to summon the party complained of, and upon the hearing the parties upon 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 said commissioners, for such damage, 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 to be levied and recovered in other cases: Provided, however, that nothing herein contained shall prevent the commissioners 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.

Commissioners may abate nuisances.

47. It shall be lawful for the said commissioners, and they are hereby authorised, 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 the

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1859.

right 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, as for the abatement thereof, and for any damages thereby occasioned; and, further, that the said commissioners shall, and they are hereby required to cause all 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 complaint made by the commissioners to the Resident Magistrate, of throwing dirt, filth, or rubbish into any such road, watercourse, drain, or place as aforesaid, shall forfeit and pay any sum of money not exceeding five pounds; 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 other penalty or forfeiture is by this Act directed to be levied and recovered in other cases.

Commissioners may enter into contracts.

48. It shall be lawful to and for the said commissioners, acting in pursuance of any such regulations as aforesaid, from time to time to 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 said commissioners for the purposes of this Act, 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, and shall be signed by two or more of the said commissioners, 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; but no contract beyond the value of one hundred pounds shall be entered into, unless eight days' notice be previously given in the *Government Gazette*, and affixed to some conspicuous place within the municipality, 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 said commissioners at a certain time and place in such notice to be mentioned: Provided, always, that if such commissioners shall be of opinion that it will not be advantageous to contract with the person offering the lowest price, it shall be lawful for the said commissioners to contract with such other person or persons as they shall think proper: Provided, however, that no commissioner shall be allowed, either directly or indirectly, to become a contractor, or to tender for any contract, either in his name, or in the name of, or jointly with, any other person, on pain of forfeiture of all his share and interest in such contracts, for the benefit of the municipality, and be considered to have vacated his office of commissioner, *ipso facto*, and to be ineligible to be elected at any future period to serve as a commissioner.

May hire houses or lands for the purposes of this Act.

49. The said commissioners, acting in pursuance of any such regulations as aforesaid, may, and they are hereby authorised and empowered to treat with the owner or owners and occupier or

Digitised by the University of Pretoria, Library Services, 2016

occupiers of any houses or buildings, lands, and grounds, for the purpose of this Act, for such sum of money or yearly rent, or for such time as to them shall appear reasonable.

Property in lands, &c., vested in commissioners.

50. The property of and in all lands, roads, and buildings to which inhabitants of the municipality of Green Point shall at any time have or acquire a common right, shall be vested in the commissioners of the said municipality for the time being.

Commissioners to make regulations as to care of pasture lands, and to establish pounds.

51. It shall be lawful for the said commissioners, and they are hereby empowered, from time to time, if necessary and expedient, to make rules for the due and proper care of the common pasture lands within the municipality, and therein to specify and regulate the quantity of cattle which each inhabitant shall be allowed to keep and depasture on the said common lands, and of what kind; and also to impose fines on any person contravening such regulations, and to establish and erect one or more pounds within the said municipality, and to appoint one or more poundmasters, and to make all such pound regulations as shall be necessary or expedient.

Commissioners may with consent of ratepayers and approval of Governor, sell or lease lands.

52. It shall be lawful for the commissioners for the time being of said municipality to sell or lease, as they may consider most expedient, any lands to which the inhabitants of Green Point and Sea Point shall at any time have or acquire a common right, or any lands which may be the property of the said commissioners in their said capacity, and apply the proceeds to the purposes of the said municipality: Provided that the said commissioners shall not be authorised or permitted to sell any such lands, or to lease any such lands for any term longer than five years, without having first obtained the consent of a majority of ratepayers at a public meeting called for that purpose, after a notice of fourteen days duly given in the *Government Gazette* of such sale or lease, and without having also obtained the consent of the Governor, acting with the advice of the Executive Council: And provided that all such lands shall, when sold, be sold by public sale, and that all leases of such lands for any term not exceeding five years shall be granted or disposed of in such manner and under such conditions as the said commissioners shall propose, and the said majority of ratepayers shall approve of.

May raise loans on credit of rates.

53. It shall be lawful for the commissioners for the time being of said municipality, if it should be found necessary so to do, to raise, by way of loan, on the credit of any rates to be assessed by the said commissioners, any such sum or sums of money as may, at any time, be required by said commissioners for the time being for carrying into effect the objects of this Bill: Provided, always, that no such loan shall be effected, unless the object and amount thereof shall have been published fourteen days previous in the *Government Gazette;* and provided permission to conclude such loans shall have been received from a majority of ratepayers at a public meeting called for that purpose, after a notice of fourteen

Digitised by the University of Pretoria, Library Services, 2016

No 14—1859.

days duly given in the *Government Gazette*, and having previously obtained the sanction of the Governor and Executive Council to borrow any sum exceeding one thousand pounds: Provided, always, that the said commissioners for the time being shall, in every case in which such loan shall have been approved of in manner aforesaid, call for tenders for the loan of the sum or sums of money required, and shall accept the tender which specifies the lowest rate of interest; and provided, also, that every sum so borrowed shall be paid out of the proceeds of the rates hypothecated with all convenient speed: Provided, further, that the loan or loans in existence shall not at any time exceed five thousand pounds sterling.

Proprietors within municipality to have a right to pasture cattle on common pasture lands.

54. The proprietors and inhabitants of or on any lands situated within the municipality of Green Point, and being within one quarter of a mile of the common pasturage land lying between the Somerset and Green Point Road and the sea, and without the municipality of Green Point, shall at all times, and in whomsoever the property or administration of such common pasture land shall for the time being be vested, have right and be entitled to pasture their cattle thereon, on the same or on as favourable terms and conditions, and under such and the same regulations as the inhabitants of Cape Town, or any part thereof, shall, for the time being, be entitled to pasture their cattle thereon.

Inhabitants of Green Point to be supplied with water from waterworks for supply of Cape Town

55. ([1]) The inhabitants of the said municipality of Green 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, in whomsoever the property, management, or administration of any such waterworks shall, for the time being, be vested, with a supply of water, in the same proportions, on the same terms, at the same rates, 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 that, in consideration of such water rates so to be paid by the inhabitants of the municipality of Green Point as aforesaid, the community or communities, person or persons, in whom the property, management, or administration of such waterworks as aforesaid shall for the time being be vested, 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; and also the four fountains or pumps connected with the said main pipe now existing, or as many of them as from time to time shall be necessary for the due supply of water to the inhabitants of the said municipality of Green Point.

[1] See also §§ 118 *et seq* of Act 26, 1893.

Digitised by the University of Pretoria, Library Services, 2016

Neither commissioners nor inhabitants to have property in, or management of, such waterworks.

56. Provided, always, that neither the said commissioners nor any of the inhabitants of the municipality of Green Point shall have any property in, or any management of, any pipes, pumps, or other machinery now used, or which may hereafter be erected, provided, or used by the community or communities, person or persons, in whom the property, management, or administration of such waterworks as aforesaid, for the purpose of furnishing and providing from the said waterworks a supply of water to the inhabitants of the said municipality in manner aforesaid. And that the property, management, and administration of such last-mentioned pipes, pumps, and other machinery shall be vested in such community or communities, person or persons, as aforesaid.

Commissioners to make regulations as to water procured from other sources.

57. It shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered, from time to time, to provide and to carry and lay any pipe or pipes for the conveyance of water, to which the inhabitants of the municipality shall at any time have or acquire a common right (not being water supplied in manner aforesaid from any such waterworks as aforesaid), from any reservoir, river, or spring, to any house, building, or other place within the limits of the municipality; and the said commissioners shall acting in pursuance of any such regulations as aforesaid and they are hereby authorised from time to time to make such regulations touching the quantity of water (not being water so supplied in manner aforesaid from the aforesaid waterworks) to be supplied to the inhabitants, and the time or times at which such supply is to be received, as shall be proper and necessary.

Seven days' notice to be given of all meetings of householders.

58. Every meeting of the householders of the municipality hereinbefore appointed or authorised to be called by the Resident Magistrate for Cape Town, or by the commissioners of the said municipality, shall be called, and that the hour and place at which shall be holden the meetings appointed to be holden in the seventh section of this Act, shall by the said commissioners be notified by advertisements, to be published in the *Government Gazette* of this Colony, not later than the seventh day previous to the day on which such meeting shall be appointed to be holden: Provided, always, that in the event of any sudden and unforeseen emergency, it shall be lawful for the said commissioners to call a meeting of the householders of the municipality, on notice of not less than one clear day to be given by them, by written or printed notices, posted on conspicuous places within the municipality, or by advertisements published in the said *Gazette*, or in any newspaper published in Cape Town, or by writing shown to or left at the dwelling-house of every householder residing within the municipality. And every such notice, notification, and advertisement shall specify the purpose or purposes for which any such meeting shall be holden.

Except in cases of sudden emergency.

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1859.

At such meetings, chairman to be elected and to have casting vote.

59. At any of the meetings hereinbefore mentioned and appointed, or authorised to be holden, such householder as may be elected by the majority of persons present and entitled to vote shall preside as chairman, and shall, notwithstanding, be entitled to vote as he might have done had he not been elected chairman, and shall, when the votes of the meeting are equally divided, also have a casting vote.

No female to vote or hold office.

60. No proprietor, renter, householder, agent, or other person, being a female, shall be entitled to vote at any meeting of householders of the municipality of Green Point, or to be proposed as a candidate for, or to be elected to hold, any office created or established under the provisions of this Act.

Inhabitants or proprietors to be deemed competent witnesses.

61. No inhabitant of or proprietor of property within the said municipality shall on that account be deemed an incompetent witness in any action, suit, or information, complaint, appeal, prosecution, or proceedings, to be had, made, prosecuted, or carried on under the provisions of this Act.

Occupier or proprietor may be sued, or either of them, for amount of any rate.

62. If the amount of any rate which under the provisions of this Act shall have been assessed on any immovable property within the said municipality shall not, on demand made by the person duly authorised to collect the same, be paid by the occupier of such property, or by the proprietor thereof, it shall be lawful for the said commissioners, and they are hereby empowered, to sue, either the said occupier or the said proprietor 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 and proprietor respectively such relief against each other as they may be lawfully entitled to: Provided, always, that no person shall, as occupier of any such immovable property, be liable to pay or to be sued for any rate which had been assessed on the same, in respect of any period, or which had become due and payable at any time, before such person entered on the occupation of such property. And that every person who, as occupier of any such property, 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 such person shall have ceased to occupy such property: And provided, also, that the payment of any rate assessed on and due in respect of any such immovable property as aforesaid, by either the proprietor or occupier of the same, shall free and discharge the other from all claim and demand for the payment of such rate.

Punishment of offences in contravention of this Act.

63. All offences committed in contravention of this Act, or of any municipal regulation made under the authority thereof, may lawfully be prosecuted by the said commissioners, in manner hereinbefore provided, in the Court of the Resident Magistrate for Cape Town; and if any person shall be duly convicted of any such offence, and shall not pay or satisfy the amount of the fine

Digitised by the University of Pretoria, Library Services, 2016

imposed upon him or her, it shall be lawful for the said Resident Magistrate to sentence such offender to any period of imprisonment not exceeding three months. And that where it has hereinbefore been enacted and provided that any such offence as aforesaid shall be punishable by fine, and the amount of such fine has not been specified, it shall be lawful for the said Resident Magistrate to sentence any person who shall be duly convicted of any such offence to pay a fine of not less than five shillings nor exceeding five pounds; and the amount of all such fines when recovered shall be paid to the Treasurer of the municipality for the time being, for the purposes of this Act: Provided, always, that the said commissioners may award so much of every such fine as they may deem fit, to be paid as a reward to any person who may have given information concerning the offence in respect of which such fine was imposed, or who may have apprehended the offender.

Act not to affect private rights.

64. Nothing herein contained shall extend, or be construed to extend, to injure or impair the rights or property which any person or persons may have in, to, or in respect of any of the matters aforesaid; and in every case in which any such commissioners as aforesaid shall commit any act under and by virtue of this Act, or of any municipal regulation, by which the right or property of any person or persons is injured or impaired, such commissioners shall be liable to make compensation to such person or persons for the same: Provided, always, that nothing herein contained shall be deemed, construed, or taken to extend to render the said commissioners personally, or any of their goods and chattels (other than such as may be vested in them in pursuance of this Act), liable to the payment of any sum of money, as or by way of compensation or satisfaction, in the cases in which such compensation or satisfaction is hereby directed to be made by the said commissioners.

Expenses incurred in 1859, for repairs to public road, and expenses of carrying this Act into effect, to be paid out of moneys levied under this Act.

65. All the necessary costs, charges, and expenses incurred during the year 1859, by the proprietors and inhabitants of the said municipality, for or in respect of any proceedings by them had for the purpose of having better and more effectual provision made for the repairs of the public road within the districts of Green Point and Sea Point, or in anywise incurred, touching and concerning this Act, as also all the necessary costs, charges, and expenses attending the carrying the provisions of this Act into effect, shall be paid out of the money authorised to be received by the commissioners under the provisions of this Act.

Laws repugnant to this Act repealed, as far as repugnant thereto.

66. The Ordinance No. 34, entitled "An Ordinance for dissolving the Burgher Senate"; the Ordinance No. 48, entitled "An Ordinance for establishing an Executive Police in Cape Town and the district thereof, and for consolidating and amending the Laws and Regulations relating thereto"; the Proclamation bearing date the 1st of April, 1814; the Ordinance No. 55, entitled "An Ordinance for regulating and defining the mode of Collecting Taxes

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1859.

and rates in Cape Town and the district thereof, and for constituting a general survey of the same"; and the Ordinance No. 57, entitled "An Ordinance for repealing certain taxes and duties, and imposing certain others in lieu thereof;" shall, in so far as the same, or any of the provisions thereof, are repugnant to or inconsistent with any of the provisions of this Act, be repealed, and the same are, to such extent as aforesaid, hereby repealed accordingly.

No. 15—1859.] [July 8, 1859.

ACT

To Amend the Law relating to the Rehabilitation of Insolvents. (1)

Preamble.

WHEREAS it is expedient to amend the law relating to the rehabilitation of insolvents: Be it enacted by 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 117, Ordinance 6, 1843, repealed.

1. The 117th section of the Ordinance No 6, 1843, entitled "Ordinance for regulating the due collection, administration, and distribution of Insolvent Estates within this Colony," is hereby repealed.

When and how insolvent may apply for his discharge.

2. Any insolvent may, after the third meeting of the creditors called by the Master of the Supreme Court, according to the provisions of the said Ordinance in that behalf, and after the examination of such insolvent (should such examination have been applied for and ordered), apply to the Supreme Court, by motion, for his discharge: Provided, however, that no such motion shall be made before the expiration of six months from the date of the making of the order of sequestration.

How notice of motion to be made.

3. Not less than six weeks' notice of the day on which such motion is to be made shall be given by advertisement in the *Government Gazette*, provided that notice in writing of such motion shall be given to the trustee of the insolvent, and in any other manner which the Supreme Court, by any such rule or order thereof as is hereinafter mentioned, shall provide.

Insolvent may apply for discharge when proceedings in section 32, Ordinance 6, 1843, have taken place.

4 Where, in consequence of the goods and effects of the insolvent being under the value of seventy-five pounds sterling, the proceedings, in such case, directed by the thirty-second section of the Ordinance aforesaid, shall have taken place, it shall be lawful for such insolvent at any time, not being less than six months after the first and final meeting in the said section mentioned, to apply, by motion as aforesaid, for his discharge.

Certificate of creditors, consenting to discharge, not necessary.

5. No certificate of or from the creditors of any insolvent, or any majority of them, testifying their consent to his discharge shall be

[1] This Act is repealed by § 14, Act 38, 1884, but is reprinted in view of the second proviso to that section.

Digitised by the University of Pretoria, Library Services, 2016

necessary in order to entitle such insolvent to obtain his discharge: Provided that every insolvent may support the motion for his discharge by producing to the Court a certificate in writing, signed by his creditors, or any of them, testifying their consent to his discharge: Provided, also, that no such motion shall be capable of being made until such insolvent shall have given sufficient security, in the sum of twenty-five pounds, for the payment of the costs of any person who may appear to oppose such discharge, and to whom the Court shall see fit to award his costs against the said insolvent: And provided that it shall be lawful for the said Court, by any such rule or order thereof as is hereinafter mentioned, to regulate the manner of giving such security, and to nominate the officer to whose satisfaction it shall be given: Provided, also, that the Court may, upon cause shown to its satisfaction by any insolvent, dispense with such security.

How, in regard to creditors opposing the discharge.

6. Every insolvent applying to the Court, as aforesaid, for his discharge shall make oath in writing that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, or made or promised any payment, or entered into any secret or collusive agreement or transaction, with intent to persuade his trustee or trustees, or any creditor, to forbear opposing such insolvent's discharge by the said Court.

Insolvent applying for discharge, to make oath that surrender of estate has been full and fair.

7. Upon the day fixed for the hearing of such motion, the trustee or any of the creditors of the insolvent may appear, in person or by counsel, and oppose the granting of the discharge aforesaid, and the Court, having regard to the conformity of the insolvent to the insolvent law, and to his conduct, whether a trader or not, before as well as after the sequestration of his estate as insolvent, shall, whether the discharge of such insolvent be opposed by the trustee or any creditor or not, judge of any objection against granting such discharge, and either find the insolvent entitled thereto, or refuse or suspend the granting of the same, or annex such conditions thereto as the justice of the case may require: Provided, always, that in case any insolvent shall apply for his discharge within four years after having obtained a former discharge in insolvency, then the Court shall not entertain such application unless three-fourths of his creditors, in number and value, certify their assent to the making of such application.

Trustee or creditors may appear and oppose granting of discharge.

Consent of three-fourths of creditors required, when application for discharge is made within four years after a previous one.

8. It shall be lawful for the Supreme Court, by any rule, order, or regulation thereof made in manner and form as are in the Act No. 26, 1856, set forth, to fix and determine the course of procedure upon such motions as aforesaid, for the discharge of insolvents, and to provide by such rules, orders, or regulations for taking evidence in the country districts in cases in which such evidence shall be required, and to make known the evidence or information, documentary or otherwise, which the Court will in addition to the oath in the sixth section mentioned, require.

Supreme court to make rules as to procedure in regard to motions for discharge.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1859.

Order for discharge to have same force and operation as certificate under Ordinance 6, 1843.

9. The order of the Court, granting the discharge of any insolvent, shall be in such form as shall, by such rule, order, or regulation as aforesaid, be established, and shall have the same force and operation, to all intents and purposes, as is by the Ordinance aforesaid, No. 6, 1843, attached to the certificate and allowance thereof in the said Ordinance mentioned, and shall be null and void for any reason on account of which, according to the Ordinance aforesaid, such certificate and allowance would have been null and void.

Provisions of section 119 of Ordinance 6, 1843, to apply to all contracts or agreements intended to persuade trustees to forbear opposing discharge

10. All and singular the provisions of the one hundred and nineteenth section of the Ordinance aforesaid, regarding preferences, gratuities, securities, or payments, and secret and collusive agreements and transactions intended to persuade any creditor to consent to sign the certificate in the said section mentioned, shall apply to the same matters and things, when intended to persuade any trustee or any creditor to forbear opposing the discharge of such insolvent; and any trustee or creditor receiving any money, matter, or thing, or promise of the same, as a consideration for, or inducement to, such creditor to forbear such opposition, shall incur the forfeiture in the said one hundred and nineteenth section mentioned.

Provisions of section 119 of Ordinance 6, 1843, to apply to manner of pleading for discharge.

11. The provisions of the one hundred and twenty-third section of the Ordinance aforesaid, in regard to the manner of pleading the certificate therein mentioned, shall apply, *mutatis mutandis*, to the manner of pleading the discharge granted by the Court.

Order of court, granting discharge, to be final, unless court shall order a rehearing of the case.

12. The order of Court granting the discharge of any insolvent, or refusing or suspending the allowance thereof, shall be final and conclusive, and shall not be reviewed by the Court, unless the Court shall thereafter see good and sufficient cause to believe that the granting of such discharge, or the refusal or suspension thereof, has been obtained on false evidence, or by reason of an improper suppression of evidence, or has otherwise been fraudulently obtained; in any of which cases it shall and may be lawful for the Court, upon the application of the insolvent, or of the trustee or any creditor of the insolvent, and subject to such order as to deposit of a sum for costs, and to such notices to the insolvent, or to any trustee or creditor, by advertisement or otherwise, as the Court shall think fit, to grant a re-hearing of the matter, and to re-hear the same accordingly. And upon such re-hearing, the Court shall make such order as to the granting of such discharge, or the refusal or suspension thereof, as the justice of the case may require, in like manner, upon like conditions, and having regard to the like circumstances, as far as the case will admit, as upon an original hearing; and in case the discharge shall have been previously granted, and upon such re-hearing, the granting thereof shall not be confirmed, such discharge shall be of no force or effect whatever; but, on the contrary, null and void.

How, if case be re-heard.

Short title of Act.

13. This Act may be cited for any purpose as "The Insolvents' Rehabilitation Act, 1859."

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1859.] [July 8, 1859.

(1) ACT

For Preventing Obstructions, and for preserving Good Order on the Beach of Algoa Bay, and on the Breakwater Wharfs and Jetties belonging thereto.

Preamble.

WHEREAS it is expedient that the commissioners for improving the port and harbour of Algoa Bay should be empowered to prevent obstructions and preserve good order on the beach of Algoa Bay, and on the breakwater, wharfs and jetties belonging thereto: 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:—

Beach, wharfs, &c., to be under direction of a beachmaster appointed by harbour commissioners, with sanction of Governor, and paid out of wharfage dues.

1. The management of the beach and of the breakwater wharfs and jetties thereon shall be under the direction of an officer, who shall be denominated the beachmaster, and who shall be appointed by the commissioners for the time being for improving the port and harbour of Algoa Bay, with the sanction of the said Governor, and be paid by the said commissioners out of the collection of wharfage dues, and the said commissioners shall have power to remove any such officer and appoint another, with the like sanction, in his stead.

Duties of beachmaster.

2. The duty of the beachmaster shall be to cause all persons making use of the beach and the breakwater wharfs and public jetties thereon, for the landing and shipping of goods or otherwise, to remove all goods therefrom, and from the approaches thereto, as speedily as possible, so as to prevent the said beach and the breakwater wharfs and public jetties thereon, together with the said approaches, being encumbered with goods, or be otherwise obstructed, and to keep the said beach and the breakwater wharfs and public jetties thereon open, for the convenience of all persons requiring the use of the same.

Persons failing to remove goods, after due notice from beachmaster, liable to fine of ten pounds.

3. If any person or persons depositing goods, on the beach or the breakwater wharfs and public jetties thereon, or on any of the approaches thereto, shall not forthwith remove such goods, when directed and required so to do by the beachmaster, or within such reasonable time as shall be notified to the person or persons depositing the goods, according to the discretion of the beachmaster, then the person or persons so offending shall be liable, on conviction, to a penalty not exceeding ten pounds for every such offence.

Beachmaster may remove goods at the expense of parties neglecting to do so.

4. If any person or persons shall refuse or neglect to remove any goods from the said beach, or from the breakwater wharfs

[1] By Act 5 of 1873, Commissioners may make regulations for preservation of good order, &c. By Act 21 of 1882, the powers vested in the Commissioners under Ord. 21 of 1847, are vested in Board therein provided for. By Act 23 of 1883, such Board is authorised to make regulations for general management, and to pay all costs and charges for enforcing the same, see also Act 16, 1894.

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1878.

and public jetties thereon, or from the approaches thereto, according to the requirement of the beachmaster, made by him as aforesaid, then the beachmaster shall be empowered to cause such goods to be removed, and the person or persons so refusing or neglecting shall, besides being liable to the penalty in the last preceding section mentioned, pay and make good the expense of such removal, which expense shall be adjudged by the Court in which the penalty aforesaid shall be prosecuted for, by way of additional fine or penalty: Provided, always, that the beachmaster shall be authorised to remove such goods, either to the store or residence of the owner or owners, consignee or consignees thereof, or, in case there be none such found, or be open to receive the said goods, then to some other safe store or place, in which lastmentioned place the said beachmaster shall have a right of retaining such goods, until the expense of removing and storing, or keeping the same at the store or place to which they shall have been removed, shall have been paid.

Such expense to form an additional penalty.

Such goods to be removed to store or residence of owner or consignee, or other safe place, and be retained until expenses are paid.

Beachmaster to give directions regarding position of wagons and other vehicles on wharfs, or approaches thereto.

5. The beachmaster shall have the right to prevent all wagons and other vehicles employed in bringing goods or ballast, to the beach or the breakwater wharfs or jetties thereon, or removing them therefrom, from unnecessarily obstructing the approaches thereto, and all drivers of wagons or other vehicles, shall place them, after loading, or when waiting to be loaded, in such position or place as shall be pointed out by the beachmaster as proper and convenient. Any person in charge of any wagon or other vehicle neglecting or refusing to comply with any direction of the beachmaster in respect of the matter aforesaid, shall be liable to a penalty not exceeding five pounds.

Fine for disobeying such directions, five pounds.

To regulate the position of ballast, anchors, cables, &c., and of boats alongside.

6. The beachmaster shall have the right to regulate the position of the ballast, anchors and cables required to be placed on the beach for the use of the shipping, and of all passage or other boats lying thereon, and to cause to be removed all boats lying an unreasonable time at the breakwater or at any public wharf, jetty, or other place, to the hindrance of others waiting to be loaded or discharged. Any person refusing or neglecting to obey the lawful order of the beachmaster in regard to the subject-matter of this section shall be liable to a penalty not exceeding five pounds.

Penalty for disobeying orders, five pounds.

Beachmaster may prevent landing of goods until the removal of those already landed-penalty for disobeying ten pounds.

7. The beachmaster shall be empowered, as often as the state of the beach shall appear to him to require, to prevent any boat from landing cargo on the breakwater wharfs or public jetties thereon, or on the approaches thereto, unless the owner or owners of that boat shall have removed therefrom all goods previously deposited by him or them thereon, and which goods shall then remain on the breakwater wharfs or jetties thereon, or on the approaches thereto, in contravention of the third section of this Act. Any person or persons landing any such cargo which the beachmaster shall have directed not to be landed shall be liable to a penalty not exceeding ten pounds.

Digitised by the University of Pretoria, Library Services, 2016

No. 17—1859.

8. No person shall make fast any boat to the steps attached to the breakwater or to the steps attached to any wharf or jetty belonging to the harbour board of Algoa Bay, nor shall any boat be hauled up for repair at or upon the space, from time to time, appointed by the beachmaster to the passage and fishing boats.

No boat to be made fast to wharf-steps, nor to be hauled up on space allotted to fishing-boats.

9. All penalties incurred under this Act shall be recoverable in the Court of the Resident Magistrate of the district of Port Elizabeth. And in case of non-payment, upon conviction of and penalty imposed by such Court under this Act, any person offending may be imprisoned with or without hard labour for any period during which the penalty may remain unpaid not exceeding one month; and all penalties recovered under this Act shall be and become the property of, and be paid over to, the said commissioners for improving the port and harbour of Algoa Bay.

Penalties recoverable in court of resident magistrate, Port Elizabeth.

In case of non-payment, offender to be imprisoned.

Penalties to be paid over to harbour commissioners.

10. If any servant, *bonâ fide* obeying the orders of his employer, shall, when acting under the directions or command of such employer, by omission, or any acts of commission, infringe any of the provisions of this Act, then such employer and the servant may both or either of them be prosecuted for the penalty incurred by such omission or commission.

Servant and employer may both, or either of them, be prosecuted for the same act.

No. 17—1859.] [July 8, 1859.

ACT

For the Regulation of the Affairs of the Board of Executors.

Preamble.

WHEREAS certain persons did by a deed bearing date at Cape Town, in this Colony of the Cape of Good Hope, the twenty-second day of August, One Thousand Eight Hundred and Thirty-eight, enter into a contract of co-partnership for the purpose of administering such property and estates as they might be lawfully appointed to, as executors, administrators, tutors, or curators; and whereas a certain Ordinance was duly made and passed in this said Colony, No. 8, 1839, and entitled "Ordinance for enabling the Board of Executors to sue and be sued in the name of their Secretary"; and whereas the joint-stock or capital sum of ten thousand pounds sterling, mentioned in the preamble to the said Ordinance, divided into fifty shares at the time of the passing of the said Ordinance, was vested in the directors of the said Board of Executors to serve as an available fund to satisfy any claim or demand which any person might have upon the said co-partnership, has since been annually increased according to the provisions in the said deed contained, and now amounts to the sum of sixteen thousand five hundred pounds, and the number of shares has in accordance with the said provisions been increased to sixty. And whereas the said Ordinance will expire on the first day of May, 1860: And whereas the following are the persons

Digitised by the University of Pretoria, Library Services, 2016

No. 17—1859.

who now constitute the shareholders of the said Board, that is to say: William George Anderson; Henry Aston; Johannes Christoffel Berrangé; Kenne Nicholas van Breda; Andries Brink, Daniel's son; Cornelis Petrus Brink, Andries' son; Petrus Michael Brink, the younger; Dirk Gysbert van Breda; Philippus Albertus Brand; William Luck Blore; Johannes Hendrik Beyers; Joseph Barry; Louis Petrus Cauvin; Ewan Christian; John Deane; Johannes Jacobus George Fischer; Diederich Heinrich Fraenkel, Doctor of Medicine; Johannes Coenraad Gie, Johannes' son; Johannes Coenraad Gie, Michael's son; Michael Coenraad Gie; George Clement Gie; William Hiddingh, LL.D.; Johannes Hendrick Hofmeyr, Hendrick's son; Hendrik Johannes Hofmeyr, the elder; Jan Hendrik Hofmeyr, senior; Arend Hermanus Hofmeyr; Laurens Johannes de Jongh; Rice Daniel Jones; Gilles Johannes de Korte; Anthony David Krynauw; Jan Hendrick Lezar; Helperus Ritsema van Lier; Charl Marais; Gysbert van Reenen Muller; Joshua Metcalfe; Wilhelmus Cornelis Arendse Möller; Samuel Oliver; Isaac Petrus van der Poel; Albertus Johannes van der Poel; Charles Pritchard; John Reid; Paul Johannes Roux, Paul's son; Johan Coenraad Schickerling; Vespasius Schönnberg; George Wolfgang Spengler; Johannes Petrus Serrurier; Johannes Wilhelmus Bernardus Aldolph Stuckeris; Johannes Jacobus Tesselar; Johannes Tromp; Oloff John Truter; Michael Christiaan Vos, the elder; Johan Andries Heyse Wicht; Carl Frederick Joubert Watermeyer; Fredrik Stephanus Watermeyer; Harrison Watson; Johannes Carolus de Wet; Jacobus Martinus Wentzel; Jacobus Petrus de Wet; Jacobus Alexander de Wet; Mauritz Herman Otto Woeke:

Resolutions of shareholders to amend deed of agreement.

And whereas the said shareholders did, at a meeting duly held upon the twenty-eighth day of March, last past, resolve that the said deed should become void on the first day of October, one thousand eight hundred and fifty-nine, and a new deed should be framed which should embrace the provisions of the said first-mentioned deed and certain alterations and additions which have, from time to time, been made in and to the said deed, which resolutions were confirmed by the shareholders at a meeting duly held upon the first day of April, and which deed has been duly adopted, and will come into force on, and be the deed of the said company, from and after the first day of October, 1859.

Incorporation and style of company.

And whereas the said persons have applied for an Act to incorporate the said Board of Executors, as constituted under the said last-mentioned deed; and in order the better to enable them to carry the said objects into effect—to take effect from and after the said first day of October, 1859: Be it therefore enacted by the Governor, by and with the advice and consent of the Legislative Council and the House of Assembly,—that it shall and may be lawful for the said persons and such others as may become entitled

Digitised by the University of Pretoria, Library Services, 2016

to the privileges of this Act, under the provisions of the said deed, to be and continue joint-stock proprietors of the said sum of sixteen thousand five hundred pounds, and of all such sums as they may hereafter acquire under the provisions of the said deed, and to constitute and be a company for the purposes before mentioned, to be carried on under the style or firm of "The Board of Executors."

Authenticated copy of deed, and list of shareholders to be filed with Registrar of Supreme Court.

2. A copy of the said deed, duly authenticated by the secretary of the said Board of Executors, appointed under the provisions of the said deed, shall be filed in the office of the Registrar of the Supreme Court of this Colony of the Cape of Good Hope, within one month after the passing of this Act; and in like manner, a return of the names of the several persons at the time, being members of the said Board of Executors, with their respective places of abode, and the name and place of abode of the chairman, and of each director thereof, and of the secretary thereof, in the same manner authenticated, shall be at the same time filed in the said office.

Subsequent alterations in or additions to deed to be filed in like manner.

3. A copy of all alterations in, or additions to, the said deed which may at any time be made in conformity with the provisions therein contained, shall, within one month after any such alterations or additions shall have been duly made, in like manner authenticated, be in like manner filed in the office of the said Registrar.

Also transfers of shares.

4. Whenever the transfer of any share in the said co-partnership or company shall be made, a return in like manner authenticated, shall within one month after such transfer shall have been made, be in like manner filed in the office of the said Registrar, and which return shall contain the date of such transfer, the name and place of abode of the person to whom or in whose behalf such transfer is made.

And names and residences of chairman, director, and secretary.

5. A return in like manner authenticated, shall, from time to time as occasion shall render it necessary, be filed in the office of the said Registrar, of the name and place of abode of any person, who shall have been appointed chairman, director, or secretary, in place of any former chairman, director, or secretary, within one month after such appointment shall have been made.

Copy of alteration, addition, or return, certified by registrar, to be admissible in evidence.

6. A copy made from the copy of the said deed, or, if any alteration on, or addition thereto, which may have been made and filed as aforesaid; and a copy of any such return of any such chairman, director, secretary, or member certified under the hands of the Registrar of the Supreme Court, shall, in all proceedings, civil or criminal, be received in evidence or proof of such deed, or of any such alteration or addition as aforesaid, or of the authority of the officer named in any such return, and also of the fact that all persons therein named as members, were such at the date of such return.

Appointments of directors or secretary, as executors, administrators, &c. to be valid.

7. All appointments under and by virtue of any last will and testament codicil, or, of any deed or act which shall have been at any time previous to the passing of this Act, or which shall here-

Digitised by the University of Pretoria, Library Services, 2016

No. 17—1859.

after be duly made and executed, of the directors of the Board of Executors, or of the secretary of the Board of Executors, as executors, administrators, tutors, curators, or agents, or as executor, administrator, tutor, curator, or agent, as the case may be, shall be deemed and taken to be a valid appointment of the Board of Executors hereby constituted.

Evidence of any officer or member to be admissible.

8. In all actions, suits, and proceedings, whether civil or criminal, the evidence of any person being a member of the said Board of Executors, shall be admissible in like manner as if such person were not a member thereof.

Actions may be brought by secretary

9. All actions and suits, and all other proceedings at law, to be commenced or instituted for and on behalf of the said Board of Executors, against any person or persons, bodies politic or corporate, or others (whether members of the said Board of Executors or, otherwise), for recovering any debts, or enforcing any claims or demands due to the said Board of Executors, or for any other matter relating to the concerns of the said Board of Executors, shall, and lawfully may, after the passing of this Act, be commenced or instituted, and prosecuted to a final judgment or sentence in the name of the secretary of the Board of Executors, as the nominal plaintiff, applicant, or petitioner, for, and on behalf of the said Board of Executors; and shall, and lawfully may, subject to the provisions of any Act, Law, or Ordinance which, may be in force, or which may hereafter be enacted on that behalf, prosecute any criminal action for any fraud, crime, or offence committed against, or with intent to defraud the said Board of Executors, or the members thereof, jointly; and that no action or other proceedings shall abate, discontinue, or be rendered ineffectual by reason of the death or resignation of such secretary, but the secretary for the time being shall always be deemed to be the plaintiff, applicant, petitioner, or prosecutor in any such action, suit, or other proceedings, as the case may be; and that all actions, and suits, and proceedings at law, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of the said Board of Executors or otherwise, against the said Board of Executors, or against the said members thereof, jointly, shall, and lawfully may be commenced, instituted, and prosecuted, to a final judgment or sentence against the said secretary of the said Board of Executors, as the nominal defendant or respondent for and on behalf of the said Board of Executors, or for the members of the said Board of Executors aforesaid, and not against the Board of Executors, or against the members or any of them.

Secretary may bring action against any member.

10. It shall and may be lawful for the secretary of the said Board of Executors to bring and maintain any action, suit, or other proceeding at law, against any person being an officer or member of the said Board of Executors, for or on account of any claim or demand which the said Board of Executors may have

Digitised by the University of Pretoria, Library Services, 2016

against such person, in like manner as if he were not an officer or member thereof.

Any officer or member may bring his action against the secretary.

11. It shall and may be lawful for any person, being an officer or a member of the said Board of Executors, to bring and maintain any action, suit, or other proceeding at law, against the secretary of the said Board of Executors, for or on account of any claim or demand which he may have against the said Board of Executors, in like manner as if such person were not a member of the said Board of Executors.

Claim of members not to be set off against capital stock or dividend, &c.

12. No claim or demand which any member of the said Board of Executors may have in respect of his share of the capital stock of the said co-partnership, or of any dividends, interests, or profits, payable in respect of such shares, shall be capable of being set off; and no claim in reconvention shall be brought on account of any such share, or dividends, or profits, against any demand which the said Board of Executors may have against such member on account of any other matter or thing whatsoever, but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital stock, or of any dividends interests or profits payable in respect thereof.

Any two directors may execute bonds, inventories, accounts &c.

13. It shall and may be lawful for any two directors of the said Board of Executors to execute any bond or other act, for and on behalf of the said Board of Executors, to draw up and execute any inventory or liquidation, distribution, or other account; and all such bonds, acts, inventories, and accounts so executed, shall be equally valid as if the same had been done and executed by every one of the members thereof.

Termination of Ordinance 8, 1839.

14. The said Ordinance shall cease to be of any force and effect from and after the said first day of October, 1859.

This Act to be a public Act.

15. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of by all judges, magistrates, and others, without being specially pleaded.

No. 18—1859.] [July 8, 1859.

ACT

For more effectually preventing the unlawful cutting down or otherwise destroying the Forests and Herbage in this Colony. ([1])

Preamble.

WHEREAS, in various parts of this Colony, persons are in the habit of unlawfully cutting down, carrying away, and disposing of trees growing on crown forests, or on crown or other lands, and of kindling fires, whereby the forests and herbage are destroyed: And whereas it is expedient to put an effectual stop to such practices: Be it enacted by the Governor of the Cape of Good Hope,

[1] See Act 28, 1888—also § 2, Act 19, 1877.

Digitised by the University of Pretoria, Library Services, 2016

No. 18—1859.

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

Penalty for cutting down trees on crown land.

1. Every person who shall, without having a lawful licence or permission or other lawful authority so to do, cut down, or cause to be cut down, any tree growing in any crown forest, or on any crown or other land, in this Colony, shall be deemed to be guilty of the crime of contravening this section of this Act, and shall, upon conviction, be liable to a fine not exceeding one hundred pounds, and in case such fine shall not be paid, to imprisonment with or without hard labour, for any period not exceeding six months, or to such fine and such imprisonment, or to such imprisonment, without such fine.

Under what circumstances offender may be acquitted.

2. If any person accused of contravening the last preceding section, shall prove to the satisfaction of the Court or jury by which he shall be tried, that he had reasonable and probable cause for believing that the tree cut down, or caused to be cut down, by him, was standing on the land of such person himself, or of some other private person whose leave and licence for cutting down trees in such land such person, so accused, had obtained, then such person shall be acquitted of the criminal charge aforesaid.

Setting fire to trees brushwood, grass.

3. (1) Every person who shall wilfully or by gross carelessness set fire to, or kindle any fire which by spreading shall set fire to, any tree, bush, brushwood, underwood, or grass, not his property, shall be deemed to be guilty of the crime of contravening this section of this Act; and shall upon conviction, be liable to the like penalties (2) as are contained in the first section.

Action for damages may be instituted.

4. Every such person as aforesaid, whether prosecuted, or not prosecuted, shall be liable in a civil action, to be instituted by the party aggrieved, to pay and make good the amount of all damage done by such cutting down or burning.

Receiving tree or part of tree, knowing it to have been removed from crown land.

5. Every person who shall receive any tree, or part or parts of any such tree, knowing at the time of such receipt, that the same had been cut down in a crown forest, or on crown or other land, without any lawful licence or permission for so doing, shall be deemed to be guilty of the crime of contravening this section of this Act, and shall, upon conviction, be liable to the penalties hereinbefore in the first section of this Act provided.

Penalty.

Contraventions of this Act may be treated as theft, or as receiving stolen goods knowing them to be stolen.

6. Nothing in this Act contained shall extend to alter, in reference to the wrongful and unlawful destroying, carrying away or receiving of trees or timber cut down in any crown forest, or on any crown or other land, the law of this Colony relating to the crime of theft, or to the crime of receiving stolen goods, knowing them to have been stolen, or the crime of maliciously setting fire to or burning any description of property: Provided that no person shall be twice prosecuted for or in regard of the same act of cutting down or of burning.

[1] See also § 17, Act 27, 1882.
[2] Amended by § 2, Act 19, 1877.

Digitised by the University of Pretoria, Library Services, 2016

7. If any servant shall, when acting under the direction or command of his employer, by omission or any act of commission, infringe any of the provisions of this Act, then such employer and servant may both or either of them be prosecuted, and, if convicted, be punished under this Act. Employers and servants may both or either of them be prosecuted.

8. In the construction of this Act, the term "tree" ([1]) shall mean any tree, whether young or old, of a sort or description ordinarily used in making wagons or other vehicles, or articles of furniture, or for building purposes, or for some other purpose of a like nature, with some one or more of the purposes aforesaid; but not any other sort or description of tree, nor brushwood, underwood, or wood only used as firewood. Meaning of term "tree."

9. This Act may be cited for all purposes as the "Forest and Herbage Preservation Act, 1859." Short Title.

No. 19—1859.] [June 8, 1859

An Act for Applying a Sum not exceeding Three Hundred and Eighty-one Thousand Eight Hundred and Ninety-eight Pounds Eleven Shillings and Nine Pence for the Service of the Year 1859.

[Spent.]

No. 20—1859.] [July 8, 1859.

An Act for Applying a Sum not exceeding One Hundred and Seventeen Thousand Six Hundred and Eighty-nine Pounds for the Service of the Year 1860.

[Spent,]

No. 21—1859.] [July 8, 1859.

ACT

([2]) For Preventing Bribery, Treating, and Undue Influence at Elections of Members of Parliament.

WHEREAS it is expedient to make provision for preventing corrupt practices in the election of members to serve in Parliament, and for securing the freedom of such elections: Be it enacted by His Excellency 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 following persons shall be deemed guilty of bribery, and shall be punishable accordingly: Bribery defined

1. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree

[1] But see § 1, Act 28, 1888.

[2] As to trial of Election Petitions, and Corrupt Practices. See Act 9 of 1883. See also notes to Constitution Ordinance.

Digitised by the University of Pretoria, Library Services, 2016

No. 2 —1859.

to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election.

2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election.

3. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election.

4. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election.

5. Every person who shall advance or pay, or cause to be paid, any money to, or to the use of, any other person, with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay, or cause to be paid, any money to any person, in discharge or repayment of any money, wholly or in part, expended in bribery at any election.

Penalty. And any person so offending shall be guilty of an offence punishable by fine not exceeding one hundred pounds, or by imprisonment, for a term not to exceed one year, and shall also be liable to forfeit the sum of fifty pounds to any person who shall sue for the same, together with full costs of suit: Provided, always, that the aforesaid enactment shall not extend, or be construed to extend, to any money paid, or agreed to be paid, for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

Bribery further defined. 2. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:

Digitised by the University of Pretoria, Library Services, 2016

1. Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election.
2. Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting, at any election.

Penalty.

And any person so offending shall be guilty of an offence punishable by fine not exceeding fifty pounds, or imprisonment not exceeding a term of three months, and shall also be liable to forfeit the sum of five pounds to any person who shall sue for the same, together with full costs of suit.

Treating defined.

3. Every candidate at an election, or other person, who shall corruptly, by himself or by or with any other person or by any other ways or means, on his behalf, at any time, either before, during, or after any election, directly or indirectly, give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink, entertainment, lodging, provision, or conveyance, to or for any person, for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting, at such election, shall be deemed guilty of the offence of treating, and shall forfeit any sum not exceeding twenty-five pounds to any person who shall sue for the same, with full costs of suit.

Penalty.

Undue influence defined.

4. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail upon any voter, either to give or to refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of an offence punishable by fine not exceeding twenty-five pounds, or

Digitised by the University of Pretoria, Library Services, 2016

No. 21—1859.

Penalty.

imprisonment, not exceeding a term of three months, and shall also be liable to forfeit the sum of twenty-five pounds, to any person who shall sue for the same, together with full costs of suit.

Names of offenders to be struck out of list of registered voters.

5. Whenever it shall be proved before the Civil Commissioner of any division that any person who is, or claims to be placed, on the list or register of voters for such division has been convicted of bribery, treating, or undue influence at an election, or that judgment has been obtained against any such person for any penal sum hereby made recoverable in respect of the offences of bribery, treating, or undue influence, or either of them, then and in that case such Civil Commissioner shall, in case the name of such person is on the list of voters, expunge the same therefrom, or shall, in case such person is claiming to have his name inserted therein, disallow such claim; and the names of all persons whose names shall be so expunged from the list of voters, and whose claims shall be so disallowed, shall be thereupon inserted in a separate list, to be entitled "The list of persons disqualified for bribery, treating, or undue influence," which lastmentioned list shall be preserved in the office of the Civil Commissioner, for general information.

And be inserted in a separate list.

No cockades or other mark of distinction to be given at elections.

6. No candidate, or other person shall, before, during, or after any election, in regard to such election, directly or indirectly, give or provide to or for any person having a vote at such election, or to or for any inhabitant of the division for which such election is had, any cockade, ribbon, or other mark of distinction; and every person so giving or providing shall, for every such offence, forfeit the sum of two pounds to such person as shall sue for the same, together with full costs of suit; and all payments made for or on account of any chairing, or any such cockade, ribbon, or mark of distinction as aforesaid, or of any bands of music, or flags, or banners, shall be deemed illegal payments within this Act.

Penalties recoverable in Supreme and Circuit Courts only.

7. The pecuniary penalties hereby imposed for the offences of bribery, treating, or undue influence, respectively, shall be recoverable by action or suit by any person who shall sue for the same in the Supreme or Circuit Courts of this Colony, but not in any other Court.

Cost and expenses of prosecution.

8. It shall be lawful for any Criminal Court, before which any prosecution by any private prosecutor shall be instituted for any offence against the provisions of this Act, to order payment to the prosecutor of such costs and expenses as to the said Court shall appear to have been reasonably incurred in and about the conduct of such prosecution: Provided, always, that no indictment for bribery, treating, or undue influence shall be triable before any other than the Supreme or Circuit Court.

Proclamation for election to give warning against bribery, &c.

