

# STATUTES

OF THE

## CAPE OF GOOD HOPE,

PASSED BY THE

### THIRD PARLIAMENT,

DURING THE

### SESSIONS 1864—1868.

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CAPE TOWN :

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1868.

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# ACTS OF THE CAPE PARLIAMENT.

No. 1—1864.

No. 1—1864.] AN ACT [May 4, 1864.

For the better Protection of the Customs Revenue in certain cases.

**W**HEREAS, as often as any increase of Customs Preamble.  
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:

I. 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 taken out of bond by being 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 port of entry, enter into a bond conditioned for the payment of such increased duty as Parliament may afterwards think fit to authorize and impose;

Officer of customs empowered to demand bond from importers on notice being given in House of Assembly of resolution to propose increase of customs duties.

No. 1—1864.

Form of bond.

Liability of persons entering into bond for difference between rate paid and rate made payable by Act of Parliament.

and such bond shall in substance be in the form contained in the schedule annexed to this Act.

II. 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.

Exemption in case of sale in bond previous to notice of resolution.

III. 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.

IV. 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.

V. 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 twenty-ninth day of April, 1864, instruct the officers of customs at the several ports of the 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 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 :

VI. 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, against 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.

Indemnity for demand made upon persons to give such bond previous to passing of this Act.

VII. 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.

Articles in bond on 29th April, 1864, to be subject to provisions of 3rd section.

No. 1—1864.

## 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 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. 2—1864.] AN ACT [May 14, 1864.

For Increasing the Duties of Customs, and for allowing a Drawback upon Goods sent by Sea to British Kaffraria in the Original Packages.

Preamble.

WHEREAS it is expedient to increase the Duties of Customs upon all articles imported into this colony and liable to such duties, and also to provide by law for allowing a drawback or return of Customs Duty upon goods sent by sea from this colony to British Kaffraria in the original packages: Be it

No. 2—1864.

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 :

I. So much of the “Customs Tariff Act, 1855,” as is repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Repugnant portions of “Customs Tariff, 1855,” repealed.

II. From and after the twenty-ninth day of April, 1864, there shall, except as is hereinafter excepted, be payable and paid to Her Majesty the Queen, in her Colonial Revenue, precisely as if this Act had been upon that day already in force and operation, an addition of twenty-five per cent. upon the amount of the Customs Duty which was next before the taking effect of this Act payable upon each and every article, whether a rated article or otherwise, and whether in bond or otherwise, imported into this colony, and chargeable with Customs Duty: Provided that nothing herein contained shall extend to or affect the provisions of the third and seventh sections of the Act No. 1, 1864, entitled “An Act for the better Protection of the Customs Revenue in certain cases.”

Additional customs duty of 25 per cent. established.

Not to affect 3rd and 7th sections of Act 1 of 1864.

III. As often as any goods which shall have paid Customs Duty in this colony shall be afterwards sent from this colony by sea to British Kaffraria in the original packages as imported, it shall be lawful for the proper officer of Customs in this colony, upon production to him of a certificate from the proper officer of Customs in British Kaffraria that such goods have been imported from this colony into British Kaffraria, to allow to the exporter of such goods from this colony a drawback or return of the Customs Duty paid upon such goods: Provided that such drawback or return of duty shall be allowed subject to such rules and regulations as the Collector of Customs from time to time shall frame, and the Governor of this colony shall sanction, for the prevention of any fraud or abuse in the granting of such drawback.

Drawback allowed upon goods sent to British Kaffraria subject to certain rules.

IV. This Act may be cited for all purposes as “The Customs Tariff Amendment Act, 1864.”

Short title.

No. 3—1864.

No. 3—1864.] AN ACT [July 26, 1864.

For Regulating the Duties upon Stamps and Licences.

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.

I. 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.

II. Stamps according to and in conformity with the provisions contained in the schedule hereunto annexed shall be used and 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.

No. 3—1864.

III. 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.

Schedule to be taken as part of Act.

IV. 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 authorize 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.

Governor to appoint persons to be charged with providing dies—stamping and issue of stamps.

V. 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.

Custody of stamps and dies.

VI. 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.

Issue of stamps and dies.



No. 3—1864.

Rules to be observed in stamping.

Stamps and dies to be returned to officers charged with their custody.

Distributor's signature to be affixed to receipt book.

Examination of stock of stamps in distributor's hands.

Value of any stamp may be made up by using two or more

VII. 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 in 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 the keys kept by the respective officers aforesaid, who shall be responsible for their safe custody.

VIII. 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.

IX. 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.

X. 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.

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stamps of lesser values.

XI. 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: Provided that as often as adhesive stamps shall, by this Act, or the schedule thereto annexed, be permitted to be used, such adhesive stamps may be postage stamps.

Stamp of higher value than required may be used.

Postage stamps may be used where adhesive stamps are permitted.

XII. 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, 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 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.

Instruments requiring stamps not to be admitted in court of law without such stamps.

But may be admitted on payment of penalty.

XIII. 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

Government officers not to issue or authenticate any instrument requiring stamps unless duly stamped.

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Tender of unstamped documents of no value.

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.

Adhesive stamp of the value of the duty payable may be affixed to unstamped documents within twenty-one days after execution.

XIV. In case any instrument by the said schedule required to be written upon stamped paper 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 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,

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.

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 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.

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When instrument shall be deemed to be executed.

XV. 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.

XVI. 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.

Penalty on unstamped documents.

XVII. 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 of the date at which any instrument which shall, after being written or engrossed and executed, be tendered in order to have such adhesive

Proof of date of execution of instrument may be called for.

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Penalty for inserting false date.

Governor may at any time authorize adhesive stamps to be affixed to unstamped instruments.

Spoiled stamps may be exchanged.

Butcher's licence. Portion of Ordinance No. 51 repealed.

Butcher's trade requires a licence.

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.

XVIII. 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.

XIX. 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 for other stamps, and the officer in Cape Town or the district stamp distributor elsewhere (the said last-mentioned distributor being thereto authorized 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.

XX. 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.

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Vendor of meat to be deemed a butcher.

XXI. So much of the Ordinance No. 11, 1846, entitled "Ordinance for amending the Law relative to the licencing 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.

Portion of Ordinance No. 11 of 1846 repealed.

Unrepealed provisions to extend to entire colony.

XXII. For the purpose of the stamp tariff contained in the schedules hereunto annexed, the term "wholesale dealer" shall extend to and embrace every person who sells or exposes for sale goods, wares, merchandise in the original package as when imported or brought coastwise.

Definition of term "wholesale dealer."

XXIII. If any person who should in obedience to or in conformity with this Act and the schedule thereunto annexed take out and possess any licence authorizing 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 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 or possessed; and such penalty shall be in place and stead of any other penalty by any former law provided: Provided that nothing herein contained shall extend to any licence for "joint-stock companies."

Penalty for not taking out proper licence.

Joint-stock companies exempted.

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Use of stamped paper or adhesive stamps optional in making bills of exchange or promissory notes.

XXIV. 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.

XXV. 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.

Adhesive stamp on bill of exchange or promissory note to be cancelled.

XXVI. 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 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.

XXVII. 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.

XXVIII. 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.

Decision of questions regarding the nature and validity of instruments coming under the operation of this Act.

XXIX. All fines and penalties imposed under and by virtue of this Act shall be sued for on behalf of Her Majesty in any competent court: Provided that all such fines and penalties may be prosecuted for in the courts of resident magistrates: Provided, also, that any person feeling himself aggrieved by any judgment or sentence of any court of resident magistrate may appeal therefrom to the Supreme Court or any circuit court having jurisdiction, or may bring the same in review before any such court.

Recovery of penalties. Recoverable in resident magistrate's courts.

Appeal to Supreme Court allowed.

XXX. Notwithstanding the repeal as aforesaid of the proclamation and of the Act in the first section of this Act mentioned, every licence which before the commencement of this Act shall have been granted to any person for the purpose of authorizing such person to practise any profession, or exercise any trade, business, occupation, or calling, or to profess or perform any matter or thing in regard to which any licence may have been issued under

Licences issued prior to this Act coming into operation to remain in full force.



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and by virtue of the said proclamation or Act hereinbefore repealed, and which licence shall be unexpired and in force at the time of the commencement of this Act, shall remain and continue in force until the expiration thereof by effluxion of time, and shall, for and during the time or term of such licence then yet to come and unexpired, be of the same force and effect as a licence for the same purpose granted under and by virtue of this Act.

Cancellation of adhesive stamps.

XXXI. 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 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.

Penalty for non-cancellation.

Penalties for offences under this Act.

XXXII. 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.

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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.

XXXIII. 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 prosecuted 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.

Persons making fraudulent use of stamp previously used liable to penalty.

Or to prosecution for falsity.

But not to both.

XXXIV. 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."

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Commencement  
Act.

XXXV. This Act shall commence and take effect of from and after such date, not earlier than the fifteenth day of October, 1864, as the Governor shall by proclamation fix or determine.

Short Title.

XXXVI. This Act may be cited as “The Stamp Act, 1864.”

## SCHEDULE.

### I.

#### ADMIRALTY COURT.

Affidavits ... ..	£0	1	6
Claims ... ..	0	1	6
Examinations in preparatory, on the first sheet	0	1	6
Every subsequent sheet ... ..	0	0	6
Each witness ... ..	0	0	6
Decree of unlivery ... ..	0	1	6
Do. of appraisal and sale ... ..	0	1	6
Do. of removal ... ..	0	0	9
Do. of inspection ... ..	0	0	9
Do. of restitution ... ..	0	3	0
Do. of delivery ... ..	0	1	6
Do. of condemnation ... ..	0	3	0
Do. for answers ... ..	0	1	6
Allegation, first sheet ... ..	0	0	9
Every subsequent sheet ... ..	0	0	9
Answers ... ..	0	0	9
Minutes of court ... ..	0	0	9
Papers extracted, per extract ... ..	0	0	9
Copies, per sheet ... ..	0	0	9

1. A sheet shall, for the purpose of the foregoing tariff, consist of one hundred words.

2. The documents mentioned in this tariff may be either on stamped paper or covered with stamped paper.

3. The stamps upon all documents issued by the registrar or any other officer of the Vice-Admiralty Court aforesaid, or upon the paper covering such documents, shall before being issued be cancelled by the officer issuing the same, by writing his name upon such stamp, together with the date.

### 2.

#### AGREEMENTS.

Leases, or agreements for leases of movable or immovable property, where the term of hiring shall exceed six months, and the rent payable shall exceed £10 per annum, as follows :

Exceeding £10 per ann., and not exceeding £50	...	£0	2	0
„ 50	„	100	0	3 0
„ 100	„	200	0	5 0
„ 200	„	300	0	7 6
For every additional £100 or fraction thereof	...	...	0	2 0

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1. Every lease or agreement for a lease 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.

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.

On every bill of Exchange or promissory note, or bank post bill of £10 and upwards	...	£0	0	6
Where bills of £10 and upwards are drawn in sets of three or more, for every bill of each set	...	0	0	6
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 either to bearer or to order.

3. If any bank shall pay or otherwise honour any cheque thereon 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 the cheque or not, shall be liable to pay the sum of twenty shillings, to be recovered by civil action in any competent court by any person who shall sue him for the same.

4. No "good-for," "I O U," or other acknowledgment of debt, not being a promissory note, 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.

5. No person who shall have granted any such instrument as is described in paragraph 4 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, on pain of being liable to pay the sum of twenty shillings to any person who will sue him for the same in any competent court.

6. 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, or by writing the name or the initials of the name of the person cancelling such instrument, together with the date of such cancellation.

7. 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, if endorsed, ceded, or transferred, be deemed to be a promissory note for the purpose of this Act, so as to require to be stamped as such.

8. Bills and notes for any sum under £10 need not be stamped.

## 5.

## SHIPS, &amp;C.

Bills of sale of any British ships, 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, whether British or foreign, where the sum secured shall not exceed £50	...	...	...
Exceeding £50 and not £100	0	7	0
" 100 " " 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 ships, British or foreign:  
 For every 100 tons of tonnage or every fraction  
 of 100 tons ... .. 0 5 0

1. The charter-parties of vessels under twenty-five tons burthen shall not require to be stamped.

2. The instruments mentioned in this tariff 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 14th section of this Act mentioned.

6.

BROKERS' NOTES.

Every bought note and every sold note ... £0 0 6

1. All brokers' notes may be either on stamped paper, or may have an adhesive stamp affixed thereon and cancelled.

2. Every adhesive stamp on any broker's note shall be cancelled by the broker writing thereon his name and the date on which he shall write the same.

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, or 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.

On Transfers passed before the Registrar of Deeds :

Value not exceeding	£10	...	...	£0	1	0
Exceeding £10 and not exceeding	20	...	...	0	1	6
"    20	35	...	...	0	2	0
"    35	50	...	...	0	3	0

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Exceeding £50 not exceeding	£100	...	...	£0	4	6
„	100	„	150	0	7	6
„	150	„	200	0	10	0
„	200	„	300	0	15	0
„	300	„	400	1	0	0
„	400	„	500	1	5	0
„	500	„	700	1	10	0
„	700	„	1000	2	5	0
„	1000	„	1500	3	0	0
„	1500	„	2000	3	15	0
„	2000	„	2500	4	10	0
„	2500	„	3000	5	0	0
„	3000	„	4000	5	10	0
„	4000	„	5000	6	0	0
And for every additional £500 or fraction thereof				0	10	0

## On Notarial Cession of Mortgage Bonds :

Value not exceeding	£100	...	...	0	1	6
Exceeding £100 not exceeding	200	...	...	0	3	0
„	200	„	300	0	4	0
„	300	„	400	0	5	0
„	400	„	500	0	6	0
„	500	„	600	0	7	0
„	750 and upwards			0	7	6

## On Mortgage Bonds passed before the Registrar of Deeds :

Amount secured not exceeding	£10	...	...	0	1	6
Exceeding £10	15	...	...	0	2	0
„	15	„	25	0	3	0
„	25	„	35	0	4	0
„	35	„	50	0	5	0
„	50	„	75	0	6	0
„	75	„	100	0	7	6
„	100	„	150	0	10	0
„	150	„	200	0	15	0
„	200	„	300	1	0	0
„	300	„	400	1	5	0
„	400	„	500	1	10	0
„	500	„	600	1	15	0
„	600	„	700	2	0	0
„	700	„	800	2	5	0
„	800	„	900	2	10	0
„	900	„	1000	3	0	0
„	1000	„	1200	3	10	0
„	1200	„	1500	4	0	0
And every additional £100 or fraction thereof				0	2	6

## On Deeds of “Kinderbewys” and General Mortgage, commonly called “Notarial Bonds” :

Amount secured not exceeding £15	...	...	£0	1	0
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Exceeding £15 not exceeding £50	...	...	£0	3	0
” 50	” 75	...	0	4	0
” 75	” 100	...	0	5	0
” 100	” 150	...	0	6	0
” 150	” 200	...	0	7	6
” 200	” 300	...	0	9	0
” 300	” 400	...	0	12	0
” 400	” 500	...	0	15	0
” 500	” 600	...	1	0	0
” 600	” 750	...	1	10	0
Every additional £100 or fraction thereof	...	...	0	2	6
Every separate notarial act of suretyship	...	...	0	2	0

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1. Every instrument mentioned in this tariff, except underhand cessions of mortgage bonds, must be either written upon or covered by stamped paper.

2. 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 14th section of this Act 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, or otherwise by writing thereon his name, and the date on which he shall write the same.

3. The stamps provided in this schedule for notarial acts of any sort or description whatever are for the minute. The grosse and all notarial copies must bear a stamp of one shilling.

## 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



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Exceeding £3000 but not £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 for creditors	...	...	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.

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.

## 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
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## 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. 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

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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.

## 12.

## WILLS AND INSTRUMENTS CONNECTED WITH WILLS.

Every will or other testamentary writing, which shall not be written upon a stamp of the value of 2s. 6d., shall, when delivered to the Master for registration and preservation, be covered with a stamp of ... ..	£0	5	0
Every act repudiating an inheritance ... ..	0	1	6
On every inventory of an estate or any part thereof, without a valuation, first sheet ... ..	0	1	6
Each subsequent sheet ... ..	0	1	0
On every inventory of an estate, or any part thereof, with a valuation as follows, viz. :			

Value not exceeding £50	...	...	...	£0	1	0
"    "    100	...	...	...	0	2	0
"    "    200	...	...	...	0	3	0
"    "    300	...	...	...	0	4	0
"    "    400	...	...	...	0	5	0
"    "    500	...	...	...	0	6	0
"    "    750	...	...	...	0	7	6
"    "    1000	...	...	...	0	10	0
"    "    1500	...	...	...	0	15	0
And every additional 100	...	...	...	0	1	0
Notarial deeds of assumption, substitution, or surrogation under any power contained in a will	...	...	...	0	2	6

1. A will and any number of codicils to that will may all be covered with one stamp.

2. No will or codicil, notarial or underhand, need be written on a stamp. But if written on a stamp of the value of two shillings and sixpence, it need not, when presented to the Master for registration, be covered as above directed.

3. A sheet shall be reckoned to be one hundred words.

4. No inventory of any estate, whether with or without a valuation, shall be chargeable with any higher stamp, in all, than £1 10s.

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 Guardians' 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

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moneys paid out of the Guardians' 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

Receipts 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.

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.

These licences are annual.	{	For exercising the trade of a baker in this colony	...	...	...	£3 15 0
		For exercising the trade of a butcher in this colony	...	...	...	3 15 0
		For keeping a billiard table	...	...	...	7 10 0
		For killing game	...	...	...	0 7 6
		For hawkers, or travelling traders, travelling without any vehicle, or with only one vehicle	...	...	...	1 10 0

These licences are annual.	{	For hawkers, or travelling traders, travelling with more vehicles than one ...	£3 0 0
		For dealing by wholesale ... ..	4 0 0
		For carrying on the business of an auctioneer ... ..	10 0 0
		For keeping a bonding warehouse ... ..	20 0 0
		For dealing in gunpowder ... ..	3 0 0
		For selling stamps ... ..	0 5 0
		For every apothecary or chemist or druggist ... ..	3 0 0
To cut reeds on Government land, per 1000 bundles ... ..		0 0 9	
Special licence for the solemnization of marriage		5 0 0	

1. The above-mentioned licences shall either be written upon paper duly stamped, or shall have adhesive stamps of the proper value affixed to them before being issued. If adhesive stamps be used, they must be cancelled by writing thereon the name of the officer issuing the licence, and the date on which he shall write the same.

2. All such of the above licences as are annual shall, no matter at what period of the year they may be taken out, expire on the thirty-first of December then next. When any such annual licence shall be issued upon or after the first of June, there shall be payable only one-half of the appointed sum. If taken out at any time before the first of June, there shall be no deduction.

3. It shall be lawful for any resident magistrate, justice of the peace, field-cornet, assistant field-cornet, or chief-constable, to demand from any person travelling in this colony as a hawker or trader, the production of his licence; and unless such person shall on such demand, produce a licence duly stamped, and still in force, it shall be lawful for the person demanding the same to carry and convey the hawker or trader, with his goods, to the nearest resident magistrate, and such magistrate shall have jurisdiction to try the offender, although no act of trading may be proved to have been done within the district of such magistrate.

4. The licence as an apothecary, or chemist, or druggist, shall cover all dealings as an apothecary and chemist and druggist, as well as all dealings covered by the retail shop licence, and must be taken out by every surgeon, doctor of medicine, or other person selling any medicines, patent or otherwise. Every wholesale and every retail licence shall authorize the sale of patent and homœopathic medicines, and no licence as an apothecary, chemist, or druggist shall be necessary for so doing.

5. So much of this tariff as relates to annual licences shall commence on the first day of January, 1865, and not sooner, anything contained in the concluding section of this Act to the contrary notwithstanding.

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6. The charge for the licence to keep a retail shop shall continue to be that prescribed by Ordinance No. 11 of 1846, namely, £1 10s.

7. No licences shall be necessary for selling postage stamps.

8. Every wholesale licence shall authorize all dealings authorized by the retail shop licence as well as all dealings by wholesale.

## 16.

## MISCELLANEOUS ACTS.

Every antenuptial contract	...	...	...	£1	0	0
Articles of partnership, whether notarial or not				1	0	0
Every general power of Attorney	...	...	...	0	10	0
Notarial protest of a bill or note for upwards of £40	...	...	...	0	5	0
Notarial protest of a bill or note exceeding £10 but not exceeding £40	...	...	...	0	2	6
Notarial certificates of the presentation of a bill, note, or cheque, exceeding £40	...	...	...	0	2	6
Not exceeding £40	...	...	...	0	1	0
Every sea protest...	...	...	...	0	10	0

1. Every instrument mentioned in this tariff, except protests of bills or notes, must be, as to some part of it, 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.

2. Protests on bills or notes under ten pounds shall not require to be stamped.

3. Protests of bills or notes, if not written upon stamped paper shall have an adhesive stamp of the proper denomination affixed and cancelled.

4. Every adhesive stamp on any protest shall be cancelled by the notary writing thereon his name, and the date on which he shall write the same.

5. The deeds of settlement of joint-stock companies shall not, for the purpose of the above stamp, be deemed to be articles of partnership.

## 17.

## JOINT-STOCK COMPANIES.

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. But the licence of every such last-mentioned company shall be reckoned upon one half, instead of upon the whole of its subscribed capital.

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. When any joint-stock company, not being such a company as has been above described, but one doing business in this colony through the instrumentality of some agency in this colony, then such last-mentioned company shall annually take out a licence of the value of fifty pounds. No licence shall be required for any steam navigation company trading between this colony and any place beyond seas.

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. The Governor, if satisfied by any such agent that the aforesaid sum of fifty pounds would, with reference to the amount of business done by such company in this colony, be disproportionally high as compared with the payments made by colonial companies generally, shall have power to reduce such sum, and shall lay before both Houses of Parlia-



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ment, at their first meeting, a list of all such reductions made by him.

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. If any person shall, as a local director, agent, or mandatory of any joint-stock company which ought to take out such a fifty-pound licence as aforesaid, transact any business in this colony for such company, or advertise in any newspaper that he is a director of or agent for such company, then, if such company shall not have taken out the licence as above required, such person shall be liable to pay any sum not exceeding one hundred pounds, to be recovered by the distributor of stamps, by civil action, in any competent court.

10. 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.

Warrant to sue or defend	...	...	...	£0	1	0
Summonses for defendants or witnesses	...	...	...	0	1	0
Any pleading, first sheet...	...	...	...	0	2	0
Every subsequent sheet	...	...	...	0	1	0
Every petition	...	...	...	0	1	6
Every affidavit	...	...	...	0	1	6
Office copies of document, each sheet	...	...	...	0	0	6
Every liquid document upon which provisional sentence is prayed, not being a document for which any other stamp is by this schedule provided	...	...	...	0	2	6

Interdicts and other orders of court ... ..	£0	2	0
Commissions for the sale of fixed property ...	0	1	6
Do. for examination of witnesses ...	0	2	6
Bail bond to the sheriff ... ..	0	1	0
Petition for leave to appeal to Her Majesty the Queen ... ..	0	10	0
Each recognizance on an appeal ... ..	0	5	0
Admission of an advocate in the Supreme Court and Court of the Eastern Districts ...	15	0	0
„ „ attorney do. do.... ..	15	0	0
„ „ notary public ... ..	10	0	0
„ „ conveyancer ... ..	10	0	0

1. A sheet shall, for the purpose of the above tariff, consist of one hundred words.

2. The documents mentioned in this tariff may be either written on stamped paper or covered by stamped paper.

3. The stamps upon all documents issued by the registrar or any other officer of any of the courts aforesaid, or upon the paper covering such documents, shall, before being issued, be cancelled by the officer issuing the same, by writing his name upon such stamp, together with the date.

4. As often as provisional sentence shall be prayed upon or in regard to any liquid document which shall, before being produced in court, have been duly stamped under this Act, no other or covering stamp shall be necessary.

5. As often as any covering stamp shall be used upon any document delivered into the hands of the registrar or other officer, such stamp shall, before being received, be cancelled by writing upon such stamp the name of the cause in which it is used, or in some similar way.

6. As often as any advocate or attorney shall, after having been admitted in the Supreme Court, be admitted in the Court of the Eastern Districts, or *vice versa*, no fresh or additional stamp duty shall be payable.

19.

MAGISTRATES' COURTS.

On every liquid document upon which judgment is prayed, for an amount not exceeding £10	£0	0	6
„ „ „ „ „ 20	0	1	0
„ „ „ „ „ 30	0	1	6
„ „ „ „ „ 40	0	2	0
On every document of which a copy must, by the 10th rule of the resident magistrates' court, be served upon the opposite party ... ..	0	0	6
On every authority to sue or defend ... ..	0	0	6

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On every summons for an amount not exceeding £10	£0	0	6
"  "	20	0	1
"  "	30	0	1
"  "	40	0	2
On every warrant of execution ... ..	...	0	0

1. Summonses must either be written upon stamped paper, or have an adhesive stamp of the proper denomination affixed thereon, and cancelled by writing on such stamp the name of the cause in which it is issued. The other documents mentioned in this tariff may be covered with stamped paper.

2. Nos. 3, 4, and 5 of the tariff No. 18 shall apply to this tariff.

3. No stamps other than the stamps mentioned in this tariff shall be required in any court of resident magistrate.

No. 4—1864.]                      AN ACT                      [July 26, 1864.

To alter in certain respects the Rates to be charged for Licences for the Sale of Wines and Spirituous and Fermented Liquors by Retail.

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

I. So much of the Ordinance No. 9, 1851, and of the Act No. 10, 1860, as is repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

II. Every licence for authorizing the sale of wines and spirituous and fermented liquors by retail, as such licence is described in the Ordinance aforesaid, No. 9, 1851, shall be subject to the charges or rates hereinafter specified, that is to say :

1. For or in regard to all such licences within any of the following towns, or within three miles of the limits of any of them, namely, Cape Town, Green Point, Graham's Town, Port Elizabeth, Simon's Town, Graaff-Reinet, Paarl, and Stellenbosch, the rates to be paid shall be as follows :

- a. For a licence commencing upon the 1st of April and ending on the 31st of March then next ... £50 0 0
- b. For a licence commencing on the 1st of July and ending on the 31st of March then next ... 40 0 0
- c. For a licence commencing on the 1st of October and ending on the 31st of March then next ... 30 0 0
- d. For a licence commencing on the 1st of January and ending on the 31st of March then next ... 16 10 0

2. For or in regard to all such licences within any of the following towns, or within three miles of the limits of any of them, namely, Worcester, Swellendam, Caledon, Uitenhage, George, Fort Beaufort, Cradock, Colesberg, Queen's Town, and Somerset East, the rates to be paid shall be as follows :

- a. For a licence commencing on the 1st of April and ending on the 31st of March then next ... £40 0 0
- b. For a licence commencing on the 1st of July and ending on the 31st of March then next .... 32 10 0
- c. For a licence commencing on the 1st of October and ending on the 31st of March then next ... 25 0 0
- d. For a licence commencing on the 1st of January and ending on the 31st of March then next ... 13 10 0

3. For or in regard to all such licences within, or within three miles of the limits of any town which shall be either a municipality or a town placed under the Public Nuisances Act, No. 2, 1855, and which shall not be any of the towns hereinbefore named, the rates to be paid shall be as follows :

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- a.* For a licence commencing on the 1st of April and ending on the 31st of March then next ... £30 0 0
- b.* For a licence commencing on the 1st of July and ending on the 31st of March then next ... 25 0 0
- c.* For a licence commencing on the 1st of October and ending on the 31st of March then next ... 18 0 0
- d.* For a licence commencing on the 1st of January and ending on the 31st of March then next ... 10 0 0

4. For or in regard to every such licence for the sale of any of the liquors aforesaid, at any place within this colony not hereinbefore named or described, there shall be paid such sum as the court mentioned in the twelfth and certain succeeding sections of the Ordinance No. 9, 1851, shall fix and determine, not being more than thirty pounds nor less than ten pounds for a licence for one whole year: Provided that in regard to licences for periods shorter than one year there shall be paid amounts corresponding to the amount which would be payable for one year, according to or in analogy with the scales and proportions hereinbefore in this section adopted: Provided, also, that no licence shall be capable of being granted for any period whatsoever for which licence there shall be payable less than ten pounds, except only in the case of a person who shall, under the eighth section of the Act No. 10, 1860, become entitled to a licence for three months, in which case such person shall pay, for such three months' licence, one fourth of the amount which was paid by him for his licence then in force, although such fourth may amount to less than ten pounds.

Limits of town for purposes of Act described.

III. For the purpose of this Act, the limits of every town which is or shall be a municipality shall

be the municipal limits thereof, for the time being, and the limits of every town which shall have been or which shall be placed under the Act No. 2, 1855, shall be the limits thereof as fixed by proclamation of the Governor.

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IV. The rates in this Act specified shall be chargeable upon or for all licences for authorizing the sale of wines and spirituous and fermented liquors by retail, save and except only retail licences for the purpose of keeping a boarding-house, and for no other purpose, as such last-mentioned licences are described in the Ordinance aforesaid, No. 9, 1851.

Boarding-houses not to come under provisions of this Act.

V. The provisions of this Act shall apply to all such licences as aforesaid issued upon or after the first of October, 1864, and to none other.

Commencement of Act.

VI. Every such retail licence as aforesaid issued upon or after the first of October, 1864, shall authorize the sale of wines and spirituous and fermented liquors in any quantity, whether wholesale or retail, anything in the seventh section of the Ordinance No. 9, 1851, to the contrary notwithstanding.

Sale in any quantity allowed.

VII. This Act may be cited for all purposes as

Short title.

“The Retail Wines and Spirits Act, 1864.”

No. 5—1864.]

AN ACT

[July 26, 1864.

To Impose Duties on Successions to Property.

WHEREAS it is expedient to impose certain duties on successions to 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:

Preamble.

I. 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

Definition of terms used in Act.

No. 5—1864.

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.

II. 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 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.

III. 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.

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.

IV. 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.

Duty chargeable on donations.

V. 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.

Master of the Supreme Court charged with duties under this Act.

VI. 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.

Duty may be paid in country divisions to the civil commissioner.

VII. 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

Power of Master to call for full account in regard of property administered.



No. 5—1864.

Declaration may be substituted in lieu of such account.

Appraisalment may be made by Master.

Expense of appraisalment.

Succession duty may be deducted by executor.

Successor to remain liable if not so deducted.

Appeal against Master's assessment may be made.

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 appraisalment, 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 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 by any person acting for and representing him, and the expense of the valuation shall be borne by Government.

VIII. It shall be lawful for every executor, whether testamentary or dative, and 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.

IX. 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 grounds 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.

No. 5—1864.

Supreme Court empowered to determine appeals.

X. 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."

Annuities, value of.

XI. 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.

Sections 7, 8, 9, and 10 to apply to donations.

XII. 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.

When return of duty paid may be claimed.

XIII. 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.

On encumbered successions.

On succession passing to another.

XIV. 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 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

Duty chargeable only on value of successions actually obtained.

Duty paid in error may be refunded.

No. 5—1864.

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 authorized by the Governor, shall thereupon refund the same to the person entitled thereto.

Where interest of successor shall have ceased by reason of death.

XV. 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.

Duty chargeable on property bequeathed for charitable purposes.

XVI. 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.

Exemptions.

Short title.

XVII. This Act may be cited for all purposes as "The Successions Duty Act, 1864."

No. 6—1864.] AN ACT [July 26, 1864. No. 6—1864.

For Imposing a Duty upon Bank Notes.

**W**HEREAS the privilege enjoyed by the Joint-Preamble.  
stock Banks of this Colony of issuing Bank  
Notes is one in regard to which a duty, regulated by  
the average amount of such notes kept in circulation  
by each Bank, may justly be imposed: Be it enacted  
by the Governor of the Cape of Good Hope, with the  
advice and consent of the Legislative Council and  
House of Assembly thereof, as follows:

I. Every joint-stock bank trading as bankers in  
this colony, and issuing bank notes, shall be bound  
and obliged to transmit to the Treasurer-General of  
this colony monthly returns of the amount of bank  
notes in circulation by such banks: Provided that,  
for the purpose of this Act, the term "bank notes"  
shall not include bank post bills.  
Monthly return of bank notes to be made.  
Definition of term "bank notes."

II. The first return to be made by every such bank  
under this Act shall state the amount of the bank  
notes of such bank outstanding on the last day of  
September, one thousand eight hundred and sixty-  
four, and every succeeding return shall state the  
amount of such notes outstanding on the last day of  
each succeeding month.  
Date of first and succeeding returns.

III. Every such return shall, in attestation of its  
correctness, be signed by not less than two direc-  
tors, and also by the cashier of the bank, or person  
acting as such cashier, and shall be in substance as  
follows:  
Who to sign return.

————— BANK.

We, the undersigned, do hereby certify that the  
bank notes of this bank, outstanding on the  
—————, 186—, amounted to £————  
Form of return.

And we further certify that this bank has not,  
during the month ending the ————— day  
of ————— 18—, paid out or put into use  
or circulation any such bank notes as are in  
the tenth section of the "Bank Notes Duty  
Act, 1864," described.

Or, should any such notes have been circulated,  
the return shall run thus: "*And we further*

No. 6—1864.

*certify that this bank has, during the month ending the ——— day of ——— 18—, paid out and put into use and circulation, bank notes such as are in the tenth section of the ‘Bank Notes Duty Act of 1864’ described, amounting to £———, and no more.”*

Dated at ———, this ——— day of ———, 186—.

A B, }  
C D, } Directors.  
E F, Cashier.

Duty chargeable.

IV. It shall be the duty of the Treasurer-General aforesaid to preserve all such returns; and every such bank as aforesaid shall be chargeable with a yearly duty to Her Majesty the Queen in her colonial revenue of one pound and ten shillings per centum upon the average issues of each year, ending the thirty-first of December, such average issues to be ascertained by adding together the amounts set forth in the several monthly returns of such bank for such year, and by then dividing the result by twelve: Provided that the duty aforesaid for the year 1864, and every succeeding year, shall be payable upon demand in writing made by the Treasurer-General, and shall be recoverable by him by action in any competent court, together with full costs: Provided, further, that duty shall be payable for the portion of the year 1864 covered by such returns as aforesaid, such duty to be ascertained by adding together the amounts set forth in the monthly returns for the said year, and by dividing the result by twelve: Provided, also, that in case any joint-stock company, person, or co-partnership by this Act required to make such monthly returns as aforesaid shall first begin to issue notes when a portion of the year shall have elapsed, then the duty to be paid for the residue of such year shall be ascertained in the manner hereinbefore provided.

How recoverable.

Mode of ascertaining  
duty for portions of  
any year.

On failure of banks  
to supply return, Su-  
preme Court may be  
applied to.

V. If any such joint-stock bank as aforesaid shall fail or neglect, for the space of one month next after the expiration of any month, to lodge with the Treasurer-General aforesaid the return aforesaid for

such last-mentioned month, it shall be lawful for such Treasurer-General to apply by motion, upon notice, to the Supreme Court, or to any judge thereof, for an order commanding the bank so in default to make such return, and the said Treasurer-General shall be entitled to his full costs of such motion: Provided that notice of every such motion may be directed to the bank in default by any name by which it may be known or distinguished, and that service of such notice at the principal place of business of such bank shall be deemed to be good service thereof, and that process for or in regard to disobedience of any order of court made upon such notice shall be directed against the directors of such bank, if any, jointly and severally, as also the manager of such bank, if there be one: Provided, further, that such process shall be directed against such manager, whether there shall be directors of such bank or not.

No. 6—1864.

Service of notice in such case.

VI. If any person or co-partnership, not being a joint-stock bank, shall issue notes payable to bearer, or at sight, or on demand, in which notes the amount for which such notes are made shall not be written, but engraved, printed, or lithographed, such person or co-partnership shall come under the provisions of this Act in like manner as if such person or co-partnership were a joint-stock bank.

Provisions of Act to apply to any person or co-partnership issuing printed notes.

VII. If any joint-stock company carrying on business as bankers in this colony shall be managed by a manager, either together with or exclusive of a board of directors, then the returns in the third section of this Act mentioned shall be certified by such manager, instead of by two directors.

Returns to be signed by manager where there is such officer.

VIII. If any person shall sign any return under this Act, which return shall, to the knowledge of such person, be false, such person shall incur and become liable to a fine not exceeding one hundred pounds.

Penalty for false return.

IX. As often as any joint-stock company carrying on business as bankers in this colony, whether their chief seat of business shall be in this colony or elsewhere, shall have in this colony a head office, and one or more branch banks also in this colony, the

Form of return where branch banks exist.

No. 6—1864.

monthly returns mentioned in the first section of this Act shall be made as follows, that is to say :

1. If the branch bank shall issue its own notes, namely, notes purporting to be issued by or at the place of business of such branch bank, then the returns aforesaid shall be made by such branch bank direct, precisely as if such bank were an independent and unconnected bank, and not a branch.
2. No such last-mentioned branch bank shall, in calculating its bank notes outstanding, be at liberty to deduct from its circulation any bank notes of its head office, or of any other branch of the same bank, which notes such branch bank may happen to have on hand.
3. In like manner, no head office of any bank having one or more branches shall, in calculating its bank notes outstanding, be at liberty to deduct from its circulation any notes of any of its branches, which notes such head office may happen to have on hand.
4. Should there be at any time in this colony a bank having a head office and one or more branch banks, which branch bank or banks shall not issue any such notes as are in the first subdivision of this section described, then the returns aforesaid shall not be made by or from the branch bank or banks, but by or from the head office, and shall include the whole outstanding circulation of the said bank, including all its branches.

Notes not issued but circulated in the colony to be included in return.

X. Every joint-stock bank carrying on business as bankers in this colony shall, in making its monthly returns for the purpose of this Act, include therein all bank notes of the same or any other bank, which notes shall on the face of them bear to have been issued at or from any place in Africa, or elsewhere, not within the limits of this colony, and which notes, having come at any time and in any manner into

the hands of such joint-stock bank, shall, during the month for which any such return shall be made, have been by such joint-stock bank paid out or put into use or circulation: Provided, however, that from and out of such bank notes as aforesaid so to be included as aforesaid may be excepted notes of the governor and company of the Bank of England: Provided, also, that the transmission of any such bank notes as are first aforesaid by any joint-stock bank to the place where such notes were issued, or to any other place beyond the limits of this colony, in a closed cover or parcel, shall not be deemed to be a paying out of such notes, or a putting of the same into circulation, so as to require that the bank notes so transmitted shall be included in any such return as aforesaid: And provided, lastly, that the duty imposed by the fourth section of this Act shall be payable upon the amount of all such bank notes as shall, under and by virtue of this section, be included in any monthly return, precisely as if such bank notes so included had been notes of the bank making such return and issued by it at the place of business of such bank by or from which such return shall be made.

No. 6—1864.

Bank of England notes exempted.

What constitutes circulation.

Amount of duty chargeable on such notes.

XI. This Act may be cited for all purposes as “The Bank Notes Duty Act, 1864.” Short title.

No. 7—1864.]                      AN ACT                      [July 26, 1864.

To Amend the Law regulating the Payment of Transfer Duty.

**W**HEREAS it is expedient to amend in certain respects the Law regulating the Payment of 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: Preamble.

I. So much of the Ordinance No. 18, 1844, and of the Act No. 15, 1855, as may be repugnant to or inconsistent with the provisions of this Act is hereby repealed. Repugnant portions of Ordinance No. 18 of 1844 and Act No. 15 of 1855 repealed.



No. 7—1864.

Registration on partition of property where no valuable consideration is given.

Duty payable on value given to effect partition.

Provisions of section of Ordinance No. 18, 1844, as to valuation in certain cases, to apply.

Meaning of Clause C of Schedule No. 1 to Ordinance No. 18 of 1844 not affected by Clause B of Schedule No. 1 to Act 15 of 1855.

II. No person claiming to be exempt from the payment of transfer duty upon the registration, after any voluntary or compulsory partition, of his separate share of any immovable property that had been by him and others, or another, held jointly, shall be entitled to such exemption unless he shall make and deposit with the officer authorized to receive transfer duty, or with the Registrar of Deeds, a solemn declaration that he has not given, nor is to give, any money or other valuable consideration to his late co-proprietors, or any of them, for or in regard to the share assigned to him, and which he desires to have registered in his name: Provided that if for the equalizing of partition, or for any other reason, such person shall have given or agreed to give to his late co-proprietors, or any of them, any money or other valuable consideration for the said share so assigned to him, he shall, by solemn declaration as aforesaid, state the amount or value given or to be given by him, and transfer duty shall be payable upon such value or amount: Provided that the provisions of the sixteenth section of the Ordinance No. 18, 1844, shall apply to the value of any consideration other than money given, or to be given, in case it shall appear to the civil commissioner who is to receive the transfer duty that such value is considerably less than the just and fair value of such consideration.

III. And whereas a doubt has been entertained whether Clause B of Schedule No. 1 to the Act No. 15, 1855, did not change the law as contained in Clause C of Schedule No. 1 of the Ordinance No. 18, 1844, in such manner as to entitle any such descendant as in the said clauses described to claim exemption from transfer duty upon so much of the purchase money of any immovable property purchased by him from his ancestor's estate as represents his share in such ancestor's general estate, instead of so much only as represents his share in the particular property so purchased; and whereas it was not intended by the Act No. 15, 1855, to make any change whatever in the previous law upon this subject: Be it enacted as follows:

IV. Clause B of Schedule No. 1 to the Act No. 15, 1855, is hereby repealed.

No. 7—1864.

Clause B of Schedule No. 1 to Act 15 of 1855 repealed.

V. Any person being a descendant of any deceased person, and who would be the heir, or one of the heirs, *ab intestato*, of such deceased person, who shall, being entitled as an heir or legatee in the estate, purchase or take over the immovable property in the estate, or any part thereof, shall not be chargeable with duty upon so much of the purchase-money or value of such property as represents his share in the property so purchased or taken over, considered as, or as if, an heir *ab intestato*; and the husband of any such heir or legatee, or the tutor, curator, or authorized agent or trustee of any such heir or legatee, purchasing for and in the name of such heir or legatee, shall be deemed and taken to be such heir for the purpose of this exemption.

Extent to which exemption from duty may be claimed by heirs.

Who shall be deemed to be heirs.

VI. The Schedule No. 2 to the Ordinance aforesaid, No. 18, 1844, entitled "Form of Oath of the Seller," shall, from and after the taking effect of this Act, be altered and amended by inserting next before the words "and that I am not to receive any other valuable consideration for or on account of the alienation of the said property," the words "and that I have not received," so that the said form shall, in that part or portion thereof, read thus: "And that I have not received, and that I am not to receive, any other valuable consideration for or in consideration of the alienation of the said property."

Alteration in form of oath of seller.

VII. If, in any case, it shall appear that besides a certain sum of money some additional valuable consideration shall be given and received, or agreed to be given and received, for or in consideration of the alienation of any immovable property, then the seller and the purchaser shall be respectively at liberty to put, by way of solemn declaration, a value in money upon such additional consideration, and such value shall be added to the sum of money first aforesaid, and transfer duty shall be paid upon the conjoint amount; and in case the said seller and purchaser shall not put the same value upon such additional consideration, then duty shall be paid upon the higher of the two values so put: Provided that

How amount of duty shall be determined where valuable consideration, other than money, shall have been given.

Where purchaser and seller disagree.

No. 7—1864.  
Provisions of 16th  
section of Ordinance  
No. 18 of 1844, as to  
valuation in certain  
cases, to apply.

Provisions of 15th  
section of said Ordi-  
nance, as to valua-  
tion, to apply.

Correction of mistakes  
in registration.

Short title.

the provisions of the sixteenth section of the said Ordinance shall apply to the value or values so put, in case it or they shall appear to the civil commissioner who is to receive the transfer duty to be considerably less than the just and fair value of such additional consideration: And provided that the fifteenth section of the said Ordinance shall apply to the valuation of such additional consideration in case the said seller and purchaser shall not, each of them, put a value thereupon.

VIII. It shall be lawful for the Governor, upon proof made to his satisfaction that any person, acting *bonâ fide*, has made a mistake in regard to the enregisterment of any transfer, to permit such transfer or transfers as may be necessary for the correction, in the Deeds Registry, of the said mistake to be passed free of transfer duty.

IX. This Act may be cited for all purposes as “The Transfer Duty Amendment Act, 1864.”

No. 8—1864.] AN ACT [July 26, 1864.

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.

I. 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

II. 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.

No. 8—1864.  
principal and interest specified.

III. 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.

To be charged on public revenue and on "sinking fund."

IV. 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.

Accounts to be laid before Parliament.

V. This Act may be cited for all purposes as "The Loan Act, 1864."

Short title.

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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
		<hr/>
		£234,000

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No. 9—1864.

No. 9—1864.] AN ACT [July 26, 1864.

To Make Provision, by means of a Sinking Fund,  
for paying off the Public Debt due by this Colony.

Preamble.

WHEREAS it is necessary to make provision for paying off from time to time, as parts or portions thereof become due, the public debt 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:

Five commissioners to be appointed.

I. It shall be lawful for the Governor, by proclamation, to appoint five fit and proper persons to be, and to be styled, "Commissioners for administering the Sinking Fund of the Cape of Good Hope."

Two commissioners to be officials and three unofficals.

II. Of the said five commissioners so to be appointed, two shall at all times be persons holding office of profit under Her Majesty the Queen, in Her local Executive Government of this colony, and three shall at all times be persons none of whom shall hold any such office.

Vacation of office.

III. If any commissioner for the time being shall die, or resign, or quit the colony for any period exceeding three months, or, having been the holder of an office of profit as aforesaid shall cease to be the holder of such an office, or if any commissioner shall be removed by the Governor by proclamation, then the office of such commissioner shall cease and determine, and another commissioner shall in manner aforesaid be appointed in his room and stead.

Quorum.

IV. At all meetings of the said commissioners, and for the transaction of any business coming before such commissioners, three commissioners shall form a quorum.

Appointment of chairman.

V. It shall be lawful for the Governor, by any such proclamation as aforesaid, to appoint one commissioner to be the chairman of such commissioners, but such chairman shall only have an original vote, and shall not have a casting vote.

Sinking fund, how created.

VI. It shall be lawful for the Governor to pay, or cause to be paid, to such commissioners as aforesaid, from and out of the public revenue of the colony,

yearly and every year, commencing from the first day of January, 1865, a sum of money equal to one pound for every one hundred pounds of the public debt of this colony for the time being, and the receipt or receipts of such commissioners for such money shall be an acquittance and discharge to the Treasurer-General of the colony.

No. 9—1864.

VII. It shall be the duty of the said commissioners to take charge of all such moneys as aforesaid, and with all convenient speed to invest the same upon first mortgage of fixed property situated in this colony, or in the purchase of debentures issued by the Government of this colony: Provided that the said commissioners shall, in making such investments, conform to and observe such regulations and rules touching the proportion which the amount to be lent on mortgage shall bear to the value of the property to be mortgaged, and touching the price to be paid for such debentures as aforesaid, and touching, generally, the right and proper administration of the sinking fund, as the Governor, with the advice of such commissioners, shall approve of and appoint.

Investment of sinking fund.

Subject to regulations made and approved.

VIII. All debentures which shall at any time be purchased by such commissioners shall be forthwith cancelled, in manner and form as shall be by such rules and regulations as aforesaid be directed and prescribed.

Debentures purchased to be at once cancelled.

IX. The Governor shall supply the said commissioners with a place for the holding of their meetings, and with a secure place for the keeping of the bonds and other securities under their administration, and with such clerical assistance as they may require.

Provision for office, clerical assistance, &c.

X. The said commissioners shall take bonds and securities, and shall sue and be sued by the name of "The Commissioners for administering the Sinking Fund of the Cape of Good Hope," and it shall not be necessary, in any bond, suit, or proceeding, to name any of the said commissioners: Provided that it shall be lawful for the chairman for the time being or any two commissioners to sign any warrant authorizing any attorney to sue any debtor to the said commissioners.

Commissioners, how to sue and be sued.

XI. The said commissioners shall in the month of

Annual statements to be furnished.

No. 9—1864.

January in every year prepare and transmit to the Governor an account or statement, showing the state and condition of the fund upon the thirty-first day of December in the previous year, and showing the amount of the said fund upon that day, and the manner in which it shall be then invested or disposed of, together with such other particulars as by such rules and regulations as aforesaid shall be directed or prescribed.

Statement to be published in Government Gazette and laid before Parliament.

XII. The account or statement aforesaid, or an abstract of it, shall be published by the Governor in the Government Gazette, for general information, and copies of the said account and statement shall be laid before both Houses of Parliament at the next ensuing meeting thereof.

Annual examination of securities.

XIII. The Governor shall in the month of December in every year appoint two or more persons, whom he shall deem competent for the purpose to examine all and singular the mortgage bonds taken by the said commissioners and then in their possession and custody, and to report to the said Governor whether the same are or are not, in the opinion of such examiners, good and sufficient.

Short title.

XIV. This Act may be cited for all purposes as "The Sinking Fund Act, 1864."

No. 10—1864.] AN ACT [July 26, 1864.

To Provide for the Construction and Maintenance of the Main Roads of the Colony.

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:

Repugnant portions of Act No. 9 of 1858, or of any other Act, repealed.

I. So much of the Act No. 9, 1858, entitled "An Act to provide for the Management of the Public Roads of the Colony," and so much of any other Act relating to such roads, as shall be repugnant to or

inconsistent with any of the provisions of this Act is hereby repealed.

No. 10—1864.

II. From and after the first day of January, 1865, the construction of new main roads in the colony shall remain with and belong to the general Government, and the maintenance or keeping in repair of the main roads of the colony shall belong to the divisional councils of this colony.

Construction and maintenance of main roads.

III. Every divisional council is hereby invested for the purposes of this Act with all and singular the rights, powers, and authorities set forth in the tenth, eleventh, twelfth, and thirteenth sections of the Act aforesaid, No. 9, 1858, precisely as if such divisional council were the commissioners of roads in the said sections mentioned, or one of such commissioners.

Powers vested in divisional councils.

IV. From and after the taking effect of this Act, the tolls taken at toll-bars established or to be established on any main road lying or being within any division, and at all ferries upon the line of any such main road, and within such division, shall belong to the divisional council of such division; and if, in any case, it shall so happen that any ferry at which there is a toll shall ply between two divisions, and not be wholly in either of them, then the tolls taken at such ferry shall be divided between the divisional councils of both divisions, share and share alike: Provided, in regard to any such ferry, that such divisional councils shall, by mutual agreement, arrange between them which council shall have the letting or farming of the toll at such ferry, and that, failing such agreement, the Governor shall decide.

Tolls and ferry charges to belong to divisional council of division in which situate.

Where situate between two divisions, mutual agreement as to letting to be made.

V. All and singular the provisions of the fourteenth, fifteenth, sixteenth, seventeenth, and eighteenth sections of the Act No. 9, 1858, in regard to toll-bars and tolls, shall, so far as any divisional council is concerned, apply to such council, and to all toll-bars and tolls within such division, in like manner as if the said sections, *mutatis mutandis*, were herein again set forth and word for word repeated.

Provisions of 16th, 17th, and 18th sections of Act No. 9 of 1858, in regard to toll-bars and tolls, to apply.

VI. The provisions of the twenty-second section of the Act No. 9, 1858, regarding the establishment of new tolls upon divisional roads, shall extend and

Section 22 of Act No. 9 of 1858, regarding establishment of new tolls on divisional roads, to apply.



No. 10—1864.

apply to the establishment of the new tolls upon main roads, anything in the fourteenth section of the said Act to the contrary notwithstanding.

Power to increase tolls with sanction of Governor.

VII. It shall be lawful for every divisional council, with the previous sanction of the Governor, to increase the amount of tolls from time to time payable at any toll-bars in such division, whether such toll-bar shall be upon a main road or a divisional road, anything in the fourteenth section of the Act No. 9, 1858, to the contrary notwithstanding: Provided that it shall not be competent for any divisional council to increase any toll existing at the time of the taking effect of this Act to rates or amounts exceeding treble the rates or amounts of the tolls payable at the time of the taking effect of this Act: Provided, also, that it shall be lawful for any divisional council from time to time, with such sanction as aforesaid, at its discretion, to alter particular items in any tariff of tolls, by increasing or diminishing the same, without altering the other items of such tariff, as also to add new items or omit old items.

Amount to which existing rates of tolls may be raised.

Single items may be raised or diminished.

VIII. It shall be lawful for every divisional council, at any time after the first day of January, 1865, to assess rates upon the immovable property within such division for the purpose of keeping the main roads within such division in repair, in like manner, precisely, as such council might now by law assess rates upon such property for making, improving, and maintaining the divisional roads of such division; and the valuation for the time being of such property under the Act No. 9, 1858, as amended by the "Road Act Amendment Act, 1860," shall be the valuation for assessment under this Act.

Power of divisional council to assess rates.

Moneys required for main and divisional road purposes may be included in one rate.

IX. It shall be lawful for any divisional council, should it so think fit, to include in one and the same rate, moneys required for the purpose of main roads and moneys required for the purpose of divisional roads; but in every case of such joint assessment some fixed and definite proportion of the rate assessed shall be devoted to the purpose of main roads, and the remainder shall be devoted to divisional roads, and the accounts showing the receipts and expenditure for main roads shall be kept separate and dis-

tinct from the accounts showing the receipts and expenditure for divisional roads: Provided that so much of the thirty-eighth section of the Act No. 9, 1858, as provides that no rate shall exceed one penny in the pound upon the value of the property liable to be rated shall be and the same is hereby repealed.

No. 10—1864.  
Portion of Section 33 of Act No. 9 of 1858, limiting rate leviable to one penny, repealed.

X. Every rate assessed under this Act for the maintenance of main roads shall be payable and recoverable as if it were a rate assessed for the purpose of divisional roads, and the provisions of the thirty-ninth, fortieth, and forty-first sections of the Act No. 9, 1858, shall apply, *mutatis mutandis*, to every such rate.

Rate assessed, how recoverable.

XI. All moneys raised or received by any divisional council from any source whatever for the purposes of this Act shall be appropriated to the maintenance and keeping in repair of the several main roads within such division and the public dams upon such roads.

Moneys to be appropriated to maintenance of main roads and dams.

XII. As often as any line of main road within any division shall pass through any municipality or corporate town, the divisional council and the commissioners of such municipality or the corporation of such corporate town (as the case may be) shall contribute, share and share alike, to the cost of maintaining and keeping in repair that piece or portion of such main road lying within the limits of such municipality or corporate town, and the said council and the said commissioners or corporation shall by mutual agreement settle between them by whom or in what manner the work of maintaining and keeping in repair such piece or portion of road shall be performed: Provided that should the said council and the said commissioners, or corporation, be unable to agree in regard to any matter or question relating to their respective rights and duties under this section, the matter or question in controversy may by either party be submitted to the Governor, who, after hearing both parties, shall, with the advice of the Executive Council, decide the same, and whose decision shall be final.

Municipalities to contribute towards maintenance of portion of main line of road running through town.

In case of disagreement, Governor to decide.

XIII. If any divisional council shall neglect to maintain and keep in usual and customary repair

Proceedings when divisional council shall fail to keep main roads in repair.

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any main road within the division to which such council belongs, it shall be lawful for the divisional council of any other division through any part of which the said main road shall run, or for any number of land-owners within any division through any part of which such main road shall run, not fewer than twenty-five, to require, in writing, the divisional council so in default to put the said main road lying within the said division into such repair as aforesaid; and if such council shall not within a reasonable time after the receipt of such requisition put the said main road into such repair as aforesaid, then it shall be lawful for the council which made the said requisition, or any five or more of the land-owners aforesaid (as the case may be), to apply to the Governor, who shall appoint some competent and proper person or persons to inspect the main road which is alleged to be out of repair; and should such person or persons report that such main road is out of repair, the Governor shall, by some writing signed by the Colonial Secretary, direct the divisional council in default to put the said road into such repair as aforesaid within some reasonable time to be limited in such writing; and unless, within such time, the said council shall put the said main road into such repair, then the Governor shall cause the same to be put into such repair, and the sum expended in putting the same into repair, together with the reasonable expenses of the person or persons who made the inspection aforesaid, shall be a debt due by the said divisional council: Provided, also, that a certificate, signed by the Auditor of the colony and setting forth the amount of such debt, shall in all courts and places be conclusive evidence of the amount thereof.

Liability of divisional council to be sued for amount expended by Government in repairs of any main road neglected by such council.

XIV. It shall be lawful for the Colonial Secretary, acting for and on behalf of Her Majesty the Queen, to sue the divisional council aforesaid for the amount of any such debt as aforesaid, 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 the said Colonial

Secretary, and to any writ of execution issued in pursuance of such judgment, precisely as if such divisional council were the municipal board of Cape Town and the judgment recovered against such divisional council had been a judgment recovered against such municipal board.

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XV. In case there should not be at any time after the taking effect of this Act, in any division, for the space of three months, any divisional council, then it shall be lawful for the Governor, by proclamation, to annex such division to any adjoining division in and for which division a divisional council shall exist, and thereupon the divisional council of such last-mentioned division shall become the divisional council of the other division so annexed, and shall be competent to exercise, and is hereby required to exercise, all and singular the provisions and authorities which might under this Act have been exercised by the divisional council of the division so annexed, did such a council exist: Provided, however, that such annexation shall take place only for the purposes of this Act, and not for any other purpose: And provided, also, that notwithstanding any such annexation, the divisional council of the division to which any other division shall have been annexed shall frame the accounts in the thirty-fifth section of this Act mentioned in such a way as to keep the receipts and expenditure of the division which shall have been so annexed as aforesaid distinct and separate from the receipts and expenditure of the division to which such division shall have been annexed.

Any division having no council may be annexed to an adjoining division where there is a council.

Annexation only for purposes of Act.

Separate accounts to be kept.

XVI. Notwithstanding anything in the preceding section mentioned, it shall be lawful for the Governor, under the circumstances therein set forth, instead of annexing the division in and for which no divisional council shall exist to another division, to nominate and appoint, by proclamation, such number of fit and proper persons as he shall select, being not less than five nor more than seven, to be the divisional council of such division for the purposes of this Act; and every such nominated divisional council shall be competent to exercise, and is hereby required to

Instead of such annexation, the Governor may by proclamation appoint divisional council.

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Who may be so appointed.

Duration of office.

Annexation or nomination by Governor may be annulled and cancelled on division electing its council.

Law relating to divisional council not to be affected.

As to contribution by one division towards maintenance of roads in another division.

exercise, all and singular the powers and authorities which might under this Act have been exercised by a divisional council duly elected, did such a council exist: Provided that the persons so nominated and appointed may or may not be persons resident within such division, as may be found convenient: And provided that every nominated council shall go out of office at the end of three years, reckoned from the day of the publication of the proclamation appointing such council, and be succeeded by another council to be appointed by proclamation as aforesaid, and so on, as long as no divisional council shall be elected for that division.

XVII. Should any division which shall have been annexed as aforesaid to any other division, or for which a divisional council shall have been appointed as aforesaid, at any time after such annexation or appointment elect and have a divisional council for such a division, it shall be lawful for the Governor, by proclamation, to revoke and annul such annexation or appointment, from and after such convenient day as the Governor shall fix and announce; and from and after such day, but not sooner, the divisional council so elected shall be deemed and taken to be in office, and shall take over from the divisional council previously in office all moneys, contracts, officers, matters, and things belonging to the administration of such council in regard to such division to the plight and condition in which they shall then be, precisely as if the period of office of such previous council had terminated by effluxion of time.

XVIII. Nothing in this Act contained shall alter or affect any law relative to the divisional or branch roads of any division, or to any roads whatever, except the main roads of the colony.

And whereas it is expedient that certain divisions of this colony should, in consideration of the use made by them of certain main roads and mountain passes lying in other divisions, contribute towards the expense of maintaining such roads and passes: And whereas it is also expedient that, in certain cases, the divisional council of one division should be empowered and required to keep in repair some

defined extent of main road or mountain pass lying in another division : Be it enacted as follows :

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XIX. 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.

Divisional council of Worcester to maintain line of road from Worcester to top of Bain's Pass.

XX. 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.

Annual contribution of division of Robertson towards above road fixed at £300.

XXI. 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.

Divisional council of Beaufort to maintain line of road from town of Beaufort through Meiring's Pass.

XXII. 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 pounds, and the divisional council of Victoria West the sum of one hundred pounds.

Annual contribution of divisions of Prince Albert and Victoria West to above road fixed at £200 and £100 respectively.

XXIII. In consideration of the benefit derived by the inhabitants of Fraserberg 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 Fraserberg 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 divisions of Fraserburg and Calvinia to division of Tulbagh, for use of main road, fixed at £125 each.

XXIV. In consideration of the benefit derived by the inhabitants of Oudtshoorn from the use of Montagu Pass, in the division of George, the divi-

Annual contribution of division of Oudtshoorn to division of George, for use of Montagu Pass, fixed at £500.

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sional 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.

XXV. 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.

XXVI. 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.

XXVII. 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 Kuil's 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.

XXVIII. 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,

XXIX. 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 of Peddie, yearly and every year, the sum of two hundred and twenty-six pounds.

XXX. It shall be lawful for every divisional council which is or shall be required to pay or contribute any sum of money to any other divisional council, under any of the provisions of this Act, to assess rates upon the immovable property of the contributing division for the purpose of such contribution, precisely as if such money were required for the maintenance and keeping in repair of a main road lying within such last-mentioned division; and in like manner every divisional council which is or shall be, by or under any of the provisions of this Act, charged with the duty of maintaining and keeping in repair any line of main road lying in any other division than that to which such council belongs, may assess rates upon the immovable property of the division to which such council belongs, for the purpose of such maintenance and repair.

XXXI. As often as any divisional council is or shall be, by or under any of the provisions of this Act, charged with the duty of maintaining and keeping in repair any line of main road lying in any other division than that to which such council belongs, the divisional council so charged shall be and it is hereby invested with all and singular the same powers and authorities in regard to the taking of lands and materials, whether of Her Majesty the Queen or of private persons, the erection of toll-houses and toll-bars, the taking of tolls, the renting or farming of tolls, and the protection of tolls by penalties, which would have been possessed by the divisional council of the division in which such line of road shall lie, in case such council had been charged with maintaining such line and keeping it in repair; and the divisional council first aforesaid shall be charged with the performance of every duty in regard to such line which the divisional council of the division in which it lies would have been charged with in case such last-mentioned council had been charged with such maintenance and repair.

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for use of main road,  
fixed at £226.

Rate may be assessed  
for purposes of con-  
tribution or for main-  
tenance of main road  
situate in other  
division.

Powers vested in  
divisional council  
charged with main-  
tenance of road not  
lying within its own  
division.



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Annual contributions shall be due on 1st July.

XXXII. Every payment or contribution to be made by any one division to any other division shall become due and payable on the first day of July in each year, unless otherwise agreed upon between the divisional councils of the said divisions, and in case it shall not be made within one month after the said date, the same may be sued for by the divisional council entitled to receive the same; and the provisions of the fourteenth section of this Act shall extend and apply to the recovery thereof: Provided that as often as by any such agreement as aforesaid any different time or times shall be fixed for the payment of any such contribution, the same shall be payable and recoverable at and after the time or times so fixed: Provided that the first annual contribution under this Act shall be made in and for the year 1865.

Or other date may be fixed by agreement.

First contribution in 1865.

Alterations as to amount of contributions, charge of roads, &c., may be made by Parliament.

XXXIII. 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.

Government to maintain in repair the retaining walls of mountain passes for one year.

XXXIV. It shall be the duty of the Colonial Government, from and out of the public revenue, to keep in usual and customary repair the retaining

walls of all mountain passes in this colony for the space of twelve months next after the day upon which such passes shall be taken over under this Act by the several divisional councils.

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XXXV. Every divisional council shall cause an exact and particular account to be kept, and to be made up and balanced at the end of each year, of all moneys raised or collected or otherwise received by such council or by any person on its behalf, under the provisions or for the purposes of this Act, and of all rates assessed under this Act due and in arrear, and of all disbursements made and expenses incurred by the said council for the said purposes, distinguishing the amount derived from each source of receipt, and shall furnish a copy of such account, together with all necessary vouchers, to the Governor, in order that the same, after having been audited by the Auditor of the colony, may be laid before both Houses of Parliament; and every divisional council which shall receive or be entitled to any contribution from any other divisional council for or in consideration of the maintenance and repair of any line of road, or mountain pass, shall keep its accounts in such manner as to show separately and correctly the expenditure really and *bonâ fide* made by such council upon such road or pass.

Annual accounts to be submitted to Parliament.

XXXVI. Every valuator appointed after the taking effect of this Act by any divisional council, under the twenty-seventh section of the Act No. 9, 1858, shall, before entering upon the valuation intrusted to him, take, before any resident magistrate in the division to which such council belongs, the following oath:

Form of oath to be taken by valuator.

I, A B, do solemnly swear that I will, to the best of my skill and knowledge, and without fear, favour, or prejudice, truly and impartially appraise and value all such property as I shall be called upon to appraise and value in the division of \_\_\_\_\_, for the purpose of road assessment, and that I shall conscientiously value the same at and for the full and fair price or sum

III.

F

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which such property would in my judgment, be likely to realize if brought at the time of such valuation to voluntary sale, and sold upon the terms and conditions usual in the said division. So help me God!

(Signed) A B.

Sworn at—this—day of—186—.

Before me, O D, Resident Magistrate.

Oath to be lodged with divisional council.

XXXVII. Every such oath as aforesaid shall be lodged with and preserved by the divisional council to which it relates.

Form of oath to be taken by presiding member of court appointed to hear objections to valuations.

XXXVIII. The presiding member of any such court as is in the thirty-fourth and thirty-fifth sections of the Act No. 9, 1858, described, shall, before said court proceeds to hear objections to any valuation, take himself, in open court, the following oath:

I, A B, do solemnly swear that I will, to the best of my skill and knowledge, and without fear, favour, or prejudice, truly and impartially adjudge upon all questions that may come before me as a member of this court. So help me God!

And the presiding member shall then administer the same oath to the members of the court.

Moiety of penalties for injury done to property protected by Act 9 of 1858 to go to divisional council.

XXXIX. The moiety of the forfeiture in the fifty-sixth section of the Act No. 9, 1858, mentioned, and which moiety is therein directed to be paid to the colonial treasury, shall, from and after the taking effect of this Act, be paid to the divisional council of the division within which the offence entailing such forfeiture shall have been committed, and every divisional council shall be entitled to claim the remedy or relief which, by the fifty-sixth and fifty-seventh sections of the said Act, is made claimable by any commissioner, as in the said sections mentioned.

Interpretation of terms used in this Act.

XL. In the interpretation of this Act, the term "construction" shall mean the first making of a main road over ground where there was no main road before, and shall include all work necessary to be done for completing such road down to the open-

ing thereof for traffic; and the terms "maintenance" and "keeping in repair" shall both signify the same thing, and shall include all work necessary to be done to any main road already opened for traffic in order to put, keep, and have it in usual and customary repair: Provided that if by reason of floods or other casualty, or any cause other than usual and customary wear and tear, any bridge shall be carried away or otherwise injured, or if from natural decay or other cause, any bridge shall require to be reconstructed, then the making good of such extraordinary injury or the effecting of such reconstruction shall, in case the amount necessary to be expended shall exceed one hundred pounds sterling, be considered as coming under the head of "construction," and not of "maintenance:" Provided, further, that if at any time any doubt or question should arise whether any particular work necessary to be done in or about any main road should be regarded as coming under the head of "construction" or the head of "maintenance," such doubt or question shall be, in the first instance, decided by the Governor, with the advice of the Executive Council, and such decision shall be final, unless Parliament shall otherwise decide: Provided, also, that all papers and information connected with such doubt or question, and the decision thereof, shall be laid before both Houses of Parliament at their then next meeting.

XLI. The Act No. 9, 1858, and all other Acts relating to the construction and maintenance of main roads, in so far as there is nothing in the said Acts repugnant to or inconsistent with any of the provisions of this Act, shall be and the same are hereby declared to be perpetual, anything in the third section of the Act No. 1, 1863, to the contrary notwithstanding.

Act No. 9 of 1858,  
and other Road Acts,  
declared perpetual.

XLII. This Act may be cited for all purposes as Short title.  
"The Road Act, 1864."

XLIII. This Act shall continue in force until the Duration of Act.  
thirty-first day of December, 1866, and no longer.

No. 11—1864.

No. 11—1864.] AN ACT [July 26, 1864.

For Amending the Law relative to the Constitution of Divisional Councils, and for other purposes.

Preamble.

WHEREAS it is intended to provide by law that the Divisional Councils of the several divisions should be charged with the duty of keeping in repair the main roads of this colony: And whereas it is expedient to alter in certain respects the constitution of the said councils: Be it enacted by 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. 5 of 1855 and No. 9 of 1861 repealed.

I. So much of the Act No. 5 of 1855, entitled "An Act for creating Divisional Councils in this Colony," and so much of the Act No. 9 of 1861, amending the Act aforesaid, as shall be repugnant to or inconsistent with any of the provisions of this Act are hereby repealed.

Who to vote for members of divisional council.

II. Every male person who is the occupier of any immovable property in any division, which property as by him occupied shall be separately valued in order to be separately rated for road purposes, and no other person, shall be entitled to vote for the members of the divisional council to be elected by such division: Provided that every registered voter as hereinafter in the next succeeding section described shall be entitled to claim that any fixed property from and out of his occupancy of which he shall be registered shall be separately valued in order to be separately assessed: Provided, also, that until the next ensuing valuation for road purposes in any division, every registered voter in such division shall be entitled to vote under this Act for members of the divisional council of such division, although no fixed property of such voter shall now be separately valued in order to be separately assessed.

Where joint occupiers shall be entitled to vote.

III. Where any immovable property so separately valued as aforesaid shall be jointly occupied by more persons than one, each of such joint occupiers shall be entitled to vote for members of the divisional council, in case he shall be a registered voter, entitled,

from and out of such occupancy, to vote for members of the House of Assembly for such division, but not unless he is so registered.

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IV. The number of the elective members of each divisional council in this colony shall be eight, instead of six, as by the Act No. 5, 1855, provided; and for the purpose of making up the number of eight councillors, the district in which the office of the civil commissioner shall be situated shall be entitled to elect three members instead of one: Provided that every person entitled to vote in such district shall be entitled to give one vote, and no more, for each of any three candidates at any such election.

Divisional council to consist of eight elective members.

Number of votes each elector is entitled to give.

V. From and after the first of November, 1864, the quorum at any meeting of any divisional council shall consist of four members, exclusive of the chairman.

Quorum.

VI. Every divisional council which shall be in office at the time of taking effect of this Act shall remain in office till the first day of November, 1864, and shall then go out of office, precisely as if, upon that day, the time for which it was originally elected had expired by effluxion of time.