9. For the more effectual observance of this Act, every proclamation which shall at any time hereafter be issued by the Governor of this Colony, for any election for either the Legislative Council or House of Assembly of the said Colony, shall pro-

Digitised by the University of Pretoria, Library Services, 2016

claim and make known that all persons who are guilty of bribery, treating, or undue influence at or in reference to the said election, will upon conviction, be liable to the penalties provided by this Act.

In private prosecutions, if judgment be given for defendant, he may recover costs from prosecutor.

10. In case of any indictment or information by a private prosecutor, for any offence against the provisions of this Act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the Court in which such judgment shall be given.

Prosecutor not entitled to costs unless he shall have entered into a recognizance that he shall conduct the prosecution and pay costs.

11. It shall not be lawful for any Court to order payment of the costs of a private prosecution for any offence against the provisions of this Act, unless the prosecutor shall, before or upon the finding or filing of the indictment or information, enter into a recognizance before a Judge of the Supreme Court, with two sufficient sureties in the sum of two hundred pounds, with the conditions following, that is to say: that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs.

Limitation of actions.

12. No person shall be liable to any penalty or forfeiture hereby enacted or imposed, unless some prosecution, action, or suit for the offence committed shall be commenced against such person within the space of six months next after such offence against this Act shall be committed, and unless such person shall be summoned, or otherwise served with process, within the same space of time, provided such summons or service of process shall not be prevented by such person absconding or withdrawing out of the jurisdiction of the Court out of which such summons or other process shall have issued, in which case the summons or process may be served within six months after the return of such person, within the jurisdiction of the Court; and in case of any such prosecution, suit, or processes aforesaid, the same shall be proceeded with and carried on without any wilful delay.

Giving refreshments to voters illegal.

13. The giving, or causing to be given, to any voter on the day of nomination or day of polling, on account of such voter having polled or being about to poll, any meat, drink, or entertainment by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed an illegal act, and the person so offending shall forfeit the sum of five pounds for each offence to any person who shall sue for the same, by civil action in any competent Court, together with full costs of suit.

Penalty.

Short Title.

14. In citing this Act for any purpose whatsoever, it shall be sufficient to use the expression "The Corrupt Practices at Elections Prevention Act, 1859."

Digitised by the University of Pretoria, Library Services, 2016

No. 1—1860.

No. 22—1859.] [July 8, 1859.

An Act for introducing into this Colony Immigrants from Europe.

[Spent.]

No. 23—1859.] [July 8, 1859.

An Act for reviving and continuing the Act No. 26, 1857, entitled "An Act for Punishing Emissaries from Kafirland, and others, delivering in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace."

[Expired.]

No. 24—1859.] [July 8, 1859.

An Act to Amend the Laws for regulating the Admission of Kafirs and other Native Foreigners into the Colony.

[Repealed by Act 22, 1867.]

No 25, 1859.] [July 8, 1859.

An Act to Amend the Act No. 23, 1858, entitled "An Act for declaring Main Roads and Regulating Tolls."

[Superseded by Act 22, 1873.]

No. 1—1860.] [May 21, 1860.

ACT

To Prevent the Introduction into the Colony of the Cape of Good Hope of Convicted Felons, and other Persons sentenced to Transportation for Offences against the Laws. (1)

Preamble.

WHEREAS the Colony of Western Australia has been constituted a penal settlement for the safe keeping of convicted felons and other persons undergoing transportation for offences against the laws: And whereas certain of the Australian Colonies adjacent to the Colony of Western Australia, to which colonies persons undergoing, or sentenced, or sent, to undergo transportation in the Colony of Western Australia had betaken and were likely to betake themselves, have passed Legislative Acts prohibiting the landing or living in such colonies of any of the said persons: And whereas certain persons, of the class or description prohibited by the Legislative Acts aforesaid from landing or being in the Colonies of which the Legislatures have passed the said Acts, have recently arrived in this Colony: And whereas, owing to the

[1] See Act 6, 1884.

Digitised by the University of Pretoria, Library Services, 2016

geographical position of this Colony, and to other causes, there is reason to apprehend that many more persons, of the class or description aforesaid, finding themselves shut out, by the Legislative Acts aforesaid, from the Colonies adjacent to Western Australia, to which Colonies they would otherwise resort, will, unless prevented, betake themselves to this Colony: And whereas it is essential to the preservation of peace and good order in the Colony of the Cape of Good Hope that an immediate stop should be put to the landing or being in the said Colony of convicted felons or other persons undergoing sentence of transportation for offences against the 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:—

Imprisonment of felons who enter the Colony.

1. No convicted felon, or other person undergoing sentence of transportation for any offence against the laws, nor any person who is or shall be under sentence in any British Colony or possession, other than this Colony, for any capital or other offence, nor any person not at liberty, by reason of any conviction or sentence, to reside in any part of the United Kingdom of Great Britain and Ireland, shall land in any of the ports of this Colony, or come or be in any place within the limits of this Colony, under the penalty, on conviction thereof before any competent Court, if a male, of being sentenced to imprisonment with or without hard labour for a period not exceeding three years, and if a female, of being imprisoned with or without hard labour for a period not exceeding two years.

No person coming from Western Australia to land, without proof of being a free person.

2. The master of any ship or vessel arriving at any port or place in this Colony, from any port or place in Western Australia, shall detain every passenger on board his ship or vessel until he have obtained from the Collector or other Chief Officer of Customs at or nearest to the port or place of arrival, in respect of each passenger respectively, a certificate that the said master has proved, to the satisfaction of the said Collector, or other Chief Officer of Customs, that the passenger in respect of whom such certificate is granted is not a prisoner of the Crown, or runaway convict, or any convict coming by virtue or under cover of any conditional pardon, ticket of leave, or indulgence of any kind, other than a free pardon or remission of his or her sentence by Her Majesty: And any master who shall permit or suffer any passenger to land, previous to obtaining such certificate, shall be liable to a penalty of twenty-five pounds for each passenger so landing: Provided, also, that it shall be lawful for the Governor, by proclamation, to extend the provisions of this section to the masters of ships and vessels arriving from any port or place mentioned in any such proclamation; and thereupon the like effects shall, in all respects, take place as if the port or place mentioned in any such proclamation had been mentioned in this section, together with the ports and places in Western Australia.

Digitised by the University of Pretoria, Library Services, 2016

No. 1—1863.

Masters or owners of vessels bringing felons to the Colony liable to fine or imprisonment.

3. Any master or mariner, or other person commanding, navigating, or sailing any ship, vessel, or boat, which may hereafter, with the knowledge of such master or other person, bring to any port or place in this Colony any runaway convict, or any convict coming by virtue or under cover of any conditional pardon, ticket of leave, or any kind of indulgence, other than a free pardon or remission of his or her sentence by Her Majesty shall, upon conviction thereof before any Court of Resident Magistrate, for every such offence, incur and be liable to a fine not exceeding one hundred pounds, or to imprisonment for any time not exceeding three calendar months, or to both such fine and such imprisonment, at the discretion of the said Court.

Penalty for concealing persons in first section mentioned.

4. Every person who shall knowingly harbour or conceal any other person such as is in the first section mentioned, shall, on conviction thereof before any such Court of Resident Magistrate as aforesaid, forfeit and pay for every such offence, a sum not exceeding one hundred pounds, and in default of payment, shall be imprisoned with or without hard labour for any period not exceeding twelve months.

Property of offenders to be forfeited, and whole or part applied in conveying them away.

5. All property found upon or in the possession of any person convicted of contravening the first section of this Act shall be forfeited; and it shall be lawful for the convicting Court to order the whole, or a sufficient part thereof, to be applied towards the expense of conveying such offender to the Colony or Possession to which he or she was transported, or in which he or she was convicted.

What deemed evidence of a person being a convict.

6. Proof, on oath, that any person was in any British Colony or Possession, other than this Colony, known to be, or was commonly reputed and deemed to be, a transported felon, or a convict under sentence for any capital or other offence, shall, for the purposes of this Act, be taken as good *primâ facie* evidence that such person was transported to such Colony or Possession, or convicted therein of a capital or other offence, as the case may be; and evidence that such person was so known, deemed, or reputed, at any period within seven years, shall be taken as good *primâ facie* evidence that such person has not served the full period of his or her sentence, or the full term for which he or she was transported, and has not received such pardon or remission as aforesaid, unless the contrary be proved.

Justice of the Peace or Resident Magistrate may grant warrant to apprehend offenders.

7. It shall be lawful for any Justice of the Peace or Resident Magistrate having credible information, on oath, that any person such as is in the first section of this Act described is harboured in any dwelling house or tenement, or other place, within his jurisdiction, to grant a search warrant to any one or more constables or officers of the law proper for the execution of criminal warrants, to search for and apprehend such offender, and any person found and apprehended by virtue of such warrant, shall, by such constable or constables, be forthwith taken before a Resident Magistrate or

Digitised by the University of Pretoria, Library Services, 2016

Justice of the Peace for examination, and to be further dealt with according to law. No. 2–1860.

8. All fines and penalties recovered under this Act, and all moneys forfeited and not specially appropriated, shall be applied to and go to Her Majesty, her heirs and successors, for the public uses of the Colony. Appropriation of penalties.

9. All proceedings under this Act shall be had and taken in a summary manner, and no such proceeding shall be quashed for want of form. Proceedings not to be quashed for want of form.

10. If any suit or action be brought against any Resident Magistrate, Justice of the Peace, constable, or other person, for any act or thing done in furtherance of this Act, the defendant in every such action or suit may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon. General issue may be pleaded in all actions.

No. 2—1860.] [July 17, 1860.

ACT

For Regulating the Manner in which Crown Lands at the Cape of Good Hope shall be disposed of. ([1])

WHEREAS it is expedient that the manner in which the Crown lands at the Cape of Good Hope shall be disposed of should be regulated by law: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof:— Preamble.

1. The conditions and regulations in the schedule to this Act contained shall be, and the same are hereby, established, and the lands to which they relate shall be disposed of according to such conditions and regulations, and not otherwise. Lands to be disposed of under regulations in schedule, and not otherwise.

SCHEDULE. Schedule.

CONDITIONS and REGULATIONS upon which the CROWN LANDS at the Cape of Good Hope will be disposed of.

1. The conditions and regulations relative to the disposal of Crown lands in this Colony, published by Government Notice of the 17th May, 1844, or by subsequent notices, are hereby cancelled; and, in future, all waste and unappropriated Crown lands will be sold subject to an annual quitrent on each lot, and at a reserved price, sufficient at least to defray the costs of inspection, survey, erection of beacons, and title deed. Previous regulations repealed. Crown lands to be sold under annual quitrent and at reserved price, to cover survey expenses and title-deed.

2. The sale will be by public auction, at the office of the Civil Commissioner of the division in which the land to be sold is situated, after four months' notice by proclamation, in the *Government Gazette*, How and where sale to be held in each division.

[1] Repealed by Act 14, 1878, save as to lands disposed of prior to the taking effect of latter Act. See Act 15, 1887, which repeals 14, 1878.

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1860.

descriptive of the position and extent of the land intended to be sold, but lands in the Cape division shall be sold at Cape Town, at such place as shall be notified in such proclamation.

When quitrent redeemable.

3. The quitrent may be redeemed at any time, upon payment of fifteen years' purchase, but when, by future subdivision of a lot and the quitrent thereon, any portion of the quitrent shall be less than ten shillings, it shall be obligatory upon the proprietor of such portion, within twelve months after such subdivision, to redeem the quitrent at fifteen years' purchase.

Conditions as to payment of purchase money.

4. The sales will be held on the following conditions as to the payment of the purchase money, viz.: the expenses of inspection, survey, erection of beacons, and title deed shall be paid on the day of sale, and one-fourth of the balance of the purchase money shall be paid within three months after the sale, failing either of which conditions no sale shall be considered as having been effected. When a sale is effected, the purchaser shall have the option of discharging the whole or any portion of the remaining three-fourths of the purchase amount at once, and on depositing the expense of the necessary bond, of retaining the balance of the purchase money aforesaid, on first mortgage of the land sold, payable in three equal instalments, at the expiration of the fifth, sixth, and seventh years respectively, from the date of sale, or at any previous time at the pleasure of the purchaser. The interest thereon shall be reckoned at the rate of six per cent. per annum, from the day of sale, and be payable annually, either to the respective Civil Commissioners in whose division the land is situated, or the Treasurer-General in Cape Town.

Interest on balance of purchase money remaining on mortgage.

Lands mortgaged under preceding section may be discharged from mortgage.

5. When any lands are mortgaged under the provisions hereinbefore contained, the Government may at any time discharge any part or parts of such lands from being subject to the mortgage, if a certificate be obtained, under the hand of the Surveyor-General, that the lands which remain subject to the mortgage are of sufficient and ample value to afford a security for the mortgage debts.

In case of timber or other perishable property being within the limits of the land, surety for payment of purchase money may be required.

6. In all cases in which there may be timber, or houses, or other valuable and destructible, or perishable, or exhaustible property, on or within the limits of any lot, the Governor may, at his discretion, direct that a clause be inserted in the conditions of sale, requiring that the purchaser provide, at the time of sale, two good and sufficient sureties for due payment of the purchase money, to the satisfaction of the Civil Commissioner of the division, or of the Surveyor-General, in case such land be sold in Cape Town.

General conditions to be inserted in title-deed.

7. The lots will be sold subject to such special servitudes and conditions as may be set forth in the conditions of sale, and the following general conditions which must be stated in the title deed, viz.:—

(*a*) The quitrent payable.

(*b*) All existing roads and thoroughfares described in the diagrams, shall remain free and uninterrupted.

(*c*) Government shall always have the right to make new roads, railways, and railway stations, aqueducts, dams, and drains, or to conduct telegraphs over the land, for the benefit of the public, and to establish convenient outspans for the use of travellers, on payment to the proprietor of such sum of money in compensation, as three appraisers, one to be appointed by

Digitised by the University of Pretoria, Library Services, 2016

each side, and a third to be chosen by the two others, before proceeding to act, or any two of them, shall award.

(*d*) With regard to lands on or adjoining the sea coast or on the banks of public rivers (not being in a town or village), Government shall have power to resume any portion thereof, when required for public purposes, on payment to the proprietor of a just and fair price for the same, according to valuation, as under section *c*.

(*e*) Lands adjoining public rivers or running streams shall be sold, subject to having such water-furrows made through or over them as the Government, acting with the advice of the Divisional Council, shall approve of and direct, for the supply of water to lands lying at a greater distance; compensation being made to the proprietors of such adjoining lands according to valuation as under section *c*.

(*f*) No condition which is not clearly expressed shall be presumed to exist.

When title-deed to be issued.

8. On settlement of the whole purchase money, by bond or otherwise, the title deed will be issued to the purchaser.

Certain lands not to be deemed waste Crown lands.

9. No land claimed by any registered owner of adjacent land as part of his property, by reason of any alleged defective title deed, or supposed landmarks of the said adjacent land, or land occupied *bonâ fide* and beneficially without title deed at the date of the extension of the Colonial limits beyond it, or land conditionally occupied or claimed under any general notice or regulation of the Government, or under any promise or order of a Government officer, duly authorised at the time to make such promise or give such order, shall be considered or treated as waste Crown land, for the purpose of these regulations, until the claim thereto, in each case, shall have been decided on by the Governor, who shall have the power of rejecting the claim altogether or of satisfying such claim, by grant of the land or compensation out of the purchase money or otherwise, as shall appear equitable: Provided, always, that due notice of the nature of the claim, and reasonable proof that it may be substantiated, be received at the office of the Colonial Secretary in sufficient time to admit of the withdrawal of the lot from sale, and that the claimant use reasonable diligence to lay the proofs in support thereof before the officer or board to whom the question may be referred by the Governor.

How claims to such lands to be dealt with.

Grants of land may be made for public purposes, with consent of Parliament.

10. Grants or reserves of land may be made by the Governor for special public purposes, provided that no such grant or reserve shall be made until the Legislative Council and House of Assembly shall have communicated to the Governor their concurrence therein.

Municipal lands not to be deemed waste Crown lands.

11. No municipal land, or land within the limits of any municipality or land lying outside the municipal limits, but which has been, by the Governor of this Colony, by proclamation, Government notice, or other instrument or act, assigned as pasturage for any municipality, shall be considered or treated as waste Crown land for the purposes of these regulations. But the Governor shall have the power, upon the application of the commissioners of any municipality, to grant or authorise the sale of any portion or portions of such lands for public improvements, for the benefit of the inhabitants resident within the limits of such municipality.

Municipal lands may, upon application of commissioners, be granted for public purposes.

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1860.

Town pasturage not waste Crown lands.

12. No land lying within or outside any town or village, which has been, by the Governor of this Colony, by proclamation, Government notice, or other instrument or act, assigned as pasturage for such town or village, shall be considered or treated as waste Crown land, for the purpose of this Act.

Crown lands in certain frontier divisions, how to be disposed.

13. The Crown lands in the divisions of Albany along the Fish River, Peddie, Stockenstrom, Victoria East, Queen's Town, and Aliwal North, may be disposed of by the Governor, by public sale, on condition of personal occupation, or of personal occupation and such conditions of providing arms and armed men as have been imposed in the divisions of Victoria, Peddie, and Queen's Town, and it shall be deemed expedient to continue to enforce for the defence of the frontier. Such conditions, however, shall not be cancelled or changed except by Act of Parliament. (1)

Lands containing valuable minerals, or required for military or certain other purposes.

14. No lands known to contain valuable minerals, or situated in the neighbourhood thereof, no lands required for military stations, defence of the frontier, public outspans, fishing stations on the sea-coast or the banks of tidal rivers, of such extent as the Government, with the advice of the Divisional Council, shall define, or required for any other public purpose, or so much of the land on the sea-coast lying above and within two hundred feet of highwater mark shall be considered waste lands of the Crown for the purposes of these regulations, and all such land shall not be disposed of, except in the manner set forth in section ten in regard to the lands therein mentioned.

Public roads, outspans, and cattle thoroughfares to be provided for.

15. In all cases in which Crown lands shall be disposed of, where sufficient public roads, outspans, and cattle thoroughfares do not exist, but may be required, such extent of land as may be necessary for establishing public roads, outspans, and cattle thoroughfares shall be reserved for such purposes.

Applications for purchase of land to be addressed to Colonial Secretary or Divisional Council.

16. Whenever any Divisional Council may deem it expedient that waste Crown lands be sold, or when any person may be desirous of purchasing particular parts of such land, an application may be made to the Colonial Secretary, in writing, setting forth as far as practicable the position, boundaries, and extent of the land referred to. But in the case of any person desirous of purchasing such land, his application may be addressed direct to the Divisional Council of the division in which the land is situate, who shall, upon the receipt thereof, forward the same to the Colonial Secretary.

Such applications to be transmitted to Surveyor-General.

17. The applications, after being duly recorded, shall be transmitted to the Surveyor-General, who shall communicate thereon with the chairman of the Divisional Council of the division in which the land is situate.

Applications to be submitted to Divisional Council.

Reports to be signed by members and certified by chairman.

18. The chairman shall submit every application to the Divisional Council at the first meeting of the said Council, after the receipt thereof, at which there shall be two-thirds of the members present, and actually taking part in the proceedings; and all reports if any be agreed to on questions relating to land shall be signed by the members individually, at the time and place of their meeting, and in presence of each other, and the chairman shall certify the same on all copies required for communication with Government.

---

[1] See Act 24, 1868.

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1860.

19. The Surveyor-General shall submit, for the decision of the Governor, all reports on cases in which he is unable to concur with the Divisional Council, and all reports which the Council desire to be specially submitted for information of the Governor.

Reports in which Surveyor-General does not concur with council, or special reports to be submitted to Governor.

20. When the Governor directs that the sale shall proceed, the Council shall in the first place transmit an estimate of the probable cost of inspection and survey, and erection of beacons, in order to enable the Surveyor-General to comply with the financial regulations, by obtaining previous specific authority for the necessary expenditure, or in the event of such information not being sent, then the Surveyor-General may call on the applicant for a deposit sufficient to cover the aforesaid cost, which deposit shall be refunded when the land is sold; but should no sale take place, or the reserved price be more than the aforesaid deposit, no refund will be made.

Council to transmit estimate of costs of inspection, failing which, applicant may be required to deposit amount of costs.

21. Whenever the special appointment of an inspecting officer shall not appear to be rendered necessary by circumstances of a peculiar and technical character, the members of the Divisional Council may depute one or more of their number, where necessary, to inspect the land; but the inspection shall not take place until after fourteen days' notice to the Field-cornet of the ward, and a public notice, posted conspicuously for fourteen days immediately preceding such inspection at the office of the Civil Commissioner or other place in the chief town or village of the division where notices are usually placarded.

Members of Divisional Council may be deputed to make inspection after due notice given.

22. The said inspection shall be made in presence of the Field-cornet or acting Field-cornet of the ward and a sworn surveyor, duly qualified, to be employed by Government; and all claims affecting the land inspected shall be heard and carefully noted, whether relating to private rights or public convenience, as in the instance of outspans, thoroughfares, and other questions of a local nature, or when an unreserved disposal of the lot might convey to a purchaser a power of annoying neighbouring residents, or of damaging adjacent property; further, the capabilities of the soil for cultivation and maintenance of stock during the year or certain months, the supply of water and facilities for augmenting such supply, the means of communication with and distance from markets or ports; the quantity of timber, if any, should all be observed and estimated; and an accurate record of the proceedings drawn up and handed to the chairman, by whom the case will be laid before the first subsequent meeting of the Divisional Council, consisting of the number of members specified in the seventeenth section.

In whose presence inspection to be made.

All claims to land to be heard and noted.

Capabilities to be observed.

Record of proceedings to be kept.

23. The Council shall then issue the necessary instructions for survey, or otherwise act as the case may appear to require, and, on the completion of diagrams, will transmit them with their reports and a copy of the record mentioned in the last section to the Surveyor-General, who will take the further steps necessary for the sale of the land, or otherwise.

Council to give directions for survey, diagrams, &c., to be transmitted to Surveyor-General.

24. The Divisional Councils will, from time to time, transmit to the office of the Surveyor-General a list of such surveyors as may be willing to undertake the survey and subdivision of particular lots or tracts of land in their division, and the duties of surveyors, or inspection of the same; and the Surveyor-General will, if he see fit, select the surveyor to be employed. Such surveyor will conform to

Divisional Council to transmit to Surveyor-General list of Surveyors willing to undertake survey.

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1860.

the instructions of the Council in all matters relating to allotment, erection of beacons, and survey, according to previously authorised agreement and estimate, under the provisions of this Act, and attend to the directions of the Surveyor-General in all that relates to professional points.

Compensation to be given to previous occupier for building and improvements.

25. Whenever any improvements, such as the erection of buildings, the construction of dams, or of water-conduits for irrigation, or the like, shall at any time prior to the taking effect of this Act have been made upon Crown land, by any occupier thereof, whose occupation shall not have been authorised by Government, it shall be lawful for the Governor, if he shall think fit, to compensate such occupier for the improvements so made. This compensation shall be made in the following manner: The buildings or other improvements in question shall be valued either by the inspecting officer or officers appointed by the Divisional Council to inspect Crown lands, or by some competent appraiser, to be appointed by the Government, as the Government shall elect; and the lands on which such improvements have been made shall, when put up to public sale, be sold subject to the payment, out of the purchase money, of the amount of such valuation, and such amount shall be paid by the purchaser at the time of sale. If the occupier who made the improvements should not be the purchaser, then one-third of the value of such improvements shall be retained by the Government, and carried to the account of the public treasury; and the remaining two-thirds shall be paid to the said occupier. In case the said occupier should himself become the purchaser, the two-thirds to which he will have become entitled shall be retained by the Government, and received in payment or part payment of the purchase money for which he shall have become liable. Provided that whenever any such improvements have been made by any occupier whose occupation has been authorised by Government, such occupier shall receive or be allowed the entire value of such improvements. And provided that compensation cannot be claimed, and shall not be given, on account of expenditure upon improvements unconnected with the ordinary use of the land by the usual class of purchasers, or of extravagant improvements not adapted to increase the value of the land.

Buildings, &c., to be valued.

How, if occupier does or does not become purchaser.

Compensation not to be given for extravagant improvements.

Regulations as to remission of purchase money to military, naval, or Indian officers.

26. The privileges allowed to officers of the army and navy, and of the late East India Company's service, in respect to remission of purchase money of waste Crown lands, may be claimed under the foregoing regulations; the claimants adhering thereto, in all respects, as in the case of ordinary application and purchase, excepting that, in the settlement of the balance of the purchase money over and above the expenses of inspection, survey, erection of beacons, and title deed, which must be paid in cash, the letter of approval of remission by the Governor may be tendered and will be received, to the extent of such amount or balance of amount as may be therein stated, in satisfaction of the whole or part of such balance of purchase money, under such regulations as the Governor may consider necessary to ensure the accuracy of the public accounts in that particular class of cases.

Waste Crown lands may be sold to contiguous proprietors at valuation by Divisional Council.

27. As often as the Surveyor-General shall, on the recommendation of the Divisional Council, certify that a portion of Crown land lies so contiguous to or between farms belonging to private persons, and that from the situation of such Crown land, and all the circumstances

Digitised by the University of Pretoria, Library Services, 2016

connected with it, such Crown land ought to be attached to one or more of the contiguous farms, then the Divisional Council may allot such Crown land to one farm, or divide it amongst two or more farms, as may seem just and expedient, at a reasonable and equitable price, to be fixed by the Council, and approved of by the Governor, not being less than the expense of the inspection, survey, erection of beacons, and title deed. And such land shall be subject to a quitrent, to be assessed by the Council.

Quitrent to be assessed by Council.

28. After the Surveyor-General shall have certified as in the last clause mentioned, then the Council shall cause to be published in the *Government Gazette* a notice stating the name of the applicant, the situation and boundaries of the land applied for, and the extent of such land, if it shall then have been surveyed, or if it have not been surveyed, its supposed extent, and stating that such application will be decided upon by the Council, at a meeting thereof, to be held upon some day to be mentioned in such notice, not being less than three months from and after the day upon which such notice shall have been first published in the *Government Gazette*. A copy of such notice shall also be posted at the office of the Resident Magistrate of the district for not less than three months before the day appointed for the meeting of Council to decide upon such application.([1])

Applications for such land, how to be dealt with.

29. At the meeting of Council to decide upon any such application as aforesaid, it shall be competent for any person, having or alleging an interest in the matter of such application, to appear in person, or by agent authorised by any writing under the hand of such person, and to submit to the Council such matters for or against such application as he shall think fit; and the Council may, from time to time, adjourn the decision upon any such application to a future meeting as often as it shall be found expedient to do so.

Persons interested in such applications may appear in person or by deputy to support or object to application.

30. The Council may grant any such application, either wholly or in part, as may appear desirable, and when an application by one person shall have been made and published for a certain lot of land, may in deciding upon such application and without the publication of any fresh notice, divide such land between the applicant and any other person or persons who may, at the meeting in the twenty-seventh clause mentioned, claim, and be found entitled to a share of such land.

Applications may be granted wholly or in part.

31. When the Council shall have decided to recommend that any such land as is in the last clause mentioned, should be granted to any person or persons, the chairman of the Council shall forward such recommendation to the Surveyor-General, together with the diagram or diagrams of such land, and a statement of the price fixed, and of the quitrent assessed by the Council, and the necessary title deed or title deeds shall be prepared and issued: Provided that the Governor, upon sufficient cause shown to him, shall be empowered to withhold the issue of such title deed or title deeds.

How, if council shall decide to grant application.

Governor may withhold title-deed.

32. The Surveyor-General shall cause to be published in the *Government Gazette*, during the months of January and July, in every year, half-yearly lists, made up to 31st December and 30th June preceding, respectively, of all title deeds issued from the Surveyor-General's office of any such lands as are in the preceding clause

Surveyor-General to publish half-yearly returns of title-deeds issued under preceding section.

[1] See Act 19, 1864, § 7.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1860.

mentioned, which lists shall set forth, in regard to each title deed, the division and field-cornetcy in which the land is situated, the name of the grantee or grantees, the extent of the land granted, the price fixed, and the quitrent assessed.

No. 3—1860.] [July 17, 1860.

An Act to Amend the Act No. 10, 1859, entitled "An Act to provide for the Adjustment of Disputed Land Boundaries, and for the Erection and Preservation of Land Beacons."

[Repealed by Act 7, 1865.]

No. 4—1860.] [July 17, 1860.

An Act for Continuing the Provisions of an Ordinance bearing date the 14th day of February, 1833, entitled "An Ordinance for enabling certain Persons having respectively the just, lawful, and undisputed Right to certain Lands and Houses to procure the same to be enregistered as their Property in the Land Register."

[Expired.]

No. 5—1860.] [July 17, 1860.

An Act to Amend the Act No. 9, 1858, entitled "An Act to Provide for the Management of the Public Roads of this Colony."

[Repealed by Act 40, 1889.]

No. 6—1860.] [July 17, 1860.

An Act to Amend the Act No. 20, 1858, entitled "An Act for Constructing a Breakwater to form a Harbour of Refuge in Table Bay, and otherwise improving the said Harbour."

[Spent.]

No. 7—1860.] [July 17, 1860.

ACT

For Enabling the Harbour Board of Mossel Bay to levy certain Wharfage Dues.

Preamble.

WHEREAS the Board of Commissioners for the Harbour of Mossel Bay, appointed under and by virtue of the Ordinance No. 21, 1847, entitled "Ordinance for Improving the Ports, Harbours, and Roadsteads of this Colony," have caused an estimate to be made of the cost of constructing certain works calculated to promote the safe and convenient anchorage of ships and landing

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1860.

and shipping of goods in the said harbour: And whereas it is estimated by the said board, and by the engineers and others who have by desire of the said board considered the subject of the said works, that a sum not exceeding seven thousand pounds will be sufficient to defray the cost of constructing or completing the said works and also any expense which the said board may incur in taking over (should it see fit so to do) a certain jetty already existing in the said harbour, which sum, together with all interest to become due thereon when borrowed, will, as it is estimated, be paid off within fifteen years out of the wharfage dues to be levied under this 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:—

Harbour board may raise money on debentures.

1. It shall be lawful for the said board to borrow and take up from time to time, upon interest, such sum or sums of money, not exceeding seven thousand pounds in the whole, as may be necessary for constructing such works in or at Mossel Bay as the said board shall judge fit to be constructed; and the provisions of the sixth and seventh sections of the Ordinance No. 21, 1847, shall, except as hereinafter excepted, apply to all such sums of money as aforesaid, precisely as if this Act were the vote or resolution of the former Legislative Council of this Colony in the said sections mentioned: Provided that the Governor aforesaid shall, in regard to the matters in the said seventh section of the said Ordinance mentioned, act with the advice of the Executive Council of the Colony, instead of with the advice and consent of the Legislative Council in the said section mentioned: And provided, also, that the word "deed" in the said section mentioned shall include the sort of security or engagement commonly called a debenture.

Harbour board may levy wharfage dues on goods landed or shipped.

2. It shall be lawful for the said board, and it is hereby authorised, to levy or cause to be levied upon goods, articles, matters, or things landed or shipped in Mossel Bay, the several dues or rates set forth in the tariff contained in the schedule to this Act; and the fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth sections of the Ordinance aforesaid, No. 21, 1847, shall apply to such dues or rates precisely as if the said dues or rates had been tolls or rates approved of and proclaimed by the Governor of the Colony, with the advice and consent of the former Legislative Council, whilst it existed, and had been by the said Governor, with the said last mentioned advice and consent, declared to be payable in regard to every article, matter, or thing landed or shipped in any part of Mossel Bay.

Value of articles landed or shipped to be stated to principal officer of customs who shall receive dues.

3. The person by whom any goods, articles, matters, or things chargeable by the tariff aforesaid, upon the value thereof, shall be or be about to be landed or shipped in Mossel Bay, or his known agent, shall be bound to state to the principal officer of Customs at Mossel Bay, who shall be entitled to demand and receive the dues or rates payable thereon, the value thereof; and if it appear

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1860.

to the said officer that the same are not valued according to the actual value thereof, then the said officer may require the person who shall have landed or shipped, or be about to land or to ship any goods, articles, matters, or things to make and subscribe a declaration, which declaration shall be in substance in the form in the second schedule to this Act set forth; and the value stated in such declaration shall be the value upon which dues shall be paid:

How if value cannot be declared.

Provided that it shall be lawful for such officer, as often as it shall be made to appear to him that the value of any goods, articles, matters, or things landed in Mossel Bay cannot be declared at or immediately after the time of such landing, to permit the same to be taken away without the payment of wharfage; but in every such case such officer shall take a bond or obligation for the payment of such wharfage at or before such time as shall in that behalf be specified in such bond or obligation.

Penalty for false declaration.

4. Any person who shall wilfully and corruptly make and subscribe any such declaration as aforesaid, knowing the same to be untrue in any material particular, shall be deemed to be guilty of the crime of contravening this section of this Act, and shall upon conviction thereof be liable to such punishment as shall be by law provided for the crime of perjury.

Principal officer of customs to pay over to harbour board all dues collected.

5. The principal officer of Customs as aforesaid shall periodically, and at such periods as shall be agreed upon between him and the board aforesaid, pay over to the said board all sums received by him under this Act, and shall allow the said board access at all reasonable times to all such accounts, books, and papers as may be required for checking or auditing the accounts of such sums:

Board may appoint clerk, to be paid out of wharfage dues.

Provided, also, that it shall be lawful for the said board to employ and pay out of the sums receivable under this Act a wharf or other clerk, who shall be under the superintendence and control of the said officer of Customs.

Act when to commence.

6. This Act shall commence and take effect from and after the first of August, 1860.

SCHEDULE No. 1.

Dues chargeable on wool.

1. Upon all wool shipped or landed in Mossel Bay, there shall be payable and be paid three pence for and upon every one hundred pounds of the weight thereof.

On other articles.

2. Upon all goods, articles, matters, or things, except wool, shipped or landed in Mossel Bay, dues shall be payable and be paid at and after the rate of seven shillings and sixpence for every one hundred pounds of the value thereof.

Exemptions.

EXEMPTIONS.

All public stores, naval or military baggage, and personal baggage of passengers.

All ship's stores outwards.

Digitised by the University of Pretoria, Library Services, 2016

All goods exported upon which wharfage has been paid upon importation. No. 11—1860.
All surplus stores or provisions for the use of whaling vessels. (1)

SCHEDULE No. 2.

I, A. B., do hereby declare that I am cognizant of the value of the following articles about to be shipped by me (or by C. D., according to the fact) on board the ————, in Mossel Bay, viz.:— (here describe the articles, with marks and numbers, if any). And I do further declare that the said articles are of the value of £——. Form of declaration of the value of articles.

(Signed) A. B.

The above declaration, under the Act No. —,
was made and subscribed this day of —,
18—, in the presence of C. D.

*** When the articles are landed, or about to be landed, the above form will be altered according to the facts.

No. 8—1860.] [July 17, 1860.

An Act to Provide the Means for Carrying on of certain Public Works.

[Spent.]

No. 9—1860.] [July 17, 1860.

An Act for Introducing into this Colony Immigrants from Europe.

[Spent.]

No. 10—1860.] [July 17, 1860.

An Act to Make Better Provision for the Granting and Withholding of Licences to sell Wines and Spirituous and other Liquors.

[Repealed by Act 28, 1883.]

No. 11—1860.] [August 15, 1860.

ACT

For Abolishing the Offices of Judge and Superintendent of Police of Cape Town, and Deputy Superintendent of Police of Cape Town.

Whereas it is expedient that the offices of Judge and Superintendent of Police of Cape Town and Deputy Superintendent of Police of Cape Town should be abolished, and that other provision Preamble.

[1] And all bullion and coin landed or shipped, as also all articles of Colonial produce *shipped* to any place in this Colony. Acts 26 of 1864 and 20 of 1886.

Digitised by the University of Pretoria, Library Services, 2016

No. 12—1860.

should be made for the performance of the duties now belonging to the former of the said offices: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Office of Judge and superintendent of police abolished.

1. The office of Judge and Superintendent of Police of Cape Town and the office of Deputy Superintendent of Police of Cape Town are hereby abolished.

Police Court of Cape Town abolished. Ordinance No. 4, 1834, repealed.

2. The Police Court of Cape Town, as erected, constituted, and established by the Ordinance No. 4, passed in 1834, entitled, "Ordinance for erecting, constituting, and establishing Police Courts, to be holden in Cape Town and Simon's Town respectively, and for defining the duties and jurisdiction of the Judge of Police of Cape Town, and of the Justice of the Peace of Simon's Town respectively," is hereby abolished, and the Ordinance aforesaid hereby repealed.

Powers of judge and superintendent of police vested in resident magistrate.

3. (1) *All and singular the powers and authorities vested in the Judge and Superintendent of Police of Cape Town by the Ordinance No. 2, 1840, entitled "Ordinance for improving the Executive Police of Cape Town and the District thereof, for defining the powers and duties of the said Police in certain cases, and for promoting the peace and good order of the said Town," are hereby vested in the Resident Magistrate of Cape Town and the district thereof and the Cape district in like manner and to the same extent as if the name of such Resident Magistrate were substituted in the said Ordinance for the name of such Judge and Superintendent of Police as often as the latter name occurs.*

4. [Repealed by Act 9, 1882.]

Act when to take effect.

5. This Act shall commence and take effect at and from such a date as shall be fixed for that purpose by any proclamation of the Governor of this Colony. (2)

No. 12—1860.] [July 17, 1860.

ACT

For Increasing the Jurisdiction of the Courts of Resident Magistrate in Criminal Cases, in which the Persons accused admit their Guilt. (3)

Preamble.

WHEREAS by the law of this Colony, every prisoner against whom a preparatory examination has been instituted, is asked by the Resident Magistrate or Justice of the Peace before whom such examination takes place, after the examination of the witnesses in support of the charge has been concluded, what he will say in answer to the charge against him, and is at the same time cautioned that he is not obliged to make any statement that may

[1] Repealed by § 2, Act 31, 1883.
[2] Took effect 15th August, 1860. See Proc. 9th August, 1860.
[3] See Act 20, 1856, extended by Proclamation No. 116 of 1889, to all the native territories.

Digitised by the University of Pretoria, Library Services, 2016

criminate himself, and that what he shall say may be used in evidence against him: And whereas the statement, if any, afterwards made by such prisoner is taken down in writing, and is, after being read over to him, subscribed by him, if he will subscribe the same, and also by the Magistrate, and by one person, at least, present at the making of such declaration: And whereas prisoners making their declarations do not infrequently in and by such declarations admit their guilt: And whereas, notwithstanding such admissions of guilt, every such prisoner must be detained in prison for trial by the Supreme or Circuit Court unless he can give bail, or unless the Attorney-General upon consideration of the preparatory examination should remit the case to the Court of the Resident Magistrate as a case proper for the summary jurisdiction of such Court: And whereas it is expedient that Courts of Resident Magistrate should be empowered in such cases of admitted guilt to pass sentences exceeding those which, in the exercise of their summary jurisdiction, they are competent to pass as often as the Attorney-General, upon consideration of the preparatory examination, shall be of opinion that what the law constitutes a crime has really been committed, and that the prisoner has by his declaration voluntarily admitted that he is guilty of that crime, and that the case, from its nature and circumstances, is one proper to be dealt with by the Court of Resident Magistrate under such increased jurisdiction, instead of being reserved for the Supreme or Circuit Court: And whereas, whilst conferring upon the Courts of Resident Magistrate such increased jurisdiction, it will, at the same time, be proper to subject the proceedings of such Courts exercising such increased jurisdiction to the scrutiny of the Supreme Court or some of the Judges 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:— No. 12 - 1860.

1. As often as any preparatory examination, taken against any prisoner for any crime or offence, in reference to which the prisoner shall in his declaration, duly made and certified, have voluntarily confessed himself guilty of the crime charged against him, shall have been transmitted to the Attorney-General for his consideration, and the said Attorney-General shall be satisfied that the preparatory examinations contain legal evidence of the prisoner's guilt, and shall see fit, with reference to the nature and circumstances of the case, to remit such case to the Court of the Resident Magistrate, such Court may sentence such prisoner [*to imprisonment, with or without hard labour, for any period not exceeding two years, or, if a male, to a whipping, privately in prison, not exceeding thirty-six lashes,—or such offender may be punished both by such imprisonment and such whipping*]: (1) Provided that all and

When prisoner admits his guilt and preparatory examination contains proof of such guilt, Attorney-General may remit case to resident magistrate.

Sentence Magistrate is empowered to pronounce.

Sentence liable to revision by judge in chambers.

(1) Words in italics superseded by § 4, Act 43, 1885.

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1860.

singular the provisions of the forty-seventh, forty-eighth, and forty-ninth sections of the Act No. 20, 1856, entitled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," shall extend and apply to all sentences pronounced by virtue of the powers conferred by this Act in like manner, precisely, as to the sentences in the said forty-seventh section of the said Act No. 20, 1856, mentioned and set forth:

Whipping not to be inflicted before sentence is confirmed by judge.

Provided, always, that the punishment of whipping shall in no case be inflicted until the proceedings are returned to the Magistrate with a Judge's certificate, as directed by the said section of the Act No. 20, 1856.

No. 13—1860.] [July 17, 1860.

ACT

For Creating a Body of Water Police at the Port of Cape Town, and for altering in certain respects the Scale of Fees now payable at the Shipping Office in Cape Town. (1)

Preamble.

WHEREAS it is expedient to employ in Table Bay a body of Water Police for the repression of thieving in and from cargo-boats and upon the public wharfs, for the suppression of mutiny and insubordination on board ship, and for other purposes connected with the protection of property and the preservation of good order in the Harbour of Table Bay: And whereas, in order to defray in part the expense of such Water Police, it is expedient to increase the fees now payable at the Shipping Office in Cape Town, for or in respect of the engagement and discharge of seamen, and to provide for the payment in certain cases of certain charges for specific services which the Water Police may be desired to render, and shall render, to particular ships: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Act confined to Cape Town.

1. Nothing in this Act contained shall extend to any Shipping Office or Shipping Master at any port in this Colony other than the Port of Cape Town.

Fees for engagement and discharge of seamen.

2. The table marked A in the schedule to the "Local Merchant Seaman's Act, 1855," is, in regard to the port of Cape Town, hereby repealed, and the following fees are hereby substituted in lieu and stead of the fees specified in the said table, that is to say:

1. Upon and for the engagement of a seaman, or any number of seamen, for each seaman ..	£0	5	0
2. Upon and for the discharge of a seaman, or any number of seamen, for each seaman ..	0	3	0

[1] As to Superannuation of Members of Water Police see Act 12, 1874.

Digitised by the University of Pretoria, Library Services, 2016

3. The table marked B in the schedule aforesaid is also hereby repealed, and the following sums are hereby substituted in lieu and stead of the sums specified in the said schedule, as the sums which may be deducted from wages by way of partial repayment of the fees in the last preceding section mentioned, that is to say:

Deduction from wages by way of partial repayment of fees.

1. From the wages of any mate, purser, engineer, surgeon, carpenter, or steward, upon each engagement and each discharge	£0	3	0
2. From the wages of all others, except apprentices, upon each engagement and each discharge..	0	2	0

Governor may appoint water police.

4. It shall be lawful for the Governor to cause such a number of fit and able men as Parliament shall from year to year provide for to be enrolled to serve as water policemen at and for the port of Cape Town.

Powers and duties of water police.

5. The men of the said Water Police Force shall be sworn in before any Resident Magistrate or Justice of the Peace, and shall act as constables for preserving the peace, preventing the commission of crimes, and apprehending offenders when crimes have been committed; and the men so sworn shall, within Cape Town, the Cape district, and the port of Table Bay, have all such powers, authorities, privileges, and advantages, and perform all such duties and incur all such responsibilities as any constable duly appointed now has, or hereafter may have, within his constablewick or assigned district, by virtue of any Law or Ordinance existing or to exist in this Colony, and shall obey all such lawful commands touching the manner in which they shall conduct themselves in the execution of their office as they may from time to time receive from their lawful superiors, as the latter shall from time to time be constituted, named and specified by the Governor.

Police boat to be provided.

6. A boat shall be provided for the Water Police, to be manned by the members of the force, and to be used by them in the execution of their duty, and they shall convey seamen paying fees under the provisions of this Act to their respective vessels, upon each engagement, without making any charge.

Warrants to be executed by water police. Fees chargeable.

7. Criminal warrants against any person being on board of any ship in the harbour of Table Bay shall, as much as may be, be executed by the Water Police; and as often as any such warrant shall have been sued out at the instance of any master against his crew, or any of them, such master shall pay to the officer or person in command of the Water Police executing the same, the sum of ten shillings for each trip of the police boat necessarily taken in and about the execution of such warrant.

Duty of water police in regard to vessels putting to sea.

8. It shall be the duty of the Water Police Force to go on board any vessel about to sail from Table Bay, when so required by the master of such ship for the purpose of preventing the crew of such vessel, or any number of them, from unlawfully obstructing the sailing of such ship, and of rendering all such reasonable services

Digitised by the University of Pretoria, Library Services, 2016

No. 15–1860.

towards enabling such ship to set to sea as they may be desired and be able to perform. For and in regard to such services as are in this section mentioned every master desiring the same shall pay such sum, not exceeding five pounds sterling, as the Governor shall from time to time fix and determine.

Fees.

Application of fees.

9. All fees and charges authorised by this Act, when received by the officer commanding the Water Police, shall be paid over by him into the Colonial Treasury, at such times and in such manner as the Governor shall direct.

Policemen not to receive any gratuity unless authorised by Governor.

10. No member of the Water Police Force shall (except as hereinafter is excepted) receive from any shipmaster or other person any gratuity or reward for or in respect of anything done or to be done by him by virtue of or in connection with, his office as such policeman: Provided that nothing in this section contained shall extend to any gratuity or reward which may be voluntarily tendered by any shipmaster or other person, and which gratuity or reward the member or members to whom it shall be tendered shall by the Governor be authorised to accept. Any officer or member of the said force who shall without having had the authority of the Governor so to do receive any gratuity or reward shall, upon conviction, incur and be liable to a penalty not exceeding treble the amount or value of the gratuity or reward so received, and in case he shall not pay the same forthwith shall be liable to be imprisoned and kept at hard labour for any period not exceeding one month.

Short title of Act, and when to commence.

11. This Act may be cited for any purpose as the "Cape Town Water Police Act, 1860," and shall commence and take effect from such day as the Governor shall, by proclamation, determine and appoint. (1)

No. 14—1860.] [July 17, 1860.

An Act for Amending the Act No. 5, 1855, entitled "An Act for Creating Divisional Councils in this Colony."

[Repealed by Act 15, 1869.]

No. 15—1860.] [July 17, 1860.

ACT

For Continuing the Ordinance No. 9, 1836, entitled "Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded," as also

---

[1] To have effect from 1st September, 1860. See Proc., 27th August, 1860.

Digitised by the University of Pretoria, Library Services, 2016

the Ordinance No. 2, 1844, entitled "Ordinance for Amending the Ordinance No. 9, 1836, entitled 'Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded.'" No. 16–1860.