Duration of office of divisional councils in office at time of this Act taking effect.

VII. In regard to the first and every successive general election of divisional councils under this Act, the civil commissioner of each division shall proceed under and according to the provisions of the twenty-third section of the Act No. 5, 1855, save and except that the polls in every division shall all be taken upon one day, which day shall be the second Wednesday of the October immediately preceding the first of November upon which the divisional councillors go out of office: Provided that, in regard to the first election of divisional councillors under this Act, it shall not be necessary that the notice mentioned in the ninth section of the Act No. 5, 1855, should be published for thirty-one days before the second Wednesday in October, 1864.

Mode of election.

Poll to be taken on one day.

For first election 31 days' notice not necessary.

VIII. The eleventh section of the Act No. 5, 1855, is hereby repealed.

Section 11 of Act No. 5, 1855, repealed.

IX. The civil commissioner of every division shall, not less than fourteen days before the earliest day

Field-cornet taking the poll to be furnished with certified list of voters.

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named by him in the certain notice specified in the ninth section of the said Act No. 5, 1855, for the taking of the poll in any field-cornetcy of such division, deliver, or cause to be delivered, to the field-cornet of such field-cornetcy, a list of all persons resident in such field-cornetcy, entitled to vote at such election, which list the said civil commissioner shall under his hand certify to be correct, and no person whose name shall not be placed in or upon such list shall be entitled or allowed to vote.

Two auditors of divisional council's accounts to be elected.

X. Two auditors of the accounts of the divisional council shall be elected by the persons entitled to vote for members of the divisional council at a public meeting of such persons, to be convened by the civil commissioner of the division, and to be held in the court-room of the district on the second Wednesday of the month of January succeeding every general election of members of the divisional council of such division: Provided that the civil commissioner shall convene such meeting by a notice posted for not less than fourteen days next before the day of meeting at or near his public office, and published in any newspaper issued in the town or village in which such meeting is to be held, or, if there be no such newspaper, then in whatever newspaper shall be issued nearest to such town or village: Provided, also, that if such civil commissioner shall fail or neglect to post or publish such notice, the said meeting shall, nevertheless, be held at ten o'clock a.m. on the day and at the place aforesaid: Provided, further, that such meeting may be adjourned till a future day should the persons present thereat and entitled to vote so determine.

Notice of meeting for election of auditors to be given.

In case of failure to give notice.

Adjournment of meeting.

Who may not be elected as auditor.

XI. It shall not be competent to elect as an auditor any member of the divisional council of which the accounts are to be audited by such auditor, nor any person related to any member of such council in or within the third degree of consanguinity or affinity: Provided that no auditor who was, at the time of his election, duly qualified to be elected shall cease to hold such office by reason that some person related to him in or within such third degree shall after the election of such auditor become a member

of the divisional council to supply some casual vacancy, or by reason that such auditor and some person who was, when such auditor was elected, already a member of the divisional council, shall after such election become related to each other in or within the third degree of affinity.

XII. Should any auditor die or resign, or refuse to act, or become incapable of acting from mental or bodily disease, or cease to reside in the division for which he was elected, or become insolvent, or assign his estate for the benefit of his creditors, his office shall become vacant, and the remaining auditors shall act alone until the next election of auditors as hereinbefore provided.

Vacancy in office of auditor.

XIII. It shall be the duty of such auditors to audit the accounts of the divisional council, and to publish in some such newspaper as in tenth section mentioned an abstract of such accounts: Provided, also, that all accounts which, under and by virtue of any Act in force for the time being relative to the public roads of the colony, shall be furnished to the Governor by any divisional council shall, when so furnished, be certified as correct by the auditors aforesaid.

Accounts to be audited and published.

Auditors to certify accounts furnished to Government.

XIV. The remuneration to be paid to such auditors as aforesaid shall be fixed at and by the meeting at which they shall be elected, and such remuneration, together with the cost of publishing every such notice of meeting and abstract of accounts, shall be paid from and out of the funds of the divisional council.

Remuneration to auditors.

XV. No member of any divisional council whose ordinary place of residence shall not be distant more than ten miles from the place in which any meeting of such divisional council shall be held shall be entitled to receive any payment for or in regard to his attendance at such meeting, either by way of travelling expenses or otherwise, anything in the first section of the Act No. 14, 1860, to the contrary notwithstanding.

Travelling allowance &c., to members.

XVI. This Act may be cited for all purposes as "The Divisional Councils Amendment Act, 1864."

Short title.



No. 12—1864.

No. 12—1864.] AN ACT [July 26, 1864.

To Amend the Law relating to the Fraudulent Marking of Merchandise.

Preamble.

WHEREAS it is expedient to assimilate the law relating to the fraudulent marking of merchandise, and to the sale of merchandise falsely marked for the purpose of fraud, to the law of the United Kingdom, as the same is contained in the Act 25 and 26 of Her Majesty, chapter eighty-eight: 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:

Interpretation of terms used in this Act.

I. In the construction of this Act, the word "person" shall include any person, whether a subject of Her Majesty or not, and any body corporate, or body of the like nature, whether constituted according to the law of this colony or of any of Her Majesty's dominions, or according to the law of any foreign country, and also any company, association, or society of persons, whether the members thereof be subjects of Her Majesty or not, or some of such persons subjects of Her Majesty, and some of them not, and whether such body corporate, body of the like nature, company, association, or society be established to carry on business within Her Majesty's dominions or elsewhere, or partly within Her Majesty's dominions and partly elsewhere; the word "mark" shall include any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark of any other description; and the expression "trade mark" shall include any and every such name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark as aforesaid, lawfully used by any person to denote any article of trade, manufacture, or merchandise to be an article or thing of the manufacture, workmanship, production, or merchandise of such person, or to be an article or thing of any peculiar or particular description made or sold by such person, and shall also include any name, signature, word, letter, number,

figure, mark, or sign which, in pursuance of any statute or statutes for the time being in force in the United Kingdom relating to registered designs, is to be put or placed upon or attached to any article during the existence or continuance of any copyright or other sole right acquired under the provisions of such statutes or any of them.

II. Every person who, with intent to defraud, or to enable another to defraud any person, shall forge, or counterfeit, or cause or procure to be forged or counterfeited, any trade mark, or shall apply, or cause or procure to be applied, any trade mark or any forged or counterfeited trade mark to any article not being the manufacture, workmanship, production, or merchandise of any person denoted or intended to be denoted by such trade mark, or denoted or intended to be denoted by such forged or counterfeited trade mark, or not being the manufacture, workmanship, production, or merchandise of any person whose trade mark shall be so forged or counterfeited, or shall apply, or cause or procure to be applied, any trade mark or any forged or counterfeited trade mark to any article not being the particular or peculiar description of manufacture, workmanship, production, or merchandise denoted or intended to be denoted by such trade mark or by such forged or counterfeited trade mark, shall be guilty of the offence of contravening this section of this Act; and every person so committing such offence shall also forfeit to Her Majesty every article belonging to such person to which he shall have so unlawfully applied, or caused or procured to be applied, any such trade mark, or forged or counterfeited trade mark, as aforesaid; and every instrument in the possession or power of such person, and by means of which any such trade mark or forged or counterfeit trade mark as aforesaid shall have been so applied, and every instrument in the possession or power of such person for applying any such trade mark or forged or counterfeited trade mark as aforesaid, shall be forfeited to Her Majesty; and the court before which any such offence shall be tried may order such forfeited articles as aforesaid to be de-

Forging or falsely applying a trade mark, with intent to defraud, an offence.

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stroyed, or otherwise disposed of as such court shall think fit.

Applying a forged trade mark to any vessel, case, wrapper, &c., in or with which any article is sold, or intended to be sold, an offence.

III. Every person who, with intent to defraud or enable another to defraud any person, shall apply, or cause to procure to be applied, any trade mark, or any forged or counterfeited trade mark, to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, in, on, or with which any article shall be intended to be sold, or shall be sold or uttered or exposed for sale, or intended for any purpose of trade or manufacture, or shall enclose or place any article, or cause or procure any article to be enclosed or placed, in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall apply or attach, or cause or procure to be applied or attached, to any article, any case, cover, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall enclose, place, or attach, any article, or cause or procure any article to be enclosed, placed, or attached, in, upon, under, with, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, having thereon any trade mark of any other person, shall be guilty of the offence of contravening this section of this Act; and every person so committing such offence shall also forfeit to Her Majesty every such article, and also every such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid, in the possession or power of such person; and every other similar cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing made to be used in like manner as aforesaid; and every instrument in the possession or power of such person for applying any such trade mark, or forged or counterfeited trade mark, as aforesaid, shall be forfeited to Her Majesty; and the court before which any such offence shall be tried may order such forfeited articles as aforesaid to

be destroyed, or otherwise disposed of as such court shall think fit.

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IV. Every person who, after the first day of January, 1865, shall sell, utter, or expose either for sale or for any purpose of trade or manufacture, or cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any article, together with any forged or counterfeited trade mark, which he shall know to be forged or counterfeited, or together with the trade mark of any other person applied or used falsely or wrongfully or without lawful authority or excuse, knowing such trade mark of another person to have been so applied or used as aforesaid, and that whether any such trade mark or forged or counterfeited trade mark as aforesaid, together with which any such article shall be sold, uttered, or exposed for sale or other purpose as aforesaid, shall be in, upon, about, or with such article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such article shall be sold or uttered or exposed for sale or other purpose as aforesaid, shall be guilty of the offence of contravening this section of this Act, and shall, for every such offence, be fined a sum of money equal to the value of the article so sold, uttered, offered or exposed for sale or other purpose as aforesaid, together with a further sum not exceeding five pounds and not less than ten shillings.

Selling articles with forged or false trade marks after 1st January, 1865, penalty equal to value of article sold, and fine not exceeding £5 nor less than 10s.

V. Every addition to, and every alteration of, and also every imitation of any trade mark which shall be made, applied, or used with intent to defraud, or to enable any other person to defraud, or which shall cause a trade mark with such alteration or addition, or shall cause such imitation of a trade mark, to resemble any genuine trade mark so or in such manner as to be calculated or likely to deceive, shall be and be deemed to be a false, forged, and counterfeited trade mark within the meaning of this Act; and every act of making, applying, or otherwise using any such addition to or alteration of a trade mark, or any such imitation of a trade mark as aforesaid, done by any person with intent to defraud, or

Additions and alterations to trade marks made with intent to defraud to be deemed forgeries.

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to enable any other person to defraud, shall be and be deemed to be forging and counterfeiting a trade mark within the meaning of this Act.

Any person who, after the 1st January, 1865, shall have sold an article having a false trade mark to be bound to give information where he procured it.

VI. Where any person who, at any time after the first day of January, 1865, shall have sold, uttered, or exposed for sale or other purpose as aforesaid, or shall have caused or procured to be sold, uttered or exposed for sale or other purpose as aforesaid, any article, together with any forged or counterfeited trade mark, or together with the trade mark of any other person used without lawful authority or excuse as aforesaid, and that whether any such trade mark or such forged or counterfeited trade mark as aforesaid be in, upon, about, or with such article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such article shall have been sold or exposed for sale, such person shall be bound, upon demand in writing delivered to him or left for him at his last known dwelling house, or at the place of sale or exposure for sale, by or on the behalf of any person whose trade mark shall have been so forged or counterfeited or used without lawful authority or excuse as aforesaid, to give the person requiring the same, or his attorney or agent, within forty-eight hours after such demand, full information, in writing, of the name and address of the person from whom he shall have purchased or obtained such article, and of the time when he obtained the same; and it shall be lawful for any resident magistrate, on information on oath of such demand and refusal, to summon before him the party refusing, and on being satisfied that such demand ought to be complied with, to order such information to be given within a certain time to be appointed by him; and any such party who shall refuse or neglect to comply with such order shall be guilty of the offence of contravening this section of this Act, and shall, for every such offence, be fined the sum of five pounds; and such refusal or neglect shall be *primâ facie* evidence that the person so refusing or neglecting had full knowledge that the trade mark, together with which such article was sold, uttered or

Power of resident magistrate to summon parties refusing to give information.

Penalty for refusal, £5.

exposed for sale or other purpose as aforesaid, at the time of such selling, uttering, or exposing, was a forged, counterfeited, and false trade mark or was the trade mark of a person which had been used without lawful authority or excuse, as the case may be.

VII. Every person who, with intent to defraud, or to enable another to defraud, shall put, or cause or procure to be put, upon any article, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which any article shall be intended to be or shall be sold or uttered or exposed for sale, or for any purpose of trade or manufacture, or upon any case, frame, or other thing in or by means of which any article shall be intended to be or shall be exposed for sale, any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such article, or any part thereof, or of the place or country in which such article shall have been made, manufactured, or produced, or shall put, or cause to procure to be put, upon any such article, cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing as aforesaid, any word, letter, figure, signature, or mark, for the purpose of falsely indicating such article, or the mode of manufacturing or producing the same, or the ornamentation, shape, or configuration thereof, to be the subject of any existing patent, privilege, or copyright, either in this colony or elsewhere, shall be guilty of the offence of contravening this section of this Act, and shall, for every such offence, be fined a sum of money equal to the value of the article so sold or uttered or exposed for sale, together with a further sum not exceeding five pounds and not less than ten shillings.

VIII. Every person who, after the first day of January, 1865, shall sell, utter, or expose for sale or for any purpose of trade or manufacture, or shall cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any article upon which shall have been, to his knowledge, put or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing

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Marking any false indication of quantity, &c., upon an article with intent to defraud, penalty equal to value of article, and fine not exceeding £5 nor less than 10s.

Selling or exposing for sale after 1st January, 1865, articles with false statements of quantities, &c., penalty not more than £5 nor less than 5s.

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together with which such article shall be sold or uttered or exposed for sale or other purpose as aforesaid, shall have been so put or upon any case, frame, or other thing used or employed to expose or exhibit such article for sale shall have been so put, any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such article or any part thereof, or the place or country in which such article shall have been made, manufactured, or produced, shall be guilty of the offence of contravening this section of this Act, and shall, for every such offence, be fined a sum not exceeding five pounds and not less than five shillings.

Application of names or words known to be used for indicating particular classes of manufactures not to be an offence within meaning of this Act.

IX. Provided, always, that the provisions of this Act shall not be construed so as to make it any offence for any person to apply to any article, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing with which such article shall be sold or intended to be sold, any name, word, or expression generally used for indicating such article to be of some particular class or description of manufacture only, or so as to make it any offence for any person to sell, utter, or offer or expose for sale, any article to which, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing sold therewith, any such generally used name, word, or expression as aforesaid shall have been applied.

Description of trade marks and forged trade marks in indictments, &c.

X. In every indictment, plaint, summons, pleading, proceeding, and document whatsoever in which any trade mark shall be intended to be mentioned, it shall be sufficient to mention or state the same to be a trade mark, without further or otherwise describing such trade mark, or setting forth any copy or facsimile thereof; and in every indictment, plaint, summons, pleading, proceeding, and document whatsoever in which it shall be intended to mention any forged or counterfeit trade mark, it shall be sufficient to mention or state the same to be a forged or counterfeit trade mark, without further or otherwise describing such forged or counterfeit trade mark, or setting forth any copy or facsimile thereof.

XI. The provisions in this Act contained of or

concerning any act, or any proceeding, judgment, or conviction for any act hereby declared to be an offence, shall not, nor shall any of them, take away, diminish, or prejudicially affect any civil suit, process, proceeding, right, or remedy which any person aggrieved by such act may by law be entitled to, and shall not, nor shall any of them, exempt or excuse any person from answering or making discovery, upon examination as a witness, or upon interrogatories or otherwise, in any civil proceeding: Provided, always, that no evidence, statement, or discovery which any person shall be compelled to give or make shall be admissible in evidence against such person in support of any indictment or plaint for an offence under this Act, or otherwise.

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Conviction not to affect any right or civil remedy.

XII. In every indictment, plaint, summons, conviction, pleading, and proceeding against any person for any offence against any of the provisions of this Act, in which it shall be necessary to allege or mention an intent to defraud, or to enable another to defraud, it shall be sufficient to allege or mention that the person accused of having done any act which is hereby made an offence did such act with intent to defraud, or with intent to enable some other person to defraud, without alleging or mentioning an intent to defraud any particular person; and on the trial of any such indictment or plaint for any such offence, it shall not be necessary to prove an intent to defraud any particular person, or an intent to enable any particular person to defraud any particular person, but it shall be sufficient to prove, with respect to every such offence, that the person accused did the act charged with intent to defraud, or with intent to enable some other person to defraud, or with the intent that any other person might be enabled to defraud.

Intent to defraud, &amp;c., any particular person need not be alleged in any indictment, &amp;c., or proved.

XIII. Every person who shall aid, abet, counsel, or procure the commission of any offence under this Act shall be guilty of the offence of being an accessory to the offence committed.

Person aiding to 'be considered as accessory.

XIV. Every person who shall be convicted or found guilty of the offence of contravening the second or the third section of this Act shall be liable

Punishment for offences under sections 2 and 3 of this Act.



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to be imprisoned for any period not exceeding two years, or to be fined at the discretion of the court, or to be both fined and imprisoned, and if fined, to be imprisoned until such fine be paid: Provided that any imprisonment adjudged against any such offender may be either with or without hard labour, as the court shall direct.

Courts competent to try offences under this Act.

XV. All offences against any of the provisions of this Act shall be capable of being tried in the Supreme Court, or in any circuit court to which any such case as aforesaid may be removed by the Supreme Court, or in any circuit court held for the division in which the offence shall have been committed, but (except as hereinafter excepted) not in any other court: Provided that it shall be competent for the public prosecutor, upon considering the preparatory examination in any such case as aforesaid, to remit the same for trial to the court of the resident magistrate of the district in which the offence shall have been committed, which court shall be competent to sentence any person convicted of contravening the second or the third section of this Act to pay a fine not exceeding ten pounds sterling, or to be imprisoned, with or without hard labour, for any period not exceeding three months, or to both such fine and such imprisonment; and such court of resident magistrate shall also be competent to deal with the articles which are by the said second and third sections, or either of them, declared to be forfeited to Her Majesty, in manner and form as by the said sections authorized: Provided that all offenders against any of the sections of this Act, other than the second or third sections thereof, who shall be convicted by any of the courts of resident magistrates, shall be punished in manner and form as authorized by the section contravened, save and except that no fine imposed by such court for the contravention of any such section shall exceed, in all, the sum of ten pounds sterling; and provided that the provisions of the forty-seventh section of the Act No. 20, 1856, as amended by the second section of the Act No. 9, 1857, shall apply to all sentences pronounced, under and by virtue of this Act, by any court of resident magistrate.

XVI. Any person aggrieved by the act constituting an offence against any of the provisions of this Act shall have the same right of prosecution which any private person has by law with regard to any offence committed against his property, and no other right: Provided that every person in this colony lawfully vending or exposing for sale in this colony any article bearing a true and genuine trade mark or other description, shall be deemed to be a person aggrieved by any act done in contravention of any of the sections of this Act, and relating to the same article, or an article purporting or pretending to be the same article, as that so lawfully vended or exposed for sale as aforesaid; and provided that the mandatory or agent of any person not within this colony, which person, if within the colony, would have been, for the purposes of this section, a person aggrieved, shall, as such mandatory or agent, be deemed and taken to be a person aggrieved: Provided, also, that if there shall, in any case, be more persons than one entitled and desirous to be and act as the private prosecutor in such case, the Attorney-General shall select as private prosecutor the person whom he deems most fit and proper for the office: Provided, lastly, that the description or definition of "person aggrieved" given in this section shall not be taken to describe or define the said term for the purpose of any other section of this Act, which term shall, in every such other section, be judged of as if this section did not exist.

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Person aggrieved to have right of prosecution.

Who shall be deemed a person aggrieved.

Where more persons than one are entitled to prosecute, Attorney-General to select prosecutor.

Definition of "person aggrieved" to apply only to this section.

XVII. In every case in which any person shall be convicted, by or before any court within this colony, of an offence against any of the provisions of this Act, the prosecutor, whether public or private, shall (except as hereinafter excepted) be entitled to his costs of suit, which costs shall be the same, and be recoverable by the same process, as if the said suit had been a civil suit and not a criminal suit: Provided that as often as any fine imposed upon any such offender shall be levied by warrant of distress and sale of the movables of the offender, then the costs awarded against such offender shall be levied by and under the same warrant: Provided, how-

On conviction, prosecutor entitled to costs.

Costs may be levied under warrant of distress.

Court may withhold costs.

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Public officer prosecuting not entitled to retain any fee or remuneration.

ever, that every such court as aforesaid shall have, in regard to such costs, the same discretionary power which it may now by law possess in regard to withholding costs from the successful party in any civil suit tried by or before such court; and provided, also, that the Attorney-General shall not, nor shall any clerk of the peace, nor shall any other person in the civil service of the colony, prosecuting at the public instance any offender against any of the provisions of this Act, be entitled to retain for his own use any fee or remuneration which may be included in such costs as aforesaid for or on account of his services, but every such fee or remuneration shall, when recovered or received, be paid into the colonial treasury.

Limitation of prosecution.

XVIII. No prosecution for any offence under this Act shall be commenced after the expiration of three years next after the committing of the offence, or one year next after the first discovery thereof by the prosecutor.

After 1st January, 1865, vendor of any article with trade mark to be deemed to contract that the mark is genuine.

XIX. In every case in which, at any time after the first day of January, 1865, any person shall sell or contract to sell (whether by writing or not) to any other person any article with any trade mark thereon, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which such article shall be sold or contracted to be sold, the sale or contract to sell shall, except as in the next succeeding section as excepted, in every such case, be deemed to have been made with a warranty or contract by the vendor to or with the vendee that every trade mark upon such article, or upon any such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid, was genuine and true, and not forged or counterfeit, and not wrongfully used, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

After 1st January, 1865, vendor of an article with description on it of its quantity to be deemed to contract that the description was true.

XX. In every case in which at any time after the first day of January, 1865, any person shall sell or contract to sell (whether by writing or not) to any other person, any article upon which, or upon any

cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which such article shall be sold, or contracted to be sold, any description, statement, or other indication of or respecting the number, quantity, measure, or weight of such article, or the place or country in which such article shall have been made, manufactured, or produced, the sale or contract to sell shall, except as hereinafter excepted, in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that no such description, statement, or other indication was in any material respect false or untrue, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee: Provided, always, that no auctioneer selling goods by public sale shall be deemed to have given the warranty mentioned in this or in the last preceding section, in case he shall, in and by conditions of sale duly read by him, have stipulated that he shall not be considered as giving such warranty: Provided, however, that in every case in which any auctioneer shall, in manner aforesaid, be freed from such warranty, the person by whom such auctioneer was employed to sell the goods in question shall be deemed to have given the said warranty, unless the contrary be expressed in the conditions of sale.

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Exception in case of sales by auction where stipulation to that effect is inserted in conditions of sale.

Where auctioneer is freed from warranty, person for whose account the goods are sold to be held liable.

XXI. In every case in which any civil action or proceeding shall be had or taken against any person for forging or counterfeiting any trade mark, or for fraudulently applying any trade mark to any article, or for selling, exposing for sale, or uttering any article with any trade mark falsely or wrongfully applied thereto, or for preventing the repetition or continuance of any such wrongful act, or the committal of any similar act, in which the plaintiff shall obtain a judgment, decree, or interdict against the defendant, the court shall have the power to direct every such article to be destroyed or otherwise disposed of; and in every such action or proceeding it shall be lawful for the court, or a judge thereof, to make such order as such court or judge shall

In actions against persons for forging or fraudulently using trade marks, court may order articles to be destroyed, and may give order for inspection of articles, &c., in possession of defendant.

No. 12—1864.

think fit for the inspection of every or any manufacture or process carried on by the defendant in which any such forged or counterfeit trade mark, or any such trade mark as aforesaid, shall be alleged to be used or applied as aforesaid, and of every or any article and thing in the possession or power of the defendant alleged to have thereon or in any way attached thereto any forged or counterfeit trade mark, or any trade mark falsely or wrongfully applied, and every or any instrument in the possession or power of the defendant used or intended to be or capable of being used for producing or making any forged or counterfeit trade mark, or trade mark alleged to be forged or counterfeit, or for falsely or wrongfully applying any trade mark; and any person who shall refuse or neglect to obey any such order shall be guilty of a contempt of court.

Damages may be recovered from offenders.

XXII. In every case in which any person shall do or cause to be done any of the wrongful acts following (that is to say), shall forge or counterfeit any trade mark, or for the purpose of sale, or for the purpose of any manufacture or trade, shall apply any forged or counterfeit trade mark to any article or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing in or with which any article shall be intended to be sold, or shall be sold or uttered or exposed for sale or for any purpose of trade or manufacture, or shall inclose or place any article in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark shall have been applied, or shall apply or attach to any article any case, cover, reel, wrapper, band, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark shall have been applied, or shall inclose, place, or attach any article in, upon, under, with, or to any cask, bottle, stopper, vessel, case, cover, reel, wrapper, band, ticket, label, or other thing having thereon any trade mark of any other person, every person aggrieved by any such wrong-

ful act shall be entitled to maintain an action or proceeding for damages in respect thereof against the person who shall be guilty of having done such act, or causing or procuring the same to be done, and for preventing the repetition or continuance of the wrongful act and the committal of any similar act.

No. 12—1864.

XXIII. The expression “The Merchandise Marks Act, 1864,” shall be a sufficient description of this Act. Short title.

No. 13—1864.] AN ACT [July 26, 1864.

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.”

WHEREAS it has happened in some Municipalities Preamble. in this Colony that the provisions of the fourteenth and fifteenth sections 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:

I. 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 to have been, unduly or illegally elected to such office, by reason merely that his election took place at a time and in a manner dif- Irregular elections legalized.

No. 13—1864.

ferent 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.

II. 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.

III. 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, 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 day for ever.

No. 13—1864.

IV. 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.

Casual vacancies.

V. 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 resident 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.

Proceedings on failure to elect at any meeting.

VI. 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

Duration of office of first board of commissioners of any municipality when elected within twelve months of a general election.



No. 13—1864.

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 then been in office for three years.

Who to be a householder and entitled to vote at elections.

VII. 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 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.

VIII. 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.

IX. 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 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 illegible 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.

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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.

X. 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 : Provided that such rate shall not exceed one penny in the pound 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.

Commissioners may assess a rate.

Not to exceed one penny in the pound.

Four-fifths of number of commissioners present to consent.

One rate only in each year leviable.

XI. 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

Regulation may be made regarding liability of proprietor or occupier for rate assessed.

No. 13—1884.

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.

Provision in section 28 of Ordinance No. 9 of 1836, giving right of appeal against assessment of rate, repealed.

XII. 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.

Right of appeal against municipal valuation.

XIII. 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.

Provided that person appealing has complied with regulations regarding such valuations.

XIV. 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

Municipalities may exercise the powers conferred by Ordinance No. 8 of 1848, in regard of waste land of the municipality.

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 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.

No. 13—1864.

Municipal regulation regarding waste land to be posted before Governor's assent is given.

XV. 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.

Fines and penalties to be paid to municipality.

XVI. This Act may be cited as "The General Municipal Ordinance Amendment Act, 1864."

Short title.

No. 14—1864.] AN ACT [July 26, 1864.

For Obliging Executors, Tutors, and Curators to lodge their Accounts.

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:

Preamble.

I. 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 account 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

Executor failing to lodge account of administration with Master within twelve months may be summoned before Supreme Court.

No. 14—1864.

Master to apply for account previous to suing.

Master may extend time on sufficient cause being shown.

On failure to satisfy Master, summons may be issued, unless a judge's order shall have been obtained.

Master entitled to costs in certain cases where the Supreme Court overrules his decision.

Exemptions from obligation to lodge account.

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 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: 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, under the circumstances, deem reasonable: And provided, also, that if any such executor so in default shall fail to satisfy the said 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.

II. 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.

III. 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.

IV. 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 authorized so to do by the said Supreme Court.

Costs unless otherwise ordered by Supreme Court, to be paid by executor in default.

V. It shall be the duty of the said Master to summon, as aforesaid, every tutor, whether testamentary or dative, and every 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

Master to sue every tutor and curator who shall fail to lodge account within prescribed date.

No. 14—1864.

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, which 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.

VI. 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.

VII. 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.

VIII. This Act may be cited for all purposes as the "Executors' Accounts Act, 1864."

No. 14—1864.

Short title.

No. 15—1864.] AN ACT [July 26, 1864.

To Amend "The Criminal Law Amendment Act, 1861," and for other purposes.

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:

Preamble.

I. So much of the said Act as shall be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Repugnant portions of Act No. 3 of 1861 repealed.

II. 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.

Joint-stock companies may be named in indictments by their style or firm.

III. 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.

Persons indicted for assault with any particular intent may be convicted of common assault.

Ditto when indicted for murder or culpable homicide.



No. 15—1864.

Section 18 of Act. No. 8, 1861, 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.

But Supreme or circuit court may direct committal or preparatory examination to be taken.

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.

IV. The eighteenth section of "The Criminal Law Amendment Act, 1861," is hereby repealed.

V. 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: Provided, always, that nothing herein contained shall 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: 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:

VI. 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.

Chief constables charged with execution of process of Supreme or circuit courts in divisions where there are no deputy sheriffs.

VII. This Act may be quoted for all purposes as "The Criminal Law Amendment Act, 1864." Short title.

No. 16—1864.] AN ACT \* [July 26, 1864.

For the Better Repression of Thefts of Sheep and Cattle.

WHEREAS the crimes of cattle-stealing and sheep-stealing have for some time prevailed extensively in various parts of this colony, to the great loss and damage of the inhabitants: And whereas it is expedient to make better provision for the punishment of persons convicted of the said

Preamble.

No. 16--1864.

crimes, as also for enabling the owners of the stolen animals to recover from such thieves as may be able to make good the same the value of such animals: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Punishment for theft of horse, mule, ass, head of horned cattle, or two or more sheep or goats.

I. Any person convicted of the theft of any horse, mule, ass, or head of horned cattle, or of the theft of two or more sheep, or of two more goats, or of one or more sheep together with one or more goats, shall be imprisoned and kept at hard labour for such term, not less than three years, as the court, by or before which such conviction shall have been had, shall adjudge.

Preceding section to apply where sheep or goats shall have been stolen at different times.

II. The last preceding section shall extend to cases in which the sheep or goats, or sheep and goats, or the sheep and the goat stolen shall have been stolen at different times, as well as to cases in which they shall have been stolen at the said time: Provided that the said section shall extend to no cases of successive thefts, except cases in which such thefts shall be charged in the same indictment: Provided, also, that nothing herein contained shall prevent the court from giving in any case, such effect to any further conviction, duly proved, as the said court, in passing sentence, may deem to be just.

But such must be charged in indictment.

Previous conviction may be taken into consideration.

III. Nothing in either of the two preceding sections contained shall prevent the courts of resident magistrates, respectively, acting under the provisions of the Act No. 12, 1860, entitled "An Act for increasing the jurisdiction of the Courts of Resident Magistrates in Criminal Cases, in which the Persons accused admit their Guilt," from sentencing any prisoner who shall have voluntarily confessed himself guilty of any such theft as is in the first section of this Act described, to imprisonment for the term of two years: Provided that such court shall not, in such cases as aforesaid, sentence to imprisonment for any term less than two years, and that the imprisonment in such cases shall be with hard labour.

Powers of magistrates in respect of sentencing prisoners pleading guilty not affected.

But sentence not to be less than two years' imprisonment with hard labour.

Value of stolen animal and damages may be recovered from ac-

IV. As often as any person shall be committed for trial by any resident magistrate upon the charge of

stealing any horse, mule, ass, head of horned cattle, sheep, or goat, it shall be lawful for the said magistrate, at, or as soon as may be after, the time of such committal, upon the request of the owner of the animal or animals stolen, or of any person authorized, in writing, by such owner, to inquire summarily and without pleadings, but in the presence of the person accused, into the value of the animal or animals for the theft of which the accused person shall have been so committed; and such magistrate, upon proof made to his satisfaction of the value of such animal or animals and of any damages which the said owner shall have sustained by the loss of such animal or animals, or by the cost of a search for, or other endeavour to recover the same, shall give judgment in favour of such owner and against the accused, for such value as aforesaid, together with such damages, if any, and such judgment shall be of the same force and effect, and be executable in the same manner, as if it had been given in a civil action duly instituted:

Provided that no resident magistrate shall give any such judgment as aforesaid in any case except one in which the proof of the guilt of the accused, given in the preparatory examination, shall be such as would, in the opinion of such magistrate, if given in a civil action founded upon the same theft, require such magistrate to give judgment in favour of the owner and against the accused: And provided that nothing in this section, or in this Act, relating to any such judgments as in this Act mentioned, shall extend to any case in which the animal or animals stolen shall, before the committal for trial, have been recovered by the owner: Provided, also, that no resident magistrate shall give any such judgment for any sum exceeding forty pounds sterling.

V. No such judgment as aforesaid shall be put in execution if the accused person will give security, to the satisfaction of the said magistrate, to pay the amount thereof, should he be afterwards convicted, in due form of law, of the theft of the animal or animals which he is charged with stealing. Nor shall any such judgment be put into execution unless and until the owner of the said animal or animals

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accused person after committal.

But the proof to be such as would entitle the owner to a judgment in a civil action.

Exception where animal is recovered.

Judgment not to exceed £40.

No execution to issue where sufficient security is tendered by accused person.

Nor unless owner give security to refund, if so required.

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shall give security, to the satisfaction of the magistrate, to refund, in case he shall by law be required so to do, any sum of money which shall be levied under or upon such judgment, and to make good such damages, if any, as the accused person shall have sustained by the execution of such judgment.

In case of acquittal where security shall have been given, judgment to be void.

VI. If any accused person who shall have given such security as in the last preceding section mentioned, shall ultimately be acquitted of the theft in regard to which he was committed, then the judgment aforesaid shall be null and void: Provided, however, that nothing in this Act contained shall deprive the owner of the animal or animals aforesaid of any right of civil action which he may by law be entitled to have or maintain, notwithstanding such acquittal, against the person so acquitted.

Right of civil action reserved to owner.

In case of acquittal after execution has issued, judgment may be summarily given for amount levied under such execution and damages.

VII. As often as any such judgment as aforesaid shall have been put into execution, and the person against whom such judgment was given shall ultimately be acquitted, then the court by or before which such person shall have been tried shall, upon application of, or on behalf of, such person give judgment, summarily and without pleadings, for such sum as shall have been levied under such execution, <sup>led</sup> and such damages, if any, as aforesaid, unless it shall be found by such court upon considering the evidence in the criminal case and any other evidence which may be given by the owner aforesaid and the person acquitted, or either of them, that, upon grounds of law applicable to the decision of civil actions, the said owner was and is rightfully entitled to have and retain such judgment as aforesaid against the person acquitted, notwithstanding such acquittal.

Where necessary, further proof as to value of stolen animal than is shown in the preparatory examination may be admitted.

VIII. In case the value of any animal or animals charged to have been stolen, and the amount of such damages as aforesaid shall not sufficiently appear upon the depositions taken on the preparatory examination, and further proof of such value or such damages shall be tendered on the part either of the owner or of the accused, such further proof shall be taken down in writing, and shall by such magistrate be preserved.

IX. As often as any charge of theft in regard to which any such judgment as aforesaid shall have been given by any resident magistrate shall be tried in the Supreme or any circuit court, it shall be the duty of the resident magistrate who gave such judgment to deliver or cause to be delivered to the registrar of such court, a copy of such further proof, if any, of value and damages as such magistrates shall have taken, over and above the preparatory examination, together with a statement of the date and amount of the said judgment, as also a statement of the amount, if any, levied thereupon, and the said registrar shall, before, during, or immediately after the trial, lay the same before the presiding judge for his inspection.

X. In case any such owner as aforesaid shall not have obtained from the committing magistrate any such judgment as aforesaid, and the prisoner committed for trial shall be afterwards convicted before the Supreme or any circuit court, then the judge before whom such conviction shall have taken place may, upon the like request as that in the fourth section of this Act mentioned, but in the presence of the prisoner, inquire summarily, and without pleadings, into the value and damages therein referred to, and give judgment for the same, and such judgment shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted.

XI. Should any case in which any such judgment as aforesaid shall have been given by any resident magistrate be afterwards remitted to the court of such resident magistrate, under the Act No. 12 of 1860, such magistrate shall, in forwarding the record of the proceedings in such case to the registrar of the Supreme Court, to be laid before a judge in chamber for his consideration, forward with such record the same particulars regarding such judgment as such magistrate is under and by virtue of the ninth section of this Act enjoined to deliver, or cause to be delivered, in cases in which the person accused is tried in the Supreme or any circuit court.

XII. If in any case the Attorney-General, upon

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Registrar of Supreme Court to be furnished with copy of such further proof, together with particulars of magistrate's judgment and the proceedings thereon.

Where magistrate has given no judgment for value of stolen animal, such judgment may be obtained from the judge after conviction.

Where case is remitted to magistrate for trial, the particulars as to judgment for value of stolen animal is to accompany his record of proceedings.

Judgment given for

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value of stolen property to become void where Attorney-General declines to prosecute unless security for private prosecution is given. *and*

But not to bar civil action.

Powers conferred on magistrates by section 42 of Act No. 20 of 1856, to try cases of cattle thefts, restricted.

Where delay is calculated to defeat the ends of justice, magistrate may proceed with trial.

On conviction by magistrate, section No. 4, as regards recovery of value of stolen property, to apply.

considering the preparatory examination shall decline to prosecute any person against whom any such judgment as aforesaid shall have been given, then, unless the owner in whose favour such judgment was given shall undertake to prosecute, as a private prosecutor, the person accused, and give security to the satisfaction of the magistrate that he will carry on such prosecution, the judgment aforesaid shall become and be null and void, and the resident magistrate shall give judgment summarily and without pleadings for such sum, if any, as shall have been levied in execution of the said judgment, together with such damages, if any, as are in the fourth section of this Act described: Provided that the avoidance of the judgment aforesaid against the person accused and the giving of judgment as aforesaid against the owner aforesaid shall not prevent such owner from having and maintaining a civil action against such accused person, precisely as if neither of the said two judgments had been given.

XIII. Except as hereinafter is excepted, no resident magistrate shall, after the taking effect of this Act, try, under his ordinary jurisdiction, as conferred by the forty-second section of the Magistrates' Courts Act No. 20, 1856, any case in which any person shall be accused of the theft of any horse, mule, ass, head of horned cattle, sheep, or goat: Provided that as often as it shall be made manifest to such magistrate that the delay consequent upon taking a preparatory examination for the purpose of a trial in the Supreme or circuit court would, by reason of the inevitable, or probably inevitable, absence of necessary witnesses at such future trial, or any other clearly sufficient cause, be obviously calculated to frustrate the ends of justice, such magistrate shall, with the consent of the owner of the animal or animals stolen, try the alleged offender under the ordinary jurisdiction of such magistrate, reporting to the Attorney-General, in case of conviction, the nature of the case and the sentence pronounced: Provided, further, that such magistrate shall, in case of a conviction in any such case so tried by him under his ordinary jurisdiction, be competent to give judgment as hereinbefore in the

{ fourth section of this Act mentioned, by like manner  
precisely as if the person so convicted had been com-  
mitted for trial.

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XIV. As often as any resident magistrate shall in, under, and by virtue of the forty-seventh section of the Act No. 20, 1856, forward to the registrar of the Supreme Court the record of the proceedings in any case tried by him under and by virtue of the immediately preceding section, such magistrate shall forward, with such record, the same particulars regarding any judgment for value or damages which may have been given by such magistrate against the person convicted as such particulars are in the ninth section of this Act mentioned or referred to.

Particulars of judgment for value or damages to accompany record of proceedings forwarded to registrar of Supreme Court.

XV. All and singular the several provisions of the first and every succeeding section of this Act relating to the theft of any horse, mule, ass, head of horned cattle, sheep, or goat, or of any particular number of such animals, shall extend to the crime committed by receiving such animal or animals, knowing it or them to have been stolen, precisely as if, wherever such theft is mentioned or referred to, such crime committed by receiving the animal or animals stolen had been mentioned in place and stead of the theft thereof.

Act to apply to receivers of stolen cattle in like manner as to thieves.

XVI. As often as more persons than one shall be committed for trial for any such theft or for any such receiving as are in this Act specified, or one or more persons shall be committed for such a theft, and one or more other persons shall be committed for receiving the same stolen animal or animals, then any such judgment as may be given for value and damages or value without damages, by any magistrate or judge, against such persons jointly, shall be deemed to be joint and several, and may be executed against the property of any one or more of the persons who shall have been committed for trial: Provided that it shall be lawful to give judgment against any one or more of a number of persons committed for trial, without including in that judgment any of the other persons committed for trial for or in regard to the same animal or animals.

Value of stolen property recoverable from one or more persons concerned in theft or receipt of stolen goods.

XVII. Nothing in this Act contained shall be Owner not obliged to



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apply for judgment.  
but may proceed by  
civil action.

Where damages ex-  
 ceed £40, owner may  
 sue for such excess.

construed so as to oblige any owner of any animal or animals stolen to apply for any such judgment aforesaid, or to deprive him of any right of civil action which he may have against the accused person for or on account of the theft of such animal or animals: Provided, also, that the fact of having obtained from any resident magistrate a judgment for the sum of £40 shall not prevent the owner who obtained such judgment from suing in any competent court for any damages by him sustained over and above the said sum of £40.

And whereas, in the several native locations upon the Eastern frontier of this colony, the principle of holding each kraal or distinct community collectively responsible for the value of stolen cattle traced into such kraal or distinct community has been approved of by the Government of the colony, and acted upon since the original establishment of such locations, and could not at present be abrogated or interfered with without very serious detriment to the public interest: Be it enacted as follows:

Principle of holding  
 native kraal respon-  
 sible for stolen cattle  
 traced to it confirmed.

XVIII. No action, suit, or proceeding at law, criminal or civil, shall be capable of being instituted or maintained in any court of the colony, by or on behalf of any native resident in any native location in this colony for or on account of any cattle of such native which shall, by order of the acting superintendent or chief officer of such location, acting in conformity with the regulations and local customs of such location, as sanctioned by the Governor, have been taken and applied to make compensation for stolen cattle traced into the kraal or distinct community to which such native belongs; but, on the contrary, every such taking, whether before or after the taking effect of this Act, shall be deemed and taken to have been lawful.

Definition of term  
 "cattle."

XIX. For the purpose of the last preceding section the term "cattle" shall comprise horses, mules, asses, horned cattle, sheep, and goats.

Governor may pro-  
 claim the native loca-  
 tions to which the two  
 preceding sections  
 shall apply.

XX. It shall be lawful for the Governor, by proclamation, from time to time, to specify the native locations to which the provisions of the two last preceding sections shall apply, and from and after

such proclamation the said sections shall apply to the locations mentioned therein.

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**XXI.** This Act may be cited for all purposes as “The Cattle-theft Repression Act, 1864.” Short title.

No. 17—1864.]            AN ACT            [July 26, 1864.

For Amending the Law regarding Certificates of  
Citizenship.

**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: Preamble.

I. The Act aforesaid, No. 24, 1857, is hereby repealed. Act No. 24 of 1857 repealed.

II. 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 by no other officers or persons. Special officers to be appointed, to issue certificates.

III. 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: Form of certificate.

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 im-

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peded 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.

IV. 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.

V. 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.

Certificate to be annually produced by holder to proper officer.

VI. Every certificate of citizenship issued to any Fingo must be produced by such Fingo at the expiration of twelve months from the date thereof, and not later than one month after the expiration of such term of twelve months, to the resident magistrate of the district or to the superintendent of the Fingo location in which such Fingo shall then reside, and so on, twelvemonth by twelvemonth, as long as such Fingo shall live or desire to secure the privileges conferred by such certificate.

Such officer to satisfy himself that the person producing certificate is the proper holder, and then to countersign it.

VII. The resident magistrate or superintendent to whom any such certificate shall be produced shall, upon the occasion of the first and every successive production thereof, satisfy himself by comparing the person producing the same with the description contained in the certificate, and by other evidence, if needful, that the person producing the same is the same person to whom it was issued, and shall then, in testimony of every such production, countersign such certificate, and affix the date on which and the place at which he countersigns the same; and should the Fingo named in such certificate have changed

Necessary alterations in certificate to be made.

his residence since the said certificate was last countersigned, or, if not yet countersigned, since the same was issued, then the magistrate or superintendent countersigning the same shall specify the then present place of residence of such Fingo; and should the said Fingo have lost any of the marks contained in his description, or got any new marks, the same shall be noted in the certificate by the magistrate or superintendent who shall countersign the same.

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VIII. Provided, always, that it shall be lawful for any magistrate or superintendent to whom any such certificate shall be produced as aforesaid, instead of countersigning the same, to issue to such Fingo a fresh certificate in due and proper form, marking thereon the words "Renewed Certificate," and thereupon to cancel the certificate produced to him.

Renewed certificate may be issued instead of countersigning.

IX. As often as the resident magistrate or superintendent to whom any such certificate shall be produced shall be the resident magistrate or superintendent at a district or location different from that in which the said certificate was last countersigned, or, if not yet countersigned, from that in which the same was issued, such magistrate or superintendent shall certify in writing to the officer who last countersigned the said certificate, or, if the same be not yet countersigned, to the officer who issued the same, that such certificate has been produced to such magistrate or superintendent, and shall state the date of such production and the then present place of residence of the Fingo named in such certificate. And if such magistrate or superintendent to whom any such certificate shall have been produced shall, in any case, issue a fresh certificate, instead of countersigning the certificate produced to him, he shall certify that he has done so, together with the date of such certificate and the then present place of residence of such Fingo.

On production of certificate to any officer other than the officer by whom issued or last countersigned, such production to be certified to the latter.

Issue of renewed certificate to be similarly certified.

X. Every resident magistrate and superintendent who shall countersign any certificate or issue any fresh certificate shall enregister the fact and the date thereof, and every resident magistrate and superintendent to whom such counter-signature or fresh

Countersignature or renewed certificate to be registered both by officer signing or issuing and by officer to whom certified.

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certificate shall have been certified shall in like manner enregister the fact and the date thereof.

Certificate to be returned for cancellation on death of holder.

XI. 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.

XII. 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.

XIII. 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 authorized by magistrate.

XIV. It shall be lawful for the chief or any other constable who shall, by the resident magistrate of the district, be authorized in writing so to do, to visit from time to time, and at uncertain times, any Fingo location 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 authorized to demand the production of such certificates.

XV. 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 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.

Fingo wilfully refusing or neglecting to produce to be incapable of again obtaining certificate unless by Governor's authority.

XVI. 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.

Where certificate has been stolen or lost, Governor may authorize issue of a fresh one.

But he may refuse.

XVII. As often as any Fingo shall, under section

Notice of incapability

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to hold or of loss of certificate to be given to officer who last countersigned.

Similar notice to be given in case Governor authorizes issue of fresh certificate.

Such particulars to be entered in register of certificates.

Penalty for wilfully depriving Fingo of certificate.

Penalty for apprehending Fingo after production of certificate.

Except on criminal charge.

fifteen of this Act, be declared incapable of ever again obtaining a certificate of citizenship, and as often as any Fingo shall, as in the sixteenth 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 authorize 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 enter register such matter in the register of certificates.

XVIII. 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.

XIX. 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 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 con-

strued 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.

XX. 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 land-owner, acting in pursuance of the twelfth section of the Ordinance No. 49, 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 countersigned, 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.

Fingo not producing certificate may be lawfully apprehended.

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.

XXI. 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.

Fingo transferring certificate and person receiving it liable to penalty.

XXII. All certificates of citizenship granted to

Existing certificates



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to be delivered up and cancelled within six months of Act coming into operation.

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 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:

No Tambookie to leave his location without a pass.

XXIII. No Tambookie shall go out of or beyond the limits of the location to which he belongs unless furnished with a pass, which pass shall be of such a nature and in such a form as the Governor aforesaid shall approve of and direct, and shall be signed by the superintendent on the location.

Sections 1, 2, 3, 4, and 5 of Act No. 23 of 1857 to apply to Tambookies when absent from their locations.

XXIV. All and singular the provisions of the first, second, third, fourth, and fifth sections of the Act No. 23, 1857, entitled "An Act for more effectually preventing Kafirs from entering the Colony without Passes," shall extend and apply to Tambookies when absent from their locations, precisely as if the passes mentioned in the last preceding section were the passes mentioned in the said Act, and as if such Tambookies were such Kafirs as are in the sixth section of the said Act mentioned.

Certificates issued to Tambookies to be delivered up and cancelled within six months after Act shall come into operation.

XXV. 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.

XXVI. 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.

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Section 14 of Act No. 27, 1857, repealed.

XXVII. 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 Basutus, 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.

Kafir or native foreigner entitled to certificate after ten years' service in the colony.

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.

XXVIII. If any Fingo, Kafir, or other native foreigner applying to any officer authorized and

Penalty for false statement.

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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.

XXIX. 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.

XXX. 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.

XXXI. If any superintendent or other officer authorized 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-three, 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.

XXXII. 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.

XXXIII. This Act may be cited for all purposes as "The Certificate of Citizenship Amendment Act, 1864."

No. 18—1864.] AN ACT [July 26, 1864. No. 18—1864.

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.

**W**HEREAS there are native locations in this Preamble. 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 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:—

I. 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. Repugnant portion of Ordinance No. 104 and of all other laws, repealed.

II. As often as any person shall depart this life who shall, at the time of his death, be the holder of a certificate of citizenship, 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 Property left by any person holding certificate of citizenship to be administered according to usage of tribe to which he belonged. Not to interfere with

No. 18—1864.

power given to Governor by 5th section of this Act.

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.

Letters of administration or interference of Master unnecessary.

III. 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.

IV. 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 "Succession 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.

V. 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 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.

VI. 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.

No. 18—1864.

Act to apply to native residents in locations to be described by proclamation.

Governor may empower superintendent of location to decide disputes instead of magistrate.

VII. This Act may be cited for all purposes as “The Native Successions Act, 1864.”

Short title.

No. 19—1864.] AN ACT [July 26, 1864.

To Provide for the Leasing of Crown Lands, and for other purposes.

**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:—

Preamble.

I. It shall be lawful for the Governor, with the advice of the divisional council of any division, to let on 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.

Leasing of Crown lands authorized.

II. 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.

Term of lease.

III. 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

Lease to be effected by public auction.

Acceptance of highest rent offered not obligatory.

No. 19—1864.

Due notice to be given.

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.

Rent payable annually.

Security to be given for three years' rent.

IV. 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.

V. 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,

VI. 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 any 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.

No. 19—1864.

the sale to be cancelled, and any payment made to be forfeited.

But previous notice in Gazette to be given.

VII. 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 authorize the allotment of the portion of Crown land in question, in like manner as if such certificate had been given.

Governor may dispense with certificate required under Act No 2 of 1860 before sale, by valuation, of Crown land.

VIII. 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.

Account of proceeds of leases of Crown land to be laid before Parliament.

IX. This Act may be cited for all purposes as "The Crown Lands Act, 1864."

Short title.



No 20—1864.

No. 20—1864.] AN ACT [July 26, 1864.

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.

I. 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.

II. 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.

III. 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 to whom vested.

IV. 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 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, 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.

Powers of trustees.

Trustees bound to

V. 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.

No. 20—1864.

conform to instructions of "Committee of Management."

VI. This Act may be cited for all purposes as Short title. "The Port Elizabeth Library Act, 1864."

No. 21—1864.] AN ACT [July 26, 1864.

For Adding to the Number of the Judges of the Supreme Court, and for other purposes.

**W**HEREAS it has been found that the number of Preamble. 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:

I. So much of the Royal Letters Patent of His late Repugnant laws repealed.

No. 21—1864.

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.

Supreme Court to consist of one chief and four puisne judges.

II. The Supreme Court aforesaid shall henceforth consist of one chief justice and four puisne judges.

Governor may provisionally appoint puisne judge.

III. It shall be lawful for the Governor to appoint, provisionally, until Her Majesty's pleasure be known, the puisne judge at present required to complete the number aforesaid of four puisne judges.

Mode of appointment.

IV. Such judge shall be appointed in manner and form as by the fourth section of the Charter of Justice directed, in regard to the appointment of fit and proper persons to supply such vacancies in the office of judge as are in the said section mentioned.

Two judges to form quorum.

V. The number of judges of the said Supreme Court necessary to form a quorum thereof shall continue to be two, 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.

VI. 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.

VII. 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."

To consist of two puisne judges.

VIII. The said last-mentioned court shall consist of and be holden before any two of the puisne judges

of the Supreme Court whom the Governor shall from time to time assign for the purpose.

No. 21—1864.

IX. 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.

Jurisdiction.

X. 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.

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.

XI. 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.

Not to abrogate from powers of Supreme Court.

XII. 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.

Appointment of registrar and other officers.

XIII. 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.

Advocates and attorneys of Supreme Court entitled to be enrolled as such in Eastern Districts Court.

XIV. 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.

Enrolment of advocate or attorney in Eastern Districts Court to entitle person so enrolled to enrolment in Supreme Court.

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Oath to be taken by  
advocate or attorney  
on enrolment.

XV. 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 en-  
rolled.

XVI. 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.

XVII. 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 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 Su-  
preme Court.

XVIII. 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 advoc-  
ates.

XIX. 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 cer-  
tain omissions, alter-  
ations, and adapta-  
tions.

XX. 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 :

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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.
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 the 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 Master of the Supreme Court, shall 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 rules authorized 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 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.
  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 be read as if these words had not been inserted therein.

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XXI. 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.

Rules as regards service of summonses to be fixed by Supreme Court; pending such order by the Eastern Districts Court.

XXII. 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.

Court may fix days for disposal of provisional cases, &c., during vacation.

XXXIII. In the Court of the Eastern Districts, one judge thereof shall be competent to execute all and every the powers, authorities, and jurisdictions by this Act granted to or vested in the said court, anything in the eighth section contained to the contrary notwithstanding.

One judge competent to act.

XXIV. When, in regard to any cause or proceeding in the Court of the Eastern Districts, heard by or before two judges thereof, and no more, there shall be a difference of opinion between such two judges, then the said cause shall, under and by virtue of the twenty-ninth section of this Act, be removed for decision into the Supreme Court.

In case of difference of opinion, cause may be removed to Supreme Court.

XXV. It shall be lawful for any person or persons, being a party or parties to any civil suit, action, or proceeding, depending in the said Court

Appeal may be had to Supreme Court.



No. 21—1864.

of the Eastern Districts, to appeal to the Supreme Court of the Colony of the Cape of Good Hope against any final judgment, decree, or sentence of the said court, or against any rule or order made in any civil suit or action, having the effect of a final or definite sentence.

Rules regulating appeals from circuit courts to apply to Eastern Districts Court.

XXVI. For the purpose of and in relation to every such appeal as last aforesaid, the Court of the Eastern Districts shall be considered as, and deemed and taken to be, a circuit court of the colony, and all and singular the provinces of the forty-first, forty-second, and forty-third sections of the Charter of Justice aforesaid shall apply to and regulate the proceedings of the said Court of the Eastern Districts and Supreme Court respectively, precisely as if the said sections were herein again set forth and word for word repeated: Provided, always, that if in any case it shall be made to appear to the said Court of the Eastern Districts that a stay of execution, pending any such appeal as aforesaid, would be likely to defeat or injure the ends of real and substantial justice, it shall be lawful for such court, and it is hereby empowered, to direct that the sentence, judgment, decree, or order appealed from shall, notwithstanding such appeal, be carried into execution; and in every such case the person in whose favour the said sentence, judgment, decree or order shall be given, shall, before the execution thereof, enter into good and sufficient security, to be approved by the said court, for the restitution of the money, matter, or thing levied, taken, or received from the party appellant in respect of such execution, together with the reasonable costs and charges of such appellant.

Court may order execution of judgment notwithstanding appeal.

Section 50 of Charter of Justice, with respect to appeal to Privy Council, to apply.

XXVII. 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.

In appeals from Eastern Districts Court, Supreme Court may remit case for further evidence, &c.

XXVIII. 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 afore-

said, 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 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 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.

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XXIX. 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.

Suit may be removed by order of Supreme or Eastern Districts Court.

XXX. 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 dependant 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,

Supreme Court may order seizure of property found beyond jurisdiction of Eastern Districts Court in satisfaction of judgment of that Court.

No. 23—1864.

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-mentioned 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.

XXXI. 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 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.

XXXII. 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.

How until provision shall be made.

Powers of Eastern Districts Court as regards summoning persons resident in those districts.

XXXIII. 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 in regard of 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 the 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.

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Where parties summoned are non-residents.

XXXIV. 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 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 Subdivisions 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

Jurisdiction of Eastern Districts Courts as regards certain existing laws.

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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 said 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.

XXXV. 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.

XXXVI. 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 in 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: 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.

XXXVII. 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 at the same time, in case the Governor of the colony shall so direct and appoint.

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XXXVIII. 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.

Appeal from circuit courts to be direct to Supreme Court.

But cause may be referred from circuit to Eastern Districts Court by consent of parties.

Or such reference may be made by presiding judge.

XXXIX. 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.

Rules of Eastern Districts Court may be amended by Supreme Court.

XL. 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.

Record books of magistrate of district to be produced to court.

XLI. 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."

Court to have separate seal.

XLII. The Governor of this colony shall, by proclamation, notify to the inhabitants of the districts

Governor to notify time and place for holding Eastern Districts Court.

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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.

Short title.

XLIII. This Act may be cited for all purposes as "The Administration of Justice Act, 1864."

## SCHEDULE.

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.] AN ACT [July 26, 1864.

For providing for taking a Census of the Population  
of the Colony of the Cape of Good Hope.

Preamble.

WHEREAS by the Act No. 1, 1862, bearing the same title as this Act, provision was made for taking a Census of this Colony in the year 1863: And whereas, owing to the want of funds applicable for the purpose, it became impracticable to take the

said Census: And whereas it will be expedient to take a Census of this Colony at the earliest period which the state of the finances of the said Colony will permit, which Census may, it is believed, be rendered less expensive than that described in the Act aforesaid, No. 1, 1862, by omitting certain of the details and particulars by the said Act required, and by not insisting that the several enumerators employed in taking the Census should apply for and obtain the information necessary for the making up of their returns upon one and the same day: And whereas it is expedient that the Governor should be authorized and empowered to cause to be taken, as soon as funds applicable for that purpose shall exist, a Census of the Colony, as accurate and complete as, regard being had to the consideration of expense and to other circumstances, may appear to the said Governor to be practicable: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. The "Census Act, 1862," is hereby repealed.

II. It shall be lawful for the Governor, when and as soon as the state of the colonial revenue shall be such as to allow him to incur the necessary expense, to cause a census to be taken of the population, lands, live-stock, and produce of this colony.

III. The said Governor shall by proclamation announce and make known the nature and particulars of the information to be collected by the enumerators to be employed in taking such census, and the duties to be discharged by such enumerators and by the inhabitants of the colony respectively, and shall specify the forms of the returns to be made, which returns shall, as far as may be necessary or convenient, conform to the schedules annexed to the Census Act, 1862.

IV. The Governor shall, in such proclamation, name some certain day as the day in regard to which the number of persons then in this colony is, as accurately as circumstances will permit, to be ascertained by the enumerators: Provided that every enumerator shall inform himself of the number of persons who

Previous Act re-  
pealed.  
Census to be taken  
as soon as funds will  
admit.

Duties of enume-  
rators, forms of re-  
turns, &c., to be an-  
nounced by procla-  
mation.

Enumeration of pop-  
ulation to be com-  
pleted on some day to  
be fixed by Governor.



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were in his district upon that day as soon after that day as his duties as such enumerator will allow.

Duties of divisional  
councils and municipi-  
palities.

V. It shall be the duty of all divisional councils and municipal boards to aid, as far as in their power, in the taking of the said census, by supplying such information as they may be able to afford, and by performing such duties as shall by any such proclamation be assigned to them.

Powers and responsi-  
bilities of enumera-  
tors.

VI. The provisions of the eighth, tenth, and fourteenth sections of "The Census Act, 1862," shall apply to the powers and responsibilities of the enumerators to be appointed by the Governor by any such proclamation as aforesaid, precisely as if the said sections were, *mutatis mutandis*, herein again set forth and word for word repeated.

Short title.

This Act may be cited for all purposes as "The Census Act, 1864."

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No. 23—1864.] AN ACT [July 26, 1864.

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 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 authorize 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 an-

I. 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.

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thorized upon debentures.

II. 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.

Principal and interest of debentures payable in London.

III. 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 be paid over to the Kowie Harbour Improvement Company.

IV. 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 the wharfage and crannage 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.

Loan to form second charge upon the funds and assets of the Kowie Harbour Improvement Company.

V. 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

Accounts of receipts and expenditure to be laid before Parliament.

No. 23—1864.

both Houses of Parliament at the next ensuing session thereof.

Short title.

VI. This Act may be cited for all purposes as “The Kowie Harbour Loan Act, 1864.”

No. 24—1864.] AN ACT [July 26, 1864.

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 at Algoa Bay as the said board should judge fit: And whereas it is expedient that the said Board should be authorized 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 authorized.

I. 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 authorized to be borrowed shall apply to the said additional loans in the same manner as if the whole sum of seventy-nine

Provisions of Act  
No. 10 of 1858 to  
apply to this loan.

thousand pounds had been by the said Act authorized to be borrowed.

No. 24—1864.

II. This Act may be cited for all purposes as the Short title,;  
 “Algoa Bay Harbour Amendment Act, 1864.”

No. 25—1864.]      AN ACT      [July 26, 1864.

To Authorize 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.

**W**HEREAS there are divers rivers in this colony Preamble.  
 across which important lines of main roads pass, which rivers are, owing to the absence of bridges, a source, especially at certain seasons, of great delay, difficulty, and danger to all persons having occasion to use the said roads: And whereas it is believed that joint-stock companies or other co-partnerships, or private persons will be prepared to contract for the construction of bridges over certain of such rivers, upon condition that the parties constructing the same shall be entitled to demand and receive reasonable tolls to be levied at such bridges for such a limited term of years as may be agreed upon: And whereas it is expedient to authorize the Governor of this Colony to conclude such contracts, should he deem it desirable for the public interest so to do: 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:

I. It shall be lawful for the Governor, from time to time, by any Government notice in the Government Gazette, to call for tenders from any joint-stock company, or other co-partnership or private person, who may be prepared to enter into a contract

Tenders for bridging rivers may be called for.

No. 25—1864.

for the construction, under this Act, of one or more bridges over rivers which are crossed by any line of main road in this colony.

Tender to state full particulars as to construction, site, &c., of bridge and tolls to be paid.

II. Every such tender shall specify the river or rivers over which the party tendering proposes to construct a bridge or bridges, and shall state the spot or site or spots or sites where it is proposed to construct the same, and shall describe in detail the nature or character of the bridge or bridges proposed to be constructed, and the materials of which the same shall be made, and shall contain or annex a tariff showing the maximum or highest rate of all tolls proposed to be levied at every such bridge, and shall set forth the number of years, reckoned from the day of the execution of the contract for the building of any such bridge, during which term tolls, not exceeding the rates specified in such tariff, shall be payable to the party tendering, and shall also contain all such other information as the Government notice calling for tenders shall describe or require.

Governor may treat with parties tendering.

III. Should it appear to the Governor that any tender sent in, in pursuance of any such Government notice is of such a nature as to give promise that a contract may be founded upon it which it would be for the public interest to enter into, then the Governor shall, if necessary, cause the party tendering to be communicated with, for the purpose of coming to a clear and full understanding upon all points necessary to be understood before concluding such contract, and of agreeing upon any modifications which may appear desirable.

Proposals to be submitted to divisional council.

IV. As soon as a clear and full understanding shall have been come to between the Government and the party tendering, the Governor shall cause the proposals of the party tendering to be transmitted or communicated to the divisional council of the division in which any such bridge is proposed to be constructed, to the end that such council may advise the Governor whether, in the opinion of such council, it will be expedient to conclude a contract upon the terms proposed, and if not, what modification of any of those terms the said council would suggest: Pro-

vided that if in any case any such bridge should be a bridge connecting two divisions, and not entirely in either of them, then the full particulars aforesaid shall be transmitted to the divisional councils of both divisions.

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Where proposed bridge connects two divisions, proposals to be submitted to council of both.

V. Every divisional council to which any such proposals as aforesaid shall have been transmitted or communicated, shall, when advising the Governor upon the subject thereof, inform him respecting the distance from either end of the proposed bridge within which distance it should not be competent during the term for which the party tendering is to be entitled to the tolls taken at such bridge, to put up or have any other toll-bar or toll-gate upon the road passing over such bridge, to the end that such restriction as to distance may be embodied in the contract, should a contract be made.

Council to advise Governor as to distance within which no other toll bar to be erected.

VI. In case the party tendering shall agree with the divisional council as to the distance from the proposed bridge within which no toll shall be established, other than the toll at such bridge, or shall agree to any modification of such distance which the divisional council shall consent to make, and in case the Governor, after receiving and considering the advice of the divisional council upon the subject of such proposals, shall, with the advice of the Executive Council, decide that it will be for the public interest to enter into a contract with the party tendering, it shall be lawful for the Governor, and he is hereby authorized, to enter into such contract, and such contract shall be of the same force and effect as if embodied in this Act.

When Governor may enter into contract.

VII. Every such contract shall, amongst other things, specify a time within which the bridge or bridges, the subject matter of such contract, shall be completed and opened for traffic, and shall contain a covenant by the party contracting that such party shall keep and have the said bridge or bridges in reasonable good repair and condition during and throughout the term of years for which such party is to be entitled to receive tolls at the rates agreed upon, and shall specify some sum of money to be paid to the Government by the party contracting for

Contract to specify time within which bridge shall be completed and agreement to keep it in repair under a penalty.

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Governor may remit penalty.

Contracting parties to deliver over bridge in good repair on expiration of period for which they are entitled to tolls.

Disputes regarding state of repair to be settled by arbitration.

As to award and costs of arbitration.

Existing law as regards protection of main roads and levying of tolls to apply.

Security for proper

and on account of any breach of any such engagement or covenant, by way of ascertained and liquidated damages for such breach: Provided that the Governor, if satisfied that any such breach arose from causes over which the parties contracting had no control, may remit the payment of such damages.

VIII. Every party contracting for and constructing any such bridge shall be, and such party is hereby declared to be, bound and obliged, at the expiration of the term of years during which such party is to be entitled to receive the tolls aforesaid, to deliver over the said bridge to the Colonial Government in reasonably good repair and condition, and such bridge shall, from and after such delivery, become and be public property, precisely as if it had been originally constructed by the said Government: Provided that if any dispute or controversy shall arise or exist regarding the state and condition of the said bridge at the time of such delivery or proposed delivery, such controversy or dispute shall be settled by the arbitrament and award of three arbitrators, of whom one shall be chosen by the Colonial Government, and one by the party contracting, and the third shall be named by the other two before proceeding with the arbitration: Provided that such three arbitrators shall all act together, and that their award, or the award of any two of them, shall be final, and that the costs of the reference and of the award, and of making the award a rule of court, shall be in the discretion of the arbitrators.

IX. Every such bridge shall, as regards its protection against injuries, whether malicious or through carelessness, be deemed to be in law a main road, or part or portion thereof, and the tariff of tolls authorized by any such contract as aforesaid to be taken at any such bridge shall be, and the same is hereby declared to be, as legal, valid, and effectual as if the same had been established by this Act, and the provisions of the fourteenth, fifteenth, sixteenth, and eighteenth sections of the Act No. 9, 1858, shall extend and apply to the toll-bar and tolls at or connected with any such bridge.

X. Every party contracting for the construction

of any such bridge under this Act shall give security to the satisfaction of the Governor for the due fulfilment by him of all the covenants, undertakings, and obligations by him to be fulfilled and kept under the contract and under this Act.

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execution of contract to be given.

And whereas it is expedient to declare that divisional councils shall be entitled to contract for the construction of bridges over rivers crossing divisional roads, in like manner as is by this Act provided in regard to bridges over rivers crossing main roads, and also to enact that municipal boards may establish tolls at bridges constructed by parties with whom such boards shall have contracted for constructing the same: Be it enacted as follows:

XI. It shall be lawful for any divisional council to enter into a contract with any joint-stock company, or other co-partnership or private individual, for the construction of any bridge over any river crossing any line of divisional road in the division to which such council belongs, in like manner as by this Act provided in regard to bridges over rivers crossing lines of main road: Provided that no such contract shall be concluded by any divisional council without the previous sanction of the Governor.

Divisional councils empowered to contract for bridging rivers on divisional roads.

But Governor's previous sanction must be had.

XII. Every application to the Governor from any divisional council requesting such sanction as aforesaid shall contain or be accompanied by the several particulars hereinbefore by the second section of this Act required in regard to all tenders in the said section mentioned.

Application for sanction to be accompanied by full particulars.

XIII. The Governor upon receiving any such application and particulars shall, by Government notice in the Government Gazette, publish the said application and particulars, or an abstract of them, for general information, and shall, in such notice, state that any parties objecting to the construction of the bridge or bridges mentioned in such application upon the proposed terms may send to the Colonial Secretary, on or before some day to be fixed in such notice, not being earlier than thirty-one days from the date of the first publication of such notice, their objections to such construction.

Application to be published in Gazette, and term fixed for sending in objections

XIV. In case the Governor, after considering any Governor, with ad-



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vice of Executive Council, to decide on application and objections.

such application as aforesaid, and all objections, if any, urged against it, shall, with the advice of the Executive Council, decide that it will be for the public interest that the divisional council shall be authorized to conclude the contract mentioned in such application, or any modification of the contract which the Governor shall suggest, and the divisional council and the party proposing to contract with them shall agree to, the Governor shall, through the Colonial Secretary, give his sanction to the divisional council to enter into such contract, and any contract so sanctioned shall be of the same force and effect as if embodied in this Act.

Sections 7, 8, and 9 to apply with regard to contracts entered into by divisional council.

XV. The provisions of the seventh, eighth, and ninth sections of this Act shall extend and apply to every such contract as is in the last preceding section mentioned, precisely as if wherever the terms "Colonial Government," "Government," and "Governor" are used in any of the said sections, the term "divisional council" had been used in their place and stead.

Where proposed bridge is within municipal limits, the municipality to possess the powers conferred on divisional councils.

XVI. Every municipal board of any municipality shall, in regard to any bridge to be constructed within the limits of any municipality, be invested with all and singular the powers and duties hereinbefore set forth in regard to the construction of bridges over rivers crossing divisional roads, and all and singular the provisions of the eleventh, twelfth, thirteenth, fourteenth, and fifteenth sections shall, *mutatis mutandis*, apply to all contracts for the construction of bridges proposed to be entered into by any municipal board: Provided that in the interpretation of this Act the term "municipal board" shall mean any board of commissioners or town council elected by any municipality established under Ordinance No. 9, 1836, or under any special Act or Ordinance.

Meaning of term "Municipal Board."

Where proposed bridge on main road shall connect municipal with other land, municipality to be consulted on such proposal.

XVII. As often as any bridge proposed to be constructed under this Act upon any line of main road shall be a bridge connecting any municipality with any extra-municipal ground, then the Governor shall, besides transmitting the proposal in the fourth section mentioned to the divisional councils con-

cerned, shall transmit the same to the municipal board of such municipality, to the end that such board may advise the Governor in like manner as in the fourth and fifth sections provided with respect to divisional councils.

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XVIII. As often as any bridge proposed to be constructed under this Act upon any line of divisional road shall be a bridge connecting any municipality with any extra-municipal ground, then it shall be lawful for the municipal board of such municipality and the divisional council concerned to agree together in regard to the terms and conditions of the contract to be entered into for the construction of such bridge, and to join together in the application to the Governor for his sanction to such contract.

Where proposed bridge on divisional line of road shall connect municipal with other land, municipality and council may join in application to Governor.

XIX. All tolls which may be taken at any such bridge as is in the seventeenth and the eighteenth sections, or either of them, mentioned, at any time after the expiration of the term of years during which the tolls payable at such bridge shall be taken by the party who constructed such bridge, shall belong to the divisional council or to the municipal board, or be divided between them in some certain proportion as the said council and the said board shall determine by mutual agreement: Provided that the cost of keeping such bridge in repair after it shall have become public property shall be borne by that one of the two bodies which shall be in receipt of the said tolls: or should such tolls be divided between the two bodies in a certain proportion, then the said cost shall be borne by such bodies in the same proportion: Provided also, that the Governor shall not give his sanction to any contract for the construction of any such bridge as in the seventeenth and eighteenth sections aforesaid mentioned, until the divisional council and the municipal board concerned shall have agreed together regarding the division or other appropriation of the tolls, if any, to be taken at such bridge, after the expiration of the term during which the tolls are to be taken by the party who constructed such bridge.

Revenue of toll to whom payable after termination of right of party constructing bridge described in two foregoing sections.

Bridge to be maintained by body receiving toll revenue.

Governor's sanction to be withheld until divisional council and municipality have agreed as to appropriation of tolls after termination of right of party constructing bridge.

XX. In regard to any bridge which shall be con- Municipality to levy

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tolls where bridge is within municipal limits after right of constructing party shall have ceased.

constructed under this Act within the limits of any municipality, as in the sixteenth section of this Act mentioned, it shall be lawful for the municipal board of such municipality upon and after the expiration of the term of years during which the tolls payable at such bridge shall be taken by the party who constructed such bridge, to levy and take reasonable tolls at such bridge, for the use and benefit of the funds of such municipality, and the provisions of the fourteenth, fifteenth, sixteenth, and eighteenth sections of the Act No. 9, 1858, shall, *mutatis mutandis*, apply to the toll-bar and tolls at or connected with such bridge: Provided that no such tolls as are in this section mentioned shall be levied or taken without the previous sanction of the Governor.

But Governor's previous sanction must be obtained.

Bridges mentioned in 16th, 17th, and 18th sections to be considered portion of municipal, main, or divisional road, as the case may be.

XXI. Every such bridge as in the seventeenth section of this Act mentioned shall, at all times from and after the construction thereof, be deemed to be a portion of the main road leading over it to or through the municipality, and every such bridge as is in the eighteenth section mentioned be deemed to be a portion of the divisional road leading over it to or through the municipality, and every such bridge as is in the sixteenth section mentioned shall be deemed to be a portion of the municipal road or street along which it is constructed: Provided that nothing herein contained shall extend to, alter, or affect any of the provisions of the nineteenth section of this Act regarding the appropriation of tolls or the duty of making repairs.

Not to affect 19th section regarding appropriation of tolls and maintenance of bridge.

Two divisions may join in application for Governor's sanction to construction of bridge.

XXII. As often as any bridge proposed to be constructed under this Act, upon any line of divisional road, shall be a bridge connecting two divisions, and not entirely in either of them, then it shall be lawful for the divisional councils of both the divisions concerned to agree together in regard to the terms and conditions of the contract to be entered into for the construction of such bridge, and to join together in the application to the Governor for his sanction to such contract, and the provisions of the seventh, eighth, and ninth sections of this Act shall extend and apply to every such contract as is in this section mentioned, as well as to every

contract mentioned in the sixteenth and eighteenth sections of this Act.

No. 25—1864.

XXIII. If any bridge constructed under this Act (being a bridge over which a line of main road or a line of divisional road passes) shall be a bridge connecting two divisions, and not entirely in either of them, then it shall be lawful for the Governor, upon and from and after the expiration of the term of years during which the tolls payable at such bridge shall be taken by the party who constructed such bridge, with the advice of the divisional councils of both such divisions, and of the Executive Council, to establish, by proclamation, tolls to be payable at such bridge, and the tolls levied at such bridge shall be divided between the said two divisions in equal shares and proportions, unless the Governor, with the advice of the Executive Council, shall otherwise determine: Provided that the Governor shall, in equally dividing or otherwise appropriating the said tolls, make due provision, as circumstances shall demand and convenience dictate, for the keeping in repair of the said bridge by one or both of the divisional councils of such divisions: Provided, also, that the fourteenth, fifteenth, sixteenth, and eighteenth sections of the Act No. 9, 1858, shall extend and apply to the tolls in this section mentioned.

Tolls to be levied on bridge connecting two divisions after right of party constructing it shall have ceased to be equally divided between such divisions, unless by the Governor otherwise determined.

Due regard being had to maintenance of bridge.

Sections 14, 15, 16, and 18 of Act No. 9, 1858, regarding tolls, to apply.

XXIV. This Act may be cited for all purposes as “The Bridge Building Act, 1864.”

Short title.

No. 26—1864.] AN ACT [July 26, 1864.

For Exempting from Wharfage Dues, Bullion and Coin landed in Algoa Bay, Mossel Bay, and Port Alfred.

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,

Preamble.

No. 26—1864.

entitled “Ordinance for improving the Kowie Harbour,” certain wharfage dues are payable upon the landing or shipping of goods in Algoa 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:

Bullion and coin exempted from wharfage dues.

I. 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.

No. 27—1864.] AN ACT [July 26, 1864.

For Promoting the Extirpation of the Burr Weed, called *Xanthium Spinosum*.

Preamble.

WHEREAS the growth of the noxious plant known as the *Xanthium Spinosum*, or Burr Weed, has increased to an alarming extent in various parts of the colony, and whereas the presence of this burr will be most detrimental to the value of the wool fleece, and highly prejudicial to the wool-growing interests of the colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Chairman of divisional council to publish notices warning persons against neglecting to extirpate weed.

I. It shall be the duty of the civil commissioner of each division, in his capacity of chairman of the divisional council of such division, to cause a public notice in the English and Dutch languages, warning all occupiers of landed property of the liability they will incur by neglecting to eradicate or burn any of the burr weed called *Xanthium Spinosum* which may have sprung up upon their lands or ground, to be posted at or near the court-house of every resident magistrate in such division, at or near all places of public worship within such division, at the place in any town or village within such division as may be

used by the inhabitants for posting public notices, and at all other places within such division at which the civil commissioner shall deem it desirable to post the same.

No. 27—1864.

II. All field-cornets in any division and occupiers of landed property in such division are hereby authorized and required to give or cause to be given to the divisional council of such division notice in writing that any occupier of landed property within such division has neglected for a period of thirty days or upwards, reckoned from the day of the posting at the court-house aforesaid of the notice aforesaid, to eradicate and burn certain of the said weed growing upon the farm or ground by him occupied.

Field-cornets and landed proprietors to report to divisional council any disregard of notice.

III. Every divisional council receiving any such notice as aforesaid shall by notice in writing call upon the occupier in regard to whose alleged neglect such notice shall have been given to show cause why the said council should not at his expense take immediate measures for eradicating and burning the weed aforesaid so growing as aforesaid, and unless such occupier shall give security to the said council that he will, within a reasonable time to be fixed by such council, eradicate and burn all of the said weed so growing as aforesaid, then it shall be lawful for such council, and it is hereby required, to employ all labourers necessary for eradicating and burning the said weed so growing as aforesaid, and all the charges thereby incurred shall, from the said occupier, be recoverable with costs in the court of the resident magistrate by action at the suit of the secretary to the divisional council: Provided that, as often as the said council shall grant time as aforesaid to eradicate and burn the said weed, the said council shall reserve to itself sufficient time before the next seeding time of the said weed to enable the said council to cause the said weed to be eradicated and burnt in the event of the neglect of the occupier aforesaid so to do.

Duty of divisional council on receiving such report.

Council may employ means for destroying weed at proprietor's expense.

IV. It shall be lawful for the divisional council of any division, and it is hereby required, to employ through the instrumentality of the field-cornets or

Council to cause weed growing on public roads, lands, or out-spans to be destroyed.

No. 27—1864.

otherwise, labourers to eradicate and burn the said weed wherever it may be found growing on public roads or crown lands, or on public outspan-places within such division, and to pay the charge so incurred out of any divisional council funds at the time, or thereafter, in the hands of the said council.

Council may levy rate for purposes of this Act.

V. It shall and may be lawful for the divisional council of any and every division, and they are hereby empowered, to levy a special rate upon the fixed property of the division in which any such council is situated, sufficient to defray the costs and charges incurred under and in consequence of the

When Government to contribute.

provisions of the fourth section of this Act: Provided, also, that if in one year the costs and charges thereby incurred in any division by the divisional council thereof, for the eradication and destruction of the said weed shall exceed the sum of one hundred pounds sterling (£100), then one half of the expense incurred over and above that sum shall be paid from and out of the public revenues of the colony, and shall be recoverable by the divisional council in the usual manner of recovering claims for expenses incurred for and on behalf of the Government: And provided that the valuation for the time being of the fixed property of any division for road purposes shall be the valuation thereof for the purpose of the rate by this section authorized.

Valuation for road purposes to be taken as valuation for rate under this Act.

VI. Whenever the said weed shall be found growing on municipal lands, the commissioners of the municipality within the limits of which it shall be found are hereby required to cause the said weed to be destroyed, and in default it shall be lawful for the divisional council of the division to cause the same to be destroyed as by the third section provided.

Municipal commissioners to cause weed growing on municipal lands to be destroyed.

Road inspectors and road parties similarly charged with destruction of weed.

VII. All road inspectors and overseers of free road parties or convicts are hereby required to cause the working parties under their direction to eradicate and burn all plants of the said weed whenever they may be found growing within the limits of their respective works.

No 28.—1864.] AN ACT [July 26, 1864. No. 28—1864.

To Regulate the Dealing in Gunpowder, Firearms, and Lead.

**W**HEREAS the Act No. 6 of 1863, entitled “An Preamble.  
 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:

I. The Act aforesaid, No. 14, 1857, entitled “An Act No. 14, 1857, entitled “Act to regulate until the expiration of the year 1858, the dealing in Gunpowder, Firearms, and Lead,” continued.  
 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.

II. 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.

III. 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 an 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.



No. 29—1864.

No. 29—1864.] AN ACT [July 26, 1864.

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.

I. The Act aforesaid, No. 26, 1857, shall be and continue in force until Parliament shall otherwise provide.

Commencement of Act.

II. This Act shall commence and take effect from and after the expiration of the Act No. 5, 1863, and no sooner.

Short title.

III. This Act may be cited for any purpose as “ The Kafir Emissaries Act, 1864.”

No. 30—1864.] AN ACT [July 26, 1864.

For Amending the Law relating to the Post Office and Postage.

Preamble.

WHEREAS there has been recently established, and is now in operation, a line of steam vessels intended to ply between England and this Colony, and commonly called the Diamond Line: And whereas it is expedient to make provision for raising the rate of postage upon letters posted in this colony and carried by the said steamers, to the

same rate as shall for the time being be payable upon letters posted in this colony, and carried by the mail packets plying under contract with the Postmaster-General of England: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly, as follows:

No. 30—1864.

I. So much of the Ordinance No. 1, 1846, entitled “Ordinance for the regulation of the Post Office and Postage,” as may be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Repugnant portions of Ordinance No. 1, 1846, repealed.

II. It shall be lawful for the Governor, by proclamation to declare that letters posted in this colony in order to be carried from thence to England by the steamers aforesaid belonging to the Diamond Line, shall be subject to the same rate of postage as if such letters had been so posted in order to be carried to the same place by the mail packets plying between this colony and England under contract with the Postmaster-General of England, and from and after such day or time as shall in and by such proclamation be fixed for the taking effect of such increased rate, such increased rate shall become and be payable, and no letters in regard to which it shall not have been paid shall be forwarded by any such steamers, but shall be dispatched by the next ship taking a mail, not being the mail packet.

Governor may increase the postage on letters conveyed by the Diamond Line of steamers to the rate payable on letters conveyed by the regular mail packets.

III. No such proclamation as aforesaid shall issue, nor shall any such increased rate of postage take effect, unless and until arrangements shall have been completed between the Colonial Government and the Diamond Company, by which, in consideration of a subsidy to be granted by the said Government to the said Company, equal to the amount of all postage accruing to this colony upon or from all letters conveyed between this colony and England and between England and this colony, the said company shall (amongst other things, if any, needful to be stipulated) agree and engage to cause its steamers to make monthly passages between England and Port Elizabeth, and Port Elizabeth and England; and that the length of such passages, either

Conditions on which postage may be so increased.

No. 30—1864.

way, shall in no case exceed thirty-eight days, and all such steamers shall touch both on the outward voyage and the homeward voyages at either Table Bay or Simon's Bay, according to the season of the year, and that in case any such voyage shall exceed thirty-eight days in length, the company shall pay or allow to the Government some reasonable sum, to be fixed upon between the Government and the company, as ascertained and liquidated damages for and in respect of every such excess.

And whereas it is expedient to amend, in certain respects, "The Book Post Act, 1862:" Be it enacted as follows:

Portion of Book Post Act of 1862 repealed.

IV. So much of the Book Post Act, 1862, as may be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Books prepaid to be delivered free of postage at port of arrival or elsewhere.

V. Books from the United Kingdom or elsewhere, arriving in this colony by sea free of postage, shall be delivered from any post office in this colony, whether at the port of arrival or at any other port, or at any inland post office, free of postage.

And whereas the fourth of the regulations of the English Inland Book Post is, in substance, as follows:

"A book-packet may contain any number of separate books or other publications (including printed letters and printed matter of every kind), prints or maps, and any quantity of paper, parchment, or vellum. And the books or other publications, prints, maps, &c., may be either printed, written, or plain, or any mixture of the three. Further, all legitimate binding, mounting, or covering of a book, &c., or of a portion thereof, will be allowed, whether such binding be loose or attached, as also rollers, in the case of prints or maps, markers (whether of paper or otherwise), in the case of books, and, in short, whatever is necessary for the safe transmission of literary or artistic matter, or usually appertains thereto."

And whereas it is expedient that the said regulation

should be applicable, and be applied, to the book post of this colony: Be it enacted as follows:

VI. The regulation No. 4, in so far as the same is hereinbefore recited, shall be applicable, and be applied, to the book post of this colony, and the twelfth section of "The Book Post Act, 1862," in so far as it contains anything which might be considered as limiting or restricting the operation of the said regulation, is hereby repealed.

And whereas certain colonial publications sent from this colony to the United Kingdom are subject to a higher rate of postage than they would be subject to if they were registered under or made conformable to certain regulations concerning such publications framed by the Postmaster-General of England, or by some other authority in the United Kingdom: Be it enacted as follows:

VII. It shall be lawful for the Governor from time to time, by proclamation, to publish for general information such regulations touching the mode in which certain descriptions of literary works published in this colony shall, by means of such a registration as such proclamation shall direct, or by such other means regarding the shape, weight, or contents of such works, or any other matter or thing belonging to them as may, in reference to the regulations for the time being in force in the United Kingdom, be requisite to entitle such works to be conveyed from the colony to the United Kingdom at a lower rate of postage than they would otherwise be subject to, or to entitle such works to any other advantages connected with their transmission by post, and all regulations so published as aforesaid shall be of the same force and effect as if they had been inserted herein.

And whereas the Postmaster-General of England has recently proposed, through the Secretary of State for the Colonies, certain arrangements by which patterns of merchandise or trade patterns may be transmitted between the United Kingdom and the colonies: And whereas it is expedient to provide for giving, in this colony, effect to such arrangements: Be it enacted as follows:

VIII. It shall be lawful for the Governor to enter,

No. 30—1864.

English book post regulation No. 4 made applicable to colonial book post.

Governor may proclaim regulations regarding reduced postage on certain descriptions of literary works.

Governor empowered

No. 30—1864.

to enter into arrangements with Home Government with regard to transmission by post of patterns of merchandise or trade patterns.

on the part of this colony, into any such arrangements as aforesaid for the transmission of patterns of merchandise or trade patterns between the United Kingdom and this colony, and the same general regulations as do or shall exist in the case of books transmitted between the United Kingdom and this colony shall apply to such patterns, and the Governor shall, by proclamation, publish the conditions, restrictions, limitations, and provisions to which it shall be necessary that such patterns should conform in order to be entitled to be transmitted as books under the arrangements aforesaid, and all such conditions, restrictions, limitations, and provisions shall be of the same force and effect as if they had been inserted herein.

And whereas it is expedient to provide for the transmission of letters to and from places between which there is daily postal communication at a reduced rate of postage: Be it enacted as follows:

Governor may reduce postage between places having two or more posts daily.

IX. As often as there shall be between any two post offices in this colony postal communication by means of two posts or more on every day not being a Sunday or holiday, it shall be lawful for the Governor, by proclamation, to fix the rate of postage which shall be charged and paid upon letters posted at either of such post offices for transmission to the other of them, such rate not being lower than one-fourth of the rate which would be charged and payable upon the same letters according to the scale of postage by the Ordinance No. 1, 1846, fixed and determined.

Establishments of penny posts between chief towns and field-cornets' residences sanctioned.

X. It shall be lawful for the Governor from time to time, as local circumstances will permit, to authorize the establishment of penny posts between the chief town of any division and the residences of any of the field-cornets of such division, under such rules and regulations as the Governor shall deem necessary and establish.

Short title.

XI. This Act may be cited for all purposes as "The Postage Act, 1864."

No. 31—1864.] AN ACT [July 26, 1864. No. 31—1864.

For Authorizing certain Expenditure not provided for by Parliament in the Year 1863.

**W**HEREAS divers public moneys, amounting in all to the sum of Twenty-seven Thousand Four Hundred and One Pounds Sixteen Shillings and Fourpence Sterling, have been necessarily advanced during the year 1863, by the authority of the Governor of this Colony, but without the previous authority of the Parliament: And whereas these advances have been found to have been duly applied to and expended upon certain necessary expenses of the Civil Government of this colony, and it is therefore proper and expedient that an Act of Appropriation should be passed to authorize the amount so expended to be charged against the public revenue of this colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

I. The public revenue of the colony is hereby charged with a further sum of twenty-seven thousand four hundred and one pounds sixteen shillings and fourpence sterling, in addition to the sums already provided for the service of the year, 1863, which shall be applied and accounted for in the manner specified in the schedule hereunto annexed.

Additional expenditure for 1863.

SCHEDULE.

For the expenditure of the Civil Establishments	£440	15	5	
Judicial ditto ... ..	50	0	0	
Medical ditto ... ..	29	12	0	
Police and Gaols ... ..	11	0	10	
<i>Services.</i>				
Charitable allowances ... ..	12	0	0	
Hospitals ... ..	3,967	6	1	
Police and Gaols ... ..	10,353	19	11	
Transport ... ..	73	9	6	
Conveyance of Mails ... ..	3,000	0	0	

No. 31—1864.

Maintenance of Convicts	...	...	...	£3,176	0	7
Miscellaneous	...	...	...	461	9	5
Ditto Cape Town and Wellington Railway				415	9	4
Ditto Railway Surveys	...	...	...	2,600	8	10
Ditto other	...	...	...	2,204	9	2
Interest	...	...	...	605	15	3
				£27,401 16 4		

No. 32—1864.] AN ACT [July 26, 1864.

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.

Preamble.

WHEREAS by the Act No. 17 of 1863, entitled “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,” the said sum of Two Hundred and One Thousand and Seventeen Pounds and Nineteen Shillings was charged upon the revenue of this Colony for the service of the Government of the Colony until the 30th June, 1864; And whereas it has become expedient, in the present session of Parliament, to take into consideration the requirements of the said service for the entire of the year 1864, as well as that portion for which provision was made by the same Act as the remaining portion thereof: And whereas it will be expedient, in order to prevent confusion, to repeal the said Act No. 17, 1863, and to provide by one Act for the service of the year 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:—

Act No. 17 of 1863 repealed.

I. The Act aforesaid, No. 17, 1863, is hereby repealed.

Expenditure, 1864.

II. The public revenue of the colony is hereby charged with a sum not exceeding four hundred and thirty thousand four hundred and thirty pounds and

eighteen shillings for the service of the year 1864, in addition to the sums already by law provided for such service, which sum of four hundred and thirty thousand four hundred and thirty pounds and eighteen shillings shall be applied in the manner following, that is to say :

For the expenditure of the Civil Establishments, a sum not exceeding sixty-seven thousand six hundred and fifty-two pounds and thirteen shillings.

For the expenditure of the Judicial Establishments, a sum not exceeding thirty-two thousand nine hundred and eighteen pounds and five shillings.

For the expenditure of the Educational Establishments, a sum not exceeding eighteen thousand three hundred and six pounds and ten shillings.

For the expenditure of the Medical Establishments, a sum not exceeding twenty-four thousand one hundred and sixty-nine pounds and seven shillings and six pence.

For the expenditure of the Police and Gaol Establishments, a sum not exceeding sixty-four thousand one hundred and seventy-six pounds twelve shillings and six pence.

For the expenditure on account of the Border Department (Aborigines), a sum not exceeding fifty-seven thousand eight hundred and twenty-three pounds.

For the expenditure on account of Charitable Allowances and Gratuities, a sum not exceeding two hundred pounds.

For the expenditure on account of Works and Buildings, a sum not exceeding sixteen thousand pounds.

For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding ninety-one thousand four hundred and ninety-five pounds.

For the expenditure on account of Miscellaneous Services, a sum not exceeding thirty-nine thousand six hundred and eighty-nine pounds and ten shillings.

For the expenditure on account of Interest, a sum not exceeding eight thousand pounds.

For the expenditure on account of Colonial Allowances to Military Officers.



No. 32—1864. ances to Military Officers, a sum not exceeding ten thousand pounds.

Total. Amounting in the whole to four hundred and thirty thousand four hundred and thirty pounds and eighteen shillings, as detailed in the schedules hereunto annexed.

Application of supplies. The said aids and supplies shall not be issued or applied for any use, intent or purpose other than the particular services for which the said amounts have been granted respectively by this Act.

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No. 33—1864.] AN ACT [July 26, 1864.

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.

Preamble. **W**HEREAS it is expedient to provide further sums, in addition to those by law provided, for the service of the Government of this Colony until the thirtieth June, 1865 :

Expenditure, 1865. I. 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, that a sum not exceeding one hundred and eighty-one thousand seven hundred and twelve pounds and nineteen shillings, as detailed in Schedules A and B appended to this Act, be charged upon the revenue of the said colony, towards the service of the year 1865, and applied in the same manner and for the same purposes as are set forth as permanent services in the schedule annexed to the Act No. , passed during the present session for the appropriation of the public revenue, that is to say :

Civil Establishment. II. For the expenditure of the Civil Establishments, a sum not exceeding thirty-three thousand six hundred and sixty-eight pounds sixteen shillings and six pence.

- III. For the expenditure of the Judicial Establishment, a sum not exceeding seventeen thousand nine hundred and fifty-nine pounds two shillings and six pence. No. 33—1864.  
Judicial Establishment.
- IV. For the expenditure of the Educational Establishment, a sum not exceeding nine thousand one hundred and fifty-three pounds and five shillings. Educational Establishment.
- V. For the Expenditure of the Medical Establishment, a sum not exceeding twelve thousand and eighty-four pounds thirteen shillings and nine pence. Medical Establishment.
- VI. For the expenditure of the Police and Gaol Establishments, a sum not exceeding thirty-two thousand and eighty-eight pounds six shillings and three pence. Police and Gaol Establishments.
- VII. For the expenditure on account of the Border Department (Aborigines), a sum not exceeding twenty-eight thousand nine hundred and eleven pounds and ten shillings. Border Department (Aborigines).
- VIII. For the expenditure on account of Charitable Allowances, a sum not exceeding one hundred pounds. Charitable Allowances.
- IX. For the expenditure on account of Works and Buildings, a sum not exceeding two thousand five hundred and seventy-five pounds. Works and Buildings.
- X. For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding seventeen thousand eight hundred and sixty-five pounds. Roads and Bridges.
- XI. For the expenditure on account of Miscellaneous Services, a sum not exceeding twenty-two thousand three hundred and seven pounds and five shillings. Miscellaneous Services.
- XII. For the expenditure on account of Colonial Allowances to Military Officers, a sum not exceeding five thousand pounds. Colonial Allowances to Military Officers.
- XIII. Amounting in the whole to one hundred and eighty-one thousand seven hundred and twelve pounds and nineteen shillings. Total.
- XIV. The said aids or supplies shall not be issued or applied for any use, intent, or purpose other than the particular services for which the said amounts have been granted respectively by this Act. Application of Supplies.

162 APPROPRIATION ACT (TO JUNE, 1865).

No. 33—1864.

SCHEDULE A.

No.		Existing Charges.		New Charges.		TOTAL.	
		£	s. d.	£	s. d.	£	s. d.
1	Civil Establishment	33526	6 6	142	10 0	33668	16 6
2	Judicial ditto ... ..	16459	2 6	1500	0 0	17959	2 6
3	Educational ditto ...	9153	5 0	...	...	9153	5 0
4	Medical ditto ... ..	12084	13 9	...	...	12084	13 9
5	Police and Gaols ditto	32088	6 3	...	...	32088	6 3
6	Border Department ...	28911	10 0	...	...	28911	10 0
7	Charitable Allowances	100	0 0	...	...	100	0 0
8	Works and Buildings	2575	0 0	...	...	2575	0 0
9	Roads and Bridges, including Convict Department ...	17865	0 0	...	...	17865	0 0
10	Miscellaneous Services	17307	5 0	5000	0 0	22307	5 0
11	Colonial Military Allowances ... ..	5000	0 0	...	...	5000	0 0
	Total...	175070	9 0	6642	10 0	181712	19 0

SCHEDULE B.

New charges proposed by the Governor in His Excellency's Message of 7th July, 1864.

1.

*Civil Establishments.—Post Office, Port Elizabeth.*

Required for six months.

Deputy Postmaster to be increased from £250 to £350	£50
Clerk	120 to 150 15
Sorter	50 to 80 15
	— £80

*Graham's Town.*

Deputy Postmaster increased from £250 to £300	£25
Clerk	120 to 150 15
	— £40

2.

*Judicial Establishments.—Court of the Eastern Districts.*

One Puisne Judge	... ..	£1,200
Clerk to	... ..	200
Interpreter	... ..	150
Crier and Usher	... ..	60
Messenger	... ..	52
Solicitor-General	... ..	600
Clerk	... ..	250

Rent and Contingencies	... ..	488
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£3,000 £1,500

3.

No 33—1864.

*Medical Establishments.*

District-Surgeon, Graaff-Reinet, to be increased from  
 £75 to £120 ... .. £22 10

4.

*Miscellaneous Services.*

Census ... .. £5,000 0  
 £6,642 10

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No. 34—1864.] AN ACT [July 26, 1864.

For Explaining the Forty-first Section of the Act  
 No. 35 of 1861.

**W**HEREAS it is, in and by the forty-first section Preamble,  
 of the Act No. 35 of 1861, declared and provided that the Wynberg Railway Company shall have the right of forming a junction with the Cape Town and Wellington Railway at the spot where the said Wynberg Railway shall join in the said Cape Town and Wellington Railway, and that the provisions of the twenty-first section and the sixth section of the second schedule annexed to the contract executed between the Colonial Government and the Cape Town Railway and Dock Company shall be applicable to the provisions of the said Act, No. 35 of 1861, in like manner as if the said Wynberg line had been a branch line formed by Government: And whereas it is expedient to explain the said forty-first section, and to declare and enact that the said Wynberg Railway Company, which has formed a junction with the Cape Town and Wellington Railway Company, at or near the station of the latter company known as the Salt River Station, should be entitled upon payment of the tolls or compensation hereinafter mentioned to use and run engines, carriages, and trucks, properly constructed upon and over the lines of rails between the said junction at or near the Salt River Station, aforesaid, and the station of the said Cape Town Railway and Dock Company in

No. 34—1864.

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

Running powers over portion of Cape Town and Wellington line of railway and use of Cape station given to Wynberg Railway Company.

I. From and after the promulgation hereof the said Wynberg Railway Company shall be entitled to use and run engines, carriages, and trucks, properly constructed, upon and over the lines of rails between the junction of the said Wynberg Railway Company with the Cape Town and Wellington Railway at or near Salt River, and the Cape Town station of the said last-mentioned company, and to use such stations.

Amount of compensation for such use to be settled by arbitration.

II. The amount of compensation or tolls to be paid by the Wynberg Railway Company to the said Cape Town Railway and Dock Company, for the use of the said lines and stations, and all questions or controversies whatsoever relative to any matter or thing connected with such use, shall be referred to and determined by three persons, one to be nominated by the Governor, one other by the Wynberg Railway Company, and the third by the Cape Town Railway and Dock Company, and the decision of any two of such three persons shall be final, the cost of such arbitration to be in the discretion of the arbitrators.

How arbitrators shall be appointed.

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No. 35—1864.] AN ACT [July 26, 1864.

To Encourage the Importation of Ice into this Colony.

Preamble.

WHEREAS William L. Avery, of the State of New Hampshire, in the United States of America, now resident in this colony, is willing to engage and bind himself to import Ice into this colony, and sell the same at certain places and at certain prices, provided he shall by law be secured for the space or term of ten years the exclusive right of importing Ice into certain ports and places in this colony from abroad : And whereas it is expedient that, upon the terms and conditions hereinafter speci-

fied, the said William L. Avery should be so secured the said exclusive right: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. The said William L. Avery, upon his acceptance as hereinafter mentioned of the terms and conditions of this Act, shall have the exclusive right of importing ice into this colony at the ports and places mentioned in section eight, until the 1st day of November which shall be in the year one thousand eight hundred and seventy-four, and it shall not be lawful for any other person or persons to import ice into such ports and places during the said period unless this Act shall sooner cease and determine.

Exclusive right to import ice vested in William L. Avery.

II. The said William L. Avery shall keep for sale, on all lawful days between the 1st of November and the 1st of May in each year, and at no fewer than two places at Cape Town and one place in Port Elizabeth, imported ice of pure quality.

Period during which and places at which ice shall be kept for sale.

III. The said ice shall be sold in Cape Town at a price not exceeding at any time two pence per pound, and in Port Elizabeth at a price not exceeding two pence and one farthing per pound.

Price of ice.

IV. In case the said William L. Avery shall fail to keep at least two places in Cape Town and one place in Port Elizabeth, as in the second section mentioned, for the sale of imported ice, or shall fail to supply at each such place, at such prices as are in the third section mentioned, all such ice as shall be there demanded from him by persons desirous to purchase ice, he, shall, for every month during which such default shall continue, be liable to pay to Her Majesty the Queen, in her colonial revenue, the sum of twenty pounds sterling: Provided that it shall be lawful for the Governor, upon being satisfied that just and reasonable grounds exist for not insisting upon such payment, to remit the same or any part thereof, as he shall think fit.

Penalty for failure.

Governor may remit penalty.

V. If at any time during the continuance of this Act the said William L. Avery shall quit this colony, he shall before doing so lodge with the Colonial Secretary in Cape Town an undertaking in writing,

In case of absence from colony security to be given for payment of any sums which may become due under this Act.

No. 35—1864.

signed by some persons in Cape Town whom the said Colonial Secretary shall deem sufficient, binding such person for the payment of any sum or sums of money which may become payable by the said William L. Avery under this Act during his absence from this colony, and the residence of the person giving such undertaking shall, for the purpose of any suit for the recovery of such sum or sums, be the *domicilium citandi* of the said William L. Avery during such absence; and if the said William L. Avery shall quit this colony without lodging such undertaking, then the Governor shall, by proclamation, declare this Act to have ceased and determined, and the same shall upon the publication of such proclamation cease and determine.

Acceptance of privileges and liabilities under this Act to be signified in writing.

VI. The said William L. Avery shall, within three months from the taking effect of this Act, deliver to the Colonial Secretary in Cape Town his acceptance, in writing, of the privileges and liabilities provided by this Act, failing which written acceptance the said Act shall thereupon, *ipso facto*, cease and determine.

On failure or default Governor may proclaim this Act to have ceased.

VII. If the said William L. Avery shall for the whole of any period between the first day of November and the first day of May in any year make such a failure or default as is in the fourth section of this Act specified, then and in that case it shall be lawful for the Governor, by proclamation, to declare this Act to have ceased and determined, and the same shall upon the publication of such proclamation cease and determine: Provided that it shall be lawful for the said Governor, upon the application of the said William L. Avery, but not otherwise, to abstain from issuing any such proclamation, in which case the Act shall remain in force: And provided that notwithstanding the ceasing and determining of this Act, all sums of money, if any, then due by or claimable from the said William L. Avery, for or in respect of any such failure or default, shall be recoverable from the said William L. Avery as if this Act remained in force.

But Governor may abstain from such proclamation.

All moneys due by W. L. Avery at the time of ceasing of Act to be recoverable.

Importation of ice by others than W. L. Avery prevented.

VIII. No person or persons other than the said William L. Avery shall, during the continuance of

this Act, import ice into Table Bay, Port Elizabeth, or any place within thirty miles thereof respectively, and if any ice shall be imported contrary to this provision it shall be forfeited to Her Majesty the Queen.

No. 35—1864.

IX. This Act shall continue in force until the first day of November in the year one thousand eight hundred and seventy-four, unless under and by virtue of the provisions in the fifth, sixth, or seventh sections in this Act contained it shall sooner cease and determine.

Duration of Act.

No. 1—1865.] AN ACT [Oct. 10, 1865.

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.”

WHEREAS it is enacted by an Ordinance numbered 97, and bearing date the fourteenth 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,” that no such memorial as therein mentioned should be received or acted upon by the committee nominated and appointed by His Excellency the Governor, under and by virtue of the provisions of the said Ordinance, which should not be lodged with the secretary of the said committee on or before the thirty-first December, 1833: And whereas, by certain other Ordinances since successively made and passed in this colony, and lastly by Act No. 4 of 1860, entitled in manner and form as this present Act, the period within which it should be lawful for the said committee to receive and act

Preamble.



No. 1—1865.

upon such memorials as aforesaid, which should be lodged with the secretary thereof, was prolonged from time to time till thirty-first December, 1865 : And whereas it is expedient that the said Ordinance, numbered 97, 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. 4 of 1860  
repealed.

I. The Act aforesaid, No. 4, 1860, is hereby repealed.

Ordinance No. 97,  
1833, perpetuated.

II. The Ordinance aforesaid, No. 97, and all and singular the several provisions thereof, except the twenty-sixth section thereof, shall, from and after the taking effect of this Act, be and remain in force until Parliament shall otherwise provide.

Short title.

III. This Act may be cited for any purpose as "The Ordinance No. 97 Perpetuation Act, 1865."

No. 2—1865.]

AN ACT

[Oct. 10, 1865.

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.

Preamble.

WHEREAS the Honourable William Porter, Esquire, is about to retire from the office of Attorney-General of this colony, and the Parliament thereof is desirous of marking its sense of the great and valued services rendered by the said William Porter in the Office of Attorney-General of the said colony, by settling on him for life, on his retirement from the said office, a pension equal to the salary thereof: 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 :

Annual pension equal  
to full salary of office  
secured to the

I. When and so soon as the Honourable William Porter, Esquire, shall resign the office of Attorney-

General for the colony of the Cape of Good Hope, the Governor of the said colony shall be authorized and required to pay, or cause to be paid, from and out of the general revenue of this Colony, to the said William Porter, for the remainder of his natural life, an annual pension, equal to the full salary of the said office at the time of such retirement.

No. 2—1865.

Honourable William  
Porter, Esq.

No. 3—1865.]                    AN ACT                    [Oct. 10, 1865.

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.

**W**HEREAS 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 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

Preamble.

No. 3—1865.

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.

I. 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.

II. 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.

III. 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.

IV. 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.

No. 3—1865.

Representation in House of Assembly and Legislative Council of the two additional electoral divisions.

V. All persons registered as voters in British Kaffraria under the Ordinance 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.

Qualification of voters.

After next ensuing general registration, Act No. 16 of 1856 to apply.

What shall be deemed the list of registered voters.

VI. From and after the incorporation in manner aforesaid of British Kaffraria, the Supreme Court of British Kaffraria existing at the time of such in-

Supreme Court of British Kaffraria abolished.

No. 3—1865.

Eastern Districts  
Court substituted.

corporation, 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.”

Pending suits transferred to Eastern  
Districts Court.

VII. 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.

VIII. 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.

IX. No person admitted and enrolled as an attorney of the Court of the Eastern Districts, under and by virtue of the last preceding section, shall be entitled by reason of such admission and enrolment to be admitted and enrolled as an attorney of the Supreme Court of the Colony of the Cape of Good Hope.

Attorneys admitted under preceding section not thereby entitled to enrolment in Supreme Court.

X. From and after such incorporation as aforesaid, the districts of resident magistrates existing in British Kaffraria at the time of such incorporation,

British Kaffrarian resident magistrates' districts and courts transferred to Cape Colony.

No. 3—1865.

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.

XI. 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 a 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 apply-

Unexpired licences not affected.

Exception.

Provision for issue under certain circumstances of retail wine and spirit licences.

ing 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 authorize 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.

XII. 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 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.

Repugnant laws of British Kaffraria repealed.

Power of Governor to repeal laws not repugnant.

XIII. 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.

Laws, duplicates of or identical with colonial laws, repealed.

XIV. 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

Wills and testamentary writings to be deposited with Master of Supreme Court.

Letters of administration, &c., granted before incorporation,



No. 3—1865.  
to remain of full  
effect.

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.

British Kaffrarian insolvent law repealed, and colonial law substituted.

XV. 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.

XVI. 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 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.

XVII. 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.

No. 3—1865.

Revenues how to be collected.

XVIII. 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.

Compensation for loss of office.

XIX. From and after such incorporation as aforesaid, and until the session of Parliament next after such incorporation, it shall be lawful for the Governor to pay to persons holding office in British Kaffraria at the time of such incorporation, salaries at and after the same rate as those which shall be payable to them next before such incorporation.

Payment of salaries.

XX. 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 be also payable to her said Majesty, her heirs and successors, yearly and every year, as and for a salary to the

Payments to native chiefs, £5,000, reserved.

Salary of High Commissioner reserved.

No. 3—1865.

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.

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:

Legislative Council to consist of twenty-one members.

XXI. From and after the taking effect of this Act the Legislative Council of this Colony shall consist of twenty-one elective members.

Additional members, how to be elected.

XXII. Three of the six members required to complete the number of twenty-one members shall be elected by the Western Districts, and three by the Eastern Districts of this Colony.

Provisions of Constitution Ordinance and Act No. 6 of 1859, regarding elections for Legislative Council to apply.

XXIII. All and singular the provisions of the Constitution Ordinance and of the Act No. 6 of 1859 regarding the election from time to time, for ever, of eight members of the Legislative Council for the Western Districts, and seven members for the Eastern Districts, shall, *mutatis mutandis*, apply to the election, in time to come, of eleven members for the Western Districts and ten members for the Eastern Districts.

New electoral divisions created.

XXIV. 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.

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XXV. 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.

Each new electoral division entitled to two members of House of Assembly.

XXVI. 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.

Electoral privileges of divisions of which new electoral divisions originally formed part, not affected.

XXVII. Forthwith, upon the taking effect of this Act, the civil commissioner in whose custody the list of persons registered as voters in any electoral division of which any of the fiscal divisions in the twenty-fourth section mentioned formed a part, shall make out and transmit to the civil commissioner of each fiscal division by this Act cut off from such electoral division and constituted a separate electoral division, a list of all registered voters resident in the separate electoral division so cut off, and the list, so transmitted, shall form the list of registered voters for the time being, for the electoral division constituted by this Act; and the list of registered voters, from which the said last-mentioned list was taken, as it shall stand after deduction of the names contained in the list transmitted, shall form the list of registered voters, for the time being, for the electoral division from which the electoral division by this Act constituted shall have been cut off: Provided that the civil commissioner of the division of Beaufort shall transmit to the civil commissioner of the division of Victoria West a list of the voters for the electoral division of Beaufort, as now constituted, who shall be resident in the fiscal divisions

List of registered voters of new electoral divisions, how to be formed.

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of Victoria West and Fraserberg, to form the list of registered voters, for the time being, for the electoral division, comprising the two last-mentioned fiscal divisions: And, provided also, that the civil commissioners of the divisions of Graaff-Reinet and Colesberg, respectively, shall transmit to the civil commissioner of the division of Richmond, lists of the voters for the electoral divisions of Graaff-Reinet and Colesberg respectively, as now constituted, who shall be resident in the fiscal divisions of Richmond and Hope Town respectively, to form the lists of registered voters, for the time being, for the electoral division, comprising the two last-mentioned fiscal divisions.

New electoral divisions, how to be named.

XXVIII. The electoral division formed by the fiscal divisions of Victoria West and Fraserberg 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.

Provision for election of new members of Legislative Council.

XXIX. As soon as may be, after the taking effect of this Act, there shall be an election of three members of the Legislative Council for the Western Districts, and of three members for the Eastern Districts.

Provisions of Constitution Ordinance regarding nominating, electing, and proclaiming members of Legislative Council to apply.

XXX. All and singular the several provisions of the Constitution Ordinance and of the Act No. 6 of 1859 relating to members of the Legislative Council, and to the mode of nominating, electing, and proclaiming such members, shall apply to the election, and the members in the last preceding section mentioned, as fully as if the said provisions were herein again set forth and word for word repeated.

XXXI. Together with the four members of Council for the Western Districts and the three members of Council for the Eastern Districts who will, under the provisions of the Constitution Ordinance, vacate their seats at the expiration of five years from the date of the last election of members for the said Council, two of the members first elected under this Act for the Western Districts and two of the members so elected for the Eastern Districts shall also vacate their seats, and the four last-mentioned members who shall so vacate their seats shall be those who were elected by fewest votes; and the remaining ten members, being five for the Western Districts and five for the Eastern Districts, shall vacate their seats at the expiration of ten years from the date of such last election, to the end that instead of an alternate election every five years of eight members, and of seven members, as in the fifth section of the Constitution Ordinance provided, there shall be an alternative election of eleven members, and ten members, every five years, for ever; and all the provisions of the said fifth section of the Constitution Ordinance shall extend and apply to such alternate elections and to the members whose seats shall become vacant: Provided that in case the three members for the Western Districts, or the three members for the Eastern Districts, who shall be first elected after the taking effect of this Act, shall be elected under the provisions of the Act aforesaid, No. 6 of 1859, and without the taking of any poll; or in case, at the poll taken for such election, any two or more of the members for the Western Districts, or for the Eastern Districts, shall have been elected by an equal number of votes, then, and in that case, the questions respecting the two members for such districts, respectively, who shall vacate their seats for the purpose aforesaid, shall be determined by lot, to be drawn in manner and form as in the said fifth section of the Constitution Ordinance provided.

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First members of Legislative Council elected under this Act, how to vacate seats.

Eleven members and ten members to be elected alternately for ever.

Provision in event of no poll being taken, or of an equality of votes.

XXXII. 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

When proclamation for election of new members of Assembly is to be issued.

No. 3—1865.	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.	XXXIII. 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.	XXXIV. This Act may be cited for all purposes as “The British Kaffraria Incorporation and Parliamentary Representation Amendment Act of 1865.”

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No. 4—1865.]      AN ACT      [Oct. 10, 1865.  
To Consolidate and Amend the Several Acts relating  
to Divisional Councils.

Preamble.

WHEREAS it is expedient to consolidate and amend the several Acts relating to Divisional Councils: Be it enacted by 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.

I. The following Acts are hereby repealed, that is to say, the Act No. 5, 1855, entitled, “An Act for creating Divisional Councils in this Colony,” the Act No. 4, 1856, amending the said Act No. 5, 1855, the Act No. 14, 1856, amending the said Act No. 5, 1855, the Act No. 4, 1859, amending the said Act No. 5, 1855, the Act No. 9, 1861, amending the said Act No. 5, 1855, and the Act No. 11, 1864, entitled “An Act for amending the Law relative to the Constitution of Divisional Councils, and for other purposes.”

II. Nothing in the repeal aforesaid shall be deemed or taken to destroy or affect the constitution, powers, acts, or functions of any divisional council in existence at the time of the taking effect of this Act, which council shall be in the same state and condition as if it had been elected under this Act; and every person whose name shall have been published in the Government Gazette by the civil commissioner of any division as a member of any such divisional council, shall be deemed and taken to have been duly elected as such member, nor shall any evidence of irregularity or alleged irregularity in his election be admissible to prove the contrary.

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Such repeal not to affect existing councils or election of members whose names have been published.

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

Divisions (Cape excepted) subdivided into districts.

IV. It shall be lawful for the Governor, by proclamation or by proclamations to be by him issued, to fix and prescribe the limits of each of the six districts of every such division, in such manner as shall, after investigation, be found most convenient and advantageous: Provided that every such district shall (except as hereinafter excepted) be formed of one field-cornetcy, or of more than one, and that no field-cornetcy shall be divided for the purpose of forming any such district: And provided that the said Governor shall distinguish the districts of every division (except the division of the Cape) by numbering the same respectively, beginning at number one and proceeding to number six: Provided, also, that as often as any division shall contain fewer field-cornetcies than six, then it shall be lawful for the Governor to divide such last-mentioned division into six districts, in whatever way shall appear to be most convenient; and every such district shall be as legal as if it consisted of an undivided field-cornetcy.

Districts by whom and how to be fixed.

Field-cornetcies not to be divided.

Districts to be numbered.

Exception as to division of field-cornetcies.

V. It shall be competent for the Governor to alter, by any such proclamation as aforesaid, the limits which may have been fixed for any district by any previous proclamation: Provided that all and singular the districts of every division as existing at the time

District limits may be altered.

Existing districts to remain as at present until altered.



- No. 4—1865. of the taking effect of this Act shall subsist until altered by some such proclamation as aforesaid.
- Divisional Council (Cape excepted) to consist of eight members.** VI. Every divisional council in the Colony (except the divisional council of the Cape division) shall consist of eight members, of whom three members shall be elected by the district in which the office of the civil commissioner of the division shall be situated, and one member by each of the five other districts contained in such division.
- How to be elected.**
- Cape division to include Cape Town and Green Point.** VII. For the purpose of this Act, the division of the Cape shall include the municipalities of Cape Town and Green Point, according to their respective limits for the time being.
- Cape division subdivided.** VIII. The division of the Cape shall, for the purpose of this Act, be subdivided into seven districts, instead of six, and the divisional council of the said division shall consist of ten members, instead of eight.
- Council to consist of ten members.**
- Mode of subdivision.** IX. The division of the Cape, exclusive of the municipalities of Cape Town and Green Point, shall be divided into six districts, numbered from one to six, and the said municipalities conjointly shall form the seventh district of the said division, and shall be styled "The Cape Town and Green Point District."
- Members how to be elected.** X. Of the ten members constituting the divisional council of the Cape division, four members shall be elected by the Cape Town and Green Point District, and one member by each of the six other districts contained in the said division.
- Sections 7, 8, 9, and 10 to remain in abeyance until next general election in 1867.** XI. The seventh, eighth, ninth, and tenth sections of this Act shall remain in abeyance, and be of no force until the next general election for the members of the several divisional councils of this Colony, which will be in the year 1867, shall be at hand, it being the true intent and meaning of this section that when and as soon as it shall become necessary to take any of the steps by this Act prescribed preparatory to such general election in the year 1867, the said sections shall be deemed and taken to be in force, but not sooner; and that until then the divisional council of the Cape division, as at present constituted, shall (except as hereinafter excepted) remain unchanged: Provided only that from and
- Members for Cape**

after the taking effect of this Act, the four persons elected by the municipalities of Cape Town and Green Point under the Act No. 9, 1858, shall be deemed to be members of the divisional council to all intents and purposes, and shall be entitled to exercise all and singular the same rights, privileges, and powers as any other members of the said council, anything in any former law to the contrary notwithstanding: Provided also, that when and as soon as the said seventh, eighth, ninth, and tenth sections of this Act shall become and be in force, then the several sections of the Act No. 9, 1858, from the twenty-ninth to the thirty-third (both inclusive), and the first, second, third, and fourth sections of the Act No. 11, 1859, shall stand repealed.

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Town and Green  
Point invested with  
full rights.

On sections 7, 8, 9,  
and 10 coming in  
force, sections 29 to  
33 of Act 9, 1858, and  
1, 2, 3, and 4 of Act  
11, 1859, repealed.

XII. All persons in any district registered as voters under the Ordinance for constituting a Parliament in this Colony, and commonly called the Constitution Ordinance and no other persons, shall be entitled to vote for the member or members of the divisional council to be elected by such district: Provided that every person entitled to vote in any district which is, by this Act, empowered to elect three members shall be entitled to give one vote, and no more, for each of any number of candidates at such election, not exceeding three: Provided, also, that every person entitled to vote in the Cape Town and Green Point district of the Cape division shall be entitled to give one vote, and no more, for each of any number of candidates, not exceeding four.

Who shall be deemed  
voters.

Distribution of votes.

XIII. Every person registered as a voter in any division under this Act, by virtue of the Ordinance aforesaid for constituting a Parliament, and who shall be registered in the land registers of this Colony as the owner of immovable property situated in such division, which shall, at the time of any election under this Act be valued for assessment for road purposes at an amount not less than £500 sterling, shall (except as in the next succeeding section is excepted) be eligible to be elected by any district into which such division shall be subdivided as aforesaid, to be a member for such district of the divisional council of such division: Provided that as often as

Who capable of being  
elected.

When joint owners  
may be elected.

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any such immovable property so valued as aforesaid shall be jointly owned by more owners than one, every such joint owner shall be eligible to be elected as aforesaid in case the value of such property, when divided by the number of the joint owners thereof, shall yield for every joint owner the sum of £500 sterling: Provided, however, that in case such joint owners shall, by the land registers aforesaid, appear to own the said property in unequal shares, no such joint owner shall be eligible to be elected unless his share shall, regard being had to the total value of the said property, yield a sum not less than £500 sterling.

Who disqualified to be elected.

XIV. No person who shall hold any office of profit under Her Majesty the Queen, no insolvent who shall not have obtained his rehabilitation, and no person whose estate shall, at the time of any election, be under assignment for the benefit of his creditors, shall be eligible to be elected as a member of any divisional council; and no person who is a contractor, under any subsisting contract with any divisional council, shall be eligible to be elected a member of such council.

Duration of office of existing councils.

XV. Every divisional council which shall be in office at the time of the taking effect of this Act shall remain in office till the 1st day of November, 1867, and shall then go out of office.

Nomination of candidates to be called for by notice.

XVI. The civil commissioner of every division shall, not later than the 31st day of August, 1867, by a notice in the Government Gazette, in the English and Dutch languages, call upon the voters in the respective districts composing such division to nominate a candidate or candidates for every such district respectively, and such notice shall be in substance, as follows:—

DIVISIONAL COUNCIL FOR THE DIVISION OF ———.

Form of notice.

The voters in the several districts of the division of ——— are hereby invited to nominate, in writing, candidates for the representation of such districts respectively in the divisional council at the ensuing election. Every candidate must be nominated by not fewer than

five persons entitled to vote for the district, or otherwise his nomination will be null and void; and in district No. — \* (which is entitled to return — members) each candidate must be nominated separately, by not fewer than five voters. No voter can sign more nominations than one, on pain of having his name erased from all the nominations in which it appears, and considered as if never placed there. All nominations must be received by the undersigned not later than the — day of —, 1867, and any nomination received later than that day will be taken no notice of. Every voter signing any such nomination must state his place of residence.

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Dated this — day of —, 1867.

(Signed) A. B., Civil Commissioner  
for the Division of —.

\* In the notice to be given by the Civil Commissioner of the Cape, instead of "in district No. —," say "in the Cape Town and Green Point district."

XVII. The day to be inserted in any such notice as aforesaid as that on or before which all nominations must be received, shall be a day not later than thirty-one days next before the 1st day of November, 1867. Date of nomination.

XVIII. Besides publishing such notice as aforesaid in the Government Gazette, the civil commissioner shall publish the same in some newspaper, if any, published in his division; or should there be no such newspaper, then in the newspaper which shall be published nearest to such division, and shall post a copy of such notice inside and outside of every court of resident magistrate in such division; and shall, by such other means as the divisional council shall determine, make known such notice, or the substance of it: Provided that no failure to comply with the provisions of this section, or any of them, shall vitiate or in any way affect any election or other proceeding under the provisions of this Act. Directions for publishing and posting notice.  
Election not vitiated by failure.

XIX. The nomination of a candidate for any dis- Form of nomination.

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trict may be written in English or Dutch, and shall be in substance as follows :

We, the undersigned, voters for district No. ———, do hereby nominate A. B., of ———, in this division, to become a member of the divisional council of this division for the said district No. ———. Dated this ——— day ———, 1867.

(Signed) C. D. ——— (name of place of residence).

E. F. ———

G. H. ———

I. J. ———

K. L. ———

&c., &c., &c.

Certain omissions and informalities, &c., not to affect nomination.

Provided that as often as any person signing any such nomination shall be a registered voter residing in the district to which such nomination relates, his omission to state his place of residence shall not vitiate or affect the validity of his signature: Provided, also, that the fact of the civil commissioner deeming a candidate to be ineligible shall not affect the nomination of such candidate: Provided, further, that no informality in any such nomination shall vitiate the same so long as the requisite number of competent voters shall have signed the same, and so long as the names of the candidate or candidates, and the district for which they are nominated, shall be discoverable from the terms of the nomination.

Nomination by less than five voters of no effect. Person duly nominated cannot withdraw his name.

If same person is nominated for more than one district.

First poll, when to be taken.

Poll, where and by whom to be taken (Cape Town and

XX. No person not nominated as aforesaid by five voters or upwards shall be eligible as a member of the divisional council for any district of any division, and no person duly nominated shall have any power to withdraw his name: Provided that if the same person shall be nominated for more districts than one, he shall be deemed to be a candidate for each district for which he shall have been so nominated.

XXI. The poll for the first general election of divisional councils under this Act shall take place on the second Wednesday in the month of October next preceding the 1st day of November, 1867.

XXII. The poll for each district in any division (except the Cape Town and Green Point district in

the division of the Cape) shall (except as hereinafter in this and in the next succeeding section is excepted) be taken by the field-cornet, at his residence, in case such district shall be constituted by a single field-cornetcy; and as often as any district shall comprise more field-cornetcies than one, the poll shall be taken by the respective field-cornets of such field-cornetcies, each at his own residence, in his own ward: Provided that the poll for every field-cornetcy in which there shall be a court of resident magistrate shall be taken by the resident magistrate at his court-room: And provided that as often as any resident magistrate shall not be himself the civil commissioner of the division in which such court-room shall be situated, the civil commissioner shall proceed, in regard to such resident magistrate and the poll to be taken by him, precisely as if such resident magistrate had been a field-cornet, whose duty it was to take such poll: Provided, also, that as often as the civil commissioner shall be himself the resident magistrate to take the poll in any field-cornetcy, he shall fix up the notice in the third sub-division of the twenty-sixth section of this Act described, and conform (as shall also such resident magistrates as are not civil commissioners) to the provisions of the Act regulating the taking of the poll by field-cornets.

XXIII. The civil commissioner of each division shall, previous to any election of members of any divisional council, and after communicating with the field-cornet of each ward in his division, appoint, in writing, some fit and proper person in each ward to act in place and stead of such field-cornet, in case, by reason of illness, absence, or other sufficient cause, such field-cornet should not in person take the poll for a divisional councillor or divisional councillors in such ward; and the poll taken by any such person shall be as legal, valid, and effectual as if the same had been taken by such field-cornet: Provided, also, that as often as the residence of the field-cornet of any ward shall be so situated as to be remote from, or difficult of access by, the greater number of the voters in such ward, the civil commissioner may appoint some more convenient place for the taking

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Green Point ex-  
cepted).Provision in case of  
illness, absence, &c.,  
of field-cornet.Poll may be taken at  
a place other than  
field-cornet's resi-  
dence.

No. 4—1865.

Voter to vote in field-cornetcy where registered.

Poll for Cape Town and Green Point, where and by whom to be taken.

Names of candidates and place and time of poll to be published.

When number of candidates shall not exceed number of vacancies, no poll to be taken.

Where no poll is taken, names of districts and candidates to be published.

Mode of publishing notice.

Forms, lists, &c., to be furnished to field-cornets.

of the poll in such ward: Provided further, that no voter shall vote except in the field-cornetcy in which such voter stands registered.

XXIV. The poll for the Cape Town and Green Point district in the Cape division shall be taken at the Townhouse, in Cape Town, by the civil commissioner of the Cape division, or by such other person as the Governor shall by Government notice nominate and appoint.

XXV. As soon as may be after the day fixed by the notice in the sixteenth section of this Act mentioned as the latest day upon which nominations can be received, the civil commissioner shall, by notice in the Government Gazette, announce the names of the candidates nominated for each district respectively, and the place, day, and hour at or upon which the poll is to take place: Provided that if, in any case, no greater number of candidates shall have been nominated for any district than the number to be then elected, no poll in or for such district shall take place, and the candidate or candidates so nominated shall be deemed to be duly elected: Provided, also, that the notice in this section mentioned shall name the districts, if any, for which no poll is to be taken, and the candidate or candidates elected for the same: And provided, further, that besides publishing such notice in the Government Gazette, the civil commissioner shall make it known by such other means as are in the eighteenth section of this Act set forth, which section shall apply to the notice in this section mentioned as fully as if the same were herein again repeated.

XXVI. The civil commissioner shall, not less than seven days before the day named by him in the notice in the last preceding section mentioned for the taking of the poll in any particular field-cornetcy, deliver or cause to be delivered to the field-cornet of such field-cornetcy the documents or papers following, that is to say:

1. A paper writing containing the names of the candidates nominated in manner aforesaid for the district in regard to which the poll is to be taken.

2. A list, written or printed, of the voters registered in such field-cornetcy for the purpose of the Constitution Ordinance,—the said list to be certified under the hand of the civil commissioner to be correct.
3. A notice, legibly written, ready to be signed by the field-cornet, and posted at his residence, which notice shall be, in substance, as follows:—

DIVISION OF ———. DISTRICT NO. ———

Notice is hereby given that a poll for the (member or members, as the case may be) of the divisional council for the above district will be held at this house (or at ———) on the ——— day of ——— next, opening at eight o'clock in the morning, and closing at five o'clock in the afternoon. The candidates nominated for this district are the following:

A. B.  
C. D.  
E. F.  
&c., &c.

All votes given for any person except one of the above-named persons will be thrown away.

Dated this ——— day ———, 1867.

4. A number of pages of ruled paper calculated to be sufficient to contain the names of the voters signing one after another on each successive line. Each page to have at the top, legibly written, the name of one candidate, and but one, and every candidate to have a number of pages reckoned to prove sufficient for the names of those who will vote for him.
5. A printed paper containing the several sections of this Act, from the twenty-sixth to the thirty-sixth, both inclusive, in the English and Dutch languages.
6. A printed paper containing the form of solemn declaration to be made by the field-cornet, as such form is hereinafter in the thirty-fourth section set forth.



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Field-cornet to note day of receipt, sign and post notice of poll.

XXVII. The field-cornet shall, forthwith upon the receipt of the documents or papers in the last preceding section mentioned, fill in at the foot of the notice in the third subdivision of the said section set forth, the date when he received the same, and then sign such notice, and then fix up such notice for general information at some conspicuous place upon his premises: Provided that no neglect or failure to comply with any of the provisions of this section shall render void the poll to which such notice relates.

Failure not to vitiate poll.

Duration of poll.

XXVIII. The poll at every polling place in any district shall open at eight o'clock a.m., and close at five p.m., before or after which hours respectively no votes shall be received.

Manner of voting.

XXIX. The manner of voting shall in substance be this: The field-cornet shall ascertain that the person coming to vote is a registered voter entered upon the list of voters received by such field-cornet, and having ascertained that such person is so entered, the field-cornet shall ask for whom he votes. When the voter has named the candidate for whom he intends to vote, the field-cornet shall lay before the voter one of the ruled pages received by him, having at the top the name of that candidate, and the voter shall, if able and willing to do so, write in the presence of the field-cornet, his name upon the upmost vacant line. Should the voter be unable or unwilling to write his name, he may, in the presence of the field-cornet, make his mark, in which case the field-cornet, or some other person in the field-cornet's presence, shall write the Christian name and surname of the voter, and the voter shall touch the top of the pen whilst the person who writes his name makes a cross (x) between the Christian name and the surname. The words "his mark," above, below, or in connection with this cross shall not be necessary nor the signature of any person as a witness to the making of such mark.

Manner of voting where election is for more than one member.

XXX. As often as the district for which any poll is taken under this Act shall be entitled to elect more than one member the manner of voting shall be the same as that in the last preceding section described,

except that there shall be laid before the voter for his signature ruled papers, as aforesaid, bearing the names of such candidates not exceeding the number of members to be then elected, as the voter shall have named as the candidates for whom he votes.

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XXXI. If the field-cornet shall, by mistake, lay before any voter a paper headed by another name than the name of the candidate named by such voter, and such voter's name shall be affixed to such paper before the mistake shall have been discovered, then the name of such voter, in case, before leaving the polling-room, he shall so desire, shall be struck out of that paper, and he shall be at liberty to sign another headed by the name of the candidate originally named by such voter; but no voter who shall have once affixed his name to a paper headed by the name of the candidate originally named by him shall be competent afterwards, upon an allegation of mistake or for any other reason, to withdraw his vote: Provided, however, that a voter may after naming a candidate as the candidate for whom he votes, but before he has finished signing his name or making his mark to a paper headed by the name of that candidate, correct his error or change his purpose, and vote, as aforesaid, for another candidate.

How where a vote is given or taken in error.

XXXII. When any person comes to vote, the field-cornet shall as aforesaid see that such person is a voter named upon the list of voters received from the civil commissioner, and unless his name shall be found upon such list, shall refuse to receive his vote: Provided that when and as often as the identity of any voter shall be established, and it shall be made to appear to the field-cornet that he is really and truly the person meant by the name upon the said list, no omission in the name upon the list of one or more of the Christian names of such voter, and no error in the spelling of any Christian name or surname of such voter, whether the error be in the spelling of the name upon the list, or in the spelling of the name by the voter, shall destroy or affect the validity of any vote, so long as the surname as written by or for the voter shall be of the same sound with the surname upon the list, or so long as the sur-

None but registered voters to vote.

Omission of Christian name or error in spelling names not to deprive voter of vote.

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name as written by or for the voter, although not of the same sound with the surname upon the list, shall be a known corruption of that surname, or the name upon the list shall be a known corruption of the surname as written by or for the voter.

At close of poll, field-cornet to sign polling lists, ascertain and carefully preserve result of poll.

XXXIII. As soon as may be after the close of the poll at any polling-place the field-cornet shall sign his name at the foot or on some other part of every separate leaf or sheet containing the names of voters who have voted, and shall cast up the number of votes given for each candidate for whom votes shall have been given, and shall put down in writing, one after another, upon a separate paper, the names of the candidates, and opposite to each name the number of votes given for that candidate, and should any candidate have received no vote, shall write opposite his name the word "none;" and the paper containing the statement of such numbers, signed in attestation of its correctness by the field-cornet and by one other person, being an owner of fixed property in the division, who shall also cast up the votes, shall be carefully preserved by such field-cornet until he shall know that the parcel mentioned in section thirty-five has been received by the civil commissioner.

Declaration to be made by field-cornet.

XXXIV. The field-cornet shall at the same time, in the presence of the person who shall have signed the paper in the last preceding section mentioned, sign a solemn declaration, under the Ordinance No. 6, 1845, being the solemn declaration mentioned in the sixth subdivision of the twenty-sixth section, and which solemn declaration shall be in substance as follows :

#### SOLEMN DECLARATION.

Form of declaration.

I, A. B., do solemnly and sincerely declare that I have taken the poll referred to in the accompanying polling papers, to the best of my ability, fairly and impartially, and without favour or prejudice in regard to any candidate, and that the accompanying polling papers contain a true statement, to the best of my knowledge, of the votes given at the said poll. And I make this solemn declaration conscientiously believing the same to be

true, and by virtue of the Ordinance No. 6, 1845, entitled "An Ordinance for substituting declarations in the place of certain oaths, and for the suppression of voluntary and extra-judicial oaths and affidavits."

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Declared this — day of ——— 186—.

A. B.

Witness : C. D.

Provided that every solemn declaration, when so signed and witnessed as aforesaid, shall be of the same force and effect as if it had been declared before a resident magistrate or justice of the peace.

XXXV. As soon as the solemn declaration aforesaid shall have been signed and witnessed, the field-cornet shall carefully and securely make up into a parcel all the polling papers relating to the poll just taken, together with the said solemn declaration, and shall address the said parcel to the civil commissioner of the division, and shall safely deliver or cause to be delivered the said parcel to such civil commissioner; but the field-cornet shall not enclose in the said parcel the paper in the thirty-third section mentioned, but shall himself keep that paper, as in the said section is enjoined.

Polling papers and declaration to be forwarded to civil commissioner.

XXXVI. The civil commissioner receiving any such parcel as aforesaid shall forthwith examine the papers therein contained, and in case he shall find that any separate leaf or sheet containing the names of voters who had voted has been omitted to be signed by the field-cornet, or find that the solemn declaration aforesaid has been omitted to be enclosed, or, being enclosed, has been enclosed unsigned or unwitnessed, or find any other irregularity of a like nature, then such civil commissioner shall, without delay, inform the field-cornet of the irregularity committed, and it shall be competent for the said field-cornet to correct the same, and upon his correcting the same, the several papers relating to the said poll shall be in the same plight and condition as if no such irregularity had been committed: Provided that the field-cornet by whom such irregularity was committed shall be liable for the expenses, if any, attendant upon the correction of the same.

Field-cornet may correct certain irregularities.

But is liable for expenses incurred in consequence.

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Complaints with regard to poll, how to be made.

Period within which complaints must be lodged.

Who to investigate complaints, and how to be investigated.

Parties may be assisted by an agent.

Civil commissioner may take evidence and summon witnesses.

XXXVII. It shall be competent for any voter registered or alleging himself to be registered as such in any field-cornetcy, who shall complain that his vote, duly tendered at the poll taken in such field-cornetcy, was rejected by the field-cornet, or shall complain that at such poll a person not registered as a voter in such field-cornetcy was admitted to vote, or who shall complain of any other irregularity fallen into at any such poll, to lodge with the civil commissioner his complaint, in writing, stating the name of the person so rejected or admitted, or the particulars of any other alleged irregularity, and requesting that the grounds of such complaint may be investigated: Provided that if such complaint shall not be lodged within seven days after the day of the poll, no notice shall be taken of it, nor shall the poll as taken be capable of being afterwards impeached by such complainant, in any action or proceeding at law.

XXXVIII. As often as the civil commissioner shall receive any such complaint as aforesaid he shall, in the most speedy and inexpensive manner practicable, cause the field-cornet and the party complaining, and the party, if any, whose vote is questioned, or the persons concerned in any other alleged irregularity, to attend before him, and shall, in their presence, inquire into the grounds of such complaint, and if he shall find that the vote of any person so complaining was improperly rejected, shall enter such vote for the candidate for whom it was tendered; and if he shall find that any person not entitled to vote was admitted to vote, shall strike out such vote from the polling paper or polling papers in which it appears; and if he shall find that any other irregularity was fallen into, shall correct such irregularity: Provided that every person complaining and every person complained against shall be entitled to be assisted by an agent: Provided, also, that the civil commissioner may, should the circumstances of the case require it, take evidence on oath, and may summon witnesses to appear before him to give evidence, and the form of summoning witnesses, and the consequences of attendance or non-attendance

shall, *mutatis mutandis*, be in substance the same as are set forth in the sixteenth, seventeenth, and eighteenth of the rules, orders, and regulations of the courts of resident magistrates contained in the schedule marked B to the Act No. 20 of 1856: Provided, further, that the civil commissioner may, if he shall so think fit, award his reasonable costs to any person concerned in such investigation, to be paid by any other person concerned therein, and shall tax and ascertain such costs, and shall certify in writing to the clerk of the court of resident magistrate for the district in which the person liable to pay such costs shall reside, the amount of such costs, and the process of such court may issue for the levy of such costs, precisely as if such costs had been costs recovered in a civil suit by the person to whom they shall have been awarded by the civil commissioner.

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Costs may be awarded.

Recovery thereof.

XXXIX. If the nature of any such case as aforesaid shall be such that the civil commissioner shall be uncertain regarding the decision proper to be given upon it, it shall be competent for him to draw up a statement of the facts, and such statement shall be signed by such civil commissioner in attestation of its correctness, and such civil commissioner shall transmit the same to the registrar of the Supreme Court, to be by him submitted to a judge in chambers for his consideration and determination: Provided that every civil commissioner within the Eastern Districts, as the same are described in the Administration of Justice Act, 1864, shall transmit all such cases as aforesaid to the registrar of the Court of the Eastern Districts for the consideration and determination of a judge of the said court.

Complaint may be referred to a judge of the Supreme Court for decision.

Or to a judge of the Eastern Districts Court.

XL. The judge before whom any such statement as aforesaid shall be laid may, should the same appear to him to be defective, call for further information from the civil commissioner who transmitted it, and shall give such a decision as shall appear to him to be right and proper, and such decision shall, for the purpose of the poll to which it relates, be final and conclusive.

Judge may call for further information.

Decision final.