Preamble. WHEREAS by the Ordinance No. 3, 1853, entitled "Ordinance for Declaring the Ordinance No. 9, 1836, to be in force and operation," it is enacted that the said Ordinance No. 9, 1836, and the said Ordinance No. 2, 1844, as the said Ordinances are more fully described in the title of this Act, should cease to be in force upon the first day of January, 1861: And whereas it is expedient that the said Ordinances should be made perpetual: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Ord. 9, 1836, and 2, 1844, continued. 1. (1) The Ordinances aforesaid, No. 9, 1836, and No. 2, 1844, shall be and remain in force until Parliament shall otherwise provide.

Short Titles. 2. The Ordinance No. 9, 1836, may be cited for any purpose as "The General Municipal Ordinance, 1836," and the Ordinance No. 2, 1844, as "The General Municipal Ordinance Amendment Ordinance, 1844," and this Act as "The General Municipal Ordinance Continuing Act, 1860."

No. 16—1860.] [July 17, 1860.

ACT

To Amend the Law concerning Marriages. (2)

Preamble. WHEREAS it is expedient to afford additional facilities for contracting valid marriages: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Resident magistrates to be marriage officers. 1. The several Resident Magistrates of this Colony are hereby made and constituted marriage officers before whom marriages may be contracted.

Provisions of schedule A to apply to marriages before magistrates. 2. All and singular the clauses and provisions in the schedule marked A to this Act annexed shall apply to marriages to be contracted before any Resident Magistrate, as fully and to all intents and purposes as if the said clauses and provisions were here set forth as so many sections of this Act.

Appointments of marriage officers already made, confirmed. 3. All appointments of marriage officers heretofore made by the Governor of this Colony for the time being are hereby ratified and confirmed, and declared to be and to have been as legal, valid, and

---

[1] See note to Ord. 9, 1836.

[2] Extended by Proclamation No. 145 of 1887 to Transkei, Tembuland, and Griqualand East; and by Proclamation No. 178 of 1892 to Port St. John's. See Act 40, 1892.

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1860.

effectual as if the Order of Her Majesty the Queen in Council of the 7th September, 1838, had by express words authorised the making of every such appointment.

Governor may appoint marriage officers for Jews and Mohammedans.

4. The Governor may appoint in manner and form as in the twelfth section of the said Order in Council mentioned, marriage officers, for the purpose of solemnizing the marriages of persons professing the Jewish faith, and marriage officers for solemnizing the marriages of persons professing the Mohammedan faith: Provided that no marriage solemnized by any such marriage officer shall be invalidated or impeached by reason that neither of the married parties belonged or was reputed to belong to the class or denomination for which such marriage officer was appointed.

Marriage by special licence before magistrate, how solemnized.

5. Any marriage for the solemnization of which a special licence shall have been obtained, may, upon the production of such licence to any Resident Magistrate named therein, be solemnized and contracted before such Magistrate and witnesses, in manner and form as is in the schedule marked A annexed to this Act directed and enjoined: Provided that as often as a special licence shall be produced for authorising the solemnization of any marriage it shall not be necessary that notice of the intention to contract such marriage shall have been given or posted as in the said schedule provided, and such marriage may upon the production of such licence be solemnized forthwith.

Act 12, 1856, for securing inheritances of minors, to apply to all marriages under this Act.

6. The provisions of the Act No. 12, 1856, entitled "An Act for better securing, in certain cases, the Inheritances of Minors," shall apply, *mutatis mutandis*, to all marriages solemnized after the taking effect of this Act by any Resident Magistrate, precisely as if the affixing of any notice of an intended marriage, as in the fourth clause of the said schedule marked A, were a publication of banns. Provided, however, that no such certificate as is in the said Act mentioned shall be issued.

No fees to be charged under this Act.

7. It shall not be lawful for any Resident Magistrate to demand or receive any fee, gratuity, or reward, for or by reason of anything done or to be done by him under or in pursuance of this Act.

Short title of Act.

8. This Act may be cited for any purpose as the "Marriage Act, 1860."

Schedule A.

SCHEDULE (1) A.

Notice of intention to marry before magistrate.

1. In every case in which any persons shall desire to contract a marriage before any Resident Magistrate, one of the parties shall give notice under his or her hand or his or her mark, witnessed by two witnesses, in the form marked No. 1 to this schedule annexed, or to the like effect, to the Resident Magistrate of the district within which the parties shall have dwelt for not less than fourteen days, and shall state therein the name and surname (if any) and the condition and occupation or calling of each one of the parties intending mar-

(1) Printed as amended by Act 9, 1882.

Digitised by the University of Pretoria, Library Services, 2016

riage, the dwelling-place of each of them, and the time, not being less than fourteen days, during which each has dwelt therein: Provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards.

How, if parties live in different districts.

2. If the parties intending marriage, as in the last preceding section mentioned, dwell in different districts of Resident Magistrate, then one of the said parties shall give the like notice to the Resident Magistrate of each of the two districts.

Notice to be filed.

3. Every Resident Magistrate receiving any such notice as aforesaid shall file and preserve the same in his office, and shall also forthwith enter a true and fair copy of every such notice in a book to be kept by him in his office for that purpose, and to be called "The Marriage Notice Book," which book shall be open at all reasonable times without fee to all persons desirous of inspecting the same.

"Marriage Notice Book" to be kept.

Notice to be affixed, and also to be read in open court.

4. Every Resident Magistrate receiving any such notice as aforesaid shall cause the same or a fair copy thereof to be affixed in some conspicuous place in or near his court-house or his office, and shall at the next ensuing Court of Resident Magistrate held at the stated and ordinary place for holding such Court read the same in open Court, and the said notice shall be so read at not less than two other Courts so held as aforesaid: Provided that not less than three clear days shall elapse between each of the respective Courts in which such notice shall be read, and provided that such notice shall be read as aforesaid three times within twenty-one clear days next after the receipt of such notice.

Objections to intended marriages, how to be made.

5. Any person knowing any lawful impediment to the marriage of the persons named in any such notice as aforesaid may at any time during the twenty-one days aforesaid, by any writing under his hand addressed to the Resident Magistrate and bearing the true name and place of abode of the person who shall have subscribed the same, lodge an objection to such marriage, stating the ground of such objection.

Such objection may be made on the ground of a previous marriage according to Mohammedan custom.

6. It shall be competent for any woman to whom the man named in any such notice shall have been married according to the Mohammedan customs and usages, at any time before the taking effect of this Act, to lodge upon that ground an objection to the intended marriage.

Intended marriage on the part of minors may be forbidden by their guardians.

7. Any person whose consent is required by law to the marriage of any person under the age of twenty-one years named in any such notice as aforesaid as one of the parties intending marriage may, by any such writing as in the fifth clause of this schedule mentioned, forbid such marriage.

After due notice, marriage may be solemnized.

8. After the expiration of the twenty-one clear days aforesaid, then in case no objection shall have been lodged, it shall be lawful for the parties to contract marriage in the court-room or in the office of such Resident Magistrate, between the hours of nine and twelve in the forenoon, with open doors, and in the presence of such Magistrate and of two or more credible witnesses: or in case such Resident Magistrate shall think fit, at any dwelling-house within his district, and at any convenient hour of the day, in the presence of such witnesses as aforesaid: Provided that as often as any notice of an intended marriage shall have been published in more districts than one, neither of the Resident Magistrates shall permit the marriage in

How, if notice of intended marriage has been published in more districts than one.

Digitised by the University of Pretoria, Library Services, 2016

No. 16—1860.

such notice mentioned to be so contracted until it shall have been certified to him by the other Magistrate that no objection has been lodged; and provided that it shall be lawful for the Resident Magistrate to put to both or either of the parties intending marriage all such questions as to him shall appear necessary for determining whether there be or be not any lawful impediment to such marriage and to refuse to permit such marriage to take place unless satisfactory answers shall be given.

Unless satisfactory answers to certain questions are given, marriage need not be permitted.

Declaration to be made by parties.

9. As often as any marriage shall be contracted in manner and form as in the last preceding section mentioned, each of the parties shall, in the presence of the Magistrate and bystanders, declare as follows: "I do solemnly declare that I do not know of any lawful impediment why I, A.B., may not be joined in matrimony to C.D.," and each of the parties shall say to the other, "I call upon these persons here present to witness that I, A.B., do take thee, C.D., to be my lawful wedded wife (or husband)"; or the said parties may, with leave of the Magistrate, in lieu and stead of the said forms, declare as follows: "I, A.B., do take thee, C.D., to be my lawful wife (or husband)." Provided that the words to be so spoken as aforesaid may, when the parties or either of them shall be wholly or partially ignorant of the English language, be spoken in the Dutch language, or in any other language capable of being understood by the witnesses aforesaid.

Register of marriage to be signed and attested.

10. A register of every such marriage so solemnized and contracted in the presence of any Resident Magistrate and witnesses shall be filled up by such Magistrate, and shall be signed by him and by the parties married, and shall be attested by two witnesses, and shall be in the form marked No. 2 to this schedule annexed.

Evidence of certain matters not required in suits regarding validity of marriages

11. After any marriage shall have been contracted in manner and form as in the eighth clause of this schedule mentioned, it shall not be necessary in support of such marriage, or in any action, suit, or proceeding in which the same may come into question, to give any proof of the actual residence of the parties married or of either of them before the marriage; nor that the notice of such marriage was duly or at all affixed or read; nor that such marriage was solemnized in the place or within the hours by this Act prescribed; nor shall any evidence be received to prove the contrary.

"Marriage record book" to be kept.

12. As soon as may be after any such marriage as last aforesaid shall have been solemnized, the Resident Magistrate shall cause such register to be copied into a book, to be kept for that purpose, and to be called "The Marriage Record Book," and shall, not later than one month after the solemnization of such marriage, transmit the said register to the Colonial Secretary aforesaid, and all such registers shall be preserved like and be as evidence of the same force as the duplicate original registers of marriage mentioned in the twenty-first section of the Order in Council of the 7th September, 1838.

Register of every marriage to be sent to Colonial Secretary

Marriage cannot be solemnized after the lapse of three months from expiration of notice.

13. Whenever any such marriage as aforesaid shall not be solemnized within three calendar months after the expiration of the twenty-one days aforesaid, then the notice aforesaid and all proceedings under it shall be totally void; and in case of the desire of the parties to contract such marriage after such three months, fresh notice shall be necessary, precisely as if no former notice had been given.

Objections to intended marriage to be referred to matrimonial court.

14. As often as any objection to any marriage shall be lodged as aforesaid with any Resident Magistrate, such Magistrate shall

Digitised by the University of Pretoria, Library Services, 2016

No. 2—1863.] [July 28, 1863. No. 3 -1863.

An Act to Provide for the imprisonment in this Colony of certain Criminals sentenced in British Kaffraria.

[Lapsed.]

No. 3—1863.] [July 28, 1863.

ACT

To Amend the Act No. 13 of 1855, entitled "An Act for the Appointment of Shipping Masters, and for other purposes relating to the 'Merchant Shipping Act, 1854.'"

Preamble.

WHEREAS the provisions of the Act of the Imperial Parliament, to wit, the "Merchant Shipping Act, 1854," as contained in the two hundred and forty-second section thereof, have, in certain respects, been altered and amended; and whereas it is expedient to amend the Act of the Colonial Parliament, to wit, the Act No. 13, 1855, entitled "An Act for the Appointment of Shipping Masters, and for other purposes relating to the 'Merchant Shipping Act, 1854,'" so that the same shall correspond with the alterations and amendments in the Imperial Act above mentioned: 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:—

Powers of cancelling or suspending certificates of masters or mates vested in local courts.

1. The powers of cancelling or suspending the certificate of a master or mate by the two hundred and forty-second section of the Act of the Imperial Parliament, entitled the "Merchant Shipping Act, 1854," conferred on the Board of Trade, shall vest in and be exercised by the Court or Tribunal duly authorised by the seventeenth section of the Act No. 13, 1855, of the Colonial Parliament, entitled an "Act for the Appointment of Shipping Masters, and for other purposes relating to the 'Merchant Shipping Act, 1854,'" to make enquiry into the several matters and things recited in the said last mentioned section of the said Act of the Colonial Parliament.

Sentence of suspension or cancellation of certificate and proceedings thereupon.

Power of Governor to direct reconsideration of decision.

2. (1) Every such Court or Tribunal shall, at the conclusion of the case, or as soon after as possible, state, in open Court, the decision to which it may have come, and shall, with all convenient dispatch, transmit the proceedings in such inquiry, together with their decision, to the Governor; and no such decision shall take effect unless it be confirmed by the Governor, who may, if he shall think fit, direct such Court or Tribunal to take further evidence, or to reconsider such decision (2); and such Court or Tribunal shall, in all cases, send a full report upon the case, with the evidence, to the Board of Trade, and shall also, if it determine to

[1] Printed as amended by § 5, Act 13, 1874.
[2] But see note (3) to § 242, sched. to Act 13, 1855.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1863.

cancel or suspend any certificate, forward such certificate, or any directions it may have given in reference thereto, to the Board of Trade, with their report, so that the said Board may exercise the powers conferred by paragraph four, section twenty-three, of 25th and 26th Victoria, chapter sixty-three.

Report to be made to Board of Trade.

Statement of the case to be furnished to owner of certificate twenty-four hours before commencement of inquiry.

3. No certificate shall be cancelled or suspended unless a copy of the report, or statement of the case upon which the investigation is ordered, has been furnished to the owner of the certificate at least twenty-four hours before the commencement of the investigation.

Certificate to be delivered to the court.

4. Every master or mate whose certificate is or is to be suspended or cancelled in pursuance of this Act, shall, upon demand, deliver his certificate to such Court or Tribunal by which the case is investigated or tried, or, if not demanded by such Court or Tribunal, to the Board of Trade, or as such Court or Tribunal may direct, in writing, and in default shall, for each offence, incur a penalty not exceeding fifty pounds.

Penalty for default.

Short title of Act.

5. This Act may be cited as the "Local Merchant Seaman's Amendment Act, 1863," and shall be construed with and as part of the "Local Merchant Seamen's Act, 1855."

No. 4—1863.] [July 28, 1863.

An Act to Amend Act No. 4 of 1858, constituting the Board of Public Examiners.

[Repealed by Act 16, 1873.]

No. 5—1863.] [July 28, 1863.

An Act for Continuing the Act No. 26, 1857, "An Act for punishing Emissaries from Kafirland, and others delivering in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace."

[Expired.]

No. 6—1863.] [July 28, 1863.

An Act to Regulate till the Expiration of the Year 1864 the Dealing in Gunpowder, Firearms, and Lead.

[Expired.]

No. 7—1863.] [July 28, 1863.

An Act to Amend the Act No. 7, 1862, entitled "An Act for the Construction of a Railway to Malmesbury."

[Lapsed.]

No. 8—1863.] [July 28, 1863.

An Act to Amend the Act No. 8, 1862, entitled "An Act for constructing a Railway from Wellington to Worcester."

[Lapsed.]

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1863.] [July 28, 1863. No. 13—1863.

An Act to Amend the Act No. 9, 1862, entitled "An Act for constructing a Railway from Port Elizabeth to Graham's Town."

[Lapsed.]

No. 10—1863.] [July 28, 1863.

An Act for Authorising the Governor to secure by Letters Patent, to the Inventors thereof, the exclusive enjoyment for a limited period of an Apparatus to Scour Wool and of a Plough for the better Cultivation of Vineyards.

[Expired.]

No. 11—1863.] [July 28, 1863.

An Act to Increase the Rate of Transfer Duty.

[Repealed by Act 5, 1884.]

No. 12—1863.] [July 28, 1863.

An Act to Amend in certain respects the Law regulating Stamp Duties and Licences.

[Repealed by Act 3, 1864.]

No. 13—1863.] [July 28, 1863.

ACT

For Establishing certain Tolls.

Preamble.

WHEREAS it is expedient that certain toll-bars be established and declared, in addition to the toll-bars by the Act No. 23 of 1858, entitled "An Act for declaring Main Roads and regulating Tolls," provided: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Toll-bars established. Governor empowered to appoint persons to demand tolls.

1. All and singular the several toll-bars mentioned and set forth in the schedule to this Act, marked A, are hereby established; and such persons respectively as shall be authorised by the Governor so to do shall be entitled to demand and receive at every such toll-bar the several tolls which in and by the said schedule, marked A, are mentioned and set forth as the tolls to be demanded and received at such toll-bars.

SCHEDULE A.

I. *Toll-bars and Toll-rates payable at "Carlisle Bridge" (Espag's Drift), at Koonap Bridge, and at Berg River Bridge.*

	s.	d.
1. Upon each wheel of every four-wheeled vehicle, not provided with a brake	0	3
2. Upon each wheel of every such vehicle provided with a brake, and upon each wheel of any two-wheeled vehicle	0	2

Digitised by the University of Pretoria, Library Services, 2016

No. 13 1863.

	s.	d.
3. Upon each horse, mule, or ass employed in drawing a vehicle	0	1
4. Upon each head of horned cattle employed in drawing a vehicle	0	0½
5. Upon each horse, mule or ass not employed in drawing a vehicle	0	2
6. Upon each head of horned cattle not employed in drawing a vehicle	0	0½
7. Upon every sheep, goat, or swine	0	0¼

II. *Rates payable at Daggaboer's Nek.*

1. Upon each wheel of every four-wheeled vehicle not provided with a wooden shoe (remschoen) or an iron shoe not less than eight inches broad, or a brake ..	0	3
2. Upon each wheel of any other vehicle	0	2
3. Upon every animal employed in drawing a vehicle ..	0	1
4. Upon every animal not employed in drawing a vehicle, excepting sheep, goats, or swine	0	2
5. Upon every sheep, goat, or swine	0	0¼

No. 14—1863.] [July 28, 1863.

An Act to Authorise the Raising of a Loan of One Hundred and Fifty Thousand Pounds.

[Spent.]

No. 15—1863.] [July 28, 1863.

An Act for Authorising certain Expenditure not provided for by Parliament in the Year 1862.

[Spent.]

No. 16—1863.] [July 28, 1863.

An Act for Applying a Sum not exceeding Four Hundred and Forty-one Thousand One Hundred and Eighty-four Pounds and Three Shillings for the Service of the Year 1863.

[Spent.]

No. 17—1863.] [July 28, 1863.

An Act for Applying a Sum not exceeding Two Hundred and One Thousand and Seventeen Pounds and Nineteen Shillings for the Service of the Year 1864.

[Spent.]

No. 18—1863.] [July 28, 1863.

An Act for making further Provision to complete the Improvement of the Kowie Harbour.

[Spent.]

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1863.] [July 28, 1863.

ACT

For enabling the Commissioners of the Municipality of George Town to procure a better Supply of Water for the Inhabitants of such Municipality.

Preamble.

WHEREAS the inhabitants of the municipality of George Town have for some years past experienced great inconvenience in consequence of a deficient supply of water; and whereas the present supply of water is derived from streams having their rise in a portion of the Outeniqua Mountains, situate within and forming part of the commonage lands of the municipality of George Town, the waters from which streams are collected in a reservoir at the base of the mountain, and thence conducted to and distributed in the town of George by means of open sluits; and whereas the existing reservoir is insufficient for the storage of an adequate supply of water, and the waters conveyed in such sluits are constantly polluted by decayed vegetable and animal matter continuously accumulating therein; and whereas it will be very beneficial to the inhabitants that additional reservoir space should be constructed and provided, and that the water should be conveyed to the town in supply pipes in place of open sluits; and whereas to enable the said commissioners to construct such additional reservoir space and procure and lay such pipes, it is proposed that a special rate should be laid on all immovable property within the municipality of George Town, to be called the water rate; and whereas it is proposed that the said commissioners should be empowered to borrow money on the security of the intended water rate to enable them to construct the intended works, but such objects cannot be obtained without the aid and authority of Parliament: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof:—

Short title.

1. This Act may be cited as the "George Town Water Act, 1863," and shall take effect from and after the promulgation thereof.

Interpretation of terms.

2. In the construction of this Act the following words and expressions have the several meanings assigned to them over and above their several ordinary meanings, unless there be something in the context repugnant to such construction, namely: Words importing the singular number include the plural number, and words importing the plural number include the singular number; words importing the masculine gender include females: the expression "commissioners" shall mean commissioners of the municipality of George Town; the expression "inhabitants" shall mean householders of the municipality of George Town; the expression "street or public thoroughfare," shall mean street, or public thoroughfare situate within the municipality of George Town; and

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1863.

the expression "ratepayers" shall mean parties paying the special rate to be laid by this Act.

Commissioners to provide for impounding adequate supply of water.

3. The commissioners are hereby empowered to cause to be made, provided, and constructed, in or upon any part of the commonage lands all such reservoirs, dams, watercourses, drains, and ditches as may be deemed necessary for the impounding of an adequate supply of water for the said inhabitants, for domestic, irrigating and other purposes, and also to provide and lay down, in or under any commonage, land, street, or thoroughfare, any pipe or pipes for the conveyance of water from such reservoir to and throughout the township for the supply of the inhabitants, and from time to time to maintain and keep such reservoirs, dams, watercourses, ditches, and pipes in repair, provided that the amount to be expended shall not exceed the sum of four thousand pounds.

Commissioners to erect public fountains with drinking troughs.

4. The commissioners shall erect within the township public fountains for the gratuitous supply of water, with suitable drinking troughs for the convenient use of horses, cattle, sheep, and other animals, and shall from time to time maintain and keep in repair such fountains and troughs.

Commissioners to determine number of such fountains and troughs.

5. The number and situation of such fountains and troughs shall from time to time be determined by the commissioners.

Ratepayers may have private service pipe.

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

Commissioners to fix and publish charges for private water-leadings.

7. The commissioners shall determine and publish the tariff by which the supply of water by private water-leadings shall be regulated, and the payment for all private water-leadings shall be in accordance with such tariff.

Plan, &c., of works to be placed in town-house, for inspection previous to commencement of works

8. Before proceeding with the works hereinbefore authorised, the commissioners shall cause a plan, specification, and estimate of such intended works to be placed in the Town-house in George Town, for the inspection of the inhabitants, and shall cause a notice in the form number one in the schedule hereto to be given to the inhabitants as hereafter is directed; after the publication of such notice, the plans, specification, and estimate shall remain open for inspection in the Town-house aforesaid for the period of twenty-one days. Any ratepayer objecting to such plans, specification, or estimate, or to any matter of detail therein, may at any time within the said period of twenty-one days leave with the secretary of the said commissioners a statement in writing setting forth clearly and concisely his objections to the same. On the expiration of the said period of twenty-one days the plan, specification, and estimate, together with a duplicate of the notice given by the commissioners, and all notices of objection lodged with the said secretary, shall be

Objections to be made in writing.

Digitised by the University of Pretoria, Library Services, 2016

deposited in the office of the Colonial Secretary, for the purpose of being laid before the Governor for the time being, for his approval; and in the event of the Governor not dissenting from such plans within forty-two days from the time of their being so deposited, the commissioners may proceed with the contemplated works.

Commissioners not to be interested in contracts.

9. No commissioner shall be allowed either directly or indirectly to become a contractor or to tender for any contract, either in his name or in the name of or jointly with any other person, or in any manner to participate in any profit to be derived from any work to be performed for the said commissioners in pursuance of this Act, on pain of forfeiture of all his interest in such contract for the benefit of the municipality; and shall also be considered to have vacated his office of commissioner *ipso facto*, and be ineligible to be elected at any future period to serve as commissioner: Provided that no commissioner shall be deemed or taken to have vacated his office or to have incurred any forfeiture whatever by reason merely that the commissioners shall have entered into any such contract or any other dealing or transaction with the directors or other managers of any joint-stock company of which such commissioner shall be a shareholder; nor shall any shareholder or person otherwise interested in any joint-stock company with which company the commissioners 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 commissioner by reason merely of such contract, dealing, or transaction.

Water rate.

10. A special rate of one penny half-penny in the pound, to be called the "water rate," is hereby imposed on all immovable property, situate within the municipality; the rate to commence and be payable on the first day of January next, and to become due and payable on the first day of January in every successive year up to and including the first day of January which will be in the year one thousand nine hundred and twenty-one.

Power to borrow money on security of water rate.

11. The commissioners are hereby empowered, with the consent of the Governor, from time to time, subject to the proviso hereinafter contained, to borrow and take up at interest upon the security of the water rate any sum of money not exceeding in the aggregate the principal sum of four thousand pounds, and to mortgage the rate for securing the repayment of such moneys: Provided that moneys borrowed for the purpose of paying off then existing mortgages shall not be deemed to form part of such four thousand pounds.

Notice to be given of intention to borrow.

12. The commissioners, before applying to the Governor for his consent to borrow and take up at interest any such moneys as mentioned in the last section, shall cause a notice in the form number two in the schedule hereto to be given as hereinafter is directed. Any ratepayer objecting to the raising of such money must within the period of fourteen days from the publication of such notice leave with the secretary of the commissioners a notice

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1863.

Mode of objecting.

in writing, setting forth clearly and concisely the nature and grounds of his objections, and the evidence to be adduced in support of such objections. On the expiration of such period of fourteen days the commissioners shall deposit in the office of the Colonial Secretary a duplicate of the notice given by them with a statutory declaration verifying the due publication thereof, and all notices of objection lodged with the secretary of the said commissioners, in order that the validity of such objections may be taken into consideration by the Governor; and in the event of the Governor not dissenting from the proposed taking up of such moneys within the period of forty-two days from the time of such notice being deposited as aforesaid, the consent of the Governor shall be assumed, and the commissioners shall be empowered to take up such moneys as shall have been specified in their notice.

Form of mortgage.

13. All mortgages to be granted in pursuance of this Act shall be in the form number three in the schedule hereto, and shall be signed by the commissioners for the time being or any three of them.

Registration of mortgage.

14. The commissioners shall cause all mortgages granted by them to be registered, and such registry shall be produced at every annual meeting, for the inspection of the inhabitants.

Transfer of mortgage.

15. All transfer of mortgages by deed shall be in the form number four in the schedule hereto, and shall be registered with the commissioners, and a fee of two shillings and sixpence in respect of such registry shall be paid to the said commissioners.

Appropriation of money.

16. All moneys received from the water rate or land sold for the purposes of this Act, and from special or extra water rates in respect of private supplies or leadings, and to be borrowed and taken up at interest by virtue of this Act, shall be applied for the purposes of this Act, and shall not be spent upon or applied to any other purpose.

Annual account to be submitted to ratepayers.

17. The commissioners shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall lay before the ratepayers at every annual meeting an abstract in the form number five in the schedule hereto, showing all moneys received and expended under and by virtue of this Act between the first day of January and thirty-first day of December in the then preceding year, and of all liabilities and assets in respect of this Act on the next preceding thirty-first day of December, and also an estimate of all moneys to be expended and received during the then current year.

Annual meeting.

18. An annual meeting of the inhabitants shall be held in the month of March in each year, of the time and place of which meeting twenty-one clear days' notice shall be given by the commissioners.

Annual water rate may be reduced.

19. In case it should appear at any such annual meeting that it will not be necessary for the requirements of the current year to levy the full amount of the rate hereby imposed, in every such

Digitised by the University of Pretoria, Library Services, 2016

case the commissioners shall reduce such rate for such current year from the said amount of one penny half-penny in the pound to such an amount as will in the opinion of the commissioners be adequate to meet the estimated expenditure for such current year.

Costs of Act.

20. All the necessary costs, charges, and expenses attending the procuring of this Act and carrying the provisions thereof into effect shall be paid out of the money authorised to be received by the commissioners under the provisions of this Act.

Erection of public baths and washing-places.

21. The commissioners are hereby empowered, with the consent of the resident householders present at any annual or special meeting, to erect and construct public baths and washing-places, and to make such regulations touching the same as the commissioners shall think proper and necessary.

Regulations respecting water supply

22. The commissioners are hereby empowered from time to time to make such regulations touching the water to be supplied to the inhabitants and the time and times at which such supply is to be received as shall be proper and necessary; and also touching the most expedient mode of preventing any waste of water within the said municipality.

Penalties.

23. Every person who shall bathe or wash himself in any reservoir belonging to the commissioners, or in any stream flowing into such reservoir, or who shall wash, throw, or cause to enter therein any dog or other animal, or who shall throw any rubbish, dirt, filth, or other noisome thing into any such reservoir or stream, or wash or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes or other thing, shall for every such offence, upon being convicted thereof upon the prosecution of the commissioners, forfeit to the use of the commissioners a sum not exceeding five pounds nor less than one pound: in 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 fourteen days.

Rates how to be recovered.

24. In all cases in which the occupier of immovable property assessed to the water rate imposed by section twelve shall not be the owner, the owner shall in the first instance be liable to pay to the commissioners the full amount of such rate and to recover from the tenant or occupier for the time being one-half of the amount of such rate: Provided that the tenant or occupier may if he think proper pay such rate and deduct and retain from the rent payable to the landlord one-half of the amount so paid.

How notices under this Act to be promulgated.

25. All public notices required by this Act shall be deemed to be sufficiently given by affixing a copy thereof on the Town-house and at the office of the Resident Magistrate for the district of George, and at such other places, if any, as the resident householders present at any annual meeting shall from time to time direct.

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1863.

THE SCHEDULE BEFORE REFERRED TO.

No. 1.

IN THE MATTER OF THE GEORGE TOWN WATER ACT, 1863.

Notice is hereby given that the plans, specifications, and estimate of the works proposed to be constructed by the commissioners of the municipality under the authority of the above Act have been this day placed in the Town-house in George Town for the free inspection of the inhabitants, and that the same may be inspected on any day (Sundays excepted) up to and including —— the — day of —— (next or instant), between the hours of ten a.m. and four p.m. Any rate-payer objecting to such plans, specification, or estimate, or to any matter of detail therein, may at any time within twenty-one days from this date leave with the secretary of the commissioners a statement in writing, setting forth clearly and concisely his objections to the same, in order that such objections may accompany the plans, specification, and estimate, and be laid with them before the Governor for his consideration.

Dated this — day of —— 186—.

No. 2.

IN THE MATTER OF THE GEORGE TOWN WATER ACT, 1863.

Notice is hereby given that the commissioners of the municipality of George Town, in pursuance of the above Act, intend to make application to the Governor of the Colony for his consent to their borrowing and taking up at interest under the provisions of the above Act a sum of money not exceeding £—— on the security of the water-rate. Any party liable to such rate objecting to the raising of such money must, within the period of fourteen days from this date, leave with the secretary of the commissioners a notice in writing, setting forth clearly and concisely the nature and grounds of his objections and the evidence to be adduced in support of such objections, in order that such notice may accompany the application to the Governor and be laid before him for his consideration.

Dated at George Town, this — day of —— 186—.

No. 3.

FORM OF MORTGAGE.

We, the undersigned, being commissioners of the municipality of George Town, in consideration of the sum of —— pounds sterling, lent and advanced to us for the purposes of the George Town Water Act, 1863, by —— do hereby, in pursuance of the powers contained in the said Act. authorising us in this behalf, charge the water-rate of one penny half-penny in the pound imposed by the said Act with the repayment of the said ——, his executors, administrators, or assigns, of the said sum of ——, by the instalments and in manner following: the principal sum of £—— on the — day of —— and the like principal sum of £—— on the day of —— in each and every subsequent year until the whole of the said principal sum of £—— shall

Digitised by the University of Pretoria, Library Services, 2016

have been paid and discharged; and also with the payment of interest after the rate of —— pounds per centum per annum on all principal moneys, continuing secured hereon by equal half-yearly payments, on the — day of —— and — day of —— in each year.

As witness our hands this — day of ——, in the year of our Lord one thousand eight hundred and —.

No. 4.

FORM OF TRANSFER.

I, the undersigned, —— in consideration of the sum of —— sterling money paid to me by —— do hereby assign unto —— his executors, administrators, and assigns, all principal moneys and interest secured by a certain deed bearing date the — day of —— 18—, under the hands of —— commissioners of the municipality of George Town, with power for the said ——, executors, administrators, and assigns, or his or their substitute or substitutes, in the name or names of the said —— executors or administrators, to sue for, receive, and give receipts for the same.

As witness my hand this —— day of —— 186—.

No. 5.

IN THE MATTER OE THE GEORGE TOWN WATER ACT, 1863.

Account of all Moneys received and paid by the commissioners of the municipality of George Town under or by virtue of this Act, between the 1st day of January, 18—, and the 31st day of December, 18—, both inclusive.

Moneys Received.

To amount received from water-rate ..
,, amount received from water-leadings ..
,, amount received from sale of lands ..
,, amount taken up on loan .. ..
,, amount received from any other source

Moneys Expended.

By amount expended on works .. ..
,, ,, ,, in salaries .. ..
,, ,, ,, in repairs .. ..
,, ,, ,, in interest of debt ..
,, ,, ,, in repayment of debt..
,, ,, ,, on any other account..

Summary of Receipts and Expenditure on Capital Account up to the 31st day of December, 18—.

To amount realized on sale of lands.. ..
To amount taken up on loan.. .. ..
To amount received from rates after payment of interest and working expenses as under:
Water-rate .. ..
Private water-leadings .. ..
By amount expended on works .. ..
By repayment of loans .. .. ..

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1863.

Statement of Liabilities and Assets on the 31st December, 18—

Liabilities.

To amount due on loans .. .. ..
,, outstanding accounts .. .. ..
,, to cash balance .. ..

Assets.

Arrears of rate .. ..
Cash Balance .. ..

Estimate of Income and Expenditure for the current year.

Income.

To cash balance .. ..
,, amount to be received from arrears of rate .. ..
,, amount to be received from private water-leadings .. ..
,, amount to be received from water-rate

Expenditure.

By cash balance .. ..
,, new works .. ..
,, interest on advances .. .. ..
,, repayment of advances .. .. ..
,, salaries .. ..
,, repairs .. ..
,, any other account .. .. ..

No. 20—1863.] [July 28, 1863.

ACT

For incorporating the Eastern Province Guardian Loan and Investment Company, and enabling them to sue and be sued in the name of their Secretary.

Preamble.

WHEREAS, by a deed bearing date at Graham's Town, the seventeenth day of December, in the year of our Lord one thousand eight hundred and sixty-one, certain persons did become co-partners together in a certain joint-stock company, called the Eastern Province Guardian Loan and Investment Company, for the purpose of carrying on a business to consist of and to be confined to the following objects, that is to say:

1. The investment of the capital stock of the said company and all such other stock, capital, or funds as may hereafter be added to the said stock, or belong to the said company, or be under the administration of the said company, upon mortgages of immovable property, of capital stock in any joint-stock company, or of Government debentures, or upon such other security, as by the directors for the time being may be deemed safe and advantageous.

Digitised by the University of Pretoria, Library Services, 2016

2. The borrowing and taking up upon the security of the capital stock, funds, and assets of the said company of such moneys, in the Colony or elsewhere, as the directors for the time being shall deem it to be for the advantage of the said company to borrow and take up, for the purpose of investing the said moneys for the benefit of the said company, in the manner hereinbefore in the last preceding clause mentioned.

3. The administration and management of such estates and other property as the said company shall be duly appointed to administer or manage as executors, tutors, guardians, curators, trustees, assignees, or agents, either under and by virtue of a decree or order of any competent Court, or by directions of the Master for the time being of the Supreme Court of this Colony, in his official capacity, or by the last will or testament, or any valid act or deed of any person or persons whomsoever, or by virtue of any marriage settlement, power of attorney, or otherwise; but such administration shall in no case whatsoever be extended to the conduct and management of any mercantile speculation or trade whatsoever, with the capital stock or funds of the said company. And whereas in and by the said deed it was stipulated and agreed that the capital of the said company should be two hundred thousand pounds sterling (£200,000) divided into twenty thousand (20,000) shares of ten pounds sterling (£10) each, whereof four thousand (4,000) shares in the said company have been allotted, and upon which the sum of nine pounds has been paid by the holders thereof, as and for part of the capital stock of the said company, and the remaining sixteen thousand (16,000) shares have been reserved for the benefit of the shareholders of the said company. And whereas the directors of the said company, acting for and on behalf of the said shareholders and being duly authorised by them in that behalf, have applied for an Act to incorporate the said company as constituted under the said deed, and in order the better to enable them to carry into effect the object of the said company:

Style of company.

1. Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, that it shall and may be lawful for the said persons and such others as may become entitled to the privileges of this Act, under the provisions of the said deed, to be and continue joint-stock proprietors of the said capital sum of two hundred thousand pounds sterling (£200,000), and of all such other sum or sums of money as they may hereafter acquire under the provisions of the said

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1863.

deed, and to constitute and be a company for the purposes before mentioned, to be carried on under the style or firm of the "Eastern Province Guardian Loan and Investment Company."

Trust deed and list of shareholders to be filed with Registrar of Deeds.

2. A copy of the said deed, duly authenticated by the secretary of the said company, together with a return, authenticated as aforesaid, of the names and places of abode of the several persons at the time being shareholders of the said company, and of the name and place of abode of the chairman and of each director thereof and of the secretary, shall, within one month after the passing of this Act, be filed in the office of the Registrar of Deeds of this Colony.

Alterations in deed to be similarly filed.

3. A copy, authenticated as aforesaid, of all alterations in or additions to the said deed which may at any time be made in conformity with the provisions therein contained, shall, within three months thereafter, be filed in the said office.

Transfer of shares.

4. Whenever and as often as the transfer of any share or shares in the said company shall be made, a return, authenticated by the secretary of the said company appointed under the provision of the said deed, shall, within three months after such transfer, be filed in the said office, which return shall contain the date of such transfer and the name or names and place or places of abode of the person or persons to whom or in whose behalf the same is made.

Names of chairman, directors, or secretary.

5. Whenever and as often as any person shall be appointed chairman, director, or secretary of the said company, in the place of the present or any future chairman, director, or secretary, a return, authenticated as last aforesaid, of such appointment shall within three months thereafter be filed in the said office.

Certified copy or extract of deed or return may be used in evidence.

6. A copy of or extract from the copy of the said deed, and of any alterations therein or additions thereto which may have been made and filed as aforesaid, and a copy of or extract from any such returns as aforesaid which may have been made and filed as aforesaid, purporting to be certified under the hand of the Registrar of Deeds, shall in all proceedings, civil or criminal, be received in evidence as *primâ facie* proof of all the matters contained or recited in such certified copy or extract, and of the authority and appointment of the person or persons named therein, whether as shareholder, director, chairman, secretary, or otherwise, and of the fact of their being such at the date of such certificate; and such certified copy or extract shall be received in evidence without any proof of the handwriting of the said Registrar or of his appointment.

Appointments by company valid.

7. All appointments by any competent Court or authority, or under and by virtue of any last will and testament, codicil, marriage settlement, power of attorney, or any other act or deed which shall have been at any time previous to the passing of this Act, or which shall be hereafter duly made and executed of the directors or secretary of the said company, as trustees, assignees, executors, administrators, tutors, curators, guardians, or agents, or

Digitised by the University of Pretoria, Library Services, 2016

as trustee, assignee, executor, administrator, tutor, curator, guardian, or agent, as the case may be, shall be deemed and taken to be a valid appointment of the said company.

Evidence of members admissible.

8. In all actions, suits, and proceedings, whether civil or criminal, the evidence of any person being a shareholder of the said company shall be admissible, in like manner as if such person were not a shareholder thereof.

Company to sue and be sued in name of their secretary.

9. All actions, suits, and proceedings at law to be brought for or on behalf of the company against any person or persons, bodies politic or corporate, or others (whether shareholders of the said company or otherwise), for or on behalf or in respect of any debt, claim, or demand due to the said company, or for or on account or in respect of any other matter or thing relating to the concerns of the said company, shall and may after the passing of this Act be brought and maintained in the name of the secretary of the said company, as the nominal plaintiff, applicant, or petitioner for and on behalf of the said company; and all proceedings of a criminal nature for any fraud, crime, or offence committed against the said company or their property, or with intent to injure or defraud the said company, shall and may be, subject to the provisions of any Act, Law, or Ordinance which may be in force, or which may hereafter be enacted in that behalf, be prosecuted for and on behalf of the said company by and in the name of such secretary as aforesaid, as nominal prosecutor; and in any indictment or information it shall be sufficient to describe the property of the said company as the property of such secretary; and any offence against or with intent to injure or defraud such secretary as aforesaid, and all actions, suits, or proceedings t law by any person or persons, bodies politic or corporate, or others (whether shareholders of the said company or otherwise) against the said company, shall and may be brought and maintained against such secretary as aforesaid, as the nominal defendant or respondent for and on behalf of the said company, and not against the said company, or the directors or shareholders thereof, or any of them, anything to the contrary thereof in the said deed notwithstanding; and no action, suit, or proceeding as aforesaid shall abate or discontinue, to be rendered ineffectual, by the reason of the death, removal, or resignation of such secretary; but in any such event, and as often as the same may occur, the name of the secretary for the time being shall be substituted in the subsequent proceedings.

Officers or members may be sued.

10. It shall and may be lawful for the secretary of the said company to bring and maintain any action, suit, or other proceeding at law against any person being an officer or shareholder of the said company, for or on account of any claim or demand which the said company may have against any person, in like manner as if he were not an officer or shareholder thereof.

And may bring actions against the company.

11. It shall and may be lawful for any person being an officer or shareholder of the said company, to bring and maintain any action,

Digitised by the University of Pretoria, Library Services, 2016

No. 21—1863.

suit, or other proceeding at law against the secretary of the said company for or on account of any claim or demand which he may have against the said company, in like manner as if he were not an officer or shareholder thereof.

Shares or dividends not to be set off against debts due to company.

12. No claim or demand which any shareholder of the said company may have in respect of his share of the capital stock of the said company, or of any dividends, interest, or profits payable in respect of any such share, shall be capable of being set off, and no claim in reconvention shall be brought on account of any such share, dividends, interest, or profits, against any claim or demand which the said company may have against such shareholder on account of any other matter or thing whatsoever, but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital stock, or of any dividends, interests, or profits payable in respect thereof.

Public Act.

13. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all Judges, Magistrates, and others, with or without being specially pleaded.

No. 21—1863.] [July 28, 1863.

AN ACT

For enabling the Divisional Council of Mossel Bay to borrow Moneys upon the Security of Road-rates and Tolls, for the Opening of Mountain Passes, the Construction of Bridges and Works of like nature.

Preamble.

WHEREAS it is expedient that the Divisional Council of Mossel Bay should be empowered to borrow moneys upon the security of the road-rates of the said division, for the purpose of opening any mountain pass, or constructing any bridge, or making or improving any public road, by which the inhabitants would be benefited; and whereas it is highly necessary and expedient that several of the roads in this division should be opened and made available for communication with the fertile back country; and whereas the annual amount of road-rates to be levied under Act No. 9, 1858, is not sufficient to meet the first outlay of those works: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Portions of Act 9, 1858, repugnant to this Act, repealed.

1. So much of the Act No. 9, 1858, [1] entitled "An Act to provide for the management of the Public Roads of the Colony," as is repugnant to or inconsistent with any of the provisions of this Act shall be and the same is hereby repealed.

Purposes for which money may be borrowed and how to be applied.

2. Besides the objects and purposes set forth in the forty-third section of the Act aforesaid, No. 9, 1858, to which objects and

[1] Repealed by Act 40, 1889.

Digitised by the University of Pretoria, Library Services, 2016

purposes the moneys received by said Divisional Council for the purposes of the said Act shall be applicable, it shall be lawful for said Council, if it shall so think fit, to apply any such moneys to the opening of any mountain pass within the division, or to the construction of any bridge, or to the making of any new road within the division, or for the payment of any loan for the said purposes to be raised as hereinafter determined, and for the interest becoming due upon such loan; it being the true intent and meaning of this section of this Act to confer upon the said Divisional Council full power and authority to determine, in regard to the objects and purposes in this section and in the forty-third section of the Act aforesaid specified, the order of priority in which they or any of them shall be undertaken and proceeded with; and provided that whenever the funds of the said Divisional Council shall require to be contributed to the making or improving of any road adjoining this division, the desirableness of such contribution shall be decided by the said Divisional Council.

Power to raise loan on security of tolls.

3. It shall be lawful for the said Divisional Council to raise, from time to time, by way of loan on the credit of any tolls to be levied or rates to be assessed under the Act aforesaid, No. 9, 1858, any such sum or sums of money as may at any time be required by the said Divisional Council, for the purpose of carrying into effect any of the objects or purposes hereinbefore and in the Act aforesaid mentioned: Provided that no such loan as aforesaid shall be capable of being effected, except under and by virtue of a resolution of the Divisional Council, at a meeting at which there shall be present not fewer than four members exclusive of the chairman; and provided that no meeting shall be competent to pass any such resolution unless each of the members shall have had, for at least twenty-one days next before the day appointed for such meeting, a notice in writing signed by the secretary to such Council, stating that the question of such loan will come under consideration of such meeting, which notice the said secretary shall issue at the instance of any member of the said Council; and provided, also, that no loan or loans, or debts contracted by said Council under this Act shall at any time exceed the sum of three thousand pounds sterling.

No loan to be raised without a resolution of Divisional Council, after proper notice.

Extent of loan.

Mode of procedure in raising loan.

4. In every case in which it shall be resolved by the said Council to raise any such loan as aforesaid, the said Council shall by a notice in the *Government Gazette*, or in some newspaper published in or near the said division of Mossel Bay, call for tenders for the sum or sums required; and in case it shall accept any of the tenders sent in, shall accept that which specifies the lowest rate of interest; and the bond, declaration, or obligation pledging the tolls or rates agreed to be pledged for securing the repayment of the sum or sums borrowed by such Council shall be signed on behalf of that Council by three members thereof, of whom one shall be the Civil Commissioner of the division.

Execution of bond.

Digitised by the University of Pretoria, Library Services, 2016

No. 21—1863.

Repayment of loan.

5. Any sum or sums of money borrowed as aforesaid by the said Divisional Council shall be paid off from or out of the tolls or rates hypothecated with all convenient speed.

Proceedings upon return of *nulla bona* upon writ of execution obtained by any creditor of Divisional Council.

6. In case it should at any time appear by the return of the Sheriff to any writ of execution sued by any judgment creditor of the said Divisional Council that the Sheriff had not found any goods or chattels of the said Council wherewith to satisfy the said judgment or any part thereof, or that he had not found such goods or chattels sufficient to satisfy the said judgment, it shall be lawful for the said creditor to apply by petition to the Supreme Court, annexing copies of the judgment and of the writ and return, and praying for such relief in the premises as the said Court shall under this Act be empowered to afford.

Application may be made to Supreme Court for purpose of obtaining list of Divisional Council's debts.

7. The creditor who shall have filed any such petition as aforesaid may apply to the Supreme Court, by motion founded upon such petition and its annexures, for an order that it be referred to the Master of the said Court, to inquire and report whether any, and if so, what other debts are due by the said Council, to the end that all such debts may be liquidated: Provided that notice of such motion shall be given to the said Council through their secretary or otherwise, if the Court shall so direct.

Supreme Court have power to make an order for obtaining such list.

8. Upon the hearing of such motion, then, unless the said Council shall satisfy the said Court that the said Council will be prepared within a reasonable time, to be approved of by the said Court, to satisfy from the rates assessed, or to be assessed, or other assets, the debt of the creditor who shall have petitioned as aforesaid, together with costs and all interests accrued due thereupon, the said Court shall make an order referring it to the Master to inquire and report what other debts, if any, are due by the said Council.