XLI. Nothing in this Act contained shall prevent

Reservation of right

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of appeal to com-  
petent court;

any person who had within the seven days aforesaid complained that his vote was, at any such poll as aforesaid, improperly rejected, and whose complaint the civil commissioner shall have decided not to be well founded, or any person whose vote given at any such poll shall, by the civil commissioner, have been struck off upon some other person's complaint, or any person whomsoever having an interest in the subject-matter of any such decision by the civil commissioner, from seeking redress in any competent court: Provided that no such person shall commence any suit or proceeding in any such court, for the purpose of obtaining such redress, later than forty-two days next after the pronouncing by the civil commissioner of the decision complained of: Provided that no civil commissioner shall be made a party to such a proceeding unless it be alleged that his decision was wilfully wrong: And if the court before which any such suit or proceeding shall be instituted shall find that the decision complained of was not wilfully wrong, it shall award the civil commissioner his reasonable costs against the party by whom the same shall have been alleged, should it be consonant with justice so to do; and should it not be so consonant, such costs shall be paid from and out of any moneys at the disposal or under the administration of the divisional council.

Period for appealing limited.

Civil commissioner to be no party to suit.

Costs of suit.

Civil commissioner to ascertain result of poll.

XLII. If the civil commissioner shall find, upon examining the papers received from each polling place in any district, that the same are regular and formal, he shall cast up the votes given for the respective candidates for such district, and shall ascertain for whom the greatest number of votes in such district shall have been given, and such candidate shall be the member of the divisional council for such district: Provided that, in regard to any district entitled to elect more members than one, the civil commissioner shall ascertain what candidates, equal in number to the number of members to be then elected, shall have received more votes than any other candidate, and such candidates shall be the members for such district: Provided, also, that the civil commissioner shall not of his own motion and

No vote to be struck out unless objected to.

without a complaint lodged, strike out any vote upon the polling paper upon the ground that, in his opinion, the voter's name was not a name upon the list sent to the field-cornet: Provided, further, that during the seven days aforesaid any candidate or person appointed in writing by any candidate shall be at liberty to inspect the several polling papers, and to compare them with the lists of voters with which such polling papers ought to correspond.

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Candidate may inspect polling papers and electoral lists.

XLIII. If, by any accident or mischance, the parcel in the thirty-fifth section mentioned containing the polling papers of any polling place should be lost or destroyed on its way from the field-cornet to the civil commissioner, then the paper writing by the thirty-third section directed to be made and signed shall be received and acted upon by the civil commissioner, in place and stead of the polling papers so lost or destroyed.

How, in case of loss or destruction of polling papers.

XLIV. If any person shall wilfully occasion the loss or destruction of any such parcel as in the thirty-fifth section mentioned, or of any of the contents of any such parcel, such person shall, upon conviction, be liable to a fine not exceeding forty pounds, and in default of payment thereof to imprisonment, with or without hard labour, for any period not exceeding three months.

Penalty for wilfully occasioning such loss or destruction.

XLV. When the civil commissioner of any division, except the division of the Cape, shall have ascertained, in manner aforesaid, the names of the eight members respectively who shall have been elected by the six districts respectively composing his division, the said civil commissioner shall forthwith cause to be published in the Government Gazette, and in some such newspaper as in the eighteenth section mentioned, if any, the names of such eight members, placing opposite to or in connection with every such name the number of the district by which such member was, or such members were, elected: Provided that if, in any district, two or more persons who have received the greatest number of votes, and who cannot be both or all elected, shall each have received the same number of votes, then the question between such persons shall

Publication of names of members elected.

Equality of votes to be decided by lot.



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Date for publishing names.

Publication of names as regards Cape division.

Date and place of first meeting of council to be notified to members.

Meeting not to take place within twenty-one days of notice.

Publication of names of members, how affected by lodgment of complaints.

Non-election or staying of publication of names of members elected; one district not to affect publica-

be determined by lot, to be drawn in presence of the civil commissioner and not fewer than seven witnesses: Provided, also, that the name of no member for any district in which a poll was taken shall be published until the expiration of seven days from the day on which such poll was taken: Provided, further, that the provisions of this section shall apply to the Cape division, and to the civil commissioner of such division, save only that such civil commissioner shall publish the names of ten members instead of eight, and shall describe the several districts of the said division in the manner in which such districts are in the ninth section of this Act mentioned and described.

XLVI. The civil commissioner shall, in the same Gazette and newspaper in which he shall cause to be published the names of the members elected to form the divisional council, apprise such members, by public notice, of the day, the hour, and the place at which the first meeting of the council will be held: Provided that such first meeting shall not take place sooner than twenty-one days from the day of the publication of such notice: And provided that the civil commissioner shall, over and above such notice, inform each of the said members respectively, in writing and in reasonable time, of the day, hour, and place appointed for such first meeting.

XLVII. The lodging of any complaint such as is in the thirty-seventh section described shall not prevent or delay the publication of the names of any candidate who would, even if every complaint so lodged were adjudged to be legal or well-founded, still be the member for, or a member for, the district to which such complaint relates. But if the decision upon such complaint or complaints might alter or affect the result of the poll, then no candidate for such district whose election might be so affected shall be published as the member for, or as a member for, such district, until such complaint shall have been investigated and decided.

XLVIII. The non-attendance of all the voters of any district for the purpose of electing a member or members for the divisional council, or the existence

in regard to any district of any complaint or complaints of such a nature as to stay the publication of the name of any candidate as the member or a member for any district, shall not prevent or delay the publication, as aforesaid, of the names of the members for the other districts of the division to which such district belongs.

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tion of names of members in other districts.

XLIX. If any person ineligible under the fourteenth section of this Act to be elected a member of the divisional council shall, nevertheless, have been nominated as in the nineteenth section mentioned, and shall have been elected, it shall be competent for any voter for the district for which such candidate shall have been elected to lodge within seven days next after the day on which the poll in and for such district was taken, but not later, with the civil commissioner a complaint stating the ground of such ineligibility, and thereupon the like proceedings, *mutatis mutandis*, as are in the thirty-seventh, thirty-eight, thirty-ninth, fortieth, and forty-first sections mentioned, shall apply to such complaint and the decision thereupon: Provided that, in regard to any complaint grounded upon the alleged ineligibility of any candidate, the attendance of the field-cornet who took the poll shall not be necessary.

Complaints regarding ineligibility of members elected by whom and manner in which to be made.

L. If, by reason of the failure in one or more districts to nominate or to elect candidates, or of the existence of irregularities or of errors in the taking of any polls, not yet corrected, or of complaints not yet decided, it shall so happen that there shall not be published in manner aforesaid, in any division, before the time fixed for the existing divisional council to go out of office the names of members of the new divisional council sufficient to form a quorum, as in the sixty-first section mentioned, the divisional council then in existence shall remain in office until a number of members of the new council sufficient to form a quorum shall have been published: Provided that as soon as a number of members of the new council sufficient to form a quorum shall have been published, then such member shall, for the time being, form such council, and such council shall be, to all intents and purposes, competent to perform all func-

Existing council to retain office until publication of names of sufficient number of new members to form a quorum.

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tions and duties belonging to it, in case such functions or duties shall not, by some particular Act or Acts, require the presence of a greater number of members than the number so published.

Sections 25 to 35  
to apply to elections  
for Cape Town and  
Green Point.

LI. For the purpose of the election of members of the divisional council of the Cape by the Cape Town and Green Point District of the said division, the provisions of the several sections of this Act from the twenty-fifth to the thirty-fifth, both inclusive, shall, *mutatis mutandis*, apply to such election, precisely as if the said Cape Town and Green Point District were a field-cornetcy, and as if the civil commissioner or other person nominated as aforesaid, to take a poll for such district, were a field-cornet.

Date for nomination  
of candidates fixed  
by section 16 may  
in certain cases be  
altered.

LII. If it shall happen that, by reason of any accident or other cause, the civil commissioner of any division shall not, in regard to the election of a new divisional council for such division in the year 1867, give, within the time by the sixteenth section of this Act in that behalf provided, the notice in the said section mentioned, or shall not give any other notice, or do any other act, by any previous section of this Act required whereby it shall happen that the names of at least a quorum of members of any new divisional council cannot be published before the day on which the old divisional council ought regularly to go out of office, it shall be lawful for the Governor, upon the application of such civil commissioner, to authorize such civil commissioner to publish, or cause to be published, such a notice as aforesaid, fixing such day or days for the receiving of nominations for candidates for the representation of the several districts of such division, and such day or days for publishing any other notice or doing any other act, as may be most convenient, and the members of the old or expiring divisional council shall remain in office until the publication, in manner and form as in the forty-fifth section of this said Act directed, of the names of the members elected.

As to failure of elec-  
tion from any cause  
excepting non-attend-  
ance of voters.

LIII. If any district of any division shall, from accident or other cause, not being the neglect of the voters to attend, as hereinafter mentioned, fail at any poll appointed for such district to elect a member of

the divisional council for such district, it shall be lawful for the Governor aforesaid, upon the application of the civil commissioner of such division, to authorize the taking in such district upon such day as may seem convenient, of another poll, and such other poll shall be deemed to be as legal, valid, and effectual as if it were the poll first appointed for such district: Provided that as often as it shall be certified to the Governor by the civil commissioner of any division, that at the poll duly appointed for any district, no member of the divisional council was elected, by reason that no voter for such district attended to give his vote, and that the said civil commissioner, after inquiry, has not ascertained the existence of any sufficient impediment preventing the attendance of one or more of the voters of such district at the said poll, then the said Governor shall direct the civil commissioner to call, by a notice in the form in the next succeeding section set forth, to be published in manner and form, and for the same time, as the notice in the sixteenth section of this Act mentioned, for a new nomination of candidates to fill the seat or seats in the council remaining vacant by reason that the district aforesaid so failed to elect; and shall, as soon as may be after the day fixed by such notice as the latest day for receiving such nominations, by another notice, published in manner and form as the notice in the twenty-fifth section of this Act mentioned, announce the names of the candidates nominated, and the day on which and the place at which a poll will be taken for the member or members whom the district which so failed to elect was entitled to elect, and such poll shall be taken by the civil commissioner in the court-room of the resident magistrate nearest to his office, and shall be kept open during the hours in the twenty-eighth section specified, and at such poll every voter entitled to vote in any district of the division for members of the divisional council shall be entitled to vote for the member or members to be then elected, and the person or persons elected at such poll shall be deemed to be the member or the members (as the case may be) for the district.

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How, if from no attendance of voters.

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Future rights affected. electoral not thereby

Distribution of votes.

Provisions of section to apply in case of a partial election.

Form of notice of nomination where election has failed through non-attendance of voters.

which shall have so, as aforesaid, failed to elect :  
 Provided, also, that when the member or members so elected as aforesaid shall vacate office, the district for which he or they sat shall be again entitled to elect its member or its members (as the case may be), precisely as if this section had never been passed :  
 Provided, further, that as often as the district which so failed to elect shall be a district entitled to have elected more members than one, then each voter at the said poll shall be entitled to give one vote, and no more, for each of any number of candidates, not exceeding the number of members to be then elected :  
 Provided, lastly, that if any district entitled to have elected more members than one shall have elected one or more, but not all of the members who should have been elected at such poll, then the provisions of this section regarding an election by the whole of the voters in the division shall apply to the election of the member or members who shall not have been elected at such poll, in like manner as if no member had been elected at such poll ; and the notice in the next succeeding section mentioned shall be modified accordingly.

LIV. The notice in the last preceding section mentioned, calling for the nomination of candidates, shall be in substance as follows :

DIVISIONAL COUNCIL FOR THE DIVISION OF ———.

Whereas the District No. —, failed to elect its member (or members as the case may be) at the last election, by reason that no voter of such district attended at the poll to give his vote, I hereby invite the voters entitled to vote for members of divisional council in the several districts of this division to nominate, in writing, candidates for the representation of the said District No. —. Every candidate must be nominated by not fewer than five voters, or otherwise his nomination will be null and void. No voter can sign more nominations than one, on pain of having his name struck out of all the nominations in which it appears, and considered as if never placed there. All nominations must be received by

the undersigned not later than the — day of —, 1867, and any nomination received later than that day will be taken no notice of. Every voter signing such nomination must state his place of residence.

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Dated this — day of —, 1867.

(Signed) A. P., Civil Commissioner for the Division of —.

LV. The form for nominating candidates in reference to the notice in the last preceding section mentioned shall, in substance, be the form in the nineteenth section of this Act set forth, except that the word "said" in the said form shall be struck out: Provided that the provisions of the twentieth section of this Act, except the last proviso thereof, shall apply to all nominations made under this section.

Provisions of sections 19 and 20 to apply to such nominations.

LVI. If the voters of any district shall, without some reasonable and sufficient cause, to be judged of by the Governor, fail to nominate any candidate for such district, in case such district shall be entitled to elect one member, or the necessary number of candidates, in case such district shall be entitled to elect more members than one, then the right to elect the member or members for such district for whom no nomination shall have been received shall devolve upon the voters throughout the several districts of the division, and thereupon the provisions of the fifty-third, fifty-fourth, and fifty-fifth sections of this Act, shall, *mutatis mutandis*, apply to the election of such member or members: Provided that as often as the Governor shall be of opinion that a reasonable and sufficient cause existed for the failure to nominate as aforesaid, then the Governor may authorize the civil commissioner to issue a fresh notice such as is in the sixteenth section of this Act mentioned, calling for nominations of candidates, in like manner as if the seat or seats for the district in question had become casually vacant: Provided, also, that the provisions of the thirty-seventh, thirty-eighth, thirty-ninth, fortieth, and forty-first sections of this Act shall apply to all elections held under the provisions of the fifty-third section, and of this section.

How on failure of nomination without reasonable cause.

And how, where reasonable cause exists.

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Members to vacate office triennially.

LVII. The members of the divisional councils throughout the Colony who shall be elected in manner aforesaid shall come into office on the 1st day of November, 1867, and shall go out of office on the 1st day of November, 1870, and a fresh election shall be held on the second Wednesday in October in the said last mentioned year, and so on with triennial vacancies and triennial elections for ever; and all and singular the several provisions of this Act regulating the first general election, after this Act shall take effect, shall, *mutatis mutandis*, extend and apply to all successive general elections.

But may be re-elected.

Provided that nothing in this section contained shall prevent a member going out of office from being re-elected.

Vacancies, how created.

LVIII. If any elective member of any divisional council shall die, or resign, or in writing refuse to act for any district for which he shall have been elected, or become insolvent, or assign his estate for the benefit of his creditors, or accept any office of profit under Her Majesty the Queen, or become a contractor with the council of which he is a member, as in the seventy-fifth section described, or for three months from the time of his last attendance at a meeting of the divisional council, absent himself, without the leave of the council first had and obtained, from the meetings, whether ordinary or special, which may have been held within that period, unless he shall have been prevented by sickness or some other lawful and sufficient cause, to be judged of by the council, then the office of such member shall, *ipso facto*, become vacant: Provided that every member prevented from attending at such meetings as aforesaid by sickness or other cause, shall be bound to report, or cause to be reported, to such council, not later than twenty-eight days next after the day on which the last of the said meetings shall have been held, the cause of his non-attendance, and if no such report shall have been received, or, being received, shall be resolved by the council not to be lawful and sufficient, then the seat of such member shall, as aforesaid, become vacant:

Members prevented from attending to give notice to council.

As regards attendance at special meetings.

And provided that, in regard to special meetings

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of the council, absence from the same shall not be reckoned or regarded for the purposes of this section unless notice of the same shall have been given to the member who shall have absented himself in reasonable and customary time: Provided, also, that as often as any person shall have been elected as a member of council by more districts than one, he shall be bound to declare within fourteen days next after the publication of his name as the member or as a member for such districts respectively as in the forty-fifth section directed, for which one of the said districts he elects to sit as member, and upon such election by him the seat or seats of such person for the other district or districts by which he was elected shall become vacant: Provided, further, that in case such person shall not within the fourteen days aforesaid, make his election as aforesaid, then all the seats in the council for which seats such person was elected shall become vacant.

When elected for more than one district member to declare district for which he elects to sit.

Failing to do so, all seats for which he was elected to become vacant.

LIX. As often as any casual vacancy shall occur in any divisional council, upon any of the grounds in the last preceding section mentioned, or upon any other ground mentioned in this Act, in any divisional council, then all and singular the provisions of the several sections of this Act from the sixteenth to the forty-first, both inclusive, shall, *mutatis mutandis*, apply to the election of a member to supply such vacancy:—Provided that the dates to be fixed for receiving the nomination of candidates, and for the taking of the poll (if any), shall be, as regards the filling up of casual vacancies, in the discretion of the civil commissioner.

Elections for casual vacancies.

Dates of nomination and poll in discretion of civil commissioner.

LX. The civil commissioner of the division shall, *ex officio*, be a member of the divisional council of his division, and shall, when present, preside at all the meetings thereof: Provided that if, in any case, the person acting as civil commissioner shall be the secretary of the council, then such person shall not be a member of the said council, or preside at any of its meetings.

Civil commissioner a member *ex officio*, and to preside.

Exception.

LXI. At every meeting of any divisional council five members, including the chairman, shall form a quorum.

Quorum.



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Who to preside in  
absence of civil com-  
missioner.

LXII. Every meeting of any divisional council at which the civil commissioner shall not be present shall, before proceeding to business, elect some member present to be the chairman of such meeting.

Chairman not to have  
casting vote.

LXIII. The civil commissioner or other member presiding at any meeting of the divisional council shall in regard to all questions that may come before such meeting have his original or deliberative vote, but not a casting vote.

Appointment of offi-  
cers.

LXIV. Every divisional council shall have a secretary, and such other officers (if any) as shall be deemed necessary by such council, and such officers shall be appointed by such council and shall

Tenure of office.

hold office during the pleasure of the council: Provided that the secretary and other officers appointed by any such council shall remain in office, notwithstanding the occurrence of any number of general elections of members of such council, unless removed

Security may be re-  
quired.

by such council. Provided, also, that every such council shall take from every officer employed by it who shall be charged with the receipt or disbursement of any of the funds of such council, such security as the council shall deem sufficient for the due performance of his duty.

Civil commissioner's  
clerk eligible for office  
of secretary.

LXV. Nothing in this Act contained shall prevent any divisional council from appointing, with the consent of the Governor, any civil commissioner's clerk to be the secretary to such council.

Salary of secretary.

LXVI. It shall be lawful for every divisional council to assign to its secretary such salary as it shall deem adequate and proper.

Percentage payable  
to council on sale of  
Crown lands.

LXVII. Towards making good the salary of the secretary of the divisional council, and defraying incidental expenses of such council, there shall be paid to the divisional council of each division, from and out of the public revenue, five pounds per centum upon the net proceeds of the purchase money of all Crown lands lying within such division, and sold under the rules and regulations applicable, for the time being, to the sale of Crown lands, as also, in each and every year upon all rents received under Act No. 19 of 1864: Provided that such percentage shall not exceed, in any one year, in any one division,

But not to exceed  
£150 in one year.

the sum of one hundred and fifty pounds : And provided that the quitrent which such lands shall be sold subject to shall not, in calculating such net proceeds as aforesaid, be reckoned or regarded as entering into the price.

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Quitrent not to be included in calculating percentage.

LXVIII. So far as the percentage aforesaid shall be insufficient to provide for the salary of the secretary aforesaid, such salary shall be paid from and out of the road rates levied by such council, and any other funds at its disposal.

Other funds available for payment of secretary's salary.

LXIX. Every divisional council is hereby authorized to frame such standing rules and orders as shall be necessary for the orderly and efficient conduct of its business : Provided that no such rules shall have any force or effect until the same shall have been submitted to and approved of by the Governor of the Colony.

Rules to be framed and approved by Governor.

LXX. The divisional council of any division may sue or be sued by the name or style of "The Divisional Council of —," and may in all legal proceedings be referred to by that name or style.

Style under which to sue and be sued.

LXXI. In all suits and proceedings in any court of resident magistrate by or against any divisional council, it shall be lawful for the secretary of such council to appear as the agent of such council, without producing his authority to sue and to defend : Provided that nothing herein contained shall be construed so as to prevent any divisional council from appearing in any such court by an agent other than the secretary of such council ; and the power to sue or defend to be produced by such agent, and filed with the clerk of the court, shall be signed by the secretary thus : "By order of the Divisional Council, A. B., Secretary of such Council."

Secretary may represent council in suits and actions.

But council may appoint another agent.

LXXII. In all suits and proceedings in any court other than the court of the resident magistrate, the warrant to sue or defend shall be signed by the civil commissioner thus : "By order of the Divisional Council, C. D., Civil Commissioner."

Warrant to sue or defend, how to be signed.

LXXIII. No proof need be given in any court that the civil commissioner or the secretary of the council (as the case may be), in signing any such warrant or power as aforesaid acted under the

No proof of authority to sign warrant required.

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authority of the council, but evidence shall be admissible to prove the contrary.

Travelling allowance to members.

LXXIV. It shall be lawful for each divisional council, from and out of any funds at its disposal, or under its administration, to pay to each member attending any meeting of such council travelling expenses, at a rate to be fixed by such council, according to the distance travelled, not exceeding in the whole fifteen shillings per day, for every day necessary for journeying to, remaining at, and returning from the place of meeting: Provided that no member whose ordinary place of residence shall not be distant more than ten miles from the place in which any meeting of such divisional council shall be held shall be entitled to receive any payment for or in regard to his attendance at such meeting either by way of travelling expenses or otherwise: Provided, also, that travelling expenses, not exceeding the rate aforesaid, shall be allowed to any member who shall, in obedience to any resolution of the council to which it belongs, have travelled to inspect any main road or divisional road at any place distant more than ten miles from the ordinary place of residence of such member.

Who not entitled.

Travelling expenses payable on land and road inspections.

No salary, fees, &c., not provided for by this Act, payable to members.

LXXV. No member of any divisional council shall have or receive any salary or allowance, or exact, accept, or receive any fee or reward whatsoever, not granted or allowed by this or some other Act, for, on account, or by reason of his office as such divisional councillor; nor shall any divisional councillor become a contractor with the council of which he shall be a member for the doing of any work or the supplying of any materials, articles, or things required by such council; nor shall such member be directly or indirectly interested in any such contract as last aforesaid. Any person contravening this section of this Act shall incur and be liable to a penalty not exceeding one hundred pounds: Provided that nothing in this section contained shall prevent any divisional councillor from receiving any fee or allowance which the Governor shall authorize for or on account of any service performed by such councillor under and in pursuance of the Crown Lands Act or any other Act.

Nor shall they become contractors to council.

Penalty.

Exception.

LXXVI. The fiftieth section of the Act No. 9, 1858, entitled "An Act to provide for the Maintenance of the Public Roads of the Colony," is hereby repealed.

No. 4—1865.

Section 50 of Act 9 of 1858 repealed.

LXXVII. All contracts entered into by any divisional council for the doing of any work or the supplying of any materials, articles, or things required by such council, shall be binding upon their successors in office: Provided that no such contract shall be made to endure for a longer period than three years from the day of its date.

Existing contracts to remain binding.

Contracts not to extend over more than three years.

LXXVIII. Whenever the term "division" is mentioned in this Act it shall remain a fiscal division, not an electoral division, and whenever the term "field-cornet" is mentioned in connection with any election for members of divisional council, it shall mean such a person as in the twenty-third section of this Act mentioned, as well as a field-cornet, and, also, the resident magistrate and the civil commissioner or other person in the cases provided for by the twenty-second and twenty-fourth sections.

Interpretation of terms.

LXXIX. Two auditors of the accounts of the divisional council shall be elected by the persons entitled to vote for members of the divisional council at a public meeting of such persons, to be convened by the civil commissioner of the division, and to be held, except in regard to the division of the Cape, in the court-room of the district of which such civil commissioner is the resident magistrate, on the second Wednesday of the month of January succeeding every general election of members of the divisional council of such division: Provided that the civil commissioner shall convene such meeting by a notice posted for not less than fourteen days next before the day of meeting at or near his public office, and published in any newspaper issued in the town or village in which such meeting is to be held, or, if there be no such newspaper, then in whatever newspaper shall be issued nearest to such town or village: Provided, also, that if such civil commissioner shall fail or neglect to post or publish such notice, the said meeting shall, nevertheless, be held at ten o'clock a.m. on the day and at the place aforesaid: Provided,

Election of auditors.

Notice of meeting for such election to be posted.

In case of failure to post, election to proceed notwithstanding.

Meeting may be adjourned.

No. 4—1865.

Meeting for Cape  
division, when and  
where to be held.

further, that such meeting may be adjourned till a future day should the persons present thereat and entitled to vote so determine: Provided, lastly, that the public meeting for the division of the Cape shall be held on the day aforesaid, in the Town House, Cape Town.

Who not eligible for  
election as auditors.

LXXX. It shall not be competent to elect as an auditor any member of the divisional council of which the accounts are to be audited by such auditor, nor any person related to any member of such council in or within the third degree of consanguinity or affinity: Provided that no auditor, who was at the time of his election duly qualified to be elected shall cease to hold such office by reason that some person related to him in or within such third degree shall, after the election of such auditor, become a member of the divisional council to supply some casual vacancy, or by reason that such auditor and some person who was, when such auditor was elected, already a member of the divisional council, shall after such election become related to each other in or within the third degree of affinity: Provided, also, that if any auditor shall after his appointment as such be elected a member of the divisional council, his office of auditor shall *ipso facto* become vacant.

Exceptions.

Auditor to vacate  
office on being elected  
a member of council.Auditor, how to be  
elected.

LXXXI. Every person proposed to be elected an auditor shall be nominated by one person entitled to vote, and such nomination shall be seconded by some other such person: Provided that if a person elected auditor at any meeting shall, at such meeting, decline to act, then an election of a person instead of the person declining to act shall, at such meeting, take place, until some two persons shall be chosen who shall not at such meeting refuse to act.

If auditor elected  
declines to act.Vacancy in office  
of auditor, how  
created, and proceed-  
ings thereupon.

LXXXII. Should any auditor die or resign, or refuse to act, or become incapable of acting from mental or bodily disease, or cease to reside in the division for which he was elected, or become insolvent, or assign his estate for the benefit of his creditors, or become a contractor with the divisional council of which he is to audit the accounts, his office shall become vacant, and the remaining auditor shall act alone until the next election of auditors as herein-

before provided: Provided that as often as both auditors shall, upon any of the grounds aforesaid, vacate office, or a vacancy shall occur by reason that any auditor for the time being shall be elected a member of the divisional council so that there shall be no auditor for the division, then the civil commissioner, shall upon such notice as is in the seventy-sixth section mentioned, convene a public meeting for some convenient day, not being less than fourteen days, after the day in which such notice shall be posted as aforesaid, and such meeting shall proceed to elect two auditors in manner and form as aforesaid: Provided, also, that if there shall be in any division at the time of the taking effect of this Act, no auditor in office, the civil commissioner of such division shall within one month next after the taking effect of this Act, upon such a notice as is in this section mentioned, convene a public meeting of the persons entitled to vote in such division for the election of two auditors, in manner and form as hereinbefore provided.

No. 4—1865.

How, if both auditors vacate office.

Or if in any division the office of auditor be vacant on taking effect of this Act.

LXXXIII. It shall be the duty of the auditors to examine half-yearly the accounts of receipts and payments of the divisional council, to ascertain that they are supported by proper vouchers, that the expenditure is in accordance with votes, or resolutions, or contracts of the council, and that such votes and resolutions, and contracts are authorized by law; and also to ascertain and certify the amount of the cash-balance in the hands of the council or of its treasurer, and where such cash is deposited; to publish an abstract of the accounts, with a certificate of the auditors as to their correctness or otherwise, in some such newspaper as in the eighteenth section mentioned: Provided, also, that all accounts which, under and by virtue of any Act in force for the time being relative to the public roads of the Colony, shall be furnished to the Governor by any divisional council shall, when so furnished, be certified as correct by the auditors aforesaid.

Duties of auditors.

Accounts furnished to Government to bear auditors' signatures.

LXXXIV. The remuneration to be paid to such auditors as aforesaid shall be such amount as shall have been previously fixed by the divisional council, and such remuneration, together with the cost of

Remuneration to auditors.

No. 4—1865.

publishing every such notice of meeting and abstract of accounts, shall be paid from and out of the funds of the divisional council.

Books, accounts, &c., to be open to inspection.

LXXXV. All books, accounts, and papers belonging to the divisional council in the hands of the secretary, or otherwise in the possession or under the control of the council, shall, during reasonable hours on every Wednesday, be open to inspection and examination at the office of the divisional council, as well by any elector of the division as by the auditors to be appointed under this Act.

Election expenses, how to be defrayed.

LXXXVI. The expenses arising out of the election of divisional councils,—that is to say, the cost of publishing notices under this Act in any newspaper other than the Government Gazette, the cost of all printed papers hereinbefore directed to be provided in regard to the taking of any poll, and the cost of remunerating field-cornets or others for their services in and about the taking of any poll,—shall, except as next hereinafter is excepted, be defrayed from and out of any moneys at the disposal or under the administration of the divisional council: Provided that the notices relating to such election, to wit, the notices mentioned in the sixteenth, twenty-fifth, forty-fifth, forty-sixth, fifty-second, and fifty-third sections of this Act, shall be inserted in the Government Gazette, through the Colonial Government, free of charge to the divisional council: And provided that so much of the Act No. 9, 1858, and of the Act No. 10, 1864, and of any other Act, as shall be repugnant to or inconsistent with this section, or with any other section of this Act authorizing or directing payments to be made by the divisional council from and out of any road-rates or other funds at its disposal, shall be and the same is hereby repealed.

Certain notices to be inserted in Gazette free of charge.

Repugnant portions of Acts 9 of 1858, and 10 of 1864, repealed.

Short title.

LXXXVII. This Act may be cited for all purposes as “The Divisional Councils Act, 1865.”

No. 5—1865.] AN ACT [Oct. 10, 1865. No. 5—1865.

To Provide for Framing a List of Registered Voters  
for the Electoral Division of Swellendam.

**W**HERAS the List of Registered Voters for that Preamble.  
portion of the electoral division of Swellendam  
which consists of the fiscal division of Swellendam  
was, with the Public Offices in the town of Swellen-  
dam, in which it was deposited, destroyed by fire on  
the 17th May, 1865 : And whereas it is necessary  
to provide for framing another list in room and  
stead of the list so destroyed : 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 :

I. Forthwith, upon the taking effect of this Act, Voters' list for the  
several field-cornet-  
cies how to be framed.  
the civil commissioner of Swellendam shall, by  
letters addressed to the several field-cornets within  
the fiscal division of Swellendam, request the said  
field-cornets to make out lists of all persons qualified  
to be registered as voters in the several field-  
cornetcies respectively, so far as such persons shall  
be known to the said field-cornets respectively.

II. Besides addressing such letters to the several Civil commissioner to  
notify in Government  
Gazette that voters'  
lists being framed.  
field-cornets aforesaid, the civil commissioner afore-  
said shall publish in the Government Gazette a  
notice, which shall be, in substance and effect, as  
follows :

REGISTRATION OF VOTERS.—DIVISION OF SWELLENDAM. Form of notice.

Whereas, for the purpose of framing a list of the  
registered voters resident in the fiscal division  
of Swellendam, I have, in pursuance of the  
Act of last session directing me so to do,  
called upon each field-cornet in the fiscal  
division of Swellendam to make out a list of  
all persons resident in his field-cornetcy who  
are qualified to be registered as voters under  
the Constitution Ordinance : Now, therefore,  
I hereby give notice that the several field-  
cornets of the said division are engaged in  
making out such lists, and that all persons  
qualified to be so registered as voters in any



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field-cornetcy are at liberty to send in, in writing, on or before the ——— day of ———, 1865, their names to the field-cornet of such field-cornetcy, to the end that their names may be entered by the said field-cornet upon the said list.

(Signed) A. B., Civil Commissioner.

Notice to be posted.

III. Besides publishing such notice in the Government Gazette, the civil commissioner shall cause the same to be posted outside and inside the court of resident magistrate in Swellendam, and at all such other public places as he shall deem desirable, and at the residence of every field-cornet in his division.

Who shall be entered on field-cornet's list.

IV. The field-cornet shall enter upon his list the name of every person resident in his field-cornetcy who shall in writing send in his name as aforesaid, and shall, moreover, enter upon the said list the name of every other person there resident whom such field-cornet shall know or believe to be qualified to be registered.

Field-cornet to forward list to civil commissioner.

V. As soon as may be after the day mentioned in such notice as the day on or before which names must be sent in to the field-cornets, each field-cornet shall forward his list to the civil commissioner of Swellendam.

Alphabetical list to be framed by civil commissioner.

VI. The civil commissioner, upon receiving such lists, shall, in regard to each field-cornetcy, place in alphabetical order the names upon the list received from its field-cornet, adding thereto in such alphabetical order the names of any persons not named upon the field-cornet's list whom the civil commissioner shall know or believe to be qualified to be registered as voters in such field-cornetcy.

Notice to claimant and persons objecting, how to be given.

VII. When the civil commissioner shall, in manner aforesaid, have framed the alphabetical 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:

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 \_\_\_\_\_ 186—.

(Signed) C. D., Field-cornet.

VIII. Every field-cornet receiving any such lists and notices as aforesaid, shall forthwith fill up the blank left in such notice 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. List and notice to be posted.

IX. 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 : Claim how to be made.

This is to give notice that I hereby claim to have my name inserted in the list of voters in the field-cornetcy of \_\_\_\_\_. Form of claim.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 186—.

(Signed) E. F.  
(Here state place of residence).

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Mode of objecting.

X. 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 \_\_\_\_\_, 186—.

(Signed) G. H.

(Here state place of residence).

Claims and objections to be forwarded to civil commissioner.

XI. 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 the fiscal division of Swellendam shall carefully enclose and transmit to the civil commissioner of the said division 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 civil commissioner that such is the case.

Civil commissioner to frame list of claimants and persons objected to.

XII. As soon as the said civil commissioner shall be in possession of all claims and objections forwarded to him by any field-cornet, under and by virtue of the last preceding section of this Act, he shall forthwith frame, in regard to each field-cornetcy within his division, a list containing the names of all persons not inserted in the list relating to such field-cornetcy, as the same was posted as aforesaid, 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; and such civil commissioner shall, in his capacity as resident magistrate of the district of Swellendam, hold such lists.

Form of list of claimants.

XIII. The list of claimants in the last preceding section mentioned shall be headed thus :

FEILD-CORNETCY OF ———.

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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 of the district of Swellendam, which notice shall be, in substance, as follows :

Form of notice to be appended to such list.

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 of ———, 186—, 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 ——— 186—.

(Signed) A. B.,  
Resident Magistrate for the District of ———.

XIV. The list of persons objected to as in the fourteenth section mentioned shall be headed thus :

Form of list of persons objected to.

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 :

Form of notice to be appended to such list.

The persons above named, and also the persons by whom they have been objected to, are respectively required to take notice that the resident magistrate undersigned will hold a court at ——— on ——— the ——— day of ——— 186—,

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at — o'clock in the afternoon, 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 ———  
186—.

(Signed) L. M.,  
Resident Magistrate for the District of ———.

How and where above  
list and notices shall  
be posted.

XV. The resident magistrate aforesaid shall forthwith post the lists and notices aforesaid outside and inside his court, 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 seventh section mentioned had been posted.

Court for revising  
list, when to be held.

XVI. The day to be appointed by any such notice as is in the thirteenth and fourteenth 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: Provided that the same day need not be appointed for or in regard to each field-cornetcy within the district of such magistrate.

Court, where to be  
held.

XVII. 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-cornetcy may be heard and determined at a court held at any place within another field-cornetcy.

XVIII. The resident magistrate aforesaid shall attend on the day and 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 eighth section mentioned shall be bound to prove to the satisfaction of such magistrate, either in person or by some one else authorized 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 authorized 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 to 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.

XIX. As soon as the resident magistrate shall have finally determined upon all claims and objections connected within any field-cornetcy within his district, he shall transmit to the civil commissioner of the division a list showing the names of all claimants

Manner of hearing and determining questions.

List of claimants admitted and objections allowed to be transmitted to civil commissioner.

222 POSTAGE PROCLAMATION REPEALING ACT.

No. 5—1865.

whose claims have been admitted, and the names of all persons objected to in regard to whom the objection shall have been allowed.

Civil commissioner to frame general list.

XX. When the civil commissioner of the 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 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.

List, so framed, to stand in place of destroyed list.

XXI. The list in the last preceding section mentioned shall be in room and stead of the list in the preamble to this Act mentioned, which was destroyed by fire, and shall, to all intents and purposes, be regarded, from and after the taking effect of this Act, as if it were the identical list so destroyed.

Next biennial registration not affected.

XXII. Nothing in this Act contained shall prevent the next biennial registration of voters for the electoral division of Swellendam from taking place at the same time as if the list aforesaid had not been destroyed, and as if this Act had not been passed.

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No. 6—1865.]                      AN ACT                      [Oct. 10, 1865.

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.

Preamble.

WHEREAS by “the Postage Act, 1864,” provision was made for subjecting, by Proclamation of the Governor, Letters posted in this Colony in order to be carried thence to England by the Steamers belonging to the Diamond Line to the same rate of postage to which such Letters would

have been subject if posted in order to be carried to the same place by the Mail Packets plying between this Colony and England, under contract with the Postmaster-General of England: And whereas, by the said Act it was further provided that no such Proclamation should issue until arrangements should have been completed between the Colonial Government and the Diamond Company, of the nature and for the purposes in the third section of the said Act set forth: And whereas, under the belief that such arrangements had been completed between the Colonial Government and the said Diamond Company, acting through its agents in this Colony, and that nothing remained to be done but the execution in England of a contract embodying the said arrangements, the Governor did on the 31st day of October, 1864, issue the Proclamation of which a copy is in the Schedule to this Act set forth: And whereas the said Diamond Company has declined to ratify and confirm the said arrangements, or to execute a contract embodying the same, whereby it becomes necessary to cancel and make void the said Proclamation: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. The said Proclamation of the 31st day of October, 1864, is hereby cancelled and made void: Provided that all postage received under the said Proclamation prior to the taking effect of this Act shall be deemed and taken to have been lawfully received.

Proclamation of 31st October, 1864, fixing rate of postage on letters conveyed by Diamond Line, cancelled.

#### SCHEDULE.

Whereas the arrangements contemplated by the third section of the "Postage Act, 1864," for the conveyance of letters by the line of steam vessels called the Diamond Line have now been completed, and it is therefore competent and fitting that, in terms of the second section of the Act aforesaid, the rates of the postage on letters carried by the said steam vessels be increased and made equal to the postage payable on letters conveyed by the mail packets plying under contract with the Postmaster-General of England:

Now, therefore, I do, by this my Proclamation, declare and make known, that from and after the date hereof, all



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letters posted in this Colony in order to be carried from thence to England by any of the steamers aforesaid belonging to the Diamond Line shall be subject to the same rates of postage as if such letters had been posted in order to be carried to the same place by the mail packets plying between this Colony and England, under contract with the Postmaster-General of England.

No. 7—1865.] AN ACT [Oct. 10, 1865.

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 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.

I. 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, &amp;c., done before taking effect of this Act, not affected.

II. 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.

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Partial resurveys or other proceedings under previous Acts, how affected.

III. 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.

Divisional councils may subdivide divisions for purposes of resurvey.

IV. 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 land-marks 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 a character as shall be suitable for the purpose of a complete and effectual resurvey, under this Act, of the several farms included therein.

Section or areas to be bounded with reference to natural objects or other distinguishable landmarks.

V. 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

In the absence of natural objects or landmarks, other beacons may be taken.

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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.

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 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: 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.

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Limit of area may be extended.

VI. 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.

Surveyor-General to be consulted.

Concurrence of Surveyor-General not to be taken as an admission of correctness of beacons in reference to Crown land.

VII. 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.

Boundaries of sections to be publicly notified.

VIII. It shall be competent for any number of landowners owning not less than half the value of

Who may apply for resurvey of area or section.

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Valuation for road rates to be taken as value of property.

Proceedings of divisional council on receiving application for re-survey.

Re-survey to be directed by proclamation in Gazette.

Divisional council may recommend surveyors.

Surveyor-General not bound to appoint such surveyors.

Surveyors removable by Governor.

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.

IX. 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 this section or area to which such application shall relate.

X. 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.

XI. 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.

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XII. 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.

Appointment of, and instructions to, surveyors.

XIII. 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 land-mark as aforesaid, within the time aforesaid, shall, upon conviction, forfeit any sum not exceeding ten pounds or less than two pounds.

Proclamation directing resurvey to be published in local newspaper (if any).

Owners of farms to set up beacons on issue of proclamation.

Penalty for neglect.

XIV. As often as the owners of different farms in any section or area shall differ in regard to the true position of the beacons 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: 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

How, if owners differ as to position of their beacons.

Penalty for removing or injuring beacons pending investigation.

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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.

XV. 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 in question

Notice to be given.

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 of the

Publication of notice.

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 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.

Divisional council may depute a member to accompany surveyor.

Duty of surveyor

XVI. It shall be the duty of the surveyor or sur-

veyors 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 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.

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with regard to farms the beacons whereof are undisputed.

Exception as to admission of beacons in sections proclaimed for resurvey prior to 31st December, 1866.

Exception as to framing of new diagrams.

XVII. 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.

XVIII. 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

Duty of divisional council on receiving such report.



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demand of the said council, to deliver over to such council.

Fresh grant to nullify all previous titles and transfer-deeds.

XIX. 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.

Hypothecation to survive and be registered anew.

Duty of divisional council when informed that fresh grant will be issued.

XX. 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 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.

XXI. 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 farms encroach upon Crown land.

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XXII. 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 call for further information and direct survey.

XXIII. 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.

Surveyor-General may depute a person to take evidence, &c.

XXIV. Every person so appointed as last aforesaid to take evidence is hereby authorized 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.

Persons deputed may summon witnesses and take evidence upon oath.

XXV. Should the Surveyor-General, after considering all such information as shall have been

Disputes respecting encroachment on Crown lands may be

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settled by commis-  
sioners chosen for  
that purpose.

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.

XXVI. 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 sur-  
veyor for detention  
while so reporting or  
collecting informa-  
tion.

XXVII. 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.

XXVIII. 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.

XXIX. 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.

XXX. The expenses of the person in the twenty-third section mentioned (should any such person be appointed), the recompense 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

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Expenses incurred  
under preceding sections,  
how to be met.

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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 land-holders to deliver over their title deeds and diagrams.

XXXI. 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.

Landholders bound to point out beacons and to admit or deny correctness of adjoining beacons.

XXXII. 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.

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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.

XXXIII. 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.

When title-deed and diagram are found to be correct, certificate to that effect to be endorsed on the latter.

XXXIV. 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 con-

Diagram, so certified, not to be issued without certificate regarding placing, &c., of beacons.

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structed according to the provisions of the hundred and twelfth section of this Act.

For unless it be certified that provisional beacons have been demolished.

XXXV. 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 such certificate shall have been given, have been demolished or removed.

How, if dispute as to boundaries cannot be settled by parties concerned.

XXXVI. 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 formed, and number of members.

XXXVII. 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.

XXXVIII. 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 the said council, before inserting in the said list the name of any man proposed to be set down therein, shall ascertain from

Consent to act on commission to be previously obtained.

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 said council: Provided, also, that the name of the civil commissioner of the division shall, in no case, be inserted upon such list.

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Civil commissioner not to be placed on list of proposed members.

XXXIX. 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 authorized 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 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.

If dispute be between owners of two farms only, number of proposed members may be reduced.

How such reduction shall be made.

XL. 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.

How reduction may take place in case of dispute between more than two.

Divisional Council to decide as to relative interest of parties to dispute.

XLI. 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

How, if owners decline to strike off one or more names.

How, when more



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than two names remain on the list.

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.

XLII. 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 authorized 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.

XLIII. 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.

XLIV. 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 interested in the

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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.

XLV. 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:

Oath to be taken by civil commissioner or resident magistrate.

“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!”

Form of 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.

Other members of commission to take similar oath.

XLVI. 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.

Examination, how to be conducted.

Parties to dispute may be assisted by an agent.

XLVII. In determining what real and substantial

Rules for deciding matter in dispute.

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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 recognize 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 which the commission in the particular case was, in manner aforesaid, selected or obtained, recognized 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.

- 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 recognized in manner and form as in letter *b* set

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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 produc-  
tion of documents.

XLVIII. 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

Penalty for disobey-  
ing summons.

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.

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Offence shall be deemed committed in district in which offender resides.

XLIX. It shall be lawful for the said commissioners, or any two or one of them, acting in pursuance of this Act, to administer an 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.

Commissioners may take evidence on oath.

Punishment for false oath.

When declaration may be substituted for oath.

L. 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.

LI. 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

Upon adjournment, notice of time and place of intended meeting to be given.

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notice to be given to all parties interested, through the field-cornet, of the changed place, day, or hour of such next meeting.

How when decision of commission shall not be unanimous.

LII. The decision of the commissioners may be given by any two of them notwithstanding the dissent of the third.

Commission to report decision and forward evidence, &c., to divisional council.

LIII. 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.

Notice of decision to be given to parties interested.

LIV. 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 persons will report to the divisional council the day or days upon which, and the manner in which 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

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.

costs of serving such notice shall be included in the costs of the inquiry.

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LV. 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 inquire 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.

Supreme Court may be appealed to against decision.

Any number of persons interested may join in appeal.

Surveyor-General, in certain cases, to be taken to be party interested.

Unanimous decisions prior to taking effect of this Act not affected.

LVI. 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.

Divisional Council on receiving notice of appeal, to transmit report and evidence to Supreme Court.

LVII. 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,

Court may be moved for rule to re-open decision.



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and remarks aforesaid, and of any affidavit or affidavits which may be 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.

LVIII. 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 meet.

When rule shall be made absolute court to direct manner of further investigation.

LIX. 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 *vivâ 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.

LX. 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.

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LXI. 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 surveyor aforesaid employed in the resurvey of the said section or area, or some other surveyor to be approved of by the Surveyor-General, shall treat and consider the beacons planted under the judgment of the court as beacons admittedly correct; 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.

If decision be corrected, court to fix position of beacons.

LXII. As often as, by any of the preceding sections of this Act, jurisdiction is given to the Supreme Court, the Court of the Eastern Districts shall have jurisdiction concurrent with that of the Supreme Court in regard to all lands lying and being within any of the districts over which the said court of the Eastern Districts has, by virtue of the "Administration of Justice Act, 1864," or has, or shall have, by any other Act, the certain jurisdiction by the "Administration of Justice Act, 1864," conferred.

Eastern Districts Court to have concurrent jurisdiction with Supreme Court.

And whereas it is necessary to regulate the cost and charges of such proceedings as aforesaid, and to provide as to the manner in which the same shall be defrayed: And whereas, whilst the importance to the Colony at large of the objects contemplated by

Costs and charges of proceedings.

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this Act is such as to justify a contribution towards the expense thereof from the public revenue, the importance to all landowners, especially in cases of disputed beacons, of being supplied with new and accurate diagrams and grants whereby they may know what lands are really their own, so as to divide and deal with them as they may think fit, without strife or litigation, is such as to render it right and proper that such landowners, should also contribute, but in different proportions, according to circumstances : Be it enacted as follows :

Surveyor to be remunerated according to tariff.

LXIII. Every surveyor employed in or upon any resurvey under this Act shall, in the absence of any special agreement between such surveyor and the divisional council, be remunerated according to a scale or tariff to be fixed from time to time, in regard to each division, by the Governor, with the advice of the Surveyor-General of the Colony and of the divisional council of such division.

Remuneration to commissioner.

LXIV. Every commissioner aforesaid shall receive an allowance of two guineas per day for every day during which he shall be really and *bonâ fide* engaged in any such inquiry as aforesaid, or in repairing to or returning from the place or places where the same shall have been carried on : Provided that such allowance shall include horse-hire.

Remuneration to field-cornet.

LXV. Every field-cornet performing any duty under the provisions of this Act shall be entitled to horse-hire and personal allowance, according to the Ordinance No. 9 of 1848.

Expenses of witnesses.

LXVI. Every witness attending and giving evidence in pursuance of any summons of the commissioners, issued under the provisions of the forty-eighth section of this Act, shall be entitled to receive his reasonable expenses, as if the place of his attendance were a resident magistrate's court, and he had attended thereat to give evidence in a civil case.

Expenses of resurvey in regard of farms, the beacons whereof shall be found to be correct.

LXVII. In all cases in which sections or areas shall be proclaimed after the taking effect of this Act, then, as regards all farms in any such section or area, which farms shall be found with all their beacons up, and admitted to be correct, as in the sixteenth section of this Act mentioned, the public

revenue shall bear one half of the expenses of the resurvey, of the new diagram, and of the fresh grant, and the owner of the farm concerned the other half: Provided that, in regard to sections or areas proclaimed before the taking effect of this Act, the provisions of the forty-seventh and forty-eighth sections of the Act No. 10, 1859, shall apply as if the same were herein inserted.

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Sections 47 and 48 of Act 10, 1859, to apply in regard to sections proclaimed prior to Act taking effect.

LXVIII. In all cases of disputes investigated by commissioners in manner hereinbefore provided, the expenses of the resurvey shall be kept distinct from the costs of the inquiry, and it shall be in the discretion of the commissioners to decide, as they are hereby required to decide, whether any portion of the expenses of the resurvey shall be paid by the public revenue, or whether the whole of such expenses shall be paid by the owners respectively concerned: Provided that in no case shall the public revenue be liable for more than one half of the expenses of the resurvey of any farm: And provided that the owner or owners of every farm shall be liable for the whole of such expenses, in case the public revenue shall not contribute thereto, or in case of such contribution for so much as the public revenue shall not pay: Provided, also, that it shall be competent for the commissioners to decide that any owner or owners, paying as aforesaid, the whole or any portion of the said expenses, shall recover the whole of what he shall have so paid, or any portion thereof, which the said commissioners shall fix, from any other owner or owners, as part and parcel of the costs, in the next succeeding section mentioned.

Resurvey expenses to be kept distinct from cost of inquiry.

Portion for which the public revenue may be liable.

Each owner of farm liable for all costs.

But may recover from other owners.

LXIX. The costs of the inquiry before the commissioners shall include only the expenses of the commissioners and of the field-cornet, at the respective rates aforesaid, and of witnesses so summoned as aforesaid, as well as such expenses of the resurvey as the commissioners may, as hereinbefore provided, adjudge, together with the expense of clerical assistance to the said commissioners, should they require and employ such assistance, and the cost of serving the notices in the fifty-fourth, seventieth, and ninety-first sections mentioned, as also in

What costs of inquiry shall include.

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reference to any inquiry affecting Crown land, the charges in the thirtieth section of this Act mentioned; and 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.

Notice as to taxation of costs.

LXX. The secretary to the divisional council shall cause notice, in writing, to be served upon each party by or to whom any costs are to be paid, calling upon him to attend at the office of such 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 the 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.

LXXI. 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.

LXXII. 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.

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LXXIII. 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.

No petition as to costs to lie to Supreme or Eastern Districts Court.

Cost of proceedings in Supreme or Eastern Districts Court.

LXXIV. All expenses of resurvey due and payable by any landowner 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.

Expenses of resurvey, how recoverable.

LXXV. 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.

Funds for resurvey may be advanced from colonial treasury.

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

When farms are situated partly in one division and partly in another.

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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.

LXXVI. 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 parties 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.

LXXVII. 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

LXXVIII. If, within the said period of fourteen

days or afterwards, both parties shall agree as to the divisional council to which the 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.

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agree, council selected to decide.

LXXIX. 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.

On failure to agree parties may address themselves to the council of any division in which the disputed beacons are situate.

LXXX. 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: Provided that it shall be lawful for the said last-mentioned 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

Duty of council, so addressed.

As regards the selection of commissioners in such case.



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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.

LXXXI. 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.

LXXXII. 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: 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 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.

But not before due inquiry shall have been made.

Powers of council named by Governor.

LXXXIII. 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

Doubts regarding functions, &c., of divisional councils, under this Act, may be determined by Governor.

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.

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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 land-marks 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.

LXXXIV. 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 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

Penalty for non-erection of beacons.

Recovery of fine and costs and appropriation of fine.

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Period when prosecution may be commenced, limited.

Beacons erected before 31st December, 1866, to be merely provisional.

Penalty for unlawfully removing, &c., such beacons.

Penalties recoverable from one or more joint owners.

Owners of new farms allowed six months for erection of beacons.

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.

LXXXV. 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.

LXXXVI. 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 farm 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.

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LXXXVII. 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 conformity 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 as correct before 31st December, 1866.

Not to extend to beacons of fresh grant.

LXXXVIII. No beacon of any farm, although such beacon shall be standing and in existence on the 31st day of December, 1866, 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.

No beacon to be admitted correct unless standing not less than six months before 31st December, 1866, and unless prescribed notice shall have been given.

LXXXIX. Every person who desires that the beacons of his farm shall, on the said 31st day of December, 1866 (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

Notice to be given to council by parties desiring beacons to be taken as correct on 31st December, 1866.

Notice to state that all beacons are erected.

Penalty for false statement.

Validity of notice

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given under section  
3 of Act 6 of 1862,  
not affected.

Period for giving  
notice, limited.

Description of bea-  
cons.

Notice to be given  
to parties interested  
of receipt of such  
notice, and of their  
liberty to object.

Notice to parties in-  
terested by whom to  
be signed, to whom  
and how to be sent,  
and how to be pub-  
lished.

Council may direct  
service of notice  
otherwise than by  
post.

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, 1866, 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.

XC. 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.

XCI. 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 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 cost 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 costs 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.

XCII. Every beacon which shall be up on the 31st day of December, 1866, 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.

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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.

Exceptions.

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When beacons shall be taken as disputed.

XCIH. No beacon or beacons shall be deemed or taken to have been disputed unless an objection in writing shall have been lodged with 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.

Owners cognizant of dispute may at once apply to have dispute determined.

When beacons are objected to or parties apply to have dispute determined, surveyor to be appointed in terms of section 11.

XCIV. 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 selection 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.

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.

XCV. 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.

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Date and place for commencing resurvey to be notified.

XCVI. 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 case, to decide, according to circumstances, whether a member shall or shall not be deputed as aforesaid.

Member of divisional council may be deputed to accompany surveyor.

Remuneration to member deputed.

Deputing of such member in discretion of council.

XCVII. 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 interested agree as to position of beacons, they shall be admitted as correct.

XCVIII. 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-

If parties cannot agree, sections 36 to 75 to apply to settlement of dispute.



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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.

XCIX. 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.

C. 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.

CI. As often as any such resurvey as aforesaid shall be made of any farm or farms not included in any such section or area 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 so resurveyed, 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.

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Who liable for such expense.

How, in case of inquiry into dispute relating to Crown land.

CII. 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 84 to 101 not to apply to farms included in sections for resurvey.

CIII. 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.

CIV. 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,

Owners of farms of which beacons are admitted may obtain resurvey and new diagram.

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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, 1866, may be disputed.

How, when date of erection is disputed.

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 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, 1866, 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.

CV. 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, 1866, 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,

such beacon shall be deemed and taken to have been erected later than six months before the said 31st day of December, 1866, 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, 1866, 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, 1866: 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.

CVI. 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.

CVII. 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, 1866, 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, 1866, 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

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Notice required by section 3 of Act 6, 1862, regarding erection of beacons may, in certain cases, stand in place of notice required by section 89 of this Act.

Beacons erected in conformity with any resurvey under this Act, not affected.

Period of prescription and servitude limited to thirty years.

Definition or description of sections or areas not interfered with.

Farm already resurveyed, &c., if included in a section, not

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to be resurveyed in such section or charged with expenses.

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.

Parties disputing beacons, or whose beacons are in dispute, not prevented from proceeding under section 93.

CVIII. 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 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, 1866, may be disputed.

CIX. Should it in any case happen that there shall be standing upon the 31st day of December, 1866, 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 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

How, when one of the parties concerned shall have given notice of such inconsistency.

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, 1866, then such person may object to the beacons of the person who gave such notice, at any time before the 31st day of December, 1867, 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.

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Period for objecting, under certain circumstances, extended.

CX. 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.

Admission of correctness of beacons not to affect right of Government to dispute beacons adjoining Crown land.

Except as regards beacons erected after resurvey.

CXI. 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 owners or owner 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.

Obligation of owners to keep beacons up and in repair from 31st December, 1866.

But council may extend time.

CXII. All such beacons as are in the last preced-

Council to prescribe

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size and shape of and material for beacons.

But to be clearly distinguishable.

Penalty for not keeping beacons up and in repair.

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.

ing section mentioned shall be of such a size and shape as the divisional council such 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 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.

CXIII. 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.

CXIV. 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.

No. 7—1865.

CXV. 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.

Field-cornet to report when beacons are absent or defective.

Not to affect proviso in section 84 regarding provisional beacons.

CXVI. 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 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.

How, as regards erection and maintenance of common beacons.

Owner erecting or repairing common beacon may recover proportion of cost from other joint owners.

CXVII. 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

Line beacons to be erected as well as angle beacons.



No. 7—1865.

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.

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 directed Act, 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.

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,' 'Middlepost,' '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 'Holfmans Hoff' of A. J. Wyd, in this division, and 'Holfmans Hoff' of William Edwards and F. Liesching, in the division of Tulbagh, to the undisputed beacons between the places 'De Twenty-vier 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:

CXVIII. 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.

Validity of resurvey of section irregularly commenced and completed established.

CXIX. This Act may be cited for all purposes as the "Land Beacons Consolidation Act, 1865."

Short title.

No. 8—1865.

No. 8—1865.]

AN ACT

[Oct. 10, 1865.

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 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 complete the said works, and for that purpose to authorize 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.

I. 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 pay-  
able in London.

II. 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

III. 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.

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to directors of Kowie Harbour Improvement Company.

IV. 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.

Loan to form third charge on funds and assets of company.

V. 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.

Accounts of receipts and expenditure to be laid before Parliament.

VI. This Act may be cited for all purposes as "The Kowie Harbour Loan Act, 1865."

Short title.

No. 9—1865.] AN ACT [Oct. 10, 1865.

For Incorporating the Malmesbury Board of Executors and Trust Company, and enabling them to sue and be sued in the name of their Secretary.

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-

Preamble.

No. 9—1865.

four, certain persons have 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 pro-  
prieters.

I. 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, and of all such other sum or sums of money as they may

hereafter acquire under the provisions of the said deed.

No. 9—1865.

II. The several persons who are or shall become shareholders in the said company, their respective heirs, executors, and administrators, shall be and are hereby united into one body corporate, under the name and title of the Malmesbury Board of Executors and Trust Company.

Incorporation of and title of company.

III. 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.

Capital stock.

Shares, how to be paid up.

IV. 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.

Directors may call up full amount due on shares.

V. 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.

When interest shall be payable on shares.

VI. 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,

Trust deed, list of shareholders, &c., to be filed with registrar of Supreme Court.

No. 9—1865.

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.

VII. 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 alteration or additions shall have been duly made, in like manner authenticated, be in like manner filed at the office of the said registrar.

Transfer of shares.

VIII. 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.

IX. 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.

X. 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.

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XI. 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.

Appointments under wills, &c., in favour of company valid.

XII. 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.

Evidence of members admissible.

XIII. 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 proceeding shall abate, discon-

Company to sue and be sued in name of secretary.



No. 9—1865.

tinue, 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.

XIV. 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.

XV. 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.

XVI. 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 copartnership, 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 Execu-

tors 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.

No. 9—1865.

XVII. 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 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.

Bonds or other acts  
executed by two  
directors valid.

XVIII. 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.

Public Act.

No. 10—1865.] AN ACT [Oct. 10, 1865.

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

Preamble.

No. 10—1865.

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 :

Repugnant portions of Act No. 20 of 1856 repealed.

I. 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.

Revision of certain judgments of resident magistrates' courts in Eastern Districts transferred from Supreme to Eastern Districts Court.

II. 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 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.] AN ACT [Oct. 10, 1865. No. 11—1865.

For Applying a Sum not exceeding Four Hundred and Nineteen Thousand Two Hundred and Forty Pounds, Five Shillings and Six Pence, for the Service of the Year 1865.

**W**HEREAS by the Act No. 33 of 1864, entitled Preamble.  
 “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,” the said sum of one hundred and eighty-one thousand seven hundred and twelve pounds and nineteen shillings was charged upon the revenue of this Colony for the service of the Government of the Colony, until the 30th June, 1865: And whereas it has become expedient, in the present session of Parliament, to take into consideration the requirements of the said service for the entire of the year 1865, as well as that portion for which provision was made by the said Act as the remaining portion thereof: And whereas it will be expedient, in order to prevent confusion, to repeal the said Act No. 33, 1864, and to provide by one Act for the service of the year 1865: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. The Act aforesaid, No. 33, 1864, is hereby repealed. Act No. 33 of 1864 repealed.

II. The public revenue of the Colony is hereby charged with 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, in addition to the sums already by law provided for such service, which sum of four hundred and nineteen thousand two hundred and forty pounds five shillings and sixpence shall be applied in the manner following, that is to say: Expenditure—1865.

For the expenditure of the Civil Establishments, Civil Establishments.  
 a sum not exceeding seventy-two thousand two hundred and twenty-three pounds five shillings and six pence.

No. 11—1865.		
Judicial Establishments.	Establishments.	For the expenditure of the Judicial Establishments, a sum not exceeding thirty-nine thousand one hundred and fifty-three pounds and five shillings.
Educational Establishments.	Establishments.	For the expenditure of the Educational Establishments, a sum not exceeding twenty thousand and eleven pounds.
Medical Establishments.	Establishments.	For the expenditure of the Medical Establishments, a sum not exceeding twenty-three thousand six hundred and eighteen pounds seventeen shillings and six pence.
Police and Establishments.	Gaol Establishments.	For the expenditure of the Police and Gaol Establishments, a sum not exceeding fifty-nine thousand four hundred and twenty pounds seventeen shillings and six pence.
Border Department (Aborigines).	Department (Aborigines).	For the expenditure on account of the Border Department (Aborigines), a sum not exceeding fifty-seven thousand six hundred and seventy-eight pounds.
Charitable Allowances.	Allowances.	For the expenditure on account of Charitable Allowances and Gratuities, a sum not exceeding two hundred pounds.
Works and Buildings.	Buildings.	For the expenditure on account of Works and Buildings, a sum not exceeding eighteen thousand and forty-six pounds.
Roads and Bridges.		For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding sixty thousand nine hundred and forty-three pounds.
Miscellaneous Services.	Services.	For the expenditure on account of Miscellaneous Services, a sum not exceeding fifty-four thousand seven hundred and forty-six pounds.
Interest.		For the expenditure on account of Interest, a sum not exceeding three thousand two hundred pounds.
Colonial Allowance.	Military	For the expenditure on account of Colonial Allowances to Military Officers, a sum not exceeding ten thousand pounds.
Total.		Amounting, in the whole, to four hundred and nineteen thousand two hundred and forty pounds five shillings and sixpence, as detailed in the schedules hereunto annexed.
Application of supplies.		The said aids and supplies shall not be issued or applied for any use, intent, or purpose other than the particular services for which the said amounts have been granted respectively by this Act.

No. 12—1865.] AN ACT [Oct. 10, 1865.

No. 12—1865.

For Fixing the Terms upon which Mineral Lands in Namaqualand, the Property of the Crown, may be leased and worked.

**W**HEREAS 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:

Preamble.

I. 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.

Mineral lands, how to be leased.

II. The extent of land to be included in any lease shall not exceed forty morgen.

Extent of land leased limited.

III. 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.

Leases, by whom to be executed.

IV. 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 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.

Terms of lease.

What shall be taken to be a ton.

V. 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.

No. 12—1865.

Private mines exempted from preceding charges.

VI. 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.

Declaration to be made on shipment of ore raised from private mines.

VII. 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 :

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.

VIII. Every such declaration shall be of the same force and effect as if made before a resident magistrate duly authorized by the said Ordinance, No. 6, 1846, to attest the same.

How if declaration be not made.

IX. 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 liable to the certain tonnage payment in the fourth section of this Act mentioned.

No. 12—1865.

X. 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 :

Notice of intention to ship ore raised from Crown lands required.

To the Principal Officer of Customs at \_\_\_\_\_ (or if any other person shall have been appointed describe him.) Form of notice.

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.

XI. 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. Penalty for shipping without previous notice.

XII. 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. Leases may be assigned or sublet.

XIII. 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 Government may cancel lease and resume ground.



No. 12—1865.

Right of such re-  
sumption limited.

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.

Existing leases may  
be cancelled, and  
fresh leases obtained.

XIV. 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 leases or rights, and thereupon obtain leases under this Act, to commence from the date of such leases.

Extent of mine or  
excavation limited.

XV. 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 authorized 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.

XVI. 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.

XVII. This Act may be cited for all purposes as "The Mining Leases Act, 1865."

No. 13—1865.] AN ACT [Oct. 10, 1865. No. 13—1865.

For Regulating the mode of appropriating Grants from the Public Revenue in aid of General Education.

**W**HEREAS it is expedient to make provision for Preamble.  
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:

I. 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: Moneys, how to be administered.  
Provided that no such rule or regulation, nor any alteration or rescission thereof, which may from time to time become expedient, shall be proclaimed by the Governor, or shall take effect until such rule or regulation, or the alteration or rescission thereof, as the case may be, shall have been assented to by both No rules for the administration of moneys to have effect before assented to by Parliament.

No. 13—1865.

"School Regulations" declared rules.

Annual report to be submitted to Parliament.

Payments on account of Border Department, how to be made.

Slave Compensation and Bible and School Funds to be administered by Master of Supreme Court.

Disposal of interest thereof.

Report of appropriation of interest to be laid before Parliament.

Schools receiving aid

Houses of Parliament by a resolution of each House : 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 : 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 : Provided, further, that none of the payments authorized 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.

II. 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 Guardians' 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 : Provided that a report signed by the Superintendent-General of Education, showing the objects to which such interest and profits shall have been applied during the past year, shall be annually laid before both Houses of Parliament.

III. 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.

No. 13—1865.

from moneys reserved under Schedule D subject to inspection, &c.

IV. It shall and may be lawful for the Superintendent-General of Education, and he is hereby authorized and empowered, to 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.

All aided schools subject to inspection.

V. 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.

VI. The thirty-second section of the Act No. 5, 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.

VII. This Act may be cited for all purposes as "The Education Act, 1865."

Short title.

## SCHEDULE.

## SCHOOL REGULATIONS.

[ ORDER A. ]

## UNDENOMINATIONAL PUBLIC SCHOOLS.

*Conditions on which Aid will be granted by the Government in support of undenominational Public Schools.*

## CLASS I.

*Schools of the First Class in the Chief Towns of the respective Divisions of the Colony.*

1. Each division, where no other provision has been made from the public funds for higher education, shall be allowed a sum, not exceeding £200 per annum, in aid of the salaries of two teachers of a public school of the first class, to be erected in the chief town of the division, if the Government shall be satisfied that such chief town is one that ought to be provided with such a school; a guarantee being furnished by the managers of the school, to the satisfaction of the Government, that for a period of three years, with this aid, the salaries to such two teachers shall be at least £250 per annum to the principal, and £150 per annum to the assistant, and that these salaries shall be duly paid.

2. The names of the managers shall in every case be submitted to the Government for approval before any grant is made: and the Government shall satisfy itself with the arrangements proposed for the management and maintenance of the school. The names and credentials of the teachers nominated by the managers, the rate of school-fee, and all further regulations, shall be subject to the approval of the Government.

3. The managers shall provide and keep in repair the necessary accommodation for the school and teachers,—namely, a schoolroom, with suitable offices attached, and proper school furniture, together with a residence for the principal teacher, or an annual allowance in lieu thereof, being one-fifth at least of the salary.

4. No new grant, nor renewal or augmentation of a grant, shall take place until the Superintendent-General of Education is satisfied that suitable out-offices, and, in addition, a suitable recreation ground, have been provided, and that the school can efficiently provide for the wants of the locality.

5. The school shall be under the management and control of the local managers, but shall be subject to inspection by the Superintendent-General of Education, or his deputy

duly appointed by the Governor, who shall have the right of entering the school at any time during school hours, of examining into the state of the buildings, and the school furniture, of ascertaining the progress of the children under instruction, and of inquiring generally into the efficiency of the school in regard to the locality in which it is placed, and of calling for such returns as he may require, in order to obtain satisfactory information on these subjects.

6. The ordinary school hours are to be computed at not less than two hours in the forenoon and two hours in the afternoon.

7. The managers of the school may provide for the religious instruction of the scholars at an hour set apart by them for that purpose, in addition to the ordinary school hours; but no scholars shall be compelled to attend at that hour for religious instruction, without the consent of their parents or guardians.

8. The subjects of instruction in a school of the first class shall include reading, writing, arithmetic, English Grammar, and descriptive geography, in the primary or elementary course; and also the Greek and Latin languages, English literature, history, elementary mathematics, and the elements of physical science, in the secondary or superior course.

9. In schools attended by both sexes, provision shall be made, if possible, for the separation of the sexes, by having separate apartments, with the female section under a female teacher; but should the inhabitants of any locality prefer the establishment of separate boys' and girls' schools, the Government will extend its aid to both, provided that the amount of population justifies the maintenance of separate schools.

10. The grant in aid of the salary of the teacher in a girls' school of the first class shall be £50 per annum, and provision must be made in such a school for superior instruction in the English language and composition, outlines of history and geography, arithmetic, plain needlework, and domestic economy, as far as may be practicable.

11. The Governor shall have the right to appoint in each school of the first class one free scholar in respect of every £20 of the annual amount allowed from the public revenue in aid of such school; such appointments to be restricted to scholars who are unable from circumstances to pay the necessary school fees.

12. The instruction during the ordinary school hours shall be given through the medium of the English language.

13. Any municipal board or divisional council which shall raise the necessary amount, and comply with the other conditions upon which aid is proposed to be given to undenominational public schools, shall be the managers of the school or schools which they shall so establish, or they may appoint other managers if they deem fit; such other managers,

however, to be subject to approval by the Governor; and such schools to be subject to all the regulations which may be imposed upon the other public schools aided from the public funds.

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CLASS 2.

*Schools of the Second Class in the Towns and Villages of the Colony.*

1. Each town or village, not being the chief town of the division, or each chief town of a division in which a public school of the first class cannot be established, shall be allowed a sum in aid of the salary of a teacher to an amount ranging from £50 to £75 per annum, a guarantee being furnished by the managers of the school, to the satisfaction of Government, that for three years their annual contribution towards the teacher's salary shall be at least equivalent to the grant in aid.

2. The names of the managers shall, in every case, be submitted to the Government for approval before any grant is made; and the Government shall satisfy itself with the arrangements proposed for the management and maintenance of the school. The name and credentials of the teacher nominated by the managers, the rate of school fee, and all further regulations, shall be subject to the approval of the Government.

3. The managers shall provide and keep in repair the necessary accommodation for the school and teacher,—namely, a schoolroom, with suitable offices attached and proper school furniture, together with a residence for the teacher, or an annual allowance in lieu thereof, being one-fifth at least of the salary.

4. No new grant, nor renewal or augmentation of a grant, shall take place until the Superintendent-General of Education is satisfied that suitable out-offices, and, in addition, a suitable recreation ground, have been provided, and that the school can efficiently provide for the wants of the locality.

5. The school shall be under the management and control of the local managers, but shall be subject to inspection by the Superintendent-General of Education, or his deputy duly appointed by the Governor, who shall have the right of entering the school at any time during school hours, of examining into the state of the buildings and the school furniture, of ascertaining the progress of the children under instruction, and of inquiring generally into the efficiency of the school in regard to the locality in which it is placed, and of calling for such returns as he may require in order to obtain satisfactory information on these subjects.

6. The ordinary school hours are to be computed at not less than two hours in the forenoon and two hours in the afternoon.

7. The managers of the school may provide for the religious instruction of the scholars, at an hour set apart by them for that purpose, in addition to the ordinary school hours; but no scholars shall be compelled to attend at that hour for religious instruction, without the consent of their parents or guardians.

8. The subjects of instruction in a school of the second class shall include reading, writing, arithmetic, English grammar, and descriptive geography, in the primary or elementary course; and also the rudiments of the Latin language, plain geometry, and elementary algebra.

9. In schools attended by both sexes, provision shall be made, if possible, for the separation of the sexes by having separate apartments, with the female section under a female teacher; but should the inhabitants of any locality prefer the establishment of separate boys' and girls' schools, the Government will extend its aid to both, provided that the amount of population justifies the maintenance of separate schools.

10. The grant in aid of the salary of the teacher in a girls' school of the second class shall be £30 per annum, and provision must be made in such a school for instruction in, at least, reading, writing, elementary arithmetic, and plain needlework.

11. The Governor shall have the right to appoint in each school of the second class one free scholar for every £10 of the annual amount allowed out of the public revenue to such school; such appointments to be restricted to scholars who are unable from circumstances to pay the necessary school fees.

12. The instruction during the ordinary school hours shall be given through the medium of the English language.

13. Any municipal board or divisional council which shall raise the necessary amount, and comply with the other conditions upon which aid is proposed to be given to undenominational public schools, shall be the managers of the school or schools which they shall so establish, or they may appoint other managers if they deem fit; such other managers, however, to be subject to approval by the Governor; and such schools to be subject to all the other regulations which may be imposed upon the other public schools aided from the public funds.

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## CLASS 3.

*Schools of the Third Class at eligible Stations among the Agricultural Population.*

1. Schools, not in towns or villages, at eligible stations among the agricultural population, approved by the Government, shall be allowed a sum of £30 per annum in aid of the salary of the teacher, on a guarantee by the managers, to the satisfaction of the Government, that for three years their annual contribution towards the teacher's salary shall be at least equivalent to the grant in aid. In districts where the distance of farms from each other prevents the assembling of the scholars at one central locality, a grant not exceeding £45 per annum will be made towards the salary of the teacher having charge of two school stations; the grant being made on the same conditions as before named, and the number of scholars at the two stations being not less than that required by Government in other cases before granting aid, and school being kept at each station for such time as the Superintendent-General of Education shall approve; only one such itinerant teacher, however, shall be aided in a field-cornetcy.

2. The names of the managers shall in every case be submitted to the Government for approval before any grant is made; and the Government shall satisfy itself with the arrangements proposed for the management and maintenance of the school. The name and credentials of the teacher nominated by the managers, the rate of school fee, and all further regulations shall be subject to the approval of the Government.

3. The managers shall provide and keep in repair the necessary accommodation for the school and teacher,—namely a schoolroom, with suitable offices attached and proper school furniture, together with a suitable residence for the teacher.

4. No new grant, nor renewal or augmentation of grant, shall take place until the Superintendent-General of Education is satisfied that suitable out offices have been provided, and that the school can efficiently provide for the wants of the locality.

5. The school shall be under the management and control of the local managers, but shall be subject to inspection by the Superintendent-General of Education, or his deputy duly appointed by the Governor, who shall have the right of entering the school at any time during school hours, of examining into the state of the buildings and the school furniture, of ascertaining the progress of the children under instruction, and of inquiring generally into the efficiency of the school in regard to the locality in which it is placed,

and of calling for such returns as he may require, in order to obtain satisfactory information on these subjects.

6. The ordinary school hours are to be computed at not less than two hours in the forenoon and two hours in the afternoon.

7. The managers of the school may provide for the religious instruction of scholars at an hour set apart by them for that purpose, in addition to the ordinary school hours; but no scholars shall be compelled to attend at that hour for religious instruction, without the consent of their parents or guardians.

8. The course of instruction in third-class schools shall include, at least, reading, writing, and elementary arithmetic.

9. The Governor shall have the right to appoint in each school of the third class five free scholars; such appointments to be restricted to scholars who are unable from circumstances to pay the necessary school fees.

10. The instruction during the ordinary school hours shall, as far as practicable, be given through the medium of the English language, within twelve months after the first establishment of the school.

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[ ORDER B. ]

MISSION SCHOOLS.

*Conditions on which Aid will be granted by Government in support of Mission Schools.*

1. Aid is granted to mission schools in eligible districts or localities, previously approved by the Government, as well within as out of towns and villages, in order to provide for the education of those portions of the population who are wholly unable of themselves to form schools.

2. The classification of mission schools is as follows:

Class I.—Where there is a series of schools, infant, juvenile, and industrial, the annual allowance shall be £75.

Class II.—Where the children form only one school, the annual allowance shall be £30.

Class III.—To schools at outstations, the annual allowance shall be £15.

3. No portion of the Government grant shall be appropriated otherwise than to the support of the teacher or teachers of the school, for the performance of their duty as teachers.

4. Before any new grant or renewal or augmentation of any grant is made, the Superintendent-General of Education shall be satisfied that proper arrangements are made for the

No. 13—1865.

maintenance and management of the school, and that the local income of the school, with the grant in aid, can efficiently provide for the secular instruction of the children of the locality in which the school is placed.

5. The schools shall be under the management and control of the churches or missionary bodies with which they are connected, but shall be subject to inspection by the Superintendent-General of Education, or his deputy duly appointed by the Governor, who shall have the right of entering the school at any time during school hours, of examining into the state of the buildings and the school furniture, of ascertaining the progress of the children under instruction, and inquiring generally into the efficiency of the school in regard to the district or locality in which it is placed, and of calling for such returns as he may require, in order to obtain satisfactory information on these subjects.

6. Suitable school buildings, furniture, and offices, and a recreation ground, must be provided, to the satisfaction of the Government.

7. The ordinary school hours are to be computed at not less than two hours in the forenoon and two hours in the afternoon; and the secular instruction given during the school hours shall include, at least, reading, writing, and elementary arithmetic.

8. No scholars shall be compelled to attend for religious instruction without the consent of their parents and guardians.

9. The Governor shall have the right to appoint, in each mission school, five free scholars, such appointments to be restricted to scholars who are unable from circumstances to pay the necessary school fees.

10. The instruction during the ordinary school hours shall, as far as practicable, be given through the medium of the English language.

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[ ORDER C. ]

BORDER DEPARTMENT.—ABORIGINES.

*Conditions on which Aid will be granted by Government to the Native Industrial Institutions, and to the Native Schools in connection with them.*

1. To place the means of getting instruction in the ordinary branches of elementary knowledge within the reach of the native youth, at certain eligible stations approved by His Excellency the Governor; and to promote the suitable industrial training, both of the male and female scholars, are the general objects to which Government aid shall be appropriated.

2. Where school is kept for not less than four hours daily by a duly qualified teacher, assisted by another qualified teacher, and the average daily attendance is not less than one hundred, a fixed annual allowance will be made in aid of salaries, not exceeding £100 for the first teacher, £40 for the assistant teacher, and £10 for the female superintending the needlework of the girls.

3. Where school is kept for not less than four hours daily by a teacher qualified to give instruction in English as well as in the native language, and the average daily attendance is not less than fifty, a fixed annual allowance will be made in aid of salaries, not exceeding £40 for the teacher, £10 for the female superintending the needlework of the girls. Where the teacher is capable of giving instruction only in the native language, a fixed annual allowance will be made in aid of his salary, not exceeding £20, provided the average daily attendance is not less than twenty-five.

4. To encourage native youth to become skilled workmen, an allowance of £15 per annum, maintenance money, will be made to males who, after one year's probation, shall have entered into a definite engagement with the authorities of the institution with which they are connected, for a further period not exceeding four years nor less than two years, as apprentices to one of the following trades : carpentry, wagon-making, blacksmith's work, tailoring, shoemaking, printing, and bookbinding. This amount will also be allowed during the probationary year.

5. To encourage the female portion of the native youth to become habituated to and skilled in the performance of the duties of domestic civilized life, an allowance of £10 per annum, maintenance money, will be made to females who, after three months' probation, shall have entered into a definite engagement with the authorities of the institution, for a further period, not exceeding two years nor less than one year, as apprentices to household work.

6. It shall be incumbent on the authorities to provide suitable elementary education, either morning or evening, for all apprentices.

7. The number of those who can be received as apprentices being limited, it is desirable to bring other of the native youth under the influences of the missionary's home, as much as possible, by enabling them to reside in the institution, for the purpose of being educated. For this object an allowance of £10 to £12 per annum (the exact amount being determined by the locality) will be made towards the maintenance of native boarders actually resident within the institution, and having, besides the ordinary school-work, some industrial occupation, such as of field or garden labour, or special training for pupil teachers.

8. Boarders and apprentices may be considered as forming part of the required average of daily attendance.

No. 13—1865.

9. These institutions and schools shall be subject to inspection by the Superintendent-General of Education, or his deputy duly appointed by the Governor, and shall furnish such reports, from time to time, as the Superintendent-General of Education may require, to enable him to judge of the state of each institution and school, and to ascertain how far each fulfils the object for which it is aided by the Government.

No. 14—1865.] AN ACT [Oct. 10, 1865.]

For Authorizing certain Expenditure not provided for by Parliament in the Year 1864.

Preamble.

WHEREAS divers public moneys, amounting in all to the sum of eleven thousand one hundred and seventy-one pounds thirteen shillings and eleven pence sterling have been necessarily advanced during the year 1864, by the authority of the Governor of this Colony, but without the previous authority of the Parliament: and whereas these advances have been found to have been duly applied to and expended upon certain necessary expenses of the Civil Government of this Colony, and it is, therefore, proper and expedient that an Act of Appropriation should be passed to authorize the amount so expended to be charged against the public revenue 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:

Additional expenditure for 1864.

I. The public revenue of the Colony is hereby charged with a further sum of eleven thousand one hundred and seventy-one pounds thirteen shillings and eleven pence sterling, in addition to the sums already provided for the service of the year 1864, which shall be applied and accounted for in the manner specified in the schedule hereunto annexed.

#### SCHEDULE.

For the Expenditure of the

Civil Establishment	...	...	...	£570	6	2
Judicial do.	...	...	...	35	15	0
Medical do.	...	...	...	22	10	0
Police and Gaols	...	...	...	4	7	10
Border Department (Aborigines)	...	...	...	49	9	6

SERVICES.

No. 14—1865.

Charitable Allowances ... ..	£12	0	0
Hospitals ... ..	400	0	0
Transport ... ..	55	0	6
Conveyance of Mails ... ..	3,125	0	0
Works and Buildings ... ..	937	7	4
Maintenance of Convicts ... ..	603	0	1
Miscellaneous ... ..	334	10	3
Do. Parliamentary ... ..	1,106	17	9
Do. Cape Town and Wellington Railway	1,004	2	5
Do. Special Payments ... ..	2,914	7	1
	<hr/>		
	£11,171	13	11

No. 15—1865.] AN ACT [Oct. 10, 1865.

To Authorize the Cape Copper Mining Company (Limited) to construct a Tramway or Railway between Hondeklip Bay and Riethuis.

WHEREAS it is desirable and expedient that Preamble. 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, merchandise, 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 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:

I. 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, Cape Copper Mining Company empowered to construct tramway or railway according to certain plan.

No. 15.—1865.

Esquire, John King, Esquire, Edmund Alfred Pontifex, Esquire, John Taylor, Esquire, and Richard Taylor, Esquire, are directors, shall be and they are hereby authorized 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.

II. It shall and may be lawful for the directors of the said company or their representatives, and they are hereby authorized, 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

Extent to which such excavation, &c., may be carried on.

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 proprietor or proprietors or person or persons claiming compensation to state in writing to

Compensation to proprietors or lessees.

Disputes regarding compensation, how to be settled.

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 proprietor or proprietors or person or persons claiming compensation to state in writing to

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the said directors or their representative, or to some person 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 representative 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 authorized 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

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.



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Lands regarding which the compensation shall be settled by arbitration, or otherwise, to become absolute property of company.

lawful for the said directors or their agent or representative, and they or either of them are hereby authorized, 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 representatives, upon so lodging the said sum, shall be authorized 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 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.

III. 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.

IV. 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.

V. 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.

Limits of line of tram or railway, its route and extent.

Variation allowed.

VI. 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 or viaduct over or under the said street or road. And the 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

Line may cross streets or roads.

Company to make and keep in repair crossings.

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such crossings, bridges, viaducts, cuttings, embankments, and approaches, culverts, and drains, as aforesaid.

Right to construct roads across line reserved.

VII. 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 at cost of company.

VIII. 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.

Stipulations in regard to the preservation of governmental and public rights as to landing places, roads, &c.

IX. 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 authorize 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.

Line to be completed in three years.

X. The directors of the company shall be bound, and are hereby required, to finish and complete the said tramway or railway within three years, reckoning from the date of the first commencement of the works thereof, so that the said tramway or railway may be open for the public conveyance of goods: Provided that the said company shall be bound to commence the said tramway or railway not later than

Date of commencement fixed.

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.

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XI. 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 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 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, merchandise, articles, or things conveyed by the company on the said line, and shall, moreover, have the right of retaining such goods, or merchandise, articles, things under the rates or charges due or payable for or in respect of the carriage or conveyance thereof shall have been duly paid.

Terms, conditions, and tariff of charges to be framed, submitted for approval, and published in Gazette.

And may be altered.

Charges, how recoverable.

XII. 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, merchandise, 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, merchandise, minerals, or other articles, to and from such stations.

Governor to regulate number of stopping places, goods stations, &c.

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Facilities for receiving, forwarding, &c., of goods, without undue preference, to be provided.

XIII. 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.

XIV. 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.

XV. No steam power shall be used for the conveyance of passengers upon the said tramway or railway until the certificate 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.

Previous to conveyance of passengers, table of charges, &c., to be framed.

On adoption of steam power, provisions of "Regulation of Railways Act, 1861," to apply.

XVI. 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 authorized to be constructed and made, as if the said provisions were herein separately set forth and made applicable to the same.

XVII. 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.

XVIII. 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.

XIX. 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.

No. 15—1865.  
Short title.

XX. This Act may be cited for all purposes as  
“The Namaqualand Tramway or Railway Act.”

No. 16—1865.] AN ACT [Oct. 10, 1865.

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.

Preamble.

WHEREAS it is expedient to provide further  
sums, in addition to those by law provided,  
for the service of the Government of this Colony  
until 30th June, 1866 :

Expenditure—1866.

I. 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, that a sum not exceeding one hundred and  
ninety thousand seven hundred and twenty-two  
pounds seventeen shillings and nine pence be charged  
upon the revenue of the said Colony, towards the  
service of the year 1866, and applied in the same  
manner and for the same purposes as are set forth  
as permanent services in the schedule annexed to the  
Act No. 11, passed during the present session, for  
the appropriation of the public revenue, that is to say :

Civil Establishment.

II. For the expenditure of the Civil Establish-  
ment, a sum not exceeding thirty-six thousand one  
hundred and four pounds two shillings and nine  
pence.

Judicial Establish-  
ment.

III. For the expenditure of the Judicial Estab-  
lishment, a sum not exceeding eighteen thousand  
nine hundred and twenty-one pounds twelve shillings  
and six pence.

Educational Estab-  
lishment.

IV. For the expenditure of the Educational Estab-  
lishment, a sum not exceeding ten thousand and five  
pounds and ten shillings.

Medical Estab-  
lishment.

V. For the expenditure of the Medical Estab-  
lishment, a sum not exceeding eleven thousand seven  
hundred and ninety-eight pounds three shillings and  
nine pence.

VI. For the expenditure of the Police and Gaol Establishments, a sum not exceeding twenty-nine thousand seven hundred and ten pounds eight shillings and nine pence. No. 16—1865.  
Police and Gaol  
Establishments.

VII. For the expenditure on account of the Border Department (Aborigines), a sum not exceeding twenty-eight thousand eight hundred and thirty-nine pounds. Border Department  
(Aborigines).

VIII. For the expenditure on account of Charitable Allowances, a sum not exceeding one hundred pounds. Charitable Allow-  
ances.

IX. For the expenditure on account of Works and Buildings, a sum not exceeding three thousand five hundred and ninety pounds. Works and Build-  
ings.

X. For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding twenty-nine thousand one hundred and twenty-one pounds and ten shillings. Roads and Bridges.

XI. For the expenditure on account of Miscellaneous Services, a sum not exceeding seventeen thousand five hundred and thirty-two pounds and ten shillings. Miscellaneous Ser-  
vices.

XII. For the expenditure on account of Colonial Allowances to Military Officers, a sum not exceeding five thousand pounds. Colonial Military Al-  
lowance.

XIII. Amounting, in the whole, to one hundred and ninety thousand seven hundred and twenty-two pounds seventeen shillings and nine pence. Total.

XIV. The said aids or supplies shall not be issued or applied for any use, intent, or purpose other than the particular services for which the said amounts have been granted respectively by this Act. Application of sup-  
plies.

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No. 17—1865.] AN ACT [Oct. 10, 1865.

To Alter in certain respects the Limits of the Division of Humansdorp.

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 Preamble.



No. 17—1865.

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.

I. 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.

II. 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-cornetries or fiscal divisions and fix limits of magistracies, not affected.

III. 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 to demand in the boundaries of field-cornetries 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

IV. 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.

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election of members  
of divisional council.

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### 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 Seacoast 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.

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No. 18—1865.]      AN ACT      [Oct. 10, 1865.

To Prevent the Introduction into this Colony of  
Malignant Diseases affecting Horned Cattle.

**W**HEREAS it appears by intelligence recently Preamble.  
received in this Colony, that a malignant  
disease, occasioning a great mortality amongst horned

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cattle, has appeared in Great Britain, and elsewhere in Europe: And whereas it is expedient to prevent, if possible, the introduction into this Colony of the said disease, and of any similar disease of a fatal character, by prohibiting for a limited time the importation of horned cattle: Be it enacted by the Governor of the Cape of Good Hope, with the advice of the Legislative Council and House of Assembly thereof, as follows:

Landing of horned cattle prevented.

I. During the operation of this Act, it shall not be lawful to land at any port or place in this Colony, from any ship or vessel, any head of horned cattle; and the master of any ship or vessel who shall land or permit or suffer to be landed from such ship or vessel any head of horned cattle, shall for every head of horned cattle so landed forfeit, upon conviction, any sum not exceeding four hundred pounds sterling.

Penalty for contravention.

Sufficient bail to be taken before release of any person committed for trial under this Act.

II. No master of any ship or vessel who shall have been committed for trial for the offence in the last preceding section mentioned shall, pending such trial, be released from custody, unless he shall give good and sufficient bail that he will duly appear to take his trial for such offence in any competent court, and that he will pay and satisfy any fine which may, by such court, be imposed upon him for such offence.

Duty of officer boarding vessel to apprise master of the existence of this Act.

III. It shall be the duty of the port-captain, harbour-master, or other officer of Government who shall first board any ship or vessel arriving at any of the ports in this Colony, to ask the master of such ship or vessel whether he has on board any horned cattle, and should the said master reply in the affirmative, the port-captain, harbour-master, or other officer, shall inform the said master of this Act, and deliver to him a copy of the same.

Indemnity to owners of cattle shipped before publication of this Act in London Gazette.

IV. If, during the operation of this Act, there shall arrive in this Colony any head of horned cattle which shall have been shipped for this Colony before the publication of this Act in the London Gazette, it shall be lawful for the Governor of this Colony, and he is hereby authorized, to indemnify from and out of the public revenue the owner of every such head of horned cattle, by paying to him or to his agent

the first cost of every such head of horned cattle, together with freight, insurance, and any other charges which shall have been reasonably and properly incurred upon or about such head of horned cattle; whereupon such head of horned cattle shall become the property of the Colonial Government: Provided that nothing in this section contained shall extend to any horned cattle which shall have been shipped at any time after the publication of this Act in the London Gazette, or to any head of horned cattle which shall be found to be actually suffering from any such disease as is in the preamble to this Act mentioned.

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Exceptions.

V. In the interpretation of this Act, the term "master" shall include any officer in command of the ship or vessel.

Interpretation of term "master."

VI. This Act shall continue in force until the 31st December, 1866, and no longer.

Duration of Act.

No. 19—1865.] AN ACT [Oct. 10, 1865.

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.

WHEREAS it is expedient that statements of the assets and liabilities of joint-stock companies trading as bankers in this Colony should be periodically published for general information: Be it enacted by 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.

I. From and after the taking effect of this Act, every joint-stock company trading as bankers in this Colony, and being a bank of issue, shall publish or cause to be published half-yearly statements of its assets and its liabilities.

Half-yearly statements of assets and liabilities to be published.

II. The half-yearly statements aforesaid shall be so framed as to show the assets and liabilities of every such bank as the same shall stand at the close of each of the days following, that is to say, the 31st of December and the 30th of June in each year.

Mode of framing statements.

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Date when statements shall be published.

Date of publication of first statement.

Statements of banks commencing business after taking effect of this Act, when to commence.

Mode of publication of statements.

III. Every such statement shall be published not later than fourteen days next after the day to which such statement relates: Provided that in case either of the days in the second section mentioned shall fall upon a Sunday or public holiday, then the statement shall show the assets and liabilities of each bank as they stood on the day next preceding such day: Provided, also, that the first statement under this Act shall be published within fourteen days next after the 31st of December, 1865, and show the assets and liabilities at the close of Saturday, the 30th day of December aforesaid.

IV. As often as any joint-stock company as aforesaid shall commence business in this Colony at any time after the taking effect of this Act, such company shall not be bound to publish any statement under this Act for or in respect of that one of the days in the second section mentioned which shall first arrive after their bank shall have opened in this Colony an office or place of business for the transaction of business, but such company shall be bound to publish a statement for or in respect of every succeeding day in the second section mentioned, precisely as if such bank had been in existence at the time of the taking effect of this Act.

V. Every such statement as aforesaid shall (except as hereinafter excepted) be published either in the Government Gazette or in some public newspaper published in the fiscal division in which the bank publishing such statement has its office or place of business: Provided that every joint-stock bank of which the office or place of business shall be in any district in or over which the "Court of the Eastern Districts," established by the "Administration of Justice Act, 1864," now has, or shall hereafter have jurisdiction, and which bank shall not publish any such statement in some newspaper published in the fiscal division in which such bank has its office or place of business, shall publish such statement in whatever newspaper in Graham's Town shall, for the time being, be appointed to publish Government notices, instead of publishing the same in the Government Gazette: Provided also, that it shall at all

times be competent for any bank which shall, for a time, have published its statements in or according to one of the modes of publication authorized by this Act, to cease to do so, and to publish the said statements in or according to any other mode of publication authorized by this Act.

VI. The statements aforesaid to be so published as aforesaid shall be signed by not fewer than two directors in attestation of their correctness, and also by some officer or officers of the bank whom the directors thereof shall for that purpose nominate and appoint.

Statements, by whom to be signed.

VII. In regard to the statements of any bank of which the chief seat of business shall be elsewhere than in this Colony, the statements of such bank in regard to the assets and liabilities of such bank at the principal office or place of business of such bank within this Colony shall be signed by the general manager or other chief officer acting at such principal office or place of business, and also by such other officer or officers employed at such office or place of business as the said manager or other chief officer shall nominate and appoint.

Signature of statements of banks the head office whereof is extra-colonial.

VIII. Every branch bank, whether a branch of a bank of which the chief seat of business shall be within this Colony, or be elsewhere than within this Colony, shall publish its statements in like manner as if it were a separate and independent bank, and not a branch bank, and the statements of every branch bank shall be signed by the manager or cashier thereof, and by the officer, if any, who shall be or act as the accountant of such bank.

Publication of statements of banks by branch banks.

IX. Any director, manager, or other officer of any bank who shall sign any statement so published as aforesaid, containing any item or particular which such director, manager, or other officer shall know to be false or erroneous, shall upon conviction forfeit any sum not exceeding five hundred pounds, and in default of payment shall be liable to be imprisoned, with or without hard labour, for any term not exceeding twelve months.

Penalty for false statement.

X. If any bank shall fail to publish within the time in that behalf by this Act prescribed any state-

Penalty for failure to publish statement.

No. 19—1865.

ment by this Act required to be published, then such bank shall pay to the public treasury the sum of twenty-five pounds sterling for every day, after the last day prescribed for such publication, during which the said statement shall remain unpublished; such sum to be recovered by civil action at the suit of the civil commissioner of the division in which such bank in default shall have its office or place of business: Provided that it shall be lawful for the Governor of this Colony, upon the application of any such bank so in default, and upon proof to his satisfaction that such default was not wilful, to remit or reduce the sum to be paid by such bank.

Penalty, how to be recovered.

Governor may remit or reduce penalty.

What shall constitute proof of publication.

XI. The production of the Government Gazette, or other newspaper as aforesaid, containing any such statement as aforesaid, shall be *primâ facie* proof that the directors and officer or officers, or the manager or officer or officers whose names are attached to such statement signed the same in order to the publication thereof for the purposes of this Act.

Form of statement.

XII. Every such statement as aforesaid shall be, in substance, as follows :

STATEMENT of the ASSETS and LIABILITIES of the  
 ——— BANK on the ——— day of ———, 186—.

To shareholders for capital paid up	...£—	By coin in the bank coffers	... —
To reserve fund accumulated	... —	By drafts on the Colonial Treasury	—
To circulation, viz., notes, outstanding this day	... —	By notes on hand of other banks	... —
To post-bills	... —	By balances in other banks	... —
To deposits, fixed	... —	By bank premises	... —
To deposits, floating	... —	By bills and notes under discount and not yet due	—
To balances due to other banks	... —	By bills and notes overdue and unpaid	... —
		By accounts overdrawn	... —

By other debts due  
to the bank, not  
included under  
the foregoing  
heads ... .. —

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£—

We certify that we have examined the above statement, and that it is true and correct.

A. B., }  
C. D., } Directors.  
E. F., Cashier,

or

A. B., Manager or Cashier.  
C. D., Accountant.

Provided that in regard to joint-stock banks, of which the chief seat of business shall not be in this Colony, the head office in this Colony shall publish a half-yearly statement in the form by this section set forth; and in regard to the branches of such last-mentioned banks, and to the branches of banks of which the chief seat of business is within this Colony, the half-yearly statement to be published by them may omit the two first items in the statement required by this section, viz. :

Statement to be furnished by head office of extra-colonial bank.

Certain items may be omitted in statements of branch banks.

To shareholders for capital paid up, £——.  
To reserve fund accumulated £——.

XIII. It shall be lawful for any bank to insert in any such statement as many additional items or particulars as such bank shall, in regard to its business or position, deem desirable or necessary.

Additional items may be inserted in statements.

XIV. In the form of statement aforesaid, the item "coin" shall include gold, silver, and copper coin of British coinage current in the Colony, and not any other coin or thing whatever, and "circulation" shall signify all notes issued by such bank and liable to duty under the "Bank Notes Duty Act, 1864 : " Provided that the term "British coinage" shall include all gold coin coined by lawful authority in any of the Australian Colonies of the Crown.

Definition of terms.

XV. It shall be the duty of the Colonial Secretary to cause to be prepared in his office a tabular state-

Tabular statement to be prepared and published.



No. 19—1865.

ment showing in a convenient form, the contents of the several half-yearly statements aforesaid for the preceding half-year, and such tabular statement shall be published half-yearly in the Government Gazette within one month after the expiration of each half-year respectively.

Copy of instrument under which bank is constituted and list of shareholders and directors to be filed with Registrar of Deeds.

XVI. Every such joint-stock bank as in the first section of this Act mentioned shall, as to banks having their chief seat of business in the Colony, thirty days after the 31st of December in each year, and as to banks not having their head office or chief seat of business within the Colony, before the 1st April in each year, file in the office of the Registrar of Deeds in Cape Town a copy, written or printed, of the instrument under which each such bank is for the time being constituted, together with a list of the names of the shareholders and of the chairman and directors of each such bank, as such list shall have been made up to the 31st day of December preceding; such copy and list respectively to be signed by two directors of the bank if it have its chief seat of business in the Colony, and by the superior officer, under whatever denomination he may hold his office, if the bank have not its chief seat of business in the Colony.

How to be signed.

Penalty for failure to file copy of instrument and list described in preceding section.

XVII. Any bank which shall fail to file, as required by the next preceding section, the copy of the instrument of constitution of the bank, and list of shareholders, chairman, and directors, as required by that section, shall incur the penalty in the tenth section mentioned, under the proviso thereby enacted.

Short title.

XVIII. This Act may be cited for all purposes as the "Joint-stock Banks' Statements Act, 1865."

No. 1—1866-'67.] AN ACT [Dec. 31, 1866.

For Altering the Duties of Customs in the Colony of the Cape of Good Hope.

Preamble.

WHEREAS it is expedient to alter the duties of customs upon articles imported into this Colony, and liable to such duties: 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 :

I. In lieu and instead of the duties of customs now leviable upon articles imported into this Colony under any Act heretofore in force, there shall be raised, levied, collected, and paid to Her Majesty, her heirs and successors, upon goods imported or brought into any part of the Colony of the Cape of Good Hope, the several duties of customs, as the same are respectively inserted, described, and set forth in the table to this Act annexed.

What custom duties to be payable.

II. All goods described as free in the said table shall be exempt from duty on the importation thereof into the Colony of the Cape of Good Hope.

Certain goods to be free of duty.

III. This Act may be cited for all purposes as "The Customs Tariff Amendment Act, 1866," and shall commence and take effect from and after the 1st day of January, 1867.

Short title.

TABLE OF CUSTOMS DUTIES.

		£	s.	d.
Butter . . . . .	the 100 lbs.	0	10	6
Ale or Beer . . . . .	the gallon	0	0	4
Candles . . . . .	the lb.	0	0	2
Cheese . . . . .	the 100 lbs.	0	12	6
Chicory . . . . .	the 100 lbs.	0	13	6
Cider . . . . .	the gallon	0	0	4
Cinnamon or cassia . . . . .	the lb.	0	0	6
Cloves . . . . .	the lb.	0	0	4
Coals, coke, or patent fuel	the ton of 2,000 lbs.	0	0	9
Coffee . . . . .	the 100 lbs.	0	13	6
Corn and grain, viz.:				
Barley . . . . .	the 100 lbs.	0	0	8
Oats . . . . .	the 100 lbs.	0	0	8
Maize . . . . .	the 100 lbs.	0	0	8
Wheat . . . . .	the 100 lbs.	0	0	8
Dates . . . . .	the 100 lbs.	0	3	0
Fish, cured . . . . .	the 100 lbs.	0	5	0
Flour, wheaten . . . . .	the 100 lbs.	0	2	6
Fruits, dried, viz.:				
Currants, raisins, or figs . . . . .	the 100 lbs.	0	10	0
Other sorts . . . . .	the 100 lbs.	0	5	0

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		£	s.	d.
Ginger, viz.:				
Dry . . . . .	the lb.	0	0	2
Preserved, or chow				
chow . . . . .	the lb.	0	0	3
Gunpowder . . . . .	the lb.	0	0	6
Guns or gun-barrels . . . . .	the barrel	1	0	0
Lard . . . . .	the 100 lbs.	0	10	0
Mace . . . . .	the lb.	0	0	9
Meat salted or cured . . . . .	the 100 lbs.	0	5	0
Mules . . . . .	each	1	0	0
Nutmegs . . . . .	the lb.	0	0	6
Oil, cocoa nut . . . . .	the gallon	0	1	0
Oil, lamp . . . . .	the gallon	0	0	6
Paddy . . . . .	the 100 lbs.	0	1	6
Pepper . . . . .	the 100 lbs.	0	12	6
Pistols or pistol barrels . . . . .	each	0	10	0
Rice . . . . .	the 100 lbs.	0	2	6
Salt . . . . .	the tons of 2,000 lbs.	0	5	0
Soap . . . . .	the 100 lbs.	0	3	0
Spirits of all sorts not exceeding the strength of proof by Syke's hydrometer, and so in proportion for any greater strength	the gallon	0	6	3
Ditto, sweetened or mixed, so that the degree of strength cannot be ascertained . . . . .	the gallon	0	7	0
Ditto, perfumed . . . . .	the gallon	0	7	6
Sugar, viz.:				
Unrefined . . . . .	the 100 lbs.	0	5	6
Refined or candy . . . . .	the 100 lbs.	0	8	0
Molasses . . . . .	the 100 lbs.	0	3	0
Tallow . . . . .	the 100 lbs.	0	4	0
Tamarinds . . . . .	the 100 lbs.	0	5	0
Tea . . . . .	the lb.	0	0	7½
Tobacco, viz.:				
Not manufactured . . . . .	the lb.	0	0	6
Manufactured (not cigars) or snuff . . . . .	the lb.	0	1	0
Cigars (at the option of the officers of Customs) . . . . .	the 1,000 or the lb.	1	0	0
	& 10 per ct. ad valorem in addition in either case.	0	2	0
Vinegar . . . . .	the gallon	0	0	4
Wine . . . . .	the gallon	0	4	4
Wood, unmanufactured . . . . .	the cubic foot	0	0	2

Agricultural implements . . . . .	} For every £100 value, £5.	
Bottles of common glass for spirits, wine or beer . . . . .		
Cement . . . . .		
Corks and bungs . . . . .		
Hops . . . . .		
Hulls of ships, masts, spars, blocks, and gear, stranded or condemned . . . . .		
Machinery other than agricultural . . . . .		
Malt . . . . .		
Pipes—iron and earthenware . . . . .		
Pitch . . . . .		
Resin . . . . .		
Seeds—sesame, hemp, and rape . . . . .		
Slates for roofing . . . . .		
Tar . . . . .		
Window glass . . . . .		
Goods not being enumerated or described, nor otherwise charged with duty, and not prohibited to be imported into or used in the Colony of the Cape of Good Hope, for every £100 value . . . . .		10 0 0

FREE.

- Agricultural machinery, namely—
  - Reaping, thrashing, and winnowing machines.
- Animals, living, except mules.
- Anchors and chain cables, for ship's use.
- Books and music, printed; and printed stationery for the use of schools.
- Bottles, of common glass, imported full.
- Bullion or coin.
- Engravings and photographs.
- Flowers of sulphur.
- Guano and other manures.
- Ice.
- Maps or charts.
- Metal composition or sheathing.
- Pictures, being oil and water colour paintings.
- Picture frames, in use for paintings or engravings.
- Provisions or stores of every description, imported or supplied for the use of Her Majesty's land or sea forces, when the customs duties shall not have been paid thereon.
- Ratans.
- Seeds, bulbs, or plants.
- Specimens illustrative of natural history.
- Staves.
- Stones of marble, for building or ornamental purposes.

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Wine imported or taken out of bond for the use of military officers serving on full pay in this Colony, and also for the use of officers of Her Majesty's Navy serving on board any of Her Majesty's ships, subject; however, to such regulations as the Governor shall think fit to make; and provided, that if any such wines shall be subsequently sold in this Colony, except for the use or consumption of any of Her Majesty's Military or Naval officers, serving as aforesaid, the same shall be forfeited and be liable to seizure accordingly.

All articles of naval or military uniform or appointments, imported by officers stationed in this Colony for their own use.

No. 2—1866-'67.] AN ACT [Dec. 31, 1866.

To Continue the Provisions of the Act No. 10 of 1864.

Preamble.

WHEREAS it is expedient that the provisions of an Act passed in the Session of Parliament holden in the year 1864, numbered 10, and entitled "An Act to provide for the Construction and Maintenance of the Main Roads of the Colony," should be continued: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

"Road Act, 1864,"  
continued.

I. The provisions of the said Act shall continue and have full force and effect until the 31st day of December, 1867.

No. 3—1866-'67.] AN ACT [Jan. 8, 1867.

To Continue, with Amendment, until the 31st of December, 1867, the Provisions of the Act No. 18 of 1865, entitled "An Act to prevent the Introduction into this Colony of Malignant Diseases affecting Horned Cattle."

Preamble.

WHEREAS it appears by intelligence received that the malignant disease referred to in the Act No. 18 of 1865, entitled "An Act to prevent the Intro-

duction into this Colony of Malignant Diseases affecting horned Cattle," is still prevalent to some extent in Great Britain, and elsewhere in Europe ; and, further, that certain malignant diseases affecting sheep, and liable to spread contagion among sheep, are also there prevalent : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :

No. 3—1866-'67.

I. That the provisions of the said recited Act be continued in force, and the same are hereby continued in force, until the thirty-first day of December, 1867.

Act 18 of 1865 continued.

II. That the several sections of the said Act shall, from and after the thirty-first day of December, 1866, be read as if after the words "horned cattle," wherever the same occur in the same sections respectively, the words "or sheep" were inserted.

Provisions of Act to apply to sheep.

III. That, notwithstanding the provisions of the said Act, or of this Act, the cattle now on Robben Island, which were brought thither after the passing of the said Act, may, nevertheless, be imported into this Colony or into any part thereof.

Certain cattle exempted.

No. 4—1866-'67.] AN ACT [Jan. 12, 1867.

For Enabling the Commissioners of the Municipality of Beaufort to secure a Supply of Water for the Inhabitants of such Municipality.

**W**HEREAS 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

Preamble.

No. 4—1866-'67.

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 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.

I. 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.

II. 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 ;

Other funds also ap-

Provided that it shall be lawful for the said com-

missioners 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.

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licable to payment of loan or interest.

Succeeding sections of Act not affected.

III. 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.

Commissioners to grant written acknowledgment of loan.

Form of acknowledgment.

By whom to be signed.

IV. 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 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.

Supreme Court may be applied to on failure by sheriff to find assets in satisfaction of writ of execution sued out by Savings' Bank.

Commissioners entitled to notice of motion.

V. 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,

Supreme Court to direct Master to inquire and report amount due.



No. 4—1866-'67.

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.

VI. 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.

VII. 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.

No. 4—1866 '67.

Notice is hereby given that the Honourable the Form of notice.  
Supreme Court has this day assessed, under the  
provisions of "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 be-  
come 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.

Provided that such notice as aforesaid shall be pub- Publication of notice.  
lished 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.

VIII. The receiver of any such rate as aforesaid Recovery of rate.  
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.

IX. Any surplus of the amount of any such rate Disposal of surplus  
after liquidation of  
debt.  
as aforesaid which shall happen to exist after the  
discharge of the debt which it was assessed to liqui-  
date shall be paid to the commissioners aforesaid.

X. In case there should happen to be no com- Service of summons  
for recovery of debt  
should no commis-  
sioners be in office.  
missioners of the said municipality in office when the  
Savings' Bank Society shall desire to proceed by  
legal process for the recovery of the debt, acknow-  
ledged in manner aforesaid, or 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: Pro- Assessment of rate  
when municipal valu-  
ation has ceased to  
be of force.  
vided, also, that in case there should not, at any time

No. 4—1866-67.

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.

Commissioners may enter upon lands, lay down pipes, and remove materials, &c.

XI. It shall and may be lawful for the said commissioners, and they are hereby authorized, 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 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 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

Owners to be compensated.

Arbitration.

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 authorized 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 authorized 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 authorized 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 commissioners a sufficient title to the use of and property in the said land or materials aforesaid had been duly done and performed.

No. 4—1866 '67.

How, if party claiming compensation, refuses or neglects to proceed to arbitration, or rejects award.

XII. The commissioners shall keep or cause to be kept a separate and distinct account of all moneys

Separate and distinct accounts to be kept.

No. 4—1866-'67.

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.

XIII. 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.

XIV. This Act may be cited for all purposes as "The Town of Beaufort Water Act, 1866."

Short title.

### 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. }

No. 5—1866—'67.] AN ACT [Jan. 12, 1867.

For the Better Maintenance of Discipline among Persons under Sentence of Imprisonment with Hard Labour.

**W**HEREAS persons under sentence of imprisonment with hard labour pronounced by the courts of criminal jurisdiction are or may be at all times kept to hard labour at places other than at convict stations to which visiting magistrates have or shall have been regularly appointed under the provisions of an Ordinance No. 7, of 1844, entitled “An Ordinance for the Discipline and safe Custody of the Convicts employed upon the Public Roads:” And whereas it is expedient to make more effectual provision than now exists by law for the safe custody and discipline of such persons: Be it enacted by 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.

I. The various provisions of an Ordinance numbered 24 of 1847, and entitled “An Ordinance for improving the Public Gaols of this Colony,” shall be amended and enlarged in manner hereafter appearing, that is to say:

Provisions of Ordinance 24 of 1847 amended and enlarged.

When and so often as it shall be urgently and absolutely necessary to secure any refractory prisoner so kept to hard labour outside the precincts of the gaol of any district in which he may for the time

Power of restraining prisoners in certain cases conferred on constables in charge of party employed at hard labour.

No. 5—1866—67.

being be, or any such prisoner contriving or endeavouring to escape from custody, the constable in charge of the party to which such prisoner is attached may cause him to be bound or placed in irons until he can be safely remitted to the gaol of the said district, thereafter to be dealt with under the provisions of the said last-mentioned Ordinance.

Offences against discipline committed outside of gaol punishable as if committed within gaol.

II. The tenth section of the same Ordinance shall be held to apply to all offences against good discipline therein mentioned, if committed by any such prisoner as aforesaid while outside the precincts of the gaol, in like manner, in all respects, as if he were within the precincts of such gaol.

Prisoners escaping or attempting to escape, or assisting others to escape, may be tried in court of resident magistrate.

III. If any such prisoner shall make his escape from custody, when outside the precincts of the gaol, or shall attempt to make such escape, or shall, either within or outside the precincts of the gaol as aforesaid, conspire or confederate with any other prisoner or other person to make the escape of both or either of them either from gaol or from custody, or shall, either within or outside the precincts of such gaol, supply any other prisoner with any implement, matter, or thing intended to aid such prisoner in making his escape either from gaol or from custody, every such prisoner who shall do or commit any of the acts or offences in this section before mentioned may be tried for such act or offence before the court of the resident magistrate of the district in which such prisoner shall be in custody, and upon conviction may be sentenced to be imprisoned with hard labour for any term not exceeding one year, to commence from the expiration of the sentence which such prisoner shall then be undergoing, or to receive corporal punishment in any number of lashes, not exceeding fifty, or both to be imprisoned as aforesaid and to receive such corporal punishment as aforesaid.

Prisoners attempting to escape may be fired upon by constable in charge.

IV. It shall and may be lawful for the constables who shall be in charge of any party of such prisoners ordered to be kept at hard labour as aforesaid, to be armed with firearms, loaded with powder and ball, or shot; and if any such prisoner shall attempt to escape and it shall be absolutely necessary, in order to prevent such escape, that any of the said con-

stables should fire upon such prisoner, it may be lawful for him so to do, and if in so doing he shall kill or wound such prisoner, he shall not be deemed guilty of any offence in so doing.

No. 5—1866 '67.

No. 6—1866-'67.] AN ACT [Jan. 12, 1867.

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.

**W**HEREAS by the Act No. 16 of 1865 entitled Preamble. "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," the said sum of one hundred and ninety thousand seven hundred and twenty-two pounds seventeen shillings and nine pence was charged upon the revenue of this Colony for the service of the Government of the Colony until the 30th June, 1866: And whereas it has become expedient, in the present session of Parliament, to take into consideration the requirements of the said service for the entire of the year 1866, as well as that portion for which provision was made by the said Act as the remaining portion thereof: And whereas it will be expedient, in order to prevent confusion, to repeal the said Act No. 16, 1865, and to provide by one Act for the service of the year 1866: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. The Act aforesaid, No. 16, 1865, is hereby Act No. 16, 1865, repealed. repealed.

II. The public revenue of the Colony is hereby Expenditure, 1866. charged with 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, in addition to the sums already by law pro-



No. 6 -1866-'67.

vided for such service, which sum of four hundred and forty-seven thousand and fifty-five pounds thirteen shillings and ten pence shall be applied in the manner following, that is to say :

Civil Establishments.

For the expenditure of the Civil Establishments, a sum not exceeding seventy-six thousand three hundred and twenty-two pounds six shillings and ten pence.

Judicial Establishments.

For the expenditure of the Judicial Establishments, a sum not exceeding forty thousand one hundred and ninety-five pounds thirteen shillings and four pence.

Educational Establishments.

For the expenditure of the Educational Establishments, a sum not exceeding twenty-one thousand five hundred and forty-seven pounds and ten shillings.

Medical Establishments.

For the expenditure of the Medical Establishments, a sum not exceeding twenty-seven thousand six hundred and twenty-seven pounds seventeen shillings and six pence.

Police and Gaol Establishments.

For the expenditure of the Police and Gaol Establishments, a sum not exceeding sixty-five thousand six hundred and twenty-four pounds eighteen shillings and four pence.

Border Department (Aborigines).

For the expenditure on account of the Border Department (Aborigines), a sum not exceeding sixty thousand one hundred and ninety-eight pounds seven shillings and tenpence.

Charitable allowances.

For the expenditure on account of Charitable Allowances and Gratuities, a sum not exceeding two hundred pounds.

Works and Buildings.

For the expenditure on account of Works and Buildings, a sum not exceeding fifteen thousand seven hundred and forty-two pounds.

Roads and Bridges.

For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding sixty-seven thousand nine hundred and ninety-five pounds.

Miscellaneous Services.

For the expenditure on account of Miscellaneous Services, a sum not exceeding forty-five thousand five hundred and eighty-six pounds.

Interest.

For the expenditure on account of Interest, a sum not exceeding sixteen thousand and sixteen pounds.

Colonial Allowances to Military Officers.

For the expenditure on account of Colonial Al-

lowances to Military Officers, a sum not exceeding No. 6—1866-'67.  
ten thousand pounds.

Amounting, in the whole, to four hundred and Total.  
forty-seven thousand and fifty-five pounds thirteen  
shillings and ten pence, as detailed in the schedules  
hereunto annexed.

The said aids and supplies shall not be issued or Application of sup-  
plies.  
applied for any use, intent, or purpose other than the  
particular services for which the said amounts have  
been granted respectively by this Act.

No. 7—1866-'67.] AN ACT [Jan. 12, 1867.

To Extend the Provisions of the Ordinance No. 5 of  
1844 to Mules and Asses.

**W**HEREAS it is expedient that the provisions of Preamble.  
the Ordinance No. 5 of the year 1844, entitled  
“An Ordinance to prevent the spread of the Horse  
Disease called Glanders,” should be made applicable  
to mules and asses: Be it therefore enacted by the  
Governor of the Cape of Good Hope, with the  
advice and consent of the Legislative Council and  
House of Assembly thereof, as follows:

I. The provisions of the Ordinance No. 5 of the Provisions of Ordinance 5 of 1844 to  
apply to mules and  
asses.  
year 1844 shall be, and the same are hereby declared  
to be applicable, in all respects, to mules and asses  
which shall have, or be commonly deemed and taken  
to have, the disease called glanders.

No. 8—1866-'67.] AN ACT [Jan. 12, 1867.

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.”

**W**HEREAS it is expedient that the landowners of Preamble.  
the division of King William's Town and  
East London should have an opportunity of availing

III.

Z

No. 8—1866-'67.

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.

I. 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 the 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 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.

II. 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.

III. 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.

IV. 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 pro-

Rectification of beacons where the Crown is not bound by Act 7 of 1865.

perty 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.

V. 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.

Settlement under resurvey binding upon Crown.

VI. This Act may be cited for all purposes as the Short title.  
 "Land Beacons Amendment Act, 1866."

No. 9—1866-'67.

No. 9—1866-'67.] AN ACT [Jan. 12, 1867.

For Raising the further Sum of Fifty Thousand Pounds for the Completion of the Breakwater and Docks in Table Bay.

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 estimates 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 authorized 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 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 :

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.

Further loan of  
£50,000 authorized.

No. 10—1866-'67.

No. 10—1866-'67.] AN ACT [Jan. 12, 1867.]

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.

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.

I. 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.

II. 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 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, 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 shall be the value upon which dues shall be paid: Provided that

Declaration as to value may be required.

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.

No. 10—1866-67.

Bond to be taken if wharfage not paid forthwith.

III. 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.

Penalty for false declaration.

IV. 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: 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.

Sums collected under this Act to be paid over to Kowie Harbour Improvement Company.

Employment of clerk authorized.

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### 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.



## 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. All goods shipped to or landed from any place within the Colony.

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 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 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.)

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No. 11—1866-'67.] AN ACT. [Jan. 12, 1867.

For Raising Two Hundred Thousand Pounds by Debentures, for paying off Unsecured Debt, and other Purposes.

Preamble.

WHEREAS, from accidental circumstances, the revenue of the Colony fell considerably short of the authorized expenditure during the years 1865 and 1866: And whereas it became necessary for the Government to obtain temporary loans from the Guardians' 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:

No. 11—1866-'67.

I. 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 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.

Loan of £200,000 on debentures authorized.

Previous temporary loans to be paid off out of proceeds.

II. 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.

Mode of issuing debentures.

Rate of interest.

III. 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.

Debentures when and where payable.

IV. 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.

Interest payable out of current revenue.

Power to buy up and cancel debentures.

V. 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 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.

Interest when and where payable.

- No. 11—1866-'67.
- Transfer of debentures. VI. 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. VII. 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. VIII. 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. IX. 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 the commencement of the next session which shall have been held after the notice of the issue of such debentures.

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FIRST SCHEDULE.

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	1865.	
REVENUE.		EXPENDITURE.
£519,044		£614,741
	Deficiency ...	£95,692

1866.

No. 11—1866-'67.

REVENUE.

EXPENDITURE.

Quarter ending—			
31st March ...	£119,809	} Actual.	£153,188
30th June ...	127,534		145,888
30th September	140,003		159,290
31st December	133,300		Estimated. 164,300
	<hr/> £520,646		<hr/> £622,661
	Deficiency ...		£102,015
Deficiency, 1865 ...	...		£95,692
„ 1866 ...	...		102,015
			<hr/> £197,707

Exclusive of Tulbagh Kloof Railway Expenditure, £49,083  
7s. 5d., defrayed out of the Loans of £248,000, but not  
yet authorized.

SECOND SCHEDULE.

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	...	...
	<hr/>		£95,000

*Port Elizabeth Bank.*

	£10,000		
	7,000		
	2,000		
	2,000		
	<hr/>	...	21,000

*Colonial Bank.*

Loan taken over from Port Elizabeth Bank	10,000
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No. 11—1866 '67.

*Guardians' 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
					<hr/>
					£248,000

No. 12—1866-'67.] AN ACT [Jan. 12, 1867.

For Raising Fifty Thousand Pounds by Debentures  
or Treasury Bills for the Public Service of the  
Year 1867.

Preamble.

WHEREAS it is doubtful whether the revenue will be sufficient to meet the ordinary current expenditure authorized or to be authorized by Parliament, and necessary for the public service, which may become payable before adequate provision can be made therefor by Parliament in its next ensuing session, and it is expedient that the Governor should be empowered to raise and take up, on loan, from time to time until such adequate provision shall otherwise be made, such sum or sums of money, not

exceeding fifty thousand pounds, to be applied for such public services as may be necessary and authorized by Parliament 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:

No. 12—1866-'67.

I. It shall and may be lawful for the Governor to raise and take up upon debentures or treasury bills 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 fifty thousand pounds, to be applied from time to time as may be needful towards payments to be made for the public service, authorized or to be authorized by Parliament.

Loan of £50,000 on debentures or treasury bills authorized.

Application of loan.

II. Such debentures or treasury bills shall be issued for sums not exceeding one hundred pounds, nor less than fifty pounds each, and shall bear date the 1st of January or the 1st of July, 1867, and shall be signed by the Colonial Secretary for the time being, by command of the Governor, and countersigned by the Treasurer and Auditor of the Colony, and shall bear interest at the rate of six pounds per cent. per annum, until the 1st January, 1872.

Mode of issuing debentures or treasury bills.

Rate of interest.

III. Such debentures or treasury bills shall be payable at par, at the Treasury in Cape Town, on the 1st January, 1872, and after that date shall cease to bear interest.

Principal when and where payable.

IV. 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.

Interest payable from current revenue.

Power to buy up and cancel debentures.

V. Interest shall be payable on the said debentures or treasury bills at the office of the Treasury in Cape Town, on the 1st July or the 1st of January next succeeding the issue thereof, respectively, and thereafter on the 1st of July and the 1st of January in each year, until the 1st of January, 1872, or until such debentures, or bills, respectively, shall be redeemed and cancelled as aforesaid.

Interest when and where payable.

VI. All such debentures or bills shall be trans-

Transfer of debentures or bills.

No. 12—1866-'67.

ferable by delivery without indorsement, and payment of principal or interest due upon any such debenture or bill 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 or bill so presented.

Disposal of debentures or bills.

VII. All such debentures or bills shall be put up for public tender, 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 or bills 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 charged on public revenue.

VIII. The capital sum and interest of the said debentures or bills, payable as hereinbefore is provided, shall be charged and chargeable on and payable out of the general revenue of the Colony.

Accounts to be laid before Parliament.

IX. An account showing the amount of all such debentures or bills 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 the commencement of the next session thereof.

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No. 13—1866-'67] AN ACT [Jan. 12, 1867.

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.

Preamble.

WHEREAS it is expedient to provide further sums, in addition to those by law provided, for the service of the Government of this Colony until the 30th June, 1867 :

I. 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, that a sum not exceeding two hundred and eleven thousand and seventy-four pounds nine shillings and eight pence be charged upon the revenue of the said Colony, towards the service of the year 1867, and applied in the manner and for the purposes set forth in the schedule annexed to this Act, that is to say :

No. 13—1866-'67.

Expenditure, 1867.

II. For the expenditure of the Civil Establishment, a sum not exceeding thirty-six thousand six hundred and twenty-seven pounds and four shillings.

Civil Establishment.

III. For the expenditure of the Judicial Establishment, a sum not exceeding twenty thousand and eight pounds and ten shillings.

Judicial Establishment.

IV. For the expenditure of the Educational Establishment, a sum not exceeding eleven thousand five hundred and ninety-three pounds and fifteen shillings.

Educational Establishment.

V. For the expenditure of the Medical Establishment, a sum not exceeding fourteen thousand eight hundred and eighty-eight pounds thirteen shillings and nine pence.

Medical Establishment.

VI. For the expenditure of the Police and Gaol Establishments, a sum not exceeding thirty-two thousand eight hundred and eleven pounds nineteen shillings and four pence.

Police and Gaol Establishments.

VII. For the expenditure on account of the Border Department (Aborigines), a sum not exceeding twenty-eight thousand seven hundred and three pounds and eleven pence.

Border Department (Aborigines).

VIII. For the expenditure on account of Charitable Allowances, a sum not exceeding one hundred pounds.

Charitable Allowances.

IX. For the expenditure on account of Works and Buildings, a sum not exceeding four thousand nine hundred and ninety-five pounds.

Works and Buildings.

X. For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding thirty-two thousand one hundred and forty-six pounds sixteen shillings and eight pence.

Road and Bridges.

XI. For the expenditure on account of Miscellaneous Services,

Miscellaneous Services.



- No. 13—1866-'67. laneous Services, a sum not exceeding fifteen thousand five hundred and forty-seven pounds and ten shillings.
- Interest. XII. For the expenditure on account of Interest, a sum not exceeding eight thousand six hundred and fifty-two pounds.
- Colonial Allowances to Military Officers. XIII. For the expenditure on account of Colonial Allowances to Military Officers, a sum not exceeding five thousand pounds.
- Total. XIV. Amounting, in the whole, to two hundred and eleven thousand and seventy-four pounds nine shillings and eight pence.
- Application of supplies. XV. The said aids or supplies shall not be issued or applied for any use, intent, or purpose other than the particular services for which the said amounts have been granted respectively by this Act.

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SCHEDULE.

Pages of Estimates  
for 1867.

For the Expenditure of the Civil Establishment :

3	50	51	His Excellency the Governor ...	£645	0	0	
4	51		Colonial Secretary	1,035	0	0	
5			Treasurer-General	300	0	0	
5			Auditor-General...	685	0	0	
5			Registrar of Deeds	482	10	0	
6	50	51	Surveyor-General	1,629	5	0	
6	51		Department Public Works, &c. ...	2,992	1	3	
8			Port Department	2,507	18	9	
10			Keeper of Public Buildings ...	118	0	0	
10			Agents-General in London ...	125	0	0	
10	50	51	52	Post Office ...	24,440	14	0
50			Customs Department—Rents ...	546	0	0	
50			Rents for Sundry Offices...	640	15	0	
51			Civil Commissioners, &c., Transport ...	480	0	0	
				————— £36,627 4 0			

Pages of Estimates  
for 1867.

No. 13—1866-'67.

For the Expenditure of the Judicial Establishment:

17	Supreme Court ...	£1,716	1	3
18	High Sheriff ...	42	10	0
19	Attorney-General	175	0	0
19	Solicitor-General...	417	10	0
21	Divisional Courts.	6,925	13	9
48	Administration of Justice, exclusive of Establishment	6,725	0	0
51	Hire of Offices, Periodical Courts	836	0	0
51	Rent of Office ...	640	15	0
51	Transport ... ..	2,530	0	0
				£20,008 10 0

For the Expenditure of the

22	Educational Estab- lishment ... ..	£822	10	0
49	Do., exclusive of Establishment...	10,248	10	0
50	Rents ... ..	285	5	0
51	Transport ... ..	237	10	0
				£11,593 15 0

For the Expenditure of the

22	Medical Establish- ment... ..	£4,476	3	9
49	Do., exclusive of Establishment...	10,012	10	0
50	Rents ... ..	25	0	0
51	Transport ... ..	375	0	0
				£14,888 13 9

For the Expenditure of the

25	Police and Gaols Establishment...	£15,418	9	4
50	Do., exclusive of Establishment...	14,325	0	0
50	Rent ... ..	518	10	0
51	Transport ... ..	2,550	0	0
				£32,811 19 4

For the Expenditure on account of the

41	Border Department ... ..	28,703	0	11
48	For the Expenditure on account of Charitable Allowances ... ..	100	0	0
53	For the Expenditure on account of Works and Buildings ... ..	4,995	0	0
53	For the Expenditure on account of Roads and Bridges ... ..	32,146	16	8

III.

2 A

354 GUNPOWDER LAW AMENDMENT ACT.

No. 13—1866-'67.

Pages of Estimates  
for 1867.

	For the Expenditure on account of			
53	Miscellaneous Ser-			
	vices... ..	£13,597	10	0
8	Amount to be paid			
	to Mr. Bourne,			
	in terms of Re-			
	solution ... ..	1,500	0	0
51	Transport ... ..	450	0	0
				£15,547 10 0
	For the Expenditure on account of			
55	Interest ... ..	£8,652	0	0
	For the Expenditure on account of			
55	Colonial Allowances, &c. .	5,000	0	0
				£211,074 9 8

No. 14—1866-'67.] AN ACT [Jan. 12, 1867.

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 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 re-  
pealed.

I. 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.

II. It shall be lawful for every justice of the peace, No. 14—1866.  
 not being a dealer in gunpowder, firearms, or lead, Justices of the peace may grant permit.  
 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.

III. Every permit or licence for the purchase of Form of permit.  
 gunpowder, firearms, or lead, shall be in the form provided by the said Ordinance, No. 2 of 1853, in that behalf.

IV. From and after the taking effect of this Act, Restrictions on sale of lead, &c., specified in Act 14, of 1857, extended to divisions of King William's Town and East London.  
 the restrictions which were placed on the dealing in lead and other articles by certain Ordinances and Act mentioned in the 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 Ordinances 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.] AN ACT [July 25, 1867.

To Amend the Act No. 1 of 1861, entitled " Act for the creation of a Municipal Board for the City of Cape Town."

**W**HEREAS it is expedient that the Municipality Preamble.  
 of Cape Town should be placed under the administration of a single board or administering body, to be called the Town Council of the City of Cape Town, and to be presided over by a Mayor, to be annually elected by such 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:

I. From and after the commencement and taking effect of this Act so much of the Act No. 1 of 1861, Repugnant portion of Act No. 1, 1861, and

No. 1—1867.  
of existing municipal regulations repealed.

entitled, "Act for the creation of a Municipal Board for the City of Cape Town," and so much of any existing regulations of the Municipality of Cape Town as are repugnant to or inconsistent with any of the provisions of this Act, shall be, and the same are hereby repealed.

Offices of Commissioners and Wardmasters abolished.

II. The offices of commissioners and wardmasters are hereby abolished.

Creation of Town Council.

III. The Municipality of Cape Town shall be under the administration of a board, to consist of eighteen members, and to be called the Town Council.

Powers, duties, &c., vested in Town Council.

IV. The Town Council shall possess, discharge, and exercise all and singular the several powers, duties, and authorities which, next before the commencement and taking effect of this Act, belonged to the Board of commissioners, or to the board of wardmasters, or to the board of commissioners and wardmasters, sitting and acting together.

Municipality to be divided into six electoral districts, each to elect three councillors.

V. For the purpose of electing the members of the Town Council, the Municipality of Cape Town shall be divided into six separate districts, and three councillors shall be elected every year for every such district, respectively.

Who eligible for election.

VI. Any person duly registered as a householder of the Municipality shall be eligible to be elected a member of said Council.

Qualification of householder.

VII. The qualification of a householder of the Municipality shall remain the same as that provided by the third and fourth clauses of Act No. 1 of 1861, and the list of householders drawn out by the commissioners of said Municipality, under the provisions of the aforesaid Act, and in force at the time of the commencement and taking effect of this Act, shall remain conclusive evidence of the qualification of any person to be elected a member of the said Town Council, or to vote at a first election of members of said Council, until the said Council shall have drawn out another or fresh list, in pursuance of the provisions contained in the Act No 1 of 1861 for having such lists drawn out annually.

Existing list of householders to continue till superseded by fresh list.

Acting commissioners continued in office.

VIII. The commissioners of the Municipality who shall be in office at the time of the commencement

and taking effect of this Act shall remain in office until the members of the said Council shall have been elected, and shall have met at their first meeting, but no longer; and such commissioners shall be, and they are hereby empowered and required to call upon the householders of the several districts of the Municipality, by a public notice in the Government Gazette and one or more local newspapers, to nominate in writing, candidates for the said Town Council, on or before some day to be mentioned in such notice, not being earlier than fourteen days nor later than twenty-one days from and after the publication of the said notice as aforesaid: Provided, however, that previous to the publication of any such notice as in this section mentioned, the said commissioners shall divide the Municipality of Cape Town into six separate districts, and shall, as soon as they shall have so done, publish in the Government Gazette a notice setting forth these several districts, and the limits of each district, respectively.

No. 1—1867.  
Their duties under this Act.

IX. Any two householders, duly registered as such upon the list of householders in any district, shall be entitled to nominate any number of candidates not exceeding three as councillors for that district: Provided, however, that in case of any failure to duly nominate such candidates, or the full number of them, it shall be competent at any meeting for the election of councillors to proceed at such meeting to the election of any councillors or so many of them as may not have been duly nominated: Provided, also, that such candidate or candidates shall be duly proposed and seconded at such meeting, and thereafter the election shall be proceeded with as if such candidate or candidates had been duly nominated in the manner provided by the Act No. 1 of 1861: Provided, further, that as often as the number of candidates nominated for any district shall not exceed the number of members to be then elected for such district, no poll shall be necessary for such district, but the candidates so nominated shall be deemed and taken to be duly elected.

Who may nominate candidates as councillors.

On failure of nomination, election may proceed notwithstanding.

When number of candidates does not exceed number of members to be elected there shall be no poll.

X. All such nominations shall be in writing, and shall be sent in to the commissioners of the Municipi-

Nominations, how to be made.



No. 1, 1861, specified, then the member to be elected to fill such vacancy shall be elected by the district for or in regard to which such vacancy shall have occurred, and the person then elected shall serve until the next general election of the Council.

No. 1—1867.

XIII. The provisions of the tenth, eleventh, twelfth, thirteenth, fourteenth, eighteenth, and twentieth clauses of the Act No. 1 of 1861, shall apply, *mutatis mutandis*, to the Town Council, and the members who shall preside thereat, merely substituting the words "Town Council" and "Member of the Town Council," as the case may be, for the words "Commissioners" and "Commissioner," and the word "Mayor" for the word "Chairman," wherever they occur: Provided, however, that the number of members of the Town Council necessary to constitute a quorum for transacting business at any meeting shall be six, instead of four. The office of Vice-Chairman shall be and is hereby abolished.

Sections 10, 11, 12, 13, 14, 18, and 20 of Act 1 of 1861 to apply to Council.

Six members to form quorum.

Office of vice-chairman abolished.

XIV. After framing regulations, in terms of clause 15 of Act No. 1 of 1861, the said Town Council shall publish the same in the Government Gazette and one or more local newspapers, as provided by said clause, and thereafter transmit the same 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 further proceed thereon as prescribed by the provisions of the aforesaid Act, save and except so much of it as refers to the wardmasters.

Municipal regulations after publication, to be subject to approval of Governor.

XV. It shall be the duty of the said Town Council to publish during fourteen days the annual account and estimate of the probable revenue and expenditure mentioned in the thirty-ninth and fortieth clauses of the aforesaid Act No. 1 of 1861; and after the expiration of the said fourteen days a meeting of the said Town Council shall be held for the purpose of assessing any such rate or rates on the immovable property situate within the Municipality as shall be considered necessary, such rate or rates in any one year not to exceed two pence in the pound on the

Annual estimate of revenue and expenditure to be published.

Assessment of rate.

Limitation of rate.



No. 1—1867.

value of the immovable property without the consent of a majority of householders at a meeting of householders duly convened for that purpose, on a notice of not less than fourteen days published in the Government Gazette and some one or more local newspapers.

Council may contract loan.

XVI. It shall be lawful for the Town Council to borrow and take up on interest, for public permanent improvements within or in reference to the said Municipality, upon the security of the revenues or property, or the revenues and property, of the Municipality, any sum or sums of money which shall not, together with the moneys already borrowed and due and owing by the Municipality at the time of the taking effect of this Act, exceed the sum of twenty thousand pounds sterling: Provided that the power hereby given to the Town Council, shall not be construed as a continuing power entitling the said Council, when any sum or sums already borrowed, or to be hereafter borrowed, shall have been repaid, to borrow afresh any sum or sums, in place or stead of the sum or sums repaid.

Not to exceed £20,000. Borrowing power limited.

When and how further loan may be raised.

XVII. Should the Town Council be of opinion that it would be for the benefit of the Municipality to borrow or take up for any such improvements as aforesaid, at any time after the moneys borrowed under the last preceding section shall amount to the sum of twenty thousand pounds sterling further moneys over and above the said sum, or be of opinion, after any sum or sums once borrowed under the authority of the last preceding section shall have been repaid, that it would be for the benefit of the Municipality to borrow afresh any sum, whether exceeding or not the sum or sums so repaid, and whether exceeding or not exceeding the sum of twenty thousand pounds sterling, it shall be lawful for the Town Council to call, upon a notice to be published in the Government Gazette and in one or more local newspapers for not less than twenty-one days, a meeting of the resident householders of the Municipality, for the purpose of considering the expediency of authorizing the Town Council to borrow such further sum, and in case such meeting

shall, by a majority of the householders present thereat, authorize the Town Council, by resolution, to borrow such further sum, it shall be lawful for the said Council to borrow the sum mentioned in such resolution, and to pledge, in security for the principal and interest of such sum, the revenues or property, or revenues and property of the Municipality: Provided that every notice to be so published as aforesaid shall state the sum proposed to be borrowed, and the purpose or purposes to which it is to be applied.

No. 1—1867.

XVIII. The several provisions of the aforesaid Act. No. 1 of 1861, and also the several regulations of the aforesaid Municipality, in so far as the same are not repugnant to or inconsistent with the true intent and meaning of this Act, shall remain as legal, valid, and effectual as if the same had been word for word inserted in this Act, until such time as the same shall have been altered by the Town Council in due form of law.

Provisions of Act No. 1 of 1861 and existing municipal regulations not repugnant to provisions of this Act to remain valid.

XIX. The board constituted under this Act shall be subject and liable to every contract, engagement, debt, and demand to which the persons who composed the board of commissioners under the Act No. 1 of 1861 shall be subject or liable at the time of the taking effect of this Act.

Liabilities of former board to subsist.

XX. This Act shall take effect from and after the promulgation thereof, and may be cited for all purposes as "The Cape Town Municipality Amendment Act, 1867."

Commencement of Act.

Short title.

No. 2—1867.] AN ACT [August 16, 1867.

To Amend Act No. 14, 1861, to regulate the Retiring Pensions of the Judges of the Supreme Court.

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:

Preamble.

No. 2—1867.

Section 1 of Act 14  
of 1861 repealed.  
Exception in regard to  
judges now in office.

Pension after ten  
years' service and  
upwards.

Pension after fifteen  
years' service and  
upwards.

No pension claimable  
before the age of  
sixty-five, unless  
disabled.

Pension for service  
under ten years may  
be granted.

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 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 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 obtained the age of sixty-five years, unless he shall be afflicted with some permanent infirmity disabling him from the due execution of his office; and provided, further, that in case any person serving the office of judge shall, before he shall have served for such full period of ten years, 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.] AN ACT [August 16, 1867.

For Enabling the Commissioners of the Municipality of Uitenhage to procure a better and purer Supply of Water for the Inhabitants of such Municipality.

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 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:

I. 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

Power to construct reservoirs, dams, &c. on commonage lands;

And to lay down and maintain water-pipes.

No. 3—1867.

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, water-courses, ditches, and pipes in repair.

Public fountains to be erected.

II. 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.

III. 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.

Tariff of charges for private water-leading to be published.

IV. The commissioners shall determine and publish the tariff by which the supply of water by private water-leading shall be regulated, and the payment for all private water-leading shall be in accordance with such tariff.

Plans, &c., of proposed works to be open to inspection for twenty-one days after notice given.

V. Before proceeding with the works hereinbefore authorized, 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. 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,

How objections there-to may be lodged.

Plans, &c., to be submitted for Governor's approval.

together with a duplicate of the notice given by the commissioners and all notice 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. 1—1867.

VI. 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 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.

No commissioner to contract for or derive profit from any work performed under this Act.

Penalty for contravention.