Master of Supreme Court to call meeting of creditors.

9. The Master in acting upon any such order shall, by a notice of not less than twenty-one days in the *Government Gazette*, and one or more newspapers published in or near the said division, call a meeting of all persons claiming to be creditors of the said Council for proof of debts, and such debts if not admitted by the said Council, or not evidenced by their books and accounts, shall be proved by affidavit.

Supreme Court empowered to assess rate for liquidating council's debts.

10. When by the report of the Master, the Supreme Court shall be informed of the whole amount of the debts due and owing by such Council, it shall be lawful for the said Court, and it is hereby required to assess and impose such a rate, not exceeding one penny per pound of the value of every rateable tenement within the division, as shall appear to be sufficient to satisfy from and out of the net proceeds of such rate all debts due as aforesaid by the said Council, together with all costs and interest legally chargeable thereon: Provided that if a single rate of one penny per pound as aforesaid shall be insufficient to satisfy the whole of the said debts, then the net proceeds of the first rate shall, after

When single rate is found to be insufficient, a second rate to be imposed.

Digitised by the University of Pretoria, Library Services, 2016

paying to the petitioning creditor his costs of suit, and of his said petition, be divided *pro rata* amongst the creditors, and a second rate, not exceeding one penny per pound shall be assessed; and so on and until the debts of the said Council and all interest legally chargeable thereupon shall have been finally discharged: Provided that not less than twelve months shall elapse between the day upon which any preceding rate became due and payable and the day upon which any succeeding rate shall become due and payable, so that the ratepayers may not in any case be assessed under the provisions of the aforesaid Act No. 9, 1858, or of this Act, in a larger sum than one penny per pound per annum; and provided that it shall be competent for the said Supreme Court to settle, if necessary, the priorities of the several creditors according to their respective rights.

Twelve months to expire before levy of second rate.

Supreme Court to settle priority of claims.

11. As often as the Supreme Court shall assess any rate for the purpose of paying creditors, such Court shall appoint a receiver, who shall be charged with the recovery of such rate, and who shall give security for the due performance of his office, and shall be entitled to such percentage or other remuneration as the said Court shall fix; and shall conform to all instructions regarding the custody of the moneys received by him, or other matters, as the said Court shall from time to time issue for his guidance. Notice shall be given in the *Government Gazette* and one or more newspapers published as aforesaid, of every rate assessed as aforesaid, and of the day on which such rate will become due and payable, and such notice shall be in substance as follows:—

Supreme Court to appoint officer to receive such rate.

Notice of assessment of rate to be given in *Government Gazette*.

DIVISION OF MOSSEL BAY.—RATE UPON IMMOVABLE PROPERTY.

Notice is hereby given that the Honourable the Supreme Court has this day assessed, under the provisions of the "Mossel Bay Divisional Council Loan Act, 1863," for payment of debts, a rate of —— per pound upon the value of every rateable tenement within the Division of Mossel Bay, which rate will become due and payable on the —— day of ———, 18—, and of which rate A. B., of ————, has been appointed the receiver.

Dated at Cape Town, this —— day of ————, 18—.

X. S. L.,

Registrar of the Supreme Court.

Provided that such notice as aforesaid shall be published for not less than thirty-one days before the day mentioned in such notice as that upon which the rate shall become due and payable.

12. The receiver of any such rate as aforesaid shall be entitled to recover the amount thereof in any competent Court.

Receiver of rate may recover.

13. Any surplus of the amount of any such rate as aforesaid which may happen to exist after the discharge of all the debts which it was assessed to liquidate shall be paid to the said Divisional Council.

Surplus to be paid to divisional council.

Digitised by the University of Pretoria, Library Services, 2016

No. 1—1864.

Effect of order of court on all debentures, &c.

14. Any such order of Court as aforesaid, referring it to the Master to report upon the debts of the said Council, shall have the effect of making all debentures, securities, and engagements granted by the said Council due and payable forthwith, notwithstanding that the same might not, but for such order, have been payable till some future date.

Short Title.

15. This Act may be cited for all purposes as "The Mossel Bay Divisional Council Loan Act, 1863."

No. 22—1863.] [July 28, 1863.

An Act to extend certain Provisions of the Act No. 7 of 1860, entitled "An Act for enabling the Harbour Board of Mossel Bay to levy certain Wharfage Dues."

[Spent.]

No. 23—1863.] [May 6, 1864.

An Act to amend Act No. 35 of 1861, entitled an "Act to incorporate the Wynberg Railway Company."

[Lapsed. See Act 8, 1876.]

No. 1—1864.] [May 4, 1864.

AN ACT

For the better Protection of the Customs Revenue in certain cases.

Preamble.

WHEREAS, as often as any increase of Customs duty has been brought under the consideration of Parliament, it has been found that the particular articles proposed to be affected by such increase are, during the progress of the Act framed for the purpose of imposing such increased duty, taken out of bond at the lower rate of duty: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Officer of customs empowered to demand bond from importers on notice being given in House of Assembly to propose increased duties

1. When and as soon as any member of the Executive Council, acting for and on behalf of the Governor of the Colony, shall, in the House of Assembly give notice of a resolution or resolutions to be offered for the adoption of the said House, whereby it shall be proposed to affirm the expediency of increasing the rate of Customs duty payable upon the importation of any goods, merchandise, matters, or things, it shall be lawful for the officers of the Customs department, acting under instructions to that effect from the Governor aforesaid, to refuse to permit any of the goods, merchandise, matters, or things, mentioned in such resolution, or resolutions, to be entered for consumption, unless, and until, the person proposing to pay duty upon the same shall, together with a surety to be approved of by the principal officer of Customs at such

Digitised by the University of Pretoria, Library Services, 2016

port of entry, enter into a bond conditioned for the payment of such increased duty as Parliament may afterwards think fit to authorise and impose, and such bond shall, in substance, be in the form contained in the schedule annexed to this Act. (1)

Form of bond.

Liability of persons entering into bond for difference between rate paid and rate made payable by Act of Parliament.

2. In case Parliament shall, by any Act thereof, passed during the same session, direct and appoint that the rate of Customs duty previously payable upon any article or articles mentioned in any such resolution or resolutions shall be increased, it shall be lawful for the Collector of Her Majesty's Customs in this Colony to call upon the person who entered for consumption the said article or articles, to pay the difference between the duty paid by him, and the increased duty payable under the said Act, and in case he shall refuse or neglect so to do, the said bond shall by the said Collector, be put in suit for the recovery of such difference.

Exception in case of sale in bond previous to notice of resolution.

3. Provided, however, that whenever a *bonâ fide* sale in bond, duty to be paid by the seller, of any of the goods, merchandise, matters or things, in this Act referred to, shall have been made previous to the day of the notice of the resolution or resolutions aforesaid, and no delivery of the aforesaid articles shall at that time have taken place, then and in such case the person proposing to pay the duty upon the same shall, upon solemn declaration, by him to that effect, be bound and obliged to pay only such rate of duty as existed upon the day of the giving of the notice of the resolution or resolutions aforesaid.

When Bill is read a first time, the same effect and consequences to follow.

4. If, in any case, the Governor shall, instead of causing such a resolution or resolutions as aforesaid, to be offered to the House of Assembly, send down to the said House a Bill, having for its object an increase of the Customs duty payable upon the certain article or articles enumerated in such Bill, then, when, and as soon, as such Bill shall have been read a first time, the same effects and consequences shall follow as those in the preceding sections mentioned, in regard to the giving of notice of the resolution or resolutions therein described.

Right of demanding bond to extend only over a single session.

5. The right of requiring such bonds as aforesaid to be entered into shall in no case endure longer than till the end of the session of Parliament in which any such resolution or resolutions, or any such Bill, as aforesaid, shall have been brought under the consideration of Parliament; and such right may, by order of the Governor be terminated sooner, in case it shall appear that Parliament declines to sanction the proposed increase of Customs duty.

And whereas the Governor did, on Friday, the 29th day of April, 1864, instruct the officers of Customs at the several ports of this Colony to require all persons paying duties of Customs on imported articles, after the said day, to enter into a bond to pay such increased rates of duty as may be proposed by the Governor and sanctioned by the Parliament, during the present session; And

[1] Printed as amended by Act 6 of 1885.

Digitised by the University of Pretoria, Library Services, 2016

No. 1 - 1864.

whereas it is fitting that the Governor should be indemnified for issuing such instruction as aforesaid, and all officers of Customs indemnified for acting upon the same ; Be it enacted as follows :

Indemnity for demand made upon persons to give such bond previous to passing of this Act.

6. The Governor of the Colony, and all officers of Customs of this Colony, are hereby jointly and severally indemnified, freed, and discharged from all actions, suits, and proceedings whatsoever brought or instituted, or which may, hereafter, be brought or instituted aganst them in any of the Courts of this Colony, for or in respect of the instruction aforesaid, or anything done or to be done in pursuance thereof; and if any person or persons who shall, under and by virtue of such instructions have been required to enter into such a bond as aforesaid, and who shall have refused so to do, and who shall by reason of such refusal, have been refused permission to pay Customs duties upon any article or articles imported into this Colony, shall, whether before or after the taking effect of this Act, have brought or instituted any action, suit, or proceeding against the Governor or any officer or officers of Customs, for or in respect of such refusal, such action, suit, or proceeding shall be dismissed, and the defendant or defendants shall be entitled to his or their full costs.

Articles in bond on 29th April, 1864, to be subject to provisions of 3rd section.

7. The provisions of the third section of this Act shall apply to all articles in bond upon the said twenty-ninth day of April, 1864, in like manner, as if upon that day, notice of a resolution or resolutions, for an increase of duty upon such articles, had been given under this Act.

SCHEDULE.

Know all men by these presents, that we, A B, of Cape Town, and C D, of the same place, merchants, are held and firmly bound to Her Majesty the Queen in the sum of £———— [*Here insert a sum reasonably sufficient to cover such amount as may become claimable*]; to be paid by us, jointly and severally and each for the whole, as co-principal debtors.

Dated at Cape Town, this —— day of —— 186—.

(Signed) A B.
C D.

Witness :
E F.

Whereas there is now under the consideration of Parliament a proposal to increase the rate of Customs duty payable upon certain articles enumerated in such proposal ; and whereas the said A B has applied to pay duty, according to the existing tariff, upon certain articles enumerated in the said proposal, namely [*Here insert the articles mentioned in the Resolution or Bill which A B proposes to pay duty upon.*]

Now the condition of the above bond is such that if the said A B shall, upon demand, pay to the principal officer of Customs at this port of ——— the difference between the amount of the Customs duty now to be paid by him upon the above articles, and the amount of such duty calculated according to the rate of duty which shall, by any Act

Digitised by the University of Pretoria, Library Services, 2016

or Acts to be passed during the present session of Parliament, be made payable upon the said articles, or any of them, then the above bond to be null and void, but otherwise to be of full force and effect. No. 3—1864.

No. 2—1864.] [May 14, 1864.

An Act for Increasing the Duties of Customs, and for allowing a Drawback upon Goods sent by Sea to British Kaffraria in the Original Packages.

[Lapsed.]

No. 3—1864.] [July 26, 1864.

ACT

For Regulating the Duties upon Stamps and Licences. (1)

Preamble.

WHEREAS it is necessary to raise a larger revenue from Duties upon Stamps and Licences, and from other Duties of a like nature, than has heretofore been raised therefrom: And whereas the Stamp Duties and other Duties imposed by the Proclamation of the Right Honourable Lord Charles Henry Somerset, the then Governor of this Colony, bearing date the thirtieth of April, one thousand eight hundred and twenty-four, besides being imposed in the old and now disused currency of this Colony, have become in many respects defective and unsuitable, and stand in need of revision and amendment: And whereas public convenience will be promoted by abrogating the schedule or tariff of Stamp Duties belonging to the said Proclamation and enacting others in their room and stead, and by repealing the Act No. 12 of 1863, for the purpose of incorporating its schedule, with amendments, into the schedule to this Act, so that the whole Stamp Law of the Colony shall as much as may be comprehended in one enactment: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Proclamation of 30th April, 1824, and Act No. 12 of 1863, repealed.

1. The Proclamations aforesaid and the Act aforesaid, No. 12, 1863, entitled "An Act to amend in certain respects the Law regulating Stamp Duties and Licences," are hereby repealed, together with so much of any other law or usage heretofore in force in this Colony as shall be repugnant to or inconsistent with any of the provisions of this Act, or shall be such as would, if in force, operate concurrently with any of the said provisions.

Obligation to use stamps described in annexed schedule.

2 Stamps according to and in conformity with the provisions contained in the schedule hereunto annexed shall be used and

[1] See Acts 1—1868, 13—1870, 17—1873, 16—1876, 15—1877, 20—1884, 38—1887; Ords. 10—1846, 2—1838, 11—1846; Acts 10—1869, 11—1871, 16—1877.

Same duties made payable in the districts of Idutywa, Butterworth, Nqamakwe, and Tsomo by paragraph 79 of Proclamation No. 110 of 1879; in Griqualand East by paragraph 72 of Proclamation No. 112 of 1879; and in Tembuland and the districts of Kentani and Willowvale by paragraph 71 of Proclamation No. 140 of 1885.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1864.

employed for and in respect of all and singular the several instruments in the said schedules mentioned and enumerated, and such stamps shall be respectively of the value or amount set down in figures in the said schedules opposite or against such instruments.

Schedule to be taken as part of Act.

3. All and singular the several explanations, conditions, directions, and provisions inserted in words in the said schedule shall be of the same force and effect as if the same had been contained in some one or more of the enacting clauses of this Act.

Governor to appoint persons to be charged with providing dies—stamping and issue of stamps.

4. It shall and may be lawful for the Governor of the Colony from time to time to nominate and appoint such person or so many persons as he shall deem necessary and shall select, to discharge, in obedience to such rules and orders as he or they may from time to time receive from the said Governor, the duty of providing proper and sufficient stamps or dies for impressing and denoting the several and respective amounts or values of the stamps by the said schedule required, and of stamping or causing to be stamped every instrument hereby required to be stamped which shall be tendered to him or them for the purpose of being so stamped, and of furnishing and supplying, or causing to be furnished and supplied, to the inhabitants of this Colony, at as many convenient places as it may from time to time be found practicable to authorise and establish throughout the Colony, such necessary stamps as shall be required and demanded, and generally to undertake and have the care and management of the proper making and distributing of stamps in and for the Colony.

Custody of stamps and dies.

5. All such stamps and dies as aforesaid shall be kept in some iron safe, or other secure place, to which there shall be affixed three locks, of which no two shall be capable of being opened by the same key, and the three keys of the said three locks shall be deposited one with the Colonial Secretary, one with the Treasurer-General, and one with the Auditor-General.

Issue of stamps and dies.

6. As often as any of the said stamps or dies shall be taken out for use they shall be delivered by some one or more of the three officers aforesaid, in person, to such public officers, not less than two, as shall be appointed by the Governor to superintend the stamping of all stamps then necessary to be stamped.

Rules to be observed in stamping.

7. The public officers so appointed to superintend the stamping of such stamps as aforesaid shall, in person, superintend such stamping, and shall take an accurate account of all the stamps then stamped, and shall enter into a book to be kept for the purpose the numbers and denominations, together with any other particulars which they shall think fit, of all stamps then stamped, and shall sign such entry in attestation of its correctness, and shall, in person, re-deliver the stamps or dies to some one or more of the three officers in the fifth section of this Act mentioned, in person, who shall deposit the same in the safe or other place from which they were taken to be used; which safe or other place shall be thereupon locked with the three locks aforesaid affixed thereto, and

Stamps and dies to be returned to officers charged with their custody.

Digitised by the University of Pretoria, Library Services, 2016

the keys kept by the respective officers aforesaid, who shall be responsible for their safe custody.

Distributor's signature to be affixed to receipt book.

8. Every entry made in the book aforesaid shall, besides being signed by the public officers appointed to superintend the stamping, be signed also by the Distributor of Stamps or other officer appointed by the Governor to take charge of stamps, as an acknowledgment of the receipt by him of the stamps enumerated in such entry; and such book shall then be delivered to the Auditor-General, to be preserved in his office until again required.

Examination of stock of stamps in distributor's hands.

9. The Governor shall from time to time, and at uncertain times, cause the stock of stamps in the custody of the person or persons nominated and appointed by the Governor as in the fourth section mentioned, and of all other Distributors of Stamps throughout the Colony, to be examined by competent persons appointed by the said Governor for the purpose, and such persons, acting upon such instructions calculated to secure the accuracy of such examination as they may receive from the said Governor, shall examine the stamps in the hands of such distributors, and report the result of such examination to the Colonial Secretary, who shall preserve in his office all such reports.

Value of any stamp may be made up by using two or more stamps of lesser values.

10. It shall and may be lawful, when and as often as occasion shall render it necessary so to do, to use two or more stamps or dies for denoting or expressing the amount or value of any one stamp by the schedule hereunto annexed required, and all instruments stamped with any two or more such stamps or dies, which shall together denote or express an amount or value not less than the amount or value of any single stamp so required, shall be held and taken to be as good, valid, and effectual as if the said single stamp had been alone impressed.

Stamps of higher value than required may be used.

11. Every instrument which shall be stamped with a stamp or with stamps denoting or expressing a greater value or amount than that of the stamp appointed for such instrument in and by the said schedule, shall be deemed and taken to be as good, valid, and effectual as if the particular stamp so appointed had been used. [1]

Instruments requiring stamps not to be admitted in court of law without such stamps.

12. No instrument which is hereby or by the said schedule directed or required to be stamped shall (except as hereinafter excepted) be given in evidence in any of the Courts of this Colony (except in the course of any criminal proceeding touching the theft or forgery of any such instrument, [2] or any proceeding for the recovery of penalties alleged to have been incurred by reason that such instrument is unstamped), nor shall any such instrument be received or admitted in any such Court as useful or available in law unless the same shall be duly stamped: Provided that any such instrument not duly stamped shall be admitted and received in evidence in case the party tendering the same shall pay to such

But may be admitted on payment of penalty.

[1] Printed as amended by Act 1, 1868, but see § 7 Act 20, 1884.

[2] Amended by Act 17, 1874, § 8.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1884.

officer as the Court shall direct, for and on behalf of the public revenue, such sum as the said Court shall fix by way of penalty, not exceeding twenty pounds sterling.

Government officers not to issue or authenticate any instrument requiring stamps unless duly stamped.

13. No person holding any office or employment under Government, whose duty it shall be, as the holder of such office or employment, to issue, or receive, or register, or authenticate, by signature or otherwise, any of the instruments in the said schedule mentioned, and thereby required to be stamped with some certain stamp, shall issue, or receive, or register, or in any way authenticate, any such instrument, unless the same shall first be duly stamped; and all persons by law required to lodge with or deliver to the Master of the Supreme Court, or any other officer, any instrument requiring a certain stamp, who shall deliver or tender the said instrument not duly stamped, shall be deemed and taken to be in the like plight and condition as if such instrument never had been delivered or tendered at all.

Tender of unstamped documents of no value.

Adhesive stamp of the value of the duty payable may be affixed to unstamped documents within twenty-one days after execution.

14. In case any instrument by the said schedule required to be written upon stamped paper [1] shall be written, or engrossed, or executed upon unstamped paper, and shall be tendered at the proper office in Cape Town, or at the office of any Civil Commissioner elsewhere, within twenty-one days next after the date of its execution, with an adhesive stamp denoting the stamp duty chargeable upon such instrument affixed thereon, and in case any such instrument shall be tendered, as aforesaid, after the expiration of twenty-one days, but before the expiration of forty-two days next after the date of its execution, with an adhesive stamp denoting double the stamp duty chargeable upon such instrument affixed thereon, and in case any such instrument shall be tendered as aforesaid after the expiration of forty-two days, but before the expiration of sixty-two days next after the date of its execution, with an adhesive stamp denoting treble the stamp duty chargeable upon such instrument affixed thereon, then the Distributor of Stamps in Cape Town or the Civil Commissioner elsewhere (as the case may be) shall cancel [2] such adhesive stamp by writing his name upon or across such stamp, together with the date upon which he shall write the same, and such instrument shall from and after such cancellation of such adhesive stamp be deemed and taken to be and to have been duly stamped, and to be of the same force and effect in all respects as if it had, when originally executed, been written or engrossed upon paper duly stamped: Provided, always, that every such instrument, if only prepared for execution and not yet executed, shall, if tendered as aforesaid with an adhesive stamp denoting the ordinary or single stamp duty, be deemed to be duly stamped, and such stamp shall be cancelled as aforesaid: And provided, also, that every instrument shall be

After twenty-one and within forty-two days adhesive stamp to denote double duty.

After forty-two and within sixty-two days adhesive stamp to denote treble duty.

Such adhesive stamps to be cancelled.

Before execution of instrument, ordinary rate only chargeable.

[1] See Act 13, 1870, Tariff 5, §§ 1 and 4; and Tariff 8, § 3, also Act 15, 1877, § 6.
[2] As to cancellation of Stamps see §§ 4 and 5 of Act 13, 1870, and Acts 20 of 1884, § 3, and 16, 1876.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1864.

deemed and taken to be executed within the meaning of this section when it shall have received the signature of any one person, being a party proper to execute the same, although there may be other persons named as parties thereto who shall not have signed the same. (1)

When instrument shall be deemed to be executed.

15. The officer or officers charged by the last preceding section with the duty of cancelling the adhesive stamps in the said section mentioned shall not in any case cancel any adhesive stamp upon any instrument, which instrument shall not be tendered as aforesaid within the space aforesaid of sixty-two days next after the date of its execution, without the special direction of the Governor in that behalf first had and obtained.

Governor's sanction necessary to cancellation of adhesive stamps affixed sixty-two days after execution.

16. For and in respect of every instrument requiring a stamp, prepared or attested by or executed in the presence of any notary public practising in this Colony, which shall be found at any time after the expiration of sixty-two days from the date of execution (in manner and form as such execution is in the last preceding section mentioned and described) without bearing or having the stamp by the schedule aforesaid appointed and required, the notary public preparing or attesting the execution of such instrument shall forfeit any sum not exceeding ten pounds, unless he shall prove to the satisfaction of the Court in which any such penalty shall be sought to be recovered that such instrument was really and *bonâ fide* never perfected or operative, or in any manner, as such instrument, attempted to be put to use. (1)

Penalty on unstamped documents.

17. The officer or officers charged by the fourteenth section of this Act with the duty of cancelling adhesive stamps upon the several instruments in the said schedule mentioned shall and may require sufficient proof for the date at which any instrument which shall, after being written or engrossed and executed, be tendered in order to have such adhesive stamp cancelled was really executed, and any notary public or other person who shall knowingly insert in or affix to any such instrument a false date shall forfeit the sum of fifty pounds.

Proof of date of execution of instrument may be called for.

Penalty for inserting false date.

18. It shall and may be lawful for the Governor aforesaid, at any time and at all times when he shall see cause so to do, to direct that any instrument which shall have been executed without being duly stamped shall be so stamped by means of adhesive stamps so cancelled as aforesaid by the Distributor of Stamps in Cape Town, or some Civil Commissioner elsewhere, of such value as the Governor shall be pleased to name, not being less than five times the value of the particular stamp originally required. (2)

Governor may at any time authorise adhesive stamps to be affixed to unstamped instruments

19. When and as often as any stamps shall have been spoiled or rendered unserviceable for the instruments for which they were respectively designed, and shall be tendered at the proper office in Cape Town, or to any Civil Commissioner elsewhere, in exchange

Spoiled stamps may be exchanged.

[1] See Act 15, 1877, § 7.
[2] See Act 15, 1877, § 6.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1864.

for other stamps, and the officer in Cape Town or the district Stamp Distributor elsewhere (the said last mentioned distributor being thereto authorised by the Civil Commissioner) shall receive such spoiled or unserviceable stamps in exchange, provided sufficient proof shall appear or be given (and, when required, by solemn declaration) that no such stamp so tendered for exchange is or has been any instrument requiring a stamp, which has at any time been put to use or attempted so to be.

Butcher's licence. Portion of Ordinance No. 51 repealed.

20. From and after the first of January, so much of the Ordinance No. 51, entitled "Ordinance for removing the Restrictions upon the exercise of the trade and calling of a Butcher in this Colony, and upon the sale of cattle in Cape Town and the district thereof, and for establishing a Cattle Market within the said Town and District," as renders it lawful to exercise the trade and calling of a butcher without any licence for that purpose, excepting such licence as is by law required for keeping a retail shop, shall be repealed; and from and after the said date no person shall exercise the said trade without having taken out a butcher's licence: Provided, also, that every person keeping a shop and exposing flesh meat for sale shall, whether he shall or shall not have himself slaughtered the same, be deemed to be a butcher for the purpose of requiring to have a butcher's licence.

Butcher's trade requires a licence.

Vendor of meat to be deemed a butcher.

Portion of Ordinance No. 11 of 1846 repealed.

21. So much of the Ordinance No. 11, 1846, entitled "Ordinance for amending the Law relative to the licensing of Retail Shops," as limits to certain towns, villages, and places the necessity of taking out a licence to keep a retail shop, is hereby repealed; and all and singular the clauses and provisions of the said Ordinance not hereby repealed shall extend and apply to the entire Colony and to all persons keeping retail shops therein.

Unrepealed provisions to extend to entire Colony.

22. [Repealed by Act 38, 1887.]

23. [Repealed by Act 13, 1870, § 1 and § 6, of that Act substituted.]

Use of stamped paper or adhesive stamps optional in making bills of exchange or promissory notes.

24. Every bill of exchange and promissory note, whether made within this Colony or elsewhere or whether payable in this Colony or elsewhere, shall be deemed and taken to be duly stamped, not only when it shall have been written upon paper stamped with a stamp of the amount or value appointed in and by the schedule annexed to this Act for such bill or note, but also when it shall have affixed thereon an adhesive stamp denoting the stamp duty by the said schedule charged on such bill or note.

Penalty for negotiating unstamped bill of exchange or promissory note.

25. No person shall present for payment, or shall pay, or shall endorse, transfer, or in any manner negotiate within this Colony, any bill of exchange or promissory note not written upon stamped paper, or whereon there shall not be such an adhesive stamp affixed as in the last preceding section mentioned, on pain of being liable to pay the sum of twenty shillings to any person who will sue him for the same.

Digitised by the University of Pretoria, Library Services, 2016

Adhesive stamp on bill of exchange or promissory note to be cancelled.

26. It shall be the duty of every person to whom any bill of exchange or promissory note not written upon paper duly stamped shall be endorsed, transferred, or negotiated, to see that such bill or note has affixed thereon an adhesive stamp of the proper value, cancelled or effaced in the manner hereinafter mentioned, to the end that it may not be used again for any other purpose, and in case such adhesive stamp shall not have been already so cancelled or effaced, to cancel and efface the same then and there, or at latest before again endorsing away, transferring, or negotiating such bill or note, or receiving payment of the same. Any person contravening this section shall be liable to pay the sum of twenty shillings (1) to any person who will sue him for the same : Provided that every such adhesive stamp shall be cancelled by placing in figures in ink upon such stamp the amount of such bill or note, or by writing the name or the initials of the name of the person cancelling such instrument, together with the date of such cancellation.

Penalty for not cancelling.

Mode of cancelling.

Bills of exchange and promissory notes negotiated prior to taking effect of Act exempted.

27. Nothing in this Act contained shall be construed so as to require that any bill of exchange or promissory note which shall have been endorsed or negotiated by the payee or person in whose favour it was originally made, at any time before the taking effect of this Act, should be stamped, and every such bill or note, if then already endorsed, transferred, or negotiated, may be again endorsed, transferred, or negotiated, and may be paid by any person liable thereon without being stamped.

Decision of questions regarding the nature and validity of instruments coming under the operation of this Act.

28. If any question shall arise in this Colony regarding what instruments shall, for the purpose of this Act and of the schedule annexed thereto, be deemed to be respectively bills of exchange and promissory notes, or regarding the nature of such alterations made therein, after the same shall have been once perfected, as shall under this Act invalidate the same, or regarding what instruments shall be deemed to be policies of insurance, or regarding the alterations which may be made in any policy of insurance without requiring a new stamp, or regarding the circumstances under which any stamp shall be deemed to be a spoiled stamp, and as such proper to be exchanged, then such question shall, unless there be something in this Act repugnant thereto, be decided in like manner and by the same rules as if such question had arisen in England upon or in regard to the stamp laws for the time being in force in that country.

29. [Repealed by Act 13, 1870, § 1, and § 10 of that Act substituted.]

30. [Lapsed.]

Cancellation of adhesive stamps.

31. Every adhesive stamp which shall under or by virtue of the schedule of this Act be required, or made use of, shall be cancelled by the person who is by the said schedule directed to cancel the

[1] Amended by Act 13, 1870, Tariff 4, § 4.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1864.

Penalty for non-cancellation.

same, to the end that it may not be used for any other purpose, on pain, in case of failure so to do, that such person shall be liable to pay the sum of twenty shillings to any person who will sue for the same. (1)

Penalties for offences under this Act.

32. If any person shall, after the taking effect of this Act, be convicted of any of the offences hereinafter in this section specified, he shall be liable to be imprisoned and kept at hard labour for any period not exceeding seven years; that is to say:

1. If he shall, with intent to defraud the public revenue of this Colony, forge or counterfeit, or cause or procure to be forged or counterfeited, any stamp or die which, in pursuance of this Act or of any other law in force for the time being, shall have been provided by the person or persons charged by the Governor with the duty of providing stamps or dies for impressing and denoting any stamp duty imposed or required by this Act or by any other law in force for the time being.
2. If he shall, with such intent as aforesaid, forge or counterfeit, or cause or procure to be forged or counterfeited upon paper, the impression, or any resemblance of the impression, or of any part of the impression, of any such stamp or die as aforesaid.
3. If he shall with such intent as aforesaid, utter, or sell, or offer for sale, any paper having thereon the impression of any such forged or counterfeited stamp or die, or part of any stamp or die, knowing the same to be forged or counterfeited.
4. If he shall, with such intent as aforesaid privately or secretly, and for his own gain or purposes, make use of any such stamp or die as aforesaid, provided as aforesaid by the person or persons charged as aforesaid by the Governor with the duty of providing stamps or dies for impressing and denoting any stamp duty imposed or required by this Act or by any other law in force for the time being.

Persons making fraudulent use of stamp previously used liable to penalty.

33. If any person shall, with intent to defraud the public revenue of this Colony, put to use, or attempt to put to use, as a stamp, or shall sell or offer for sale, or otherwise utter or attempt to utter as a stamp, any stamp, whether an adhesive stamp or not, and whether a postage stamp, of a stamp imposed or required by this Act, or any other law in force for the time being, which stamp he shall know to have been already used as a stamp, he shall, for every such offence, be liable upon conviction, to a fine not exceeding ten pounds, or to imprisonment, with or without hard labour, for any period not exceeding three months, or to both such fine and such imprisonment: Provided that nothing in this section contained shall be construed so as to prevent such person from being prose-

Or to prosecution for falsity.

[1] See Act 20, 1884, § 3.

Digitised by the University of Pretoria, Library Services, 2016

cuted for the crime of falsity, or any other crime of the like nature, instead of being prosecuted for the offence mentioned in this section of this Act: Provided also, that no person prosecuted for the offence mentioned in this section shall be again prosecuted for or in respect of the same act, for any other crime as aforesaid, and that no person prosecuted for any other crime as aforesaid shall be again prosecuted for or in respect of the same act, for the offence mentioned in this section. No. 3—1864. But not to both.

34. In the interpretation of this Act the term "paper" shall be taken to comprehend parchment and vellum as well as paper. Definition of term "paper."

35. This Act shall commence and take effect from and after such date, not earlier than the fifteenth day of October, 1864, as the Governor shall by proclamation fix or determine. Commencement of Act.

36. This Act may be cited as "The Stamp Act, 1864." Short title.

SCHEDULE.

1.

ADMIRALTY COURT.

[Abolished by 53 and 54, Vic. Chapter 27.]

2.

AGREEMENTS.

[Repealed by Act 13, 1870, § 1; Tariff 2, Act 20, 1884, substituted.]

3.

ARBITRATIONS AND AWARDS.

Every deed of submission to arbitrators	£0	5	0
Awards, where any sum of money is awarded to be paid by one person to another, to be stamped as follows:			
Where the sum awarded is under £100	0	2	0
For every additional £100 or fraction thereof	0	1	0
Every award made in regard to anything else than the payment of money	0	5	0

1. Every deed of submission and every award must, as to some part of it, be written upon, and not merely covered by stamped paper, or otherwise it must have an adhesive stamp affixed and cancelled, as in the 14th section in this Act mentioned.

2. Where the sum or matter in dispute shall be under ten pounds in value, the submission and the award shall both be exempt from stamp duty.

4.

BILLS, NOTES, CHEQUES, &c.

[Repealed by Act 13, 1870, § 1, and Tariff 4 of that Act substituted.]

5.

SHIPS, &c.

[Repealed by Act 13, 1870, § 1, and Tariff 5 in that Act substituted.]

6.

[Repealed by Act No. 38, 1887.]

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1864.

7.

DONATIONS.

Where the subject of the donation is money, and the amount exceeds £25, but does not exceed £100	£0	5	0
For every additional £100 or fraction thereof	0	5	0
Where the subject of the donation is not money	0	5	0

1. Deeds of or acts of donation must be written upon, and not merely covered by stamped paper, otherwise they must have an adhesive stamp affixed and cancelled, as in the 14th section of this Act mentioned.

2. Where the donation is of money, and the amount under twenty-five pounds, the deed or act need not be stamped.

3. Deeds of donations for religious or charitable purposes shall be exempt from stamp duty. Questions regarding the deeds so entitled to exemption to be decided by the Governor, whose decision shall be final.

8.

TRANSFERS AND MORTGAGES.

[Repealed by Act 13, 1870, § 1, and Tariff 8 in that Act substituted.]

9.

LIQUIDATION ACCOUNTS.

When net assets for distribution under Insolvent Estates do not exceed £100	£0	1	6
Exceeding £100 but not 150	0	2	6
,, 150 ,, 200	0	5	0
,, 200 ,, 300	0	7	6
,, 300 ,, 400	0	10	0
,, 400 ,, 500	0	12	6
,, 500 ,, 600	0	15	0
,, 600 ,, 800	1	0	0
,, 800 ,, 1000	1	10	0
,, 1000 ,, 1250	2	0	0
,, 1250 ,, 1500	2	10	0
,, 1500 ,, 2000	3	15	0
,, 2000 ,, 2500	4	10	0
,, 2500 ,, 3000	6	0	0
,, 3000 ,, 3500	7	10	0
,, 3500 ,, 4000	9	0	0
,, 4000 ,, 4500	10	10	0
,, 4500 ,, 5000	12	0	0
,, 5000 ,, 5500	13	10	0
,, 5500 ,, 6000	15	0	0
,, 6000 ,, 7000	16	10	0
,, 7000 ,, 8000	18	0	0
,, 8000 ,, 10000	20	0	0
Every additional £100 or fraction thereof	0	5	0
Every deed assigning property in trust	1	0	0

1. Under and by virtue of assignments in trust for creditors, the net assets shall be liable to a duty amounting to one-half the duty chargeable upon assets under insolvent estates.

Digitised by the University of Pretoria, Library Services, 2016

2. Every deed assigning property in trust for creditors must as to some part of it, be written upon, and not merely covered by, stamped paper, or otherwise it must have an adhesive stamp affixed and cancelled, as in the 14th section of this Act mentioned.

3. The assignee shall, at all times after any such assignment, be bound to produce, upon demand, to the Distributor of Stamps, or to any person appointed by him in writing, all accounts and papers belonging to the assigned estate, and necessary or calculated to show the amount of the fund for distribution.

4. Should the assignee decline or refuse to produce such accounts and papers, the Distributor of Stamps may, by motion, apply to the Supreme Court, or any Judge thereof, for an order upon such assignee to produce the same, and should such Court or Judge grant such motion, it shall be granted with costs.

5. The receipt to be granted by the Distributor of Stamps for the duty payable upon or in respect of the fund for distribution shall be written upon paper stamped with a stamp of the value of the duty paid.

10.

CUSTOMS DEPARTMENT.

For every bond, import or export, relating to bonded goods, when the amount for which such bond is made does not exceed £500	£0	2	6
For every additional £100 or fraction thereof	0	0	6
For each form of entry, inwards and outwards	0	0	6

1. These bonds must be written upon, and not merely covered by stamped paper.

11.

POLICIES OF INSURANCE. (1)

Marine Policies:			
For every £100 insured, and every fraction of £100 ..	£0	0	6
For every additional £100 or fraction thereof	0	0	6
For every £100 and fraction thereof, insured on a Time Policy:			
Where the time does not exceed six months	0	1	6
Where the time exceeds six months	0	2	6
Fire Policies:			
For every £100 insured, and every fraction thereof ..	0	0	6
Life Policies:			
Where the sum insured does not exceed £100	0	0	6
For every additional £100 or fraction thereof	0	0	6
Where the premiums on any policy of insurance on life or against fire shall be payable or be paid annually, the receipts for such annual payments shall be stamped as follows:			
On life policies for every £1 of such premium or fraction of £1	£0	0	0½
On fire policies for every £100 or fraction thereof of the sum insured	0	0	6

[1] See Acts 13, 1870, § 5 and 20, 1884, Tariff 11, as to Cessions of Policies.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1864.

1. In marine assurances, as often as a slip or memorandum shall be delivered before or instead of a policy, then the slip or memorandum shall bear a stamp of the value appointed for the policy. This slip or memorandum, if not written or printed on stamped paper, shall have an adhesive stamp of the proper value affixed to it before delivery thereof by the party insuring to the party insured.

2. If any insurance company shall deliver to any person insuring with such company any slip or memorandum, or any policy, not stamped with the proper stamp, the secretary of such company shall be liable to pay the sum of two pounds to any person who will sue him for the same by civil action in any competent Court.

3. As often as a policy shall be executed for or in reference to any insurance in regard to which a stamped slip or memorandum shall have been previously delivered, no stamp shall be necessary upon such policy, in case the stamped slip or memorandum relating to such insurance shall be attached to or preserved with such policy for the purpose of proving that the proper stamp has been used in regard to such insurance.

4. In regard to marine time policies, and to fire policies, and to life policies, as often as an annual or other periodical payment of premiums shall take place, the receipts for all such periodical payments shall be written upon paper stamped with the appointed stamps or otherwise, or have an adhesive stamp affixed. If any such periodical payment of premiums shall be received from or credited to the person who insured, and no duly stamped receipt shall be given for such payment to the person insured, then the secretary of the insurance company receiving such payment shall be liable to pay the sum of two pounds to any person who will sue him for the same by civil action in any competent Court.

5. As often as the party granting any insurance in this Colony shall be a company whose chief seat of business is not in this Colony, then the agent in this Colony of such company shall be liable to the penalties aforesaid, in like manner as if he were the secretary of a company which had its chief seat of business in this Colony.

6. Should any receipt separate from the policy be granted for the first payment of premium upon any policy upon life or against fire such separate receipt need not be stamped.

7. In case the premium upon any policy of insurance on life or against fire shall be payable or be paid quarterly, or otherwise than annually, every receipt for such premium shall be stamped with a stamp of a value bearing the same proportion to the stamp hereinbefore appointed for an annual payment which the period fixed upon in the particular case shall bear to one whole year.

8. Every adhesive stamp mentioned in this tariff shall be cancelled by the secretary or some other officer of the insurance company writing thereon his name, and the date on which he shall write the same.

9. Nothing in this tariff contained shall be construed so as to require that any policy, slip, memorandum, or receipt for premiums, executed or granted before the taking effect of this Act, should be stamped. But receipts for premiums paid after the taking effect of this Act, upon policies granted before the taking effect of this Act shall be stamped.

Digitised by the University of Pretoria, Library Services, 2016

12.

WILLS AND INSTRUMENTS CONNECTED WITH WILLS.

[Repealed by Act 20, 1884.]

13.

RECEIPTS FOR INHERITANCES.

Discharges or receipts for inheritances or legacies, not subject to the payment of succession duty under the "Succession Duty Act, 1864," by reason that such inheritances or legacies accrued due from deaths which happened before the taking effect of the said Act:

Exceeding £10 and not exceeding £50	£0	1	6
,, 50 ,, ,, 100	0	3	6
On every additional £100, or fraction thereof	0	2	6

1. All such discharges or receipts shall be written upon or covered by stamped paper, or otherwise they must have an adhesive stamp affixed and cancelled, as in the 14th section of this Act mentioned.

2. The executor, testamentary or dative, to whom letters of administration shall have been issued, shall be liable to Government for the stamp duty chargeable upon discharges or receipts for all inheritances or legacies paid by him to heirs or legatees, but such duty shall be paid by such heirs or legatees.

3. As often as any inheritance or legacy shall be paid by any such executor as aforesaid into the Guardian's Fund, no stamp shall be necessary upon the receipt or acknowledgment, if any, granted to such executor by the Master of the Supreme Court. But the receipts taken by the Master for moneys paid out of the Guardian's Fund to heirs or legatees shall be upon paper stamped according to this tariff.

4. Discharges or receipts for inheritances or legacies not exceeding £10 shall be exempt from stamp duty.

14.

LAND GRANTS AND LAND RENTS.

Grants on Quitrents:

When the land granted does not exceed 10 morgen ..	£0	10	0
Exceeding 10 but not 30	1	0	0
,, 30 ,, 50	1	10	0
,, 50 ,, 60	2	0	0
,, 60 ,, 80	2	10	0
,, 80 ,, 100	3	0	0
,, 100 and upwards	4	0	0

Receipt for Quitrents:

When the land does not exceed 5 morgen..	0	0	3
Exceeding 5 but not 10	0	0	6
,, 10 ,, 50	0	1	0
,, 50 ,, 100	0	2	0
,, 100 ,, 500	0	4	0
,, 500 morgen..	0	7	6

1. Receipts for quitrent may be written upon stamped paper, or an adhesive stamp of the appointed value may be affixed to such receipt. If an adhesive stamp be used, it must, before being issued, be cancelled by writing on it the name of the officer issuing it, and the date.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1864.

2. In case the quitrent for a greater number of years than one shall be paid at one time, a single receipt, specifying the years for which the rent is received, shall be sufficient, but such receipt must bear a stamp of a value not less than the aggregate amount of the stamps which would have been used had such rent been paid regularly year by year.

3. All stamps necessary in regard to fresh grants issued under "The Land Beacons Act, 1859," shall be supplied by Government free of charge.

15.

LICENCES.

[Repealed by Act 15, 1877, § 1; and § 2 of that Act substituted.]

16.

MISCELLANEOUS ACTS.

[Repealed by Act 13, 1870, § 1. See Tariff 16, Act 20, 1884.]

17.

JOINT-STOCK COMPANIES. (1)

Every joint-stock company carrying on business in this Colony shall annually take out a licence, for which there shall be payable for every £100 of the subscribed capital of such company £0 1 0

1. The term joint-stock company shall, for the purpose of the above licence, embrace:

a. Every company having a capital stock divided into shares, of which company the chief seat or principal place where its business is managed shall be within this Colony.

b. Every such company of which the chief seat or principal place where its business is managed shall not be within this Colony, but of which any of the dealings shall, by the deed or other instrument regulating such company, be described as to be carried on in this Colony. (2)

2. The licence issued to any such company at any seat or place of business thereof in this Colony shall cover the business of such company at all its places of business in this Colony.

3. The directors for the time being within this Colony of any such company as aforesaid shall be personally liable *singuli in solidum* for the amount payable for the licence. If there be no directors within this Colony, but only a manager, then the manager shall be liable.

4. The directors of any such company, or the manager should there be no directors, shall, upon request of the Distributor of Stamps, certify the amount of the subscribed capital of such company for the time being. Should any such director or manager refuse or neglect to certify such amount, the Distributor of Stamps shall be entitled to estimate the subscribed capital of such company at whatever amount he shall, from the information within his reach, judge to be sufficient, and calculate the sum payable for a licence according to such amount, and such amount shall be recovered as aforesaid.

5. [Repealed by Act 38, 1887.]

[1] See § 11, Act 38, 1887.
[2] Printed as amended by Act 20, 1884, Schedule 1

Digitised by the University of Pretoria, Library Services, 2016

6. When any one agent for a company shall have taken out a licence, such licence shall cover the business done for the same company by any other agent in this Colony.

7. [Repealed by Act 38, 1887.]

8. Every director and every agent of any such company resident in this Colony shall be liable *singuli in solidum* for the amount payable for the licence.

9. [Repealed by Act 38, 1887.]

10. (1) Every mutual assurance company, not having a capital stock divided into shares, and every building society, whether one having a capital stock divided into shares or not, shall annually take out a licence for which there shall be payable the sum of one shilling for every £100, or fraction of £100, of the accumulated fund of such company, as such fund shall have been ascertained by the latest statement of accounts laid before its members at any general meeting thereof: Provided that no such company or society as is in this clause mentioned, of which the accumulated fund for the time being shall be less than £10,000 shall require to take out a licence under this Act.

11. The first annual licence of any such joint-stock company shall be taken out upon the first of January, 1865, and not sooner, or within one month after the said day, and so on from year to year; and direction No. 2 in tariff No. 15 shall apply to the licences of joint-stock companies.

12. Nothing in this Act contained shall require any savings bank society or benefit society to take out any licence.

18.

SUPREME COURT, COURT OF THE EASTERN DISTRICTS, AND CIRCUIT COURTS.

[Repealed by Act 20, 1884.]

19.

MAGISTRATES' COURTS.

[Repealed by Act 15, 1877, § 1; and Tariff 19 of that Act substituted.]

No. 4—1864.] [July 26, 1864.

An Act to alter in certain respects the Rates to be charged for Licences for the Sale of Wines and Spirituous and Fermented Liquors by Retail.

[Repealed by Act 2, 1868.]

No. 5—1864.] [July 26, 1864.

ACT

To impose Duties on Successions to Property. (2)

Preamble. WHEREAS it is expedient to impose certain duties on successions to property: Be it enacted by the Governor of the Cape of Good

[1] See § 11, Act 38, 1887.

[2] C.C. of division, in which the provisions of the Glen Grey Act, 1894, has been applied, invested with the powers and functions of the Master of the Supreme Court conferred by Act 5, 1864. See Act 25, 1894, § 21.

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1864.

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

Definition of terms used in Act.

1. Every past or future disposition of property by reason whereof any person has or shall become entitled to any property not being immovable property out of this Colony or the income thereof, upon the death of any person dying after the taking effect of this Act, either immediately or after any interval, either certainly or contingently, and either directly or by way of substitutive limitation, and every devolution by law of any beneficial interest in property or the income thereof upon the death of any person dying after the time appointed for the taking effect of this Act, to any other person, in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled, by reason of any such disposition or devolution, "a succession," and the term "successor" shall denote the person so entitled, and the term "predecessor" shall denote the testator, intestate, ancestor, or other person from whom the interest of the successor is or shall be derived.

Rates of duties to be levied.