Not to extend to commissioner by reason of his being a shareholder in any joint-stock company contracting for such work.

VII. 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

Commissioners to frame regulations for supply of water.

And to impose water rate.

No. 3—1867.

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 Ordinance No. 9 of 1836 or of the Act No. 13 of 1864: 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.

Rate limited.

Loan may be raised, not to exceed £2,500, irrespective of loans for paying off existing mortgages.

VIII. 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.

IX. 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

X. 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 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.

No. 3-1867.

Governor's sanction to raise loan.

How objections may be lodged.

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.

XI. 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.

Form of mortgage under this Act.

XII. 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.

Mortgages to be registered, and registry to be produced annually for inspection.

XIII. 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.

Form of transfer of mortgage.

XIV. 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

Funds to be applied only for purposes of this Act.



No. 3—1867.

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.

XV. 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 water-courses 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 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.

XVI. The necessary costs, charges, and expenses 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.

XVII. 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.

No. 3—1867.

Commissioners entitled to notice of motion.

XVIII. 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.

Proceedings on such motion.

XIX. 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 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 such succeeding rate shall become due and payable.

Court may impose rate to be applied to liquidation of debt with interest and costs.

More than one rate may be assessed.

But not before expiration of twelve months from date of previous levy.

No. 3—1867.

Court to appoint receiver of rate levied to liquidate debt.

XX. 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 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 :

Notice of rate assessed and when due.

## 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.

XXI. 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

XXII. 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.

No. 3—1867.

after liquidation of debt.

XXIII. 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 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.

Service of summons for recovery of debt should no commissioners be in office.

Assessment of rate when municipal valuation has ceased to be of force.

XXIV. 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

Governor in Executive Council to decide on approval or otherwise of proposed works.

Notice of intended approval to be given.

No. 3—1867.

which the said works, or any part of them, shall be proposed to be constructed.

Commissioners empowered to purchase or hire private lands.

XXV. 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, 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

How, when unable to agree regarding purchase-money, hire, &c.

Arbitration.

No. 3—1867.

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 authorized 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 to 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.

XXVI. 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 authorized, 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 Guardians' Fund, who is hereby authorized 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

How to proceed if owner be a minor.

Moneys in such case to be paid to Master of Supreme Court.

How, if land be partly

No. 3—1867.  
 under fidei-commis-  
 sary trust.

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 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 Guardians' 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 em  
 powered to dam up  
 rivers or streams.

Existing rights pro-  
 tected.

XXVII. 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.

XXVIII. 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 authorized.

No. 3—1867.  
Interpretation of terms.

XXIX. This Act may be cited as the Uitenhage Water Act, 1867, and shall take effect from and after the promulgation thereof.

Short title.

## 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 in 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 ratepayer 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 authorizing us in this behalf, charge the water-rate of \_\_\_\_\_ in the pound imposed by the said Act with the repayment 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 cer-

tain deed bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 18—  
 under the hands of \_\_\_\_\_ commissioners of the municipa-  
 lity of Uitenhage, with power for the said \_\_\_\_\_ heirs,  
 executors, administrators, and assigns, or his or their sub-  
 stitute 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 commis-  
 sioners 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	...	...	

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	...	...	

No. 5—1867.

No. 5—1867.] AN ACT [August 16, 1867.

For Continuing till the 31st of December, 1868, the Provisions of the Act No. 3 of 1866-'67.

Preamble.

WHEREAS it is desirable that the provisions of the Act No. 3 of 1866-'67, entitled "An Act to continue with amendment, until the 31st of December, 1867, the provisions of the Act No. 18 of 1865, entitled 'An Act to prevent the Introduction into this Colony of Malignant Diseases affecting Horned Cattle,'" should be continued in force until the 31st day of December, 1868: 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. 3, 1866-'67, continued.

The provisions of the said Act No. 3 of 1866-'67 shall be, and the same are hereby continued until the said 31st day of December, 1868, in like manner as if in the first section of the said Act the words or figures 1868 had been substituted for the words or figures 1867.

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No. 6—1867.] AN ACT [August 16, 1867.

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.

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:

I. 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.

Divisional Council of Cradock empowered to take over from the commissioners of the municipality the bridge lying at the Fish River.

II. 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.

Council may contract for erection and completion of bridge.

III. 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.

Cost not to exceed £6,000.

Removal of material from municipal commanage.

IV. It shall be lawful for the said council to erect and establish a toll at the said bridge, subject to and

Council empowered to establish toll.

No. 6—1867.

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.

Protection of bridge against injuries.

V. 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.

Council to keep bridge in repair.

VI. 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.

On completion of bridge, council may close fords within two miles of it.

VII. 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.

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:

Council empowered to raise loan not exceeding £6,000.

VIII. 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

To include amount

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.

No. 6—1867.  
required to pay off existing mortgages.

IX. It shall be lawful for the chairman of the said council, being duly authorized 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 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.

Bonds for moneys raised, how to be executed.

X. 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.

Moneys raised to be deposited in bank and drawn out by cheques.

XI. The said council shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the Colonial Secretary, half-yearly, showing all moneys received and expended up to the 30th June and 31st December, then preceding, and all liabilities and assets on the same days.

Separate account to be kept of receipt and expenditure, and abstract to be transmitted to Colonial Secretary half-yearly.

XII. 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.

Accounts to be audited.

XIII. 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

Fund to be provided for repayment of loan.

No. 6—1867.

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.

XIV. 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: 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.

Mode of recovery.

Eastern Districts Court to have concurrent jurisdiction with Supreme Court.

Expenses attending procuring of this Act chargeable to moneys received under its provisions.

XV. 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 authorized to be received under the provisions of this Act.

Interpretation terms.

XVI. 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.] AN ACT [August 16, 1867.

No. 7—1867.

To Amend the Act No. 3 of 1861, entitled “An Act for improving the Administration of Criminal Justice.”

**W**HEREAS it is expedient that the law relative Preamble.  
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 :

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. Mode of proof of former conviction on plea of guilty.



No. 8—1867.

No. 8—1867.] AN ACT [August 16, 1867.

To Amend the Ordinance No. 25 of 1874 entitled  
 “An Ordinance for improving the Police of the  
 Colony.”

Preamble.

WHEREAS by the eighteenth section of Ordinance No. 25 of 1847 entitled “An Ordinance for improving the Police of the Colony,” it is provided that, under certain circumstances therein mentioned, every person offending as therein mentioned shall be liable to a penalty not exceeding forty shillings, and to imprisonment until the same be paid, and may be further called upon should such course seem necessary, to find sufficient sureties to keep the peace: And whereas it is further by the thirty-eighth section of the same Ordinance provided that the term imprisonment, where it occurs, in the same Ordinance, shall embrace imprisonment with or without hard labour, as the functionary awarding such imprisonment shall adjudge and declare; and it is expedient that the said enactments 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:

Penalty for conviction under section 18 of Ordinance.

Whenever any person shall be convicted under the said eighteenth section of the said Ordinance, every person so offending shall be liable to a penalty not exceeding forty shillings, as in the same section is provided, and to imprisonment with or without hard labour, and with or without spare diet, for any term not exceeding one month, unless or until the fine be sooner paid, and may be further called on, as in the same section is provided, should such a course seem necessary, to find sufficient sureties to keep the peace, but save as herein is provided, shall not be detained in prison for any longer period than the court shall by its sentence, as herein empowered, award.

No. 9—1867.] AN ACT [August 16, 1867.

No. 9—1867,

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.

**W**HEREAS it not unfrequently happens that a Preamble. 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:

I. 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.

Persons indicted for theft may on such indictment, be convicted 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:

II. It shall and may be lawful for any court empowered to pass sentence on any person for the offence of theft, or of receiving stolen goods knowing the same to have been stolen, or of having been

Court may impose fine in addition to sentence passed for offence committed.

No. 9—1867.

accessory to any theft before the fact, to impose upon such offender, in addition to such sentence, a fine not exceeding in amount ten times the value of the property which such offender shall be then and there sentenced for stealing, or for receiving knowing the same to have been stolen, such fine, if not paid, to be levied of the movable property of the said offender under and by virtue of a warrant under the hand of the judge or magistrate imposing such fine, together with the costs of such levy. The amount of such fine when paid or levied shall be paid into the public treasury; and it shall and may be lawful for the Governor, upon the recommendation of the judge or magistrate who shall have tried the case, out of the amount so paid or levied as aforesaid, to make restitution, in whole or in part, to the person from whom the property the subject matter of such offence aforesaid shall have been stolen, of the value of such property, and further to reward any person or persons, not being himself or themselves concerned in the theft, or accessory thereto, who may have given such information as to lead to the apprehension or conviction of the offender or to the recovery of the stolen property; and when and as often as any such fine as aforesaid shall be imposed by a resident magistrate, such resident magistrate shall forward the record of the proceedings in the said case to the Registrar of the Supreme Court, or if the magistracy shall be within the Eastern Districts, then to the Registrar of the Court of the Eastern Districts, in order that the sentence may be reviewed by one of the judges of such courts respectively, and such judge may reduce or disallow the same, as shall seem to him to be most in accordance with real and substantial justice; and in every case in which such record shall have been so forwarded as aforesaid, the warrant shall be executed by immediately attaching sufficient goods as aforesaid to answer the fine imposed by such magistrate in the first instance, but such goods shall not be sold to realize the amount of such fine until the sentence shall have been finally approved or amended by such judge as aforesaid, and then only so much

Fine, how to be levied.

Disposal of fine.

Fine imposed by resident magistrate subject to review by Supreme or Eastern Districts Court. ✓

Goods attached to satisfy fine not to be

thereof shall be sold as shall probably be necessary to produce the amount of such fine as shall ultimately be imposed, together with the costs of levy, as aforesaid.

III. If any fine in the preceding section mentioned be paid when imposed by any resident magistrate, and be afterwards reduced or disallowed as aforesaid, the amount by which the same shall be reduced, or the amount of such fine, as the case may be, shall be refunded to the person who shall have paid the same.

IV. Nothing in this Act shall be held to repeal any of the provisions of the Act No. 16 of the year 1864; but whenever judgment shall be given under the fourth section of the same Act in favour of the owner of any cattle or sheep supposed to have been stolen by any accused person, such judgment shall be considered by the court which shall try such accused person in awarding such fine as is hereinbefore mentioned, should such person be found guilty.

No. 9—1867  
sold before confirmation of sentence.

In case of reduction or disallowance of fine refund to be made to person who paid the same.

Act No. 16, 1864, not affected; but judgment given in favour of owner of stolen property to be considered in awarding fine.

No. 10—1867.] AN ACT [August 16, 1867.

For Encouraging the Introduction into the Waters of this Colony of Fishes not native to such Waters, respectively.

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:

Preamble.

I. It shall be lawful for any person to apply in writing to the Governor for leave to introduce into

Application for leave to introduce and for

No. 10—1867.

protection of fish,  
how to be made.Governor in Council  
may grant leave and  
provide for protection.Limits of waters pro-  
tected to be defined,  
and destruction of  
fish prohibited by pro-  
clamation.

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 behalf, or other persons thereto by him, his heirs, or executors, duly authorized, 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 to 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.

II. 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 authorized by this Act; and any person contravening the provisions thereof, so far as the same are so authorized, 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.

III. 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 authorized 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 authorized by this Act.

No. 11—1867.

No. 11—1867.] AN ACT [August 16, 1867.

To Make Provision for the Payment of Judgment Debts found to be due by Public Bodies empowered to levy rates.

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.

I. 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.

II. Such rule shall thereupon be served upon such

public body at their office, or if the court should 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.

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III. 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 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.

Rule may be made absolute;

And a rate assessed to satisfy judgment.

Rate limited.

More than one rate may be assessed;

But not within twelve months.



No. 11—1867.

Court may order inquiry by Master into further liabilities.

IV. 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.

V. 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.

VI. 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 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

Apportionment of proceeds of rate in such case.

of such petitioner and the other creditors, if any, *pro rata*, until all the debts proved, with interest thereon, shall be fully satisfied.

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VII. 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.

VIII. 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.

IX. 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.

No. 11—1867.

(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 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.

X. The receiver of any such rate as aforesaid shall be entitled to recover the amount thereof in any competent court.

Disposal of surplus.

XI. 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.

XII. 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 authorized 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.

XIII. 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.

Jurisdiction of Eastern Districts Court.

XIV. 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 Eastern Districts, then by the registrar of such last-named court to the Supreme Court, through its registrar.

How order for reference to Master is to be notified when public body in Eastern Districts is respondent.

XV. 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

Proceedings when there are several petitions, and order for reference to Master has been made on one petition.

No. 11—1867.

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.

XVI. 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

XVII. 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 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.

No. 11—1867.

specially provided for.

XVIII. This Act may be cited as the "Public Bodies' Debts Act, 1867."

Short title.

No. 12—1867.] AN ACT [August 16, 1867.

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.

WHEREAS it is expedient to impose duties on the depasturing of stock upon the waste Crown lands of this Colony, under licences to be issued for that purpose: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows :

Preamble.

I. For the purposes of this Act the words "waste Crown lands" shall be taken to mean all waste lands of the Crown within this Colony the use or occupation of which has not already been, or shall not, when any question regarding the same shall arise under this Act, have been otherwise lawfully authorized, and the word "stock" shall be taken to mean any horse, ass, or mule, or any horned cattle, or any sheep or goat.

Definition of terms "waste Crown lands" and "stock."

II. From and after the 1st day of January, 1868, no person shall be allowed to depasture any stock upon any waste Crown land without having obtained a licence for that purpose: Provided that no *bonâ fide* traveller shall be held to infringe this Act by depasturing or resting the stock in his charge, accompanying him on his journey, on such waste

No stock to be depastured on Crown land without licence.

Travellers exempted.

No. 12—1867.

Crown land or on any recognized outspan place, for a lawful and reasonable time.

Licences, how and by whom to be issued.

III. All licences under this Act shall be upon stamped paper, or shall be covered with adhesive stamps of the value of the amount payable for the licence, and shall be issued by the civil commissioner of the division in which the waste Crown land on which the stock is to be depastured is situated, and shall be in such form as the Governor, with the advice and consent of the Executive Council, shall prescribe.

Stamp affixed to licence to be cancelled.

IV. Every stamp which shall, under and by virtue of the preceding section of this Act, be affixed to any licence shall be cancelled by the civil commissioner who issues such licence, in manner provided by the twenty-sixth section of Act No. 3, 1864, on pain, in case of failure so to do, that such civil commissioner shall be liable to pay the sum of five pounds to any person who shall sue for the same.

Penalty on failure.

Rights to be provided for by licence.

V. Such licences shall provide for common rights of depasturing stock within certain limits, but may not provide for any exclusive rights of depasturing any stock over any definite tract of land, and shall be in force from the date specified in such licence until the first day of January next after such specified date.

Period of licence.

Tariff of licence fees.

VI. For every such licence there shall be charged and payable, at the time of the issue of the same, such sum, calculated according to the number of the stock to be depastured, as the Governor, by and with the advice of the Executive Council, shall prescribe by tariffs framed for that purpose for the divisions of the Colony, respectively, and which shall not in any case be less than :

For every twenty-five sheep or goats,			
or sheep and goats, and for every			
fractional part of that number	£0	5	0
For every horse, ass, mule, or head			
of horned cattle	....	....	0 2 6

And the subsequent natural increase of any stock for which a licence has been issued shall be permitted to be depastured under that licence without

any additional charge. But no licence shall at any time be issued the amount payable for which, according to the rates chargeable by the prescribed tariff, shall be less than three pounds; and when the Governor shall be of opinion that a sufficient number of licences has already been issued, or that no licence should be issued, for any particular locality, he may order that no further licences, or no licences, as the case may be, shall be issued for the same. In forming his opinion on the matters in this section contained, the Governor shall consult the divisional council of the division within which the lands to be depastured are situate; but it shall not be compulsory on the Governor to accept the decision of such council.

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No licence to be under £3.

Governor may limit or prohibit issue of licences in particular localities;

But to consult divisional council.

VII. Every civil commissioner shall keep a register of the licences issued by him under this Act, showing the name of the person to whom issued, the number and description of stock for which the same is issued, the limits within which the stock is to be depastured, and the dates from and up to which the licence is to be in force; and shall, not later than the 15th day of January in each year, send a copy of this register, and thereafter from time to time as fresh licences are issued during the year, a supplementary list of such fresh licences, to every field-cornet in his division, which register and copies and supplementary lists shall be open to the inspection of the public at all reasonable times, without the payment of any fee or charge; and similar copies shall also be forwarded by the civil commissioner to every justice of the peace in his division.

Register of licences to be kept.

Field-cornets to be supplied with copies;

To be open to inspection of public.

Copies to be also furnished to justices of the peace.

VIII. If any person who shall have obtained a licence under this Act shall, under plea or colour thereof, depasture on the waste Crown land for which the licence was issued any stock in excess of the number specified in his licence, and their natural subsequent increase, the stock so depastured in excess, and in the case of sheep and goats the flock amongst which the excess is found, may be impounded, as in the next following section provided, and such person shall, upon conviction, be liable to a fine not exceeding twice the amount that would

Stock depastured in excess of number specified in licence may be impounded and penalty imposed.



No. 12—1867.

have been payable for a licence to depasture the number of stock so depastured by him in excess of the number specified in his licence.

Stock found trespassing may be impounded.

IX. Any stock found trespassing upon any waste Crown land in contravention of this Act may be impounded in the pound nearest to the locality where the same shall be found so trespassing, by any person duly authorized thereto by the civil commissioner of the division in which the waste Crown land so trespassed upon is situated; and the person so impounding such stock shall at the same time deliver or cause to be delivered to the poundmaster a note or memorandum, duly signed by him and dated, stating the number and description of stock impounded, the place or locality where the same was found trespassing, and the distance thereof from such pound; and thereupon the poundmaster shall pay to such person, for his own use and benefit, on a proper receipt to be given, the mileage payable for driving such stock to the pound, at the rate then in force in the division, under the existing pound law and regulations, and which memorandum and receipt the poundmaster shall preserve as vouchers.

Poundmaster to be supplied with memorandum of particulars of stock impounded.

Mileage payable to person impounding.

How impounded stock may be released.

X. The owner of any stock so impounded as in the two preceding sections mentioned may at any time release the same from the pound, upon payment of the pound fees, mileage, herding money, and trespass money, at the rate chargeable under the pound law and regulations then in force in the division, for which the poundmaster shall grant a receipt, specifying the various charges; and the trespass money so received by the poundmaster shall be paid over by him to the civil commissioner of the division, for the benefit of the public treasury of the Colony.

Disposal of trespass money.

Person impounding stock to furnish civil commissioner with note of particulars in regard to such stock.

XI. The person by whom any stock shall be impounded, as hereinbefore provided, shall, within fifteen days from the time of his impounding the same, furnish the civil commissioner of the division with a note, specifying the number and description of the stock so impounded, the date of impounding, and the name of the poundmaster to whom the same shall have been delivered.

XII. Any person who shall deem that his stock so impounded has been unlawfully impounded under colour of this Act may institute an action or suit for the recovery of damages against the person who impounded the same; and if he shall prove to the satisfaction of the court in which the action or suit is tried that his stock was impounded unlawfully and without sufficient cause, the court shall, besides and apart from the judgment given in the case, order the trespass moneys paid by such person on releasing his stock to be refunded to him.

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Persons unlawfully impounding stock subject to action for damages.

Court may direct refund of trespass moneys.

XIII. Any person who shall wilfully and maliciously, and without any probable cause, impound any stock under colour of the provisions of this Act shall be 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 term not exceeding three months, or, if the court shall see fit, to pay a fine of not exceeding fifty pounds.

Penalties for wilfully or maliciously impounding stock.

XIV. All prosecutions for contraventions of this Act, and all civil actions or suits arising out of anything done under this Act or under colour of the same, shall be brought and tried in the court of the resident magistrate of the district in which the contravention complained of shall have been committed, or, in civil cases, in which the cause of action shall have arisen.

Resident magistrate's courts to have jurisdiction in prosecutions or suits under this Act.

XV. Nothing in this Act contained shall apply to the Cape Flats and Downs, as defined in the Ordinance No. 5 of 1836, which Ordinance shall continue to be in full force.

Exception as regards Cape Flats and Downs.

XVI. This Act may be cited for all purposes as the "Crown Pastures Licence Act, 1867," and shall commence and take effect from the date of the promulgation thereof, and shall continue in force until the first day of January, 1871, and no longer.

Short title.

Commencement and duration of Act.

For Authorizing certain Expenditure not provided  
for by Parliament in the Year 1865.

Preamble.

WHEREAS divers public moneys, amounting in all to the sum of twenty-seven thousand and eighty-four pounds eight shillings and seven pence sterling, have been necessarily advanced during the year 1865, by the authority of the Governor of this Colony, but without the previous sanction of the Parliament: And whereas these advances have been found to have been duly applied to and expended upon certain necessary expenses of the Civil Government of this Colony, and it is therefore proper and expedient that an Act of Appropriation should be passed to authorize the amount so expended to be charged against the public revenue 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:

Additional expenditure for 1865.

I. The public revenue of the Colony is hereby charged with a further sum of twenty-seven thousand and eighty-four pounds eight shillings and seven pence sterling, in addition to the sums already provided for the service of the year 1865, which shall be applied and accounted for in the manner specified in the schedule hereunto annexed.

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SCHEDULE.

For the expenditure of the

Civil Establishment	...	...	...	£861	10	5
Judicial do.	...	...	...	676	12	2
Education do.	...	...	...	100	0	0
Police and Gaols	...	...	...	17	0	0
Ecclesiastical	...	...	...	80	0	0

SERVICES.

Charitable allowances	...	...	...	£112	0	0
Education	...	...	...	140	8	6
Hospitals	...	...	...	389	1	7
Works and Buildings	...	...	...	46	14	0
Roads and Bridges	...	...	...	8,725	19	6
Miscellaneous Services	...	...	...	1,289	7	11

Miscellaneous Services, Parliamentary	£171	13	5	No. 13—1867.
Do. Special Payments ... ..	8,105	10	5	
Interest ... ..	6,368	10	8	
	£27,084		8 7	

No. 14—1867.] AN ACT [August 16, 1867.

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.

**W**HEREAS it is desirable that the works designed Preamble. and in progress for improving the harbour of Port Elizabeth should be proceeded with, and to that end that the board of commissioners for the said harbour should be empowered to raise on loan such further sums of money as may from time to time be necessary for prosecuting the said works to completion, not exceeding in the whole the sum of forty thousand pounds, under the guarantee of the general revenue of the Colony; and that provision should be made, as hereinafter is provided, for raising by means of wharfage dues sums sufficient annually to keep down the interest on all sums of money for the time being due and owing by the said commissioners, after the rate which may be due thereon respectively, as well as for the payment of the costs of managing and keeping in repair the said harbour and 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: Further loan authorized.

I. It shall be lawful for the said board to borrow and take up from time to time upon interest, with the sanction of the Governor, and under the guarantee of the general revenue of the Colony, such sum or sums of money, not exceeding in the whole in addition to the sums already borrowed by the said board under the authority of Parliament and still due, the sum of Extent of loan. forty thousand pounds, as may be necessary for prosecuting towards completion the works in Algoa Bay

No. 14—1867.

Provisions of Act 10 of 1858 to apply to this loan.

in contemplation and already commenced; and, save and except as is hereinafter excepted, all the provisions of the Act No. 10 of 1858, entitled "An Act for enabling the Harbour Board of Port Elizabeth to levy certain Wharfage Dues," so far as the same relate to the money thereby authorized to be borrowed, shall apply to the said sums hereby authorized to be borrowed as if the same were borrowed under the authority of the said Act.

Wharfage dues chargeable after contraction of loan.

II. From and after the borrowing of the money, or any portion thereof, hereby authorized to be borrowed, it shall be lawful for the said board, and they are hereby required, to levy or cause to be levied upon goods, articles, matters, or things landed or shipped in Algoa Bay the several dues or rates set forth in the tariff contained in the schedule to this Act annexed, instead of the dues or rates set forth in the tariff contained in Schedule No. 1 of the aforesaid Act No. 10 of 1858; and all the provisions of the said Act No. 10 of 1858 shall apply and extend to the dues and rates set forth in the schedule hereunto annexed, precisely as if the said dues or rates had been inserted in the aforesaid Schedule No. 1 to the said Act No. 10 of 1858 annexed.

Rates chargeable.

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### SCHEDULE.

Schedule of rates.

1. Upon all wool shipped or landed in Algoa Bay there shall be payable, and be paid, four pence and one half-penny for and upon every one hundred pounds of the weight thereof.
2. Upon all goods, articles, matters, or things, except wool, shipped or landed in Algoa Bay, dues shall be payable, and be paid, at and after the rate of seven shillings and sixpence for every one hundred pounds of the value thereof.

### *Exemptions.*

Exemptions.

1. All public stores, naval or military baggage, and personal baggage of passengers.
2. Ship's 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.

No. 15—1867.] AN ACT [August 16, 1867. No. 15—1867.

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.

**W**HEREAS certain general rules and orders, contained in the schedules to this Act annexed, have been from time to time made by the Judges of the Supreme Court for the time being for the regulation of the practice of the said Court and of the Court of the Eastern Districts, respectively, and have been approved by the Governor, with the advice of the Executive Council, and have been from time to time published in the Government Gazette, and it is expedient that the same should be enacted and confirmed, respectively: 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.

I. That the several rules and orders in the several schedules to this Act contained and set forth shall be of full force and binding effect until altered or repealed by competent authority.

Rules of Court in annexed schedule confirmed.

II. From and after the promulgation of this Act, the Act No. 26 of 1856 shall be, and the same is hereby, repealed.

Act No. 26 of 1856 repealed.

III. It shall be lawful for the judges for the time being of the Supreme Court, or the major part of them, to alter or amend in any respect in which the Court was authorized by the forty-sixth section of the Charter of Justice to make general rules or orders, any general rule or order for the time being in force, or to make any new rule or order which by the same section of the said Charter such Court was authorized to make for regulating the practice of the Supreme Court, and in the like respects to alter or amend any rule now in force in the Court of the Eastern Districts, or to make any new rule in like respect for regulating the practice of the said last-mentioned Court; and every such amendment or alteration, and every such new rule, respectively

Supreme Court may frame or amend rules and orders mentioned in section 46 of Charter of Justice.

Rules to be submitted to Governor in Executive Council,

No. 15—1867.  
and, if approved, published.

shall be submitted to the Governor for his approval, with the advice of the Executive Council, and on being so approved shall be published in the Government Gazette, and shall take effect from and after such publication, unless some other subsequent time shall be named therein from which the same is to take effect, in which case it shall take effect from such time, and shall from such times forward, respectively, be of full force and effect until altered or repealed by competent authority.

Amended or new rules to be laid before Parliament.

IV. Every such alteration, amendment, or new general rule or order, respectively, shall, if Parliament be in session at the date of its publication as aforesaid, be laid on the table of both Houses as soon as conveniently may be after the publication thereof, and if Parliament be not in session at the date of such publication, then so soon as conveniently may be after the opening of the then next ensuing session of Parliament.

#### SCHEDULE No. 1.

I. It is ordered that the table of fees and charges to be allowed by the High Sheriff of the Colony in respect of executing the process of the Supreme Court of the Cape of Good Hope, dated 6th February, 1838, be altered and amended from the 22nd day of November, 1859, and that the rates of fees and charges to be permitted and allowed shall, in the certain instances hereunder specified, be as follows, namely:

	£	s.	d.
Service out of any town or village, and within one hour's distance... ..	0	6	0
Ditto at a greater distance, per day ... ..	0	9	0
Horse-hire, out of town, for the first hour ... ..	0	4	6
Ditto, at a greater distance, per day ... ..	0	8	0

The said rates shall be uniform throughout the several divisions and districts of the Colony.

The amended tariff to have effect, in respect of all processes served, both in civil and criminal cases, from and after the said 22nd day of November, 1859.

II. Rules and Orders of the Supreme Court of the Colony of the Cape of Good Hope relating to the Rehabilitation of Insolvents.

It is ordered that with reference to the provisions of the

Insolvents' Rehabilitation Act, 1859, from and after the 20th day of January, A.D. 1860, that—

1. Every notice given to any trustee by an insolvent, stating his intention to apply to the Supreme Court for his discharge, shall be in the form A, annexed hereto, or to the like effect, and shall be signed by the insolvent, his attorney, or agent.

2. Four weeks before the day on which it is intended to make such motion, a copy of such notice shall be filed with the registrar of the Supreme Court, who shall note the same in a book to be kept for that purpose, open to the inspection of the public.

3. Any trustee or creditor intending to oppose the discharge of an insolvent shall, one week before the day of hearing, cause a notice of his intention to be entered in the proper page and column of a book to be kept for that purpose in the registrar's office, which book shall, during office hours, be open to the inspection of the public.

4. All papers relating to every insolvency, and in the possession of the master, shall be open for inspection and examination until two days before the day of hearing, and upon the expiration of the period for inspection, the same shall be filed by the master at the registrar's office.

5. The security required by the fifth section of the Insolvents' Rehabilitation Act, 1859, shall be given to the satisfaction of the master, resident magistrate, or some justice of the peace of the district within which the insolvent is residing at the time he applies for his discharge; and such master, resident magistrate, or justice shall certify under his hand that such security has been given in the form following, or to the like effect.

I, A. B., Master of the Supreme Court (or resident magistrate, or a justice of the peace, of the district of \_\_\_\_\_, as the case may be) do hereby certify that C. D., an insolvent debtor, has given sufficient security to my satisfaction, in the sum of £25, for the payment of the costs of any person who may appear to oppose the discharge of the said insolvent, and to whom the court shall see fit to award his costs against the said insolvent.

Given under my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_\_.

6. In addition to the oath required by the sixth section of the Insolvents' Rehabilitation Act, 1859, every insolvent applying for his discharge shall, four weeks before the day on which the application is to be heard, file with the



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registrar of the Supreme Court, a general balance sheet in the form of B, hereto annexed, or as near thereto as circumstances will permit, and every such balance sheet shall be read over to and signed by the insolvent, in the presence of a person who shall attest that the same was so read and signed by the insolvent, and the name, occupation, and place of residence of the attesting witness shall be specified. Every such balance sheet shall be open to the inspection of any trustee or creditor of the insolvent, his attorney, or agent.

7. In all cases in which the court shall think fit, an examination of the insolvent shall take place after the filing of the balance sheet before the court, or one of the judges thereof, or a commissioner of the court.

[A]

Notice is hereby given to the trustee and creditors in the insolvent estate of A. B., that application will be made to the Supreme Court, by motion, on the \_\_\_\_\_ day of \_\_\_\_\_, at 10 o'clock, or as soon as council can be heard, for the discharge of the insolvent, at which time the trustee, or any of the creditors may, upon due notice, appear to oppose the granting of the said discharge.

[B]

In the Supreme Court

In the Matter of A. B., an Insolvent.

INSTRUCTIONS.—This account is to begin at or before the time when the earliest debt in the schedule was contracted by the insolvent. If he has been previously insolvent, the date of each such insolvency must be set forth, and it must be stated whether any debts due under such insolvency or insolvencies are still unpaid, and the amount thereof.

#### GENERAL BALANCE SHEET.

This my account begins in or about the month of \_\_\_\_\_, A.D. 18—.

The earliest debt in my schedule (No.)— was contracted by me in the year \_\_\_\_\_ A.D.

Dr.	£ s. d.	Cr.	£ s. d.
Capital at the time aforesaid, consisting of, &c., &c. ... ..		Good debts as in schedule	
Aggregate amount of my debts, as in schedule		Bad ditto	
Deduct those for which I received no consideration... ..		Doubtful ditto	
Profits of business in each year (specifying the years and amounts)... ..		Total } ... ..	
Other profits ... ..		Rent and taxes for — years at £— per year	
(Here enter all moneys received by annuities, dividends, legacies, or otherwise; also all property had by purchase, gift, bequest, &c., since the time aforesaid.)		Other household expenses, at £— per year, for — years ... ..	
Value to be accounted for		Servants' wages for — years at £— per year	
		Losses by—in the year—	
		Ditto ... ..	
		(Here the losses in trade or otherwise are to be specified.)	
		Property mentioned in schedule belonging to me ... ..	
		Deficiency ... ..	

The cause of my present insolvency is (here state, with as much clearness as the nature of the case will admit of, all the causes to which the insolvent attributes his inability to pay his creditors. If any losses have arisen from speculation in trade, or otherwise, the transactions must be explained).

III. It is ordered that from and after the 6th day of April, 1865 :

1. There shall be served, together with the notice of the filing of any pleading, a copy of such pleading, and in default of such service such notice shall be inoperative, unless it be otherwise ordered.

2. In cases not carried on by default, either party may, at any time after the closing of the pleadings, and at least two days before service by himself of notice of trial, or before or within two days after service of notice of trial by any opposite party, give notice to the opposite party of any documents in his possession, or power, proposed by him to be made use of against such opposite party, and asking to have their execution admitted, for that action only, by such opposite party within a reasonable time in such notice to be specified, and offering inspection of such documents for such purpose at a suitable place and time; and in default of such notice, or of such admission, the party so in default shall have to bear the requisite costs of proving such execution, unless the court or a judge shall, at or after the trial, otherwise order.

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3. In any application on notice, copies of the affidavits intended to be used in support thereof shall be served together with such notice; and in default, the affidavits in respect of which there shall be such default shall not be capable of being used on such application, unless it shall be otherwise ordered. A copy of the notice of any application on notice shall be lodged with the registrar before noon of the office day next before the day mentioned in the notice for moving the application.

#### SCHEDULE No. 2.

I. It is ordered that the following rules shall be in force in the Court of the Eastern Districts of the Cape of Good Hope from and after the sixth day of April, 1865:

1. Chamber business in vacation may be brought on by way of summons or notice of motion, on petition, or otherwise, as court business of a like nature may in sittings in term be brought on.

2. The master of the court and the resident magistrate in and for places within the Eastern Districts, as specified in the schedule of the Administration of Justice Act, 1864, and justices of the peace residing within any of such districts shall, within the limits of their respective jurisdictions, be commissioners of the court for taking affidavits.

3. The resident magistrates, as last aforesaid, shall be commissioners of the court for the taking of examinations and of bail and security.

II. It is ordered that the following rules shall be in force in the Court of the Eastern Districts of the Cape of Good Hope from and after the 12th day of February, 1866:

1. The time for service under the thirteenth Rule of Court unless otherwise ordered by the court or by a judge, shall be as follows:

In liquid cases, when the residence of the party served is in Graham's Town, or within one day's journey thereof, two clear days before the day of appearance; in other cases of such party's residence there shall be, in addition to the two days already mentioned, one day for every additional day's journey from Graham's Town.

In illiquid cases the time for service shall be seven days, instead of two as provided above; but the additional days shall correspond with those provided for in the last paragraph.

2. The period for service of notice to a defendant that he must plead, answer, or except, to be served under the twentieth rule of court, shall correspond with that directed by the foregoing rule in reference to service in illiquid cases therein referred to.

3. The thirty-first rule of court is hereby rescinded in reference to the said Court of the Eastern Districts, and in lieu thereof the following is substituted: Notice of trial shall be given by the party who sets down the case for trial seven clear days previous to the day for trial; but where it shall be made to appear to the court, or to a judge, upon application of the party upon whom notice of trial is served, that any witness resides at a greater distance than twenty-five miles from Graham's Town, then there may be such further period for notice of or before trial as to such court or judge shall appear reasonable.

4. All process issued from the said Court of the Eastern Districts may be transmitted or delivered by the attorney or party taking out the same to the deputy-sheriff of the district where such process is to be executed, and shall be made returnable to the said court at Graham's Town, and shall be returned by such deputy-sheriff to the registrar of the said court.

5. The said Court of the Eastern Districts shall sit on the twelfth day of each of the following months,—that is to say, January, March, April, July, September, and October, in each year, or if such twelfth day shall be a Sunday or public holiday, then on the next succeeding day not being such, for the hearing of provisional cases, and the disposal of such other business as is usually brought before the Supreme Court on the twelfth day of the month.

6. Chamber business may be brought on by way of summons or notice of motion, or petition, or otherwise, as court business of a like nature may be brought on in the sittings in term.

7. The master of the said court and the resident magistrates in and for places within the jurisdiction of the said court, and justices of the peace residing within any of such places, shall, within the limits of their respective jurisdictions, be commissioners of the said court for the taking of affidavits.

8. The resident magistrates, as last aforesaid, shall be commissioners of the said court for the taking of examinations and bail and security.

9. There shall be served, together with the notice of the filing of any pleading, a copy of such pleading; and in default of such service such notice shall be inoperative, unless it be otherwise ordered.

10. In any application or notice, copies of the affidavits intended to be used in support thereof shall be served together with such notice; and in default the affidavits in respect of which there shall be such default shall not be capable of being used, unless it shall be otherwise ordered.

A copy of the notice of any application on notice shall be

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lodged with the registrar before noon of the office day next before the day mentioned in the notice for moving the application.

11. When exceptions are filed to any pleading, either party may, after the pleadings are closed, and before notice of trial served, set down the case for argument on such exceptions, giving to the opposite party four clear days' notice before the day fixed in such notice for the argument, such day being a day in term.

12. Whenever the name Graham's Town occurs in any of the foregoing rules, it shall be understood to mean the place for the time being duly fixed for the sitting of the said Court of the Eastern Districts.

III. It is ordered by the Court, on the 20th day of February, 1867, that the term for the dispatch of the civil business of the court in the next ensuing month of May shall commence on the 20th day of May and end on the 20th day of June following, in lieu of the period hitherto fixed and provided by the first general rule of this Court in that behalf.

IV. It is ordered by the Court that the following rule shall be in force in the Court of the Eastern Districts of the Cape of Good Hope from and after the 22nd day of October, 1866 :

As often as the "clerk of the peace in Cape Town" is mentioned in any of the rules or orders of the Supreme or Circuit Court, or in any form of process therein mentioned, the clerk of the peace in the place for the time being duly fixed for the sitting of the Court of the Eastern Districts shall, as to the Court of the Eastern Districts, and as to the Circuit Courts holden within the several districts over which the Court of the Eastern Districts shall have jurisdiction, be deemed and taken to be the person meant.

V. It is ordered by the Court that the following rule shall be in force in the Court of the Eastern districts of the Cape of Good Hope from and after the 15th day of January, 1867 :

The summons or process of the Court of the Eastern Districts, for the procuring the attendance of any person before the said court to give evidence in any criminal case, shall be delivered to the resident deputy-sheriff of the district within which the said person shall reside or be for execution thereof, together with so many copies of the summons as there are persons to be summoned. And in case there be no resident deputy sheriff within such district, then the provisions of the sixth section of Act No. 15 of 1864 shall be taken to apply, as if the Court of the Eastern Districts were especially mentioned therein, in addition to the Supreme and Circuit Courts.

No. 16—1867.] AN ACT [August 16, 1867. No. 16—1867.

To continue to the end of 1868 the Act No. 10 of 1864.

**W**HEREAS it is expedient that the provisions of Preamble.  
 an Act passed in the session of Parliament holden in the year 1864, numbered 10, and entitled “An Act to provide for the Construction and Maintenance of the Main Roads of the Colony,” should be continued until the 31st December, 1868: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. The provisions of the said Act, other than the Road Act of 1864 continued.  
 provision therein contained that the same shall continue in force no longer than the 31st of December, 1866, shall be continued until the 31st day of December, 1868, and the said last-mentioned provision shall be, and the same is hereby repealed.

No. 17—1867.] AN ACT [August 16, 1867.

To Amend the Criminal Law in regard to Thefts of Stock.

**W**HEREAS it is expedient and necessary to make Preamble.  
 other provision than now exists for the more effectual and speedy punishment of persons convicted of cattle, sheep, and goat-stealing, and, to this end, to amend in certain respects Act No. 16, 1864, entitled “Act for the better Repression of Thefts of Sheep and Cattle:” Be it enacted by the Governor of the Cape of Good Hope, with the advice of the Legislative Council and House of Assembly thereof, as follows:

I. The first, second, and third sections of Act No. 16, 1864, entitled “The Cattle Theft Repression Act, 1864,” are hereby repealed; as also any other sections of the said Act, or of any other Act or Ordinance, in so far as the same shall be repugnant Repugnant laws repealed.

No. 17—1867.

to or inconsistent with any of the provisions of this Act.

Jurisdiction of court of resident magistrate.

II. From and after the taking effect of this Act, the courts of resident magistrates shall, respectively, have jurisdiction, without appeal or review, in all cases in which any person may be accused of the

Limitation of punishment.

theft of any cattle, sheep, goat, or goats: Provided that it shall not be lawful, (save as is hereinafter excepted,) for any such court to punish any person convicted of any such theft in any higher or other manner than by imprisonment, with or without hard labour, for any period not exceeding one year; or by imprisonment with spare diet, and with or without hard labour, for any period not exceeding three months; or by corporal punishment in any number of lashes not exceeding twenty-five, in any case in which no former conviction of the offender for the theft of any cattle, sheep, or goat shall be charged and proved against him, and not exceeding thirty-six lashes in any case in which any such former conviction shall be charged and proved: Provided that no former conviction shall be capable of being charged or proved for the purposes of this Act, except a conviction had and obtained within the space of three years next before the conviction in regard to which sentence shall be about to be pronounced: Provided, also, that no offender sentenced under this Act to imprisonment with hard labour for any period exceeding three months shall be sentenced to spare diet, except for offences against the discipline of the gaol or other place at which he may be lawfully confined or employed: Provided, further, that in regard to the infliction of spare diet under this Act, the courts of resident magistrates shall, in their sentences observe and conform to such regulations and restrictions as shall from time to time be deemed necessary to prevent injurious consequences, and be by the Governor prescribed for the guidance of such court; and such courts shall, in their sentences, fix, in conformity with such regulations and restrictions, the particular days or times during which the offender shall be subject to spare diet. But nothing herein contained shall be construed to prevent any

When former conviction may be charged.

*within three years from each offence*

Limitation as to infliction of spare diet.

Restrictions to be observed in infliction of spare diet.

Powers conferred by section 2 of Act 9 of 1867 not affected.

court of resident magistrate from exercising the powers conferred upon it by the second section of an Act passed during this present session of Parliament, entitled "An Act to amend the Law relating to the Trial and Punishment of Criminals for Theft and for Receiving Stolen Goods knowing the same to have been stolen."

III. In the trial of cases under this Act the courts of resident magistrates shall (except as hereinafter is excepted) proceed in like manner as in criminal cases falling within their ordinary jurisdiction: Provided that in all cases under this Act the magistrate shall take down in writing, or cause to be taken down in writing, the evidence in the case, the judgment of the court, and should such judgment be a judgment of "guilty," the sentence pronounced upon the offender.

Trial to be conducted in ordinary manner, but record to be kept.

IV. On the day of the hearing of any case under this Act, the magistrate shall read over, or cause to be read over, to the accused person the charge or complaint against him, and shall ask him if he pleads "guilty" or "not guilty" to the offence set forth in such charge or complaint; and should such person plead "guilty," his said plea shall be recorded as shall also the sentence pronounced upon the offender.

Plea of guilty and sentence thereupon to be recorded.

V. The provisions of the forty-third, forty-seventh, forty-eight, 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 cases of convictions under this Act, whether upon a plea of "guilty" or after a plea of "not guilty," and whatever may be the period of imprisonment or the number of lashes to which the offender shall have been sentenced.

Sections 43, 47, 48, and 49 of Act No. 20 of 1856 to apply.

VI. As often as any charge of the theft of cattle, sheep, or goat shall be brought under the notice of any resident magistrate, which charge shall from its nature or magnitude appear to such magistrate to be unfit to be disposed of under the limited jurisdiction conferred by this Act, it shall be lawful for such magistrate, instead of proceeding to try the case under this Act, to commence and take a preparatory ex-

Magistrate in certain cases empowered to commence preparatory examination.



No. 17—1867.

Provisions of Act No. 12 of 1860 and of sections 25, 26, 27, and 28 of Criminal Law Amendment Act, 1861, to apply.

But punishments under this Act substituted.

Attorney-General may remit case for trial.

Procedure when case is so remitted.

Magistrate may stop trial and turn proceedings into preliminary examination.

amination, in like manner precisely as if this Act had not been passed: Provided, however, that if upon such preparatory examination the prisoner shall have voluntarily confessed himself guilty of the crime charged against him, then the provisions of the Act No. 12, 1860, and of the twenty-fifth, twenty-sixth, twenty-seventh, and twenty-eighth sections of the Criminal Law Amendment Act, 1861, shall extend and apply to such case, save and except only that in place and stead of the punishments provided in and by the first section of the said Act No. 12, 1860, the punishments provided in and by the third section of this Act shall, in regard to all cases of cattle-stealing, sheep-stealing, or goat-stealing be and the same are hereby substituted: Provided, also, that if upon such preparatory examination, the prisoner shall not have so confessed his guilt, but the Attorney-General, upon consideration of the preparatory examination, shall be of opinion that the evidence is such as to require that the prisoner shall be put upon his trial, and be of opinion also that the exercise of the jurisdiction conferred by this Act will satisfy the ends of justice, then and in that case it shall be lawful for the Attorney-General to remit the case for trial to the court of the resident magistrate by whom the preparatory examination was taken, and such court shall thereupon proceed to try the same in manner and form as in the twenty-ninth section of the "Criminal Law Amendment Act, 1861," prescribed; and in case the prisoner shall be convicted, such court may pronounce upon him any sentence to which he might have been subjected under this Act, in case he had been tried under this Act without any preparatory examination having been taken.

VII. When, in the course of any trial under this Act in any court of any resident magistrate, it shall appear to the resident magistrate, from the facts disclosed by the evidence, that the case is one which from its nature or magnitude is unfit to be disposed of under the limited jurisdiction conferred by this Act, it shall be lawful for such court to stop the trial, and to take, or turn proceedings into, a pre-

paratory examination; and thereupon all and singular the provisions of the last preceding section shall apply to such preparatory examination, precisely as if such trial as aforesaid had never been commenced.

VIII. All and singular the provisions of the second and every succeeding section of this Act relating to the theft of any cattle, sheep, or goat, shall extend to the crime committed by receiving any such animal, knowing it to have been stolen, precisely as if, whenever such theft is mentioned or referred to, the crime of such receiving as aforesaid had been mentioned in place or stead of the theft thereof.

IX. It shall be lawful for the Attorney-General, upon considering any such preparatory examination as is in the sixth section of this Act mentioned, in reference to which preparatory examination the accused person shall have been committed for trial upon the charge of stealing any animal or animals, to remit the case for trial to the court of the resident magistrate, upon the charge of receiving such animal or animals knowing the same to have been stolen; which charge of "receiving" may be either in addition to, or in substitution for, the charge of "theft;" and, conversely, when any accused person shall have been committed for trial upon the charge of receiving any animal or animals knowing the same to have been stolen, to remit the case upon the charge of stealing the same animal or animals, which charge of "theft" may be either in addition to, or in substitution for, the charge of "receiving;" and upon the remittal of any such case as is in this section mentioned, the court of resident magistrate shall try such accused person upon the charge or charges upon which the case shall have been remitted, precisely as if such accused person had been committed for trial upon such charge or charges.

X. The word "cattle" in this Act shall be taken to mean any horse, mare, gelding, colt or filly, mule or ass, or any bull, cow, ox, heifer, or calf.

XI. This Act may be cited for all purposes as "The Cattle Theft Repression Amendment Act, 1867."

Act to apply to crime of receiving stolen cattle.

Power of Attorney-General in remitting cases of theft or receiving stolen goods to prefer both or either of those charges.

Definition of term "cattle."

Short title.

No. 18—1867.

No. 18—1867.] AN ACT [August 16, 1867.

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.

Preamble.

WHEREAS by the Act No. 13 of 1866, entitled “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,” the said sum of two hundred and eleven thousand and seventy-four pounds nine shillings and eight pence was charged upon the revenue of this Colony for the service of the Government of the Colony, until the 30th June, 1867: And whereas it has become expedient, in the present session of Parliament, to take into consideration the requirements of the said service for the entire year of 1867, as well that portion for which provision was made by the said Act as the remaining portion thereof: And whereas it will be expedient, in order to prevent confusion, to repeal the Act No. 13, 1866, and to provide by one Act for the service of the year 1867: Be it enacted by 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. 13, 1866,  
repealed.

I. The Act aforesaid, No. 13, 1866, is hereby repealed.

Expenditure, 1867.

II. The public revenue of the Colony is hereby charged with 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, in addition to the sums already by law provided for such service; which sum of four hundred and fifty-seven thousand two hundred and fifty-seven pounds six shillings and three pence shall be applied in the manner following, that is to say:

Civil Establishments.

For the expenditure of the Civil Establishments, a sum not exceeding seventy-three thousand three hundred and forty-two pounds fourteen shillings and three pence.

For the expenditure of the Judicial Establishments, a sum not exceeding thirty-nine thousand seven hundred and seventy-four pounds and ten shillings.

No. 18—1867.  
Judicial Establishments.

For the expenditure of the Educational Establishments, a sum not exceeding twenty-two thousand and sixty-four pounds and ten shillings.

Educational Establishments.

For the expenditure of the Medical Establishments, a sum not exceeding thirty-two thousand and eight pounds seven shillings and six pence.

Medical Establishments.

For the expenditure of the Police and Gaol Establishments, a sum not exceeding sixty-seven thousand two hundred and twenty-two pounds and five shillings.

Police and Gaol Establishments.

For the expenditure on account of the Border Department (Aborigines), a sum not exceeding fifty-seven thousand three hundred and ninety-nine pounds sixteen shillings and nine pence.

Border Department (Aborigines).

For the expenditure on account of Pensions and Retired Allowances, a sum not exceeding one thousand five hundred pounds.

Pensions and Retired Allowances.

For the expenditure on account of Charitable Allowances and Gratuities, a sum not exceeding two hundred pounds.

Charitable Allowances.

For the expenditure on account of Works and Buildings, a sum not exceeding eleven thousand eight hundred and eighty-four pounds.

Works and Buildings.

For the expenditure on account of Roads and Bridges, a sum not exceeding eighty-two thousand eight hundred and seventy-two pounds and ten pence.

Roads and Bridges.

For the expenditure on account of Miscellaneous Services, a sum not exceeding forty-three thousand four hundred and fifteen pounds one shilling and eleven pence.

Miscellaneous Services.

For the expenditure on account of Interest, a sum not exceeding fifteen thousand and seventy-four pounds.

Interest.

For the expenditure on account of Colonial Allowances to Military Officers, a sum not exceeding ten thousand pounds.

Colonial Military Allowances.

For the expenditure on account of Loans to be repaid, a sum not exceeding five hundred pounds.

Repayment of Loans.

422 LOAN ACT (NO. 11 OF 1866-'67) AMENDMENT ACT.

No. 18—1867.

Total.

Amounting, in the whole, to four hundred and fifty-seven thousand two hundred and fifty-seven pounds six shillings and three pence, as detailed in the schedules hereunto annexed, marked A and B respectively.

Application of supplies.

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

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No. 19—1867.] AN ACT [August 16, 1867.

To Amend Act No. 11 of 1866-'67.

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 Guardians' 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 Guardians' 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 appro-

priated 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. 19—1867.

No. 20—1867.] AN ACT [August 16, 1867.

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.

**W**HEREAS it is expedient to provide further sums, in addition to those by law provided, for the service of the Government of this Colony until the 30th June, 1868 :

Preamble.

I. 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, that a sum not exceeding two hundred and twenty-two thousand three hundred and one pounds eleven shillings and ten pence be charged upon the revenue of the said Colony, towards the service of the year 1868, and applied in the manner and for the purposes set forth in the schedule annexed to this Act, that is to say :

Expenditure, 1868.

II. For the expenditure of the Civil Establishments, a sum not exceeding thirty-four thousand nine hundred and thirteen pounds three shillings and nine pence.

Civil Establishments.

III. For the expenditure of the Judicial Establishment, a sum not exceeding nineteen thousand seven hundred and twelve pounds and fifteen shillings.

Judicial Establishment.

IV. For the expenditure of the Educational Establishment, a sum not exceeding eleven thousand and thirty-one pounds and fifteen shillings.

Educational Establishment.

V. For the expenditure of the Medical Establishment,

Medical Establishment.

No. 20—1867.

ment, a sum not exceeding sixteen thousand five hundred and eleven pounds thirteen shillings and nine pence.

Police and Gaol Establishments.

VI. For the expenditure of the Police and Gaol Establishments, a sum not exceeding thirty-three thousand six hundred and twenty-three pounds twelve shillings and sixpence.

Border Department (Aborigines).

VII. For the expenditure on account of the Border Department (Aborigines), a sum not exceeding twenty-eight thousand six hundred and ninety-nine pounds eighteen shillings and four pence.

Pensions, Retired Allowances, and Gratuities.

VIII. For the expenditure on account of Pensions, Retired Allowances, and Gratuities, a sum not exceeding one thousand five hundred pounds.

Charitable Allowances.

IX. For the expenditure on account of Charitable Allowances, a sum not exceeding one hundred pounds.

Works and Buildings.

X. For the expenditure on account of Works and Buildings, a sum not exceeding three thousand one hundred and thirty pounds.

Roads and Bridges.

XI. For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding forty thousand seven hundred and forty-six pounds three shillings and six pence.

Miscellaneous Services.

XII. For the expenditure on account of Miscellaneous Services, a sum not exceeding twenty thousand three hundred and three pounds.

Interest.

XIII. For the expenditure on account of Interest, a sum not exceeding seven thousand and twenty-nine pounds and ten shillings.

Colonial Allowance. Military

XIV. For the expenditure on account of Colonial Allowances to Military Officers, a sum not exceeding five thousand pounds.

Total.

XV. Amounting, in the whole, to two hundred and twenty-two thousand three hundred and one pounds eleven shillings and ten pence.

Application of supplies.

XVI. The said aids or supplies shall not be issued or applied for any use, intent, or purpose other than the particular services for which the said amounts have been granted respectively by this Act.

SCHEDULE.

Pages of Estimates  
for 1867.

For the Expenditure of the Civil Establishment :

3	40	41	His Excellency the Governor ...	£675	0	0
3		41	Colonial Secretary	843	0	0
4			Treasurer-General	300	0	0
4			Auditor-General ...	710	0	0
4			Registrar of Deeds	482	10	0
5		41	Surveyor-General	1,016	0	0
7		41	Department Public Works, &c. ...	3,133	6	3
9			Port Department...	2,165	8	6
9			Keeper of Public Buildings ...	118	0	0
9			Crown Agents, London... ...	125	0	0
16	40	42	Post Office ...	23,187	4	0
40			Customs Department—Rents ...	1,008	0	0
41			Rents for Sundry Offices ...	669	15	0
42			Civil Commissioners, &c., Transport ...	480	0	0
				—————£34,913 3 9		

For the Expenditure of the Judicial Establishment :

17			Supreme Court ...	£1,772	11	3
17			High Sheriff ...	57	10	0
18			Attorney-General	120	0	0
18			Solicitor-General...	425	0	0
20			Divisional Courts	7,251	1	9
38			Administration of Justice, exclusive of Establishment	6,725	0	0
41			Hire of Offices, Periodical Courts	191	0	0
41			Rent of Office ...	669	15	0
42			Transport ...	2,500	0	0
				—————£19,712 15 0		

For the Expenditure of the

21			Educational Establishment ...	£752	0	0
39			Do., exclusive of Establishment ...	9,777	10	0
40			Rents ...	262	5	0
42			Transport...	240	0	0
				—————£11,031 15 0		



426 APPROPRIATION ACT (PARTIAL), 1868.

No 20—1867.

Pages of Estimates  
for 1867.

	For the Expenditure of the			
24	Medical Establish- ment ... ..	£4,776	13	9
39	Do., exclusive of Establishment ...	10,935	0	0
	**Bathing Accommo- dation, Somerset Hospital ... ..	450	0	0
40	Rents ... ..	25	0	0
42	Transport... ..	325	0	0
		<hr/> £16,511 13 9		
	For the Expenditure of the			
35	Police and Gaols Establishment ...	£15,372	12	6
40	Do., exclusive of Establishment ...	15,162	10	0
41	Rent ... ..	588	10	0
42	Transport... ..	2,500	0	0
		<hr/> 33,623 12 6		
37	For the Expenditure on account of the Border Department ... ..	28,699	18	4
38	For the Expenditure on account of Pensions, Retired Allowances, and Gratuities... ..	1,500	0	0
39	For the Expenditure on account of Charitable Allowances ... ..	100	0	0
43	For the Expenditure on account of Works and Buildings ... ..	3,130	0	0
44	For the Expenditure on account of Roads and Bridges ... ..	40,746	3	6
46	For the Expenditure on account of Miscellaneous Ser- vices ... ..	£20,003	0	0
42	Transport... ..	300	0	0
		<hr/> 20,303 0 0		
46	For the Expenditure on account of Interest ... ..	7,029	10	0
46	For the Expenditure on account of Colonial Allowances, &c. ... ..	5,000	0	0
		<hr/>		
	Total ... ..	£222,301	11	10

No. 21—1867.] AN ACT [August 16, 1867.

No. 21—1867.

For Conferring on Divisional Councils certain Powers relating to the Regulation and Management of Pounds in their Divisions.

**W**HEREAS it is desirable to vest in divisional Preamble. councils, besides the powers already conferred upon them by the Act No. 1, 1857, certain other powers of making regulations for the management of pounds within their divisions respectively, and of altering such regulations from time to time: 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:

That the powers formerly vested in the civil Powers vested in divisional councils. commissioners and justices of the peace under and by virtue of section 37 of Ordinance No. 16 of 1847, entitled "An Ordinance for the better regulation of Pounds and prevention of Trespasses," shall be vested in and exercised by the divisional councils for the divisions in which the pounds therein referred to are or may be situate, respectively, save as by the same Ordinance is excepted.

No. 22—1867.] AN ACT [August 16, 1867.

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.

**W**HEREAS it is necessary further to amend the Preamble. 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:

No. 22—1867.

Certain laws repealed.

I. The Ordinance No. 49 of the year 1828, entitled "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, entitled "An Act for more effectually preventing Kafirs from entering into the Colony without Passes;" the Act No. 27 of the same year, entitled "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, entitled "An Act to amend the Laws regulating the admission of Kafirs and other Native Foreigners into the Colony;" the Act No. 23 of 1860, entitled "An Act for preventing unauthorized 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, entitled "An Act for amending the Law regarding the Certificates of Citizenship;" shall be, and the same are hereby repealed.

Contracts under Masters and Servants Act to hold good.

II. 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, 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 person infringing subsequent provisions of Act.

No native foreigner to enter Colony without pass.

III. It shall not be lawful for any native foreigner to enter this Colony without a pass 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 accord-

Form of pass, and by whom to be signed.

ing 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 imprisonment 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. 22—1867.  
Penalties for contra-  
vention.

IV. It shall be lawful for any resident magistrate or other person thereto duly authorized 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 ex-  
tended.

V. 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

After expiration of  
sentence, pass may be  
granted to native for-  
eigner desiring to  
complete or enter into  
contract of service.

In default of such

No. 22—1867.

contract, pass to return to his country to be issued.

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 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."

VI. 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.

VII. 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

Exception where officer in charge of location shall not reside within its limits.

the divisions of King William's Town and East London in which the officer in charge of any such location, and authorized 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

Proprietor of land or building entitled to certificate of citizenship.

Governor may grant certificate to deserving Kafir or Tambookie.

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, entitled "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 purpose 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.

No. 22—1867.

Section 27 of Act 17 of 1864 to apply.

Residence in British Kaffraria to be taken as residence in Colony.

VIII. 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 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.

Who may demand production of pass.

On failure or refusal to produce pass, native foreigner may be apprehended.

IX. 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.

X. 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

Annual revision and renewal of certificates not necessary.

No. 22—1865.

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.

Persons wandering over or loitering on private property without leave of owner may be apprehended.

XI. If any person shall be found wandering over any land belonging to or lawfully and of right occupied by any private person or persons, or loitering on private property near to or lodging in any house, out-house, or kraal, without leave of the owner thereof; and if such person shall be unable to give a good and satisfactory account of himself, then such person may be arrested as idle and disorderly, and shall be liable, on conviction before the resident magistrate of the district, on the complaint of the owner or occupier aforesaid, to imprisonment for any period not exceeding fourteen days, 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 as last aforesaid, with or without hard labour, and with or without spare diet. And any person hereby declared to be liable to be arrested, may be so arrested and conveyed to gaol by the owner or occupier of the property or premises on which such person shall be found, or by his servants, or by any police officer or constable, at the request of such owner or occupier.

And punished by imprisonment or fine.

Who may apprehend.

Penalty on wrongful arrest.

XII. 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.

### 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 to 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, authorize; 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 authorization to that effect, and that this pass shall be endorsed by the magistrate, field-cornet, or other officer to whom the bearer is directed.

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.] AN ACT [ June 24, 1868.

To Confine the use of Postage Stamps to the purposes of Postage.

**W**HEREAS it is desirable that postage stamps Preamble. 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:

Notwithstanding the provisions of the eleventh Postage stamps to be used for postage only. 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



No. 1—1868.

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.

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No. 2—1868.]                      AN ACT                      [June 24, 1868.

To Alter in certain respects the Rates to be charged for Licences for the Sale of Wines and Spirituous and Fermented Liquors by Retail.

Preamble.

WHEREAS it is expedient to reduce the charges for licences for the sale of wines and spirituous and fermented liquors by retail: 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. 4, 1864, repealed.

I. The Act No. 4 of the year 1864, entitled 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," shall, except in so far as relates to the repeal thereof, be and the same is hereby repealed.

Charges for licences.

II. Every licence for authorizing the sale of wines and spirituous and fermented liquors by retail, as such licence is described in the Ordinance No. 9 of

1851, shall be subject to the charges or rates hereinafter specified, that is to say: For or in regard to all such licences within any town, municipality, village, or other place placed under the Public Nuisances Act No. 2 of the year 1855, the rates to be paid shall be as follows :

	£	s.	d.
For a licence commencing upon the 1st April and ending on the 31st March then next ... ..	30	0	0
For a licence commencing upon the 1st July and ending on the 31st March then next ... ..	23	0	0
For a licence commencing upon the 1st October and ending on the 31st March then next ... ..	16	0	0
For a licence commencing upon the 1st of January and ending on the 31st March then next ... ..	8	0	0

For or in regard to every such licence for any place not hereinbefore described, there shall be paid such sum as the court mentioned in the twelfth and certain succeeding sections of the Ordinance No. 9 of 1851 shall fix and determine, not being more than thirty pounds sterling nor less than ten pounds sterling for a licence for one whole year: Provided that in regard to licences for periods shorter than one year there shall be paid amounts corresponding to the amount which would be payable for one year, according to or in analogy with the scales and proportions hereinbefore in this section adopted.

III. For the purposes of this Act, the limits of every town which is or shall be a municipality shall be the municipal limits thereof for the time being; and the limits of every town which shall have been or which shall be placed under the Act No. 2 of 1855 shall be the limits thereof as fixed by proclamation of the Governor.

Limits of towns for purposes of Act.

IV. The rates in this Act specified shall be chargeable upon or for all licences for authorizing the sale of wines and spirituous and fermented liquors by retail, save and except only retail licences

Boarding-houses not to come under provisions of Act.

No. 2—1868.	for the purpose of keeping a boarding-house, and for no other purpose, as such last-mentioned licences are described in the Ordinance aforesaid, No. 9, 1851.
Commencement of Act.	V. The provisions of this Act shall apply to all such licences as aforesaid, issued upon or after the 1st of October, 1868, and to none other.
Sale in any quantity allowed.	VI. Every such retail licence as aforesaid issued upon or after the 1st of October, 1868, shall authorize the sale of wines and spirituous and fermented liquors in any quantity whether wholesale or retail; anything in the seventh section of the Ordinance No. 9, 1851, to the contrary notwithstanding.
Short title.	VII. This Act may be cited for all purposes as "The Retail Wines and Spirits Act, 1868."

No. 3—1868.]            AN ACT            [Sept. 2, 1868.  
To Exempt from Tolls Officers and Men of the  
Frontier Armed and Mounted Police.

Preamble.

WHEREAS it is desirable that the officers and men of the Frontier Armed and Mounted Police should be exempted from payment of the tolls which are usually and of right levied at the several toll-bars and ferries in the Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Members of Frontier Armed and Mounted Police exempted from payment of toll and ferry charges when on duty.

I. Every officer and man of the Frontier Armed and Mounted Police, whose duty it shall be, in proceeding to or from any place, to pass through any toll-bar or over any ferry, at or in respect of which the payment of toll shall now be or may hereafter be lawfully demanded, shall be exempted from the payment of any such toll in respect of himself and of any animal and vehicle that may be required for the performance of the duty on which he may be employed.

Penalty for wilful detention of member of force.

II. If any person duly authorized to collect tolls in respect of any ferry shall wilfully subject any officer or man of the said Frontier Police to unreasonable delay or detention in respect to the

passage over such ferry, then such person shall be liable on conviction to a penalty not exceeding five pounds nor less than ten shillings.

III. If any person, not being an officer or man of the said Frontier Police shall wilfully personate such officer or man, or if any such officer or man of the Frontier Armed and Mounted Police Force, not then being on duty shall falsely represent himself to be such officer or man on duty, with the intent to evade the payment of any toll legally payable by him, such person shall, on conviction, be liable to a penalty of five pounds sterling, or, in default thereof, to imprisonment for a period not exceeding one calendar month.

IV. And whereas at the present time certain persons have become bound under contracts to pay to the divisional councils of certain divisions in which toll-bars and ferries are situated certain sums of money for the period stated in such contracts, on condition of being permitted to demand and to receive the tolls legally payable at such toll-bars and ferries during such period: Be it therefore further enacted that no officer or man of the said Frontier Police shall be entitled to claim any of the privileges conferred upon him by this Act, in respect of any toll-bar or ferry mentioned in this section, so long as the tolls thereof shall be held under any lease actually in existence at the date of the taking effect of this Act, unless such officer or man shall, at the time of claiming such privilege, deliver to the person claiming payment of toll by him a ticket showing that such officer or man was travelling on duty, and likewise describing the amount which might otherwise have been of right demanded of him. And the person to whom such ticket shall be delivered shall be entitled to demand and receive payment of the said amount from the civil commissioner of the division.

Penalty for personating member of force for purpose of evading toll or ferry charges.

Provision as regards contracts for lease of tolls or ferries entered into previous to passing of Act.

No. 4—1868.

No. 4—1868.] AN ACT [Sept. 2, 1868.

For the Protection of Private Property in Domesticated Ostriches.

Preamble.

WHEREAS the farming of domesticated ostriches is likely to become an important branch of industry in the Colony, and it is expedient that the same should be encouraged by affording a more sufficient protection to the private property of the owners of such birds than can at present be afforded thereto: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

How long after straying a domesticated ostrich may be considered private property.

I. Whenever any ostrich which shall have been domesticated, and shall have been as such the lawful property of any person, while in his custody, or possession, or guardianship, either by himself or his servants, or within the bounds of any enclosure within which it shall have been placed by such person, or by his orders, or with his consent, express or implied, shall have strayed or escaped from such custody, possession, guardianship, or enclosure, the property in such ostrich of the person who was the lawful owner or custodian thereof, respectively, and of every other person who had at the time of such escape or straying any property therein,—all which persons shall for the purposes of this Act be designated by the term “owner of such ostrich,”—shall be deemed to continue therein unimpaired and unaffected by reason of such escape or straying as aforesaid, for a term not less than thirty days from the time of such escape or straying, and during such term of thirty days such ostrich shall be deemed not to have regained its natural liberty; and any person who shall kill, injure, or convert to his own use, during such period of thirty days, any such ostrich, shall be liable to account in damages to the owner of such ostrich in respect to any damage done to such owner’s property therein, or to restore such ostrich, or both to restore such ostrich and to account in damages, as the case may be, in like manner as if such ostrich were an ox or other domestic animal.

II. If any person shall find any ostrich which shall have been domesticated as aforesaid trespassing on his property, he may lawfully impound the same in the nearest pound, and the provisions of the different laws relating to the impounding of cattle now in force in this Colony shall, *mutatis mutandis*, apply to domesticated ostriches; and the various bodies entrusted by law with the regulation of the pounds of this Colony are hereby directed to make such regulations as may be necessary in their districts, respectively, for regulating the pound fees and other matters relating to the impounding of ostriches requisite to the due carrying into effect of this enactment.

No. 4—1868.

Domesticated ostriches trespassing may be impounded.

III. Nothing in this Act contained shall be held to take away, or limit, or curtail any right or property which but for this Act would have existed or be held to belong to any person in any domesticated ostrich in respect of its being domesticated, nor to take away any remedy, by way of action for trespass, or otherwise, of any person on whose property any domesticated ostrich shall have trespassed, or whose property such ostrich shall have in any way injuriously affected, which the owner of such property may have, or might but for this Act have had, against the owner of such ostrich in respect of damage done by such ostrich while remaining the property of such owner.

Private rights of and action against owners of domesticated ostriches not affected by this Act.

IV. This Act shall have effect and be in force from and after the day of the promulgation thereof, and until the 31st day of December, 1870.

Commencement and duration of Act.

No. 5—1868.] AN ACT [Sept. 2, 1868.

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."

WHEREAS in the sixth section of the Act No. 17, 1867, entitled "An Act to amend the Criminal Law in regard to Thefts of Stock," a mistake or misprint has occurred, in that it is

Preamble.

No. 5—1868.

therein set forth that if upon a preparatory examination,—such as in the previous portion of the said section prescribed,—the prisoner shall have voluntarily confessed himself guilty of the crime charged against him, then the provisions of the Act No. 12, 1860, and of the twenty-fifth, twenty-sixth, twenty-seventh, and twenty-eighth sections of the Criminal Law Amendment Act, 1861, shall extend and apply to such case, save and except only that in place and stead of the punishments provided in and by the first section of the said Act No. 12, 1860, the punishments provided in and by the third section of this Act,—namely, the said Act No. 17, 1867,—shall in regard to all cases of cattle-stealing, sheep-stealing, or goat-stealing be, and the same are hereby substituted: And whereas the true intent and meaning of the said enactment was that the punishments to be inflicted in the cases mentioned should be the punishments provided in and by the second section of the said Act No. 17, 1867: 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, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Error in section 6 of Act 17, 1867, corrected.

I. The sixth section of the said Act No. 17, 1867, shall be read and construed as if the words “third section” hereinbefore mentioned in the said sixth section had been originally written and printed as “second section.”

No. 6—1868.]                      AN ACT                      [Sept. 2, 1868.  
For Altering and Regulating certain Rates of  
Postage.

Preamble.

WHEREAS it is expedient that the rates of postage should be altered in some 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:

I. The ninth and eighteenth sections of the

Ordinance No. 1 of the year 1846, entitled "An Ordinance for the regulation of the Post Office and Postage," and the Act No. 23 of the year 1856, entitled "An Act for empowering the Governor to regulate the postage of Letters transmitted to and from Countries beyond the Colony," shall be, and the same are hereby repealed. But any proclamation made under the sixth section of the said Act No. 23 of 1856, and now in force, shall continue in force until revoked by some other proclamation to be published in due course of law.

No. 6 -1868.

Sections 9 and 18 of Ordinance 1, 1846, and Act 23, 1856, repealed.

Proclamations under section 6 of Act 23, 1856, to continue in force until revoked.

II. All weights mentioned or referred to in this Act shall be deemed and taken to mean English standard weights avoirdupois.

Definition of weights.

III. All petitions to Parliament, marked as such, and addressed to a member of either House, and with or without a letter enclosed therein, shall pass free of postage. Every such petition shall be enclosed in a cover open at both ends, and every such letter shall refer exclusively to the subject of the said petition.

Petitions to Parliament free of postage.

IV. The rates of postage upon all letters received at or dispatched from any port in this Colony by private ship (except letters which, under the provisions of the twenty-second section of Ordinance No. 1, 1846, are exempted from postage, and except letters from and to the United Kingdom, and from and to any port or country with the Government whereof a postal convention may and shall be made under the provisions in any Act contained) shall, until any such convention shall affect such rates, be as follows, viz.: for every half ounce and fraction of half an ounce at the port, four pence. And if such letters (except as aforesaid) shall be conveyed by inland post in or through this Colony, or any part thereof, then, for every half ounce or fraction of half an ounce, six pence; which said last-mentioned rate shall cover and include both the ship rate aforesaid and the inland postage.

Rates of postage on letters.

V. The rates of postage on book packets and patterns or samples of merchandise posted in this Colony for transmission to places not beyond sea, under the provisions in force in that behalf, shall be the rates next hereinafter mentioned, that is to say:

Inland rates of postage on books, samples, &amp;c.



No. 6—1868.

On all such packets, patterns, and samples not exceeding in weight one ounce, one penny.

On all such packets, patterns, and samples above one ounce and not exceeding two ounces, two pence.

On all such packets, patterns, and samples above two ounces and not exceeding four ounces, three pence.

And for every additional four ounces, or fraction of four ounces, an additional rate of three pence.

Governor may enter into postal conventions with Foreign States for establishing reciprocal rates of postage.

VI. The Governor may, with the advice of the Executive Council, make agreements or postal conventions with Her Majesty's Government and with the Government of any British Colony or Dependency, and with the Government of any Foreign State or Dependency, for the establishment of reciprocal rates of postage on all letters and other matters transmitted between this Colony and the United Kingdom and any such British Colony or Dependency, or Foreign State or Dependency, aforesaid; and may from time to time in like manner alter, vary, and amend such agreements and postal conventions.

Mail matter for States in South Africa for and from United Kingdom to pass as between Colony and United Kingdom.

VII. Letters, newspapers, book packets, and patterns or samples of merchandise passing through this Colony between the United Kingdom and any Colony, Dependency, or State in South Africa shall, for the purpose of agreements or postal conventions with Her Majesty's Government, be deemed to be letters, newspapers, book packets, and patterns or samples of merchandise between the United Kingdom and this Colony, and be chargeable as such. And such letters, newspapers, book packets, and patterns or samples of merchandise shall, for the purpose of agreements or postal conventions with any such Colony, Dependency, or State, be deemed to be letters, newspapers, book packets, and patterns or samples of merchandise between this Colony and such Colony, Dependency, or State, and shall, in respect of the transmission thereof through this Colony, be chargeable as such.

And to be chargeable, in addition, with colonial postage.

VIII. So soon as the agreements or postal conventions necessary and convenient for effectuating the provisions hereinbefore contained, or any of them, respectively, shall have been made, it shall be lawful for the Governor from time to time to issue a proclamation or proclamations, to be published in the Government Gazette, that from and after a time or times to be defined in such proclamation or proclamations, respectively, any one or more of the different rates of postage and regulations therein set forth for or in respect of letters and other matters to be carried by post shall be imposed and paid, or observed, respectively, in such manner as shall be set forth in such proclamation or proclamations, respectively; and from and after such time or times the same rates and regulations, respectively, shall be so imposed, paid, and observed.

No. 6—1868.

Governor may proclaim terms of and period from which postal conventions shall take effect.

IX. Copies of all agreements or postal conventions made by the Governor under the provisions of this Act shall be laid before both Houses of Parliament within ten days after the opening of the first session ensuing after the completion of such agreements or conventions.

Copies of all postal conventions to be laid before Parliament.

X. This Act may be cited for all purposes as “The Postal Rates Act, 1868.”

Short title.

No. 7—1868.]                      AN ACT                      [Sept. 2, 1868.

To Amend and Alter in certain respects the Regulations of the Post Office.

WHEREAS it is expedient that the regulations of the Post Office should be altered in some 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:

Preamble.

I. The eighth and twelfth sections of Act No. 3 of the year 1862, entitled “Act to facilitate the Transmission of Books by means of the Post Office,” shall be, and the same are hereby repealed.

Sections 8 and 12 of Act 3 of 1862 repealed.

II. The charge for registering any letter for which

Charge for registering letters, &c.

No. 7—1868.

the sender shall be entitled to require a receipt under the fifteenth section of Ordinance No. 1 of 1846 shall be reduced from six pence to four pence; and the charge for registering any newspaper, or book packet, or pattern or sample, shall be four pence; and all such registration fees shall be prepaid by affixing postage stamps.

Non-registered letters containing coin may be registered by post office officials, and double registration fee charged.

III. Whenever it shall appear manifest or probable to the officers of the Post Office that any unregistered letter posted in this Colony for transmission by inland post, or for transmission beyond sea to the United Kingdom or to any other country, port, or place with the Government of which agreements or postal conventions already exist or shall hereafter be made, contains coin, the said officers may cause the same to be registered; and the same shall be chargeable on delivery with a double registration fee of eight pence.

Book packet posted in closed cover may be charged with letter postage.

IV. Any book packet which shall be posted in a cover not open at the ends or sides may be treated and charged as a letter, but it shall not be compulsory on the officers of the Post Office so to treat and charge it as a letter.

Patterns, &c., may be sent by inland post under regulations fixed by proclamation.

V. Patterns or samples of merchandise or trade patterns may be transmitted by inland post from one place in the Colony to another at the rates of postage which shall by law be fixed for the same; and subject to such regulations and conditions as may from time to time be established by the Governor, with the advice of the Executive Council, and published by proclamation in the Government Gazette.

Fine for insufficient prepayment.

VI. In case any letter, newspaper, book packet, pattern or sample posted in the Colony for transmission by inland post shall be insufficiently prepaid, it shall be chargeable with a fine equal to a single rate of the postage applicable thereto, in addition to the amount of postage which may be deficient.

Short title.

VII. This Act may be cited for all purposes as the "Postal Regulations Act, 1868."

No. 8—1868.] AN ACT [Sept. 2, 1868.

No. 8—1868.

To Abolish Liability to Quitrent within the Limits  
of the Municipality of King William's Town.

WHEREAS it appears that, before the creation of <sup>Preamble.</sup> 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:

I. 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.

Proprietors of lots of land within municipality of King William's Town relieved from payment of quitrent.

No. 9—1868.

No. 9—1868.] AN ACT [Sept. 2, 1868.

To Amend the Act No. 9, 1855, entitled “An Act for Incorporating the South African Association.”

Preamble.

WHEREAS by the Ordinance No. 6, 1836, entitled “An Ordinance for incorporating and establishing the South African Association for the Administration and Settlement of Estates,” provision was made for the appointment of the said Association as executors, tutors, curators, administrators, trustees, and agents by all such persons as might see fit to appoint the said Association to act in any such capacity: And whereas by the Act No. 9, 1855, entitled “An Act for incorporating the South African Association,” which Act repealed the Ordinance aforesaid No. 6, 1836, no express provision has been made for the appointment of the said Association to act in all or any of the capacities aforesaid, whereby it is possible that a doubt may be entertained whether the said Association is competent to be appointed to act in such capacities: And whereas it is expedient to remove all such doubts: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly, as follows:

Association may be appointed to act as executors, tutors, &c.

I. It shall be lawful for the Association aforesaid to be appointed, either under or by virtue of any decree of any competent court, or by the Master of the Supreme Court in his official capacity, or by the last will or codicil or other valid deed or act of any person, to be executors, tutors, curators, administrators, trustees, or agents; and every appointment which shall be, or shall have been, made of the said Association in any such capacity as aforesaid, by any name intended to designate the said Association, and every appointment of the directors of the said Association, or of the secretary thereof, to act in any such capacity as aforesaid, shall be deemed and taken to be an appointment of the said Association by its proper name as “The South African Association for the Administration and Settlement of Estates.”

Appointments made previous to passing of this Act to be valid.

II. All appointments of the Association to act in any of the capacities aforesaid which shall have been

made at any time prior to the taken effect of this Act shall be deemed and taken to be as valid and effectual, and to be of the same force and effect, as if the last preceding section of this Act had formed a section of the Act aforesaid, No. 9, 1855, entitled "An Act for incorporating the South African Association."

No. 9—1868.

No. 10—1868.] AN ACT [Sept. 2, 1868.

To Repeal the Third Section of the Act No. 4 of the Year 1858.

WHEREAS it is expedient to remove the restriction imposed by the third section of the Act No. 4 of the year 1858, entitled "An Act for creating a Board of Public Examiners in Literature and Science:" 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.

From and after the commencement and taking effect of this Act the said third section of the said Act No. 4 of the year 1858 shall be and the same is hereby repealed.

Section 3 of Act 4 of 1858 repealed.

No. 11—1868.] AN ACT [Sept. 2, 1868.

To Declare void certain Laws imposing Disabilities on certain Persons and Bodies on account of their Religious Persuasions, and to amend Ordinance No. 68.

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

Preamble.

No. 11—1868.

have never formally been repealed: And whereas it 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.

I. 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.

II. 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.

III. 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 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.

IV. 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.

No. 11—1868.

V. This Act may be cited as the “Disabilities Short title.  
Removal Act, 1868.”

No. 12—1868.] AN ACT [Sept. 2, 1868.

To make Provision for the winding up of Joint-Stock Companies.

**W**HEREAS it is expedient that provision should Preamble.  
be made for the winding up of joint-stock companies in this Colony, in cases where it is desirable that such companies should be wound up: Be it enacted by the Governor of the Cape of Good Hope with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. The term joint-stock company in this Act shall Definition of term joint-stock company.  
mean every partnership whereof the capital is divided, or agreed to be divided, into shares, and so as to be transferable without express consent of all the partners, and also every partnership which at its formation, or by subsequent admission, shall consist, or have at any time consisted of more than seven members.

II. Every joint-stock company may be wound up When company may be wound up.  
under the following circumstances, that is to say:

1. Whenever the company has passed a special resolution that the same shall be wound up.
2. Whenever the company does not commence its business within one year from its incorporation, or suspends its business for the course of a year.
3. Whenever the number of members is reduced below seven.
4. Whenever three-fourths of the subscribed capital have been lost or become unavailable for the business of the company.
5. Whenever the company is unable to pay its debts.

III.

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No. 12—1868.

6. Whenever the court is of opinion that it is just and equitable that the company should be wound up.

When company shall be deemed unable to pay its debts.

III. A joint-stock company shall be deemed to be unable to pay its debts—

1. Whenever any person shall have obtained any judgment, decree, or order of any court of competent jurisdiction for the payment of money against such joint-stock company or any officer of the same, as such officer on behalf of or as representing such joint-stock company, and such judgment, decree, or order shall remain unpaid or unsecured without the consent of the creditor for a space of thirty days.
2. Whenever to any writ or warrant of execution of any competent court there shall be a return of no effects, or no sufficient effects to answer the amount of the writ, or other return to the like effect.
3. Whenever any creditor of the company has sued out any summons or other process of any competent court for the recovery of any debt or money demand to the amount of ten pounds or upwards against such company or any officer thereof, as such officer as representing such company, and such creditor shall file in the Supreme Court an affidavit of such suing out of such summons or other process, and that the debt or money demand for the recovery whereof such summons or other process shall have been issued is justly due to him, and such company shall not within twenty-one days after the service of notice of such affidavit, and the like number of days after service of such summons or other process upon them, which shall last happen, have paid or secured, or otherwise arranged to the satisfaction of such creditor for such debt, or have made it appear to the satisfaction of a judge of the Supreme Court that it is the

*bonâ fide* intention of such company to defend such action on the merits thereof, and that there is reasonable ground for such defence, and shall not within twenty-one days after the service of such notice and summons or other process have caused appearance to be entered to such action.

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4. Whenever it shall be proved by any means to the satisfaction of the court that the company is unable to pay its debts.

IV. Every application to the court for winding up of a company under this Act shall be by petition to the Supreme Court, and may be presented by the company, if incorporated in the Colony, or by any officer of the company, if not incorporated in this Colony, authorized to sue in the name or on behalf of the company, or by one or more than one creditor of the company, or by one or more than one member of or contributory to the company, or by all or any of the above parties; and every order for winding up which shall be made on such petition shall have the same effect, no matter on whose petition the same shall be made.

Application for winding up company, how and by whom to be made.

V. The winding up shall have relation to the date of the presenting of the petition for winding up on which any order for winding up shall be made.

Order for winding up to have effect from date of presenting petition.

VI. The court may at any time after the presentation of a petition for winding up a company, and either before or after making an order for winding up the company, upon the application of the company or of any person interested as creditor, contributory, or otherwise, restrain the commencement of, or any further proceedings in any action, suit, or other proceeding, nominally or actually, against the company, either absolutely or upon such terms as the court shall deem right, and may also at any time after the presentation of such petition, and before the appointment of general liquidators, appoint a provisional liquidator or liquidators of the estate and effects of the company, with all or such of the powers of general official liquidators as the court shall order.

Court may stay all proceedings against company pending decision on petition for winding up.

And may appoint provisional liquidators.

VII. Upon the hearing of any petition for wind-

Powers of court on hearing petition.

No. 12—1868.

ing up, the court may dismiss the same with or without costs, or may adjourn the hearing thereof conditionally or unconditionally, and may make such interim or interlocutory order on the same, and may direct such inquiries or generally may make such order as may seem just.

Order for winding up to bar suits, &c., against company.

VIII. When any order shall have been made for winding up a company, no action, suit, or other proceeding shall be brought or further prosecuted against the company, except by leave of the court, and under such conditions, if any, as the court may impose.

Court may stay or suspend proceedings under order on cause shown.

IX. The court may at any time after such order, on the application of the liquidator or liquidators, either general or provisional, or of any creditor of or contributory to such company, or other person showing an interest in the matter, and upon proof to the satisfaction of the court that all or any proceedings in relation to such winding up ought to be stayed either absolutely or conditionally, or suspended for any time, make order accordingly, subject or not subject to conditions, or any other order of the same nature as shall to the court seem just.

Court may take into consideration wishes of creditors or contributories.

X. The court may in all matters under this Act give such weight as shall seem just to the wishes of creditors of or contributories to any company on the subject of any proceeding under this Act, and may regard the wishes or votes of such creditors and contributories, or of any particular classes of such, respectively as respects number and as respects value, and as respects the power of voting given by the trust deed or articles of association of the company, if any, according as may seem just with regard to the matter before the court, and may direct meetings of creditors or of contributories, or of both, or of any particular classes thereof, to be called, held, and conducted in such place and in such manner as may seem just, for the purpose of ascertaining their wishes and may appoint the person to act as chairman of any such meeting and to report to the court the result thereof.

Court may appoint official liquidator.

XI. For the purpose of conducting the proceedings in winding up a company, the court may

appoint a person or persons to be called an official liquidator, or official liquidators, and may make such appointment for any time and subject to any conditions which shall seem right. In all cases, if more persons than one are appointed to the office of official liquidator, the court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all, or any one or more of such persons. The court shall determine also whether any and what security shall be given by any official liquidator on his appointment. If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed in the custody of the court; and in any indictment for theft thereof, or of any part thereof, under such circumstances, or for any similar purpose, the property may be laid in the Master of the Supreme Court.

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And where more than one are appointed shall define duties to be done by each.

And shall determine the security to be given.

Property of company to be in custody of court till appointment of liquidator.

XII. Any official liquidator may resign, or may be removed by the court on due cause shown, and any vacancy in the office of official liquidator may be filled by the court, and not otherwise.

Resignation or removal of official liquidator.

XIII. There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, and dependent on his good behaviour in his office, as the court may direct; and if more liquidators than one are appointed, such remuneration shall be distributed among them in such proportions as the court shall direct.

Remuneration to official liquidators.

XIV. The official liquidator or official liquidators shall be described by the style of the official liquidator or official liquidators of the company in respect of which he or they shall be appointed, and not by his or their individual name or names. He or they shall take into his or their custody or under his or their control all the property, effects, and things in action or possession to which the company is or appears to be entitled, and shall perform such duties in reference to the winding up of the company as may be imposed by the court.

Designation of official liquidators.

Duties of official liquidators.

XV. The official liquidator shall have power, with the sanction of the court, to do the following things:

Powers of official liquidator.

1. To bring, defend, prosecute, or continue, or

- to continue the defence of, any action, suit, or proceeding, civil or criminal, in the name and on behalf of the company.
2. To carry on the business of the company so far as may be necessary for the beneficial winding up of the same.
  3. To sell the movable and immovable property and effects and things in action or possession belonging to the company, by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels.
  4. To do all acts, and to execute in the name and on behalf of the company all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal, if any.
  5. To prove, rank, claim, and draw dividend in the matter of any insolvency of any debtor or contributory to the company for any balance against the estate of such debtor or contributory, and to take and receive dividends in respect of such balance in the matter of the insolvency as a separate debt due from such insolvent, and rateably with his other creditors or with preference, as the case may be.
  6. To draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company, wherever the company itself was authorized to draw, accept, make, or endorse such bills or notes, respectively, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making, or endorsing of every such bill or note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or endorsed by or on behalf of such company in the course of carrying on the business thereof.

7. To take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory or his estate, which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself.

8. To do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

XVI. The court may provide by any order that the official liquidators may exercise any of the above powers without the sanction or intervention of the court, and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

Court may authorize exercise of powers without its intervention, and may restrict powers of provisional liquidator.

XVII. The official liquidator may, with the sanction of the court, appoint an attorney-at-law to assist him in the performance of his duties.

Official liquidator may obtain assistance of an attorney-at-law.

XVIII. As soon as may be after making an order for winding up the company, the court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

Court to settle list of contributories, and to cause company's assets to be collected and applied.

XIX. In settling the list of contributories the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others.

Court to distinguish between contributories.

XX. The court may, at any time after making an order for winding up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent or

Court may make order for delivery to official liquidator of books, papers, effects, &c., of company.

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officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to or into the hands of the official liquidator, all moneys, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *primâ facie* entitled.

Court may make order on contributory directing payment of moneys due by him to company irrespective of his liability under this Act.

XXI. The court may, at any time after making an order for winding up the company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made in manner in the said order mentioned of any moneys due from him, or from the estate of the person whom he represents, to the company, exclusive of any moneys which he, or the estate of the person whom he represents, may be liable to contribute by virtue of any call made or to be made by the court in pursuance of this Act; and it may, in making such order, when the company is not limited, allow to such contributory, by way of set-off, any moneys due to him or the estate which he represents, from the company on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit: Provided that when all the creditors of any company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls.

And may allow as set-off moneys due by company to contributory.

Court may make call on contributories.

XXII. The court may, at any time after making an order for winding up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on, and order payment thereof by, all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and shall, in making any call, consider the rights of such contributories amongst themselves, and so make such call as to conduce to the ultimate adjustment of

such rights, without prejudice to the paramount rights of creditors and others, if any; and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

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XXIII. The court may order any contributory, purchaser, or other person from whom money is due to the company, to pay the same to some bank to be named by the court, to an account to be opened therewith in the name of the official liquidator, as such in the fourteenth section of this Act is provided, instead of to the official liquidator; and such order may be enforced in the same manner as if it had directed payment to the official liquidator; and the liquidator may, in like manner, be ordered to pay into the like bank any sum or sums of money in his hands, or to come into his hands, on behalf of the company, to the like account.

Court may order all moneys to be deposited in the bank.

XXIV. All moneys, bills, notes, and other securities paid and delivered into such bank as aforesaid shall be subject to such order and regulation for the keeping of the account of such moneys and other effects and for the payment and delivery in, or investment and payment and delivery out of the same, as the court may direct.

Moneys, &c., so deposited subject to order of court with respect to its administration.

XXV. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, the official liquidator shall be deemed entitled to claim as a creditor on the estate of such deceased contributory in respect of the sum so ordered to be paid, and shall be entitled to take proceedings as such creditor for recovering such sum out of the estate of such deceased contributory.

Official liquidator may recover out of estate of deceased contributory.

XXVI. Any order made by the court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are *primâ facie* to be taken to be truly stated as against all persons and in all proceedings whatsoever.

Order of court sufficient proof of debt.



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Court may fix day for proving debts.

XXVII. The court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims or be excluded from the benefit of any distribution made before such debts are proved.

Court to adjust rights of contributories and distribute surplus.

XXVIII. The court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Payment of costs when assets are insufficient to meet liabilities.

XXIX. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in winding up any company, in such order of priority as the court thinks just.

Company to be dissolved by order of court.

XXX. When the affairs of the company have been completely wound up, the court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

Order to be published in Government Gazette.

XXXI. Any order so made shall be published in the Government Gazette and in such newspaper as the court may direct within ten days after the making of such order.

Official liquidator in neglecting to publish order liable to penalty.

XXXII. If the official liquidator makes default in publishing as aforesaid the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds sterling for every day during which he is so in default.

Court may summon before it persons deemed capable of giving information, and may direct production of books, &c.

XXXIII. The court may, after it has made an order for winding up the company, summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company, and the court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed,

Persons neglecting to attend liable to be apprehended.

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having no lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause such person to be apprehended and brought before the court for examination; nevertheless, in cases where any person claims any lien on papers, deeds, writings, or documents produced by him, such production shall be without prejudice to such lien, and the court shall have jurisdiction in the winding up to determine all questions relating to such lien.

Production of papers, &c., not to prejudice lien.

XXXIV. The court may cause to be examined upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it in manner aforesaid, or whom it may be desired to examine, concerning the affairs, dealings, estate, or effects of the company, and may cause to be reduced into writing the answers of every such person, and require him to subscribe the same.

Evidence may be taken on oath.

XXXV. The court may, at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the Colony or otherwise abscond, or to remove or to conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods, and chattels to be seized, and him and them to be safely kept until such time as the court may order. But bail may be accepted by the court, if it shall seem fit for due payment of any calls due by him, or for the production of such books, papers, securities, goods, and chattels, or any of such matters; and on such bail being given to the satisfaction of the court, such person may be released from custody, or such books, papers, securities, goods, and chattels, or any of them, from seizure, as to the court may seem right.

Contributory may be arrested by court and seizure of effects made on suspected intention to abscond.

But bail may be taken.

XXXVI. Any powers by this Act conferred on the court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting, either at law or in equity, of instituting proceedings

Powers conferred on court by this Act to be deemed to be additional, and not restrictive.

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against any contributory, or the estate of any contributory, or against any debtor of the company, for the recovery of any call or other sums due from such contributory or debtor or his estate, and such proceedings may be instituted accordingly.

How appeals from decision of court may be had.

XXXVII. Reviews of and appeals from any order or decision made or given in the matter of the winding up of a company by the court may be had in the same manner and subject to the same conditions in and subject to which reviews and appeals may be had respectively from any order or decision of the same court in cases within its ordinary jurisdiction.

Transactions with company in process of being wound up void unless court order otherwise.

XXXVIII. Where any company is being wound up under this Act all dispositions of the property, effects, and things in action of the company, and every transfer of shares or alteration in the status of the members of the company made between the commencement of the winding up and the order for winding up, shall, unless the court otherwise order, be void.

Books, &c., of company and of liquidator to be taken *primâ facie* to be correct.

XXXIX. Where any company is being wound up, all books, accounts, and documents of the company and of the liquidators shall, as between the contributories of the company, be *primâ facie* evidence of the truth of all matters purporting to be therein recorded.

Disposal of books, accounts, &c., of company wound up and dissolved.

XL. Where any company has been wound up under this Act, and is about to be dissolved, the books, accounts, and documents of the company and of the liquidators may be disposed of in such way as the court shall direct.

Court may make order for inspection of company's books, &c.

XLI. When an order has been made for winding up a company the court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by the creditors or contributories in conformity with the order of the court, but not otherwise.

Contingent debts and claims admissible to proof.

XLII. In the event of any company being wound up under this Act, all debts payable on a contingency and all claims against the company, present

or future, certain or contingent, ascertained or sounding only in damages shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of all such debts or claims as may be subject to any contingency, or sound only in damages, or for some other reason do not bear a certain value; and in proving or claiming debts against any company in course of winding up under this Act, save where it is herein otherwise provided, the principles regulating the proof of debts in case of the judicial insolvency of any individual shall, so far as may be, be followed and observed.

XLIII. The liquidators may, with the sanction of the court, pay any classes of creditors in full, or make such compromise or other arrangement as they may, with the like sanction, deem expedient with creditors, or persons claiming to be creditors, or persons having or alleging themselves to have a claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable.

Liquidators may, with sanction of court, pay claims in full or compromise.

XLIV. The liquidators may, with the sanction of the court, compromise all calls and liability to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company, or the winding up of the company, upon the receipt of such sums, payable at such times and generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities and to give complete discharges in respect of all or any such calls, debts, or liabilities.

Liquidators may with sanction of court, compromise all debts and liabilities due to company.

XLV. Where any company is being wound up under this Act, any attachment, sequestration, distress, or execution put in force against the estate or

Attachment or sequestration void where company is being wound up.

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What shall be deemed  
undue preference.

effects of the company after the commencement of the winding up shall be void to all intents.

XLVI. Any alienation, transfer, cession, delivery of goods, mortgage, or pledge of any goods, or effects, movable or immovable, personal or real, and any payment of money which would, if made or done by or against any private person, in the event of his insolvency, be deemed to have been made or done by way of undue preference, under and by virtue of Ordinance No. 6 of 1843, entitled "Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony," shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Act, to have been made or done by way of undue preference of the creditors of such company, and shall be invalid accordingly; and for the purposes of this section the presentation of a petition for winding up a company shall be deemed to correspond with the order for the compulsory sequestration of the estate of a private person under the fifth section of the Ordinance No. 6 of 1843 aforesaid; and any conveyance or assignment made by any company of all its estate and effects to trustees for the benefit of its creditors shall be void to all intents.

Presentation of petition for winding up to be deemed to correspond with order for compulsory sequestration.

Powers of court on proof on misapplication of moneys by officers of company or liquidator.

XLVII. Where, in the course of winding up any company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such company has misapplied or retained in his own hands, or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest at such rate as the court thinks just, or to contribute such sums of money to the assets of

the company, by way of compensation in respect of misapplication, retainer, misfeasance, or breach of trust, as the court may think just.

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XLVIII. If any director, officer, or contributory of any company wound up or being wound up under this Act shall destroy, mutilate, alter, or falsify any books, papers, writings, or securities, or shall make, or be privy to the making of, any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud or deceive any person, every person so offending shall, upon conviction, be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Penalty on mutilation, falsification, &c., of registers, books, &c.

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

Court may order prosecution of officers or members of company.

L. If any person, upon any examination upon oath or affirmation under this Act, or in any affidavit, deposition, or solemn affirmation in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, shall wilfully and corruptly give false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

Costs of prosecution to be paid out of company's assets.

Penalty for giving false evidence.

LI. The court may in the course of any winding up, in any case in which it shall see fit, direct that meetings shall be held, either of the creditors or contributories, or of both, and may direct that votes shall be taken either in person or by proxy, or in person and by proxy, and may direct that the majority may be estimated either by number or value, or by both, and may generally direct what shall be submitted to any such meeting, and how the pro-

Meetings of creditors and contributories may be held under direction of court.

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ceedings thereof shall be carried on, and who shall preside thereat, but shall not be bound by any resolution of any such meeting.

Judges of Supreme Court may make rules regarding proceedings for winding up a company.

LII. The judges of the Supreme Court may, as often as circumstances require, make such rules concerning the mode of proceeding to be had for winding up a company as may from time to time seem necessary, and may provide by such rules for the performance of such functions of the court, and the exercise of the jurisdiction of the court, in such cases and for such purposes under this Act, by the court in chambers, or by a judge in chambers, as to such judges shall seem just and convenient.

Short title.

LIII. This Act may be cited as the "Winding-up Act of 1868."

No. 13—1868.] AN ACT [Sept. 2, 1868.

For defining and establishing the Constitution of the Joint-stock Company or Co-partnership called "The Eastern Province Bank."

Preamble.

WHEREAS the shareholders of the joint-stock company or co-partnership, trading as bankers at Graham's Town and at Cradock, in this Colony, and called the "Eastern Province Bank," under the provisions of a certain deed of settlement, bearing date the 28th day of December, 1855, and certain supplements thereof, are desirous that the constitution of the said company should be defined and established by authority of Parliament: And whereas it is expedient so to do: 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:

Deed of settlement and supplements thereto void.

I. The deed of settlement aforesaid of the said bank, bearing date the 28th day of December, 1855, and all supplements thereto, and all acts or resolutions affecting the said deed of settlement or the constitution of the said bank, made, executed, or passed at any time before the taking effect of this Act, are (except as hereinafter excepted) hereby repealed, rescinded, and made void.

II. Notwithstanding the repeal aforesaid, every right or claim of or against the said company existing at the time of the taking effect of this Act, or arising from any transaction entered into before such time, shall survive for or against the said company as constituted under this Act, and shall to all intents and purposes be judged of as if the deeds, instruments, matters, and things by the last preceding section repealed, rescinded, and made void were still in full force and operation.

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Existing rights and claims of or against company not affected.

III. All property of every description, movable and immovable, rights, claims, credits, matters, and things, nothing excepted, which shall at the time of the taking effect of this Act belong to the said company, by being vested in the trustees thereof, in trust for the said company, shall, upon and from and after the taking effect of this Act, continue to belong to the said company, and become and be, under and by virtue of this Act, vested in the trustees of the said company appointed under the fifty-eighth section of this Act.

All property vested in existing trustees vested in trustees under this Act.

IV. The capital stock of the said company shall, as heretofore, consist of the sum of one hundred and twenty-one thousand seven hundred and fifty pounds sterling, raised and made up by and in respect of subscribed capital paid up upon and in respect of the shares in the next succeeding section mentioned and from moneys acquired and accumulated from the business hitherto conducted by the said company, of which sum of one hundred and twenty-one thousand seven hundred and fifty pounds sterling the sum of three thousand one hundred and thirty-nine pounds four shillings and sixpence sterling is or forms the "reserve fund;" all which said amount shall, subject to the provisions of this Act, be held and applied for and on account of the said company, and may be increased in manner hereinafter provided.

Capital stock.

V. The shares of the said company which are now in existence, and are in number three thousand eight hundred and fifty-six, of the value of twenty-five pounds sterling each, and upon each of which the sum of twenty-five pounds sterling has been fully paid up, shall continue to be shares, for the time

Number and value of shares.



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being, of the said company, and be and remain numbered progressively from 1 to 3,856, and shall be held by and belong to the existing shareholders of the said company.

Number of shares may be increased and disposed of.

VI. The directors of the said company may, with the previous consent of shareholders, as hereafter mentioned, from time to time create such further and other shares of twenty-five pounds sterling each as they shall deem advisable, not exceeding, however, in the whole, two thousand and eight hundred shares; and the said directors may from time to time sell or dispose of the same in such manner and upon such terms and under such regulations and conditions as they may think fit: Provided that no such further or other shares shall be created unless a majority of four-fifths or upwards of the votes given at a general meeting of shareholders, convened under and in accordance with the twenty-fourth section of this Act, shall authorize the creation of such shares, and fix the maximum number which it shall be lawful to create: Provided, also, that the notice to be given of such general meeting shall specify the purpose for which it is called: Provided, further, that such additional shares shall not at any time be sold at a less rate than thirty-five pounds sterling for each and every such share, and such additional share or shares, when taken or purchased, shall subject the holders thereof to all the risks, liabilities, and engagements, and shall entitle them to all the benefits, rights, and privileges in respect thereof, of existing shareholders.

But only by general meeting of shareholders.

Notice of purpose of meeting to be given.

Price of additional shares and conditions of sale.

How when purchaser of such shares neglects to sign deed.

VII. In case any person or persons who may purchase any such further or other share or shares in the said bank as aforesaid, or to whom the same may be allotted, shall fail to sign the deed or instrument hereinafter in and by the seventy-eighth section of this Act mentioned within two calendar months after such sale, or after notice of allotment; or if any such person or persons shall make default in the payment of the purchase money of any such share or shares as aforesaid, or of any instalment or instalments thereof, within twenty-eight days after the same shall have become payable, or shall otherwise neglect or refuse to comply with the terms and conditions upon

Or makes default in payment of purchase amount.

which the same were sold or allotted, then such person or persons shall forfeit to the company all right, title, and interest in and to the share and shares in respect of which any such default shall be made, and in and to all the money (if any) which shall have been previously paid thereon. And thereupon the directors for the time being, if they think fit, shall, in the place of such forfeited share or shares, create a new share or shares, which shall be sold or otherwise disposed of to some other person who will comply with the several conditions and provisions of these presents: Provided, however, that nothing herein contained shall prevent the said directors from empowering and requiring the trustees for the time being of the said company to bring and maintain their action against any such defaulter, if the said directors shall think fit so to do, instead of declaring such share or shares to be forfeited as aforesaid; whereupon the said trustees shall bring and maintain such action accordingly.

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New shares may be created in place of those forfeited.

Right of action against defaulter not affected.

VIII. No person shall be holder of more than two hundred shares in the aforesaid capital stock in his own right: Provided, however, that nothing herein contained shall prevent any person from holding, in addition thereto, such shares as he may become entitled to by inheritance, bequest, gift, marriage, or as executor, administrator, or other legal representative of a deceased shareholder.

Number of shares each shareholder may hold.

Exceptions.

IX. No person shall be entitled, in his capacity as guardian of, or trustee for, any minor or number of minors, to become the holder at any time of more than one hundred shares, in the whole, for such minors; and any person who shall become the holder of any share or shares as guardian or trustee for any minor shall be personally liable to pay any calls or claims which may accrue on account thereof, so long as the person for whom he shall hold the same shall remain under age.

Number of shares which may be held in trust for minors.

Guardian or trustee personally responsible.

X. In no case shall more than one person be permitted to become a shareholder in respect of any share in the capital of the said company, it being the true intent and meaning of this Act that two or more persons shall not be allowed to become jointly shareholders in respect of any share or shares.

Share not to be held jointly by two or more persons.

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Share registry book to be kept.

Certificates held by holders of existing shares to represent such shares.

Certificate to be granted to holders of shares hereafter created.

XI. The directors shall cause the names and additions of all present and future shareholders, and the shares belonging to every shareholder, and the proper number of each share, to be entered in a book to be kept for that purpose, to be called the "Share Registry Book;" and the certificates held by the shareholders shall stand good for, and continue to represent, the existing shares aforesaid of the said company; and in respect of any further or other shares which may hereafter be created under the provisions of this Act, the directors shall cause to be delivered to the persons entitled to the same an extract from such book, by way of certificate, signed by any three of the directors, and which certificate shall at all times be deemed sufficient evidence of the interest in such share of the respective parties to whom the same shall be granted; and the said certificate shall be in the form following, that is to say:

Form of certificate.

No. ———

£25.

CERTIFICATE OF SHARE IN THE EASTERN PROVINCE BANK.

We, the undersigned, directors of the Eastern Province Bank, do hereby certify that A. B., of \_\_\_\_\_, is the proprietor of the Share No. —, amounting to Twenty-five Pounds Sterling, in the Capital Stock in the Eastern Province Bank, established under and by virtue of Act No. —, of 1868, entitled "An Act for defining and establishing the Constitution of the Joint-stock Company, or Co-partnership called 'The Eastern Province Bank.'"

Transferable with the approval of the Directors of the said Bank.

Graham's Town, Cape of Good Hope.

C. D. )  
E. F. ) Directors.  
G. H. )

Entered: I. K., Manager.

XII. No certificate shall be delivered to any shareholder until he shall have subscribed the deed or instrument hereinafter in and by the seventy-eighth section of this Act provided, either personally or by an agent duly authorized thereto by him in writing, in which latter case the authority shall be attested by two witnesses, and shall remain filed in the office of the company.

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Shareholder not entitled to certificate before signing deed.

XIII. Any person who shall become entitled to any share or shares by purchase, representation, or otherwise, and who shall then be a registered shareholder of the company, or who shall not, having been a shareholder at the taking effect of this Act, have signed the deed or instrument hereinafter in and by the seventy-eighth section of this Act provided, in respect of any share or shares, shall not be required or obliged again to execute the said deed or instrument, but shall be entitled, upon having the requisite transfer effected, to be immediately entered in the share registry book as the holder of the said shares.

Who shall not be required to execute deed.

XIV. When any shareholder shall be desirous of disposing of any share or shares in the capital stock of the said bank, he shall make application in writing, addressed to the chairman of the board of directors, desiring to have such share or shares transferred, and stating the name, residence, and condition of the person to whom he desires that the same shall be transferred; and the chairman shall submit such application to the then next meeting of the directors, who shall thereupon at such meeting authorize the transfer of such share or shares, if they shall so see fit, into the name of the proposed transferee thereof; and such transferee shall take upon himself the engagements and liabilities of the original shareholder, and shall sign the deed or instrument hereinafter in and by the seventy-eighth section of this Act mentioned: Provided, always, that no transfer shall be authorized of any share or shares upon which any instalments or calls remain unpaid, or unless the directors shall deem the proposed transferee to be sufficient to meet the engagements and liabilities of the shareholder desiring to have the transfer made, and shall approve of such proposed

How shares may be disposed of.

Directors may authorize transfer.

Liability transferred with share.

Directors may, under certain circumstances, decline to authorize transfer.

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Transferee not by  
virtue of transfer to  
hold more than 200  
shares.

transferee as a person of good name and character :  
Provided, also, that such proposed transferee shall  
not be a person who would, in case such transfer  
were made, become the proprietor of more than two  
hundred shares in the said bank.

How transfer of  
shares shall be effect-  
ed.

XV. All transfers of shares shall be made by  
endorsement upon the certificate, specifying the  
person to whom the same is transferred : Provided,  
however, that no such endorsement shall be valid to  
transfer any interest in, or profit or title to, any  
share, or any dividend, profit, or advantage arising  
therefrom until such endorsement shall have been  
duly registered at the said bank, and three of the  
directors shall have certified such registration upon the  
said certificate, and that they consent to such transfer.

Transfers to be re-  
corded in share regis-  
try book.

XVI. On any person ceasing to be a shareholder  
of the company in respect of all or any of the shares  
held by him and on any person becoming a pro-  
prietor of any share or shares in the capital of the  
said company, the directors shall cause all such  
entries to be made in the share registry book as  
shall be necessary, in order that the said book may  
at all times show who are the shareholders for the  
time being of the company, and the number of shares  
held by each of the shareholders, and the proper  
number of each share held by each of the shareholders  
for the time being.

Liability to cease on  
transfer of share.

XVII. Every shareholder whose share or shares  
shall have been transferred to any other person in  
manner hereinbefore mentioned shall be released and  
discharged, as between himself and the other share-  
holders, from all and every liability, claim, and  
demand whatsoever to which he would have been  
liable in respect of such share or shares in case such  
share or shares had not been transferred.

Directors may make  
further rules as to  
transfer of shares and  
fee payable thereon.

XVIII. The directors shall from time to time, and  
at all times hereafter, make such further rules, orders,  
and regulations respecting the transfer of shares,  
and by whom the same shall be prepared, and  
whether any, and what, charge to and in favour of  
the bank shall be payable thereon, as shall appear to  
them necessary and advisable for the security and  
advantage of the company and the due transference

of the said shares ; and all transfers, sales, or assignments of any share or shares in the company which shall not be made conformably to the provisions of this Act, and according to the regulations of the directors, shall, as regards the said bank, be null and void.

XIX. A general meeting of the shareholders shall be held at the banking-house of the said bank, in Graham's Town, or at such other place in Graham's Town as the directors of the said company may appoint, upon the last Wednesday in the month of January in each year, and every such meeting shall be called the "annual general meeting."

Annual general meeting.

XX. At every annual general meeting the directors shall lay before the shareholders a general statement of, and report on, the affairs of the said company, to be made up to, and inclusive of, the 31st day of December in each year.

Statement and report to be laid before annual general meeting.

XXI. Every annual general meeting shall have full power to superintend, regulate, and control all the affairs and concerns of the said bank : Provided that it shall not be competent for any shareholder at any annual general meeting to propose any gift of money or increase of salary to any officer of the bank, unless such gift or increase shall have been recommended to such meeting by the board of directors. Any resolution passed in contravention of this section shall be null and void.

Powers of annual meeting.

XXII. The directors may at any time call a general meeting of the shareholders, for the purpose of submitting to their consideration any question or matter concerning the interests of the bank.

Directors may call general meetings.

XXIII. The directors shall call a general meeting of the shareholders whenever required so to do by a requisition in writing, to be left at the office of the bank, in which the object for which such meeting is required to be called shall be stated, and which requisition shall be signed by not less than fifteen of the shareholders, each of whom shall have been a shareholder of the bank for at least three months before the day on which such requisition shall be lodged, and which requisitionists shall be entitled, in the whole, to not less than forty votes. Every such meeting shall be called upon a notice, to be

General meeting to be called on requisition of shareholders.

Notice of such meeting.

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issued within twenty-eight days next after such requisition shall have been so lodged as aforesaid.

Where meetings shall be held, and how called.

XXIV. All meetings of the shareholders, whether the annual general meeting or any special general meeting, to be convened under any of the provisions of this Act, shall be held at the banking-house of the said bank, in Graham's Town, or at such other place in Graham's Town as the directors may appoint, and shall be called by advertisement addressed to the shareholders of the bank, to be inserted at least twice in any one or more of the local newspapers; the first of which insertions shall not take place later than twenty-one days before the day for which the meeting shall be called: Provided, however, that if, from accident or other cause, such notice shall fail to be given in regard to any annual general meeting, such meeting shall nevertheless be held upon the day aforesaid appointed for the purpose, and be as legal, in all respects, as if such notice had been given: Provided, also, that the notice of every meeting other than the annual general meeting, shall state the objects or purposes for which it is called.

Failure of notice not to affect legality of annual general meeting.

Notice of meeting to state object for which called.

List of shareholders to be laid on table previous to commencement of general meeting.

XXV. An alphabetical list of the shareholders, with the number of their shares and of the votes to which they are respectively entitled in regard to such shares, shall be made out from the share registry book, and laid upon the table previous to the commencement of any general meeting of the shareholders.

Who to preside.

XXVI. At the annual general meeting, and at all other general meetings of the proprietors, the chairman of the board of directors, or the director present whose name stands next on the list of directors, shall preside, and in all cases where the votes are equal such chairman, besides his proper or original vote, shall have a casting vote.

Chairman to have casting vote.

Resolutions passed repugnant to this Act to be void.

XXVII. No resolution which may be in anywise repugnant to or inconsistent with any of the provisions of this Act, or any alteration of this Act made under the authority of this Act, as hereinafter provided, shall be passed at any such meeting as is hereinbefore mentioned; and the same, if passed, shall be of no force or effect.

XXVIII. The minutes of the proceedings of every meeting of the shareholders shall be entered in a proper book to be kept for that purpose, and the same shall be signed by the chairman presiding at such meeting.

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Minutes of meetings to be recorded and signed by chairman.

XXIX. Should the shareholders at any meeting be unable to come at once to a decision upon any question duly brought before them, or should the scrutineers hereafter mentioned be unable to declare the result of any ballot on the day on which the meeting shall be held, or should any other circumstance make an adjournment desirable, it shall be competent for the chairman, upon motion made and question put, to adjourn such meeting to such future day and hour as the majority of shareholders present shall, by a show of hands, determine.

Meetings may be adjourned.

XXX. No business shall be transacted at any meeting of shareholders, not being the annual general meeting, other than the special business for which it shall have been called, and no other business shall be transacted at any adjourned general meeting, whether the annual general meeting or not, except the business left unfinished at the meeting at which such adjournment took place.

Business to be transacted at meetings.

XXXI. In all matters submitted to the consideration of any general meeting of the shareholders of the bank, the shareholders shall have a right to vote in manner following, that is to say :

Manner of voting.

The holder of 5 shares, or any smaller number,	1 vote
"    10    "	2 votes
"    20    "	3    "
"    30    "	4    "
"    40    "	5    "
"    50    "	6    "
"    75    "	7    "
"   100    "	8    "
"   125    "	9    "
"   150    "	10   "
"   175    "	11   "
"   200 (and above),	12 votes, and no more.

XXXII. No shareholder shall be entitled to vote at any meeting, in respect of any share or shares

No shareholder entitled to vote before signing deed or being registered.



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held by him, until he shall have signed the deed or instrument hereinafter in and by the seventy-eighth section mentioned and provided, nor until he shall have been registered in the books of the bank for a period of not less than three calendar months as the proprietor of such share or shares : Provided, always, that no proprietor whatsoever shall be entitled to vote until all instalments or calls which may be due in respect of his share or shares shall have been duly paid.

Or when any calls or instalments on shares remain due.

Persons holding shares in trust entitled to vote.

XXXIII. Any person who shall be the holder of any shares in the said capital stock in his capacity as trustee, tutor, curator, or guardian of any minor or other person shall be entitled to the same number of votes in respect of such shares as such minor or other person would have been entitled to if of full age or otherwise competent to vote : Provided that when two or more persons are the joint trustees, tutors, curators, or guardians of any minor or other person, such one trustee, tutor, curator, or guardian only as the other or others of them may appoint for that purpose in writing shall be allowed to vote in respect of such shares as the minor or other person may hold : and provided, further, that any such tutor, curator, or guardian (if a shareholder in his own right) shall not in any event have more than eighteen votes, inclusive of his own.

Where trust is vested in more than one person, one only to vote.

Number of votes restricted in certain cases.

Who may vote by proxy.

XXXIV. No shareholder residing within the municipality of Graham's Town, excepting females holding shares in their own right, shall be allowed to vote by proxy, but any shareholder residing elsewhere than within the limits of the said municipality, and any female holding shares in her own right, shall be entitled to appoint a person to vote for him or her ; but no vote by proxy shall be admitted unless the person appointed to vote by proxy shall be a shareholder duly qualified to vote in respect of the ownership of five shares or upwards, and no such qualified proprietor shall carry more than the proxies of, or for, six other proprietors ; and the appointment of any proxy shall be in the form or to the effect following :

I, A. B., of ———, one of the shareholders of the Eastern Province Bank, do hereby authorize and appoint C. D. to be my proxy at all meetings of the shareholders of this said bank (or at a meeting of the shareholders of the said bank, to be held on ———), and to vote for me in and upon all matters and things relative to the concerns of the said bank.

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Form of appointment of proxy.

Witness my hand at ———, this ——— day of ———, 186—.

XXXV. All questions relating to any business or matter to be transacted or discussed at any general meeting of shareholders, whether annual or special, shall be decided by a show of hands of the shareholders present: Provided that any shareholder qualified to vote may demand that any question then submitted shall be determined by ballot, in which case such question shall be decided by a majority of votes, to be taken in manner hereinbefore prescribed: Provided, also, that the ballot shall be taken by means of voting papers signed by the persons entitled to vote, and that whatever resolution shall be taken or negatived by a majority of votes so taken at such meeting, and certified in writing by the scrutineers appointed to take the same, shall be binding upon every shareholder; and the question then decided shall not be re-opened, nor shall any meeting be called for the purpose of discussing such question, at any time sooner than the then next annual general meeting.

Questions to be decided by show of hands.

But ballot may be demanded.

Mode of taking ballot.

Question decided not to be re-opened before next annual general meeting.

XXXVI. The affairs and business of the bank shall be transacted and carried on by a board of directors, and such and all future directors shall have the sole management of the capital stock, funds, estate, property, affairs, and concerns of the said company, and shall transact and manage the affairs and business of the bank in manner herein provided.

Management vested in directors.

XXXVII. No person shall at any time be elected a director of the said company unless he shall be a proprietor in his own right of at least twenty shares in the said capital stock,—the certificates of such shares, to the number of twenty, to be lodged with the bank manager, to remain in his custody, free

Who eligible as director.

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from all lien or pledge, during the continuance in office of such director; and no two persons carrying on business as co-partners in trade, or related to each other in or within the third degree of consanguinity or affinity, shall both be eligible to fill at the same time the office of director.

Existing directors.

XXXVIII. The board of directors for the management of the said company shall consist of seven members, namely, Frederik Calder Bate, Edward Booth, George Wood the Younger, Henry Blaine, Philip William Lucas, William Haw, and William Attwell Richards, the present directors, who shall continue in office until the annual general meeting to be held in the year 1869: Provided that at such last-mentioned meeting Frederik Calder Bate and Edward Booth shall go out of office and be succeeded by two others to be then elected; and that at the annual general meeting to be held in 1870, George Wood the Younger and Henry Blaine shall go out of office and be succeeded by two others to be then elected; and that at the annual general meeting to be held in 1871, the remaining three of the directors aforesaid shall go out of office, and be succeeded by three others to be then elected. And provided that afterwards, for ever, two directors, being the two then longest in office, shall go out of office every year, except every third year, when three directors shall go out of office; and that all directors going out of office at any annual general meeting shall be succeeded by an equal number to be elected by such meeting: Provided, also, that nothing herein contained shall at any time prevent the outgoing directors, or any of them, from being eligible for re-election.

Outgoing directors eligible for re-election.

Directors, when to be deemed to vacate office.

XXXIX. Any director who shall die, resign, or be removed, or shall become insolvent, or shall assign his estate for the benefit of his creditors, or shall be absent from the board of directors for four consecutive months, or who shall, by sale, transfer, forfeiture, or otherwise, cease to be the holder of at least twenty shares in his own name and right, or who shall refuse to act upon or carry into effect any legal resolution of the shareholders duly carried at any

general meeting, or any rule, order, regulation, or by-law of the company duly passed at any general meeting, shall thereby and thereupon become disqualified, and shall, *ipso facto*, cease to be a director.

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XL. In case the conduct of any particular director shall at any time be such that his continuance in office shall appear to at least twenty of the proprietors of the said company entitled to vote to be prejudicial to the interests of the company, and that notice thereof shall be given to the directors for the time being, in writing, the said board shall be required, and they are hereby directed, without any delay, to call a general meeting of the shareholders for the purpose of determining whether such particular director shall continue in office: Provided, always, that twenty-one days' notice shall be given of such meeting, and of the purpose for which it is called, in any two or more of the local newspapers; and it shall and may be lawful for a majority of the shareholders at such meeting to remove such director from his office, and his place shall be filled up in the manner provided by the forty-fifth section of this Act.

Director may be removed.

Notice of meeting for his removal.

Who to preside at meetings.

XLI. The senior director for the time being shall be the chairman of the board, and shall preside at all meetings of directors and of shareholders, and in his absence the director present whose name shall stand next on the list of directors shall preside: Provided, always, that in the event of the senior director for the time being refusing or declining to be and act as the chairman of the board of directors, it shall be competent for the said directors to choose from among themselves a chairman who shall be and act as such, in the place and stead of the said senior director, during the time for which that senior director would otherwise have been the chairman.

XLII. All questions that shall come before any meeting of directors shall be decided by a majority of votes of the directors present, and in case of an equality of votes the chairman shall, in addition to his original vote, have a casting vote.

Questions to be decided by majority of votes; chairman to have casting vote.

XLIII. At every annual general meeting the proprietors shall elect by ballot, out of such of the shareholders as shall be qualified in manner hereinbefore

Election of directors by ballot.

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Candidates to be  
nominated and notice  
given.

provided, such number of persons to be directors as may be required to fill up the vacancies of those who may have gone out of office in manner also hereinbefore provided: Provided, always, that no person shall be balloted for unless he shall have been proposed by one proprietor and seconded by another proprietor qualified to vote, and unless notice shall have been given to the directors, in writing, signed by two such shareholders, that such person will be proposed as a director, at least thirty-one days previous to the day on which such election is to take place.

Notice of annual elec-  
tion and of names of  
candidates.

XLIV. Not less than twenty-eight days before the annual election shall take place, notice thereof shall be given by the directors, by advertisement in any two or more of the local newspapers, and the said directors shall at the same time notify the names of such persons as shall have been duly put in nomination to be balloted for at the then next ensuing annual general meeting to fill up the vacancies which will then take place: Provided that as often as the persons nominated shall not exceed in number the vacancies to be filled up, no ballot shall be necessary, and the persons nominated shall be declared duly elected.

When number of  
candidates does not  
exceed number of  
vacancies, ballot not  
required.

Casual vacancies, how  
to be filled up.

XLV. Upon any casual vacancy occurring in the board of directors in any way or manner hereinbefore set forth, the directors shall convene a special general meeting of shareholders for the purpose of electing a director to fill up such vacancy, notice whereof shall be given by advertisement in one or more of the local papers in the twenty-fourth section mentioned, at least forty-two days before such meeting is held; and such election shall take place in manner and subject to the regulations hereinbefore provided for the ordinary election of directors at the annual general meetings; and such director elected to fill any casual vacancy shall continue in office until the expiration of the period for which the director occasioning any vacancy in manner aforesaid would otherwise have remained in the direction: Provided that the directors shall, in and by the notice to be given by them as aforesaid, fix some day, not later than fourteen days next before

the day appointed for the meeting, upon which day, so fixed, nominations of candidates shall in manner aforesaid be sent in, and shall forthwith, upon receipt of any such nominations, announce, by publication in the same papers as published the original notice, the names of the persons nominated: Provided, also, that the concluding proviso of the forty-fourth section shall extend and apply to any such election as is in this section mentioned.

XLVI. The directors shall meet at the banking-house of the said bank on such days in each week as they shall from time to time resolve and appoint as fit and convenient for the dispatch of the general business of the bank.

Directors, where and when to meet.

XLVII. Three or more directors shall constitute a quorum or board for the management of the affairs of the said bank.

Quorum.

XLVIII. The directors shall appoint a manager, a cashier, and accountant, and such clerks and other assistants as they may deem necessary for transacting the affairs and business of the bank, and shall require them, and every of them, respectively to give security to the satisfaction of the said directors for the faithful discharge of the duties of their respective offices; and may also discharge any such manager, cashier, accountant, clerk, or other assistant, and appoint another in his room and stead.

Appointment of officers.

XLIX. No such manager, cashier, accountant, clerk, or other assistants as aforesaid shall be allowed to carry on or be engaged in any kind of trade, business, or agency whatever, either directly or indirectly, or shall be allowed to act as agent or broker, or trustee in any insolvent estate; but all such persons shall (unless in so far as they may be permitted by the directors to employ themselves at other than bank hours in some other occupation) confine themselves exclusively to the duties of their respective offices.

Officers prohibited from engaging in any business, agency, &c.

L. The directors are hereby authorized and empowered to pay such salaries, wages, and allowances to such manager, cashier, accountant, clerks, and other assistants as they shall think fit and reasonable, and also to pay all such expenses and disburse-

Remuneration of officers.

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ments as may be requisite and necessary to enable them to carry on the business of the bank.

Remuneration of chairman and directors.

LI. The chairman and directors shall receive out of the clear profits of the bank such sum or sums of money, by way of remuneration for their services and trouble, as the majority of the shareholders shall by resolution determine at the annual general meeting.

Director not to vote where personally interested.

LII. Any director having any interest other than his interest as a shareholder in the question under discussion at any meeting of the board of directors shall not be allowed to vote in the decision by the other directors present, provided they be sufficient to form a quorum, and provided that such question in which such director shall be concerned shall stand over until there be a proper quorum, in case the other directors then present shall not be a quorum.

Record of proceedings to be kept.

LIII. The minutes of the proceedings at any board or meeting of the directors shall be entered in a book and signed by the chairman, or by the director acting as chairman of every such board or meeting.

Acts of quorum, during vacancy in direction, valid.

LIV. All acts which may be done by a quorum of the directors present at any meeting of the directors during any vacancy in the number of the directors shall be as valid and effectual as if the number of directors had been complete.

Directors to have entire management of company's business.

LV. Subject and without prejudice to the power hereinbefore given to general meetings of shareholders, the directors for the time being shall have the entire management and superintendence of the company and of the affairs and business of the bank, and shall in all cases provided for by this Act, or hereafter to be provided for by any general meeting, act in strict conformity to the laws and regulations hereby established, or hereafter to be established by the general meetings of the shareholders, and generally, where this Act is silent and does not otherwise provide, to act in the direction of the concerns of the company in such manner as at their absolute discretion they shall think most conducive to the interests of the company, and for that purpose to make, do, and execute all such deeds, matters, and things whatsoever as may be requisite

and expedient in that behalf; and the directors shall and may from time to time, and at all times, make such rules, orders, regulations, and by-laws as to them shall seem just and expedient for the general management and government of the business and affairs of the company, provided that the same be not contrary to law, or repugnant to any of the provisions of this Act; which said rules, orders, regulations, and by-laws, when made, shall be posted in some public and conspicuous part of the banking-house of the company for the period of fourteen days, and if not objected to in writing by at least ten of the shareholders during that period, the same shall then become binding upon the several shareholders and directors of the company. But in the event of such rules, orders, regulations, and by-laws, or any of them, being objected to as aforesaid, the directors shall either abandon the same or submit them to a general meeting of the shareholders, and if then adopted and approved of by a majority of the shareholders present, the same shall become binding upon the company: Provided, always, that the shareholders may at any time, by a majority of votes taken by ballot at any general meeting, repeal any one or more of the said rules, orders, regulations, and by-laws, if they shall see fit so to do.

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And to frame rules.

Rules not objected to to be binding.

How if objected to.

Rules may be repealed.

LVI. The said directors may authorize and require the trustees hereinafter appointed to hire or purchase any immovable property, and to cause to be built any house, offices, or other premises which they may consider to be necessary for the purposes of the company and for carrying on the business of the bank; and it shall be lawful for the said directors, having previously obtained the consent of the majority of the shareholders at any general meeting, to authorize the said trustees to sell and dispose of the same at such price and in such manner as such meeting shall see fit.

Purchase or hire of premises for banking purposes and sale thereof.

LVII. The trustees of the bank shall never consist of more or less than three; and the following persons, to wit, George Wood the Younger, William Haw, and Robert Godlonton (who have been duly appointed to be the trustees of the bank), shall continue to be,

Number of trustees and names of present trustees.



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and they are hereby declared to be, the trustees for the time being of the said bank.

Property of company vested in trustees.

LVIII. All property to which the company is or may become entitled shall be, and be deemed to be, in law, the property of the trustees for the time being of the said bank, and shall be treated and considered as such in all legal proceedings whatsoever.

Trustees to apply and dispose of property under authority of directors.

LIX. The trustees aforesaid, and the trustees of the said bank for the time being, in whom any of the funds or property of the bank shall for the time being be vested, shall stand possessed of the same in trust for the company, and shall apply and dispose of the same for the benefit of the company in such manner as the board of directors shall, conformably to the duties imposed on them by this Act, from time to time order and direct.

Shareholders' rights to shares vested in trustees.

LX. All right and title of the shareholders of the said bank in and to their shares are hereby declared to be vested in the trustees for the time being, in trust and for the benefit of the shareholders for the time being; and the said trustees, and all others

General powers of trustees under authority of directors.

who shall in manner hereinafter provided be appointed as such, are and shall at all times, upon being authorized and directed to that effect by the directors for the time being, be competent to make and conclude and take and accept of all purchases, sales, demises, leases, securities, contracts, and agreements whatsoever, for the benefit of the shareholders, according to the provisions herein contained; and shall, upon being so authorized and directed, be competent to sue for and recover all moneys, debts, goods, and effects whatsoever due and belonging to the said company, also to compound for or release, and shall accordingly compound for or release, any debt or demand in favour of any debtor, and further shall prosecute or defend any action or suit in respect of any sums of money or other debts, duty, right, matter or thing whatsoever relative to the concerns of the said company or may discontinue the same, or compromise or leave to arbitration, and shall accordingly compromise or leave to arbitration, any matter or question in dispute, or otherwise act therein as the directors shall deem most advisable for the

interests of the company; and the receipts or other acts and deeds of the said trustees, or of the trustees for the time being, relative to all or any of the matters aforesaid, shall be good, absolute, and sufficient discharges and exonerations and indemnities to or for any vendor or purchaser, or other person whomsoever, by, to, or with whom any sale, purchase, contract, agreement, rent, moneys, or securities for money, shall be made or given: Provided, however, that the authority hereby given to and trust vested in the said trustees shall not extend, or be deemed to extend, to interfere with the powers and privileges of the shareholders or the directors as provided by any clause or clauses of this Act, relative to the management of the affairs of the said bank, or with the transfer of shares, as provided for in the fourteenth section of this Act.

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Such powers not to interfere with rights of shareholders or directors under this Act.

LXI. In case any one or more of the trustees for the time being shall become insolvent, or shall assign his estate for the benefit of his creditors, or shall not be the holder of twenty shares at the least in his own right; or in case any such trustee shall resign his office; or in case the directors, by a resolution of the board, shall require any one or more of the said trustees to relinquish his or their office; or in case any of them shall happen to die, or shall be absent from the Colony for a longer period than twelve calendar months, then, and in any such case, the office of such trustee or trustees shall be deemed to have become vacant, and all his or their right and title thereto to have ceased and determined, in such manner as if such trustee or trustees, or his or their representative or representatives, had with the consent and approbation of the shareholders and directors relinquished such office, and had with such consent and approbation assigned and transferred his or their right and title to such office to another trustee or trustees; and thereupon the directors for the time being shall, by a resolution of the board, signed by the chairman, nominate and appoint another person or persons duly qualified as aforesaid to be a trustee or trustees in his or their place and stead; and it shall and may be lawful for the trustee or

Trustees, when to be deemed to vacate office.

How vacancy shall be filled.

Duties of remaining trustees in reference to new trustee.

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How, should no trustee remain.

trustees then remaining, and they are hereby required, to join and concur in doing, executing, and performing all such acts and deeds, if any, as shall be requisite and necessary towards effecting a transfer or assignment of the right and title to and in such office to the joint names of the remaining or surviving or any such new trustee or trustees, in such effectual manner as that the same may be legally vested in them; or if no trustee shall then remain, it shall and may be lawful for any three of the directors for the time being, to be for that purpose chosen by the board of directors, and who shall be deemed to be the trustees for that purpose, to join and concur together in doing and performing all such acts and deeds as shall be requisite and necessary towards effecting, in such effectual manner as aforesaid, a transfer and assignment of their right and title to and in such office to such three persons duly qualified as aforesaid and whom the board of directors shall have nominated to be new trustees; and such trustee or trustees, in whose name or names such right and title to and in such office shall be transferred and assigned, shall be and are hereby authorized and empowered to act therein in like manner as the trustees herein named are authorized and empowered.

Business of Eastern Province Bank.

LXII. The business of the said Eastern Province Bank, as well as its several branches established, or hereafter to be established in pursuance of this Act shall be confined to banking in all its branches, in the keeping of cash accounts, and receiving deposits and issuing and circulating promissory notes payable to the bearer on demand, in the discounting of bills of exchange, acceptances, promissory notes, and bonds, and other negotiable securities, public or private, in the giving of cash credits upon such terms as to the directors may seem advisable, in the purchase of bullion and dealing therein, and in making advances upon the same, or upon goods or other property which shall have been *bonâ fide* deposited as securities, and in selling or causing to be sold such goods or securities, as shall not have been redeemed according to the terms of such deposit;

but in no case whatever shall the said company engage in any manner or description of trade or mercantile business.

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LXIII. The head or chief office of the said company shall be at the banking-house of the said company, in Graham's Town, and the business shall be carried on there, and at such other place or places at which the directors may from time to time deem it expedient to continue any branch bank, or at which any new branch may be established according to the provisions of the sixty-eighth section of this Act.

Where to be carried on.

LXIV. The directors may, at any time when it shall seem to them to be beneficial, allow interest, after such rate and upon such conditions as they shall by any regulation determine, upon any sum or sums of money deposited in the said bank.

Interest on deposits.

LXV. The directors shall be bound to see that the provisions of the "Joint-stock Banks' Statements Act, 1865," are duly complied with by the company hereby established.

Provisions of "Joint-stock Banks' Statements Act, 1865," to be complied with.

LXVI. The directors may, by and with the consent of a majority of two-thirds of the shareholders at any general meeting, notice whereof shall be given in manner hereinbefore provided by the twenty-fourth section of this Act, establish branch banks in any district of this Colony; and further the directors may, upon such terms as shall be directed and expressed by any resolution passed by any general meeting of the shareholders, duly convened for that purpose, amalgamate with, or purchase or acquire the business or property of, any joint-stock banking company in any division of the Colony of the Cape of Good Hope, and upon such terms and conditions as a majority of two-thirds or upwards of the votes given at a general meeting of shareholders, convened under the provisions of the twenty-fourth section of this Act, shall approve of and determine; and in case this company shall be amalgamated with any other banking company, in accordance with the powers for that purpose herein contained, the directors of the Eastern Province Bank shall be, and they are hereby empowered to make, do, and execute all

Branch banks may be established.

Amalgamation with or purchase of business of other joint-stock bank may take place.

Powers of directors in regard to amalgamation.

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deeds, instruments, matters, and things necessary for carrying such amalgamation into effect.

Dividends.

LXVII. The dividends to be paid to the shareholders of the company, and the time or times when the same shall become payable, shall be determined by the directors, and be declared by them at the annual general meeting: Provided, however, that out of the actual profits of the bank, one-tenth part thereof, at least, shall be annually set apart and retained, and added to the reserve fund of the bank in existence at the time of the taking effect of this Act, and so from year to year continue to be added, until by such additions the said reserve fund shall amount to ten thousand pounds sterling; after which, and so long as such reserve fund shall not fall under the said sum of ten thousand pounds sterling, no further amount shall be accumulated or added thereto, but all the profits of the bank realized upon the entire capital stock thereof may, in the discretion of the directors, be divisible amongst the shareholders, as hereinbefore mentioned: Provided, always, that if after such sum of ten thousand pounds sterling shall have been once made up, it should so happen that the reserve fund should fall below the said sum of ten thousand pounds sterling, then, and so long as the reserve fund shall remain under that sum, one-tenth part of the annual profits shall be set apart and added thereto, until the reserve fund shall again amount to that sum, and as soon as the sum of ten thousand pounds sterling shall again be made up, then no further amount shall be added thereto, and the whole of the profits of the year may, in the discretion of the directors, be divisible as aforesaid; and such reserve fund shall be carried to a separate account in the books of the bank, and shall be reserved and applied to meet any unforeseen emergency.

Dividends where and when payable.

LXVIII. All such dividends as may be in manner aforesaid declared out of the profits of the company shall be payable at the banking-house of the said bank on such day or days in each year as the directors shall appoint.

Books to be kept and annually balanced.

LXIX. The directors shall cause all necessary and proper books of account to be kept at the banking-

house of the said bank, and shall cause to be written in such books true, plain, and perfect entries of all receipts, payments, transactions, and dealings by or on behalf of the bank, and of all profits, gains, and losses arising therefrom; and shall on the 31st day of December in each year cause the said books to be properly settled, adjusted, and balanced: Provided, always, that no shareholder or other person, not being a director or officer of the said bank, and not specially deputed by a general meeting of shareholders to make any inspection of the said books, shall, on any pretence whatever, be permitted to have access to or to inspect the said books.

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No person, unless duly authorized, to inspect books.

LXX. All notices required to be given by the directors, the manner of giving which is not herein specially provided for, shall be given by public advertisement, addressed to the shareholders of the bank, and signed by the chairman for the time being, and inserted in any one or more of the local newspapers.

Notices, how to be given.

LXXI. The said bank shall continue for and during the period of twenty-one years, to be computed from the 20th day of January, 1856, unless otherwise determined as provided by the seventy-seventh section of this Act: Provided, however, that at the annual general meeting which shall be holden in the year 1877, it shall and may be lawful for a majority of the votes of shareholders, given at such meeting, to extend the continuance of the bank for a period not exceeding fourteen years, and the resolution of the said meeting to that effect shall be effectually binding on the whole of the shareholders; and it shall and may be lawful for the shareholders in like manner afterwards to extend the continuance of the bank from time to time for a period not exceeding fourteen years at any one time: Provided, always, that if at any time the losses of the said bank shall have exhausted all the reserve fund and also one-fourth of the paid-up capital then the directors shall forthwith call a special general meeting of the shareholders, in manner provided by the twenty-fourth section of this Act, and shall submit to such meeting a full and general statement of the

Term of partnership.

Term may be extended.

In case reserve fund and one-fourth of capital shall be exhausted, special general meeting to be called.

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How if meeting by  
a majority decide to  
carry on bank.

affairs and concerns of the bank; and thereupon the bank shall be dissolved, unless a majority of the votes of the shareholders given at such meeting shall resolve to continue and carry on the said bank, and the shareholders resolving upon such continuance shall, by themselves or their proxies (as the case may be), then and there undertake in writing to indemnify the dissentient shareholders against all the existing debts and engagements of the bank and to purchase the shares of such dissentient shareholders at such amount, in respect of every such share as shall be determined by the arbitrament and award, to be made in writing within such period as shall by the proprietors present or represented by proxies be fixed, of two indifferent persons, whereof one shall be chosen by the shareholders who shall have resolved to continue and carry on the said bank, and the other by the dissentient shareholders: Provided that should such persons so chosen not agree upon their arbitrament and award, then they shall appoint any other indifferent person to be umpire in the determination to be made concerning the premises, and whose award and umpirage shall be conclusive upon each and all of the shareholders.

How differences be-  
tween company and  
shareholders shall be  
decided.

LXXII. If, in any case, any difference shall arise between the company on the one hand, and any of the shareholders, their heirs, executors, or assigns, on the other hand, touching the true construction or the incidents or consequences of this Act, or of the sections, or touching anything then to be thereafter done, executed, omitted or suffered in pursuance of this Act, or any of the sections thereof, or touching any breach or alleged breach of this Act, or any claim on account of any such breach or alleged breach of this Act, or otherwise relating to the premises, or this Act, or to the sections, or to any of the affairs of the company, every such difference shall be referred to arbitration, as is hereinbefore in the last preceding section provided; and if either party do not, within seven days after being thereto requested, in writing, by the other party or his agent, name an arbitrator, then both arbitrators shall be named by the party by whom, or by whose agent, the request was made.