2. There shall be levied and paid to Her Majesty the Queen in her Colonial revenue in respect of every succession as aforesaid, according to the net value thereof, the following duties, that is to say:—

1. Where the successor shall be the lineal descendant or the lineal ancestor of the predecessor, a duty of one pound per centum upon such value.
2. Where the successor shall be a brother or a sister of the predecessor, a duty at the rate of two pounds per centum upon such value.
3. Where the successor shall be a descendant of a brother or sister of the predecessor, a duty at the rate of three pounds per centum upon such value.
4. Where the successor shall be in any degree of consanguinity to the predecessor other than is hereinbefore described, or shall be a stranger in blood to him, a duty of five pounds per centum upon such value.

Exemptions.

3. From the duties aforesaid, imposed by this Act, the following estates and persons shall be exempt, that is to say:—

1. Where the whole succession or successions derived from the same predecessor, and passing upon any death to any person or persons shall not amount, in money or other property, to the sum of one hundred pounds, no duty shall be payable under this Act in respect thereof or of any portion thereof.
2. Where the successor shall be a son or daughter of the predecessor, no such duty, as aforesaid, shall be payable by such successor in case the net amount or value of the succession of such successor do not amount to the sum of one hundred pounds.

Digitised by the University of Pretoria, Library Services, 2016

3. No successor whatever shall be liable to pay duty upon any succession which shall be of less value than twenty pounds.

4. Every surviving spouse, being a successor of his or her deceased spouse, shall be exempt from the payment of any duty upon such succession.

Duty chargeable on donations.

4. As often as a donation *mortis causa* shall be made there shall be payable by the donee the same duty upon the net amount or value of the donation as such donee would have paid under this Act in case the donor had been a predecessor, and such donee had been a successor under this Act.

Master of the Supreme Court charged with duties under this Act.

5. The duties by this Act imposed shall be under the care and management of the Master of the Supreme Court, who shall be entitled to collect and recover the same.

Duty may be paid in country divisions to the civil commissioner.

6. It shall be lawful for any person domiciled in any division of this Colony, other than Cape Town and the district thereof, and the Cape Division, and liable to the payment of duty under this Act, to pay such duty, as assessed by the Master, to the Civil Commissioner of such division, whose receipt for such duty, when transmitted to, and received by, the said Master, shall be a sufficient discharge for such duty.

Power of Master to call for full account in regard of property administered.

7. It shall be lawful for the said Master to call upon all executors, whether testamentary or dative, and all trustees, tutors, and curators, for a full and true account of all property in regard to which duty shall be payable under this Act, excluding immovable property not actually in this Colony, and which property shall have been received or disposed of by them in their said capacities, and of the value of such property, together with the names of the successor and predecessor, and their relation to each other, and all such other particulars as shall be necessary or proper for enabling the said Master to ascertain the duties payable: Provided that if any executor shall, by last will, or codicil to a last will, have been directed not to file such an account, it shall be lawful for such executor to make a solemn declaration of the amount upon which such succession duty shall be due and payable under this Act; and it shall be lawful for the said Master, if dissatisfied with the value placed by any successor, or by any person acting for or representing him, upon his succession, or if such successor shall fail to place any value thereupon, to cause the value thereof to be appraised by any person or persons appointed by such Master for the purpose, and to assess the duty upon the footing of the value as ascertained by such appraisement, together with reasonable expenses of such valuation, subject to appeal as hereinafter provided: But in case such valuation shall not exceed the value of such succession put upon the the same by such successor to the extent of one-sixth of the value thereof, the duty shall be paid upon the valuation put upon the same by such successor or

Declaration may be substituted in lieu of such account.

Appraisement may be made by Master.

Expense of appraisement.

Digitised by the University of Pretoria, Library Services, 2016

No. 5—1864.

by any person acting for and representing him, and the expense of the valuation shall be borne by Government.

Succession duty may be deducted by executor.

8. It shall be lawful for every executor, whether testamentary or dative, and he is hereby required to deduct from the succession of every successor in the estate under the administration of such executor, the amount of succession duty payable by such successor: Provided, that as often as any such succession duty shall not have been so deducted, the successor entitled to such succession shall be liable for the same.

Successor to remain liable if not so deducted.

Appeal against Master's assessment may be made.

9. It shall be lawful for any person liable for any duty under this Act, and who shall be dissatisfied with the assessment made by the Master of the Supreme Court of the duty payable under this Act, to give notice to the said Master, at any time within thirty-one days after he shall have had notice from the said Master of such assessment, that he intends to appeal against such assessment, and to give at the same time a statement of the ground of such appeal, and thereupon such person may appeal by petition to the Supreme Court, and such Court, or any Judge thereof sitting in Chambers, shall have jurisdiction to hear and determine the matter of such appeal, and the costs thereof, with power to direct, for the purposes of such appeal, any inquiry, valuation, or report to be made by any Resident Magistrate or other person, as such Court or Judge shall think fit.

Supreme Court empowered to determine appeals.

Annuities, value of

10. As often as any succession shall be an annuity, then the value of such annuity shall be calculated according to the tables contained in the schedule annexed to the Act of the Imperial Parliament, called "The Succession Duty Act, 1853."

Sections 7, 8, 9, and 10 to apply to donations.

11. The provisions of the seventh, eighth, ninth, and tenth sections of this Act shall extend and apply to donations *mortis causa*, in like manner as if the same had been successions under this Act.

When return of duty paid may be claimed.

12. In estimating the value of a succession no allowance shall be made in respect of any contingent incumbrance thereon: but in the event of such an incumbrance taking effect as an actual burden on the interest of the successor, he shall be entitled to a return of a proportionate amount of duty paid by him in respect of the amount or value of the incumbrance when taking effect.

On encumbered successions.

On succession passing to another.

13. In estimating the value of a succession, no allowance shall be made in respect of any contingency upon the happening of which the property may pass to some other person; but in the event of the same so passing, the successor shall be entitled to a return of so much of the duty paid by him as will reduce the same to the amount which would have been payable by him if such duty had been assessed in respect of the actual duration or extent of his interest.

Duty chargeable only on value of successions actually obtained.

14. Where a successor shall not have obtained the whole of his succession at the time of the duty becoming payable, he shall be chargeable only with duty on the value of the property or

Digitised by the University of Pretoria, Library Services, 2016

benefit from time to time obtained by him; and whenever any duty shall have been paid on account of any succession, and it shall afterwards be proved to the satisfaction of the Master of the Supreme Court that such duty, not being due from the person paying the same, was paid by mistake, or was paid in respect of property which the successor shall have been unable to recover, or from or of which he shall have been evicted or deprived by any superior title, or that for any other reason it ought to be refunded, the Master of the Supreme Court, being thereto authorised by the Governor, shall thereupon refund the same to the person entitled thereto.

Duty paid in error may be refunded.

15. Where the interest of any successor in any property shall before he shall have become entitled thereto in possession, have passed by reason of death, to any other successor or successors, then one duty only shall be paid in respect of such interest, and shall be due from the successor who shall first become entitled thereto in possession; but such duty shall be at the highest rate which, if every such successor had been subject to duty, would have been payable by any one of them.

Where interest of successor shall have ceased by reason of death.

16. Where property shall become subject to a trust for any charitable or public purposes, under any past or future disposition which, if made in favour of an individual, would confer on him a succession, there shall be payable in respect of such property, upon its becoming subject to such trust, a duty at the rate of five pounds per centum upon the amount or principal value of such property; and it shall be lawful for the trustee of any such property to raise the amount of any duty due in respect thereof, with all reasonable expenses, upon the security of the charity property, at interest, with power for him to give effectual discharges for the money so raised: Provided, however, that this clause shall not extend to charitable institutions, namely: Hospitals for the blind, deaf, and dumb, lunatics, lepers, chronic sick, aged, and poor.

Duty chargeable on property bequeathed for charitable purposes.

Exemptions.

17. This Act may be cited for all purposes as "The Successions Duty Act, 1864."

Short title.

No. 6—1864.] [July 26, 1864.

An Act for Imposing a Duty upon Bank Notes.

[Repealed by Act 6, 1891.]

No. 7—1864.] [July 26, 1864.

An Act to Amend the Law regulating the Payment of Transfer Duty.

[Repealed by Act 5, 1884.]

Digitised by the University of Pretoria, Library Services, 2016

No. 8—1864. No. 8—1864.] [July 26, 1864.

ACT

To Authorise the Raising upon Loan of a Sum not exceeding £234,000.

Preamble. WHEREAS it is necessary to take up upon debentures the sum of two hundred and thirty-four thousand pounds, for the purpose of meeting the several liabilities and requirements in the schedule to this Act set forth: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Loan to be raised in England. 1. It shall be lawful for the Governor to issue or cause to be issued, in England, through the Crown Agents for the Colonies, debentures for securing the payment of any sum or sums not exceeding in the whole the sum of two hundred and thirty-four thousand pounds sterling.

Rate of interest and dates of payment of principal and interest specified 2. Each such debenture shall specify the rate of interest to be payable thereon, being a rate not exceeding five per cent. per annum, and that such interest shall be payable half-yearly, at the office of the Crown Agents aforesaid, in London, and that the principal of such debentures shall be payable at the said office on the thirty-first day of December which will be in the year of our Lord one thousand nine hundred.

To be charged on public revenue and on "sinking fund." 3. All sums borrowed under the authority of this Act, together with the interest to accrue due thereon, are hereby charged upon and made payable out of the public revenue of this Colony, and more especially out of the Sinking Fund created by the "Sinking Fund Act, 1864," and shall be paid off, from and out of the said Sinking Fund and the said revenue, according to the tenor of the debentures aforesaid to be issued for securing the payment of such sums and such interest.

Accounts to be laid before Parliament. 4. An account, showing the amount of all moneys borrowed under this Act, and the expenditure thereof, or of so much thereof as shall have been expended, vouched by the Auditor-General of the Colony, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next ensuing session thereof.

Short title. 5. This Act may be cited for all purposes as "The Loan Act, 1864."

SCHEDULE.

For the liquidation of debentures issued under the Acts No. 8 and No. 10 of 1857 and No. 16 and No. 21 of 1858, and falling due in January, 1865	£118,800
For the payment of sums borrowed from time to time by the Government	115,200
	£234,000

Digitised by the University of Pretoria, Library Services, 2016

No. 9—1864.] [July 26, 1864.

An Act to make provision by means of a Sinking Fund, for paying off the Public Debt due by this Colony.

[Repealed by Act 8, 1874.]

No. 10—1864.

No. 10—1864.] [July 26, 1864.

ACT

To Provide for the Construction and Maintenance of the Main Roads of the Colony. (1)

Preamble.

WHEREAS it is expedient that the general revenue should bear the expense of constructing, but should be relieved from the expense of keeping in repair the Main Roads of this Colony: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. [§§ 1—12 repealed by Act 40, 1889; §§ 13 and 14 repealed by Act 22, 1873.]

[§§ 15—18 repealed by Act 40, 1889.]

Divisional council of Worcester to maintain line of road from Worcester to top of Bain's Pass.

19. The Divisional Council of Worcester shall be and it is hereby charged with the duty of maintaining and keeping in repair the whole line of main road from the town of Worcester to the top of Bain's Pass, where the said pass enters the division of the Paarl.

Annual contribution of division of Robertson towards above road fixed at £300.

20. In consideration of the benefit derived by the inhabitants of the division of Robertson from the line of main road in the last preceding section mentioned, the Divisional Council of the division of Robertson shall pay to the Divisional Council of Worcester, yearly and every year, the sum of three hundred pounds.

Divisional council of Beaufort to maintain line of road from town of Beaufort through Meiring's Pass.

21. The Divisional Council of Beaufort shall be and it is hereby charged with the duty of maintaining and keeping in repair the whole line of main road from the town of Beaufort to and through Meiring's Pass, as far as the homestead of or on the farm now called and known as Meiring's Farm.

Annual contribution of divisions of Prince Albert and Victoria West to above road fixed at £200 and £100 respectively.

22. In consideration of the maintenance and repair by the Divisional Council of Beaufort of the said road and pass, the Divisional Councils of Prince Albert and Victoria West shall respectively, yearly and every year, pay to the Divisional Council of Beaufort the respective sums following, that is to say: the Divisional Council of Prince Albert, the sum of two hundred

---

[1] Continued to 31 Dec., 1867, by Act 2, 1866-67; to 31 Dec., 1868, by Act 16 of 1867; to 31 Dec., 1869, by Act 17 of 1868; to 31 Dec., 1870, by Act 14 of 1869; to 31 Dec., 1871, by Act 15 of 1870; to 31 Dec., 1872, by Act 4 of 1871; to 31 Dec., 1873, by Act 23 of 1872. Amended and made perpetual by Act 22 of 1873. See also Act 38, 1892. For meaning of terms "Construction" and "Maintenance or keeping in repair," see Act 22 of 1873, § 5. [Act 22 of 1873 is repealed by Act 40 of 1889.]

Digitised by the University of Pretoria, Library Services, 2016

No. 10—1864.

pounds, and the Divisional Council of Victoria West the sum of one hundred pounds.

Annual contribution of divisions of Fraserburg and Calvinia to division of Tulbagh, for use of main road, fixed at £125 each.

23. In consideration of the benefit derived by the inhabitants of Fraserburg and Calvinia from the use of the main road running through the division of Tulbagh, from the Breede River, through Mitchell's Pass, over the Hottentot's Kloof, through Karroo Poort, to the boundary of the said division of Tulbagh, the Divisional Councils of Fraserburg and Calvinia shall respectively, yearly and every year, pay to the Divisional Council of Tulbagh the sum of one hundred and twenty-five pounds each.

Annual contribution of division of Oudtshoorn to division of George, for use of Montagu Pass, fixed at £500.

24. In consideration of the benefit derived by the inhabitants of Oudtshoorn from the use of Montagu Pass, in the division of George, the Divisional Council of Oudtshoorn shall pay to the Divisional Council of George, yearly and every year, the sum of five hundred pounds.

Annual contribution of Port Elizabeth to divisions of Alexandria, Humansdorp, and Uitenhage, for use of main roads, fixed respectively at £700, £500, and £480.

25. In consideration of the benefit derived by the inhabitants of the division of Port Elizabeth from certain lines of main roads lying in the divisions of Alexandria, Humansdorp, and Uitenhage, the Divisional Council of Port Elizabeth shall, yearly and every year, pay to the Divisional Councils of the said divisions, respectively, the respective sums following, that is to say: to the Divisional Council of Alexandria, the sum of seven hundred pounds, to the Divisional Council of Humansdorp, the sum of five hundred pounds, and to the Divisional Council of Uitenhage, the sum of four hundred and eighty pounds.

Divisional Council Paarl, charged with maintenance of road between Kruispad and Zandhoogte, in the division of Stellenbosch.

26. In consideration of the fact that a certain piece of main road passing through a part of the division of Stellenbosch, namely, a piece of main road lying between Kruispad and Zandhoogte, is chiefly for the use of the inhabitants of the Paarl, and is of little benefit to the inhabitants of Stellenbosch, the Divisional Council of the Paarl shall be and it is hereby charged with the duty of maintaining and keeping in repair the said piece of main road.

Annual contribution of division of Caledon to division of Stellenbosch, for use of road from Sir Lowry's Pass to Kuil's River, fixed at £150.

27. In consideration of the benefit derived by the inhabitants of the division of Caledon from the use of the main road running through the division of Stellenbosch from Sir Lowry's Pass to Kuils River, the Divisional Council of Caledon shall pay to the Divisional Council of Stellenbosch, yearly and every year, the sum of one hundred and fifty pounds.

Annual contribution of Bredasdorp to division of Caledon, for use of main road, fixed at £120.

28. In consideration of the benefit derived by the inhabitants of the division of Bredasdorp from the use of the main road running through the division of Caledon from Sir Lowry's Pass to the division of Swellendam, the Divisional Council of Bredasdorp shall pay to the Divisional Council of Caledon, yearly and every year, the sum of one hundred and twenty pounds.

Annual contribution of division of Albany to division of Peddie, for use of main road, fixed at £226.

29. In consideration of the benefit derived by the inhabitants of Albany from the main roads in the division of Peddie, the Divisional Council of Albany shall pay to the Divisional Council

Digitised by the University of Pretoria, Library Services, 2016

of Peddie, yearly and every year, the sum of two hundred and twenty-six pounds. No. 10—1864.

30. [§§ 30—32 repealed by Act 40, 1889.]

33. It shall be lawful for the House of Assembly at any and every session of Parliament after the present, by any resolution of such House, which resolution shall be concurred in by the Legislative Council and the Governor, to increase or diminish any of the payments or contributions in this Act specified, and to appoint and direct, as cause shall be shown and occasion may require, that Divisional Councils other than those named in this Act shall respectively make and receive contributions to and from each other for the purposes of this Act, and fix the amount of such contributions for the time being, and to charge Divisional Councils, not by this Act charged with the duty of maintaining and repairing lines of main road lying in divisions other than their own, with the duty of so doing, and all such arrangements, from session to session, to alter and revise as circumstances may for the time being demand, and the provisions of this Act regarding the certain arrangements established by this Act shall extend and apply to all such further or other arrangements as may from time to time be established, in like manner precisely as if the same had been the arrangements embodied in this Act. Alterations as to amount of contributions, charge of roads, &c., may be made by Parliament.

34. [§§ 34—41 repealed by Act No. 40, 1889.]

42. This Act may be cited for all purposes as "The Road Act, 1864." Short title.

43. [Repealed by Act 22 of 1873.]

No. 11—1864.] [July 26, 1864.

An Act for Amending the Law relative to the Constitution of Divisional Councils, and for other purposes.

[Repealed by Act 4, 1865.]

No. 12—1864.] [July 26, 1864.

An Act to Amend the Law relating to the Fraudulent Marking of Merchandise.

[Repealed by Act 12, 1888.]

No. 13—1864.] [July 26, 1864.

ACT

To Amend the Ordinance No. 9 of 1836, entitled "Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded." (1)

WHEREAS it has happened in some Municipalities in this Colony that the provisions of the fourteenth and fifteenth sections Preamble.

[1] See note to Ord. 9, 1836.

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1864.

of the Ordinance No. 9, 1836, relative to a triennial election of Municipal Commissioners, have, from error or inadvertence, been overlooked, whereby doubts may be raised respecting the validity of the acts of certain Boards of Commissioners who formerly held office, as well as of certain Boards of Commissioners now in existence: And whereas it is expedient to remove such doubts, and at the same time to amend the said Ordinance in certain respects: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Irregular elections legalised.

1. No person now acting, or who shall at any time heretofore have acted, as a commissioner of any municipality established and existing under the Ordinance aforesaid, No. 9 of 1836, shall be deemed or taken to be, or have been, unduly or illegally elected to such office, by reason merely that his election took place at a time and in a manner different from the time and manner in which, under and by virtue of the fourteenth and fifteenth sections of the said Ordinance, such election ought to have taken place; and the acts and proceedings of every such person, as a commissioner and of any board of commissioners of which he was or is a member, shall be taken and judged of as if such person had been duly and regularly elected under the provisions of the said Ordinance.

And whereas, whilst it is necessary, in reference to the municipalities in which such irregular elections have taken place, to fix the time at which the existing commissioners shall go out of office, and other commissioners shall be elected thereto, it will be convenient to provide that the commissioners of all municipalities established or to be hereafter established under the Ordinance aforesaid, No. 9, 1836, should be elected throughout the Colony on the same day: Be it enacted as follows:

Duration of office of existing commissioners.

2. It shall and may be lawful for every commissioner in every municipality established and existing under the Ordinance No. 9, 1836, no matter when such commissioner may have been elected, and whether elected at a time and in a manner directed by the fourteenth and fifteenth sections of the Ordinance aforesaid or not, to hold office as such commissioner till the first day of March, one thousand eight hundred and sixty-five, but every commissioner in every such municipality shall then go out of office.

General election when and how to take place.

3. On the last Monday in the month of February, one thousand eight hundred and sixty-five, a meeting shall be holden, at such hour and place as shall be notified by the commissioners then in office, for the election of commissioners for the three years next succeeding the first of March, one thousand eight hundred and sixty-five, and such election shall proceed in such manner as is by the twelfth section of the said Ordinance, No. 9, 1836, provided in regard to the first election of commissioners under the said Ordinance; and such incoming commissioners shall, in their turn,

Digitised by the University of Pretoria, Library Services, 2016

go out of office on the first day of March, one thousand eight hundred and sixty-eight, and be succeeded by others to be elected on the last Monday of the preceding month; and so on with triennial vacancies and triennial elections on the same days for ever.

Casual vacancies.

4. Every person elected in manner and form as in the sixteenth section of the Ordinance aforesaid, No. 9, 1836, provided, for supplying any casual vacancy in the office of commissioner, shall serve until the then next general election of commissioners, and shall then go out of office.

Proceedings on failure to elect at any meeting.

5. In case it shall happen that by reason of any failure or neglect, or any other cause whatever, any meeting for the election of a commissioner or commissioners shall not be duly or regularly holden, or that at any such meeting the commissioner or commissioners for the purpose of choosing whom such meeting was convened shall not be duly elected, then and in every such case the Resident Magistrate of the district, or any neighbouring Justice of the Peace, shall, as soon as any such event shall have been duly notified to him in writing by any three or more householders of the municipality within which such event shall have occurred, call, by a notice of not less than seven or more than fourteen days, a meeting of the householders of such municipality for the purpose of electing such commissioner or commissioners, in the same manner as is in the said Ordinance, No. 9, 1836, directed with respect to the first election of commissioners under the provisions of the said Ordinance; and the commissioners who shall have been in office next before the time when such failure shall have occurred in regard to any general election of commissioners shall remain and continue in office until their successors shall in manner herein provided have been duly elected, upon which the former shall forthwith go out of office, and be succeeded by the persons newly chosen.

Duration of office of first board of commissioners of any municipality when elected within twelve months of a general election.

6. In regard to the first board of commissioners to be elected by any municipality to be hereafter created or established under the Ordinance aforesaid, No. 9, 1836, such first board, if elected within twelve months next before the last Monday of any February in which a general election of commissioners in the several municipalities existing under the Ordinance aforesaid is by this Act appointed to take place, shall not go out of office at the then next general election, but shall hold office until the general election next succeeding that general election; but in case such first board of commissioners shall be elected twelve months or upwards before the day aforesaid, then such board of commissioners shall go out of office at the then next general election, precisely as if they had been in office for three years.

Who to be a householder and entitled to vote at elections.

7. Every person who is the occupier of any house, warehouse, counting-house, shop, or office, either as proprietor or renter, of the yearly value or rent of not less than ten pounds sterling, shall be

Digitised by the University of Pretoria, Library Services, 2016

No. 13—1864.

and be deemed and taken to be a resident householder within the meaning of the Ordinance aforesaid, No. 9 of 1836; and at all meetings of resident householders every such resident householder who shall be personally present shall have and be entitled to one vote, and no more.

Joint proprietors or occupiers to be regarded as separate householders, the value of occupancy of each being not less than £10.

8. Where any premises shall be jointly occupied by more persons than one as proprietors or renters, each of such joint occupiers shall be entitled to be considered a resident householder within the meaning of the said Ordinance, in respect of the premises so jointly occupied, in case the yearly value or rent of such premises shall be of an amount which, when divided by the number of such joint occupiers, shall give a sum of not less than ten pounds for each and every such joint occupier.

Commissioners to have no interest in municipal contracts on pain of penalty and vacation of office.

9. No commissioner of any municipality (except as hereinafter excepted) shall be allowed, directly or indirectly, to become a contractor with the board of commissioners of which he is a member, for or in regard to any such contract as is in the forty-third section of the Ordinance aforesaid, No. 9, 1836, described, either in his own name or in the name of, or jointly with, any other person, on pain of forfeiting for every such offence, for the benefit of the municipality, any sum not exceeding fifty pounds, and he shall also be deemed to have thereby *ipso facto*, vacated his office as commissioner, and shall not be eligible for re-election as a commissioner until the next general election of commissioners for such municipality. Provided that no commissioner of any municipality shall be deemed or taken to have vacated his office as commissioner, or to have incurred any penalty, forfeiture, or disqualification whatever, by reason merely that the board of commissioners to which he belongs shall have entered into any such contract as is in the forty-third section of the Ordinance aforesaid mentioned, or any other dealing or transaction with the directors or other managers of any joint-stock company of which such commissioner shall be a shareholder or director, 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 commissioners of any municipality shall have entered into any past or still subsisting contract, dealing or transaction, be deemed or taken to be ineligible to be elected or to act as a commissioner of any municipality, by reason merely of such contract, dealing, or transaction: Provided that it shall be lawful for any commissioner to purchase at any public sale held for or on account of the municipality of which he is a commissioner, any property, right, or other interest which such board shall put up to public competition.

Shareholders in joint-stock companies having transactions with municipality may hold office as commissioners.

Commissioners may purchase property sold at public sale on account of municipality.

Commissioners may assess a rate.

10. It shall be competent for any board of commissioners for any municipality to assess a rate on the immovable property of such municipality without calling a public meeting of householders:

Not to exceed one penny in the pound.

(1) Provided that such rate shall not exceed one penny in the pound

[1] But see § 2, Act 28, 1879.

Digitised by the University of Pretoria, Library Services, 2016

on the value of immovable property in such municipality: And provided that not less than four-fifths of the members of such board of commissioners shall be present, and consenting to such rate, at any meeting of such board at which such rate may be determined upon: Provided that no more than one such rate shall be assessed in any one year.

Four-fifths of number of commissioners present to consent.

One rate only in each year leviable.

11. It shall be competent for any municipality, by any municipal regulations thereof, to fix and define, in regard to rates assessed under the twenty-eighth section of the Ordinance No. 9, 1836, whether such rates shall be payable by the occupier of immovable property or by the proprietor, or by either the occupier or the proprietor, at the option of the commissioners; and whether, in case the occupier shall be made liable for and shall be compelled to pay any such rate, he shall or shall not have recourse against the proprietor for the amount so paid or any part thereof; and whether occupiers of a certain description shall have such recourse, whilst occupiers not of that description shall not have such recourse; and, generally, to impose or distribute the burthen of the municipal rates between or in regard to proprietors and occupiers in such manner as, under the circumstances of such municipality, may be deemed equitable and expedient.

Regulation may be made regarding liability of proprietor or occupier for rate assessed.

12. The following proviso in the twenty-eighth section of the Ordinance No. 9, 1836, namely: "Provided always that nothing herein contained shall prevent any person who feels himself aggrieved by any such assessment from appealing therefrom to any Court having jurisdiction," is hereby repealed.

Provision in section 28 of Ordinance No. 9 of 1836, giving right of appeal against assessment of rate, repealed.

13. It shall be lawful for any person who feels himself aggrieved by the value put upon any property owned or occupied by him upon or for the purpose of the roll of assessment in any municipality to appeal against such valuation to the Court of Resident Magistrate of the district in which such property shall be situated, and such Court shall inquire into such valuation, and the decision of such Court shall be final and conclusive: Provided that no person shall be entitled to bring any such valuation under the review of any such Court unless and until he shall have complied with the provisions of any municipal regulations of such municipality touching and concerning the manner in which the valuation of the properties in such municipality shall be corrected by the commissioners of such municipality upon the application of the owners or occupiers thereof.

Right of appeal against municipal valuation.

Provided that person appealing has complied with regulations regarding such valuations.

14. It shall be competent for any municipality, by means of any municipal regulations thereof, to exercise all such powers and authorities as are conferred upon the board of commissioners of such municipality by the Ordinance No. 8, 1848, entitled "Ordinance for enlarging in certain respects the Powers of Municipal Commissioners in regard to the common Pasture Lands of the Municipality"; and as often as such powers and authorities shall be exercised by means of municipal regulations, then the

Municipalities may exercise the powers conferred by Ordinance No. 8 of 1848, in regard of waste land of the municipality.

Digitised by the University of Pretoria, Library Services, 2016

No. 14-1864.

Municipal regulation regarding waste land to be posted before Governor's assent is given.

posting of notice and the other forms prescribed by the said last-mentioned Ordinance shall not be necessary: Provided, however, that it shall be lawful for the Governor, before approving, amending, or disallowing any such last-mentioned municipal regulations, to require that notice of the nature or object thereof shall be posted within the municipality, in manner and form as is by the second section of the said Ordinance, No. 8, 1848, directed for general information.

Fines and penalties to be paid to municipality.

15. The amount of all fines imposed upon persons convicted in any municipality of offences against the Ordinance No. 9, 1836, or against the municipal regulations of such municipality shall, when recovered, be paid into the treasury of such municipality, anything in the forty-seventh section of the Ordinance No. 9, 1836, to the contrary notwithstanding.

Short title.

16. This Act may be cited as "The General Municipal Ordinance Amendment Act, 1864."

No. 14—1864.] [July 26, 1864.

ACT

For Obliging Executors, Tutors, and Curators to lodge their Accounts.

Preamble.

WHEREAS it is necessary and expedient that better provision be made for obliging executors, tutors, and curators to lodge their accounts with the Master of the Supreme Court: Be it enacted by the Governor of this Colony, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Executor failing to lodge account of administration with Master within twelve months may be summoned before Supreme Court.

1. As often as any executor, whether testamentary or dative, shall fail or shall have failed to lodge with the Master of the Supreme Court the certain amount mentioned in the thirty-third section of the Ordinance No. 104, within the space of twelve months from the day on which letters of administration were granted to such executor, it shall be lawful for the said Master to summon said executor, so in default, to show cause before the Supreme or any Circuit Court

Master to apply for account previous to suing.

why said account has not been so lodged as aforesaid: Provided that the said Master shall, not sooner than three months nor later than one month, before suing out any such summons as aforesaid, apply by letter, to the executor in default requiring him to lodge his account on pain of being summoned to do so under this Act:

Master may extend time on sufficient cause being shown.

Provided further that any executor receiving any such application from the said Master, may lay before the said Master such grounds and reasons as he may be able to advance why he has not lodged his account, and the said Master, should such grounds and reasons seem to him sufficient, may grant to such executor such an extension of time for the lodging of such account, as such Master shall

On failure to satisfy Master, summons may be issued, unless a judge's order shall have been obtained.

under the circumstances deem reasonable: And provided also that if any such executor so in default shall fail to satisfy the said

Digitised by the University of Pretoria, Library Services, 2016

Master that he ought to receive an extension of time, said Master shall be at liberty to summon such executor to lodge his account, unless such executor shall obtain from the Supreme Court, or some Judge thereof, and deliver to such Master an order made upon motion of which the said Master shall get notice, granting to such executor an extension of time within which to lodge his account

Master entitled to costs in certain cases where the Supreme Court overrules his decision.

2. Although the Court or Judge aforesaid shall be of opinion that the ground and reasons laid before the said Master, by any executor, who shall be summoned to lodge his account as aforesaid, were such as would have warranted the said Master in granting an extension of time; the said Master shall nevertheless be entitled to his costs in case he shall, before summoning the executor whose grounds and reasons the said Master shall have overruled, and declared insufficient, have allowed such executor sufficient time for enabling him to apply to the Supreme Court or some Judge thereof, for such an order as aforesaid, granting to such executor an extension of time.

Exemptions from obligation to lodge account.

3. Provided always that when the person by whom any testamentary executor has been appointed shall, by any deed duly executed by him, or by any clause in a will or codicil to a will, have directed that such testamentary executor shall not transmit to the office of the said Master an account of the whole administration and distribution of the estate of which he is such executor, then, and in every such case, no such executor shall be required to lodge the same with the said Master of the Supreme Court; except when an order for the production of the same shall have been made by the Supreme Court or any Judge thereof, on sufficient cause for the production of the same being shown by the Master, or by some person having an interest in the said joint estate: And that the survivor of two spouses married in community of property, to whom the predeceasing spouse shall by will have lawfully bequeathed all the share of the said joint estate belonging to such predeceasing spouse, shall by will or other lawful instrument have appointed the executor of his or her will and the tutor of his or her minor children, and the administrator (*boedelhouder*) of the said joint estate during the minority of such children, shall not in any case be required to transmit or lodge at the office of the said Master any such account as before mentioned, except when an order for the production of the same shall have been made by the Supreme Court, or any Judge thereof in manner aforesaid.

Costs unless otherwise ordered by Supreme Court, to be paid by executor in default.

4. The costs adjudged to the said Master upon any summons sued out by him or on his behalf, shall be payable by the executor in default in his individual capacity, and he shall not be at liberty to charge the same to the estate under his administration, unless authorised so to do by the said Supreme Court

Master to sue every tutor and curator who shall fail to

5. It shall be the duty of the said Master to summon, as aforesaid, every tutor, whether testamentary or dative, and every

Digitised by the University of Pretoria, Library Services, 2016

No. 14—1864.

Lodge account within prescribed date.

curator, whether nominative or dative, and every curator bonis, to show cause why any account which, under the thirty-eighth section of the Ordinance No. 105, ought to have been lodged with such Master has not been lodged, and unless such tutor or curator shall, before the day fixed by the said section for the filing of such account, obtain from the said Master or from the Supreme Court, or some Judge thereof, an extension of time within which to lodge the same, then the provisions of the second and fourth sections of this Act, regarding costs, shall apply to the motion aforesaid when made by the said Master under this section.

Act to apply to executors appointed after and within five years before Act coming into operation.

6. The provisions of this Act shall extend to all executors to whom letters of administration as aforesaid shall be granted at any time after the taking effect of this Act, and to all executors to whom such letters of administration shall have been granted at any time within five years next before the taking effect of this Act, but not to any other executors: Provided that this Act shall extend or apply to no executor except the individual who received letters of administration to administer the estate of which the account has not been lodged, and that, in case of his death, the liability of his executors or heirs to lodge the account which, had he been living, he ought to have lodged, shall be judged of as if this Act had not been passed: Provided also that no executor to whom letters of administration shall have been granted at any time before the taking effect of this Act, shall be summoned to lodge his account until the expiration of twelve months next after the taking effect of this Act.

Liability confined to person to whom letters of administration have been granted.

Executors appointed previous to this Act not to be sued before the expiration of twelve months after its coming into effect.

Master to furnish Supreme Court with periodical return of estates in which no accounts have been lodged.

7. It shall be the duty of the said Master to render to the Supreme Court, at the first sitting thereof, held after the expiration of three months from the taking effect of this Act, a return, in writing, of all such estates and administrations as aforesaid, in which accounts should have been lodged, but have not been lodged, and such Master shall, thereafter, on the first day of every term, render a return, in writing, to the said Court of all such estates and administrations as aforesaid, in which accounts shall have been lodged since the last preceding return was rendered, as well as of all estates and administrations (if any), in which accounts should have been lodged but have not been lodged, and a copy of every such return shall lie open for inspection in the office of the said Master.

Short title.

8. This Act may be cited for all purposes as the "Executors' Accounts Act, 1864."

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1864.] [July 26, 1864.

ACT

To Amend "The Criminal Law Amendment Act, 1861," and for other purposes. (1)

Preamble.

WHEREAS "The Criminal Law Amendment Act, 1861," stands in need of certain amendments: And whereas, it is also expedient to amend the law regarding the Service of Criminal Process in certain cases: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant portion of Act No. 3 of 1860 repealed.

1. So much of the said Act as shall be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Joint-stock companies may be named in indictments by their style or firm.

2. In every case in which it shall be necessary in any indictment, to name any joint-stock company or co-partnership, as the persons injured or damaged by the commission of the offence charged in such indictment, or for any other purpose, it shall be sufficient to state the name, style, or firm of such company or co-partnership, without naming any of the officers or shareholders of such joint-stock company or any of the partners in such co-partnership, and one individual trading under the style or title of a firm may be described by such style or title.

Persons indicted for assault with any particular intent may be convicted of common assault.

Ditto when indicted for murder or culpable homicide.

3. Any person tried upon any indictment charging him with an assault with intent to commit a rape, or with an assault with any other particular intent specified in such indictment, may be found guilty of a common assault. And any person charged with murder or culpable homicide, in regard to whom it shall not be proved to the satisfaction of the jury that he caused the death of the person whom he is charged with killing, may, in case the jury shall be satisfied that he is guilty of having assaulted such deceased person, be found guilty of a common assault.

Section 18 of Act No. 3, 1861, repealed.

4. The eighteenth section of "The Criminal Law Amendment Act, 1861," is hereby repealed.

Defendant to be committed for trial by an inferior Court before trial in Supreme or Circuit Court.

On liberation, after committal, by order of Attorney-General, no private prosecution to take place without leave from Supreme or Circuit Court.

5. No defendant shall be tried in the Supreme or any Circuit Court for any crime or offence, unless such defendant shall have been previously committed for trial by some competent Court or Magistrate, for or in respect of the crime or offence charged in such indictment; and in case any defendant, after having been so committed for trial, shall have been again liberated by order of the Attorney-General, no process for summoning such defendant to answer any indictment at the suit of any private prosecutor shall be sued out without the leave of the Supreme or some Circuit Court, or some Judge thereof, for that purpose first had and obtained: (2) Provided, always, that nothing herein contained shall

[1] Extended by Proclamation No. 80 of 1890 to all the Native Territories.
[2] See § 11 Ord. 40, and foot note thereto.

Digitised by the University of Pretoria, Library Services, 2016

No. 15—1864.

But Supreme or Circuit Court may direct committal or preparatory examination to be taken.

be construed so as to deprive the Supreme or any Circuit Court, or any Judge thereof, of any power which such Court or Judge may now, by law, possess to direct, upon the application of any party interested, any Magistrate to take a preparatory examination, or to order any person to be committed for trial, whether any preparatory examination shall have been taken against such person or not: And provided that every defendant shall be deemed and taken to have been committed for trial, for or in respect of the crime or offence charged in such indictment, as often as the depositions taken before the committing Magistrate shall contain an allegation of any fact or facts upon which the defendant might have been committed upon the charge named in the indictment, although the committing Magistrate may, when committing the defendant upon such depositions, have committed him for some different crime or offence than that charged in the indictment, or for some crime or offence not known to the law of this Colony

When defendant shall be considered to be committed.

Persons in custody or appearing in pursuance of bail bond to be deemed to have been committed, unless the contrary shall be proved.

Provided, also, that every defendant who shall be in actual custody when brought to trial, or who shall appear to take his trial in pursuance of any bail bond or recognizance entered into before any Magistrate, shall be deemed and taken to have been duly committed for trial upon the charge stated in the indictment, unless he shall prove the contrary.

And whereas by the twenty-third section of the Ordinance No. 25 of 1847, entitled "Ordinance for improving the Police of the Colony," it is enacted that the "chief constable of every district shall diligently and faithfully execute, or cause to be executed, as he shall be by law required, all criminal process of the Supreme or any Circuit Court"; and whereas it is expedient to make provision by law in regard to such process: Be it enacted as follows:

Chief Constable charged with execution of process of Supreme or Circuit Courts in divisions where there are no Deputy Sheriffs.

6. The chief constable of every district in which there shall reside no Deputy Sheriff shall diligently and faithfully execute all process of the Supreme or any Circuit Court for summoning defendants and witnesses in criminal cases, residing or being in such district, and which process shall be delivered to him for execution by the officer charged, for the time being, with the duty of suing out such process; and such chief constable shall execute such process in like manner in all respects as if he were the Sheriff for the Colony, or a lawful deputy of such Sheriff; and the return of such chief constable endorsed upon such process shall, in all Courts and places, be of the same force and effect as if it had been made by the said Sheriff, anything in any rule or order of the Supreme Court, or Circuit Courts to the contrary notwithstanding.

Short title.

7. This Act may be quoted for all purposes as "The Criminal Law Amendment Act, 1864."

No. 16—1864.] [July 26, 1864.

An Act for the Better Repression of Thefts of Sheep and Cattle.

[Repealed by Act 35, 1893.]

Digitised by the University of Pretoria, Library Services, 2016

No. 17—1864.] [July 26, 1864.

ACT

For amending the Law regarding Certificates of Citizenship.

Preamble.

WHEREAS it is expedient to repeal the Act No. 24, 1857, entitled "An Act for preventing Colonial Fingoes and certain other subjects of Her Majesty from being mistaken for Kafirs, and thereby aggrieved," and to make other provisions in its room and stead: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Act No. 24 of 1857 repealed.

1. The Act aforesaid, No. 24, 1857, is hereby repealed.

Special officers to be appointed to issue certificates.

2. From and after the taking effect of this Act certificates of citizenship as hereinafter mentioned shall be issued to Fingoes entitled to the same by such Resident Magistrates and by such superintendents of Fingoes as shall be specially appointed for that purpose by the Governor, but no other officers or persons.

Form of certificate.

3. Every certificate of citizenship shall be written or printed upon parchment or paper, both in the English and in the Dutch language, and shall be signed by the Resident Magistrate or superintendent issuing the same, and shall be in the following form:

CERTIFICATE.

Know all men who shall see this that the bearer (name him) a Fingo residing at (name the place and division), and whose description is hereunder given, is an inhabitant of this Colony, and a subject of Her Majesty the Queen, and is not to be obstructed or impeded by any person upon the ground or supposition that he is a Kafir without a pass.

Description of (name him)
Age
Height
Marks

Dated at —— this —— day of ——, 18—
(Signed) A.B., Resident Magistrate of —— (or Superintendent of Fingoes at ——, as the case may be).

Certificate how to be registered.

4. Every Resident Magistrate and every superintendent of Fingoes issuing any such certificate to any Fingo shall enregister such certificate in such a manner as to show the date of certificate and the name, age, height, and marks of the Fingo.

Case for holding certificate to be supplied.

5. Every Fingo who shall be supplied with such a certificate as aforesaid shall also be supplied with a case or other receptacle or covering for the purpose of carrying his certificate about his person safely and conveniently.

6. [§§ 6-10 relate to the annual revision and renewal of certificates, and are therefore repealed by § 10 Act 22, 1867.]

Digitised by the University of Pretoria, Library Services, 2016

No. 17—1864

Certificate to be returned for cancellation on death of holder.

11. As often as any Fingo shall die who at the time of his death was the holder of any such certificate as aforesaid, such certificate shall be forthwith delivered up to the Superintendent of the location (should such Fingo have died in a location), or to the Resident Magistrate of the district (should such Fingo have died elsewhere than in a location), and the superintendent or Resident Magistrate receiving any such certificate shall cancel the same and enregister such cancellation.

Penalty for retaining certificate after death of holder.

12. Any person who shall take possession of the certificate which belonged to any deceased Fingo at the time of his death for any other purpose than to deliver up the same to the superintendent of Fingoes or Resident Magistrate aforesaid, or who shall retain the same in his possession for any space of time longer than was reasonably necessary for the delivery up thereof to such Resident Magistrate or superintendent, shall be guilty of the offence of contravening the twelfth section of this Act, and shall upon conviction be, if a male, imprisoned with hard labour for the term of six months, and if a female, be imprisoned, with or without hard labour, for any term not exceeding three months, or such offender shall be liable to a fine not exceeding five pounds and not less than five shillings, instead of such imprisonment.

Penalty for using certificate after death of holder.

13. Any male person who shall use or attempt to use any such certificate as is in the twelfth section of this Act mentioned as a certificate issued to such person himself shall be guilty of the offence of contravening this section of this Act, and shall upon conviction be imprisoned with hard labour for the term of two years.

Examination of certificates at uncertain times may be authorised by magistrate.

14. It shall be lawful for the chief or any other constable who shall, by the Resident Magistrate of the district, be authorised in writing so to do, to visit from time to time, and at uncertain times, any Fingo Locations in such district, and to demand from all Fingoes resident in such location, who shall have received certificates of citizenship, the production of such certificates, and if any such Fingo shall not upon demand made to him in person produce his certificate, the constable who demanded the same shall report such failure to the superintendent of such location, if such there be, and such superintendent shall inquire into the circumstances of the case, and shall report thereon to the Resident Magistrate of the district, for his information. And as often as there shall not be any superintendent of the location to which such Fingo shall belong, the constable aforesaid shall report such failure as aforesaid direct to the Resident Magistrate by whom such constable was authorised to demand the production of such certificates.

Fingo wilfully refusing or neglecting to produce to be incapable of again obtaining certificate unless by Governor's authority.

15. The Resident Magistrate aforesaid, upon receiving any such report as aforesaid from the superintendent of the location or the constable aforesaid, shall summon the Fingo who failed to produce the certificate issued to him to appear before such Magistrate, at some convenient time to be fixed by such Magistrate, and unless

Digitised by the University of Pretoria, Library Services, 2016

such Fingo shall prove or make it probable that his failure to produce the said certificate was not caused by any wilful act or gross neglect upon his part, he shall be declared incapable of ever again obtaining a certificate of citizenship, and shall never again obtain such a certificate unless by the express authority of the Governor of the Colony.

Where certificate has been stolen or lost, Governor may authorise issue of a fresh one.

16. As often as any Fingo shall allege to the Resident Magistrate of the district in which such Fingo resides that the certificate of citizenship issued to such Fingo has been stolen from him, or has, without any wilful act or gross neglect on his part, become lost, such Magistrate shall take all such evidence upon the subject as shall be obtainable by him, and transmit the same for the consideration of the Governor, and if the Governor shall, under the circumstances, approve of the issue to such Fingo of a fresh certificate, the same shall be issued to him, but it shall be lawful for the Governor to refuse or delay the issue of any such fresh certificate as the circumstances of the case may seem to him to require.

But he may refuse.

Notice of incapability to hold or of loss of certificate to be given to officer who last countersigned.

17. As often as any Fingo shall, under section sixteen [1] of this Act, be declared incapable of ever again obtaining a certificate of citizenship, and as often as any Fingo shall, as in the seventeenth [1] section mentioned, allege that his certificate has been stolen from him or lost, then the Resident Magistrate in the said sections mentioned, in case he be not the Resident Magistrate by whom the missing certificate was last countersigned, shall certify to the Resident Magistrate or superintendent who last countersigned such certificate that such certificate no longer exists: Provided that, should the Governor at any time afterwards authorise or approve of the issue of a fresh certificate, the Resident Magistrate issuing the same shall certify thereof to the same officer to whom he before certified the non-existence of the previous certificate, which no longer exists: Provided, also, that the respective officers aforesaid by whom and to whom any such matter as aforesaid shall have been certified shall enregister such matter in the register of certificates.

Similar notice to be given in case Governor authorises issue of fresh certificate.

Such particulars to be entered in register of certificates.

Penalty for wilfully depriving Fingo of certificate.

18. If any person shall wilfully and unlawfully deprive any Fingo of his certificate of citizenship, such person so offending shall upon conviction be liable to a fine not exceeding ten pounds, or to imprisonment with or without hard labour for any period not exceeding three months.

Penalty for apprehending Fingo after production of certificate.

19. If any person shall, upon the allegation or pretext that any Fingo who shall produce for inspection his certificate of citizenship is nevertheless a Kafir without a pass, apprehend or obstruct such Fingo after he shall have produced such certificate aforesaid for inspection, such person so offending shall upon conviction be liable to a fine not exceeding ten pounds, or to imprisonment with or without hard labour for any period not exceeding three months, and shall, moreover, pay to such Fingo his reasonable damages, to

[1] So in original—should obviously be "fifteen" and "sixteen" respectively.

Digitised by the University of Pretoria, Library Services, 2016

No. 17—1864.

be assessed and adjudged in a summary manner by the Court in which the criminal prosecution shall be brought; and unless such damages, as well as the fine, shall be forthwith paid, the person convicted shall be liable to be imprisoned as aforesaid until the same shall be paid, or until the term of imprisonment shall expire, whichever shall first happen: Provided that nothing herein contained shall be construed so as to prevent any such Fingo from being apprehended for or on account of any crime which he may be charged with having committed, and for which alleged crime or offence any other subject of Her Majesty might, by the same person and in the like case, have lawfully been apprehended.