LXXIII. The several shareholders, their heirs, executors, administrators, and assigns; shall not in any case or event, as between themselves, be answerable or liable for or in respect of the debts, losses, or other demands upon the said company to an amount exceeding that of the share or shares possessed by such shareholders respectively.

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Liability of shareholders *inter se* limited.

LXXIV. The directors of the said company shall be bound within three weeks after the 1st January, in each year, to cause to be published in the Government Gazette a list of the shareholders in the said company for the time being, in which the respective places of abode and number of shares held by each shareholder shall be stated, and such list shall be duly authenticated by the signatures of not less than three directors of the said company. And the directors of the company shall be liable to a penalty of five pounds sterling per week for every delay in publishing such list. And such penalties may be recovered by the public prosecutor.

List of shareholders to be published annually.

Penalty for delay.

LXXV. In all actions, suits, or other proceedings at law brought, commenced, carried on, and prosecuted by the said trustees or the said directors, or any other person or persons on behalf of the said bank, against any shareholder or shareholders thereof, and in all actions, suits, or other legal proceedings brought, commenced, carried on, and prosecuted by any shareholder or shareholders against the said trustees or the said directors or other officer for the time being of the said bank, the partnership hereby established shall form no bar to such action, suit, or other legal proceeding being carried on and proceeded in.

Partnership not to bar actions, &c., by company against shareholder, and *vice versa*.

LXXVI. The chairman, directors, and trustees of the said bank, and each and every of them, shall be indemnified and saved harmless out of the funds and property of the bank, and the several shareholders shall be bound and obliged, rateably and in proportion to the shares they possess, at all times to save them harmless and indemnified from and against all costs, charges, losses, damages, and expenses which they or any of them, their or any of their executors or administrators, shall or may incur or

Indemnity to chairman, directors, and trustees.



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sustain by reason or in consequence of any contract or engagement into which they may lawfully enter in behalf of the company, or any action, suit, or other proceeding, either at law or in equity, relating to any such contract or engagement, or in or about any matter or thing whatsoever, or in any wise relating to the affairs and business of the bank: Provided, always, that such losses, costs, charges, damages, and expenses shall not have been sustained or occasioned by his, their, or either of their wilful act, neglect, or default.

Exception in case of wilful neglect or default.

Bank may be dissolved before expiration of term of partnership.

LXXVII. It shall and may be lawful for the proprietors entitled to vote at any general special meeting to be held for that purpose, of which notice shall be given by the directors six weeks before the same shall take place, to be inserted in any one or more of the local newspapers as the directors may deem to be expedient, whenever so required to do by a requisition in writing setting forth the purposes for which the meeting is required to be held, signed by not less than twenty-five proprietors holding in the whole not less than fifty votes, to declare that the bank shall be dissolved at an earlier date than the date at which it would otherwise have been dissolved by effluxion of time: Provided, always, that not less than four-fifths of the votes of shareholders given at such meeting shall concur in the same; and provided, further, that in such event the claims of any shareholders dissenting from such dissolution should be settled in manner and form as hereinbefore in the seventy-first section of this Act is provided.

But only when four-fifths of votes concur.

And claims of shareholders dissenting settled.

Form of deed to be executed by shareholders.

LXXVIII. The shareholders of the said company, and all other persons who may hereafter become shareholders, shall be required and bound to sign and execute a deed or instrument in the form or to the effect following :

“ We, the undersigned, do hereby severally, and each for himself, acknowledge and declare that we are shareholders in the Eastern Province Bank ; and we hereby bind and oblige ourselves severally to abide, perform, and

fulfil the duties and obligations enjoined upon or required from the shareholders thereof, under and by virtue of the provisions of Act No. —, entitled ‘An Act for defining and establishing the Constitution of the Joint-stock Company or Co-partnership, called “The Eastern Province Bank,”’ and all such other provisions as may from time to time be duly made under authority of the said Act.”

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Provided that no shareholder, whether one now existing or not, shall be entitled to claim or demand any dividend upon any share in the said company until he shall, by himself or his agent duly authorized, have signed the said deed or instrument in respect of such share.

Dividends not claimable before execution of deed.

LXXIX. In the construction of this Act, unless there be something in the context repugnant thereto, any word denoting the singular number or the male sex shall be deemed to extend to any number of persons, places, and things, and to both sexes; that the word “directors,” and the word “trustees,” and the word “shareholders,” and the word “proprietors,” whenever the same may occur, shall be taken to mean, respectively, the directors, trustees, shareholders, or proprietors for the time being of the bank hereby established; that the words “local newspapers” shall be taken to mean any of the newspapers published in Graham’s Town; that the word “company” and the word “bank” shall be taken to mean the joint-stock company and bank hereby established; and, generally, that all and every part of this Act shall be construed and understood in the plain and ordinary and common sense meaning of the language used; and if any reasonable doubt shall happen to arise as to the true interpretation of any part thereof, the bank shall, as against any individual shareholder, have the benefit of such doubt.

Definition of terms.

LXXX. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all judges, magistrates, and others, without being specially pleaded.

This Act a public Act.

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 Company not incor-  
 porated, nor share-  
 holders' liability  
 limited.

LXXXI. Nothing in this Act shall be taken or construed so as to incorporate the said company or to limit the liability of the shareholders thereof.

No. 14—1868.] AN ACT [Sept. 2, 1868.

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, re-  
 pealed.  
 Existing council to  
 remain in statu quo.

I. 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, 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: 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 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.

Term of office of exist-  
 ing council.

Act to apply to casual  
 vacancies in existing  
 council.

Limits of municipi-  
 pality.

II. 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.

III. There shall be in the said Municipality a Style of town corporation. 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.

IV. The Council of the said Municipality shall Town council. consist of twenty-one Councillors, one of whom shall be the Mayor.

V. The said Municipality shall be divided into Municipality divided into seven wards. seven wards, to wit:

No. 1. Comprising all immovable property within the municipal limits south of the Baakens 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 Baakens River.

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- 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.
- 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. No. 14—1868.

VI. 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.

Council may alter boundaries of wards.

But notice of intended alteration to be given.

VII. Three Councillors shall be elected for each ward, in manner hereinafter mentioned.

Three councillors to be elected for each ward.

VIII. 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 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.

Who qualified to vote at elections.

Existing assessment roll to be taken as framed under this Act.

IX. 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.

X. 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

Who may be elected councillor.

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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 shall be deemed a candidate.

XI. 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.

Names of candidates to be published.

XII. 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.

Annual election of councillors.

XIII. On the second Tuesday in the month of December in every year, an election shall take place for Councillors for the said municipality.

How poll to be taken.

XIV. 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.

When poll shall not be necessary.

Mayor or town clerk to act as returning officer.

Candidate may appoint scrutineer.

XV. Every candidate may, if he think fit, appoint a scrutineer to see that the votes are fairly taken and recorded.

XVI. The election shall take place in the following manner: Every ratepayer qualified as aforesaid may vote for any candidate for his ward, not being more than the number to be elected for the ward, by delivering to the polling officer a voting paper, containing the Christian and surname of the candidate or candidates, and signed by the person voting, or by the polling officer at his request, and stating his place of abode and description.

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Mode of election.

XVII. The polling officer shall receive such voting paper, and shall register each vote.

Polling officer to receive and register votes.

XVIII. 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.

Duration of poll.

XIX. No inquiry shall, at any election, be permitted to be made as to the right of any person to vote, except as follows,—that is to say the polling officer may, of himself, or at the request of any qualified householder, put to any voter the following questions, or either of them, and no other:

Certain questions may be put to voter.

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?

XX. 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.

Penalty for false answers.

XXI. At the close of the election, the returning officer shall ascertain the number of votes given for each candidate; and so many candidates, being equal to the number to be chosen, as shall have the greatest number of votes shall be declared by the returning officer to be duly elected.

Returning officer to declare result of election.

XXII. 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

Polling officer to transmit voting papers to returning officer, who shall declare candidates elected.



- No. 14—1868.
- Names of candidates elected, with numbers of wards for which elected, to be published.
- When first-elected councillors to enter upon office.
- When and how to vacate office.
- How when votes are equal.
- What to constitute vacancy.
- Council to appoint auditors.
- 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 herein-after in the seventy-fifth section set forth.
- XXIII. 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.
- XXIV. 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 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.
- XXV. 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.
- XXVI. 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. No. 14—1868.

XXVII. No person shall be eligible as an Auditor who shall be a Councillor, Treasurer, Clerk, or other Officer of the Municipality. Who disqualified from being auditor.

XXVIII. 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 vacancy.

XXIX. 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. How in case of equality of votes at election of councillor.

XXX. 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. Election of mayor for first year.

XXXI. 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 the twenty-fourth section, 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. How to be elected in after years.

XXXII. 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. Commencement and duration of office.

XXXII. 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. How when votes are equal.

XXXII. 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. Mayor may resign office.

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When mayor shall be deemed to have vacated office.

XXXIII. 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.

XXXIV. 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.

XXXV. The Council shall have power and authority to do the following acts: To make and keep in repair the roads, streets, dams, sewers, drains, and bridges within the limits of the Municipality, to excavate, construct, and lay watercourses, water-pipes, conduits, sluices, dams, reservoirs, aqueducts, and other works for supplying the Municipality with water, and to keep the same in repair or to grant leave to any person or company of persons to lay down pipes or to execute any other like works; to take order for the prevention and extinguishment of fires, and for that purpose to provide and keep fire engines with pipes and utensils; to order, establish, alter, or remove markets, and to have or purchase any land, and to erect or purchase and keep in repair any building for the same; to assize weights and measures and appoint an officer for that purpose; to grant permits and licences, and to levy tolls and dues as hereinafter provided; to regulate the time and place for slaughtering cattle, and the state and con-

dition 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 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.

XXXVI. 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.

XXXVII. 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.

XXXVIII. 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.

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Penalties for contra-  
vening regulations  
limited.

XXXIX. 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.

All property vested  
in existing council,  
vested in council  
elected under this  
Act.

XL. 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.

Council may sell  
lands with sanction  
of Governor.

XLI. 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 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 not-

Notice of intention  
to apply for Gov-  
ernor's sanction to be  
given.

Lands may be sold  
subject to servitudes.

withstanding: Provided, further, that the said Council may, with such consent as aforesaid, alienate any of the land or property aforesaid in exchange for other land or property, but such Council shall not, except with such consent, alienate any such land or property; and the provisions of this section in regard to the notice to be given before applying for a consent to sell shall extend to any application for a consent to an exchange.

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Council may exchange lands.

XLII. 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.

Council may, with consent of Governor, raise loans on mortgage or by debentures.

But notice to be given of such intention.

Council to execute mortgage of property on which debentures shall be charged.

XLIII. The sum of money to be raised under the last preceding section in any one year, reckoned from the 1st day of January till the 31st 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

Extent to which loans may be raised.

But mortgages or debentures issued not affected by limit being exceeded.

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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.

Council may raise loans upon security of rates.

XLIV. 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 not to exceed £12,000.

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.

Mortgages, how to be executed.

XLV. Every mortgage aforesaid or power of attorney for authorizing 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.

Council may enter into fresh loan to pay off loans becoming payable without obtaining Governor's sanction.

XLVI. 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 authorized and empowered to secure 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:

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Provision for loans contracted previous to passing of this Act.

XLVII. 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.

Mortgage in favour of South African Loan and Investment Company declared valid.

XLVIII. 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

Council may grant one or more mortgages for paying off loan of above company.



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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 mortgages 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.

Mode of leasing and conditions of lease.

Mines and quarries.

Lessee not to sub-let without sanction of council.

Council may purchase or hire lands,

XLIX. 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-performance of covenants.

L. The Council may, by public sale or tender, lease the privilege of working any mines or quarries belonging to the corporation.

LI. 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.

LII. 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 authorized 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

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buildings, or materials for public improvements.

How where parties disagree as to terms of sale or hire.

Arbitration may be referred to.

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second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said corporation by the Town Clerk for the time being, and by the person or persons claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators, in case of a difference of opinion, to call in an umpire whose decision shall be final; and the award of such arbitrators or umpire, as the case may be, shall be made a rule of the Supreme Court of this Colony, or of the Court of the Eastern Districts, and shall be binding and conclusive, and may be pleaded in bar to any action or proceeding at law brought for, or on account of, the same subject-matter. And in case such person as aforesaid, claiming such recompense or compensation, shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said Council, and it is hereby authorized 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 authorized 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 where owner  
of property neglects  
or refuses to name  
arbitrator.

How if owner of pro-  
perty be absent or  
not discoverable.

LIII. 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 authorized, 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 authorized 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, 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 what-

Value to be paid into  
Guardians' Fund.

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ever sum such person shall have valued the land, buildings, materials, springs, streams, or other supplies of water in question at, into the Guardians' 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 authorized 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.

All questions to be decided by majority of votes.

LIV. All acts hereby authorized 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.

Sections thirty-six and sixty-four not affected.

Ordinary meetings of council.

LV. 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.

Special meetings.

LVI. 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.

Who to preside.

LVII. 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.

Chairman to have casting vote.

LVIII. In all cases of an equality of votes, the

Mayor or chairman shall have a second or casting vote.

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LIX. 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.

LX. It shall be lawful for the Council to appoint, out of their own body, such and so many committees, either of a general or special nature, and consisting of such number of members as may seem fit, for any purpose which, in the judgment of the Council, would be better managed by means of a committee: Provided, always, that the proceedings of every such committee shall be submitted to the Council for its approval. The Mayor to be *ex officio* member of all such committees.

Appointment of committees.

Mayor *ex officio* a member.

LXI. 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 and removal of officers.

LXII. 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.

Appointment of street-keepers, policemen, &c.

LXIII. For the purpose of raising the means for making new roads, streets, market-places, bridges, drains, sewers, watercourses, reservoirs, aqueducts,

Landlords' rate to be levied.

No. 14—1868.

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.

LXIV. 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 shall be deemed necessary and reasonable, and shall be authorized 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

Tenant's rate.

No rates to be levied unless fourteen members shall be present.

Certain property not rateable.

no tenants' rate or assessment shall be imposed upon unoccupied land.

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LXV. 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.

LXVI. 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.

LXVII. In order to ascertain the annual value or rental of the rateable property within the Municipality—

How tenants' rate in to be assessed.



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pality 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 ratepapers, 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 pro-

Assessment roll to be open for public inspection.

visions of the sixty-sixth section of this Act shall apply to the hearing and deciding upon objections against such roll.

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LXVIII. 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 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' rates 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.

Estimates to be published. More rates than one may be assessed.

But under certain limitations.

Separate accounts of expenditure to be kept.

Rates to be charged on property.

LXIX. 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

Collection and recovery of rates.

No. 14—1868.

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 not 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.

Owner or occupier may be sued together or separately.

LXX. In case by reason of the nonpayment 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 authorized, 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 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.

Owner or occupier may recover, one from the other, landlords' or tenants' rate.

Statement of rates in arrear to be published annually.

LXXI. 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.

LXXII. 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 nonpayment 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.

LXXIII. No toll shall be payable by any officer Who exempt from tolls. 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.

LXXIV. 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. Treasurer to furnish books for inspection of auditors. Annual balance sheet to be published.

LXXV. 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 notices to be published.

LXXVI. All fines or penalties imposed by this How fines and penal-

No. 14—1868.  
 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 later than three months from and after the date of the act or omission upon which such prosecution shall be grounded.

Storing of gun- powder, &c. LXXVII. 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. LXXVIII. 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. LXXIX. 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 1861.

Mayor and councilors substituted for municipal commissioners in management of Provincial Hospital and Grey Institute. LXXX. 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 Council-

lors 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. 14—1868.

No. 15—1868.] AN ACT [Sept. 2, 1868.

For the Encouragement of the Breeding of Horses.

**W**HEREAS 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 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:

I. 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

Preamble.

Governor may under certain conditions grant certain lands to the King William's Town Stock and Produce Company.

No. 15—1868.

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.

II. 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.

III. 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 dépôt 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.

IV. 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 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.] AN ACT [Sept. 2, 1868.

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.

**W**HEREAS His Honour Colonel John Hare, C.B. Preamble. 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



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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 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.

I. 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

And commissioners to re-transfer to consistency.

Unless otherwise agreed upon.

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 last-mentioned in the said agreement, or any of them, instead of first transferring the same and afterwards obtaining re-transfer thereof.

II. 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.

Who to execute power of attorney to effect transfer.

III. The Consistory for the time being of the Dutch Reformed Church in Adelaide shall be competent, by that name, to transfer the land hereby authorized to be transferred, notwithstanding that the grants aforesaid were made to such Consistory by other names or designations.

Consistory competent to give transfer.

IV. No transfer made under the authority of this Act by the 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.

Transfer duty not chargeable.

V. 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.

Servitudes not affected.

No. 16—1868.

## 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.

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No. 17—1868.] AN ACT [Sept. 2, 1868.

To Continue to the end of 1869 the Act No. 10 of  
1864.

Preamble.

WHEREAS it is expedient that the provisions of an Act passed in the Session of Parliament holden in the year 1864, numbered 10, and entitled "An Act to provide for the Construction and Maintenance of the Main Roads of the Colony," and continued by subsequent Acts, should be further continued until the 31st December, 1869: Be it enacted by the Governor of the Cape of Good Hope,

with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :

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I. The provisions of the Act No. 10 of the year 1864 shall, except any of the same which have been repealed by any subsequent Act, be continued until the 31st day of December, 1869.

Road Act of 1864 continued.

No. 18—1868.] AN ACT [Sept. 2, 1868.

To provide for the Management of the Docks in Table Bay.

WHEREAS by the Acts No. 20 of the year 1858, Preamble.  
No. 6 of the year 1860, and No. 16 of the year 1861, provision was made for the construction of a breakwater and of docks in Table Bay : And whereas, by reason of the approaching completion of one of the said docks, it has become necessary to make provision for the regulation of the use of the said dock, and of the trade of the harbour of Table Bay : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :

I. The management of any dock that may be opened for public use in Table Bay, and of everything appertaining thereto, shall, subject to the provisions hereinafter contained, be vested in the Board of Commissioners appointed in conformity with the Act No. 6 of the year 1860 for the time being, which board shall continue in existence for that purpose, and the powers of appointment in the said Act contained shall be also continued.

Management of docks vested in commissioners.

II. The Governor shall, notwithstanding anything in the said Act contained, have the power to remove any of such Commissioners from time to time by proclamation to be published in the Government Gazette ; and if any Commissioner shall become insolvent or assign his estate for the benefit of his creditors, then the office of such Commissioner shall become vacant, and another Commissioner shall be appointed in his room ; and no Commissioner shall

Governor may remove commissioner.

How commissioner shall vacate office.

Commissioner not to

No. 18—1868.

vote in questions of personal interest.

vote on any question in which he shall have any personal pecuniary interest, directly or indirectly, under a penalty not exceeding the sum of one hundred pounds.

Goods to be landed and shipped at dock only.

III. Save as is hereinafter excepted, all goods that may be brought into Table Bay for importation from any port within or beyond the limits of the Colony, and all goods intended for exportation from Table Bay to any port within or beyond such limits shall be landed or shipped, as the case may be, at the dock in the preceding section mentioned, and at no other place in the said bay. But it shall be lawful for the Collector of Customs to grant permission, on such terms as he may think fit, for the landing or shipping of any such goods at some other place in the said bay.

Unless under permission of Collector of Customs.

Goods landed or shipped in contravention of preceding section liable to forfeiture.

IV. All goods which may be landed or shipped otherwise than in conformity with the preceding section shall be deemed and taken to have been illegally landed or shipped, and may be seized by any officer of the Customs, or by any person thereto authorized in writing by the Commissioners in the first section mentioned, and shall be forfeited. And all such goods shall be dealt with in like manner as by the Ordinance No. 6 of the year 1853 it is directed that goods forfeited thereunder shall be dealt with.

Goods to be landed and shipped by persons employed by commissioners.

V. The landing of all goods brought to the dock for importation, and the shipment of all goods brought thither for exportation, shall be performed by persons employed under the authority of the Commissioners in the first section hereof mentioned. And such Commissioners shall be entitled to demand and receive from the importers or exporters, as the case may be, of such goods, such sums as may be appointed for the same by the said Commissioners, and approved by the Governor from time to time, and published in the Government Gazette.

Charges for landing and shipping.

Commissioners not bound to convey goods to or from vessels outside dock.

VI. Nothing in the preceding section contained shall be construed to impose upon the said Commissioners the duty of conveying any goods intended for importation into the dock from any vessel which may be anchored outside of the same, or the duty of

conveying any goods intended for exportation from the dock to any vessel so anchored; but such conveyance of any goods shall be performed by and at the cost of the importer or exporter thereof, respectively.

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VII. It shall be lawful for the said Commissioners to demand and receive in respect of all goods, stores, and coals that may be transhipped from one vessel to another in the dock or in Table Bay, wharfage dues at the rate of two shillings for every ton or fraction of a ton of such goods, stores, and coals.

Wharfage dues chargeable on transhipment of goods.

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

Commissioners may charge warehouse rent.

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

Dock dues chargeable.

X. It shall be lawful for the said Commissioners to employ for the superintendence of the said dock, and for the conduct of the business thereof, so many officers, and to pay to them such salaries as may be recommended by the said Commissioners, and approved by the Governor. And it shall not be lawful for any officer who may be employed under the authority of this section to be directly or indirectly engaged or concerned in other business or trade whatsoever.

Employment of officers.

Officers not to engage in business or trade.

XI. All sums now payable by law to the said Commissioners as wharfage dues, and all sums accruing under the provisions of this Act, may by them be applied to the payment of interest on the amount borrowed or to be borrowed for the construction of the breakwater and dock, and other works connected therewith, and to the payment of all charges that may be incurred for the maintenance

Application of wharfage dues and of revenues under this Act.

No. 18—1868.

Annual accounts to be laid before Parliament.

and repair of the same, or for carrying into effect the provisions of this Act. And a full account of all receipts and payments by the said Commissioners shall be by them rendered at the close of each year to the Governor, to be laid before Parliament at the next annual session thereof.

Commissioners may frame and alter regulations.

XII. Subject to the provisions hereinbefore contained, it shall be lawful for the said Commissioners, with the approval of the Governor, to make all necessary regulations for the management of the said dock and of the landing, shipping, transhipping, and warehousing of goods, and for the proper control of all vessels entering the same; and from time to time, as to them may appear proper, and with the like approval, to alter and amend any such regulations.

Regulations to be published.

And all such regulations shall be published in the Government Gazette, and any person violating the same shall be liable, on conviction, to a fine not exceeding five hundred pounds, or to imprisonment, with or without hard labour, for any period not exceeding six months, unless the fine be sooner paid.

Penalty for violating regulations.

Commencement and duration of Act.

XIII. This Act shall take effect on such day as shall be appointed by the Governor by proclamation to be published in the Government Gazette, and remain in force until the 31st day of December, 1872.

No. 19—1868.] AN ACT [Sept. 2, 1868.

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 Regulations of the Customs in the Colony of the Cape of Good Hope.'"

Preamble.

WHEREAS it is expedient to confine the benefits of the said Act, No. 8 of 1855, to ships proceeding to foreign parts not upon the coast of Africa bounded by the Atlantic or the Indian Ocean, for the use of which foreign-going ships such benefits were originally intended: Be it enacted by the Governor

of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :

No. 19—1868.

I. The benefits of the said Act shall not extend to any vessel engaged in a coasting voyage along the shores of this Colony, notwithstanding that the same may be bound for a port on the coast of Africa beyond the limits of the Colony; and for the purposes of this Act any voyage shall be deemed a coasting voyage in which the voyage shall be from any one point on that part of the coast of Africa bounded either by the Atlantic or Indian Ocean to any other point on the said coast bounded by either of the said oceans, between which points any portion of the coast of this Colony shall intervene.

Benefits of Act No. 8, 1855, as regards shipping of bonded goods, not to extend to vessels proceeding on coasting voyage within or beyond colonial limits.

No. 20—1868.] AN ACT [Sept. 2, 1868.

To Repeal Act No. 5 of 1867, and to make provision relating to Contagious and Infectious Diseases affecting Cattle, Sheep, or other Domestic Animals.

WHEREAS it is expedient that an Act numbered 5 of 1867 should be repealed, and that provision should be made in future for preventing the introduction into this Colony of contagious and infectious diseases affecting cattle, sheep, or other domestic animals: 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.

I. The said Act, No. 5 of 1867, shall be, and the same is hereby repealed.

Act No. 5, 1867, repealed.

II. If at any time it shall seem expedient, by reason of the known or supposed prevalence in any place beyond this Colony of any contagious or infectious disease, or any disease supposed to be contagious or infectious, affecting cattle, sheep, horses, or any other domestic animals, to prohibit the

Governor may by proclamation prohibit importation of cattle, sheep, horses, &c.

III.

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No. 20—1868.

importation or introduction into this Colony for any time, from any place or places, of any such cattle, sheep, horses, or other domestic animals, it shall be lawful for the Governor, with the advice of the Executive Council, to make proclamation, which shall be published in the Government Gazette, declaring that during such time as shall be named in such proclamation it shall not be lawful to land at any port or place in this Colony, from any ship, vessel, or boat, or otherwise to introduce into this Colony, any such cattle, or any sheep, or horse, or other domestic animal, or any animal of all or any of such denominations, and that the master of any ship or vessel, and the owner of any boats, who shall land or permit or suffer to be landed from such ship or vessel, or boat, and every other person who shall otherwise introduce into this Colony, contrary to the prohibition in such proclamation contained, any such cattle, sheep, horse, or other domestic animal, shall, for every animal so landed or otherwise introduced into this Colony contrary to such prohibition, forfeit, upon conviction, any sum not exceeding four hundred pounds sterling, and in default of payment thereof may be imprisoned, with or without hard labour, for any term not exceeding twelve months, unless the fine be sooner paid.

Penalty for landing animal contrary to such prohibition.

Proclamation to have force of law.

III. From and after the publication of such proclamation the prohibitions and penalties contained in the same shall be as binding and validly imposed as if the same were imposed and enacted directly by this Act.

Governor may permit landing of animals at Robben Island or elsewhere.

IV. Notwithstanding the general restrictions hereinbefore enacted, it shall be lawful for the Governor, with the advice of the Executive Council, if it shall seem expedient, by any such proclamation as aforesaid, to permit the landing of such cattle, sheep, horses, or other animals as aforesaid upon Robben Island, or any other island to be named in such proclamation, and to give order for the keeping of such animals separate and apart from any other animals; and if any such animals shall have been so kept on any such island as aforesaid, separate and apart from any others afterwards imported, for a

Governor may, after certain period, and certain restrictions, permit landing of animals on mainland.

period not less than three months, and shall during such time have shown no symptom of any contagious or infectious disease, or disease supposed to be contagious or infectious, then it shall be lawful for the Governor to give under his hand permission that such specified animals as to him shall seem expedient may, under such restrictions, if any, as to him shall seem expedient, which shall also be under the hand of the Governor, be, and the same may thereupon, subject to such restrictions, if any, be landed from such island on the mainland of this Colony, without incurring any penalty under this Act or any proclamation to be published in pursuance thereof; but if any of the restrictions deemed necessary by the Governor to be coupled with such permission shall be evaded, broken, or neglected, every person knowingly evading, breaking, or neglecting the same shall, on conviction, forfeit any sum not exceeding one hundred pounds sterling, and in default of payment thereof may be imprisoned, with or without hard labour, for any term not exceeding six months, unless the fine be sooner paid.

Penalty for evading or breaking restrictions imposed.

V. No person who shall have been committed for trial for any offence hereinbefore mentioned shall, pending such trial, be released from custody unless he shall give good and sufficient bail that he will duly appear to take his trial for such offence in any competent court, and that he will pay and satisfy any fine which may by such court be imposed upon him for such offence.

Sufficient bail to be taken before release of any person committed under this Act.

VI. It shall be the duty of the port captain, harbour master, or other officer of Government who shall first board any ship or vessel arriving at any of the ports of this Colony pending the time limited in any such proclamation as aforesaid for the continuance of such prohibitions as aforesaid as may be therein contained, to ask the master of such ship or vessel whether he has on board any animal whereof the importation shall by such proclamation be prohibited, mentioning such animals by their denominations; and should the said master reply in the affirmative, the port captain, harbour master, or other officer shall inform the said master of this Act

Duty of officer boarding vessel to inform master of existence of Act and proclamation under it.

No. 20—1868.

and the said proclamation, and deliver to him a copy of the same respectively.

Indemnity to owners of animals prohibited to be landed under certain circumstances.

VII. If during the time within which any such prohibition as aforesaid shall be in force there shall arrive in any of the ports of this Colony any of the animals whereof the importation shall be so prohibited as aforesaid, which shall be consigned to any place in this Colony, and which shall have been shipped for this Colony after the publication of this Act in the London Gazette and before the publication of any such proclamation as aforesaid in the London Gazette, it shall in such case be lawful for the Governor, and he is hereby authorized, to indemnify, from and out of the public revenue, the owner of every such animal by paying to him or his agent the first cost of every such animal, together with freight, insurance, and any other charge which shall have been reasonably and properly incurred upon or about such animal, whereupon such animal shall become the property of the Queen in her colonial revenue; but it shall not be incumbent on any importer of such animal to accept such terms if he shall be willing to submit to such conditions as may be proposed to him by the Colonial Government with reference to landing such animal on Robben Island, or such other island as the Governor shall appoint, and to providing for the care and maintenance of such animal separate and apart from other animals, save such as shall have been imported therewith, at the risk of the owner, for such time as may seem expedient, not being less than three months, and shall abide by such conditions and submit to such restrictions as to subsequently landing such animal upon the mainland of this Colony, and keeping the same for such time thereafter as may seem expedient, and shall be ordered by the Governor as aforesaid in that behalf: Provided, also, that no compensation shall be made in respect of any such animal as aforesaid which shall have been shipped at any time after the publication of such proclamation as aforesaid in the London Gazette, or in respect of any such animal as shall be found to be actually suffering from any contagious or infectious disease, or any disease sup-

Exceptions.

posed to be contagious or infectious, at the time at which such animal would, in the ordinary course, have been landed on the mainland of this Colony or within fourteen days thereafter : Provided, also, that it shall be lawful for the Governor to order the destruction of such infected animal, should the same at any time be landed on the mainland.

No. 20—1868.

VIII. In the interpretation of this Act, the term "master" shall include any officer in command of any ship or vessel. Interpretation term "master." of

IX. This Act may be cited for all purposes as the "Cattle Diseases Act of 1868." Short title.

No. 21.—1868.] AN ACT [Sept. 2, 1868.

For further facilitating the Naturalization of certain Aliens.

**W**HEREAS by an Ordinance numbered 2 of the year 1865, given at King William's Town on the 27th day of June, 1865, entitled "An Ordinance to facilitate the Naturalization of certain Aliens," it was intended to facilitate the naturalization of certain German immigrants and members of the late British German Legion who have resided in these territories for several years, and who during such residence have conducted themselves well and loyally : And whereas by the operation of Act No. 3 of the year 1865, entitled "An Act to make provision for the Incorporation of British Kaffraria with the Colony of the Cape of Good Hope, and to increase the number of the Members of both Houses of Parliament of the said Colony," the said Ordinance has, to some extent, failed of its effect : And whereas it is desirable that such persons as aforesaid may be enabled, should they so desire, to obtain letters of naturalization without payment of the fee now by law required upon obtaining such letters : Be it enacted by 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.

No. 21—1868.

Governor may grant letters of naturalization, free of charge, to certain German immigrants and others.

I. The Governor is hereby authorized and empowered, if he shall think fit, to grant, under the public seal of this Colony, letters of naturalization in this Colony, free of charge, to all German immigrants and members of the late British German Legion (being aliens) who shall apply to the Governor for the same; provided the applicant shall have attained the full age of twenty-one years, shall be of good character, and shall have resided within the territory comprised in the divisions of King William's Town and East London during the five years immediately preceding the date of the aforesaid Ordinance: Provided, however, that no letters of naturalization shall be granted to any person who shall be an unrehabilitated insolvent, or who shall be of unsound mind, or who shall have been convicted and sentenced for treason, murder, arson, rape, theft, house-breaking, receiving stolen property, fraud, perjury, or forgery.

Exceptions.

Applications for letters of naturalization, how to be made.

II. Every application for letters of naturalization under this Act shall state the name, birth-place, age, occupation, and place of residence of the applicant in this Colony, and shall be supported by affidavits or other proofs, to the satisfaction of the Governor, of the truth of the allegations contained in the application.

Oath of allegiance to be taken by person obtaining letters of naturalization.

III. When and as soon as letters of naturalization shall have been obtained by any alien under this Act, he shall be bound to take and subscribe the oath of allegiance to Her Majesty, which oath any judge of the Supreme Court, or any resident magistrate or justice of the peace within this Colony, is hereby authorized to administer, and to endorse on the letters of naturalization, and attest at the time of such alien's taking such oath, the fact of such alien's having taken the same; and upon taking such oath, and after such endorsement shall have been duly made and attested as aforesaid, such alien shall, to all intents and purposes whatsoever, be deemed and taken to be naturalized in this Colony, and to be in the same plight and condition in all respects as if he had been born therein.

Oath to be recorded

IV. The magistrate or justice of the peace before

whom any oath of allegiance is taken as aforesaid shall forthwith transmit the same to the Master of the Supreme Court, to be by him preserved of record; and the Master, as soon as he shall receive the same, or, when taken before a judge, forthwith thereafter, shall, by a notice to be published in the Government Gazette, announce that the said oath has been deposited in his office, pursuant to this Act.

No. 21—1868.  
by Master of Supreme Court, and public notice thereof given.

V. All letters of naturalization granted under this Act, and duly endorsed as aforesaid, shall be admissible in evidence, without proof of the signature or seal authenticating the same, and shall be *primâ facie* evidence of the person named therein being duly naturalized, and of the signature or seal authenticating the same, and of all the matters contained or recited therein, and of the official character of the person appearing to have signed the same.

Letters of naturalization admissible in evidence.

VI. If any alien applying for letters of naturalization in the manner hereinbefore described shall wilfully make any false statement in the application made by him, the rights, capacities, and privileges granted by the said letters of naturalization shall absolutely cease and determine, and he shall incur the same penalties as by law provided against persons convicted of wilful and corrupt perjury, including the disability hereinbefore enacted in the first section of this Act.

Penalties for making false statements in application.

No. 22—1868.] AN ACT [Sept. 2, 1868.

To Remove Doubts as to the intent of the Act  
No. 19 of 1867.

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:

Preamble.

No. 22—1868.

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.] AN ACT [Sept. 2, 1868.

To Amend the Act No. 12 of the Year 1867.

Preamble.

WHEREAS it appears that the rates payable under the provisions of the sixth section of the Act No. 12 of the year 1867, for licences to depasture stock on the waste lands of the Crown, are, in respect to some of the divisions of the Colony in excess of the amount fairly chargeable for the same; and it is expedient to make other provision for fixing the said 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:

Section 6 of Act No. 12, 1867, repealed.

I. The sixth section of the Act No. 12 of the year 1867 shall be and the same is hereby repealed.

Governor to fix tariff of licence fees.

II. It shall be lawful for the Governor, with the advice of the Executive Council, from time to time to prescribe by tariff the amount that shall be charged and payable in each division of the Colony, respectively, for licenses to depasture stock, to be issued under the provisions of the said Act; but no licence shall at any time be issued for grazing in any locality for an amount less than that which shall, according to the tariff for that locality, be payable for twenty head of horned cattle. And when the Governor shall be of opinion that a sufficient number of licences has already been issued, or that no licence should be issued for any particular locality, he may order that no further licences, or no licences, as may be, shall be

And may restrict number of licences to be issued.

issued for the same. In forming his opinion on the matters in this section contained, the Governor shall consult the divisional council of the division within which the lands to be depastured are situate; but it shall not be compulsory on the Governor to accept the advice of such council.

No. 23—1868.

But to consult divisional council.

No. 24—1868.] AN ACT [Sept. 2, 1868.

To Relax the Conditions of Crown Land in certain Divisions of the Colony.

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:

Preamble.

I. 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 Town and East London, shall be fixed in manner provided by the said Act No. 2 of 1860.

Payment of quitrent.

II. 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.

Condition of personal occupation cancelled.



No. 25—1868.

No. 25—1868.] AN ACT [Sept. 2, 1868.

To prevent the Spread of Contagious Diseases at the  
Military and Naval Stations of this Colony.

Preamble.

WHEREAS it is desirable to prevent, as far as  
may be, the spread of certain contagious  
diseases in the localities wherein Her Majesty's  
military and naval forces are principally located 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 :

Short title.

I. This Act may be cited as the "Contagious  
Diseases Prevention Act, 1868."

Interpretation  
terms.

II. In the construction of this Act, the term  
"contagious disease" shall be taken to mean any  
venereal disease, including Gonorrhœa. The term  
"hospital" shall be taken to mean any ward or part  
of a hospital, or any other building which may be  
appointed by the Governor to be used as a hospital,  
for the purposes of this Act.

Districts in which  
Act shall be in force.

III. The districts within which this Act shall be  
in force shall be the districts enumerated in Schedule  
No. 1, hereunto annexed, and such other districts  
as the Governor, with the advice of the Execu-  
tive Council, shall for the time being, declare by  
proclamation, to be published in the Government  
Gazette; and the limits of such districts, whether  
enumerated in the said schedule hereto, or declared  
by such proclamation as aforesaid, shall be defined  
and may be altered from time to time, with the like  
advice and by a like proclamation, to be published  
in like manner; and every such proclamation as in  
this section mentioned shall take effect from the day  
on which the same shall be published, unless some  
day from which the same shall take effect shall be  
named in such proclamation, in which case such pro-  
clamation shall take effect from the day so named.

Limits of districts to  
be defined or altered  
by proclamation.Date from which  
proclamation shall  
take effect.Governor may ap-  
point medical Inspec-  
tor for each district.

IV. It shall be lawful for the Governor to appoint  
some duly qualified medical practitioner to be medical  
inspector of contagious diseases for each of the  
districts in the preceding section mentioned; and

No. 25—1868.

every such medical inspector shall be paid such remuneration as Parliament shall from time to time sanction.

V. Within every such district every woman known or reputed to be a common prostitute shall, except as is hereinafter excepted, be liable to be inspected twice in each month, at intervals of not less than fourteen days and not exceeding sixteen days, by the medical inspector of such district, for the purpose of ascertaining whether such woman is or is not affected with any contagious disease, and every such woman shall, in the first instance, be summoned by an order, in writing or in print, or partly in one and partly in the other, signed by such medical inspector, or by an inspector or sub-inspector of police in Cape Town, or by the medical superintendent or chief officer of police in any other district, countersigned in either case by the resident magistrate of the district, to attend at such time and place as may be named in such order, for such inspection.

Prostitutes liable to inspection.

And to be summoned to attend for the purpose.

VI. If any such woman shall refuse or neglect to attend according to the tenor of such order, or if, having attended, she shall not submit to be inspected, she may be arrested by warrant of the resident magistrate within whose jurisdiction the district in which she resides or practises prostitution shall be, who shall grant a warrant for her arrest upon its being made to appear on oath that such woman is, on good grounds, supposed to be a common prostitute, and was duly served with such order as aforesaid, and neglected or refused to attend according to the tenor thereof, or, having attended, that she refused to be examined; and upon such arrest the magistrate, upon proof made to the same effect, and that such woman is a common prostitute, and after hearing what may be advanced by such woman and her witnesses to the contrary, may order such woman to be imprisoned, with or without hard labour, or with or without spare diet, for any term not exceeding one month.

How on refusal to attend or to submit to inspection.

Penalty.

VII. If any such woman shall, while undergoing any sentence of imprisonment under the preceding section, signify her readiness to submit to inspection,

How if woman signifies her willingness to submit to inspection whilst undergoing sentence.

No. 25—1868.

she shall on the first convenient occasion be released from such imprisonment, and be brought before the medical inspector for inspection in due course.

Woman found to be infected with contagious disease to be taken to hospital.

VIII. If, upon any such inspection the medical inspector shall find any such woman to be affected with contagious disease, such woman shall, if she willingly submit thereto, be taken to the proper hospital, and shall be received and detained there for medical treatment, and shall not be discharged therefrom until reported cured; and the order of such medical inspector shall be a sufficient warrant to the officers of such hospital for receiving and detaining such woman until she be reported cured.

On refusal to submit willingly may be sent to hospital under magistrate's order.

IX. If any such woman found as in the last preceding section mentioned to be affected with contagious disease shall not willingly submit to go to the hospital, she shall be arrested and detained in custody of the police, and taken as soon as may be before the resident magistrate within whose jurisdiction the district in which she resides or practises prostitution may be, who shall examine into the matter, and hear the objection of such woman, and take the evidence of the medical inspector upon oath, and shall thereupon determine the matter, and may make order that such woman shall be taken to the hospital and be there received and detained until she shall be reported cured; and such order shall be a sufficient warrant to the officers of such hospital for receiving such woman and detaining her until she shall be reported cured.

Such woman may demand further examination.

X. The resident magistrate shall, at the request of any such woman, on the examination of the matter in the last preceding section mentioned, before making the order therein mentioned, on such woman tendering the expenses necessary for the purpose, summon two medical practitioners, other than the medical inspector, one of whom may be named by such woman, to examine her, and shall, after their having examined her, take their evidence, upon oath, as to whether such woman is or is not affected with contagious disease, and shall be guided by the whole evidence on the case as to the order which he shall make.

XI. If any woman who shall have been admitted into hospital under the provisions of any of the preceding sections shall make her escape from the same before she be reported cured, or if any such woman shall refuse or neglect to conform to the regulations of such hospital during the period for which she may be lawfully detained therein, such woman shall, on conviction thereof, be liable to imprisonment, with or without hard labour, or with or without spare diet, for any term not exceeding one month; the execution of which sentence may, at the magistrate's discretion, be suspended until such woman shall be discharged from hospital as cured.

No. 25—1868.  
Penalty for escaping from hospital, or breach of hospital regulations.

XII. Every medical inspector shall keep a record, according to the form in Schedule No. 2, hereunto annexed, of the case of every woman who may be inspected by him, and such record shall at all times be open to the examination of the resident magistrate and of the chief officer of police of the district for which the same shall be kept, and of any other person who may be authorized by the Governor to examine the same.

Medical Inspector to keep record of cases.

XIII. It shall be the duty of the medical inspector, in the case of every woman who, upon inspection as aforesaid, shall be found to be free from any contagious disease, or who, after admission into hospital as aforesaid, shall be reported cured, to grant to such woman a certificate thereof according to the form in Schedule No. 3, hereunto annexed, or to the like effect, and such certificate shall state the term for which the same shall remain in force, and the time and place at which such woman shall be required to attend for the purpose of being again inspected.

Medical inspector to grant certificate where woman shall be free from disease or be cured.

XIV. If any woman other than the woman to whom a certificate under this Act shall have been granted shall be found in possession of and using the same, then, and in every such case, the woman so offending shall be liable, on conviction, to imprisonment, with or without hard labour, or with or without spare diet, for any term not exceeding one month; and every woman to whom a certificate under this Act shall have been granted who shall knowingly permit any other woman to take and use

Penalty for using false certificate.

Penalty for allowing use of false certificate.

No. 25—1868.

the same, shall, upon conviction, be liable to imprisonment, with or without hard labour, or with or without spare diet, for any term not exceeding one month.

Woman discontinuing prostitution may apply to magistrate to be relieved from periodical inspection.

XV. If any woman theretofore known as a common prostitute, and not being in hospital, shall at any time be desirous to discontinue her prostitution and to be relieved from periodical inspection as aforesaid, she may apply, in writing, to the resident magistrate within whose jurisdiction she resides or as theretofore practised prostitution, for such relief, who shall appoint a time and place for the hearing of such application, and shall cause to be served on such woman by some officer or constable of police, or some other person to be nominated by the magistrate in that behalf, a notice of such appointment.

Magistrate may grant such relief.

XVI. If, on the hearing of such application, it shall be shown to the satisfaction of the magistrate that the applicant has ceased to be a common prostitute, or if she shall enter into recognizances, with or without sufficient sureties, as to the magistrate shall seem fit, in such sum as shall to him seem sufficient for good behaviour during six calendar months thereafter, such magistrate may order that she be relieved from liability to periodical inspection as aforesaid, and she shall, so long as she shall continue of good behaviour, be so relieved accordingly.

Recognizance entered into for good conduct forfeited on violation of its conditions.

XVII. Every such recognizance shall be deemed to be forfeited if at any time during the term for which it is entered into the woman to whom it relates shall be within the limits of any district within which this Act shall be in force, in any public street, thoroughfare, or place for the purpose of prostitution, otherwise within such limits shall conduct herself as a common prostitute; and if after the expiration of the term for which such recognizance shall be in force such woman shall, within any such limits as aforesaid, be in any public street, thoroughfare, or place for the purposes of prostitution, or otherwise conduct herself as a common prostitute, she shall be liable to be dealt with, under the preceding provisions of this Act, as if no such order of relief had been granted, and such order shall be deemed to be cancelled.

Woman resuming prostitution after term of her recognizances to come under provisions of this Act.

XVIII. If any person being the owner or occupier of any house, room, or place within any district in which this Act shall be in force, or being a manager or assistant in the management thereof, knowing or having reasonable cause to believe any common prostitute to have a contagious disease, shall induce or suffer such prostitute to resort to or be in such house, room, or place for the purpose of prostitution, every such person shall be liable, on conviction, to a penalty not exceeding twenty-five pounds sterling, or to be imprisoned, with or without hard labour, or with or without spare diet, for any period not exceeding three months.

No. 25—1868.

Penalty on persons harbouring or allowing prostitutes having contagious disease to resort to their houses for purposes of prostitution.

XIX. Every resident magistrate may, in entertaining any case or making any investigation under this Act, if he shall think fit, direct that the courtroom or other room in which he may sit for such purpose shall be cleared of all persons not actually concerned in the case; and nothing herein contained shall limit any other power that the magistrate may have of ordering any person or persons out of court.

Magistrate may direct courtroom to be cleared during investigation.

XX. This Act shall take effect in each of the districts named in Schedule No. 1, hereto annexed, on such day as shall by the Governor, by proclamation to be published in the Government Gazette, be appointed for the same, respectively.

Commencement of Act.

XXI. Nothing in this Act contained shall have the effect of legalizing prostitution or of exempting any person engaged in or practising the same from such pains and penalties as may by the existing laws of this Colony attach thereto.

Act not to legalize prostitution or exempt from existing penalties.

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SCHEDULE No. 1.

CONTAGIOUS DISEASES ACT, 1868.

1. The District of Cape Town.
2. The District of Simon's Town.
3. The District of Port Elizabeth.
4. The District of Graham's Town.
5. The District of King William's Town.

## SCHEDULE No. 2.

## RECORD OF EXAMINATION.

DATE.	Record No.	DATE.		Result, whether, Certificate renewed or Bearer sent to Hospital.			If last Certificate returned.	REMARKS, Stating the nature of the Case, &c.
		Last Examination.	Next due.	Clean.	Hospital.	Refused.		

## SCHEDULE No. 3.

HEALTH CERTIFICATE.—(ACT —, 18—).—NOT TRANSFERABLE.

This is to certify that A. B., native of ———, residing at ———, height — feet — inches, eyes ———, hair ———, complexion ———, aged —, register number, —, was medically inspected this — day of ———, 18—, and that she was then free from contagious disease.

This certificate is in force until the — day of ———, 18— and no longer.

D. E.,  
Medical Inspector.

(Reverse.)

TO A. B.

## NOTICE.

Take notice that you, A. B., are hereby required to attend on the — day of ———, 18—, at the ———, at — o'clock, for medical inspection, prior to renewal of this certificate.

## CAUTION.

Any person except the abovementioned A. B. making any use of this certificate will be liable to imprisonment, with or without hard labour, or with or without spare diet, for any period not exceeding one month; and the said A. B., knowingly permitting any other woman to take and use the same, will also be liable to imprisonment, with or without hard labour, or with or without spare diet, for any period not exceeding one month.

No. 26—1868.] AN ACT [Sept. 2, 1868.

No. 26—1868.

For raising the further Sum of Thirty Thousand Pounds for the Completion of the Dock in Table Bay.

**W**HEREAS it appears that a further sum of Preamble. thirty thousand pounds will be required for increasing the depth of the dock in Table Bay and for the construction of the buildings required for the transaction of the business of the port, and for the purchase and erection of a patent slip: And whereas it is expedient that the said sum of thirty thousand pounds should be raised for 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:

I. It shall be lawful for the Governor to raise and take up upon debentures such sum or sums of money as from time to time shall be necessary, not exceeding, in the whole, the sum of thirty thousand pounds; and all sums to be so raised shall be applied to the purposes in the preamble to this Act mentioned. Loan of £30,000 authorized.

II. The application as aforesaid of all sums to be raised under the preceding section shall be entrusted to the Commissioners appointed or to be appointed under the provisions of the Act No. 6 of the year 1860. And such Commissioners shall, in respect to such application, have and exercise all the powers conferred upon them by the said Act. Application of moneys raised entrusted to commissioners.

III. Such debentures shall be issued for sums not exceeding one hundred pounds nor less than fifty pounds each, and shall bear date the 15th October, 1868, and shall be signed by the Colonial Secretary for the time being, by command of the Governor, and countersigned by the Treasurer and Auditor of the Colony, and shall bear interest at the rate of five pounds per cent. per annum until the 15th October, 1872. Sums for which debentures may be issued, by whom signed, and rate of interest.

IV. Such debentures shall be payable at par, at the Treasury in Cape Town on the 15th October, 1872, and after that date shall cease to bear interest. Debentures where and when payable.

V. Such debentures, together with the interest Debentures and in-



- No. 26—1868.  
 terest charged on colonial revenue.  
 Power to buy up and cancel debentures.
- from time to time to accrue thereon, shall be and the same are hereby charged upon and made payable out of the general revenue of this Colony. And the Governor shall from time to time pay such interest, and may also out of such revenue from time to time buy up and cancel such debentures.
- Debentures and interest charged in first instance on harbour revenues.
- VI. Notwithstanding that the debentures to be issued as aforesaid, together with the interest thereon, are hereby charged upon the general revenue of this Colony, the same shall be and are hereby made a charge, in the first instance, upon the dues of wharfage and cranage and all other revenues accruing to the Commissioners aforesaid appointed or to be appointed under the provisions of the Act No. 20 of the year 1858, and the Act No. 6 of the year 1860, and the Commissioners aforesaid shall out of such revenues indemnify the Governor for all moneys paid out of the general revenue of the Colony on account of such debentures, or of any interest thereon.
- Interest when and where payable.
- VII. Interest shall be payable on the said debentures, at the Office of the Treasury in Cape Town, on the 15th April or the 15th October next succeeding the issue thereof, and thereafter on the 15th of April and 15th of October in each year, until the 15th of October, 1872, or until such debentures shall be redeemed and cancelled as aforesaid.
- Transfer of debentures.
- VIII. All such debentures shall be transferable by delivery without endorsement, and payment of principal or interest due upon any such debenture to any person presenting the same shall be a good discharge for such principal or interest, respectively, to the Government, who shall not be bound to make any inquiry as to the title of such person to the debenture so presented.
- Disposal of debentures.
- IX. All such debentures shall be put up for public tender, and may be disposed of for the best terms which can be obtained, not being less than par. 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 such tenders, as circumstances may make expedient.

No. 27—1868.] AN ACT [Sept. 2, 1868.

No. 27—1868.

For the Better Protection of Her Majesty's Subjects  
on the Northern Frontier of this Colony.

**WHEREAS** it is expedient that better provision Preamble.  
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:

I. It shall be lawful for the Governor, by pro-  
clamation 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.

Formation of new  
district on northern  
border sanctioned.

II. It shall be lawful for the Governor to establish  
within such district such court as hereinafter is  
described.

Governor may estab-  
lish court for such  
district.

III. 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 here-  
inafter 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 in-  
capacity 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,

Governor may ap-  
point officer to exer-  
cise jurisdiction with-  
in such district and  
preside in such court.

No 27—1868.

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.

IV. 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 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.

V. 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.

VI. 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.

VII. 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 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.

Record of proceedings to be taken.

VIII. 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.

Females not liable to corporal punishment or to labour in public place.

IX. Every person upon trial on any criminal charge in the court of such officer as aforesaid shall

Accused person may make defence by counsel, attorney, or agent.

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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.

X. 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.

XI. 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.

XII. In any case in which the copy of the proceedings shall have been forwarded by any resident magistrate under the last foregoing section to the Registrar of the Supreme Court, the provisions of the forty-eight 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.

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Sections forty-eight and forty-nine of Resident Magistrates' Courts Act, 1856, to apply in regard to proceedings forwarded for revision.

XIII. 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.

XIV. 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

Power of summoning and compelling attendance of witness.

Witnesses not of right entitled to travelling expenses or maintenance.

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expenses or maintenance in respect of such attendance.

Contempts of court, what, and how punishable.

XV. 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 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.

XVI. The records of such court shall be kept in such place as the Governor shall from time to time order.

Rules in resident magistrate's courts to apply.

XVII. 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.

XVIII. 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.

XIX. This Act may be cited as the "Border Protection Act, 1868."

## SCHEDULE A.

No. 27—1868.

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.] AN ACT [Sept. 2, 1868.

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.

**W**HEREAS by the Act No. 20 of 1867, entitled Preamble. "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," the said sum of two hundred and twenty-two thousand three hundred and one pounds eleven shillings and ten pence was charged upon the revenue of this Colony, for the service of the Government of the Colony, until the 30th of June, 1868: And whereas it has become expedient, in the present session of Parliament, to take into consideration the requirements of the said service for the entire of the year 1868, as well as that portion for which provision was made by the said Act as the remaining portion thereof: And whereas it will be expedient, in order to prevent confusion, to repeal the said Act, No. 20 of 1867, and to provide by one Act for the service of the year 1868: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. The Act aforesaid, No. 20 of 1867, is hereby Act 20, 1867, repealed. repealed.

II. The public revenue of the Colony is hereby Expenditure, 1868. charged with a sum not exceeding four hundred and



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twenty-three thousand seven hundred and sixty-six pounds twelve shillings and nine pence for the service of the year 1868, in addition to the sums already by law provided for such service, which sum of four hundred and twenty-three thousand seven hundred and sixty-six pounds twelve shillings and nine pence shall be applied in the manner following, that is to say :

- Civil Establishments.** For the expenditure of the Civil Establishments, a sum not exceeding sixty-six thousand two hundred and fifty-nine pounds twelve shillings and seven pence.
- Judicial Establishments.** For the expenditure of the Judicial Establishments, a sum not exceeding thirty-eight thousand nine hundred and sixty-nine pounds.
- Educational Establishments.** For the expenditure of the Educational Establishments, a sum not exceeding twenty-two thousand one hundred and eighty-three pounds.
- Medical Establishments.** For the expenditure of the Medical Establishments, a sum not exceeding thirty-four thousand six hundred and sixty-eight pounds seventeen shillings and four pence.
- Police and Gaol Establishments.** For the expenditure of the Police and Gaol Establishments, a sum not exceeding fifty-eight thousand five hundred and twenty-one pounds and ten shillings.
- Border Department (Aborigines).** For the expenditure on account of the Border Department (Aborigines), a sum not exceeding fifty-seven thousand four hundred and ninety pounds thirteen shillings and five pence.
- Pensions and Retired Allowances.** For the expenditure on account of Pensions and Retired Allowances, a sum not exceeding six thousand and thirty pounds nine shillings and two pence.
- Charitable Allowances.** For the expenditure on account of Charitable Allowances and Gratuities, a sum not exceeding two hundred pounds.
- Works and Buildings.** For the expenditure on account of Works and Buildings, a sum not exceeding twelve thousand two hundred and sixty-one pounds four shillings and five pence.
- Roads and Bridges, including Convict Department.** For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding sixty thousand five hundred and three pounds eighteen shillings and seven pence.

For the expenditure on account of Miscellaneous Services, a sum not exceeding forty-seven thousand three hundred and six pounds seven shillings and three pence. No. 28, 1868. Miscellaneous Services.

For the expenditure on account of Interest, a sum not exceeding eight thousand eight hundred and seventy-two pounds. Interest.

For the expenditure on account of Colonial Allowances to Military Officers, a sum not exceeding ten thousand pounds. Colonial Allowances. Military

For the expenditure on account of Loans to be repaid, a sum not exceeding five hundred pounds. Repayment of Loans.

Amounting, in the whole, to four hundred and twenty-three thousand seven hundred and sixty-six pounds twelve shillings and nine pence, as detailed in the schedule hereunto annexed, marked A and B respectively. Total.

The said aids and supplies shall not be issued or applied for any use, intent, or purpose other than the particular services for which the said amounts have been granted respectively by this Act. Application of Supplies.

No. 29—1868.] AN ACT [Sept. 2, 1868.

For the Organization and Regulation of a Police Force for the Northern Border of the Colony.

**W**HEREAS 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: Preamble.

I. It shall be lawful for the Governor to cause such a sufficient number of fit men as Parliament shall from time to time provide 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 Police force to be embodied.

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preventing robberies and other crimes, and apprehending offenders against the peace.

Governor may appoint and remove inspector.

II. 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.

III. 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.

IV. 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.

Penalty on member taking bribes or gratuities.

V. 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.

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VI. 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 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.

Penalty for desertion or refusal to serve during term of service.

VII. 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 authorize, 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.

Application of fines levied under this Act.

Disposal of Gratuities or rewards.

VIII. 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,

Penalty for unauthorized sale or pledge of horse, equipments, &c.

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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.

IX. 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.

X. 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 any order made for the sequestration of the estate of any such member.

Sections 8, 9, and 10 not to apply to inspector.

XI. 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.

XII. 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 act 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

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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.

XIII. All the offences created by this Act, and all fines and penalties to be inflicted under or by virtue of this Act, may be prosecuted and imposed, respectively, by any resident magistrate having local jurisdiction in the place where such offence shall be committed, or by the officer to be appointed by the Governor under the provisions of the Act for the protection of the northern border of the Colony if committed within the district to be assigned to him under the provisions of the same Act.

How prosecutions may be instituted.

XIV. 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.

Ordinance No. 25 of 1847 not to extend to the force embodied under this Act.

No. 30—1868.] AN ACT [Sept 2, 1868.

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.

WHEREAS it is expedient to provide further Preamble.  
sums, in addition to those by law provided, for the service of the Government of this Colony until the 30th June, 1869 :

No. 30—1868.

Expenditure, 1869.

I. 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, that a sum not exceeding two hundred and eight thousand four hundred and two pounds and nineteen shillings be charged upon the revenue of the said Colony, towards the service of the year 1869, and applied in the manner and for the purposes set forth in the schedule annexed to this Act, that is to say :

Civil Establishments. II. For the expenditure of the Civil Establishments, a sum not exceeding thirty-two thousand three hundred and eighty-four pounds and eleven shillings.

Judicial Establishment. III. For the expenditure of the Judicial Establishment, a sum not exceeding nineteen thousand four hundred and eighty-four pounds and nine shillings.

Educational Establishment. IV. For the expenditure of the Educational Establishment, a sum not exceeding eleven thousand and ninety-one pounds and ten shillings.

Medical Establishments. V. For the expenditure of the Medical Establishment, a sum not exceeding sixteen thousand two hundred and eleven pounds and eight shillings.

Police and Gaol Establishments. VI. For the expenditure of the Police and Gaol Establishments, a sum not exceeding twenty-nine thousand two hundred and sixty pounds and fifteen shillings.

Border Department (Aborigines). VII. For the expenditure on account of the Border Department (Aborigines), a sum not exceeding thirty thousand six hundred and twenty pounds and six shillings.

Pensions, Retired Allowances, &c. VIII. For the expenditure on account of Pensions, Retired Allowances, and Gratuities, a sum not exceeding two thousand seven hundred and ninety pounds and four shillings.

Charitable Allowances. IX. For the expenditure on account of Charitable Allowances, a sum not exceeding one hundred pounds.

Works and Buildings. X. For the expenditure on account of Works and Buildings, a sum not exceeding four thousand three hundred and seventy-eight pounds and twelve shillings.

Roads and Bridges. XI. For the expenditure on account of Roads and

Bridges, including the Convict Department, a sum not exceeding twenty-nine thousand five hundred and fifty-one pounds and nineteen shillings.

No. 30—1868.

XII. For the expenditure on account of Miscellaneous Services, a sum not exceeding twenty-three thousand and ninety-three pounds and five shillings.

Miscellaneous Services.

XIII. For the expenditure on account of Interest, a sum not exceeding four thousand four hundred and thirty-six pounds.

Interest.

XIV. For the expenditure on account of Colonial Allowances to Military Officers, a sum not exceeding five thousand pounds.

Colonial Allowances to Military Officers.

XV. Amounting, in the whole, to two hundred and eight thousand four hundred and two pounds and nineteen shillings.

Total.

XVI. The said aids or supplies shall not be issued or applied for any use, intent, or purpose other than the particular services for which the said amounts have been granted respectively by this Act.

Application of Supplies.

SCHEDULE.

Pages of Estimates for 1868.

For the Expenditure of the Civil Establishment :

3	40 41	His Excellency the Governor ...	£675	0	0
3	41	Colonial Secretary	852	10	0
4		Treasurer-General	343	10	0
4		Auditor-General ...	652	10	0
4		Registrar of Deeds	495	0	0
5	41	Surveyor-General	1,055	0	0
7	41	Department Public Works, &c.	2,848	18	0
9		Port Department	2,785	8	0
9		Keeper of Public Buildings ...	118	0	0
9		Crown Agents, London ...	125	0	0
16	40 42	Post Office ...	20,367	0	0
40		Customs Department—Rents	1,013	0	0
41		Rents for Sundry Offices ...	723	15	0
42		Civil Commissioners, &c., Transport	330	0	0
			<hr/>		
			£32,384	11	0
			2 0		

III.



No. 30—1868.

Pages of Estimates  
for 1868.

## For the Expenditure of the Judicial Establishment :

17	Supreme Court	£1,642	11	0	
17	High Sheriff ...	59	10	0	
18	Attorney-General	120	0	0	
18	Solicitor-General	430	0	0	
20	Divisional Courts	7,329	3	0	
38	Administration of Justice, exclu- sive of Estab- lishments ...	6,525	0	0	
41	Hire of Offices, Periodical Courts	£154	10	0	
41	Rent of Office ...	723	15	0	
42	Transport ...	2,500	0	0	
					£19,484 9 0

## For the Expenditure of the

21	Educational Estab- lishment ...	£680	0	0	
39	Do., exclusive of Establishment	9,887	10	0	
40	Rents ...	284	0	0	
42	Transport ...	240	0	0	
					11,091 10 0

## For the Expenditure of the

24	Medical Establish- ment ...	£4,736	8	0	
39	Do., exclusive of Establishment	11,200	0	0	
40	Rents ...	25	0	0	
42	Transport ...	250	0	0	
					16,211 8 0

## For the Expenditure of the

35	Police and Gaol Establishments	£15,035	15	0	
40	Do., exclusive of Establishments	11,642	10	0	
41	Rent ...	582	10	0	
42	Transport ...	2,000	0	0	
					29,260 15 0

For the Expenditure on account  
of the

1 (Sup. Est.)	Border Department	2,500	0	0	
37	For the Expenditure on account of Border Department	28,120	6	0	
					30,620 6 0

WORCESTER DIVISIONAL COUNCIL LOAN ACT. 563

Pages of Estimate  
for 1868.

No. 30—1868.

38	For the Expenditure on account of Pensions, Retired Allowances, and Gratuities ... ..	2,790	4	0
39	For the Expenditure on account of Charitable Allowances ... ..	100	0	0
43	For the Expenditure on account of Works and Buildings ... ..	4,378	12	0
44	For the Expenditure on account of Roads and Bridges ... ..	29,551	19	0
42	For the Expenditure on account of Miscellaneous Services (Trnspt). £275 0 0			
46	Ditto ditto 22,443 5 0			
2 (Sup. Est).	Ditto ditto ... 375 0 0			
	-----	23,093	5	0
46	For the Expenditure on account of Interest ... ..	4,436	0	0
46	For the Expenditure on account of Colonial Allowances, &c. ... ..	5,000	0	0
	-----			
	Total ...	£208,402	19	0

No. 31--1868.] AN ACT [Sept. 2, 1868.

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.

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 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

Preamble.

No. 31—1868.

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

Repugnant portions of Act No. 9 of 1858, repealed.

I. 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.

II. 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, entitled "An Act to provide for the construction and maintenance of the Main Roads of the Colony," any sum or sums of money that may at any time be required by the said divisional council for the purpose of carrying into effect the object and purpose hereinbefore mentioned ; Provided that no such loan as aforesaid shall be capable of being effected except under and by virtue of a resolution of the said divisional council, at a meeting at which there shall be present not fewer than 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 five 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 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.

WORCESTER DIVISIONAL COUNCIL LOAN ACT. 565

III. 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 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.

No. 31—1868.

Mode of raising loan.

Bond by whom to be signed.

IV. 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 five thousand pounds sterling authorized to be raised under this Act.

Moneys previously borrowed for carrying on work may be repaid from loan.

V. 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.

VI. 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.

VII. The accounts in the last preceding section mentioned shall be audited and examined by the

Audit of accounts.

No. 31—1868.

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.

Repayment of loan provided for.

VIII. 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.

Expenses of procuring Act to be charged to loan.

IX. 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.

Short title.

X. This Act may be cited for all purposes as the "Worcester Divisional Council Loan Act, 1868."

No. 32—1868.] AN ACT [Sept. 2, 1868.

To Provide for the Maintenance of the Main Northern Road.

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.

I. It shall be lawful for the Governor, on receiving a certificate from the Chief Inspector of Public

No. 32—1868.

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.

II. 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 entrusting 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.

Councils named may arrange for maintenance of road.

Council maintaining road to receive toll revenues.

III. It shall be lawful for the Governor, on the application of the divisional councils of Stockenstrom and Queen's Town, or either of them, to direct the Chief Inspector of Public Works to take charge of and to maintain the said road within their respective divisions; and thereupon it shall be lawful for the Governor to exercise in respect to such portion, or the whole of such road, as the case may be, all the powers relating to the imposition and collection of tolls which are by Act No. 10 of 1864 conferred upon divisional councils.

Road may be placed in charge of Chief Inspector.

Collection, &c., of tolls in that case.

IV. This Act shall be and continue in force to the 31st December, 1869, and no longer.

Duration of Act.

No. 33—1868.

No. 33—1868.] AN ACT [Sept. 2, 1868.

To Make Provision for better defining the Boundaries of such Divisions of the Colony in which it may be necessary.

Preamble.

WHEREAS it appears that the boundaries of various divisions of the Colony are not sufficiently and correctly defined, and it is expedient to make provision for better defining such boundaries in all cases in which it may be found necessary: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Boundaries of divisions may be altered by proclamation.

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

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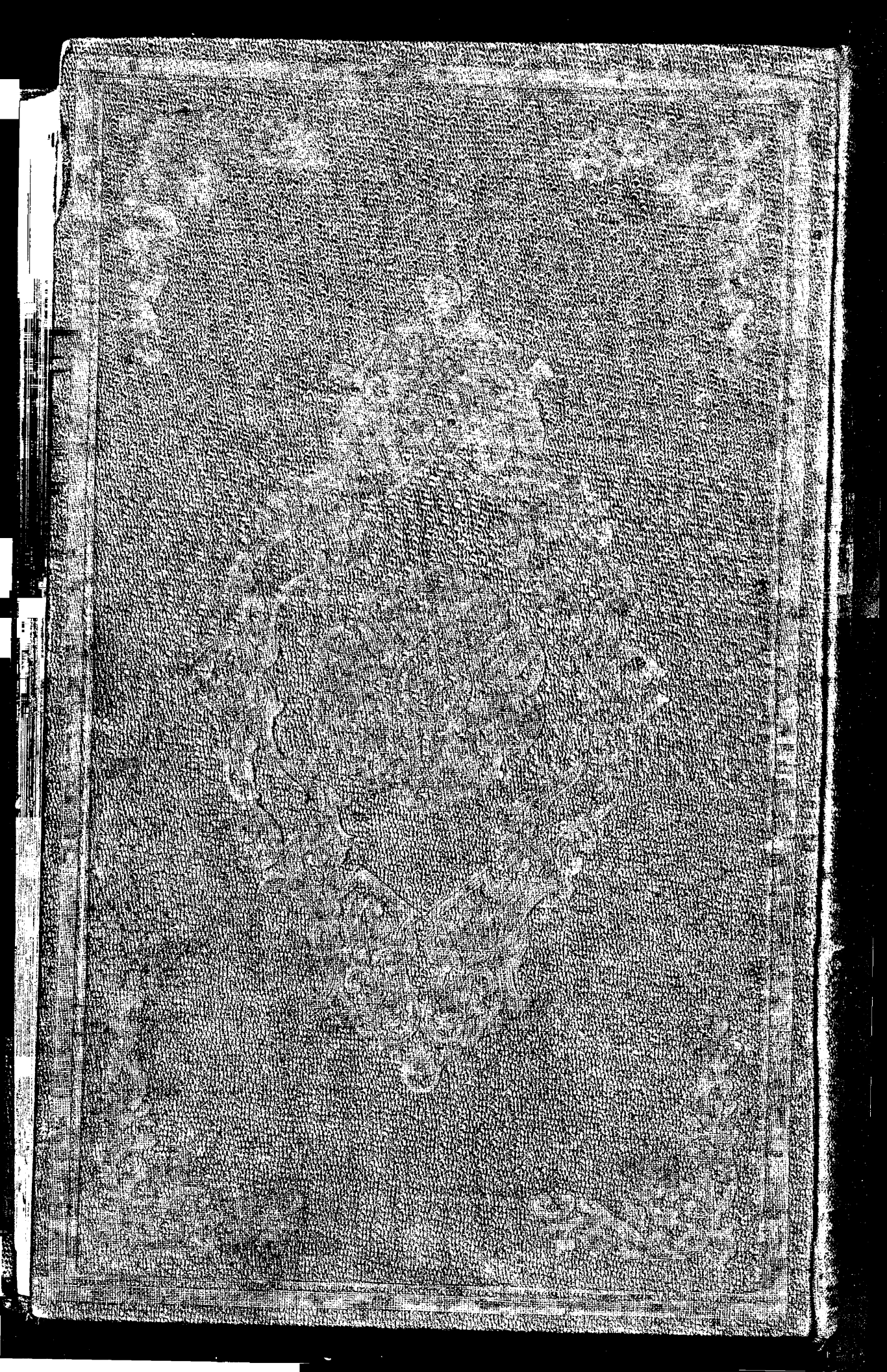
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