Except on criminal charge.

Fingo not producing certificate may be lawfully apprehended.

20. If any Fingo who shall have neglected to supply himself with, so as to be able to produce, such a certificate of citizenship as aforesaid, shall be apprehended by any Justice of the Peace, Field-cornet, constable, or landowner, acting in pursuance of the twelfth section of the Ordinance No. 49, [1] such last-mentioned person acting *bonâ fide* without malice, and having reasonable and probable cause for mistaking such Fingo for a Kafir without a pass, such Fingo shall be deemed and taken to have been lawfully apprehended, and shall not be entitled to have or maintain any action or suit, civil or criminal, against the person by whom he shall have been so apprehended: Provided that no certificate of citizenship of which the latest date mentioned therein or thereon, whether the date of its issue or the date of its being last counter-signed, shall be more than thirteen months before the day on which the same shall be produced for inspection to such Justice of the Peace, Field-cornet, constable, or land-owner as aforesaid, shall be deemed and taken to be a certificate of citizenship, or to be evidence to any extent that the person producing it is a Fingo and not a Kafir without a pass.

No certificate the date of issue or counter-signature of which shall be more than thirteen months before the day of inspection to be valid.

Fingo transferring certificate and person receiving it liable to penalty.

21. If any Fingo who shall have received a certificate of citizenship as aforesaid shall deliver such certificate, or cause or procure the same to be delivered, with intent that the same should be used as a certificate of citizenship by any other person, whether a Kafir or an inhabitant of the Colony, then such Fingo so delivering the said certificate or causing the same to be delivered, as also the person, if any, who shall have received the same with intent to make use of it as a certificate of citizenship, shall each be liable to a fine not exceeding fifty pounds, or to imprisonment with or without labour for any term not exceeding twelve months.

Existing certificates to be delivered up and cancelled within six months of Act coming into operation.

22. All certificates of citizenship granted to Fingoes at any time before the taking effect of this Act shall, within six months next after the taking effect of this Act, be delivered up to the Resident Magistrate of the district, or superintendent of the location, in which the holders thereof shall reside, in order that the same may be cancelled, and new certificates, under this Act, issued in their stead; and no such certificate shall at any time after the

[1] Repealed by Act 22, 1867.

Digitised by the University of Pretoria, Library Services, 2016

expiration of such period of six months be deemed or taken to be a certificate of citizenship, or to be evidence to any extent that the person producing it is a Fingo and not a Kafir without a pass.

And whereas it is expedient to continue, in regard to the people called Tambookies, the restrictions which were imposed by the Act No. 24, 1857, hereinbefore repealed: Be it enacted as follows:

23. [§§ 23 and 24 repealed by Act 22, 1867.]

Certificates issued to Tambookies to be delivered up and cancelled within six months after Act shall come into operation.

25. All certificates of citizenship which may at any time before the taking effect of this Act have been granted to Tambookies or other Kafirs, shall, within six months next after the taking effect of this Act, be delivered up, for cancellation, to the Resident Magistrate of the district in which the holders thereof shall reside, and no such certificate shall at any time after the expiration of such period of six months be deemed or taken to be a certificate of citizenship, or to be evidence to any extent that the person producing it is a Fingo, and not a Kafir without a pass.

Section 14 of Act No. 27, 1857, repealed.

26. The fourteenth section of the Act No. 27, 1857, entitled "An Act for regulating the terms upon which Natives of Kafirland and other Native Foreigners may obtain employment in this Colony," is hereby repealed.

Kafir or native foreigner entitled to certificate after ten years' service in the colony.

27. Any Kafir or other Native Foreigner, whether one who may have formerly received a certificate of citizenship or not, who shall prove to the satisfaction of the Resident Magistrate of the district in which he resides that he has for not less than ten consecutive years next before his application to such Magistrate been constantly in service in this Colony, and who shall not during such ten years have been convicted of the crime of theft, or of any other crime for or in regard to which he shall have been sentenced to any punishment exceeding one month's imprisonment, shall be entitled to receive a certificate of citizenship under this Act; and all and singular the provisions of this Act relating to such certificates when issued to Fingoes shall extend and apply to such certificates when issued to Kafirs or other Native Foreigners: Provided that any such Kafir or other Native Foreigner shall be deemed to have been constantly in service as often as not more than one month shall during ten years have intervened between any one contract of service and one next succeeding: Provided, also, that the term "Kafir or other Native Foreigner" shall, for the purpose of this section, include Tambookies and other Kafirs, as also Basutos, Baralongs, Mantatees, and all other Natives commonly regarded and spoken of as belonging to the Kafir family: Provided lastly, that nothing in this section contained regarding a service of not less than ten years shall extend or apply to the case of any Kafir or Native Foreigner who shall, at the time of the taking effect of this Act be already in possession of a certificate of citizenship, in case such person shall be a person who was, according to the true intent and meaning of the Act No. 24, 1857, entitled to receive such certificate of citizenship under that Act.

Interval between leaving one service and entering another not to exceed one month.

Definition of terms Kafir and native foreigner.

Stipulation of ten years' service not to extend to Kafir or native foreigner in possession of and entitled, under Act No. 24, 1857, to hold certificate.

Digitised by the University of Pretoria, Library Services, 2016

No. 17—1864.

Penalty for false statement.

28. If any Fingo, Kafir, or other Native Foreigner, applying to any officer authorised and appointed to issue certificates of citizenship shall make to such officer any statement wilfully and knowingly false touching the right or claim of such Fingo, Kafir, or other Native Foreigner to obtain such certificate, such Fingo, Kafir, or other Native Foreigner shall upon conviction be liable to be imprisoned and kept at hard labour for any period not exceeding six months.

Governor empowered to grant certificate in certain cases where applicant shall not be able to show ten years' service.

29. It shall be lawful for the Governor, upon the application of any Native Foreigner who may not be able to give the proof of service in the last preceding section mentioned, but who shall yet be able to show that he has by industry and good conduct during a residence in the Colony of not less than ten years, merited the privilege, to direct that such Native Foreigner may receive a certificate of citizenship under the provisions of this Act.

Certificate to be forfeited on holder being convicted of crime.

30. Any person whomsoever who shall have obtained a certificate of citizenship shall, if convicted of any crime for or in regard to which he shall be sentenced to any punishment exceeding six months' imprisonment shall *ipso facto* forfeit his certificate.

Penalty for issuing certificate to person not entitled to hold one.

31. If any superintendent or other officer authorised to issue certificates of citizenship shall wilfully and knowingly issue a certificate of citizenship to a person not entitled by law to receive or demand the same, or shall wilfully or knowingly issue a pass to any Tambookie, which pass shall not be in pursuance of the provisions required by section twenty-four, every such superintendent or other officer shall, on conviction, forfeit a sum not exceeding fifty pounds sterling.

Act to apply to both males and females.

32. Whenever the word Fingo, Tambookie, Kafir, or Native Foreigner occurs in this Act, it shall extend to and mean both male and female for the purposes of this Act.

Short title.

33. This Act may be cited for all purposes as "The Certificate of Citizenship Amendment Act, 1864."

No. 18—1864.] [July 26, 1864

ACT

To Provide for the Mode in which the Property of certain descriptions of People resident in this Colony shall, when abandoned by their Death, be administered and distributed.

Preamble.

WHEREAS there are Native Locations in this Colony occupied by Natives who are gradually becoming civilized, but to whom and to whose circumstances the laws of inheritance in force in this Colony are at present unsuitable: And whereas the said laws of inheritance are also unsuitable to the Fingo people, certain of whom have acquired, and are acquiring, property: And whereas it is believed that all Fingoes who are likely to leave any property behind them

Digitised by the University of Pretoria, Library Services, 2016

No. 18—1864.

at their death will have taken out certificates of citizenship, as they are by law entitled to do, and that the same will be the case with regard to all Natives not resident in a Native Location: And whereas it is expedient that the property of all persons holding, at the time of their death, certificates of citizenship, and of all Natives resident in any Native Location, should after their death, be administered and distributed according to their own customs and usages: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant portion of Ordinance No. 104 and of all other laws, repealed.

1. So much of the Ordinance No. 104 and so much of any former Law or Ordinance as may be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Property left by any person holding certificate of citizenship to be administered according to usage of tribe to which he belonged.

2. As often as any person shall depart this life who shall, at the time of his death, be the holder of a certificate of citzenship, all property belonging to such deceased person at the time of his death shall be administered and distributed according to the customs and usages of the tribe or people to which the deceased person belonged, relative to the administration and distribution of property left by deceased persons at their death: Provided that nothing in this section contained shall restrict or interfere with the power and authority hereinafter by the fifth section of this Act conferred upon the Governor.

Not to interfere with power of Governor by 5th section of this Act.

Letters of administration or interference of Master unnecessary.

3. No letters of administration from the Master of the Supreme Court shall be necessary in regard to the administration of any such property, nor shall the said Master be called upon to interfere with such administration; but if any controversies or questions should arise between the relatives or reputed relatives of such deceased person regarding the distribution of the property left by him at his death, such controversies or questions shall be determined according to Native usages and customs by the Resident Magistrate of the district in which such deceased was domiciled at the time of his death.

Questions arising to be decided according to native law by resident magistrate.

Succession duty may be claimed by civil commissioner.

4. If it shall, in any case, come to the knowledge of the Civil Commissioner of the division in which any such deceased person was domiciled at the time of his death that any succession which, from its amount or value, is liable to succession duty under the "Successions Duty Act, 1864," has accrued to any successor of any such deceased person, then such Civil Commissioner shall claim and recover such succession duty, and he is hereby, for that purpose, invested with the powers and functions which, by the said Act, are conferred or imposed upon the Master of the Supreme Court, and such duty shall be paid over by such Civil Commissioner into the Colonial Treasury.

Governor may by proclamation define usages and customs to be observed.

5. It shall be lawful for the Governor, should he see cause so to do, to define or describe from time to time, by proclamation, the customs and usages to be observed in the administration and distribution of such properties as aforesaid, and the customs and

Digitised by the University of Pretoria, Library Services, 2016

No. 19—1864.

usages defined by any such proclamation shall be observed, whether the same be in conformity with Native customs and usages or not; and the Governor may also, by any such proclamation lay down rules and regulations as to the course of procedure to be observed in regard to the administration and distribution of the property left by any such deceased person at the time of his death.

Act to apply to native residents in locations to be described by proclamation.

6. The provisions of this Act shall apply to all natives resident in any native location as from time to time described by the Governor by proclamation, in like manner as if every deceased native who was domiciled in any such location at the time of his death had been at that time the holder of a certificate of citizenship: Provided that it shall be lawful for the Governor, by proclamation, to declare and establish in regard to any such location that the determination of any such controversies or questions as are in the third section of this Act mentioned shall devolve upon and belong to the superintendent of such location, instead of the Resident Magistrate of the district.

Governor may empowersuperintendent of location to decide disputes instead of magistrate.

Short title.

7. This Act may be cited for all purposes as "The Native Successions Act, 1864."

No. 19—1864.] [July 26, 1864.

ACT

To Provide for the Leasing of Crown Lands, and for other purposes. (1)

Preamble.

WHEREAS circumstances may in some cases render the sale of Crown lands inexpedient, and may render expedient the leasing 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:—

Leasing of Crown Lands authorised.

1. It shall be lawful for the Governor, with the advice of the Divisional Council of any division, to let or lease such of the waste Crown land of such division as he may deem it expedient, for the time being, to deal with in that way.

Term of lease.

2. Such lands may be let on lease for any term not exceeding twenty-one years, and upon such conditions and stipulations as shall be imposed by the Governor, and agreed to by the lessee.

Lease to be effected by public auction.
Acceptance of highest rent offered not obligatory.
Due notice to be given.

3. All Crown lands to be let shall be let by public auction, and at the highest rent which can, in that way, be obtained: Provided that it shall not be obligatory to accept the highest rent offered should it be deemed inadequate. And provided also that notice of such public auction shall be advertised in the *Government Gazette*, and in one newspaper, if there be any, in the district in which the land proposed to be leased is situated, at least one month previous to the day appointed for such auction.

---

[1] Repealed by Act 14, 1878, save in so far as the provisions of this Act relates to lands disposed of prior to taking effect of Act 14, 1878.

Digitised by the University of Pretoria, Library Services, 2016

No. 15 –1864.

Rent payable annually.

Security to be given for three years' rent.

4. The rent of any Crown land, so leased, shall be payable annually; and the payment of the same, for the period of the first three years, shall be secured by sureties whom the Civil Commissioner shall deem sufficient, which sureties shall bind themselves, in regard to such rent, as sureties *in solidum* and co-principal debtors, renouncing the exceptions of excussion and division. Provided that the Civil Commissioner shall, if required, receive two years' rent in advance instead of demanding sureties for the period of three years.

Where two years' rent is tendered in advance, no sureties required.

And whereas it is expedient for the better prevention of unlicensed squatting on Crown lands, that the Government should be empowered in such cases as they may think fit so to do, to assign to persons who may be found squatting as aforesaid, fit and proper localities for their future residence. Be it enacted as follows:

Governor empowered to set apart a tract of land to be leased to squatters.

5. The Governor may, with the consent of the Divisional Council, and with the advice of the Executive Council, set apart, in any division, a tract of Crown land, to be divided into lots and let on lease to the parties hereinbefore mentioned, being fit and proper persons, upon such terms and subject to such regulations as he may think expedient, and a statement of all such assignments of land and copies of all such regulations shall be laid before both Houses of Parliament at the first meeting thereof, next after the making of such assignments or regulations.

Particulars whereof and regulations regarding to be laid before Parliament.

And whereas it is expedient to make provision regarding certain matters arising under Act No. 2, 1860; Be it enacted as follows:

On failure of purchasers of Crown land to take up title deed and pass mortgage bond for balance due, the sale to be cancelled, and any payment made to be forfeited.

6. If the purchaser of any Crown land at any effected sale thereof, which purchaser shall not, upon demand made by the Civil Commissioner of the division in which the land purchased is situated, duly take up the title deed of such land, and pass a mortgage bond, according to the fourth regulation contained in the Schedule to the Act No. 2, 1860, for the balance of the purchase-money of such land; and if such purchaser shall remain in such default for the space of twelve months from the day of sale, then the sale of such land shall be deemed to be, *ipso facto*, cancelled, and any previous payment made on account of such sale shall be forfeited: Provided that no such cancellation or forfeiture shall take place until after the publication in the *Government Gazette* for not less than three months, and not less than three times, of a Government notice, directed to such purchaser and all others whom it may concern, calling upon such purchaser or others claiming from or under him, to execute such mortgage bond as aforesaid, or otherwise to pay the balance of the purchase-money due and owing, on pain of the said sale becoming null and void, and such previous payments, if any, forfeited.

But previous notice in Gazette to be given.

Digitised by the University of Pretoria, Library Services, 2016

No. 20—1864.

Governor may dispense with certificate required under Act No. 2 of 1860 before sale, by valuation, of Crown land.

7. If, in any case, any Divisional Council shall recommend to the Surveyor-General to give, in regard to any portion of Crown land, the certificate required by the twenty-seventh regulation contained in the Schedule to the Act No. 2, 1860, and the Surveyor-General shall decline to accede to such recommendation, it shall be lawful for the Governor, upon considering the grounds and reasons of the Divisional Council for recommending such certificate, and the grounds and reasons of the Surveyor-General for withholding the same, to dispense with such certificate, and to authorise the allotment of the portion of Crown land in question, in like manner as if such certificate had been given.

Account of proceeds of leases of Crown land to be laid before Parliament.

8. The Governor shall cause a separate account to be kept of all proceeds of leases of Crown lands, and lay the same before Parliament within fourteen days from the opening of the Session.

Short title.

9. This Act may be cited for all purposes as "The Crown Lands Act, 1864."

No. 20—1864.] [July 26, 1864.

ACT

To Incorporate the Trustees of the Public Library of Port Elizabeth.

Preamble.

WHEREAS it is expedient to provide for the appointment, rights, and duties of trustees for the Port Elizabeth Library, and to incorporate such trustees: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Incorporation of the library.

1. The trustees of the Port Elizabeth Public Library are hereby constituted a body corporate, by the name of "The Trustees of the Port Elizabeth Library," by which name such body corporate shall have a common seal and perpetual succession.

Number of trustees.

2. The said trustees so incorporated shall be three in number, and shall be appointed by the Governor of this Colony by proclamation, and two trustees shall form a quorum.

Vacancies, how to be supplied.

3. In case of the death, resignation, absence from the Colony, or removal from office by the Governor, of any trustee, his office shall become vacant, and every such vacancy shall be supplied by a new appointment to be made as aforesaid by the Governor.

Property in whom vested.

4. All property, movable and immovable, of every sort and description, belonging to the Port Elizabeth Library, or to which such library shall become in any manner entitled, and all claims for moneys payable to such library, shall vest in and be in law the property of the trustees for the time being, who shall sue and be

Powers of trustees.

sued for, or in regard to any matter or thing connected with the said library, and such trustees may, by their name aforesaid, buy and sell, and take and give transfer or delivery of property, movable and immovable, and grant and take leases of property,

Digitised by the University of Pretoria, Library Services, 2016

and pledge or mortgage such property, and generally become and be owners and administrators, but in trust for the said library, of every right, title and interest whatsoever, belonging to the said library.

Trustees bound to conform to instructions of "Committee of Management."

5. Provided, always, that the said trustees shall, in the execution of their trust, conform, at all times and in all respects, to the instructions of "The Committee of Management" for the time being of the said library, elected by the subscribers to the said library in manner and form as is, or shall be, provided by the rules of the said library for the time being, which instructions shall be communicated to the said trustees by resolutions of the said committee, and that such trustees shall not, as such, have any right or power to interfere with the management of the said library, which management shall belong to the said committee, nor shall such trustees do any act, as such trustees, without the previous authority of the said committee, to be communicated by some resolution thereof.

Short title.

6. This Act may be cited for all purposes as "The Port Elizabeth Library Act, 1864."

No. 21—1864.] [July 26, 1864.

ACT

For Adding to the Number of the Judges of the Supreme Court, and for other purposes.

Preamble.

WHEREAS it has been found that the number of Judges of which the Supreme Court, as at present constituted, is insufficient to enable the said Judges to hold Courts in the several districts of this Colony as frequently as the wants of the inhabitants require: And whereas, in order to remedy these evils, and to afford, at the same time, to the inhabitants of the Eastern Districts of this Colony the benefit of a local Court, it is expedient to add to the number of the Judges of the said Supreme Court, and to enable certain of the Judges to form a separate Court, having jurisdiction over the said Eastern Districts, but so, however, as not to interfere with the jurisdiction of the said Supreme Court over every part and portion of the entire Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed.

1. So much of the Royal Letters Patent of His late Majesty King William the Fourth, bearing date at Westminster the fourth of May, in the second year of his reign, commonly called "The Charter of Justice," and so much of any other law, usage, ordinance, or rule of Court, as shall be repugnant to, or inconsistent with any of the provisions of this Act, are hereby repealed.

2. [Superseded by Section 2, Act 40, 1882.]

3. [Sections 3 and 4 lapsed.]

Digitised by the University of Pretoria, Library Services, 2016

No. 21—1864.

Two judges to form quorum.

5. (1) The number of Judges of the said Supreme Court necessary to form a quorum thereof, shall continue to be two, (2) as in the thirty-third section of the said Charter provided, and in case of any difference of opinion between such two Judges, the decision of the said Court shall be suspended until three or more Judges shall be present, but not longer; and the decision of such two Judges, when unanimous, or the majority of such three or more Judges, in case of any difference of opinion, shall, in all cases, be deemed and taken to be the decision of the whole Court.

In case of difference of opinion.

Powers vested in quorum.

6. So long as the number of Judges of the Supreme Court, for the time being, shall not be less than such quorum as aforesaid, the said Court shall be competent to execute all and every the powers, jurisdiction, and authorities belonging to or vested in the said Court.

Court in Eastern Districts established

7. A Court of Justice is hereby established in and for the several districts named in the schedule to this Act, to have and exercise such jurisdiction as is hereinafter specified, and such Court shall be called "The Court of the Eastern Districts of the Cape of Good Hope."

8. [Superseded by Section 3, Act 5, 1879.]

Jurisdiction.

9. The Court of the Eastern Districts hereby created shall have, throughout the districts within and for which it is established, a jurisdiction concurrent with that of the Supreme Court in and over all causes arising and persons residing and being within the said districts. (3)

Sections 30, 31, 32 and 34 of Charter of Justice and Sections 1, 4, 5, 48, 50, and 54 of Ordinance No. 40, regarding proceedings in criminal cases to apply.

10. The thirtieth, thirty-first, thirty-second, and thirty-fourth sections of the Charter of Justice, and the first, fourth, fifth, forty-eighth, fiftieth, and fifty-fourth sections of the Ordinance No. 40, entitled "Ordinance for regulating the manner of proceeding in Criminal Cases in the Colony," shall apply, *mutatis mutandis*, to the said Court of the Eastern Districts, so far as regards the districts throughout which it shall exercise jurisdiction.

Not to abrogate from powers of Supreme Court.

11. Nothing contained in this Act shall be construed so as to deprive the Supreme Court aforesaid of any jurisdiction, power, or authority which it does or shall by law possess throughout every part and portion of this Colony.

Appointment of registrar and other officers.

12. There shall be attached and belong to the said Court of the Eastern Districts a Registrar, who shall keep the records of the said Court, together with so many other officers as the Governor, with the advice of the Chief Justice of the Colony, find necessary and appoint.

Advocates and attorneys of Supreme Court entitled to be enrolled as such in Eastern Districts Court.

13. All advocates and attorneys admitted and enrolled in the Supreme Court shall be entitled, upon proof of such admission and enrolment, to be admitted and enrolled as advocates or attorneys respectively in the said Court of the Eastern Districts.

[1] See § 3, Act 40, 1882.

[2] See Act 23, 1875.

[3] Jurisdiction extended by § 6, Act 3, 1865; § 17, Act 40, 1882, and § 3, Act 3, 1885.

Digitised by the University of Pretoria, Library Services, 2016

Enrolment of advocate or attorney in Eastern Districts Court to entitle person so enrolled to enrolment in Supreme Court.

14. The said Court of the Eastern Districts may approve, admit, and enrol, as an advocate or an attorney thereof, any person who would, by the law for the time being regulating the admission of advocates and attorneys in the said Supreme Court, be qualified to be admitted and enrolled an advocate or attorney (as the case may be) of such Supreme Court, and such person, when so admitted and enrolled, shall, upon proof of such admission and enrolment, be entitled to be admitted and enrolled in the said Supreme Court.

Oath to be taken by advocate or attorney on enrolment.

15. Every such person as aforesaid admitted and enrolled by the said Court of the Eastern Districts as an advocate or attorney, shall take and subscribe the like oaths as such person would have taken and subscribed if admitted and enrolled by the Supreme Court.

Attorneys admitted to practise in circuit courts may be enrolled.

16. Every person who at the taking effect of this Act shall be an admitted attorney of the Circuit Courts of this Colony, shall be entitled to be admitted and enrolled as an attorney of such last-mentioned Court.

When notaries may be allowed to practise as attorneys before Eastern Districts Court.

17. In case there shall, at the time of the opening of the said Court of the Eastern Districts, or at any time afterwards, be fewer than four attorneys admitted and enrolled therein, under and by virtue of any of the preceding sections of this Act, and domiciled within the district of the Resident Magistrates within which such Court shall be appointed to be holden, then it shall be lawful for such Court to admit and enrol, as attorneys thereof, so many persons of good fame and credit, domiciled within the said district, being public notaries and persons who have practised as agents in one or more of the Circuit Courts of this Colony for not less than five years, as the said Court shall consider necessary.

Persons admitted under two preceding sections not entitled to enrolment in Supreme Court.

18. No person admitted and enrolled in the Court of the Eastern Districts under either of the two last preceding sections shall, by reason thereof, be entitled to be admitted or enrolled in the Supreme Court.

When advocates may act as attorneys and attorneys as advocates.

19. Advocates shall be admitted to act as attorneys in the Court of the Eastern Districts, and attorneys shall be admitted to act as advocates in the said Court in the like cases, and none other, as those in which, by the two hundred and first and two hundred and second of the Rules and Orders for the Circuit Courts of this Colony, advocates may appear and act for attorneys, and *vice versa*, attorneys may appear and act for advocates.

Rules of Supreme Court to be in force in Eastern Districts Court, subject to certain omissions alterations, and adaptations.

20. All and singular the rules and orders of the Supreme Court now in force therein, and numbered from No. 1 to No. 213, shall be in force in the Court of the Eastern Districts, subject, however, for the purpose of this section, to the several omissions, alterations, and adaptations hereinafter mentioned, that is to say:

1. As often as the term Supreme Court is mentioned in any of the said rules and orders, or in any form of, or for, process, civil or criminal, the term "Court of the Eastern Districts" shall be taken to be substituted in its stead.

Digitised by the University of Pretoria, Library Services, 2016

No. 21—1864.

2. As often as "the Registrar of the Supreme Court" is mentioned in any rule, order, or form of process, the Registrar of the Court of the Eastern Districts shall be deemed and taken to be the person meant.
3. As often as any process of the Supreme Court in the said rules and orders mentioned is directed or appointed to be witnessed by the Chief Justice of the Colony, the like process issued by the Court of the Eastern Districts, shall be witnessed by the senior of the Judges assigned to hold, for the time being, the said last-mentioned Court.
4. The rules and orders following, namely, those numbered 37, 38, 39, 40, 67, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 137, 138, shall not apply to or be in force in the Court of the Eastern Districts, nor so much of the rule or order No. 13 as specifies the number of hours or days which the copy of summons therein mentioned must be served before the day therein prescribed for the appearance of the defendant, nor so much of the rule or order No. 20 as specifies the number of days within which a defendant must plead, answer, or except to the plaintiff's declaration, or make a claim in reconvention.
5. The taxation of costs in the thirty-first rule or order mentioned and therein directed to be made by the Master of the Supreme Court, shall, in regard to the Court of Eastern Districts, be made by the Registrar thereof.
6. The several duties connected with the sale of real property attached by legal process, which duties are, by the rules and orders from No. 105 to No. 122 (both inclusive), directed to be performed by the Deputy Sheriff of the District within which the Court of the Eastern Districts, together with the other duties by the said last-mentioned rules and orders imposed upon the Sheriff of the Colony.
7. The records which by the one hundred and eighty-fifth of the rules and orders aforesaid the Registrar of every Circuit Court is directed to transmit to the Registrar of the Supreme Court, shall be transmitted by the Registrar of every Circuit Court holden within the district over which the Court of the Eastern Districts shall have jurisdiction, to the Registrar of such last-mentioned Court.
8. The process in the one hundred and eighty-seventh of the said rules and orders mentioned, and by the said rule authorised to be sued out by the Clerk of the Peace in Cape Town, may be sued out, in regard to any Circuit Court holden within the districts over which the Court of the Eastern Districts shall have the certain jurisdiction by this Act conferred, by the Clerk of the Peace of the

Digitised by the University of Pretoria, Library Services, 2016

district of Resident Magistrate within which the said Court shall be appointed to be holden, or by such other officer as the Governor shall from time to time appoint. (1)

9. For the purpose of any Circuit Courts holden for the districts of Uitenhage and Port Elizabeth, or either of them, the following words in the two hundred and fourth rule of court shall be, and the same are hereby expunged, viz., " and in so far as relates to any Circuit Court which shall be holden for the districts of Uitenhage, or Port Elizabeth, or either of them, when there shall not be within the town of Uitenhage, or the town of Port Elizabeth, or jointly within both," and the said rule shall read as if these words had not been inserted therein.

Rules as regards service of summonses to be fixed by Supreme Court; pending such order by the Eastern Districts Court.

21. The copy of summons in the thirteenth of the rules and orders of Court mentioned, and the copy of declaration and claim and accompanying notice mentioned in the twentieth of the said rules and orders, shall be served upon defendants resident within the districts over which the Court of the Eastern Districts shall have such jurisdiction as aforesaid, such length of time varying with the distance from the said Court of the residences of such defendants respectively, as the Judges of the Supreme Court, by any such rule or order thereof, as is hereinafter in the section mentioned, shall prescribe: Provided that, until such rule or order shall be duly promulgated, the Court of the Eastern Districts shall have full power and authority to fix, by any order thereof, issued from time to time to the Registrar thereof, such reasonable time or times, in regard to the matters aforesaid, as the said Court shall deem suitable and sufficient.

Court may fix days for disposal of provisional cases, &c., during vacation.

22. The Court of the Eastern Districts shall sit for the hearing of provisional cases, and the dispatch of other business, on such days in vacation as the Supreme Court shall, by any rule or order thereof, fix and prescribe.

[Sections 23-26 repealed by Section 12 Act 5, 1879.]

Section 50 of Charter of Justice, with respect to appeal to Privy Council, to apply.

27. The judgment, decree, sentence, rule, or order made by the said Supreme Court in cases as aforesaid, brought in appeal before it from the said Court of the Eastern Districts shall be subject to the provisions of the fiftieth section of the Charter of Justice aforesaid. (2)

In appeals from Eastern Districts Court, Supreme Court may remit case for further evidence, &c.

28. It shall and may be lawful for the said Supreme Court, should it see fit in any such case as aforesaid brought in appeal as aforesaid, to remit such case to the Court of the Eastern Districts aforesaid, with such rule or order touching the taking of further evidence, when necessary, or other the further proceedings therein, as the said Supreme Court shall consider needful, and the said

[1] See Rule of Court No. 376.
[2] See § 14 *et seq.* Act 5, 1879.

Digitised by the University of Pretoria, Library Services, 2016

No. 21—1864.

Court of the Eastern Districts shall, in all cases of appeal to the said Supreme Court, conform to and execute such judgments and orders as the said Supreme Court shall see fit to make, in like manner as any original judgment, decree, order, or rule of the said Court of the Eastern Districts could or might have been executed.(1)

Suit may be removed by order of Supreme or Eastern Districts Court.

29. As often as any suit or action shall be brought or depending in the Supreme Court, or in the Court of the Eastern Districts respectively, and it shall be made to appear to the Court before which such suit or action may be pending, that the same may be more conveniently or more fitly heard or determined in the other of the said Courts, it shall be lawful for the Court before which such suit or action is pending to order the same to be removed to such other Court, and such order shall be certified by the Court granting the same to the court into which the suit or action shall be intended to be removed; and thereupon it shall be lawful for such last-mentioned Court to proceed in such suit or action in like manner as if the same had been originally commenced and prosecuted in such last-mentioned Court.(2)

Supreme Court may order seizure of property found beyond jurisdiction of Eastern Districts Court in satisfaction of judgment of that Court.

30. When and as often as any judgment, decree, or order for the payment of money shall be made by the Court of the Eastern Districts in respect of or in relation to any civil suit, action, or proceeding in which the party defendant shall have been duly served with the process of such court, or shall have appeared in pursuance of any process thereof, it shall be lawful for the Supreme Court, and it is hereby required, upon inspection of such judgment, decree, or order, and upon proof to be made by the return of the officer proper to make such return to the process of execution of the said Court of the Eastern Districts, that the said judgment, decree, or order remains either wholly or in part unsatisfied, to issue process of execution upon such judgment, decree, or order, against any property, movable or immovable, belonging to the party against whom such judgment, decree, or order shall have been obtained, and situated elsewhere in this Colony than in the Eastern Districts, and to cause such process to be executed in such manner as process could or might have been issued and executed upon any original judgment, decree, or order, of the like nature of the said last-mantioned Court: Provided that it shall not be necessary to prove the handwriting of such officer as aforesaid to any such return as aforesaid.

Copy of record duly certified to be admitted as evidence.

31. In every case in which any judgment, decree, order, or other record of the Supreme Court aforesaid, or of any Circuit Court, or of the Court of the Eastern Districts, shall require to be proved, inspected, or in any manner referred to in any other Court, a copy of such record, certified under the seals of the Supreme

---

[1] See § 14 *et seq.* Act 5, 1879

[2] See Charter of Justice, § 44.

Digitised by the University of Pretoria, Library Services, 2016

Court and of the said Court of the Eastern Districts respectively, or, as to any such record of any Circuit Court, under the signature of the Registrar of such Court, shall be taken and received as *primâ facie* evidence of such record: Provided that it shall not be necessary, in regard to any certified copy, to prove the handwriting of any such Registrar to any such copy.

Supreme Court may provide for form and execution of process of the Eastern Districts Court.

How until provision shall be made.

32. It shall be lawful for the Supreme Court, by any rules or orders of the said Court, to provide for the form of the process of the Court of the Eastern Districts and for the manner in which such process shall be executed and returned by the Sheriff of the Colony, or his lawful deputies, or by any of the said deputies: Provided that unless and until other provisions shall in manner aforesaid be made in that behalf, the process of the Court of the Eastern Districts shall in substance, be in the like form as if such Court were a Circuit Court having jurisdiction over an area or territory comprising the whole of the Eastern Districts, and that such process shall be executed and returned by the Deputy Sheriff of the particular district in which the person to be served or otherwise affected by such process shall reside, or the property to be attached or otherwise affected shall be situated.

Powers of Eastern Districts Court as regards summoning persons resident in those districts.

Where parties summoned are non-residents.

33. In all cases depending in the Court of the Eastern Districts, the process of the said Court for summoning, whether as a party or a witness, any person residing or being within any of the Eastern Districts to appear in such Court, shall be of the same force and effect as if such Court were the Supreme Court, and such process that of the Supreme Court, and that in regard to the summoning of witnesses residing or being elsewhere in this Colony than in any of the Eastern Districts, the process of the Court of the Eastern Districts shall, for the purpose of the one hundred and eighty-eighth Rule of Court and the seventeenth section of the Criminal Law Amendment Act, 1861, and of any other law, be of the same force and effect as if the said last mentioned Court were a Circuit Court.

Jurisdiction of Eastern Districts Courts as regards certain existing laws.

34. In regard to the Ordinance No. 6, 1843, entitled "Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony," and to the Ordinance No. 97, entitled "Ordinance for enabling certain Persons having respectively the just, lawful, and undisputed Right to certain Lands and Houses to procure the same to be enregistered as their Property on the Land Register," and to the Ordinance No. 104, entitled "Ordinance for regulating the Registration of Wills and the Administration of the Estates and Property of Persons dying, either testate or intestate, in so far as the same are situated within this Colony," and to the Ordinance No. 105, entitled "Ordinance for the due Administration and Management of Estates and Property of Minors, Lunatics, and persons absent from the Colony, and for the proper Care of the Persons of Minors and Lunatics," and to the

Digitised by the University of Pretoria, Library Services, 2016

No. 21—1864

Ordinance No. 9, 1844, entitled "Ordinance for facilitating the Recovery of Land Rents in this Colony," and to the Ordinance No. 15, 1844, entitled "Ordinance for the Enregisterment in the Land Registers of the Colony of certain Sub-divisions of the Locations and Extensions of the Settlers of 1820," and to the Ordinance No. 5, 1848, entitled "Ordinance for enabling Resident Magistrates to exercise in regard to disputed Rights of Water certain Powers formerly exercised by Landdrost and Heemraden," and to the Act No. 1, 1854, entitled "An Act to secure Freedom of Speech and Debates on Proceedings in Parliament, and to give summary Protection to Persons employed in the Publication of Parliamentary Papers," the Court of the Eastern Districts shall have the same jurisdiction and authority and none other, which would belong to it under and by virtue of the same Ordinances, and the said Act respectively in case the Court of the Eastern Districts were a Circuit Court having jurisdiction over an area or territory comprising the whole of the Eastern Districts.

Powers exercised by Supreme Court in regard to Cape Town and district to be exercised by Eastern Districts Court in regard of district within which it is held.

35. The Court of the Eastern Districts shall exercise and perform, in regard to the District of Resident Magistrate within which it shall be appointed to be holden, the same powers and duties which, by the fifty-sixth, fifty-eighth, sixtieth, sixty-fifth, and sixty-sixth sections of Ordinance No. 40 aforesaid, the Supreme Court is empowered or required to exercise and perform in regard to Cape Town and the Cape district.

Attorney-General or Solicitor-General to prosecute.

36. In regard to all criminal cases pending in the Court of the Eastern Districts, the Attorney-General shall exercise the right of prosecution now by law vested him in person; or by the Solicitor-General of the Colony, should such an officer be appointed, or by any person appointed by the said Attorney-General under his hand to conduct such cases: Provided that nothing herein contained shall prevent the said Attorney-General from specially appointing any person to appear and act for him in any particular case, as by the seventh section of Ordinance No. 40 aforesaid provided: Provided, also, that when and as soon as such Solicitor-General shall have been appointed, every right, power, and function conferred or imposed by law upon the Attorney-General may be exercised by the said Solicitor-General, in regard to all criminal cases within the Eastern Districts, or any of them: (1) Provided that such Solicitor-General shall be appointed by Her Majesty the Queen, but may be appointed by the Governor provisionally, and until Her Majesty's pleasure be known.

Attorney-General may appoint person to prosecute.

Solicitor-General (when appointed) to possess the powers conferred on Attorney-General in regard to Criminal cases.

Solicitor-General to be appointed by the Queen, but Governor may appoint provisionally.

Holding of circuit courts not prevented.

37. Nothing in this Act contained shall be construed so as to prevent any Judge of the Supreme Court of the Colony from holding any Circuit Court anywhere within the Colony, or prevent any number of such Judges from holding separate Circuit Courts

[1] See also § 18, Act 40, 1882.

Digitised by the University of Pretoria, Library Services, 2016

at the same time, in case the Governor of the Colony shall so direct and appoint.

Appeal from circuit courts to be direct to Supreme Court.

38. All appeals from or against any judgment, decree, or sentence of any Circuit Court held for any of the Eastern Districts shall be directly to the Supreme Court, and not to the Court of the Eastern Districts: Provided that nothing herein contained shall prevent the parties to any suit which may from time to time be pending in any such Circuit Court from referring such suit by mutual consent, with the permission of the then presiding Judge, to the said Court of the Eastern Districts, for argument and decision, or shall prevent any Judge of any such Circuit Court from referring any suit pending therein to the said Court of the Eastern Districts, if he shall so see fit.

But cause may be referred from circuit to Eastern Districts Court by consent of parties.

Or such reference may be made by presiding judge.

Rules of Eastern Districts Court may be amended by Supreme Court.

39. The rules and orders in force for the time being in the Court of the Eastern Districts may be amended, added to, or rescinded by the Supreme Court, proceeding in like manner as by law is or shall be required in regard to the framing and confirmation of rules and orders of and for the said Supreme Court.

Record books of magistrate of district to be produced to court.

40. The criminal record book, and the civil record book of the Court of the Resident Magistrate of the District of Resident Magistrate within which the Court of the Eastern Districts shall be holden, shall be submitted for inspection to the said last-mentioned Court on the first sitting day of every criminal session of the said Court of the Eastern Districts for the inspection of the presiding Judge, and the provisions of this section shall be in room and stead of the fifth and fifty-third of the rules, orders and regulations for the Courts of Resident Magistrates. (1)

Court to have separate seal.

41. The said Eastern Districts Court shall have and use as occasion may require, a seal bearing a device and impression of the Royal Arms and this inscription: "The Seal of the Court of the Eastern Districts of the Cape of Good Hope."

Governor to notify time and place for holding Eastern Districts Court.

42. The Governor of this Colony shall, by proclamation, notify to the inhabitants of the districts over which the Court of the Eastern Districts shall have jurisdiction, the time when the said Court will be open, and the place where it shall, for the time being, be holden, and from and after the time when such Court shall be open, the said Court shall be competent to exercise the certain concurrent jurisdiction conferred upon it by this Act: Provided that it shall be lawful for the Governor, from time to time, with the advice of the Chief Justice and other Judges of the Supreme Court, to provide for the occasional holding of the Court of the Eastern Districts, before not less than two Judges, at such places other than the stated or ordinary place for the holding of such Court, as circumstances will permit, and the Governor shall, by proclamation, notify the days during which the said Court will sit at every such other place for the dispatch of business.

[1] The rules herein referred to are obviously those of the 22nd March, 1828, which have been repealed by Act 20, 1856.

Digitised by the University of Pretoria, Library Services, 2016

No. 23—1864.
Short Title.

43. This Act may be cited for all purposes as "The Administration of Justice Act, 1864."

SCHEDULE. (1)

Albany	Humansdorp
Albert	Middelburg
Alexandria	Murraysburg
Aliwal North	Peddie
Bathurst	Port Elizabeth
Bedford	Queenstown
Colesberg	Richmond
Cradock	Stockenstrom
Fort Beaufort	Somerset
Graaff-Reinet	Uitenhage
Hopetown	Victoria East.

No. 22—1864.] [July 26, 1864.

An Act for Providing for taking a Census of the Population of the Colony of the Cape of Good Hope.

[Spent.]

No. 23—1864.] [July 26, 1864.

ACT

To make further Provision towards Completing the Improvement of the Kowie Harbour.

Preamble.

WHEREAS by the Act No. 18, 1863, entitled "An Act for making further provision to complete the Improvement of the Kowie Harbour," authority was given to the Governor to raise a certain sum of money to be lent to the directors of the Kowie Harbour Improvement Company, to enable them to continue the works at the said harbour for the period in that behalf in the said Act specified: And whereas it is expedient to provide means for enabling the said directors to discharge certain liabilities of the said company, and to continue the said works, and for that purpose to authorise the Governor to raise a loan of twenty thousand pounds upon the credit of this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Loan of £20,000 authorised upon debentures.

1. It shall be lawful for the Governor to borrow and take up, in England, upon debentures to be issued through the Crown Agents for the Colonies, bearing interest at the rate not exceeding six per

[1] See note to § 9. Kaffraria incorporated in Eastern Districts.

Digitised by the University of Pretoria, Library Services, 2016

cent. per annum, the sum of twenty thousand pounds sterling; which debentures shall be and the same are hereby charged upon the public revenue of the Colony.

Principal and interest of debentures payable in London.

2. The interest upon all such debentures shall be payable in London half-yearly at the office of the Crown Agents for the Colonies, and the principal of all such debentures shall be payable at the said office on the thirty-first day of December which will be in the year of our Lord one thousand nine hundred, and the debentures so to be issued as aforesaid shall, amongst other things, stipulate for such payments to be so made.

Loan to be paid over to the Kowie Harbour Improvement Company.

3. It shall be lawful for the Governor to pay to the directors of the said company the sum of twenty thousand pounds so to be borrowed as aforesaid, and such sum shall by such company be applied to or towards the objects specified in the preamble of this Act.

Loan to form second charge upon the fund and assets of the Kowie Harbour Improvement Company.

4. The sum of twenty thousand pounds to be raised as aforesaid by the Government of this Colony for the purpose of the harbour works aforesaid, with the interest upon the same, shall be and the same is hereby charged, in favour of the said Government, upon the dues of wharfage and cranage levied and to be levied at the said harbour, and upon the proceeds of the sales of all lands vested in the said directors for the purpose of the said works, and upon all other the assets of the said company, such sum of twenty thousand pounds, with the interest thereupon, to be a second charge upon the said funds and assets, and to rank thereon next after the sum of twenty-four thousand pounds borrowed and taken up under and by virtue of the Act aforesaid, No. 18, 1863.

Accounts of receipts and expenditure to be laid before Parliament.

5. An account showing the amount of all moneys received under this Act by the directors of the company aforesaid, and the expenditure thereof, or of so much thereof, as shall have been expended, vouched by the said directors, shall be laid before both Houses of Parliament at the next ensuing session thereof.

Short title.

6. This Act may be cited for all purposes as "The Kowie Harbour Loan Act, 1864."

No. 24—1864.] [July 26, 1864.

AN ACT

For Making further Provision to complete the Improvement of the Harbour of Algoa Bay.

Preamble.

WHEREAS by the Acts No. 10 of 1858 and 17 of 1862, the Harbour Board of Port Elizabeth was empowered to borrow and take up sums of money, amounting in all to fifty thousand pounds, with the sanction of the Governor and upon the security of the general revenue, for the purpose of constructing such works in or

Digitised by the University of Pretoria, Library Services, 2016

No. 26—1864.

at Algoa Bay as the said board should judge fit: And whereas it is expedient that the said board should be authorised to raise in a similar manner, upon the security of the wharfage dues and other property belonging to the said board, and upon the further security of the general revenue of the Colony, a further sum of twenty-nine thousand pounds, which it is expected will be sufficient to complete the works already commenced and in progress under charge of the said board: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Additional loan of £29,000 authorised.

1. It shall be lawful for the said board to borrow and take up from time to time upon interest such further sum or sums of money, not exceeding twenty-nine thousand pounds in the whole, as may be necessary for completing the works now constructing under, by virtue of, and subject to the provisions of the Act No. 10 of 1858 aforesaid; and all the provisions contained in the said Act with regard to the money thereby authorised to be borrowed shall apply to the said additional loans in the same manner as if the whole sum of seventy-nine thousand pounds had been by the said Act authorised to be borrowed.

Provisions of Act No. 10 of 1858 to apply to this loan.

Short Title.

2. This Act may be cited for all purposes as the "Algoa Bay Harbour Amendment Act, 1864."

No. 25—1864.] [July 26, 1864.

An Act to Authorise the Governor, Divisional Councils, and Municipal Boards to enter into Contracts for the Construction of Bridges in this Colony by Parties willing to construct the same in consideration of receiving, for a limited Term of Years, the Tolls to be levied at such Bridges.

[Repealed by Act 40, 1889.]

No. 26—1864.] [July 26, 1864.

AN ACT

For Exempting from Wharfage Dues, Bullion and Coin landed in Algoa Bay, Mossel Bay, and Port Alfred.

Preamble.

WHEREAS by Act No. 10 of 1858, entitled "An Act enabling the Harbour Board of Port Elizabeth to levy certain Wharfage Dues," and by Act No. 7 of 1860, entitled "An Act for enabling the Harbour Board of Mossel Bay to levy certain Wharfage Dues," and by Ordinance No. 4 of 1852, entitled "Ordinance for improving the Kowie Harbour," certain wharfage dues are payable upon the landing or shipping of goods in Algoa

Digitised by the University of Pretoria, Library Services, 2016

Bay, Mossel Bay, and Port Alfred respectively: And whereas it is expedient to exempt bullion and coin from the payment of such dues on importation: Be it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council and House of Assembly, as follows:— No. 28—1864.

1. From and after the promulgation of this Act, all bullion and coin shall be exempt from payment of wharfage dues upon being landed in Algoa Bay, Mossel Bay, or Port Alfred respectively. Bullion and coin exempted from wharfage dues.

No. 27—1864.] [July 26, 1864.

An Act for Promoting the Extirpation of the Burr Weed, called Xanthium Spinosum.

[Repealed by Act 40, 1889.]

No. 28—1864.] July 26, 1864.

AN ACT

To Regulate the Dealing in Gunpowder, Firearms, and Lead. (1)

WHEREAS the Act No. 6 of 1863, entitled "An Act to regulate till the Expiration of the Year 1864 the Dealing in Gunpowder, Firearms, and Lead," will expire with the expiration of the last-mentioned year; and whereas it is expedient that the provisions of the Act No. 14, 1857, which was continued in force by the said Act No. 6 of 1863 until the expiration of the year 1864, should be made perpetual, Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:— Preamble.

1. The Act aforesaid, No. 14, 1857, entitled "An Act to regulate until the Expiration of the Year 1858 the Dealing in Gunpowder, Firearms, and Lead," shall continue and be in force and operation from the expiration of the year 1864 till Parliament shall otherwise provide. Act No. 14, 1857, entitled "Act to regulate until the expiration of the year 1858, the dealing in Gunpowder, Firearms, and Lead," continued.

2. This Act shall commence and take effect at and upon the expiration of the Act aforesaid, No. 6, 1863, and not sooner. Commencement of Act.

3. Every offence against the Ordinance No. 2, 1853, as amended by the Act aforesaid, No. 14, 1857, committed after the commencement and taking effect of this Act, shall, in any indictment relative thereto, be charged as a contravention of the said Ordinance, No. 2, 1853, as amended by the Act aforesaid, No. 14, 1857, and made perpetual by this Act; and it shall not be necessary in any such indictment to recite or refer to any of the other Acts by which the said Ordinance had been from time to time continued. Offences against this Act—how to be charged in indictments.

[1] See Act 17, 1892.

Digitised by the University of Pretoria, Library Services, 2016

No. 29—1864.] [July 26, 1864.

AN ACT

For Continuing the Act No. 26, 1857, "An Act for punishing Emissaries from Kafirland, and others, delivering in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace."

Preamble. WHEREAS the Act No. 26, 1857, entitled "An Act for punishing Emissaries from Kafirland, and others, delivering in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace," was limited so as to continue in force until the thirty-first December, 1858: and whereas the said Act was, by other Acts, further continued until the thirty-first December, 1864, and no longer; and whereas it is expedient that the said Act should be made perpetual: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows: –

Act No. 26 of 1857 continued. 1. The Act aforesaid, No. 26, 1857, shall be and continue in force until Parliament shall otherwise provide.

Commencement of Act. 2. This Act shall commence and take effect from and after the expiration of the Act No. 5, 1863, and no sooner.

Short Title. 3. This Act may be cited for any purpose as the "Kafir Emissaries Act, 1864."

No. 30—1864.] [July 26, 1864.

An Act for Amending the Law relating to the Post Office and Postage.

[Repealed by Act 4, 1882.]

No. 31—1864.] [July 26, 1864.

An Act for Authorising certain Expenditure not provided for by Parliament in the Year 1863.

[Spent.]

No. 32—1864.] [July 26, 1864.

An Act for Applying a Sum not exceeding Four Hundred and Thirty Thousand Four Hundred and Thirty Pounds and Eighteen Shillings for the Service of the Year 1864.

[Spent.]

No. 33—1864.] [July 26, 1864.

An Act for Applying a Sum not exceeding One Hundred and Eighty-one Thousand Seven Hundred and Twelve Pounds and Nineteen Shillings for the Service of the Year 1865.

[Spent.]

Digitised by the University of Pretoria, Library Services, 2016

No. 34—1864.] [July 26, 1864. No. 3—1865.

An Act for Explaining the Forty-first Section of the Act No. 35 of 1861.

[Lapsed. See Act 8, 1876.]

No. 35—1864.] [July 26, 1864.

An Act to encourage the Importation of Ice into this Colony.

[Lapsed.]

No. 1—1865.] [Oct. 10, 1865.

An Act for Perpetuating the Provisions of an Ordinance bearing date the Fourteenth day of February, 1833, entitled "An Ordinance for enabling certain Persons, having respectively the just, lawful, and undisputed Right to certain Lands and Houses, to procure the same to be enregistered as their Property in the Land Register."

[Repealed by Act 28, 1881.]

No. 2—1865.] [Oct. 10, 1865.

An Act for Securing by Law a certain Allowance or Annual Pension to the Honourable WILLIAM PORTER, Esquire, on his Retirement from the Office of Attorney-General of the Colony of the Cape of Good Hope.

[Lapsed.]

No. 3—1865.] [Oct. 10, 1865.

AN ACT

To Make Provision for the Incorporation of British Kaffraria with the Colony of the Cape of Good Hope, and to increase the Number of the Members of both Houses of Parliament of the said Colony.

Preamble.

WHEREAS by the third section of the Imperial Act, 28th of Her Majesty, chapter 5, the Parliament of the Cape of Good Hope is empowered to make provision for the incorporation of the territory of British Kaffraria with the Cape of Good Hope, and it is enacted that when and as soon as the Governor of the Cape of Good Hope, as Governor of British Kaffraria, assents, in manner and form as in the said section set forth, to the provision so made, then, and from and after the date

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1865.

of such assent, British Kaffraria shall become incorporated with the Cape of Good Hope, on the terms of such provision, for all purposes whatever, as if British Kaffraria had always formed part of the Cape of Good Hope: And whereas it is expedient that such provision as aforesaid should be made, and that the same should take effect when and as soon as the Governor of British Kaffraria shall, by virtue of his powers as such Governor, and by Laws and Ordinances by him made, have divided British Kaffraria into two parts, to form, after such incorporation as aforesaid, Electoral Divisions of the Cape of Good Hope, each of which shall be entitled to send two members to the House of Assembly of the Cape of Good Hope, and shall have defined and named such Electoral Divisions, and shall have effected a registration of voters entitled to vote according to the qualification of voters fixed and established by the fourth section of the Constitution Ordinance of the Cape of Good Hope, and shall have declared the qualification of persons capable of being elected to be, after such incorporation as aforesaid, members of the House of Assembly aforesaid,—such qualification to be that described in the forty-seventh section of the Constitution Ordinance aforesaid,—and shall have provided for the conduct of the election of such members, in like manner, so far as may be, as if such election were to take place under the provisions of the said Constitution Ordinance, and when and as soon as the said election shall have been held: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Repugnant part of Constitution Ordinance, &c., repealed.

1. So much of the Constitution Ordinance, and so much of any other law in force in this Colony at the time of the promulgation of the proclamation in the next succeeding section mentioned, as shall be repugnant to or inconsistent with any of the provisions of this Act shall be and the same are hereby repealed.

Incorporation of British Kaffraria, when to take effect.

2. From and after the day upon which the Governor of the Cape of Good Hope shall, by proclamation in the *Government Gazette* of the said Colony, publish the names of the members returned in manner and form as in the preamble to this Act mentioned by each of the two Electoral Divisions of British Kaffraria, then British Kaffraria shall become incorporated with the Cape of Good Hope, for all purposes whatever, as if British Kaffraria had always formed part of the Cape of Good Hope.

Additional members of House of Assembly, condition of.

3. The four members aforesaid shall be added to the number of the members of the House of Assembly of the Cape of Good Hope, and be, from and after the promulgation of such proclamation as aforesaid, in the same situation and condition, in all respects, as if, when they were so returned as aforesaid, the said Electoral Divisions of British Kaffraria had been Electoral Divisions of the Cape of Good Hope entitled to return two members each to the House of Assembly.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1865.

Representation in House of Assembly and Legislative Council of the two additional electoral divisions.

4. The two Electoral Divisions aforesaid shall, from and after such incorporation as aforesaid, become and remain Electoral Divisions of the Cape of Good Hope, entitled to be each represented by two members in the House of Assembly, and shall, for the purpose of the election of members of the Legislative Council of the Cape of Good Hope, be comprised in and form part of the Eastern Districts, within the meaning and for the purposes of the Constitution Ordinance, in like manner and with the like effect, in all respects, as if those Electoral Divisions had been expressly constituted part of the Eastern Districts in that Ordinance.

Qualification of voters.

5. All persons registered as voters in British Kaffraria under the Ordinances and Proclamations of the Governor of British Kaffraria, to be in that behalf enacted and proclaimed, shall be entitled, after such incorporation as aforesaid, to vote for members of the Legislative Council for the Eastern Districts, and for members of the House of Assembly for the Electoral Divisions in which such voters shall be registered, until the next general registration of voters throughout the Colony which shall take place after such incorporation, when all and singular the provisions of the Act No. 16 of 1856, entitled "An Act for amending the Law relative to the Registration of Voters, and the taking of Polls," shall apply to the said two Electoral Divisions, and to persons residing therein, precisely as if the said Electoral Divisions had formed part of the Colony of the Cape of Good Hope at the time of the taking effect of the Constitution Ordinance: Provided that the list of registered voters in each of the said Electoral Divisions, framed before the incorporation aforesaid, for the purpose of the first election as aforesaid for members of the House of Assembly, shall be deemed to be, for the purpose of the second and every succeeding section of the Act last aforesaid, the registered list of voters for the time being for each of the said Electoral Divisions.

After next ensuing general registration, Act No. 16 of 1856 to apply.

What shall be deemed the list of registered voters.

Supreme Court of British Kaffraria abolished.

6. From and after the incorporation in manner aforesaid of British Kaffraria, the Supreme Court of British Kaffraria existing at the time of such incorporation, and all laws, rules, and regulations regulating or affecting the trial of suits therein, shall cease and determine; and the districts of Resident Magistrates comprising that part of the Colony formed by such incorporation shall be added to the districts of Resident Magistrates in and over which "the Court of the Eastern Districts of the Cape of Good Hope" has and exercises the certain concurrent jurisdiction by "The Administration of Justice Act, 1864," conferred upon the said Court; which Court, proceeding according to the rules and orders thereof, shall have jurisdiction in and over all causes arising and persons residing and being within any of the districts hereby added to the certain other districts aforesaid, precisely as if the districts so added had been included in the schedule to "The Administration of Justice Act, 1864."

Eastern Districts Court substituted.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1865.

Pending suits transferred to Eastern Districts Court.

7. All suits and proceedings, civil or criminal, pending in the Supreme Court of British Kaffraria at the time of such incorporation as aforesaid, shall, by virtue of this Act, stand removed into "the Court of the Eastern Districts," and may be carried on, tried, heard, and determined in such last-mentioned Court, in like manner, as nearly as may be, in all respects, as if they had been instituted or taken in that Court after the incorporation aforesaid.

Advocates, attorneys, notaries of Supreme Court of British Kaffraria and their articled clerks, how affected by this Act.

8. (1) Every advocate admitted and enrolled in the Supreme Court of British Kaffraria shall be entitled, after such incorporation as aforesaid, upon proof of such admission and enrolment, to be admitted and enrolled as an advocate in the Supreme Court of the Colony of the Cape of Good Hope and in the Court of the Eastern Districts without the payment of any fee or charge, and all attorneys admitted and enrolled in the Supreme Court of British Kaffraria shall be entitled, after such incorporation as aforesaid, upon proof of such admission and enrolment, to be admitted and enrolled as attorneys of the Court of the Eastern Districts without the payment of any fee or charge; and service rendered under articles by any clerk to any attorney of the Supreme Court of British Kaffraria before such incorporation shall, for the purpose of entitling the articled clerk so serving to be admitted and enrolled an attorney of the Court of the Eastern Districts, be reckoned as if the attorney to whom such service was rendered had been, when the articles were executed, an attorney of the Court of the Eastern Districts: Provided, also, that in case the attorney of the Supreme Court of British Kaffraria to whom any such clerk shall have been articled shall be admitted and enrolled as an attorney of the Court of the Eastern Districts within two months next after such incorporation as aforesaid then such service shall be deemed and taken to have been unbroken, and shall be reckoned continuously from the first commencement thereof: Provided, further, that every notary public who shall have obtained authority to practise as such in British Kaffraria shall, after such incorporation as aforesaid, upon proof of such authority, be entitled to receive the authority of the Supreme Court of the Colony of the Cape of Good Hope to practise as such notary public in the said Colony, without examination, and without the payment of any fee or charge; and the provisions of this section relative to service rendered under articles by any clerk to an attorney of the Supreme Court of British Kaffraria before such incorporation shall, *mutatis mutandis*, apply to the service rendered under articles to a notary public of British Kaffraria, in like manner as if when the Supreme Court of British Kaffraria is mentioned in the said section the Territory of British Kaffraria had been named, and as if when the Court of the Eastern Districts is mentioned the Supreme Court of the Colony of the Cape of Good Hope had been named.

1 See § 2, Act 6, 1872.

Digitised by the University of Pretoria, Library Services, 2016

9. [Repealed by Act 6, 1872.]

British Kaffrarian resident magistrates' districts and courts transferred to Cape Colony.

10. From and after such incorporation as aforesaid, the districts of Resident Magistrates existing in British Kaffraria at the time of such incorporation, and the Courts of Resident Magistrates established in such districts, shall become and be districts and Courts of Resident Magistrates of this Colony, and be in the same situation and condition, in all respects, as if such Courts had been created by the Act No. 20 of 1856, entitled "An Act for Amending and Consolidating the Laws relative to the Courts of Resident Magistrates."

Laws regulating customs, stamps, and other duties repealed and colonial laws substituted.

11. All Laws and Ordinances in force in British Kaffraria at the time of the incorporation thereof, as aforesaid, regulating duties of customs, duties upon stamps and licences, duties upon the transfer of immovable property, duties upon sales by auction, duties upon successions to property, and duties upon bank notes, shall, from and after such incorporation, stand repealed; and there shall be payable to Her Majesty, her heirs, and successors, in that part of the Colony formed by such incorporation, and under and by virtue of the Colonial Acts in that behalf made and provided, the same duties of customs, duties upon stamps and licences, duties upon the transfer of immovable property, duties upon sales by auction, duties upon successions, and duties upon bank notes, as would be payable in case British Kaffraria had at all times formed part of the Cape of Good Hope: Provided that all licences in force and unexpired at the time of the said incorporation shall be and remain in force for the same time as if no such incorporation had taken place: Provided, also, that in case any such Kaffrarian licence shall be a licence which, if issued in this Colony, must have commenced with the first and ended with the last day of the year, and such Kaffrarian licence shall expire otherwise than at the end of the year, then a colonial licence for the residue of the year current at the time of such expiration shall be issued for a sum bearing the same proportion to the charge for an annual licence that such residue shall bear to one year: Provided, further, that if any Kaffrarian licence for the sale of wines and spirituous and fermented liquors, by retail, shall expire at a time which might reasonably and probably prevent the holder thereof from applying for a colonial licence to the Court mentioned in the twelfth and certain succeeding sections of the Ordinance No. 9 of 1851, then the Governor may authorise the issue of a licence to such holder upon such terms as shall appear reasonable, such licence to subsist until the day when the then next quarterly licences should, by law, commence.

Unexpired licences not affected.

Exception.

Provision for issue under certain circumstances of retail wine and spirit licences.

Repugnant laws of British Kaffraria repealed.

12. All Laws or Ordinances in force in British Kaffraria at the time of the incorporation aforesaid, in so far as the same shall be repugnant to or inconsistent with any of the provisions of this Act, shall, from and after such incorporation, stand repealed; but all other Laws and Ordinances shall remain in force until Parliament

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1865.

shall otherwise provide: Provided that it shall be lawful for the Governor, at any time after such incorporation as aforesaid, and before the commencement of the session of Parliament next after such incorporation, by proclamation, to repeal any of the Laws or Ordinances by this section preserved in force; and upon such repeal the Law in force in this Colony, if any, upon the same subject as the Law or Ordinance so repealed, shall be and remain in force in that part of the Colony formed by such incorporation.

Power of Governor to repeal laws not repugnant.

Laws, duplicates of or identical with colonial laws, repealed.

13. All Laws or Ordinances promulgated and in force in British Kaffraria at the time of the incorporation thereof, which Laws or Ordinances shall, in substance, be duplicates of, or identical with, any Laws, Ordinances, or Acts, in force in this Colony, shall from and after such incorporation be deemed and taken to be repealed, to the end that the part of the Colony formed by such incorporation shall, in regard to such duplicate or identical legislation as aforesaid, become and be subject to the same Laws, Ordinances, and Acts as the rest of the Colony.

Wills and testamentary writings to be deposited with Master of Supreme Court.

14. As soon as may be after such incorporation as aforesaid, all last wills and other testamentary writings, deposited, before such incorporation, in any public office in British Kaffraria, shall be transmitted to and deposited with the Master of the Supreme Court of the Colony of the Cape of Good Hope: Provided that all letters of administration duly granted in British Kaffraria to any executor, testamentary or dative, and all appointments duly made therein of curators bonis, curators nominate, and curators dative, shall be of the same force and effect after such incorporation as aforesaid, and entail the same duties and obligations in every respect, as if they had been originally granted or made by the Master of the Supreme Court of the Colony of the Cape of Good Hope.

Letters of administration, &c., granted before incorporation to remain of full effect.

British Kaffrarian insolvent law repealed, and colonial law substituted.

15. The Laws and Ordinances in force in British Kaffraria at the time of the incorporation thereof as aforesaid, for regulating the collection, administration, and distribution of insolvent estates, shall, from and after such incorporation, stand repealed, and the provisions of the insolvent law, as administered, for the time being, in the Colony of the Cape of Good Hope, shall apply to and regulate all estates placed under sequestration in pursuance of the Laws or Ordinances hereby repealed, in so far as the said provisions shall be applicable to such estates in the situation and condition in which such estates shall be at the time of such incorporation.

Deeds Registry of British Kaffraria to remain unaltered.

16. Nothing in this or any other Act or Ordinance which shall be in force in this Colony at the time of such incorporation shall be construed so as to introduce into that part of the Colony formed by such incorporation the operation of the Deeds Registry of the Cape of Good Hope; and the Deeds Registry of British Kaffraria shall, in regard to that part of the Colony formed by such incorporation, remain and be of the same force and effect after such incorporation as before such incorporation: and no deed of transfer

Digitised by the University of Pretoria, Library Services, 2016

or hypothecation executed by any person domiciled in that part of the Colony formed by such incorporation shall be registered otherwise than in the local Deeds Registry there established, or, if registered elsewhere, shall derive any benefit from such registration.

Revenues payable to Cape Colony.

17. All quitrents, taxes, duties, dues, and revenue of every kind and nature whatsoever, payable to or claimable by the local Executive Government of British Kaffraria at the time of the incorporation thereof, shall be and continue payable to and claimable by the local Executive Government of the Cape of Good Hope, and shall, except as regards duties or customs, be collected by the Civil Commissioners of the Fiscal Divisions into which that part of the Colony formed by such incorporation shall be divided, and shall be by such Civil Commissioners accounted for to the Colonial Treasury: Provided that all duties of customs levied in that part of the Colony formed by such incorporation shall be collected and accounted for by the proper officers of customs, in like manner, in all respects, as is the case at the several other outports of the Colony; and all money at the time of such incorporation as aforesaid due on account of British Kaffraria shall thenceforth be deemed to be due on account of the Cape of Good Hope.

Revenues how to be collected.

Compensation for loss of office.

18. It shall be lawful for the Governor to pay to all persons now holding offices of profit under Her Majesty the Queen in British Kaffraria, whose offices shall, by reason of such incorporation as aforesaid, be abolished, such compensation for loss of office as shall be awarded by the Governor, in conformity with the established regulations of Her Majesty's service, and to be approved of by one of Her Majesty's Principal Secretaries of State.

19. [Lapsed.]

Payments to native chiefs, £5,000 reserved.

20. For the purpose of enabling Her Majesty the Queen to make good engagements entered into by her with certain native chiefs and headmen in British Kaffraria, there shall, from and after such incorporation as aforesaid, be payable to Her Majesty, her heirs, and successors, yearly and every year, such sums of money, not exceeding in all, in any one year, the sum of five thousand pounds, as shall be required for the purpose aforesaid; and there shall also be payable to Her said Majesty, her heirs, and successors, yearly and every year, as and for a salary to the Governor of this Colony as High Commissioner, the sum of one thousand pounds; the said sums of money to be issued by the Treasurer of this Colony, in discharge of such warrant or warrants as shall be, from time to time, directed to him under the hand and seal of the Governor: Provided, always, that a full and particular account, showing the manner in which the sums drawn out for native chiefs and headmen have been expended, shall, from time to time, be laid before Parliament.

Digitised by the University of Pretoria, Library Services, 2016

No. 3—1865.

Salary of High Commissioner reserved.

Number of members of Legislative Council and House of Assembly increased.

And whereas it is expedient that the number of the elective members of the Legislative Council of the Cape of Good Hope should be increased to twenty-one, and that the number of the members of the House of Assembly of the said Colony should be increased to sixty-six, such number to include the four members aforesaid to be returned by the two Electoral Divisions forming that part of the Colony which, next before the incorporation thereof as aforesaid, formed the Territory of British Kaffraria: Be it enacted as follows:—

21. [Superseded by section 3, Act 39, 1877].

22. [Superseded by section 2, Act 18, 1874].

23. [Superseded by Act 18, 1874].

New electoral divisions created.

24. For the purpose of electing the sixteen members required, together with the four members in the second, third, and fourth sections of this Act mentioned, to complete the number of sixty-six members of the House of Assembly, the following ten Fiscal Divisions shall be, and the same are hereby constituted, respectively, Electoral Divisions,—that is to say, Aliwal North, Namaqualand, Oudtshoorn, Piketberg, Riversdale, and Queen's Town, whilst the Fiscal Divisions of Victoria West and Fraserburg shall together constitute a seventh Electoral Division, and the Fiscal Divisions of Hope Town and Richmond shall together constitute an eighth Electoral Division.

Each new electoral division entitled to two members of House of Assembly.

25. Each of the said eight Electoral Divisions shall be entitled from time to time, for ever, to elect two members of the House of Assembly.

Electoral privileges of divisions of which new electoral divisions originally formed part, not affected.

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

27. [Lapsed.]

New electoral divisions, how to be named.

28. The Electoral Division formed by the Fiscal Divisions of Victoria West and Fraserburg shall be called the Electoral Division of Victoria West, and the court for the nomination of persons proposed as members of the House of Assembly for such Electoral Division, and the court for declaring the names of the members elected by such Electoral Division, shall be held in the Court-room of the district of Victoria West; and the Electoral Division formed by the Fiscal Divisions of Hope Town and Richmond shall be called the Electoral Division of Richmond, and the court for the nomination of persons proposed as members of the House of Assembly for such Electoral Division, and the court for declaring the names of the members elected by such Electoral Division, shall be held in the Court-room of the district of Richmond.

Digitised by the University of Pretoria, Library Services, 2016

29. [Lapsed.]

30. [Lapsed.]

31. [Repealed by Act 18, 1874.]

When proclamation for election of new members of Assembly is to be issued.

32. As soon as, but not before, the names of the members of the Legislative Council elected as aforesaid shall have been published, there shall be an election of two members of the House of Assembly for each of the eight Electoral Divisions in the twenty-fourth section of this Act mentioned; and all and singular the several provisions of the Constitution Ordinance relating to the election of members of the House of Assembly shall apply to the elections to take place in and for the said eight Electoral Divisions; and the members then elected shall, after their election, be in the same situation and condition, in all respects, as if they had been returned for the said divisions at the last general election held throughout the Colony for members of the House of Assembly.

Commencement of Act.

33. This Act shall commence and take effect upon and from and after the publication of the proclamation in the second section of this Act mentioned.

Short Title.

34. This Act may be cited for all purposes as "The British Kaffraria Incorporation and Parliamentary Representation Amendment Act of 1865."

No. 4—1865.] [Oct. 10, 1865.

An Act to Consolidate and Amend the several Acts relating to Divisional Councils.

[Repealed by Act 40, 1889.]

No. 5—1865.] [Oct. 10, 1865.

An Act to provide for Framing a List of Registered Voters for the Electoral Division of Swellendam.

[Temporary.]

No. 6—1865.] [Oct. 10, 1865.

An Act to Cancel and make void a certain proclamation imposing an increased Rate of Postage upon Letters carried from this Colony to England, by Steamers belonging to the Diamond Line.

[Lapsed.]

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.] [Oct. 10, 1865.

ACT

To Consolidate and Amend the several Acts relating to the Adjustment of Disputed Land Boundaries and to the Erection and Preservation of Land Beacons. (1)

Preamble.

WHEREAS it is expedient to consolidate and amend the several Acts in force in this Colony relating to the Adjustment of Disputed Land Boundaries, and to the Erection and Preservation of Land Beacons: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Previous Acts repealed.

1. The following Acts are hereby repealed,—that is to say, the Act No. 10, 1859, entitled "An Act to provide for the Adjustment of Disputed Land Boundaries, and for the Erection and Preservation of Land Beacons," and the Act No. 3, 1860, entitled "An Act to amend the Act No. 10, 1859, entitled 'An Act to provide for the Adjustment of Disputed Land Boundaries and for the Erection and Preservation of Land Beacons,'" and the Act No. 6, 1862, entitled "An Act amending the Act No. 10, 1859, entitled 'An Act to provide for the Adjustment of Disputed Land Boundaries, and for the Erection and Preservation of Land Beacons.'"

Acts, proceedings, &c., done before taking effect of this Act, not affected.

2. Notwithstanding the said repeal, every act, proceeding, matter, or thing done before the taking effect of this Act under or by virtue of the Acts so repealed, or any of them, relating to the resurvey of any section or area, or the settlement of any dispute regarding the boundaries of any farm or farms not included in any such section or area, shall at all times hereafter be judged of, and be of the same force and effect, in all respects, as if the said Acts were still in force: Provided that as often as no fresh grant shall, at the time of the taking effect of this Act, have been, under the said Act No. 10, 1859, issued, then the provisions of this Act shall, if different from the provisions of the Acts aforesaid, or any of them, apply, so far as applicable, to all resurveys or other proceedings still in progress, in the state and condition in which such resurveys or other proceedings shall then be, precisely as if such resurveys or other proceedings had been begun under this Act, instead of under the other Acts aforesaid, or one of them.

Partial resurveys or other proceedings under previous Acts, how affected.

Divisional councils may subdivide divisions for purposes of resurvey.

3. It shall be lawful for the Divisional Council of any division in this Colony, from time to time, to divide such division, or so much and such parts thereof as such council shall deem necessary or expedient, into sections or areas, for the purpose of a resurvey under the provisions of this Act.

---

[1] See Act 9, 1879.

Digitised by the University of Pretoria, Library Services, 2016

Sections or areas to be bounded with reference to natural objects or other distinguishable landmarks.

4. Every such section or area as aforesaid shall be, if possible, a tract of country lying between permanent and conspicuous natural objects, such as mountain ranges or rivers, or objects of a like nature; and in case of the total or partial absence of such natural objects, then some undisputed and indisputable beacons or landmarks or other sufficiently distinguishing points shall be resorted to for the purpose of defining or describing a section or area of such extent and of such character as shall be suitable for the purpose of a complete and effectual resurvey, under this Act, of the several farms included therein.

In the absence of natural objects or landmarks, other beacons may be taken.

5. As often as the absence at proper or convenient places of such objects or points as are in the last preceding section mentioned, or of a sufficient number of such objects or points, shall render it impossible or undesirable to define or describe a section or area in any particular locality by means of such objects or points it shall be lawful to define or describe for the purpose of such locality a section or area for resurvey under this Act by means of beacons which are capable of being disputed; but the boundaries or limits of all sections or areas so defined or described shall be provisional in their nature, and may be ultimately enlarged, contracted, or otherwise altered as may in the progress of the resurvey be found necessary, and the beacons so taken for the purpose of the provisional definition or description placed where, according to such alteration they ought of right to stand: Provided that when and as often as any of the beacons so provisionally taken shall be beacons dividing farms being private property from other farms being private property, and the beacons so provisionally taken shall be disputed by the proprietors of farms lying beyond or outside of the said beacons, then such last-mentioned farms shall be deemed to be included in the section or area; and so on from private farm to private farm, until some natural object, some Crown land, some undisputed beacons, or some other fixed points shall be arrived at, beyond which it shall not be necessary that the section or area should extend: Provided, also, that if any doubt or question should arise as to the point or points beyond which it is not necessary that any such section or area as in this section of this Act mentioned should extend, such doubt or question shall be decided by the Surveyor-General, with the advice of the Divisional Council: Provided, further, that no such beacons as are in this section mentioned shall be at any time resorted to for the purpose of describing, either wholly or in part, any section or area for the purpose of resurvey under this Act, until the Divisional Council proposing such beacons shall have satisfied the Surveyor-General that it would, under the circumstances of the case, be either impossible or in the highest degree inconvenient to define or describe a section or area in the same locality by such objects or points as are in the preceding section mentioned; it being the true intent and meaning of this Act that no section or area other

But the boundaries to be provisional only.

When beacon taken is a disputed beacon between two or more farms, such farms to be included in section.

Surveyor-General to decide questions as to limits of section.

Beacons herein alluded to not to be taken unless Surveyor-General shall be satisfied of necessity for so doing.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

than one defined or described as in the last preceding section mentioned should be sanctioned by the Surveyor-General, unless in cases in which a departure from the provisions of the said section shall be either absolutely necessary or obviously desirable;

Limit of area may be extended.

Provided, lastly, that if in any case it should become necessary in the progress of the resurvey of any area under this section to include any farm lying beyond the limits of the division within which such area as provisionally defined originally lay, it shall be lawful to include such farm; and such farm shall be in the same plight and condition as regards the provisions of this Act as if it lay within the limits of such division as aforesaid.

Surveyor-General to be consulted.

6. In defining and describing sections or areas of country for the purposes of this Act, every Divisional Council shall consult with, and obtain the concurrence of, the Surveyor-General of the Colony, or of such officer of his department, or Government surveyor, as the said Surveyor-General shall appoint: Provided that as often as there shall, under either of the two immediately preceding sections, be an area proposed to the Surveyor-General for his concurrence, which area shall, either wholly or in part, be defined or described by beacons, then the concurrence of the Surveyor-General, when given, shall not be taken to be an admission by the Surveyor-General that such beacons are correct in reference to Crown land, or to deprive the Colonial Government of any Crown land lying or being within the area defined or described by such beacons, or by any of them.

Concurrence of Surveyor-General not to be taken as an admission of correctness of beacons in reference to Crown land.

Boundaries of sections to be publicly notified.

7. As soon as the whole or any part of any division shall have been divided into such sections or areas as aforesaid, or as soon as any one such section or area shall have been defined, the Divisional Council of the division shall, by means of notices, affixed at public places, and by means of the Field-cornet or Field-cornets resident within such section or area, or otherwise, as such council shall devise, make publicly known the boundaries or limits of such sections or areas respectively, or of such single section or area, should only one be in the first instance described.

Who may apply for resurvey of area or section.

8. It shall be competent for any number of landowners owning not less than half the value of the whole immovable property lying in any such section or area, and valued for the purpose of being assessed for road rates, to apply, in writing, for the resurvey of such section or area, for the purposes of this Act: Provided that, in determining the value of immovable property for the purpose of this section, the valuation of the same for road rates shall be binding and conclusive.

Valuation for road rates to be taken as value of property.

Proceedings of divisional council on receiving application for re-survey.

9. Every Divisional Council receiving any such application as aforesaid shall forward the same to the Colonial Secretary, together with the report of such council that such application is signed by not less than one half in value of such owners as aforesaid, and a description or definition of the section or area to which such application shall relate.

Digitised by the University of Pretoria, Library Services, 2016

Re-survey to be directed by proclamation in *Gazette*.

10. As soon as the application, report, and description or definition in the last preceding section mentioned shall have been received by the Colonial Secretary, it shall be lawful for the Governor of the Colony, by proclamation in the *Government Gazette*, if he shall see fit to direct the resurvey of such section or area for the purposes of this Act.

Divisional council may recommend surveyors.

11. Upon the issue of any such proclamation as aforesaid, or before such issue, it shall be lawful for the Divisional Council of the division to which such proclamation shall relate, to recommend to the Surveyor-General such number of competent land-surveyors as they shall deem proper to be employed upon the resurvey of the section or area described or defined in such proclamation: Provided that it shall not be incumbent upon the Surveyor-General to appoint the surveyor or surveyors recommended by the council, and that if, in any case, he shall see cause not to do so, he may transmit to the Divisional Council the name or names of another surveyor or other surveyors as the person or the persons whom he proposes to employ, and unless the said council shall object to the surveyor or surveyors so proposed, and assign sufficient grounds of objection, to be judged of by the Governor aforesaid, then the last-mentioned surveyor or surveyors shall be appointed: Provided that every such surveyor shall be removable by the Governor at pleasure, and that in case of a vacancy arising from death, removal, or other cause, another surveyor may, in manner aforesaid, be appointed to supply such vacancy.

Surveyor-General not bound to appoint such surveyors.

Surveyors removable by Governor.

Appointment of, and instructions to, surveyors.

12. Every surveyor employed in the resurvey of any section or area aforesaid shall receive from the Surveyor-General a commission or appointment, in writing, together with such practical instructions for his guidance or assistance in the performance of his duties as the said Surveyor-General may deem it fitting to supply.

Proclamation directing resurvey to be published in local newspaper (if any).

13. When and as often as any such proclamation as aforesaid shall have been issued, the Divisional Council shall cause such notice published in the local newspaper, if any there be, in which notices of such Divisional Council are usually published, and it shall be incumbent upon the owner or owners of each farm included in the section or area described or defined in such proclamation, of which farm the beacons, or some of them, shall not be standing, to put up within forty-two days from and after the publication of the first *Government Gazette* containing such proclamation as aforesaid, the beacons of such farm, or some visible marks to serve provisionally as beacons, at or upon the spots where, as he or they maintain, the beacons of such farm ought of right to stand. Any owner failing or neglecting to put up any such beacon or landmark as aforesaid, within the time aforesaid, shall, upon conviction, forfeit any sum not exceeding ten pounds nor less than two pounds.

Owners of farms to set up beacons on issue of proclamation.

Penalty for neglect.

How, if owners differ as to position of their beacons.

14. As often as the owners of different farms in any section or area shall differ in regard to the true position of the beacons

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

dividing or affecting the same, the beacons of each farm put up by the respective owners shall be merely provisional in their nature, and shall not be evidence, to any extent, of the rights of parties, but only of the fact that such rights are, or may be, in dispute:

Penalty for removing or injuring beacons pending investigation.

Provided, that it shall not be lawful for any person acting against the will or without the authority of the person or persons by whom any such beacon shall have been put up, to remove, destroy, or injure the same, pending the investigation, hereinafter provided, into the correctness or otherwise of the said beacon; and any person so removing, destroying, or injuring any such beacon shall, upon conviction, forfeit any sum not exceeding ten pounds nor less than two pounds:

Clause respecting provisional nature of disputed beacons not to extend to beacons within sections proclaimed for resurvey after 31st December, 1866.

Provided, further, that nothing in this section contained respecting the merely provisional nature of all beacons within any section or area proclaimed for the purpose of resurvey shall extend to any beacons within any section or area proclaimed for resurvey at any time after the 31st of December, 1866, and which beacons shall, by virtue of the ninety-second section of this Act, have become at the date of such proclamation, admittedly true and correct.

Resurvey of section when to commence.

15. As soon after the expiration of the forty-two days aforesaid as circumstances will permit, the surveyor or surveyors commissioned or appointed as aforesaid to resurvey the section or area

Notice to be given.

in question shall commence the same: Provided that previous notice of the day and place or days and places of commencing such resurvey shall be given by the Divisional Council, by means of a notice in the *Government Gazette*, to be published therein for not less than twenty-one days before the first day fixed in and by such notice for the commencement of the resurvey; and provided that such notice may be given either before or after the expiration

Publication of notice.

of the forty-two days aforesaid: Provided, also, that the Divisional Council shall, besides publishing such notice in the *Government Gazette*, publish the same in the local newspaper in the thirteenth section of this Act mentioned, and take such other steps as they may deem expedient for causing the subject-matter of it to be made generally known to the owners of immovable property in the

Divisional council may depute a member to accompany surveyor.

section or area about to be resurveyed; And provided, further, that it shall be lawful for the Divisional Council, in case it should so think fit, to depute one of its members to accompany such surveyor or surveyors in the making of such resurvey, in manner and form, and under the like conditions, in all respects, as are hereinafter in the ninety-eighth section of this Act set forth.

Duty of surveyor with regard to farms the beacons whereof are undisputed.

16. It shall be the duty of the surveyor or surveyors, employed upon any such resurvey, when and as often as he or they shall find any farm or number of farms of which the beacons are all standing, and are admitted as correct by the owners of all the adjoining or other farms interested in or affected by such beacons, or any of them, to obtain proof of such admission by some writing signed by such owners, and thereafter to frame an accurate diagram of every

Digitised by the University of Pretoria, Library Services, 2016

such farm, taking the same to be the area represented by such admitted beacons, whether the said beacons shall or shall not coincide with the existing diagram of such farm, or with the extent of land which shall by the title-deed of such farm purport to have been granted: Provided that no beacon or beacons in any section or area proclaimed for the purpose of resurvey before the 31st of December, 1866, shall be taken to be so admitted before and until the beacons of all the farms within such section or area shall be standing or in existence: Provided that nothing in this section contained shall be construed so as to render it necessary to frame a new diagram of any such farm as is in the thirty-third section of this Act mentioned.

Exception as to admission of beacons in sections proclaimed for resurvey prior to 31st December, 1866.

Exception as to framing of new diagrams.

17. Every surveyor who shall frame any such diagram as is in the last preceding section mentioned, shall transmit the same to the Divisional Council, together with a report containing any information which he may deem useful, or which the Divisional Council may have desired, and amongst other things, the degree in which the new diagram coincides with or differs from the existing diagram or title-deed.

Diagram and report to be transmitted to divisional council.

18. The Divisional Council receiving any such diagram and report shall transmit the same, together with any remarks which the said council shall see fit to offer, to the Governor aforesaid, through the Surveyor-General, in order that a fresh grant, founded upon the resurvey and new diagram, if found by the said Surveyor-General to be correct, may be issued. And the said council shall also transmit to the Surveyor-General all title-deeds, transfer-deeds, and diagrams connected with the farm resurveyed, which deeds and diagrams the person in whose custody or power the same shall be, shall be bound, upon demand of the said council, to deliver over to such council.

Duty of divisional council on receiving such report.

19. Upon the issue of any such fresh grant, all existing title-deeds or transfer-deeds of the same farm shall become cancelled, void and of no effect: Provided that as often as any hypothecation, conventional or tacit, of or over any farm so re-granted, shall be in existence at the date of such re-grant such hypothecation shall attach to and upon the said farm as so re-granted precisely as it existed upon the said farm under its former title-deed or transfer-deed, and all usual and proper entries and endorsements upon or in regard to such fresh grant as may be necessary to record any hypothecation of the land therein contained, shall be made in the Deeds Registry of the Colony, before such fresh grant shall be delivered from and out of the office of the Surveyor-General to the person or persons entitled thereto.

Fresh grant to nullify all previous titles and transfer-deeds.

Hypothecation to survive and be registered anew.

20. As soon as the Divisional Council shall have learned from the Surveyor-General that a fresh grant will be issued on the new diagram, then the said council shall cause notice to be given to the proper parties in that behalf, that they are at liberty to replace such of their existing beacons as shall not be of the description

Duty of divisional council when informed that fresh grant will be issued.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

required by the one hundred and twelfth section of this Act, with other and proper beacons, as by the said one hundred and twelfth section prescribed; and no fresh grant of any farm shall be delivered to the person or persons entitled thereto, without the authority of the Divisional Council, which shall not give such authority until it shall be certified in writing to such council by the surveyor who made the new diagram, or by some other surveyor to be approved of by the said Surveyor-General, that the beacons of such farm have been inspected by him, and that they are correctly placed, and are constructed according to the provisions of the said one hundred and twelfth section of this Act, and that the provisional beacons, if any, of such farm have been demolished or removed.

No fresh grant to be issued without divisional council's authority.

When Crown land is included in section, surveyor bound to give information thereof to Surveyor-General.

21. As often as there shall be within any section or area defined, as aforesaid, for the purpose of resurvey, any Crown land, it shall be the duty of the surveyor employed in making the resurvey of such section or area to report to the Surveyor-General of the Colony the existence of such Crown land, and the name or other description of all the farms adjoining to or abutting upon it, and whether the beacons of such farms respectively upon the side of such Crown land do or do not correspond with the diagrams of such farms respectively; and such surveyor shall also describe to the said Surveyor-General the nature and materials of such beacons, and whether they are in appearance original and authentic, or the reverse, and generally all such other information as may appear calculated to assist the Surveyor-General in determining whether any of the beacons of any such farm encroach upon Crown land.

Surveyor-General may call for further information and direct survey.

22. If the Surveyor-General, upon considering any such report, shall be of opinion that it does not contain sufficient information to enable him to determine whether there has or has not been any such encroachment, then the Surveyor-General may call upon such surveyor for such further information and may direct such further survey as the said Surveyor-General may think needful or desirable.

Surveyor-General may depute a person to take evidence, &c.

23. Should the Surveyor-General be unable, from the information furnished to him by such surveyor, to determine whether there has or has not been such an encroachment as aforesaid, then the Surveyor-General shall, with the sanction of the Governor, by any writing under his hand, appoint some fit and proper person, not being the surveyor employed in making the resurvey, to proceed to the spot for the purpose of taking evidence and collecting information.

Person deputed may summon witnesses and take evidence upon oath.

24. Every person so appointed as last aforesaid to take evidence is hereby authorised to summon witnesses, and examine them upon oath; and the provisions of the forty-eighth and forty-ninth sections of this Act shall, *mutatis mutandis*, apply to the said person so appointed, and to all witnesses summoned by him.

Digitised by the University of Pretoria, Library Services, 2016

Disputes respecting encroachments on Crown lands may be settled by commissioners chosen for that purpose.

25. Should the Surveyor-General, after considering all such information as shall have been supplied to him in regard to any such beacons as aforesaid, be of opinion that such beacons do encroach upon and include Crown land, and if the person claiming such beacons as beacons of his farm shall not consent to the removal of the same to such spot or spots as the Surveyor-General shall prescribe, then the question in dispute shall be determined by commissioners chosen in manner and form as hereinafter set forth

Surveyor subject to penalty for failure to report existence of Crown land.

26. If any surveyor employed to resurvey any such section or area as aforesaid, and who shall survey any farm adjoining to or abutting upon any Crown land, shall fail or neglect to report to the Surveyor-General the existence of such Crown land, such surveyor shall (except as hereafter is excepted) forfeit any sum not exceeding one hundred pounds: Provided that if such surveyor, when proceeded against for any such forfeiture, shall prove that the existence of such Crown land might, notwithstanding the exercise upon his part of due and proper skill and diligence, fail to be discovered by him, he shall not be liable to such forfeiture, unless the prosecutor shall prove that the existence of such Crown land was, in fact, known to such surveyor.

Unless sufficient cause is shown for not so reporting.

Remuneration to surveyor for detention while so reporting or collecting information.

27. As often as any surveyor employed to resurvey any section or area shall be detained from proceeding with such resurvey by reason of reporting to the Surveyor-General as aforesaid and collecting evidence or other information for that officer, such surveyor shall be recompensed for his time and trouble whilst so detained at such reasonable rate as the Surveyor-General shall, with the sanction of the Governor, fix and determine.

Witnesses' expenses.

28. Every witness attending and giving evidence before any such person as is in the twenty-third section of this Act mentioned shall be entitled to his reasonable expenses, to be ascertained in manner and form as in the sixty-sixth section of this Act is provided.

How when Crown land, the existence of which has not been reported, is believed to have been included in any diagram.

29. Should it at any time happen that the Surveyor-General, receiving any such diagram and report as are in the seventeenth section of this Act mentioned, shall find reason to believe or suspect that there has been included in that diagram some Crown land the existence of which had not been reported to him by the surveyor, as in the twenty-first section of this Act is directed, then the Surveyor-General shall communicate with such surveyor on the subject, and call for all such information from such surveyor as may be deemed necessary; and in case it shall be found that there was, in such section or area, any Crown land of which the existence was not reported, all and singular the foregoing provisions of this Act relating to Crown land shall apply to such Crown land, and to the beacons of all farms put up upon the side of such Crown land.

Expenses incurred under preceding sections, how to be met.

30. The expenses of the person in the twenty-third section mentioned (should any such person be appointed), the recompense

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

of the surveyor, as in the twenty-seventh section of this Act mentioned, and the expenses of the witnesses in the twenty-eighth section of this Act mentioned, shall be paid in the first instance out of the general revenue, and they shall be included in the costs of the inquiry by the commissioners who shall investigate and decide the case, as such costs are described in the sixty-eighth and sixty-ninth sections of this Act: Provided that as often as no commission shall be appointed by reason that the Surveyor-General shall ultimately admit the correctness of the beacons which were, for a time, in doubt, then the charges in this section mentioned shall (unless it shall be otherwise agreed upon between the Surveyor-General and the person who claimed the said beacons) be borne by the general revenue: And provided that as often as no commission shall be appointed by reason that the person who originally claimed certain beacons shall ultimately remove them from where they first stood, and place them where the Surveyor-General shall have prescribed, then the charges in this section mentioned shall (unless it shall be otherwise agreed upon as aforesaid) be borne by such person: Provided, also, that as often as no commission shall be appointed by reason that the Surveyor-General and the owner of the private property concerned shall mutually agree that the beacons which were, for a time, in question shall finally be placed neither where such owner originally placed them, nor where the Surveyor-General originally prescribed, but at some intermediate spot or spots, then such charges as aforesaid shall (unless it shall be otherwise agreed upon as aforesaid) be borne by the general revenue.

On issue of proclamation directing resurvey of any section, divisional council to require landholders to deliver over their title deeds and diagrams.

31. When and as soon as any such proclamation as is in the tenth section of this Act described shall have been issued, it shall be lawful for the Divisional Council of the division in which the section or area defined in such proclamation shall be situated, to require, by notice in writing, signed by the secretary, the several landowners within such section or area to deliver over to such Divisional Council all original title-deeds and all diagrams in their possession, respectively, or copies thereof certified as correct by a Government land surveyor, in order to enable the surveyor employed upon the proposed resurvey to proceed therewith, and such deeds or copies shall be delivered over by every such landowner within twenty-one days next after the receipt by him of such notice, or within such further time as the said council shall think fit to grant in any particular case; and any landowner failing without lawful cause so to deliver the same shall be liable to pay the sum of five pounds sterling, to be recovered by such council, suing by its secretary, and paid into the funds of such council: Provided that the Divisional Council receiving any such deeds shall give a receipt for the same, and be responsible for the return of the same, or, in case of loss, for the supply of official copies thereof.

Penalty for refusal.

Council to give receipt, and be responsible for return.

Digitised by the University of Pretoria, Library Services, 2016

Landholders bound to point out beacons and to admit or deny correctness of adjoining beacons.

32. The proprietor of every farm lying within any section or area in process of resurvey shall be bound, upon the application of the surveyor employed on such resurvey to point out to such surveyor the beacons of his farm, and shall also be bound, upon the like application, to admit or deny, by some writing witnessed by not less than two witnesses, the correctness of any of the beacons of any adjoining farm, which beacons abut upon his own farm, and which beacons shall be pointed out to him by the said surveyor; and in case any such proprietor shall refuse or neglect, after reasonable notice from such surveyor so to do, to point out his own beacons, then any beacons of any adjoining farm, which beacons may be inconsistent with the beacons of such proprietor, shall be deemed to be admittedly true and correct; and in case any such proprietor shall, after reasonable notice, refuse or neglect to admit or deny, in writing as aforesaid, the correctness of the beacons of any adjoining farm, which beacons abut upon his own farm, and which beacons he shall, as aforesaid, have been called upon to admit or deny, then those last-mentioned beacons shall be also deemed and taken to be admittedly true and correct: Provided, also, that the proprietor of every farm, whether within or without the division to which the section or area shall belong, which shall adjoin or abut upon any part of the outer side of the limits or boundary of any such section or area, shall be bound, upon such application as aforesaid, to point out the beacons of his farm; and should any such proprietor refuse or neglect so to do, then the same effects and consequences shall take place as are in this section enacted in regard to such refusal or neglect occurring in regard to any farm within the limits of the section or area.

How in case of neglect or refusal to do so.

Provisions of this section to apply to adjoining farms whether within or without division to which section belongs.

When title deed and diagram are found to be correct certificate to that effect to be endorsed on the latter.

33. If, in any case, the title-deed and diagram of any farm lying within any such section or area as aforesaid shall, upon resurvey, be found correct, and shall be found to be so by the Surveyor-General, so that no fresh grant of such farm shall be necessary, then the Surveyor-General shall cause a certificate of such correctness to be endorsed or written upon such diagram in testimony of such correctness.

Diagram, so certified, not to be issued without certificate regarding placing, &c., of beacons.

34. No Divisional Council shall issue any diagram bearing any such certificate as is in the last preceding section mentioned until it shall be certified, in writing, to such council by the surveyor who made the resurvey, or by some other surveyor to be approved of by the Surveyor-General, that the beacons of such farm have been inspected by him, and that they are correctly placed, and are constructed according to the provisions of the hundred and twelfth section of this Act.

Unless it be certified that provisional beacons have been demolished.

35. No Divisional Council shall issue any diagram bearing any such certificate as aforesaid, until it shall be certified, in writing, by the surveyor who resurveyed the section or area in question, or some other surveyor to be approved of by the Surveyor-General, that all provisional beacons, if any, of the farm in regard to which

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

such certificate shall have been given, have been demolished or removed.

How, if dispute as to boundaries cannot be settled by parties concerned.

36. In all cases in which any surveyor employed in any such section or area as aforesaid shall find that any dispute exists regarding boundaries, which dispute cannot be settled amongst themselves by the parties interested, such surveyor shall give notice of such dispute, and of the names of all parties interested in it, so far as he can judge or discover, to the Divisional Council, in order that, by the means hereinafter provided, such dispute may be inquired into and settled.

Commission of inquiry, how to be formed and number of members.

37. As often as the Divisional Council shall receive any such notice as aforesaid, the said council shall take the same into consideration, and regard being had to the nature of the dispute to be settled, shall frame a list of six men, none of whom shall have any interest in the matter in dispute, or be related to any person who shall be interested therein in or within the fourth degree of consanguinity or affinity, from or out of which six men, two men to form, together with the Civil Commissioner of the division, as hereinafter mentioned, a commission of inquiry, shall be selected or obtained, in the manner hereinafter in that behalf provided.

Who may be placed on list.

38. The list aforesaid of six men, to be framed by the Divisional Council, may include members of such council as well as men not members; and shall contain the names of such men as shall, by the said council, be thought qualified to form an impartial and intelligent judgment upon the dispute in question: Provided that

Consent to act on commission to be previously obtained.

the said council, before inserting in the said list the name of any man proposed to be set down therein, shall ascertain from him that, if necessary, he will be prepared to act as a member of the commission; and provided, also, that not more than four of the names upon any such list shall be the names of members of the

Civil commissioner not to be placed on list of proposed members.

said council: Provided, also, that the name of the Civil Commissioner of the division shall, in no case, be inserted upon such list.

If dispute be between owners of two farms only, number of proposed members may be reduced.

39. As soon as such list of six men shall have been prepared, and notice thereof given to the parties to the said dispute, it shall be lawful for the said parties, in person, or by agents authorised by any writing under their hands, to attend at some time and place to be fixed by such council, in order that, as often as such dispute shall exist between the owner or owners of two farms only, the owner or owners of each farm may, if so minded, strike off from such list the names of two men, so as to leave thereon the

How such reduction shall be made.

names of two men to form, with the Civil Commissioner of the division, the said commission: Provided that the owner or owners of one farm shall first strike off one name, and then the owner or owners of the other farm, another name, and so again alternately; and provided that the farm of which the owner or owners shall strike off the first name shall be decided by lot.

Digitised by the University of Pretoria, Library Services, 2016

How reduction may take place in case of dispute between more than two.

40. In cases in which any such dispute as aforesaid shall embrace or involve a number of farms greater than two, it shall be lawful for the owner or owners of the two farms which shall respectively have the chief or principal interest upon the opposite sides of the dispute, to strike off, in manner aforesaid, for themselves and the others having a common or kindred interest with them, four names from the list of six men already mentioned. And in case any question shall arise regarding the two farms, or either of them, which really have the chief or principal interest in the dispute, such question shall be decided by the Divisional Council.

Divisional Council to decide as to relative interest of parties to dispute.

How, if owners decline to strike off one or more names.

How, when more than two names remain on the list.

41. Should any owner or owners entitled to strike off, in manner aforesaid, two names, decline so to do, this shall not prevent the other party from striking off, if so minded, two names: Provided that as often as the non-exercise of the right to strike off names, by either or both of the parties entitled so to do, shall leave a number of names greater than two upon the list aforesaid of six men, then the two men to form, with the Civil Commissioner of the division, the commission shall be taken by lot from the names so left.

When dispute shall relate to Crown land, Surveyor-General to be one of the parties.

42. As often as any dispute in any such section or area as aforesaid, shall be a dispute relating to any Crown land, as in the twenty-first section of this Act mentioned, then the Surveyor-General shall be deemed to be one of the parties to such dispute, and shall, in person or by an agent authorised by any writing under his hand, be entitled, on behalf of Government, to strike off in manner aforesaid two names from the list of six men framed as aforesaid by the Divisional Council, and the other party to such dispute two other names.

Civil commissioner, *ex officio*, a member of commission.

43. For the better and more satisfactory taking and recording of evidence, and securing greater regularity in the proceedings of the commission, the Civil Commissioner of the division shall, except as hereinafter is excepted, be *ex officio*, a member of the commission, and shall, together with the two men so selected as aforesaid, form such commission: Provided that in case such Civil Commissioner should have any interest in the matter in dispute, or shall be related to any person so interested in or within the fourth degree of consanguinity or affinity,—or in case such Civil Commissioner should, for any reason to be allowed by the Governor as sufficient, desire to be excused from serving on such commission, or should such Civil Commissioner, for any reason to be allowed by the Governor as sufficient, be objected to by either of the parties to the dispute,—then some other Civil Commissioner, or some Resident Magistrate, to be named by the Divisional Council, with the sanction of the Governor, shall, with the two men so selected as aforesaid, form the commission.

Exceptions.

Divisional council to notify time and place for commission to meet.

44. As soon as may be after a commission of three members shall, in manner aforesaid, have been obtained, the Divisional Council shall cause notice, in writing, to be given to the parties

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

interested in the matter or matters in dispute of a time and place at which the said parties, with any witnesses whom they shall desire to have examined, shall attend, for the purpose of meeting, and giving information to, the commissioners named in such notice; and the Divisional Council shall hand over to such commissioners all title-deeds and diagrams or copies thereof in the possession of such council and relating to the matter or matters in dispute.

Oath to be taken by civil commissioner or resident magistrate.

45. At the time and place mentioned in such notice the said commissioners shall assemble, and the Civil Commissioner or Resident Magistrate forming one of such commissioners shall, before the said commissioners proceed to any other business, take, in the presence of the other commissioners and of the by-standers, the following oath, that is to say:

Form of oath.

"I, A. B., do solemnly swear, as in the presence of Almighty God, that I will, to the best of my skill and knowledge, and without fear, favour, or prejudice, inquire into and decide all matters which this commission has been appointed to inquire into and decide. So help me God!"

Other members of commission to take similar oath.

And the Civil Commissioner or Resident Magistrate shall then administer the same oath, *mutatis mutandis*, to the other two commissioners, and the taking of the said oath by the commissioners shall be entered upon the minutes of their proceedings.

Examination, how to be conducted.

46. The said commissioners so assembled, being assisted by the surveyor who reported as aforesaid to the Divisional Council the existence of the dispute, or some other surveyor to be approved of by the Surveyor-General, shall, in the presence of the parties to such dispute, examine all deeds, documents, and witnesses produced by the parties, and shall inspect the localities in question between the parties, so as to ascertain where, according to real and substantial justice between the parties, the disputed beacons ought of right to stand: Provided that it shall be lawful for any party, whether present in person or not, to be assisted by an agent.

Parties to dispute may be assisted by an agent.

Rules for deciding matter in dispute.

47. In determining what real and substantial justice between the parties truly is, the commissioners will take into their consideration the particular circumstances of each particular case, but they will, as general principles be expected to recognise and act upon the rules following, that is to say:

a. The original beacons of farms, as pointed out at the original measurement thereof shall be deemed to denote and include the true and proper farms as granted and intended so to be, notwithstanding that such beacons may not correspond with the original diagrams, or with the extents of land which the original title-deeds purport to grant. This rule is, however, to be subject to the qualification or modification mentioned under letter *b*.

b. As often as it shall be made to appear that certain well-ascertained beacons have been, for an uninterrupted period of thirty years or upwards next before the day on

Digitised by the University of Pretoria, Library Services, 2016

which the commission in the particular case was, in manner aforesaid, selected or obtained, recognised by the parties who dispute the same before the commissioners, or those under whom such parties claim, as the true and proper beacons, such beacons shall be taken to be and to have been the original beacons, nor shall any proof to the contrary be acted upon, unless the parties disputing such beacons shall allege and prove some fraud, deceit, or circumvention, in regard to such beacons, upon the part of the person maintaining their correctness, or upon the part of those from or under whom such persons claim.

c. As often as it shall be made to appear that any land included within the original beacons of an older grant has afterwards been included within the diagram and beacons, or diagram or beacons, of a later grant, the right of the older grant to the "overlap" shall prevail, unless in the cases next hereinafter stated under letters *d* and *e*.

d. If the parties interested in the later grant shall prove that they, or those from or under whom they claim, are or were purchasers for valuable consideration, and shall prove that they did, acting *bonâ fide*, and without notice of any error, purchase the farm granted by the later grant, according to its original beacons, and shall prove that the error made in planting or pointing out such original beacons was induced by the neglect or default of the parties interested, for the time being, in the older grant, in not having kept up their own beacons, or in not objecting, if present at the time of the inspection of the later grant, to the position of the beacons of such later grant, or in not attending at such time for the purpose of so objecting, in case, by the custom of the country, they ought to have so attended, then the title of the later grant to the "overlap" shall prevail: Provided that if the original beacons of the older farm were up and visible at the time of the survey of the later farm, then the right of the older farm to the "overlap" shall prevail, although the parties for the time being interested therein did not attend at the inspection of the later grant; and provided that, if such parties attended at the inspection of the later grant, and pointed out or gave notice of the spots where their beacons had been and should be, the older farm shall, in like manner, be entitled to the "overlap," although the beacons thereof may not have been then up or visible.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

e. Although there may have been nothing in the conduct of the parties interested in the older grant, or those from or under whom they claim, in reference to the origin of the error in the later grant, which would prevent the said older grant from being entitled to the "overlap," yet if, for thirty years or upwards, beacons other than the original beacons of the older farm have been recognised in manner and form as in letter *b* set forth, then the rule mentioned in letter *b* shall apply.

f. As often as one party to any dispute shall rely upon the existing diagram, and shall maintain that the beacons which contradict it have been shifted, and the other party shall rely upon such beacons as original and authentic, and shall maintain that the diagram which contradicts them is erroneous, then the commissioners, in deciding whether such beacons are or are not the original and authentic beacons, shall have regard to the nature of such beacons as likely or not likely to have been shifted, to the nature of the diagrams as likely or not likely to be erroneous, and to the evidence produced before them as that of witnesses likely or not likely to know and speak the truth, and shall decide the controversy to the best of their skill and judgment. This rule, however, shall not apply in any case to which the rules under letters *b* and *e* shall apply.

Commissioners may summon witnesses, and require production of documents.

48. If the commissioners should, in any case, desire to obtain the evidence of any person who shall not come before them of his own accord, nor be produced by either or any of the parties interested in the case, it shall be lawful for the said commissioners, or any of them, by any summons under his hand, to require the attendance of any person who shall be regarded as able to give useful information, and to require such person to bring with him and produce such documents and papers as may be in his possession or power, and be deemed necessary to be examined; and every such summons shall be served by any person appointed for the purpose by the commissioners or any of them. And any person without lawful cause disobeying any such summons, after his reasonable expenses have been tendered to him, or without lawful cause refusing to answer any lawful question put to him by the said commissioners, or any of them, shall, upon conviction, incur a fine not exceeding forty pounds sterling, to be recovered in manner and form as provided by the Ordinance No. 6, 1839: Provided that the offence of disobeying any such summons shall be deemed to be committed in the district in which the person disobeying usually resides, although the place where such person should have given his attendance may be in another district.

Penalty for disobeying summons.

Offence shall be deemed committed in district in which offender resides.

Commissioners may take evidence on oath.

49. It shall be lawful for the said commissioners, or any two or one of them, acting in pursuance of this Act, to administer an

Digitised by the University of Pretoria, Library Services, 2016

oath to any witness whom they or he shall examine, to the effect that the evidence he shall give regarding the matters and things that shall be lawfully required of him shall be the truth, the whole truth, and nothing but the truth, so help him God. And any witness who shall, before any such commissioners as aforesaid, or any two or one of them, make on oath, knowingly and wilfully, any false statement in regard to any matter material to any question which shall be the subject of inquiry by such commissioners, or any two or one of them, shall be guilty of perjury, and shall, upon conviction, be liable to such punishment as shall be by law provided for the said crime: Provided, always, that as often as by this or by any other section of this Act any person is required to take an oath, such person shall be entitled to make his solemn affirmation or declaration instead of an oath in case he would, if a witness giving evidence in a Court of Justice, be by law entitled so to do.

Punishment for false oath.

When declaration may be substituted for oath.

50. It shall be lawful for any such commissioners to adjourn any inquiry, or the further proceeding thereupon, from place to place, or from time to time, as convenience may require; and such commissioners may, by any writing signed by the three of them, depute any two or one of them to take, in writing, the evidence of any person or persons named or described in such writing, in order that such evidence may be received and considered at the next meeting of the said commissioners.

Inquiry may be adjourned, and members deputed to obtain evidence.

51. The commissioners shall, when adjourning any inquiry pending before them, announce the place, day, and hour of their next intended meeting; and should they, during the adjournment, find reason to alter their announced intention, they shall cause notice to be given to all parties interested, through the field-cornet, of the changed place, day, or hour of such next meeting.

Upon adjournment notice of time and place of intended meeting to be given.

52. The decision of the commissioners may be given by any two of them notwithstanding the dissent of the third.

How when decision of commission shall not be unanimous.

53. The commissioners shall, with all convenient speed, transmit to the Divisional Council a report, in writing, of their decision whether unanimous or not, upon the case submitted to them, together with such documentary and other evidence as they may have taken, and any remarks explanatory of their decision which they may think it necessary or proper to attach.

Commission to report decision and forward evidence, &c., to divisional council.

54. The Divisional Council shall cause notice, in writing, to be sent through the field-cornet or some other person to the parties interested in the said decision, whether such decision shall have been an unanimous decision or a decision by a majority, informing such parties that unless legal proceedings, as by this Act provided, shall, within three months from and after the receipt of such notice, be instituted for the purpose of reversing or altering such decision, the same will become final, binding, and conclusive, and the field-cornet or other person will report to the Divisional Council the day or days upon which, and the manner in which

Notice of decision to be given to parties interested.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

every such notice shall have been served: Provided that as often as the Surveyor-General shall be one of the parties, notice to him shall be served upon the Civil Commissioner, who shall transmit the same to the Surveyor-General without delay: Provided, also, that such notice shall be served upon such parties either personally or by leaving at the residence of each party to be served a copy of such notice with one of his household: Provided, further, that in case any farm shall be jointly owned by more persons than one who shall, as such joint owners, be interested in the decision to which such notice relates, then, in case such joint owners shall not all reside upon the said farm, service upon such of them as reside thereupon shall be good service upon them all, unless the Divisional Council shall otherwise direct: Provided, lastly, that the costs of serving such notice shall be included in the costs of the inquiry.

When Surveyor General is one of the parties, such notice to be served on him through the civil commissioner.

Notice how to be served.

How, in case of joint owners not being all resident upon farm to which dispute relates.

Cost of service.

Supreme Court may be appealed to against decision.

55. It shall be lawful for any person whom such last mentioned decision shall or may concern, at any time within the three months aforesaid, to present a petition to the Supreme Court, stating that he feels aggrieved by such decision, and praying the said Court to enquire into and correct the same, and notice of such petition having been lodged shall be given, by or on behalf of the person presenting the same, to the Secretary of the Divisional Council not later than fourteen days from and after the day of the presentation thereof: Provided that any number of persons having the same or a similar interest opposing such decision may join in petitioning for the correction of the same: Provided, also, that the Surveyor-General, acting on behalf of Government, shall be deemed and taken to be a person concerned in any such decision which shall relate to Crown land: Provided, further, that nothing herein contained shall be construed so as to confer or permit any such appeal as aforesaid against any decision, in regard to which the commissioners shall have been unanimous, pronounced before the taking effect of this Act.

Any number of persons interested may join in appeal.

Surveyor-General in certain cases, to be party interested.

Unanimous decisions prior to taking effect of this Act not affected.

Divisional Council on receiving notice of appeal, to transmit report and evidence to Supreme Court.

56. The Divisional Council, upon receiving notice as aforesaid that a petition has been lodged, shall, with all convenient speed, transmit to the Supreme Court, addressed to the Registrar thereof, the report of the commissioners upon the subject of the decision petitioned against, and all evidence, documentary or otherwise, and all remarks received by the said council from the commissioners, or any of them.

Court may be moved for rule to reopen decision.

57. It shall be lawful for the petitioner, at any time after such report, evidence, and remarks as aforesaid shall be in the hands of the Supreme Court, to move the said Court, without notice, for a rule to show cause why the decision complained of should not be opened up for the purpose of being corrected, and why the petitioner should not be adjudged to be entitled to make good his right to such specific relief as shall be set forth in such rule; and the said Court, upon consideration of the report, evidence, and remarks aforesaid, and of any affidavit or affidavits which may be

Digitised by the University of Pretoria, Library Services, 2016

filed by the petitioner, and of such matter as shall be urged in his behalf, shall grant or refuse such rule as shall to justice appertain: Provided that the said Court shall only have regard to facts resting upon affidavit, in case it shall, by affidavit, be made to appear to such Court that good and sufficient cause existed why such facts were not proved before the commissioners.

How, if rule be granted.

58. Should the said Court see fit to grant such rule as aforesaid, it shall be served upon all such persons as the said Court shall direct, and shall be returnable upon such day as the said Court shall appoint, and upon such day it shall be lawful for the parties served with the same, or any of them, to appear, and upon affidavit, or otherwise, to show cause against such rule, and thereupon such rule shall be discharged or made absolute, as to the said Court shall seem fit.

When rule shall be made absolute court to direct manner of further investigation.

59. In case the said Court shall make such rule as aforesaid absolute, then the said Court shall direct the manner in which the matter in controversy between the applicants and the respondents shall be further investigated, and may take additional evidence, either *viva voce* or by affidavit, or may order an examination before a commissioner appointed by such Court, and upon interrogatories framed or approved of by such Court, or may depute one or more of the Judges of such Court to inspect the farms in question and take evidence upon the spot, and such Court shall, in the most speedy and inexpensive manner which shall consist with a thorough and effectual investigation of the case, decide, according to the principles set forth in the forty-seventh section of this Act, whether the decision in question shall or shall not be affirmed, wholly or in part.

When decision of commission shall be final.

60. As often as no petition shall be presented to the Supreme Court, within the time aforesaid, and as often as the Supreme Court shall refuse a rule to show cause as aforesaid, or having granted such rule shall afterwards discharge the same, or having made such rule absolute shall ultimately affirm the decision petitioned against, then such decision shall become and be thenceforward final, binding, and conclusive; and thereupon the same proceedings and consequences shall take place in regard to new diagrams and fresh grants as are hereinbefore provided with respect to the farms which are in the sixteenth section of this Act mentioned, precisely as if the beacons established by such decision had been beacons originally admitted to be true and correct.

If decision be corrected, court to fix position of beacons.

61. If, in any case, the Supreme Court shall see fit to correct any decision petitioned against, then the said Court shall fix by its judgment the proper position of all beacons connected with the case, and may delegate to such fit and proper person or persons as the said Court shall select the duty of placing the said beacons; and such beacons shall be forthwith constructed as hereinafter in the one hundred and twelfth section of this Act prescribed, and the

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

secretary upon some day to be fixed in such notice, not being sooner than fourteen days from the day of the service thereof, in order to have said costs taxed and ascertained: Provided that such notice shall be served in like manner as the notice in the fifty-fourth section of this Act mentioned.

Service of notice.

Costs, by whom to be taxed.

71. Upon the day fixed in and by such notice, the secretary shall, in the presence of at least one of the commissioners, and of such of the parties interested as shall attend, tax and ascertain the amount of costs to be paid by each or any of the said parties: Provided that any of the said parties may attend by an agent appointed by any writing signed by such party: And provided that any person dissatisfied either with the admission or the rejection of any item in the account of costs may, upon notice to the other party or parties interested, bring the decision upon or in regard to such item under review of the Divisional Council at its next meeting, whose decision shall be final.

Parties may attend by an agent.

Decision liable to review by divisional council.

Costs, how recoverable.

72. In case the amount of any taxed and ascertained costs payable by any person who shall not by himself or his agent have signified in writing his intention to bring such taxation in review before the Divisional Council, shall remain unpaid after the expiration of twenty-one days from the day named in the notice aforesaid for the taxation of such costs, it shall be lawful for the secretary aforesaid to certify in writing to the Resident Magistrate of the district the amount due by any person or persons within his jurisdiction, and the process of such Court may issue for the levy of such amount, precisely as if such amount were a sum which had been recovered in a civil suit by the secretary aforesaid, in his said capacity. And as often as any taxation of costs shall be brought in review before the Divisional Council, the costs, as settled by the said council, upon review, shall be in manner aforesaid recoverable, if need be, by the process in execution of the Court of Resident Magistrate.

No petition as to costs to lie to Supreme or Eastern Districts Court.

73. No petition shall lie to the Supreme Court or to the Court of the Eastern Districts which shall complain of the judgment of commissioners merely, so far as it regards costs, or some item or items allowed or disallowed in the taxation of costs as aforesaid, and the costs of all proceedings had in the said Supreme Court or in the Court of the Eastern Districts in reference to any petition or other proceeding shall be in the discretion of the said Court: Provided that as often as the decision of commissioners which was appealed against shall be affirmed by the Supreme Court or by the Court of the Eastern Districts, then the costs as awarded by such decision shall be payable according to such decision; but in case such decision shall be reversed or altered, then all the costs of the resurvey and inquiry, as well as the costs of all proceedings in the Supreme Court or in the Court of the Eastern Districts, shall be in the discretion of the said Court.

Cost of proceedings in Supreme or Eastern Districts Court.

Digitised by the University of Pretoria, Library Services, 2016

Expenses of re-survey, how recoverable.

74. All expenses of re-survey due and payable by any land-owner shall be recoverable by action in any competent Court, at the suit of the Civil Commissioner who shall, as in the next succeeding section mentioned, have advanced such expenses.

Funds for resurvey may be advanced from Colonial treasury.

75. Such funds as may be necessary for carrying into effect any resurvey under this Act shall be from time to time advanced by the Colonial Government from the public revenue, under such rules and regulations as the Governor shall from time to time establish.

When farms are situated partly in one division and partly in another.

And whereas, in some parts of this Colony, there are farms which are partly in one division and partly in another, and divisions of which the boundary lines dividing them from other divisions are, in certain places, the boundary lines dividing certain farms one from another: And whereas, when beacons or boundaries happen to be disputed by and between any such farms and contiguous farms, doubts will arise as to the Divisional Council proper for the adjustment of such disputes: And whereas it is expedient to remove such doubts: Be it enacted as follows:

Owners of such farms to agree as to which council shall undertake adjustment of dispute.

76. As often as any boundary line in dispute between two or more farms shall lie partly in one division, and partly in another division, and as often as any boundary line in dispute between two or more farms shall form part of the boundary line between any two divisions, and as often as a dispute regarding any boundary line within any division shall involve or affect any farm or farms lying wholly or in part in any other division, it shall be competent for the party involved in such dispute to agree together upon or in regard to the Divisional Council to which the adjustment of such dispute shall be referred: and in case the said parties shall not agree thereupon, then it shall be competent for the Divisional Council of the respective divisions in which any of the lands involved in or affected by such dispute shall lie, to agree upon or in regard to the Divisional Council to which the adjustment of such dispute shall be referred; and in case neither the said parties nor the said councils shall so agree, then the Divisional Council to which such adjustment shall be referred shall be appointed by the Governor, with the advice of the Executive Council.

In case of disagreement of owners, councils to agree.

And both failing, the Governor to decide.

Owner naming council to give notice to party having adverse interest.

77. In all such cases as are in the last preceding section described, it shall be competent for either of the persons interested in the dispute to give the other person having an adverse interest a notice, in writing, naming the Divisional Council to which, in the opinion of the person giving such notice, the adjustment of the dispute should be referred, and requiring the person to whom such notice shall be given to state, in writing, within fourteen days next after the receipt of such notice, whether or not he agrees to refer such dispute to the Divisional Council named in such notice, and, if not, what other Divisional Council he proposes.

When both parties agree, council selected to decide.

78. If, within the said period of fourteen days or afterwards, both parties shall agree as to the Divisional Council to which the

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

adjustment of the dispute shall be referred, then such Divisional Council so agreed on shall have the same power and authority to adjust such dispute as if all the lands involved in or affected by it lay within the division to which such Divisional Council belongs.

On failure to agree parties may address themselves to the council of any division in which the disputed beacons are situate.

79. In case the said parties shall not within the fourteen days aforesaid, or within some extension of that time mutually agreed upon between them for the purpose of negotiation, agree upon or in regard to the Divisional Council to which the adjustment of the dispute shall be referred, then either of the said parties may address either or any of the Divisional Councils in which any of the lands involved in or affected by such dispute shall lie, stating the existence of such dispute, the giving or receipt of the notice aforesaid, the persons by and to whom such notice was given, and the failure of the parties to agree upon or in regard to the Divisional Council to which the adjustment of the dispute should be referred, and requesting the council so addressed to make arrangements for or in regard to the appointment of a Divisional Council by which the dispute shall be adjusted.

Duty of council, so addressed.

80. The Divisional Council so addressed as aforesaid shall, as soon as conveniently may be, and not later than one month next after being so addressed, communicate with the council or councils of the other division or divisions in which any of the lands involved in or affected by such dispute shall lie; and such councils shall, between or amongst themselves, agree, if they can, upon or in regard to the Divisional Council to which the adjustment of the dispute shall be referred; and thereupon such last-mentioned Divisional Council shall have the same power and authority to adjust such dispute as if all the lands involved in or affected by it lay within the division to which such Divisional Council belongs:

As regards the selection of commissioners in such case.

Provided that it shall be lawful for the said lastmentioned council to agree with the other council or councils in question upon or in regard to all or any of the names proper to be placed upon the list of six men mentioned in the thirty-seventh section of this Act, should it eventually become necessary to appoint a commission.

On failure of councils to agree, application may be made to Governor.

81. In case the Divisional Councils aforesaid shall be unable between or amongst themselves to agree upon or in regard to the Divisional Council to which the adjustment of the dispute in question shall be referred, it shall be competent for either or any of the councils so unable to agree to apply to the Governor to name, with the advice of the Executive Council, the Divisional Council to which the adjustment of the dispute in question shall be referred.

Governor may name council to adjust dispute.

82. As often as the Governor shall receive any such application as aforesaid, he shall, with the advice of the Executive Council, name the Divisional Council to which the adjustment of the dispute in question shall be referred:

But not before due inquiry shall have been made.

Provided that before naming such Divisional Council, the Governor shall call for a report upon the subject from the other council or councils concerned, and

Digitised by the University of Pretoria, Library Services, 2016

consider such reasons as may be therein given for naming some particular Divisional Council: And provided that as often as the Governor, with the advice of the Executive Council, shall name any Divisional Council for the adjustment of any dispute, such last-mentioned Divisional Council shall have the same power and authority to adjust such dispute as if all the lands involved in or affected by it lay within the division to which such last-mentioned Divisional Council belongs.

Powers of council named by Governor.

83. Should it happen that any case not expressly provided for in this Act should occur, whereby a doubt or question might be raised regarding which one of any greater number of Divisional Councils is proper for the adjustment of any dispute, or for the performance of any other function under this Act, it shall be competent for the Governor, with the advice of the Executive Council, to determine such question, and thereupon the Divisional Council named by the Governor, with such advice as aforesaid, shall have the same power and authority to adjust such dispute, or perform such other function, as if all the lands involved in or affected by it lay within the division to which such last-mentioned council belongs: Provided that it shall not be competent for the parties to any dispute, nor for the Divisional Council connected with any dispute, nor for the Governor, to appoint any Divisional Council to adjust such dispute, except a Divisional Council belonging to some division in which or along some part of the boundary of which some of the lands involved in or affected by such dispute shall lie.

Doubts regarding functions, &c., of divisional councils, under this Act, may be determined by Governor.

No councils but those of the divisions in which, or along the boundary of which, the lands involved lie, to be appointed to adjust dispute.

And whereas the proclamation of the 23rd of December, 1814, by Lord Charles Henry Somerset, the then Governor of this Colony, enjoining the erection and preservation of permanent landmarks or beacons, having in many parts of this Colony, fallen into disuse, was, by the Act aforesaid, No. 10, 1859, repealed, and other provisions enacted in its stead: And whereas the period limited by the said Act No. 10, 1859, for the erection of beacons, either provisional or permanent, has for some time expired, and it is therefore the duty of every landowner in this Colony to have, now and henceforth, all the beacons of his farm erected and in existence: And whereas it is expedient to enforce the said duty by suitable penalties, as well as to provide for fixing, by acquiescence for a certain time, or in case of dispute, by due investigation, the boundaries of farms not contained in any such section or area as is in the third section of this Act mentioned: Be it enacted as follows:

Preservation of land beacons.

84. If, at any time, after the taking effect of this Act, any farm throughout the Colony shall be found, of which farm all the beacons shall not be standing or in existence, the owner or owners of every such farm shall incur a fine not exceeding five pounds, nor less than one pound, for every beacon not then standing or in existence, and such fine shall be incurred afresh for every three months, from and after a first conviction, during which such owner

Penalty for non-erection of beacons.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

Recovery of fine and costs and appropriation of fine.

Period when prosecution may be commenced, limited.

Beacons erected before 31st December, 1866, to be merely provisional.

Penalty for unlawfully removing, &c., such beacons.

or owners shall fail or neglect to have such beacons put up: Provided that such fine may be prosecuted for by the secretary of the Divisional Council, in his capacity as such secretary, and that the person convicted shall also be liable to the reasonable costs of the prosecution, and the fine when recovered, shall be paid to the Divisional Council for public purposes: Provided also that no prosecution under this section shall in any case be commenced later than three months next after the day on which the whole of the beacons of the farm in regard to which the fine shall have been incurred shall have been standing or in existence: Provided, further, that such beacons need not at any time before the 31st day of December, 1866, be of the description in the hundred and twelfth section of this Act described, and shall until then be merely provisional in their nature, and shall not be evidence to any extent of the rights of parties, but only of the fact that such rights are or may be in dispute; but no person shall, against the will or without the authority of the person or persons by whom such beacons shall have been put up, or without the authority of some competent Court, or of this Act, remove, destroy, or injure any such beacon; and any person who shall, in contravention of this section, remove, destroy, or injure any such beacon, shall, upon conviction, forfeit any sum not exceeding ten pounds nor less than two pounds, to be recovered and applied in the same manner as the certain other fine in this section mentioned.

Penalties recoverable from one or more joint owners.

85. As often as any farm in regard to which any fine or penalty under this Act shall have been incurred shall be jointly owned in undivided shares by more persons than one, any one or more of such joint owners shall be liable and may be prosecuted for the whole of such fine or penalty.

Owners of new farms allowed six months for erection of beacons.

86. As often as any new farm shall have been created after the taking effect of this Act, either by grant from the Crown or by the subdivision of any other farm or farms, the owner of such new farms shall be allowed a period of six months from the day of grant or transfer made to him within which period to erect the beacons of such new farm; and should not the whole of the beacons of such new farm be up or in existence at the expiration of such six months, then the fine in the eighty-fourth section of this Act mentioned shall be incurred by the owner of such farm.

No beacon to be admitted as correct before 31st December, 1866.

87. No beacon, whether one erected before or one erected after the taking effect of the Act No. 10, 1859, shall (except as hereafter is excepted), be deemed to be admittedly true and correct, so as not to be afterwards disputed, before or until the 31st day of December, 1866, anything in any former Act to the contrary notwithstanding: Provided that nothing in this or in the next succeeding section contained shall extend to any of the beacons of any fresh grant issued under and by virtue of the said Act No. 10, 1859, or of this Act, and which beacons shall be placed in con-

Not to extend to beacons of fresh grants.

Digitised by the University of Pretoria, Library Services, 2016

formity with such fresh grant, which beacons shall not, nor shall any of them be capable of being at any time disputed.

No beacon to be admitted correct unless standing not less than six months before 31st December, 1867, and unless prescribed notice shall have been given.

88. No beacon of any farm, although such beacon shall be standing and in existence on the 31st day of December, 1867, (1) shall be deemed to be admittedly true and correct, so as not to be afterwards disputed, unless such beacon shall have been up and standing for not less than six months next before the said day, and unless the notice in the next succeeding section mentioned shall have been given.

Notice to be given to council by parties desiring beacons to be taken as correct on 31st December, 1867.

89. Every person who desires that the beacons of his farm shall, on the said 31st day of December, 1867, (1) (if not sooner), become admittedly true and correct, may deliver a notice, in writing, to the Divisional Council of the division in which such farm is situated, giving the name of such farm, or otherwise describing it, and naming or otherwise describing the farms which immediately adjoin such farm, and stating that all the beacons of such farm are up. Any notice which shall omit to state that all the beacons of the farm of the person giving it are up, shall be null and void; and if any person shall give a notice stating that all the beacons of his farm are up, when, in truth and in fact such beacons are not all up, he shall be liable to a fine not exceeding five pounds to be prosecuted for in like manner as the fine hereinbefore in the eighty-fourth section mentioned: Provided that nothing in this section contained shall impair or affect the validity of any notice given under the third section of the Act No. 6, 1862, at any time before the taking effect of this Act: And provided that every notice under this section of this Act shall be delivered to the said council not later than six months before the 31st day of December, 1867, (1) or otherwise the same shall be null and void: Provided, also, that the beacons in this section mentioned need not be beacons of the description in the one hundred and twelfth section described.

Notice to state that all beacons are erected.

Penalty for false statement.

Validity of notice given under section 3 of Act 6 of 1862, not affected.

Period for giving notice, limited.

Description of beacons.

Notice to be given to parties interested of receipt of such notice, and of their liberty to object.

90. As soon as the Divisional Council shall have received such notice as in the last preceding section mentioned, the said council shall forthwith cause notice in writing to be given to all parties interested, stating the day when such notice as aforesaid was received by the said council, and informing all parties interested that such beacons as aforesaid have been erected and are up, and that such parties are at liberty, should they regard the said beacons or any of them as encroaching upon their land, to object to the same in the manner prescribed by this Act.

Notice to parties interested by whom to be signed, to whom and how to be sent, and how to be published.

91. The notice in the last preceding section mentioned shall be signed by the secretary of the Divisional Council giving the same and shall be sent to the proprietor, or to some one of the proprietors, of every farm abutting upon the farm of which the notice aforesaid shall have stated that all the beacons are up, and such notice may be sent by post or otherwise, as the Divisional Council

[1] Printed as amended by Act 8, 1866-'67.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

shall, under the circumstances of each case, determine: and such notice shall also be published, together with a statement of the day on which it was received by the council, once a week during three consecutive weeks, in the *Government Gazette* and in the local newspaper, if any there be, in which notices of such Divisional Council are usually published: Provided that if the Divisional Council shall, under the circumstances of any case determine that such notice shall be served, instead of being sent by post, then such service shall be either personal or by leaving at the residence of the proprietor to be served a copy of the said notice with one of his household, and the costs of serving such notice shall be calculated at the rate for the time being chargeable for serving summonses of the Resident Magistrate's Court of the district in which the notice is served, and such cost and the cost of publication in the *Gazette* and in the local newspaper shall be prepaid by the person who shall have given notice to the Divisional Council of the erection of his beacons; but should such beacons, or any of them, be disputed, and the dispute be referred to a commission constituted under this Act, the said costs shall be included in the costs of the inquiry: Provided, further, that if any question shall arise regarding the beacons mentioned or referred to in any such notice, it shall not be necessary to prove that any notice which shall have been duly published as aforesaid in the *Government Gazette* was published in any local newspaper or duly sent or served in manner aforesaid: Provided, also, that if the person who should, as aforesaid, prepay the costs aforesaid shall not, upon demand, prepay the same, then no such notice as aforesaid shall be served or published as aforesaid, and the notice delivered by such person to the Divisional Council shall be null and void: Provided, lastly, that as often as any such notice shall be intended to be sent by post, then the costs, to be prepaid as aforesaid, shall include the postage.

Council may direct service of notice otherwise than by post.

Cost, how to be defrayed.

When published in Government Gazette, proof of other publication or of service of notice not necessary.

If costs be not prepaid, notice to be void.

Postage included in costs.

When beacons shall be taken to be correct and undisputed.

92. Every beacon which shall be up on the 31st day of December, 1867, (1) and which shall have been up for six months next before that day, and in regard to which the respective notices aforesaid in the eighty-ninth and ninetieth sections of this Act respectively mentioned shall have been given, shall, unless disputed before or on the day in the next succeeding section mentioned, become and be admittedly true and correct, so as not to be afterwards disputed: Provided that nothing herein contained shall extend to render admittedly true and correct any such beacon as is in the hundred and ninth section of this Act mentioned, and which, by the said section, is otherwise provided for, or any beacon adjoining any Crown land, as in the one hundred and tenth section of this Act is provided for.

Exceptions.

When beacons shall be taken as disputed.

93. No beacon or beacons shall be deemed or taken to have been disputed unless an objection in writing shall have been lodged with

[1] Printed as amended by Act 8, 1866-'67.

Digitised by the University of Pretoria, Library Services, 2016

the Divisional Council of the division in which such beacon or beacons is or are situated before the expiration of six months from the day on which the Divisional Council received the notice in the eighty-ninth section mentioned: Provided that any person who shall know that his beacons, or any of them, are questioned or objected to may at once apply to the council aforesaid, stating the circumstances, and requesting the council to have the correctness of such beacons investigated and determined under this Act. (1)

Owners cognisant of dispute may at once apply to have dispute determined.

94. As often as any beacon or beacons shall be disputed in manner and form as in the last preceding section mentioned, and as often as any person whose beacons, or any of them, shall be objected to or questioned, shall make the application in the said section mentioned, then a surveyor or surveyors, appointed in manner and form as in the eleventh section of this Act mentioned, shall be sent by the Divisional Council to make a resurvey of all the farms or portions of farms, which it shall be necessary or proper to resurvey for the purpose of determining, or assisting to determine, the true and correct position of the beacons or beacon disputed or objected to; and the provisions of the thirty-first section of this Act shall apply to the title-deeds and transfer deeds, and the provisions of the thirty-second section to the beacons, of all farms which, for the settlement of such dispute, it shall be necessary to resurvey or inspect: Provided, also, that as often as any such objection or application as in the last preceding section mentioned shall be lodged, it shall be lawful for the Divisional Council, in case it shall contemplate the formation of a section or area of country such as is in the third section of this Act mentioned, which section or area shall include the beacon or beacons in dispute, to defer for any period not exceeding twelve months from the day of the lodging of such objection or application the sending of a surveyor or surveyors to make the resurvey hereinbefore in this section mentioned.

When beacons are objected to or parties apply to have dispute determined, surveyor to be appointed in terms of section 11.

Provisions of section 31, as regards title and transfer deeds, and 32, as regards beacons, to apply.

If disputed beacons are included in a contemplated section for resurvey, council may defer proceedings.

95. Notice of the day and place of commencing any such resurvey as last aforesaid shall be given in manner and form as the notice in the fifteenth section of this Act mentioned.

Date and place for commencing resurvey to be notified.

96. It shall be lawful for the Divisional Council by which any such surveyor shall be sent, as in the ninety-fourth section mentioned, to make any resurvey, to depute a member of the said council, not interested in the matter in dispute, nor related to any person having an interest therein, in or within the fourth degree of consanguinity or affinity, to accompany such surveyor: Provided that such deputed member shall be paid for his attendance at the rate hereinbefore in the sixty-fourth section of this Act mentioned in regard to a commissioner, and that his expenses shall be taken to be included in the cost of the resurvey: Provided, also, that it shall be in the discretion of the Divisional Council, in each particular

Member of divisional council may be deputed to accompany surveyor.

Remuneration to member deputed.

Deputing of such member in discretion of council.

[1] See § 4, Act 9, 1879.

Digitised by the University of Pretoria, Library Services, 2016

No. 7—1865.

case, to decide, according to circumstances, whether a member shall or shall not be deputed as aforesaid.

If parties interested agree as to position of beacons, they shall be admitted as correct.

97. In case all the parties interested or concerned in any such beacon or beacons shall, with the aid and assistance of the deputed member aforesaid (if any), and of the surveyor or surveyors aforesaid who shall have made the resurvey aforesaid, agree amongst themselves upon the spot where the beacon or beacons which had previously been disputed or questioned ought of right to stand, then the beacons of all the farms so resurveyed shall be deemed to be admitted as correct, and thereupon all and singular the same proceedings shall take place in regard to the farms so resurveyed as are in the sixteenth, seventeenth, eighteenth, nineteenth, and twentieth sections of this Act mentioned.

If parties cannot agree, sections 36 to 75 to apply to settlement of dispute.

98. Should the deputed member aforesaid (if any), and such surveyor or surveyors as aforesaid, after the making of such resurvey as aforesaid, find that the disputing parties cannot agree amongst themselves in regard to the position of the beacon or beacons in dispute, then the said surveyor or surveyors shall give to the Divisional Council notice of such dispute, in manner and form as in the thirty-sixth section of this Act mentioned, and thereupon all and singular the same proceedings, in all respects, shall be had and taken as are hereinbefore in the several sections of this Act, from the thirty-sixth to the seventy-fifth, both inclusive, provided in regard to the determination by commissioners of similar disputes arising within such sections or areas as are in this Act mentioned.

Provisions of section 21, as regards reporting existence of Crown land, to extend to detached resurveys.

99. As often as any farm not included in any such section or area as aforesaid, but adjoining to or abutting upon any Crown land, shall be resurveyed by a surveyor appointed under the ninety-fourth section of this Act, it shall be the duty of such surveyor to report to the Surveyor-General the existence of such Crown land in the manner by the twenty-first section of this Act directed, and thereupon all and singular the several sections of this Act, from the twenty-first to the thirtieth, both inclusive, shall apply to such surveyor, to such farm, and to such Crown land, in like manner precisely as if such farm had been situate within some such section or area as aforesaid: Provided that the said surveyor shall not be bound to report upon the diagram or beacons of any farm adjoining such Crown land, save and except the farm or farms which he shall be engaged in resurveying.

Report of surveyor to extend only to farms actually under process of resurvey.

Resurvey by sections to be preferred to decisions of detached disputes.

100. The Divisional Council of every division will, as much as circumstances will permit, adopt the system of defining or describing for resurvey sections or areas of country such as are in the third section of this Act mentioned, in preference to the system of deciding detached disputes between the owners of particular farms.

Resurveys of farms not included in sections not to be paid for from public revenue.

101. As often as any such resurvey as aforesaid shall be made of any farm or farms not included in any such section or area

Digitised by the University of Pretoria, Library Services, 2016

of country as aforesaid, and as often as any such commission as aforesaid shall be selected and appointed to adjust any dispute regarding such a farm or farms, no part of the costs of such resurvey or of such inquiry shall be paid from or out of the public revenue. In case, upon the resurvey, the parties previously in dispute shall agree upon the beacon or beacons which were in controversy, then the owner of each farm shall (unless it be otherwise agreed upon) be liable for the expense of resurveying such farm. And in case the dispute shall be referred to and determined by a commission, then the costs of the resurvey of every farm surveyed, and also the costs of the inquiry, shall be paid by the parties to such inquiry in such shares and proportions, or by one or more of the said parties to the exemption of the rest, according as the commissioners shall adjudge; and the provisions of the seventieth, seventy-first, and seventy-second sections of this Act shall apply to such costs: Provided, also, that the costs of any inquiry into any dispute relating to Crown land shall be treated in the same manner precisely as if such costs had been incurred in regard to a dispute occurring in respect of Crown land within a section or area.

Who liable for such expense.

How, in case of inquiry into dispute relating to crown land.

102. Nothing in this Act from the eighty-fourth to the one hundred and first section, both inclusive, except the proviso contained in the eighty-seventh section, shall apply to any farm which shall be included in any such section or area of country as is hereinbefore in the third section of this Act mentioned.

Sections 81 to 101 not to apply to farms included in sections for resurvey.

103. As often as it shall be found upon any resurvey or other proceeding connected with any disputed boundary, whether within a section, or area, or not, that other farms besides those originally engaged in the dispute are really involved in or affected by it, then the owners of every farm involved in or affected by the dispute shall, as well as the farms originally engaged, be deemed to be, for the purpose of the one hundred and first section of this Act, parties to the inquiry, so as to be liable, at the discretion of the commissioners, to pay or contribute towards paying the costs in the said section mentioned, in such shares and proportions as the commissioners in the said section mentioned shall, under the circumstances, consider just and shall adjudge.

Owners of farms not included in section may be made parties to inquiry and be liable for share of cost.

104. Should the owner or owners of any farm, not contained in any section or area, of which the beacons shall, under and by virtue of the ninety-second section of this Act, have become admittedly true and correct, desire to obtain a fresh grant, founded upon a diagram truly and correctly representing the said farm as defined by such admitted beacons, such owner or owners may cause the said farm to be surveyed by a surveyor, appointed in manner and form as in the eleventh section of this Act mentioned, according to such admitted beacons; and thereupon the sixteenth, seventeenth, eighteenth, nineteenth, and twentieth sections of this Act shall apply to such case, and a fresh grant shall be issued, showing a

Owners of farms of which beacons are admitted may obtain resurvey and new diagram.

Digitised by the University of Pretoria, Library Services, 2016